

Rio Grande Mining Company
Shafter Mine
MSHA ID# 41-02905

Petition for Modification

Docket No. M-2012-007-M

Proposed Decision and Order

On September 4, 2012, Rio Grande Mining Company (Rio Grande) filed a petition under 30 U.S.C. § 811 (c) and 30 C.F.R. Part 44 seeking a modification of the application of 30 C.F.R. § 49.2 (c) to its Shafter Mine (MSHA ID# 41-02905). Rio Grande operates the Shafter Mine, an underground silver mine near Marfa, TX.

30 C.F.R. § 49.2 (c) - Availability of mine rescue teams

To be considered for membership on a mine rescue team, each person must have been employed in an underground mine for a minimum of one year within the past five years. For the purpose of mine rescue work only, miners who are employed on the surface but work regularly underground shall meet the experience requirement. The underground experience requirement is waived for those miners on a mine rescue team on the effective date of this rule.

The Shafter Mine started silver production around the 1860's and produced silver until 1942 when the miners were needed to produce iron ore products for the war. Mining resumed in the 1980s and ceased in 1989, when the price of silver dropped. The mine reopened in 2011 and is currently in a development stage. Active mining began in December of 2012. Currently, a total 130 miners work two 12-hour shifts, seven days a week. Forty seven (47) miners work underground. Employment will increase as underground operations reach full production and a planned surface pit is developed to recover ore from old underground workings near the surface. The Shafter Mine has a 2600-foot decline into the mine. A raise-bored shaft will be completed to serve as the secondary escapeway. The mine has a refuge chamber located approximately 1200 feet down the decline. The rescue chamber has piped air and water, and the capacity for 20 miners. The raise-bored escape way will have a hoist and conveyance to the 400 level of the mine. Mobile equipment will haul the ore to the surface and stockpile it until the mill begins processing. The mine operator will employ the Merrill-Crowe process for silver extraction. Approximately 17 pieces of diesel equipment, of various sizes, are located in the mine. Shafter Mine's mine rescue team consists of 12 members including both management and hourly employees. Additional members are in training but have not yet completed the one-year experience requirement. The mine purchased 13 Drager

BG4 self-contained breathing apparatuses with spare oxygen bottles. A Haskell oxygen pump is located at the mine and supplies medical grade oxygen for the breathing apparatuses. The mine has a fully equipped ambulance on the surface and a fully equipped Kabota tractor for transportation of injured miners to the surface. The mine has at least three persons certified as emergency medical technicians (EMTs). Mine management has expressed concerns about the remote location of the mine and turnover of mine rescue team members as justification for this petition of modification. The Shafter Mine is located over 200 miles from the nearest underground mine. Team membership is currently on a volunteer basis and does not include premium pay for participation.

The Petitioner's proposal consists of waiving the requirements for 30 C.F.R. § 49.2(c) which requires mine rescue members to have at least one year of underground experience in the past five years, and substituting a 3-month requirement. Mine rescue personnel without the one year of underground experience would be trained paramedics or emergency medical technicians and certified surface fire fighters. They would be trained in mine rescue by a certified mine rescue trainer.

On September 12, 2012, MSHA's South Central District Manager and members of his staff conducted an investigation relevant to the merits of the petition and filed a report of their findings and recommendations with the Administrator for Metal and Nonmetal Mine Safety and Health. After a careful review of the entire record, including the petition and MSHA's investigative report, this Proposed Decision and Order is issued.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

MSHA's investigation revealed that modifying this standard by allowing rescue members to have only 3-months underground experience rather than having at least one year of underground experience in the past five years would not increase the safety of miners working at the Shafter mine.

Therefore, the petitioner's proposed alternative method will not at all times provide a safe work environment for miners and guarantee no less than the same measure of protection afforded the miners under 30 C.F.R. § 49.2 (c).

ORDER

Wherefore, pursuant to the authority delegated by the Secretary of Labor to the Administrator for Metal and Nonmetal Mine Safety and Health, and pursuant to Section 101(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C., § 811(c), it is hereby ordered that a modification of the application of 30 C.F.R. § 49.2 (c) to Rio Grande Mining Company as it applies to the Shafter Mine, is hereby **DENIED.**

Any party to this action desiring a hearing must file a request for hearing within 30 days after service of the Proposed Decision and Order, in accordance with 30 C.F.R. § 44.14, with the Administrator for Metal and Nonmetal 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 and Order. A party other than the petitioner who has requested a hearing shall also comment upon all issues of fact or law presented in the petition. 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, this Proposed Decision and Order will become final and must be posted by the operator on the mine bulletin board at the mine.

/s/ Neal H. Merrifield
Neal H. Merrifield
Administrator for Metal and Nonmetal
Mine Safety and Health