



U.S. Department of Justice

Bureau of Alcohol, Tobacco,  
Firearms and Explosives

JUN 15 2007

Washington, DC 20226

www.atf.gov

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[REDACTED]

Dear Mr. [REDACTED]

This is in response to your letter dated August 24, 2006, to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). We sincerely apologize for the delay.

In your letter, you described how your company stores explosives underground and stated that this meets the Department of Labor's Mining, Health, and Safety Administration's (MSHA's) requirements. Additionally, you referred to the 1980 Memorandum of Understanding (MOU) between MSHA and ATF as to inspection of explosives storage. We wish to thank you for your detailed description of how your company secures and maintains explosives underground.

The intent of ATF's regulations, under 27 CFR, Part 555, and MSHA's regulations, under 30 CFR, Part 57, is the safe and secure storage of explosives. In this regard, Government and industry share common goals: ensuring worker and general public safety and protecting America against potential criminal or terrorist activities. These goals are nothing new and were in place in 1980 when this MOU was signed. For these reasons, ATF and MSHA have worked together through joint inspection activities, joint training of field personnel, and issuing policy guidance to help achieve our goals. Inquiries such as yours assist us with issuing policy guidance and eventually modifying the MOU.

In regard to the language in the current MOU, you quoted a passage that states, "MSHA safety specifications and security requirements will govern the movement and use of explosive materials taken underground for mining and other activities." This passage does not say that MSHA storage regulations will govern underground. ATF regulations govern the storage of explosives for the purposes of 27 CFR, Part 555. We concur with your assessment that this has not been clearly communicated to the mining community.

[REDACTED]

This does not mean, however, that if you are storing explosives in accordance with MSHA regulations, you would automatically be in violation of ATF regulations. Upon examining your description of [REDACTED] storage and interviewing MSHA and ATF field personnel, we concur that your means of storage is substantially equivalent to the prescribed regulations.

In general terms, 27 CFR, Part 555, Subpart K, requires that storage magazines must be weather- and theft-resistant. If the storage is for high explosives requiring a Type-1 or -2 magazine, the magazine must additionally be bullet- and fire-resistant. Detonators that are properly packaged so that they will not mass detonate may be stored in a Type-4 magazine, but this still requires that the storage meet the weather, fire, and theft resistance standards.

Because your explosives are stored approximately 700 feet underground, you meet any bullet resistance standard. Bullet resistant standards are in place to ensure that hunters in the area may not accidentally detonate explosive materials. Additionally, in today's environment, bullet resistant standards provide protection from someone above ground, attempting to cause an intentional detonation. Therefore, we must conclude that the storage of explosives approximately 700 feet underground is adequately protected from penetration of a bullet fired above ground. For alternative bullet resistance standards that ATF has already approved, please refer to ATF Ruling 76-18. While none of these standards specifically addresses your situation, ATF Ruling 76-18 (q) states that the storage must have an "Exterior of any type of fire-resistant material which is structurally sound, lined with an intermediate six inch space filled with well-tamped dry sand or well-tamped sand/cement mixture."

We also believe that if you are complying with the MSHA requirements that you quoted in your letter to keep the explosives facilities "clean, dry, and orderly" and well-ventilated, then the storage would be properly weather-resistant and ventilated as called for in Part 555.

The final storage magazine construction requirement under Part 555 pertains to theft resistance. ATF has specific locking and other security requirements in the regulations. We generally require two specific locks with two hoods of a minimum thickness of 1/4-inch steel for outdoor storage magazines. Indoor storage may be in a magazine with a single five-tumbler, 3/8-inch shackle padlock with no hood, if the room is properly secured in accordance with the regulations.

You stated that each storage area is secured by one padlock. Further access to the mine is restricted through two hoists, which a hoist operator controls. If the mine is not operating, the building is locked, secured, and monitored by a security guard. We believe the security measures you described are substantially equivalent to the prescribed methods in the regulations.

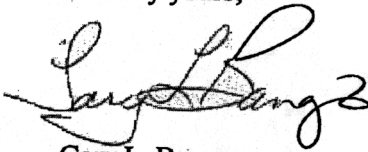
There are additional Part 555 regulations that will apply to you. MSHA inspectors will ensure compliance with these regulations during their inspections as well. MSHA also has requirements under their regulations that you must comply with. You must ensure you comply with the most restrictive regulations of either agency. For instance, while the regulations of 27

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CFR 555.213 allows for the storage of certain detonators in a type 4 magazine, 30 CFR 56/57.6130(a) requires all detonators to be stored in a type 1 or 2 ATF magazine. Therefore you must comply with the more restrictive MSHA regulation.

We trust the foregoing has been responsive to your letter. Again, we apologize for our delayed response. Please feel free to contact the Explosives Industry Programs Branch at EIPB@ATF.GOV with any further questions you may have.

Sincerely yours,



Gary L. Bangs  
Chief, Explosives Industry  
Programs Branch

c: All Special Agents in Charge  
All Area Supervisors  
[REDACTED]