

In the matter of
San Juan Coal Company
San Juan South Mine
I. D. No. 29-02170
San Juan Deep Mine
I.D. No. 29-02201

Petition for Modification

Docket No. **M-2001-100-C**

PROPOSED DECISION AND ORDER

On October 15, 2001, a petition was filed seeking a modification of the application of 30 CFR 75.362(d)(2) to Petitioner's **San Juan South and San Juan Deep Mine both** located in **San Juan County New Mexico**. The Petitioner alleges that application of this standard will result in a diminution of safety to the miners and 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.

After a careful review of the entire record and other information referenced herein, this Proposed Decision and Order is issued.

Finding of Fact and Conclusion of Law

The petitioned portion of the regulation requires methane tests to be made at the face from under permanent roof support, using extendable probes or other acceptable means.

In the alternative to compliance with 30 CFR 75.362(d)(2), Petitioner proposes the following for continuous miners and roof bolters:

In working places before continuous miners or roof bolters are taken into the place or energized, methane tests shall be taken at the face from under permanent roof support or when such test is not appropriate because the last row of permanent support is sufficiently back from the face, using a probe with a maximum extension of 20 feet.

Subsequent to this filing, MSHA, on July 7, 2003, promulgated changes to the mandatory safety standards governing the requirement for making periodic methane tests at face areas from under permanent roof support during roof bolting activities.

This new regulation eliminated the need for petitions for modification of 30 CFR 75.363(d)(2) as it applies to making periodic methane tests at face areas during roof bolting activities and was effective August 8, 2003.

Therefore, pursuant to the authority delegated by the Secretary of Labor to the Administrator for Coal Mine Safety and Health, San Juan Coal Company's Petition for Modification of 30 CFR 75.362(d)(2) as it applies to making periodic methane tests at face areas of the San Juan South and San Juan Deep Mines during roof bolting activities is dismissed without prejudice.

For the most part, as it applies to making periodic methane tests at face areas during continuous miner activities, the petitioner has not alleged grounds not previously considered by MSHA in promulgating the rule. During the promulgation process which resulted in the 1996 final rule, the Agency considered and addressed comments similar to the statements in the petition alleging a diminution of safety and presenting an alternative to compliance with the standard.

A discussion of these issues and their disposition appears in the preamble to the 1996 final rule in volume 61 of the Federal Register at page 9801 (March 11, 1996). Based on the studies referenced in the preamble, the Agency concluded that tests or monitoring at locations outby the face were not adequate or equivalent to testing at the face since substantial, potentially explosive, accumulations of methane could be undetected if tests are not performed at the face. The Agency is unaware of any reputable studies demonstrating that methane tests at outby locations reliably indicate either the volume or maximum concentration of methane at the face.

In addition, the petitioner alleges that application of the standard will result in accumulation of combustible material and roadway deterioration. These issues are addressed under separate regulations which MSHA believes are unrelated to methane tests.

Since the rule was promulgated, probes for extended cuts have been developed that are inserted and removed on wheels or skids in contrast to hand-held cantilever designs, and back injuries are much less likely. Workable probes are commercially available and others can be readily constructed in-house. Moreover, other compliance options are available which can eliminate or minimize the use of probes.

In addition, the standard expressly provides that the tests are to be performed from under permanent roof support. Accordingly, application of the standard does not expose persons to

unsupported roof. The Agency therefore concludes that the Petitioner has not alleged grounds upon which a petition for modification can be granted.

ORDER

Wherefore, pursuant to the authority delegated by the Secretary of Labor to the Administrator for Coal Mine Safety and Health, and pursuant to Section 101(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C., sec. 811(c), it is ordered that **San Juan Coal Company's** Petition for Modification of the application of 30 CFR 75.362(d)(2) in the **San Juan South and San Juan Deep Mine** is hereby:

DENIED.

Any party to this action desiring a hearing on this matter must file in accordance with 30 CFR 44.14, within 30 days. The request for hearing must be filed with the Administrator for Coal Mine Safety and Health, **1100 Wilson Boulevard, Arlington, Virginia 22209-3939**.

If a hearing is requested, the request shall contain a concise summary of position on the issues of fact or law desired to be raised by the party requesting the hearing, including specific objections to the proposed decision. A party other than Petitioner who has requested a hearing shall also comment upon all issues of fact or law presented in the petition, and any party to this action requesting a hearing may indicate a desired hearing site. If no request for a hearing is filed within 30 days after service thereof, the Decision and Order will become final and must be posted by the operator on the mine bulletin board at the mine.

John F. Langton
Acting Deputy Administrator
for Coal Mine Safety and Health