



Billing Code: 4520-43-P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of two petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below.

DATES: All comments on the petitions must be received by MSHA's Office of Standards, Regulations, and Variances on or before **[INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit your comments, identified by "docket number" on the subject line, by any of the following methods:

1. Electronic Mail: zzMSHA-comments@dol.gov. Include the docket number of the petition in the subject line of the message.

2. Facsimile: 202-693-9441.

3. Regular Mail or Hand Delivery: MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202-5452, Attention: Roslyn B. Fontaine, Acting Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards, Regulations, and Variances at 202-693-9557 (voice), Noe.Song-Ae.A@dol.gov (email), or 202-693-9441 (facsimile). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations Part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or
2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements for filing petitions for modification.

II. Petitions for Modification

Docket Number: M-2020-005-C.

Petitioner: Affinity Coal Company, 111 Affinity Complex Rd., Sophia, WV 25878.

Mine: Affinity Mine, MSHA I.D. No. 46-08878, located in Raleigh County, West Virginia.

Regulation Affected: 30 CFR 75.1700 Oil and gas wells.

Modification Request: The petitioner requests a modification of the existing standard, 30 CFR 75.1700, in order to mine through two existing wells at the Affinity Mine.

The petitioner states that:

(1) Coal mining operations at the Affinity Mine are restricted by two conventional gas wells, which are shallow and vertical.

(2) The gas wells are close to a future portal site, which will be composed of: an intake shaft, hoist, warehouse, supply yard, and parking.

(3) If the wells cannot be mined through then the petitioner will have to drop the well entries and build overcasts. Dropping the well entries and building overcasts would reduce the amount of air supplied by the intake shaft.

(4) An alternate method proposed in the petition will increase ventilation throughout the Affinity Mine.

The petitioner's alternative method consists of procedures for cleaning out, preparing, plugging, and replugging oil or gas wells; procedures for mining within 100-foot diameter barrier around well; and additional conditions the petitioner will meet prior to mining through the wells.

(a) The petitioner proposes the following conditions to be met prior to mining through the wells:

(1) A 300 foot safety barrier will be built and maintained around the oil and gas wells, which includes a 150 foot barrier between a mined location and the well, until the MSHA district manager has approved mining in that area. Oil and gas wells are defined by the petitioner to include active, inactive, abandoned, shut-in, previously plugged wells, water injection wells, and

carbon dioxide sequestration wells. Additionally, MSHA considers potential oil and gas producing formations that have not produced in commercial quantities to be oil and gas wells.

(2) Before mining inside the safety barrier, around any well that the mine will intersect, the petitioner will give the MSHA district manager a sworn affidavit or declaration by a company official, stating the required procedures for cleaning, preparing, and plugging each gas or oil well have been completed. The affidavit or declaration will include the logs described below as well as any other records that the district manager requires.

The petitioner may request a permit to lower the 300 foot safety barrier if a well intersection is not planned and lowering the barrier will not intersect the well.

(3) This petition applies to all methods of underground coal mining.

(b) The petitioner proposes the following mandatory procedures for cleaning out, preparing, plugging, and replugging oil or gas wells:

(1) Procedures for cleaning out and preparing vertical oil and gas wells before plugging or replugging them:

(i) If the well is less than 4,000 feet deep, the petitioner will clean out the well from the surface to at least 200 feet below the lowest mineable coal seam's base, unless the MSHA district manager requires cleaning below that (based on the MSHA district manager's judgement, geological strata, or well pressure). If the well depth is equal to or greater than 4,000 feet, the petitioner will clean out the well from the surface to at least 400 feet below the lowest mineable coal seam's base. The petitioner will remove all materials that are within the well, throughout the entire diameter of the well, from wall to wall.

(ii) Down-hole logs will be prepared by the petitioner for each well.

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logs are made up of a caliper survey and log(s) used to determine the diameters of the coal seam and potential hydrocarbon producing strata and location for a bridge plug (if required). If approved by the MSHA district manager, down-hole camera surveys may be used instead of down-hole logs. A journal will be maintained to describe the depth and nature of material(s) encountered, the drilling information, the length of the plug, casing(s) effected, and other information related to cleaning and sealing the well. Information such as invoices, work orders, and other records will be kept for MSHA to inspect, should MSHA request it.

(iii) When cleaning the well, a diligent effort will be made to remove
all

the casing in the well. If the casing cannot be removed, the petitioner will ensure that the annulus between the casings and the well walls are filled with expanding cement, with a minimum of 0.5% after setting, and contain no voids. Remaining casing will be cut, milled, perforated, or ripped to facilitate removing remaining casing from the coal seam. Any remaining casing will be perforated or ripped to allow cement to be injected in order to fill in voids throughout the well. The petitioner will make sure that work done before this petition to perforate or rip remaining casing at the coal seam is consistent with this petition. Perforations or rips are required at intervals of every 50 feet from 200 feet below the base of the lowest mineable coalbed, for wells less than 4,000 feet deep and 400 feet below the lowest mineable coal seam, up to 100 feet above the uppermost part of the coal seam.

(iv) In the event that the cleaned-out well produces excessive gas, a mechanical bridge plug will be placed in the borehole in a competent stratum at least 200 feet below the base of the lowest mineable coalbed, but above the top of the uppermost hydrocarbon-producing stratum, unless the MSHA district manager requires a larger distance. If it is not

possible to set a mechanical bridge plug, an appropriately sized packer may be used in place of the mechanical bridge plug.

(v) If the uppermost hydrocarbon-producing stratum is within 300 feet of the base of the lowest mineable coalbed, a properly placed mechanical bridge plug, described in subparagraph (iv) above, will be used to isolate the hydrocarbon-producing stratum from the expanding cement plug. A minimum of 200 feet of expanding cement will be placed below the lowest mineable coalbed unless the MSHA district manager requires a greater distance, based on judgement, geological strata, or well pressure.

(2) Procedures for plugging and replugging oil or gas wells:

(i) A cement plug will be set by pumping an expanding cement slurry down the well to create a plug that runs from at least 200 feet (400 feet if the total well depth is 4,000 feet or greater) below the base of the lowest coal seam that is being mined, unless the MSHA district manager requires a greater distance, based on judgement, geological strata, or well pressure. The cement will be placed in the well under a pressure of at least 200 pounds per square inch. Portland cement or a light-weight cement mixture may be used to fill in the area from 100 feet above the top of the uppermost mineable coalbed to the surface, unless the MSHA district manager requires a higher distance, based on judgement, geological strata, or well pressure.

(ii) The petitioner will embed steel turnings or other small magnetic particles in the top of the cement near the surface as permanent magnetic monuments for the well. An alternative is a 4 inch or larger casing, set in cement, which extends 36 or more inches

above the ground level with the API number engraved or welded on the casing. High resolution GPS are required when a hole cannot be physically marked.

(3) Procedures for plugging and replugging oil or gas wells for use as degasification wells:

(i) A cement plug will be set in the wellbore by pumping an expanding cement slurry to form a plug from at least 200 feet of expanding cement (400 feet if the depth is 4,000 feet or greater) below the lowest mineable coalbed at a pressure of at least 200 pounds per square inch. The top of the expanding cement will extend at least 50 feet above the top of the coalbed being mined, unless the MSHA district manager requires a greater distance.

(ii) The petitioner will grout a suitable casing into the bedrock of the upper part of the degasification well in order to protect it. The remainder of the well may be cased or uncased.

(iii) The petitioner will fit a wellhead to the top of the degasification casing, as required by the MSHA district manager in the approved ventilation plan.

(iv) This equipment can include check valves, shut-in valves, sampling ports, flame arrestor equipment, and security fencing.

(v) The degasification well will be addressed in the approved ventilation plan, including periodic tests of methane levels and limits on the minimum methane concentrations extracted.

(vi) Once an area of the coal mine is degassed by a sealed well or if the coal mine is abandoned, the petitioner will plug all degasification wells using the following procedures: the petitioner will insert a tube to the bottom of the well, or at least to 100 feet above the coal seam being mined; blockage will be removed to allow the tube to reach this depth; the

petitioner will set a cement plug in the well, pumping Portland cement or a lightweight cement mixture until the well is filled to the surface; and the petitioner will embed steel turnings or other small magnetic particles in the top of the cement near the surface as permanent magnetic monuments for the well. An alternative is a 4 inch or larger casing, set in cement, which extends 36 or more inches above the ground level with the API number engraved or welded on the casing.

(4) Procedures for preparing and plugging or replugging oil or gas wells that the petitioner determines, and the MSHA district manager agrees, cannot be cleaned completely:

- (i) The petitioner will drill a hole adjacent and parallel to the well, at least

200 feet deep (400 feet if the total well depth is 4,000 feet or greater), below the coal seam to be mined or at the lowest mineable coal seam (whichever is lower).

- (ii) The petitioner will locate remaining casings using geophysical sensing

devices.

- (iii) If casings are detected then the petitioner will drill into the well from

from the parallel hole. The petitioner will perforate or rip all casings to allow for the injection of cement. The petitioner will perforate or rip at every 50 feet from at least 200 feet (400 feet if the total well depth is 4,000 feet or greater) below the base of the coal seam to be mined or the lowest mineable coal seam, whichever is lower, up to 100 feet above the seam that is being mined (unless the MSHA district manager requires a greater distance based on judgement, geological strata, or well pressure).

The petitioner will ensure that the annulus between the casings and the well are filled with expanding cement, with a minimum of 0.5% after setting, and contain no voids. Where there are multiple casing or tubing strings present, any remaining casing will be ripped or perforated and filled with expanding cement; an acceptable casing bond log is needed for each casing and tubing strip if used instead of ripping or perforating multiple strings.

(iv) If the petitioner determines, and the MSHA district manager agrees, that there is insufficient casings in the well to allow for the procedures above (iii) to be completed, the petitioner will use a horizontal hydraulic fracturing technique to intercept the original well. From at least 200 feet (400 feet if the total well depth is 4,000 feet or greater) below the base of the coal seam to be mined or the lowest mineable coal seam to a point of at least 50 feet above the seam being mined, the petitioner will fracture 6 places (in agreement with the MSHA district manager). After the fracturing process, the petitioner will pump in cement to fill any voids.

(v) Down-hole logs will be prepared by the petitioner for each well. The logs are made up of a caliper survey and log(s) used to determine the diameters of the coal seam and bridge plug (if required). If conditions make it impractical to obtain the log from the well, the petitioner may obtain logs from the adjacent hole. If approved by the MSHA district manager, down-hole camera surveys may be approved used instead of down-hole logs. A journal will be maintained to describe the depth and nature of material(s) encountered, the drilling information, the length of the plug, casing(s) effected, and other information related to cleaning and sealing the well. Information such as invoices, work orders, and other records will be kept for MSHA to inspect, should MSHA request it.

(vi) After the well has been plugged according to the above procedures, the petitioner will plug the adjacent hole from the bottom to the surface using Portland cement (or a lightweight cement mixture). The petitioner will embed steel turnings or other small magnetic particles in the top of the cement near the surface as permanent magnetic monuments for the well. An alternative is a 4 inch or larger casing, set in cement, which extends 36 or more inches above the ground level. Each well will be assessed and the petitioner may submit an alternative plan, while the MSHA district manager may require that more than one method be utilized (or require additional data and certification).

(c) The petitioner proposes to use the following mandatory procedures for mining within a 100-foot barrier around the well:

(1) A conference may be requested by any of the following: the representative of the petitioner, a state agency, or the MSHA district manager (the petitioner's employees do not have a designated miners' representative as defined by 30 CFR 44.11(a)(6)). The requester will let the other parties above know of the conference with a reasonable amount of time before the conference, allowing for an opportunity to participate. The focus of the conference is to review, evaluate, and accommodate any abnormal or unusual circumstances that relate to the condition of the well or surrounding strata.

(2) The intersection of a well by the petitioner will be conducted on a shift approved by the MSHA district manager. The petitioner will notify the MSHA district manager and the miners' representative prior to the intersection so that representatives can be present.

(3) For continuous mining, drivage sites will be installed by the petitioner not more than 50 feet from the well, at the last open crosscut near the area to be mined to ensure intersection of the well. The drivage sites will not be more than 50 feet from the well.

(4) Firefighting equipment, including fire extinguishers, rock dust, and sufficient fire hose to reach the working face area of the mining-through will be available when either the conventional or continuous mining method is used. The fire hose will be located in the last open crosscut of the entry or room. The petitioner will maintain the water line to be able to reach the farthest point of penetration on the section.

(5) Sufficient supplies of roof support and ventilation materials will be available and located at the last open crosscut. In addition, an emergency plug and/or plugs will be available in the immediate area of the mine-through.

(6) Equipment will be checked for permissibility and serviced on the shift prior to mining-through the well; water sprays, water pressures and water flow rates will be checked and any issues will be corrected.

(7) The methane monitor on the continuous mining machine will be calibrated on the shift prior to mining-through the well.

(8) When mining is in progress, tests for methane will be made with a hand-held methane detector at least every 10 minutes from the time that mining with the continuous mining machine is within 30 feet of the well until the well is intersected and immediately prior to mining through. During the actual cutting through process, no individual will be allowed on the return side until mining-through has been completed and the area has been examined and declared safe.

(9) The working place will be free from accumulations of coal dust and coal spillages, and rock dust will be placed on the roof, rib and floor within 20 feet of the face when mining through or near the well on the shift or shifts during which the cut-through will occur.

(10) When the wellbore is intersected, all equipment will be de-energized and the area thoroughly examined and determined safe before mining is resumed.

(11) After a well has been intersected and the working place determined safe, mining will continue inby the well at a sufficient distance to permit adequate ventilation around the area of the wellbore.

(12) When a torch is necessary for poorly cut or milled casings, no open flames will be permitted in the area until adequate ventilation has been established around the wellbore and methane levels of less than 1 percent are present in all areas affected by flames or sparks from the torch. Before using a torch, a thick layer of rock dust will be applied to any roof, face, floor, ribs or exposed coal within 20 feet of the casing.

(13) Non-sparking (brass) tools will be used only to expose and examine cased wells. These tools will be located on the working section.

(14) No person will be permitted in the area of the mining-through operation except for those actually engaged in the operation, company personnel, representatives of the miners, personnel from MSHA, and personnel from the appropriate State agency.

(15) The petitioner will alert all personnel in the mine of a planned intersection of the well before going underground if it is to occur during the shift. The warning will be continuously repeated until the well is mined through.

(16) The mining-through operation will be under the direct supervision of a certified official. Instructions concerning the mining-through operation will be issued only by the certified official in charge.

(17) Within 30 days after the Proposed Decision and Order (PDO) becomes final, the petitioner will submit proposed revisions to be approved by the MSHA District Manager, as part of the 30 CFR 48 training plan. This will include initial and refresher training. The revisions are to include training on the above terms for all miners involved in well intersection prior to mining within 150 feet of the well which is to be mined through.

(18) The required person under 30 CFR 75.1501 Emergency Evacuations is responsible for emergencies relating to the intersection and this person will review intersection procedures before the intersection occurs.

(19) Within 30 days of when this PDO is finalized, the petitioner will submit a revised emergency evacuation and firefighting training program, required by 30 CFR 75.1502. The petitioner will revise the program to incorporate hazards and evacuation plans used for well intersection. All underground miners will be trained in the above plan revisions within 30 days of submittal.

(20) The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection from the potential hazards against which the existing standard for 30 CFR 75.1700 is intended to guard.

Docket Number: M-2020-006-C.

Petitioner: Nelson Brothers, LLC, P.O. Box 8276, South Charleston, WV 25303.

Mines: Workman Creek Surface Mine, MSHA I.D. No. 46-09475, located in Raleigh County, West Virginia; No. 1 Surface Mine, MSHA I.D. No. 46-06870, located in Nicholas County, West Virginia; Twilight Mtr. Surface Mine, MSHA I.D. No. 46-08645, located in Boone County, West Virginia.

Regulation Affected: 30 CFR 77.1302(k) Vehicles used to transport explosives.

Modification Request: The petitioner requests that a previously granted petition for modification, Docket No. M-2009-043-C, be amended. The petitioner proposes to add Workman Creek Surface Mine, MSHA I.D. No. 46-09475 to the Proposed Decision and Order (PDO), while removing from the PDO: No. 1 Surface Mine, MSHA I.D. No. 46-06870 (no longer active) and Twilight Mtr. Surface Mine, MSHA I.D. No. 46-08645 (which the petitioner does not service anymore). On January 31, 2011, the petition for modification to 30 CFR 77.1302(k), Docket No. M-2009-043-C, was granted; the PDO permitted the petitioner's alternative method of repairing and maintaining vehicles containing explosives or detonators. Under this PDO, employees are allowed to perform routine repair or maintenance work under non-permanent shelters constructed in remote areas of the mine where normal mining activities are not occurring. The petitioner asserts that at the new mine cited above, the alternative method included in Docket No. M-2009-043-C will at all times guarantee no less than the same measure of protection afforded the miners under 30 CFR 77.1302(k).

Roslyn Fontaine,

Acting Director,

Office of Standards, Regulations, and Variances.

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