



**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:** 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. This notice is a summary of 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 the MSHA's Office of Standards, Regulations, and Variances on or before [Insert date 30 days from the 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](mailto: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 12<sup>th</sup> Street South, Suite 4E401, Arlington, Virginia 22202-5452,

Attention: Sheila McConnell, 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 petitions 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:** Barbara Barron, Office of Standards, Regulations, and Variances at 202-693-9447 (Voice), barron.barbara@dol.gov (E-mail), or 202-693-9441 (Facsimile). [These are not toll-free numbers.]

**SUPPLEMENTARY INFORMATION:**

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. That 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 and procedures for filing petitions for modification.

## **II. Petitions for Modification**

Docket Number: M-2015-006-M.

Petitioner: Marigold Mining Company, 950 17<sup>th</sup> Street, Suite 2600, Denver, Colorado 80202.

Mine: Marigold Mine, MSHA I.D. No. 26-02081, located in Humboldt County, Nevada.

Regulation Affected: 30 CFR 56.6309(b) (Fuel oil requirements for ANFO).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of re-refined oil in lieu of conventional diesel when preparing ANFO for blasting. The petitioner states that:

(1) Only RDO-100 will be used, which is an engineered liquid hydrocarbon fuel that is refined off site from recycled petroleum products by a reputable commercial business with quality controls in place to assure that the product meets the specifications outlined in the Material Safety Data Sheet.

(2) Marigold mining company received lab results from American Testing Technologies, Inc., analyzing the RDO-100 Burner Fuel. The RDO-100 Burner Fuel oil exceeds the following Environmental Protection Agency (EPA) limits of 40 CFR 279.11:

- Arsenic – 5 ppm maximum
- Benzene – 25 ppm maximum
- Cadmium – 2 ppm maximum
- Chromium – 10 ppm maximum
- Lead – 100 ppm maximum
- Total Halogens – 1,000 ppm maximum
- Flash Point - 100°-125° F minimum

In similar cases, and corresponding orders granting modification of the application of 30 CFR 56-6309(b), MSHA has determined that there is not a diminution of safety when using re-refined used oil that meets the EPA criterial of 40 CFR 279.11, and does not contain hazardous waste material listed in 40 CFR Part 261 to prepare ANFO.

(3) Marigold Mining Company seeks modification of the existing standard that recognizes the RDO-100 Burner Fuel is not a “waste oil” or “crankcase oil” prohibited by the referenced standard. RDO-100 is an engineered liquid hydrocarbon fuel manufactured offsite from 100 percent reclaimed petroleum products, and has a flash point greater than 200 degrees Fahrenheit. Marigold Mining seeks recognition from MSHA that it can utilize RDO-100 Burner Fuel to prepare ANFO.

(4) RDO-100 burner fuel is not a “waste oil” or “crankcase oil” prohibited by the referenced standard. Used oil is clearly acceptable to certain situations under EPA standard. Marigold Mining should be allowed to use re-refined and EPA compliant oil to prepare ammonium nitrate-fuel oil for the blasting process. 30 CFR 56.6309(b) states that “waste oil, including crankcase oil, shall not be used to prepare ammonium nitrate-fuel oil” However, the standard does not define the terms “waste oil and “crankcase oil”. Evaluating common industry definitions, it is clear that the RDO-100 burner fuel utilized by Marigold Mining does not fall into either of these categories.

The Merriam-Webster Dictionary defines a “crankcase” as “the part of an engine that contains the crankshaft, the housing of a crankshaft.” Thus, “crankcase oil” is the oil inside the crankcase that lubricates the crankshaft. The oil that Marigold Mining intends to utilize is recycled EPA compliant oil that does not fall under this definition. Used oil

is clearly acceptable in certain situations under EPA standards. “Used oil means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities,” 40 CFR 279.1. 40 CFR Part 279 defines the acceptable and prohibited uses of “used oil”. However, “used oil burned for energy recovery, and any fuel produced from used oil by processing, blending, or other treatment is subject to regulation under [40 CFR Part 279] unless it is shown not to exceed any of the allowable levels of the constituents and properties.

40 CFR 279.11 (emphasis added). Based on Marigold Mining analysis test results, it is evident that Marigold Mining re-refined used oil does not exceed any allowable levels, and thus is not subject to the prohibitions described in 40 CFR Part 279. As such, Marigold Mining should be allowed to utilize used, recycled, EPA compliant oil to prepare ammonium nitrate-fuel oil.

(5) RDO-100 burner fuel (recycled oil) is almost chemically identical to Mobile 15-W40 motor oil (new oil). Even if RDO-100 burner fuel is considered “waste oil” under 30 CFR 56.6309(b), a comparison of the lab results for RDO-100 burner fuel (recycled oil) and Mobile 15-W40 motor oil” (new oil) used to make ANFO reveals that there is not significant difference between the two. The new oil contains more total halogens than the recycled oil. RDO-100 is an engineered liquid hydrocarbon fuel refined offsite from recycled petroleum products by a reputable commercial business with quality controls in place to assure that the product meets the specifications outlined in the MSDS. Thus, creation of ANFO using RDO-100 versus Mobile15-W40 motor oil is similar to the creation of a Coke bottle using recycled plastic versus new plastic.

(6) Marigold Mining is in the process of establishing several precautionary measures that it intends to follow in an effort to dispel any safety concerns. The procedures below constitute a fully appropriate and safe method for transporting, storing, and utilizing recycled used oil to prepare ANFO without any diminution of safety.

- Marigold Mining will only be using re-refined used oil that has already been recycled and tested by a reputable commercial business.

- The recycled oil received by Marigold Mining for use to prepare ANFO will be stored in an oil tank that is dedicated for diesel and/or used oil blend storage.

- The ammonium nitrate to be combined with the re-refined used oil to create ANFO will be stored separate and apart from the re-refined used oil in a locked and secured compound.

- The recycled oil, after it is filtered and meets the EPA criteria of 40 CFR 279.11, shall have no other products added except for No. 2 diesel fuel.

- The re-refined used oil shall not be modified by heating, the addition of additives (excluding the No. 2 diesel fuel), or in any other way that would change the relevant properties of the oil.

- The ANFO will be transported and used in a closed system which prevents skin contact, inhalation of vapors and ingestion of the product. Personal protective equipment worn by employees who handle the ANFO mixture, as required by 30 CFR 56.15006, will be maintained to ensure the intended protection and will be properly disposed of after each use.

- The ANFO will be used only on Marigold Mine property and will not be sold or transferred to other mine properties.

- The re-refined used oil and ammonium nitrate will be taken to the blast site in separate containers and will be combined only as part of the actual process of loading the blast holes.

- The petitioner will maintain a daily “load” and “shot” report detailing all holes loaded and shots fired which contain this re-refined used oil/prill mixture.

(7) There have been no documented incidents at the Marigold Mine from use of RDO-100 burner fuel to prepare ANFO. Marigold Mining has successfully used RDO-100 burner fuel for over eight years without any problems, and has had several discussions with MSHA inspectors during that period regarding use of the product. Prior to Citation No. 8562938 being issued and subsequently vacated in 2011, no MSHA inspector has ever cited Marigold Mining for the use of RDO-100 burner fuel, nor has any MSHA inspector ever advised Marigold Mining not use RDO-100 burner fuel. Marigold Mining’s use of RDO-100 burner fuel is a safe environmentally responsible practice that complies with the requirements of 30 CFR 6309.

The petitioner asserts that application of the existing standard will result in a diminution of safety to the miners and that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

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Sheila McConnell  
Acting Director,  
Office of Standards, Regulations, and Variances  
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