

*Mine:* MC#1 Mine, MSHA I.D. No. 11-03189, located in Franklin County, Illinois.

*Regulation Affected:* 30 CFR 75.507-1(a) (Electric equipment other than power-connection points; outby the last open crosscut return air; permissibility requirements).

• *Docket Number:* M-2015-022-C.

*FR Notice:* 80 FR 77024 (12/11/2015).

*Petitioner:* Speed Mining LLC, P.O.

Box 99, Dawes, West Virginia 25054.

*Mine:* Refuse Disposal Facility, MSHA I.D. No. 46-05437, located in Kanawha County, West Virginia.

*Regulation Affected:* 30 CFR 77.214(a) (Refuse piles; general).

**Sheila McConnell,**

*Director, Office of Standards, Regulations, and Variances.*

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**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 August 1, 2016.

**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 12th Street South, Suite 4E401, Arlington, Virginia 22202-5452, Attention: Sheila McConnell, 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](mailto:barron.barbara@dol.gov) (Email), 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-2016-012-C.

*Petitioner:* ICG Illinois, LLC, 5945 Lester Road, Williamsville, Illinois 62693.

*Mine:* Viper Mine, MSHA I.D. No. 11-02664, located in Sangamon County, Illinois.

*Regulation Affected:* 30 CFR 75.500(d) (Permissible electric equipment).

*Modification Request:* The petitioner requests a modification of the existing standard to permit the use of nonpermissible surveying equipment in or inby the last open crosscut. The petitioner proposes to use theodolites and low-voltage battery operated total stations if they have an IP rating of 66 or higher. The petitioner states that:

(1) Nonpermissible electronic surveying equipment will only be used until equivalent permissible electronic surveying equipment is available or if viable new mechanical surveying equipment is not commercially available.

(2) Viper Mine will maintain a log for electronic surveying equipment. The log

will be kept in either a paperbound book or a digital copy. The log will contain the date of manufacture and/or purchase of each particular piece of electronic surveying equipment. The log will be made available to MSHA on request.

(3) All nonpermissible electronic surveying equipment to be used in or inby the last open crosscut will be examined by the person that will operate the equipment prior to taking the equipment underground to ensure the equipment is being maintained in a safe operating condition. These checks will include:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover or battery attachment to ensure that it is securely fastened.

(vi) Recording the results of the inspection in the equipment log.

(4) All nonpermissible electronic surveying equipment will be serviced according to the manufacturer's recommendations. Dates of service will be recorded in the equipment log and will include a description of the work performed.

(5) The non-permissible surveying equipment that will be used in or inby the last open crosscut will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance.

(6) As an additional safety check, prior to setting up and energizing nonpermissible electronic surveying equipment in or inby the last open crosscut, the surveyor(s) will conduct a visual examination of the immediate area for evidence that the areas appear to be sufficiently rock-dusted and for the presence of accumulated float coal dust. If the rock-dusting appears insufficient or the presence of accumulated coal dust is observed, the equipment will not be energized until sufficient rock dust has been applied and/or the accumulations of coal dust have been cleaned up. If nonpermissible electronic surveying equipment is to be used in an area that is not rock-dusted within 40 feet of a working face where a continuous miner is used to extract coal, the area will be rock-dusted prior to energizing the electronic surveying equipment.

(7) Prior to energizing any of the nonpermissible surveying equipment in or inby the last open crosscut, methane tests must be made no more than 8 inches from the roof at the location of the equipment. All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined by 30 CFR 75.320. All methane detectors must provide visual and audible warnings when methane is detected at or above 1.0 percent.

(8) All areas to be surveyed will be pre-shifted according to 30 CFR 75.360 prior to surveying. If the area was not pre-shifted, a supplemental examination according to 30 CFR 75.361 will be performed before any non-certified person enters the area. If the area has been examined according to 30 CFR 75.360 or 75.361, an additional examination is not required.

(9) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in or inby the last open crosscut. If there are two people in the surveying crew, a second person in the crew will also continuously monitor for methane. That second person will either be a qualified person as defined in 30 CFR 75.151 or will be in the process of being trained to be a qualified person but will not make such tests for a period of 6 months, as required by 30 CFR 75.151. On completion of the 6-month training period, the second person on the survey crew must become qualified to continue on the survey crew. If the surveying crew consists of one person, that person will monitor for methane with two separate devices. While the equipment is energized in or inby the last open crosscut, one qualified person who is continuously monitoring for methane will remain with the electronic surveying equipment.

(10) Batteries contained in the surveying equipment must be changed out or charged in intake air outby the last open crosscut. Replacement batteries for the electronic surveying equipment will not be brought in or inby the last open crosscut. Upon each entry into the mine, all batteries for the electronic surveying equipment must be fully charged.

(11) When using nonpermissible electronic surveying equipment inby the last open crosscut, the surveyor must confirm by measurement or by the air quantity on the section, on that shift, in the last open crosscut or coming to the face is the quantity that is required by the mine's ventilation plan.

(12) Nonpermissible electronic surveying equipment will not be used when active coal extraction is occurring in the section. All active coal extraction in the section will cease prior to use of the equipment in or inby the last open crosscut.

(13) Personnel using the surveying equipment will be properly trained to recognize the hazards and limitations associated with the use of surveying equipment in areas where methane could be present.

(14) All members of the surveying crew will receive specific training on the terms and conditions of this petition before using nonpermissible electronic surveying equipment in or inby the last open crosscut. A record of the training will be kept with the other training records.

(15) Within 60 days after the Proposed Decision and Order (PDO) becomes final, the petitioner will submit proposed revisions for their approved part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the PDO. When training is conducted on the terms and conditions stated in the PDO, an MSHA Certificate of Training (Form 5000-23) will be completed. Comments on the certificate of training will indicate surveyor training.

(16) Viper mine will replace or exclude from service any theodolite that was acquired more than 5 years prior to the date that this petition becomes final or any total station acquired more than 10 years prior to the day that the PDO becomes final for use in or inby the last open crosscut. After 5 years, Viper Mine will maintain a cycle of purchasing new electronic surveying equipment whereby theodolites will be no older than 5 years from date of manufacture and total stations will be no more than 10 years from date of manufacture of use in or inby the last open crosscut.

(17) Viper Mine is responsible for seeing that all surveying contractors hired by Viper Mine are using relatively new electronic equipment, *i.e.*, theodolites no older than 5 years from date of manufacture and total stations no older than 10 years from date of manufacture. These rules and regulations will apply to all nonpermissible electronic surveying equipment used in or inby the last open crosscut regardless of whether the equipment is used by Viper Mine or by an independent contractor.

(18) Nonpermissible equipment will not be used where float coal dust is in suspension.

The petitioner asserts that the proposed alternative method will at all

times guarantee no less than the same measure of protection afforded by the existing standard.

*Docket Number:* M-2016-013-C.

*Petitioner:* ICG Illinois, LLC, 5945 Lester Road, Williamsville, Illinois 62693.

*Mine:* Viper Mine, MSHA I.D. No. 11-02664, located in Sangamon County, Illinois.

*Regulation Affected:* 30 CFR 75.507-1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

*Modification Request:* The petitioner requests a modification of the existing standard to permit the use of nonpermissible surveying equipment in the return airway. The petitioner proposes to use theodolites and low-voltage battery-operated total stations if they have an IP rating of 66 or higher. The petitioner states that:

(1) Nonpermissible electronic surveying equipment will only be used until equivalent permissible electronic surveying equipment is available or if viable new mechanical surveying equipment is not commercially available.

(2) Viper Mine will maintain a log for electronic surveying equipment. The log will be kept in either a paperbound book or a digital copy. The log will contain the date of manufacture and/or purchase of each particular piece of electronic surveying equipment. The log will be made available to MSHA on request.

(3) All nonpermissible electronic surveying equipment to be used in the return airway will be examined by the person that will operate the equipment prior to taking the equipment underground to ensure the equipment is being maintained in a safe operating condition. These checks will include:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover or battery attachment to ensure that it is securely fastened.

(vi) Recording the results of the inspection in the equipment log.

(4) All nonpermissible electronic surveying equipment will be serviced according to the manufacturer's recommendations. Dates of service will be recorded in the equipment log and

will include a description of the work performed.

(5) The nonpermissible surveying equipment used in the return airway will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance.

(6) As an additional safety check, prior to setting up and energizing nonpermissible electronic surveying equipment in the return airway, the surveyor(s) will conduct a visual examination of the immediate area for evidence that the areas appear to be sufficiently rock-dusted and for the presence of accumulated float coal dust. If the rock-dusting appears insufficient or the presence of accumulated coal dust is observed, the equipment will not be energized until sufficient rock dust has been applied and/or the accumulations of coal dust have been cleaned up. If nonpermissible electronic surveying equipment is to be used in an area that is not rock-dusted within 40 feet of a working face where a continuous miner is used to extract coal, the area will be rock-dusted prior to energizing the electronic surveying equipment.

(7) Prior to energizing any of the nonpermissible surveying equipment in the return airway, methane tests must be made no more than 8 inches from the roof at the location of the equipment. All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined by 30 CFR 75.320. All methane detectors must provide visual and audible warnings when methane is detected at or above 1.0 percent.

(8) All areas to be surveyed will be pre-shifted according to 30 CFR 75.360 prior to surveying. If the area was not pre-shifted, a supplemental examination according to 30 CFR 75.361 will be performed before any non-certified person enters the area. If the area has been examined according to 30 CFR 75.360 or 75.361, an additional examination is not required.

(9) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in the return airway. If there are two people in the surveying crew, a second person in the crew will also continuously monitor for methane. That second person will either be a qualified person as defined in 30 CFR 75.151 or will be in the process of being trained to be a qualified person but will not make such tests for a period of 6 months, as required by 30 CFR 75.151. On completion of the 6-month training period, the second person on

the survey crew must become qualified to continue on the survey crew. If the surveying crew consists of one person, that person will monitor for methane with two separate devices. While the equipment is energized in the return airway, one qualified person who is continuously monitoring for methane will remain with the electronic surveying equipment.

(10) Batteries contained in the surveying equipment must be changed out or charged in intake air out of a return airway. Replacement batteries for the electronic surveying equipment will not be brought into the return airway. Upon each entry into the mine, all batteries for the electronic surveying equipment must be fully charged.

(11) When using nonpermissible electronic surveying equipment in the return airway, the surveyor must confirm by measurement or by the air quantity on the section, on that shift, in the return airway is the quantity that is required by the mine's ventilation plan.

(12) Nonpermissible electronic surveying equipment will not be used when active coal extraction is occurring in the section. All active coal extraction in the section will cease prior to use of the equipment in the return airway.

(13) Personnel using the surveying equipment will be properly trained to recognize the hazards and limitations associated with the use of surveying equipment in areas where methane could be present.

(14) All members of the surveying crew will receive specific training on the terms and conditions of this petition before using nonpermissible electronic surveying equipment in the return airway. A record of the training will be kept with the other training records.

(15) Within 60 days after the Proposed Decision and Order (PDO) becomes final, the petitioner will submit proposed revisions for their approved part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the PDO. When training is conducted on the terms and conditions stated in the PDO, an MSHA Certificate of Training (Form 5000-23) will be completed. Comments on the certificate of training will indicate surveyor training.

(16) Viper mine will replace or exclude from service any theodolite that was acquired more than 5 years prior to the date that this petition becomes final or any total station acquired more than 10 years prior to the day that the PDO becomes final for use in the return airway. After 5 years, Viper Mine will maintain a cycle of purchasing new electronic surveying equipment

whereby theodolites will be no older than 5 years from date of manufacture and total stations will be no more than 10 years from date of manufacture for use in the return airway.

(17) Viper Mine is responsible for seeing that all surveying contractors hired by Viper Mine are using relatively new electronic equipment, *i.e.*, theodolites no older than 5 five years from date of manufacture and total stations no older than 10 years from date of manufacture. These rules and regulations will apply to all nonpermissible electronic surveying equipment used in the return airway regardless of whether the equipment is used by Viper Mine or by an independent contractor.

(18) Nonpermissible equipment will not be used where float coal dust is in suspension.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

*Docket Number:* M-2016-014-C.

*Petitioner:* ICG Illinois, LLC, 5945 Lester Road, Williamsville, Illinois 62693.

*Mine:* Viper Mine, MSHA I.D. No. 11-02664, located in Sangamon County, Illinois.

*Regulation Affected:* 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility).

*Modification Request:* The petitioner requests a modification of the existing standard to permit the use of nonpermissible surveying equipment within 150 feet of pillar workings. The petitioner proposes to use theodolites and low-voltage battery-operated total stations if they have an IP rating of 66 or higher. The petitioner states that:

(1) Nonpermissible electronic surveying equipment will only be used until equivalent permissible electronic surveying equipment is available or if viable new mechanical surveying equipment is not commercially available.

(2) Viper Mine will maintain a log for electronic surveying equipment. The log will be kept in either a paperbound book or a digital copy. The log will contain the date of manufacture and/or purchase of each particular piece of electronic surveying equipment. The log will be made available to MSHA on request.

(3) All nonpermissible electronic surveying equipment to be used within 150 feet of pillar workings be examined by the person that will operate the equipment prior to taking the equipment underground to ensure the

equipment is being maintained in a safe operating condition. These checks will include:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover or battery attachment to ensure that it is securely fastened.

(vi) Recording the results of the inspection in the equipment log.

(4) All nonpermissible electronic surveying equipment will be serviced according to the manufacturer's recommendations. Dates of service will be recorded in the equipment log and will include a description of the work performed.

(5) The nonpermissible surveying equipment that will be used within 150 feet of pillar workings will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance.

(6) As an additional safety check, prior to setting up and energizing nonpermissible electronic surveying equipment within 150 feet of pillar workings, the surveyor(s) will conduct a visual examination of the immediate area for evidence that the areas appear to be sufficiently rock-dusted and for the presence of accumulated float coal dust. If the rock-dusting appears insufficient or the presence of accumulated coal dust is observed, the equipment will not be energized until sufficient rock dust has been applied and/or the accumulations of coal dust have been cleaned up. If nonpermissible electronic surveying equipment is to be used in an area that is not rock-dusted within 40 feet of a working face where a continuous miner is used to extract coal, the area will be rock-dusted prior to energizing the electronic surveying equipment.

(7) Prior to energizing any of the nonpermissible surveying equipment within 150 feet of pillar workings, methane tests must be made no more than 8 inches from the roof at the location of the equipment. All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined by 30 CFR 75.320. All methane detectors must provide visual and audible warnings when methane is detected at or above 1.0 percent.

(8) All areas to be surveyed will be pre-shifted according to 30 CFR 75.360 prior to surveying. If the area was not pre-shifted, a supplemental examination according to 30 CFR 75.361 will be performed before any non-certified person enters the area. If the area has been examined according to 30 CFR 75.360 or 75.361, an additional examination is not required.

(9) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment within 150 feet of pillar workings. If there are two people in the crew, a second person in the surveying crew will also continuously monitor for methane. That second person will either be a qualified person as defined in 30 CFR 75.151 or will be in the process of being trained to be a qualified person but will not make such tests for a period of 6 months, as required by 30 CFR 75.151. On completion of the 6-month training period, the second person on the survey crew must become qualified to continue on the survey crew. If the surveying crew consists of one person, that person will monitor for methane with two separate devices. While the equipment is energized within 150 feet of pillar workings, one qualified person who is continuously monitoring for methane will remain with the electronic surveying equipment.

(10) Batteries contained in the surveying equipment must be changed out or charged in intake air outside of 150 feet of pillar workings. Replacement batteries for the electronic surveying equipment will not be brought within 150 feet of pillar workings. Upon each entry into the mine, all batteries for the electronic surveying equipment must be fully charged.

(11) When using nonpermissible electronic surveying equipment within 150 feet of pillar workings, the surveyor must confirm by measurement or by the air quantity on the section, on that shift, within 150 feet of pillar workings is the quantity that is required by the mine's ventilation plan.

(12) Nonpermissible electronic surveying equipment will not be used when active coal extraction is occurring in the section. All active coal extraction in the section will cease prior to use of the equipment within 150 feet of pillar workings.

(13) Personnel using the surveying equipment will be properly trained to recognize the hazards and limitations associated with the use of surveying equipment in areas where methane could be present.

(14) All members of the surveying crew will receive specific training on the terms and conditions of this petition before using nonpermissible electronic surveying equipment within 150 feet of pillar workings. A record of the training will be kept with the other training records.

(15) Within 60 days after the Proposed Decision and Order (PDO) becomes final, the petitioner will submit proposed revisions for their approved part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the PDO. When training is conducted on the terms and conditions stated in the PDO, an MSHA Certificate of Training (Form 5000-23) will be completed. Comments on the certificate of training will indicate surveyor training.

(16) Viper mine will replace or exclude from service any theodolite that was acquired more than 5 years prior to the date that this petition becomes final or any total station acquired more than 10 years prior to the day that the PDO becomes final for use within 150 feet of pillar workings. After 5 years, Viper Mine will maintain a cycle of purchasing new electronic surveying equipment whereby theodolites will be no older than 5 years from date of manufacture and total stations will be no more than 10 years from date of manufacture for use within 150 feet of pillar workings.

(17) Viper Mine is responsible for seeing that all surveying contractors hired by Viper Mine are using relatively new electronic equipment, *i.e.*, theodolites no older than 5 years from date of manufacture and total stations no older than 10 years from date of manufacture. These rules and regulations will apply to all nonpermissible electronic surveying equipment used within 150 feet of pillar workings regardless of whether the equipment is used by Viper Mine or by an independent contractor.

(18) Nonpermissible equipment will not be used where float coal dust is in suspension.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

**Sheila McConnell,**

*Director, Office of Standards, Regulations, and Variances.*

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