

July 25, 2005

In the matter of:
Vigo Coal Company
Friendsville Mine
I.D. No. 11-03064

Petition for Modification

Cypress Creek Mine
I.D. No. 12-02178

Docket No. M-2004-039-C

PROPOSED ORDER OF DISMISSAL

On August 24, 2004, Vigo Coal Company, filed a petition pursuant to 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. Sec. 811(c), and 30 CFR 44 et seq., for the modification of the application of 30 CFR 77.1304(a), to its Friendsville Mine, located in Wabash County, Illinois and its Cypress Creek Mine, located in Warrick County, Indiana. The Petitioner alleged that the alternative method proposed in the petition would at all times guarantee no less than the same measure of protection afforded by the standard.

The petitioner requested the modification be granted to allow the use of fine coal from the Lower Friendship seam mixed with ammonium nitrate and 4 percent (by weight) fuel oil (AN-FO) as a blasting agent. The petition was submitted after MSHA enforcement personnel questioned whether the mix represented a blasting agent that complied with the requirements of 30 CFR 77.1304(a).

The standard states:

Sensitized ammonium nitrate blasting agents, and the components thereof prior to mixing, shall be mixed and stored in accordance with the recommendations in Bureau of Mines Information Circular 8179, "Safety Recommendations for Sensitized Ammonium Nitrate Blasting Agents," or subsequent revisions.

Information Circular 8179 was revised and republished as Information Circular 8746 in 1977. The need to update the circular was explained in the abstract:

Since 1963, the Bureau of Mines Information Circular 8179 has served the mining industry as a fundamental safety guide in the field of blasting agents. In the intervening 14 years, many changes have occurred, and this report presents revised recommendations which recognize these changes. For example, AN-FO is now supplied mostly premixed, whereas in 1963 much of it was mixed by the blaster; aluminum metal (Al) and other fuels are now often added to AN-FO to increase strength and flake aluminum powder is used as a sensitizer in water gels; and water gels or slurries that are now extensively used were just coming into practical use in 1963.

Both Information Circulars make the same recommendations under the heading "Composition":

33. (IC 8179) or 16. (IC 8746) If solid fuels are used, they should be chosen to minimize dust explosion hazards.

36. (IC 8179) or 18. (IC 8746) Other unusual compositions should not be attempted except under the supervision of competent personnel able to evaluate the possibility of new hazards in the operation and equipment to determine the sensitivity of the resulting compositions.

37. (IC 8179) or 19. (IC 8746) The cap sensitivity of a composition should be determined at regular intervals and after every change in proportion, character of ingredients, mixing, or packaging.

MSHA personnel observed the cap sensitivity testing of the components and various proportion mixes and subsequent test blasting. The petitioner's engineers demonstrated the competence to supervise the mixing and to monitor the use of the AN-FO/fine coal blasting agent. In addition, the petitioner provided a report carefully outlining procedures for the mixing, storage, and use of the blasting agent. The document, titled "Cap Sensitivity and Velocity of Detonation Test Results, Conclusions, and Recommendations - April 8, 2005" provides for and addresses all of the applicable cap sensitivity testing and safety requirements. Therefore, MSHA concludes that the operator is in compliance with 30 CFR 77.1304(a) when using the

mixture of AN-FO and Lower Friendsville coal seam fine coal as a blasting agent in conformance with observed procedures. No modification of the standard is necessary.

The testing and practices as demonstrated by Petitioner at the Friendsville Mine complied fully with the standard and the provisions of the referenced Information Circulars. Therefore, pursuant to the authority delegated by the Secretary of Labor to the Administrator for Coal Mine Safety and Health, Vigo Coal Company's Petition for Modification of 30 CFR 77.1304(a) at its Friendsville Mine and Cypress Creek Mine is not needed and is hereby:

DISMISSED.

Any party to this action desiring a hearing on this matter must file in accordance with 30 CFR 44 within 30 days. The request for hearing must be filed with the Administrator for Coal Mine Safety and Health, 1100 Wilson Boulevard, Arlington, Virginia 22209-3939.

If a hearing is requested, the request shall contain a concise summary of position on the issues of fact or law desired to be raised by the party requesting the hearing, including specific objections to the proposed decision. A party other than Petitioner who has requested a hearing shall also comment upon all issues of fact or law presented in the petition, and any party to this action requesting a hearing may indicate a desired hearing site. If no request for a hearing is filed within 30 days after service thereof, the Order of Dismissal will become final.

/s/ Terry L. Bentley

Terry L. Bentley
Chief, Safety Division
Coal Mine Safety and Health