

April 13, 2005

In the matter of:
Relgis Inc.
Lick Branch No. 2 Mine
I.D. No. 46-08676

Petition for Modification

Docket No. M-2004-041-C

PROPOSED ORDER OF DISMISSAL

On September 7, 2004, Relgis, Inc., 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 75.1103-4(a), to its Lick Branch No. 2 Mine, located in Fayette County, West Virginia. 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 using terms and conditions slightly different from those used by MSHA in granting a modification of the same standard to another mine. Relgis, Inc. proposed maintaining the carbon monoxide sensors used to detect combustion on 2000-foot centers rather than the 1000-foot centers necessary for early warning detection of fire or smoldering coal in the belt entry. The petition for modification was submitted subsequent to a citation being issued on August 27, 2004, for the failure to install the sensors necessary to identify which belt flight is the source of an alarm or fire, specifically those sensors ahead of belt transfer points and immediately downwind of the transfer.

The petitioner did not withdraw the requested modification or propose to amend the alternative method to acceptable sensor spacing. In addition, the petitioner insisted during its investigation that the petition be granted or denied based upon the proposed 2000-foot sensor spacing.

MSHA's investigation determined that the petitioner's proposed alternative method (carbon monoxide sensors installed on not more than 2000-foot centers) would not provide early warning of a fire in the belt entry and is, consequently, not an acceptable alternative method of compliance with the standard.

The mine operator subsequently decided that installing three (3) sensors in order to come into compliance with the safety

standard was preferable to installing the nine (9) sensors necessary to reduce the sensor spacing to not more than the 1000-foot spacing MSHA requires to assure quicker sensor response for early warning fire detection.

On March 21, 2005, the outstanding citation was terminated when three (3) additional sensors, one at each of the conveyor belt transfer points, were installed.

The mine operator has complied with the standard and the modification is no longer needed. Therefore, pursuant to the authority delegated by the Secretary of Labor to the Administrator for Coal Mine Safety and Health, Relgis, Inc.'s Petition for Modification of 30 CFR 75.1103-4(a) at its Lick Branch No. 2 Mine 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.

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