

September 14, 2006

In The Matter of
Simplot Phosphates LLC
Vernal Pit & Mill Mine
I.D. No. 4200998

PETITION FOR MODIFICATION

Docket No. M-2005-002-M

PROPOSED ORDER OF DISMISSAL

On July 29, 2005, Simplot Phosphates LLC ("Simplot") filed a petition for modification of the application of 30 C.F.R. § 56.9300(a), Berms or Guardrails, to the Vernal Pit & Mill Mine located in Vernal, Uintah County, Utah. The mine is an open pit mine producing phosphate used in the food and agriculture industries.

The relevant standard, 30 C.F.R. § 56.9300 Berms or Guardrails, provides in part:

- (a) Berms or guardrails shall be provided and maintained on the banks of roadways where a drop-off exists of sufficient grade or depth to cause a vehicle to overturn or endanger persons in equipment.
- (b) Berms or guardrails shall be at least mid-axle height of the largest self-propelled mobile equipment which usually travels the roadway.
- (c) Berms may have openings to the extent necessary for roadway drainage.

To raise the height of the tailings dam, Petitioner uses scrapers to haul the material from a borrow pit to the dam. Bulldozers, graders, and a sheeps foot are used to construct, compact, and grade the dam.

On May 17, 1994, an MSHA inspector observed that the outside edge of the tailings dam was not bermed. Equipment was being operated in the area within three feet of the edge, thereby exposing the miners to possible equipment rollover. The MSHA inspector issued a citation, No. 4405782, under 30 C.F.R. § 56.9300(a) because berms were not provided on the outside edge of the dam. After the issuance of the citation, Petitioner developed a plan to abate the violation. This plan was approved by MSHA and the citation was terminated. In June 2005, MSHA informed Petitioner that this previously approved plan was not in compliance with 30 C.F.R. § 56.9300.

The petition at issue involves the same procedures for dam construction as were used in 1994 to abate the citation. This procedure for dam construction requires that haulage equipment remain at least 12 feet back from the edges of the impoundment. When the equipment is used to place fill material within 12 feet of the edge, the speed of the equipment does not exceed three miles per hour. At no time is the haulage equipment closer than three feet to the outside of the fill. Compaction equipment runs near the

outside edges to obtain proper compaction. Within 12 feet of the edge of the fill, the compaction equipment does not exceed three miles per hour. 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 30 C.F.R. § 56.9300.

MSHA investigators investigated the relevant merits of the petition and filed a report of their findings with the Administrator for Metal and Nonmetal Mine Safety and Health ("Administrator"). After a careful review of the entire record, including the petition and MSHA's investigative report, this Proposed Decision and Order is issued.

Findings of Fact and Conclusions of Law

The haulage and dumping activities described in the petition for modification are not subject to 30 C.F.R. § 56.9300. That standard applies only to roadways and not to the tops of tailings dams, which is where the Petitioner's loads are being dumped. The dumping locations described in the petition are addressed by § 56.9301.

Further, Petitioner has not demonstrated, nor did the investigative report confirm, that the planned activities violate 30 C.F.R. § 56.9300. There is no violation of 30 C.F.R. § 56.9300 as long as Petitioner's equipment remains far enough from the edge of the tailings dam that it is not exposed to a drop-off which could cause the equipment to overturn or endanger miners.

Therefore, pursuant to the authority delegated by the Secretary of Labor to the Administrator, Simplot's Petition for Modification of 30 C.F.R. § 56.9300(a), as it applies to installing berms at the edges of the tailings dam at the Vernal Pit & Mill Mine, is dismissed. Felix A. Quintana

Order

Pursuant to the authority delegated by the Secretary of Labor to the Administrator, and pursuant to Section 101(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 811(c), Simplot's petition for modification of the application of 30 C.F.R. § 56.9300 to the above listed mines, is hereby **DISMISSED**.

/s/ Felix A. Quintana

Felix A. Quintana
Acting Administrator for

Metal and Nonmetal Mine Safety and Health