

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 05 December 2007

Case No.: 2007-MSA-00002

In the Matter of:

TWENTYMILE COAL COMPANY,
(FOIDEL CREEK MINE, MINE ID 05-03836)

Petitioner,

v.

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

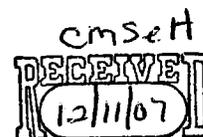
**INITIAL DECISION APPROVING SETTLEMENT
AND ORDER OF DISMISSAL**

This proceeding arises under Section 101(c) of the Federal Mine Safety and Health Act of 1977 ("Act"), 30 U.S.C. 811(c) (2000), and its implementing regulations found at 30 C.F.R. Part 44 (Jul. 1, 2007). On October 12, 2005, Twentymile Coal Company ("Petitioner") sought modification of 30 C.F.R. § 75.500(d), as it pertains to the use of battery-powered non-permissible surveying equipment. 30 C.F.R. § 75.500(d) provides that:

All other electric face equipment which is taken into or used in by the last crosscut of any coal mine, except a coal mine referred to in § 75.501, which has not been classified under any provision of law as a gassy mine prior to March 30, 1970, shall be permissible.

In its Petition for Modification ("Petition"), Petitioner alleged that, pursuant to 30 C.F.R. § 44.4(a)(1), the use of the aforementioned equipment, with certain terms and conditions, was an alternative method of achieving the results of the standard, which would at all times guarantee no less than the same measure of protection afforded by the standard. After conducting an investigation of the Petition, MSHA filed a report of its findings and recommendations with the Administrator of Coal Mine Safety and Health ("Administrator"). On January 22, 2007, MSHA issued a Proposed Decision and Order denying the Petition for Modification of 30 C.F.R. § 75.500(d) filed by Petitioner. Thereafter, pursuant to 30 C.F.R. § 44.14, Petitioner, who disagreed with the denial of its Petition for Modification, requested a hearing before a

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to Safety



Department of Labor Administrative Law Judge. Subsequently, on November 30, 2007, having resolved all disputed issues, the parties submitted a consent agreement to the Presiding Judge that, in accordance with 30 C.F.R. § 44.27(b) contained the following consent findings and a proposed consent order disposing of the entire matter.

Consent Findings

1. In accordance with 30 C.F.R. § 44.27(b)(1), both MSHA and Petitioner agree that the following consent order shall have the same effect as if made after a full hearing.
2. In accordance with 30 C.F.R. § 44.27(b)(2), both MSHA and Petitioner agree that the record on which the following consent order is based consists of the petition and agreement and all other pertinent information as set forth in Section 44.27(b)(2).
3. In accordance with 30 C.F.R. § 44.27(b)(3), Petitioner agrees to waive any further procedural steps before the Administrative Law Judge and the Assistant Secretary.
4. In accordance with 30 C.F.R. § 44.27(b)(4), Petitioner agrees to waive any right to challenge or contest the validity of the consent findings and consent order made in accordance with this consent agreement.
5. Both MSHA and Petitioner agree that the terms and conditions of the following consent order will at all times guarantee no less than the same measure of protection afforded by the existing standard under the conditions present at this particular mine.

Consent Order

Having carefully reviewed the Consent Agreement submitted by the parties, and having concluded that the requirements of 30 C.F.R. § 44.27 have been satisfied, the Presiding Judge accepts the agreement as a just disposition of the issues involved in this matter.

Accordingly, it is ORDERED that Petitioner's request for modification of the application of 30 C.F.R. § 75.500(d) at the Foidel Creek Mine is hereby **GRANTED** and the Petition for Modification of Twentymile Coal Company is hereby **DISMISSED**, under the following conditions:

- a. Non-permissible surveying equipment shall be used only when equivalent permissible equipment does not exist. The non-permissible equipment to be used is limited to the Leica TC 403, the Geodimeter 620, and equivalent units with batteries having no greater voltage.
- b. All non-permissible surveying equipment to be used in or inby the last open crosscut or in the return shall be examined in fresh air outby the last open crosscut prior to being used to ensure the equipment is being maintained in a safe operating condition. Those checks shall include:

- i. check the instrument for any physical damage and the integrity of the case;
- ii. remove the battery and inspect for corrosion;
- iii. inspect the contact points to ensure a secure connection to the battery;
- iv. reinsert the battery and power up and shut down to ensure proper connections; and
- v. check the battery compartment cover to ensure that it is securely fastened.

The results of the inspection will be recorded and retained for one (1) year and available for review by MSHA upon request.

c. A qualified person as defined in existing 30 C.F.R. § 75.151 shall continuously monitor for methane immediately before and during the use of non-permissible surveying equipment in or inby the last open crosscut or in the return.

d. Non-permissible surveying equipment shall not be used if methane is detected in concentrations at or above 0.5 percent methane. If 0.5 percent or more of methane is detected while the non-permissible surveying equipment is being used, the equipment shall be de-energized immediately and the non-permissible electronic equipment withdrawn outby the last open crosscut or out of the return.

e. Immediately before the surveying equipment is activated in or inby the last open crosscut or in the return an air reading will be taken at the location of the equipment to assure that the air movement is at least equal to that required by the ventilation plan as follows:

- i. at the location of the last open crosscut, as identified in the ventilation plan, the air reading will be the amount required in the ventilation plan for that location;
- ii. in the return the air reading will be the amount required in the ventilation plan for the last open cross cut; or
- iii. in any other location, the amount will be the amount required in the ventilation plan when roofbolting is occurring.

f. All hand-held methane detectors shall be MSHA approved and maintained in permissible and proper operating condition as defined in existing 30 C.F.R. § 75.320.

- g. Non-permissible surveying equipment shall not be used when float coal dust is in suspension.
- h. Non-permissible surveying equipment shall not be used when coal production is occurring in the section. All mining in the section shall cease prior to use of the equipment in or inby the last open crosscut or in the return.
- i. All surveying equipment shall be used in accordance with the manufacturer's recommended safe use practices.
- j. Batteries contained in the surveying equipment must be "changed out" or "charged" in fresh air outby the last open crosscut.
- k. Qualified personnel engaged in the use of surveying equipment shall be properly trained to recognize the hazards and limitations associated with the use of surveying equipment.
- l. The non-permissible surveying equipment shall not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the above terms and conditions.
- m. Within 60 days after this Decision and Order becomes final, Petitioner shall submit proposed revisions for its approved 30 C.F.R. Part 48 training plan to the Coal Mine Safety and Health District Manager. These proposed revisions shall specify initial and refresher training regarding the terms and conditions stated above.
- n. This grant of modification may be amended or revoked in accordance with 30 C.F.R. § 44.53.

SO ORDERED.


Daniel A. Sarno, Jr.
Administrative Law Judge

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SERVICE SHEET

Case Name: **MSHA_v_TWENTYMILE_COAL_COMP_**

Case Number: **2007MSA00002**

Document Title: **Decision and Order**

I hereby certify that a copy of the above-referenced document was sent to the following this 5th day of December, 2007:


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