

In the matter of
Nelson Brothers, LLC
Contractor I.D. 5DA
for

Petition for Modification

Alex Energy, Inc.
Edwight Surface Mine
I.D. 46-08977

Alex Energy, Inc.
No. 1 Surface Mine
I.D. 46-06870

Elk Run Coal Company
Republic Energy Mine
I.D. 46-09054

Elk Run Coal Company
Black Castle Mining Company
I.D. 46-07938

Progress Coal
Twilight Mtr. Surface Mine
I.D. 46-08645

Docket No. M-2009-043-C

PROPOSED DECISION AND ORDER

On January 22, 2010 an amended petition was filed seeking a modification of the application of 30 C.F.R. § 77.1302(k) by Nelson Brothers LLC, an independent contract blaster, for Alex Energy, Inc.'s Edwight Surface Mine located in Raleigh County, West Virginia, Alex Energy, Inc.'s No. 1 Surface Mine located in Nicholas County, West Virginia, Elk Run Company's Republic Energy Mine located in Fayette County, West Virginia, Elk Run Coal Company's Black Castle Mining Company Mine located in Boone County, West Virginia and Progress Coal's Twilight Mtr. Surface Mine located in Boone County, West Virginia.

The petitioned standard reads "Vehicles containing explosives or detonators shall not be taken to a repair garage or shop for any purpose".

Petitioner's alternate method would allow employees to perform routine repair and maintenance work on its explosive trucks under the cover of the non-permanent shelters that the petitioner constructs at a remote area of the mine, away from normal

mining, for such purpose. These structures are comprised of a roof constructed over a concrete pad with two sides closed off from the wind, rain, and snow.

The Petitioner alleges that the alternative method proposed in the petition will at all times guarantee no less than the same measure of protection afforded by the standard and furthermore contends that compliance with the standard would result in a diminution of safety to the workers from working in the open and on the ground.

On February 23 and 24, 2010, and March 5 and 11, 2010, MSHA personnel conducted an investigation of the petition and filed a report of their findings with the Administrator for Coal 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 was issued.

Findings of Fact and Conclusions of Law

The Petitioner requests that it be permitted to perform routine repair and maintenance work on its bulk explosive trucks under the cover of non-permanent shelters constructed by the petitioner. These non-permanent shelters are not the type of "repair garage or shop" contemplated by 30 C.F.R. § 77.1302(k) and do not present the same hazards associated with the maintenance of vehicles used to transport explosives at these facilities. Petitioner's use of these non-permanent shelters, located in remote areas of the mine site away from normal mining activity, would allow Petitioner to perform maintenance work on its explosive trucks while reducing worker exposure to potential hazards. The required maintenance or repair work on these bulk trucks are presently being performed in the open and at different areas of the mine thereby increasing the exposure of miners working in these areas to potential hazards.

The petitioner alleges that workers are subject to exposure to harsh weather elements, and potential slip, trip and fall injuries while repairs and maintenance is performed in areas where a dry, level, and protected structure is not provided. The non-permanent shelters would provide a smooth, dry, level foundation of concrete that provides easier placement of jacks, cribbing or stands as apposed to working in environmental conditions such as rain, snow, freezing rain, mud, and ice. Jacks or cribbing sink into the ground resulting in reduction of workspace and unlevel, poorly supported equipment that is subject to falling. Petitioner is of the opinion that workers in shelters would reduce the slip/fall, sprains/strains injuries associated with their work.

Federal regulations define a blasting agent (the type of material found in Petitioner's bulk trucks) as any material or mixture, consisting of fuel and oxidizer intended for

blasting, not otherwise defined as an explosive: provided, that the finished product, as mixed for the use or shipment, cannot be detonated by means of a No. 8 blasting cap (detonator) when confined. The ANFO blasting agent, being utilized for blasting of overburden at the petitioned mines, incorporates an explosive booster into the charged hole that acts as a bridge between a low energy explosive (blasting cap or detonator) and a low sensitivity (but typically high energy) explosive such as ANFO. The booster increases the explosive shockwave to the degree sufficient to detonate the ANFO. The petitioner proposes that all high explosives (boosters and detonators) will be removed from vehicles prior to entering the non-permanent structures.

The alternative method proposed by the Petitioner (as amended by MSHA) will at all times guarantee no less than the same measure of protection afforded the miners under 30 C.F.R. § 77.1302(k).

On the basis of the petition and the findings of MSHA's investigation, Nelson Brothers, LLC is granted a modification of the application of 30 C.F.R. § 77.1302(k) for Alex Energy, Inc.'s Edwight Surface Mine, Alex Energy, Inc.'s No. 1 Surface Mine, Elk Run Company's Republic Energy Mine, Elk Run Coal Company's Black Castle Mining Company Mine, and Progress Coal's Twilight Mtr. Surface Mine.

ORDER

Wherefore, pursuant to the authority delegated by the Secretary of Labor to the Administrator for Coal 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 ordered that Nelson Brothers, LLC's Petition for Modification of the application of 30 C.F.R. § 77.1302(k) to allow explosive trucks to enter non-permanent shelters constructed for the purpose of repair or maintenance work at Independence Coal Company's Edwight Surface Mine, Alex Energy, Inc.'s No. 1 Surface Mine, Elk Run Coal's Republic Energy Mine, Elk Run Coal Company's Black Castle Mining Company Mine and Independence Coal Company's Twilight Mtr. Surface Mine is hereby:

GRANTED, conditioned upon compliance with the following terms and conditions:

1. All high explosives and detonators shall be removed from vehicles prior to entering the non-permanent shelters.
2. No hot work or open flames shall be permitted within 50 feet of a vehicle containing blasting agents.

3. Vehicles shall be emptied of all explosives, including blasting agents, and washed before entering the non-permanent shelter to conduct hot work (grinding), welding, or cutting with an open flame.
4. A flashing light shall be installed on top of the shelter to warn anyone approaching that a truck containing blasting agents is in the shelter.
5. A rope or gate with a warning sign shall be extended across entrances when trucks containing blasting agents are in shelters for repair or maintenance.
6. The number of persons working in the shelter shall be limited to the minimum required to conduct repair work or perform maintenance.
7. All shelters shall be constructed in remote areas away from normal mining activities.
8. This petition of modification shall be posted at each non-permanent shelter and at each mine bulletin board.

Within 60 days of the PDO being granted, the Petitioner shall submit proposed revisions for its approved 30 C.F.R. Part 48 training plan to the MSHA District Manager. These proposed revisions shall include initial and refresher training regarding compliance with the PDO.

Any party to this action desiring a hearing on this matter must file in accordance with 30 C.F.R. § 44.14, 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 may 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 Decision and Order will become final and must be posted by the operator on the mine bulletin board at the mine.

Charles J. Thomas
Deputy Administrator for
Coal Mine Safety and Health