



Issue Date: 15 August 2019

CASE NO.: 2017-MSA-00002

In the matter of:

**CARGILL, INC.,
D/B/A CARGILL DEICING
TECHNOLOGY, CLEVELAND MINE
(Federal ID 33-01994),**
Petitioner,

v.

**MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),**
Party Opposing Petition.

**DECISION AND ORDER APPROVING SETTLEMENT AGREEMENT
AND DISMISSING CASE**

This matter is before me on a request for hearing filed by Cargill, Inc. (the “Petitioner” or the “Mine”), which contests the Mine Safety and Health Administration’s (“MSHA”) Proposed Notice of Change in Placement to change the classification of the Mine from a Category VI mine to a Category IV mine pursuant to 30 C.F.R. § 57.22201, *et seq.*

On August 14, 2019, MSHA submitted a Joint Motion to Approve Settlement and Dismiss Case, which both parties have signed. As part of the Settlement Agreement, which is incorporated by reference to this Decision and Order, the parties agree to the following:

1. The Petitioner agrees to withdraw its request for a hearing in this matter.
2. MSHA will reclassify the Mine to a Category IV mine, subject to the terms of the Settlement Agreement.

3. Notwithstanding the provisions of 30 C.F.R. § 57.22227, the Mine may continue to use its hydrogen sulfide detectors (Industrial Scientific model “T40 Rattler”) without violation provided that the Petitioner complies with the conditions listed in the Settlement Agreement. The Petitioner shall not be cited for use of its hydrogen sulfide detectors under § 57.22227 as long as conditions outlined in the Settlement Agreement are met.
4. Standard 30 C.F.R. § 57.22501 shall apply only to the personal electric cap lamps and flashlights used by miners underground. The Mine shall not be cited under this standard relating to any other type of lighting.
5. The Mine will have a 12-month compliance assistance period beginning on the date on which a final order approving the Settlement Agreement is settled in which to transition into Category IV compliance. During that time, MSHA will help educate the Mine and its workforce about Category IV requirements and will alert the Mine to any potential violations of the Category IV rules it discovers, but it will not issue any citations to the Mine under Category IV standards.
6. MSHA agrees to promptly vacate any citations issued in violation of the terms of this Settlement Agreement.
7. Nothing in this Settlement Agreement is intended to affect other applicable Mine Act provisions or MSHA regulations, other than 30 C.F.R Subpart T (§§ 57.22001-57.22608). Nothing in this Settlement Agreement is intended to lessen, diminish, or substitute any provision found in applicable state laws or regulations.
8. Nothing in this Settlement Agreement shall be considered an admission of liability by the Petitioner, an admission that the Petitioner at any time violated the Mine Act or regulations thereunder, an admission that the Proposed Notice of Change in Placement was justified or supported, an admission that the presence of methane at the Mine has ever been established within the meaning of 30 C.F.R. § 57.22003(a)(6), or an admission that the Mine liberates methane or otherwise qualifies as a Category IV mine under 30 C.F.R. § 57.22003(a)(4).
9. The Petitioner does not waive, and reserves all rights, to contest any and all enforcement action by MSHA relating to the standards cited herein or any other MSHA standards.

ORDER

Having carefully examined the Settlement Agreement, I conclude that its terms are consistent with the requirements of the Act and applicable regulations. Therefore, the Joint Motion to Approve Settlement and Dismiss Case is **GRANTED**.

Accordingly, this matter is **DISMISSED**, subject to the terms and conditions of the Settlement Agreement.

SO ORDERED.

JOHN P. SELLERS III
Administrative Law Judge