

April 28, 2008

In the matter of
Orchard Coal Company
Orchard Slope
I.D. No. 36-08346

Petition for Modification

Docket No. M-2006-031-C

PROPOSED DECISION AND ORDER

On May 18, 2006, a petition was filed seeking a modification of the application of 30 C.F.R. § 75.1714-4 to Petitioner's, Orchard Slope mine located in Schuylkill County, Pennsylvania.

The petitioner requests that 75.1714-4(a) through (e) "be modified for this anthracite coal mine not to require an additional self-rescue device, nor shall additional SCSRs be required on mantrips or mobile equipment, nor shall additional SCSRs be required in alternative and primary escapeways, therefore storage locations and signs would be unnecessary." Petitioner justified his request by proposing that there is little risk of fire or explosion in anthracite mines because there is no electric equipment at his mine, rendering additional SCSRs unnecessary.

The petitioner's proposed alternative method is to continue mining without providing a second SCSR for each miner. One Anthracite Region Petitioner has proposed that his alternative method of compliance is to properly train his employees by requiring them to wear an SCSR for one hour. He argues that wearing the SCSR will give the full effect of proper usage. That petitioner claimed that the recent tragedies regarding SCSRs were caused by improper training. This alternative method was erroneously attributed to Orchard Coal Company in the Federal Register Notice (Vol. 71, No. 193/ Thursday, Oct. 5, 2006/ Notices)

Orchard Coal Company alleges that the proposed alternative method will guarantee no less than the same measure of protection afforded the miners under the existing standard.

MSHA personnel conducted an investigation of the petition and filed a report of their findings with the Administrator for Coal Mine Safety and Health. 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 Conclusion of Law

MSHA has determined that the application of 30 C.F.R. § 75.1714-4(a) through (e) to the subject mine will provide the intended protection to miners and that the petitioner's proposed alternative method will not at all times guarantee no less than the same measure of protection afforded the miners.

The petitioner seeks to modify 30 C.F.R. § 75.1714-4(a), (b), (c), (d), and (e), which are part of a recently promulgated Emergency Temporary Standard (ETS) that is now a final rule. MSHA issued an ETS on March 9, 2006 (71 Fed. Reg. 12252) in accordance with Section 101(b) of the Federal Mine Safety and Health Act of 1977 (Mine Act). Mine emergencies in underground coal mines, particularly the accidents at the Sago and Aracoma Alma mines in January 2006, led MSHA to conclude that a more integrated approach to mine emergency response and evacuation was necessary. In issuing the ETS, MSHA acted to protect miners from a grave danger associated with mine emergencies and evacuations. In accordance with the Mine Act, the ETS served as the proposed rule and became effective immediately upon publication.

The ETS included requirements for underground coal mine operators to:

1. provide additional self-contained self-rescue devices (SCSRs) for persons working underground;
2. conduct improved SCSR training and more realistic evacuation drills; and
3. install and maintain directional lifelines in both escapeways.

The ETS also required all mine operators to notify MSHA of accidents immediately (within 15 minutes).

MSHA solicited public comments on the ETS and held four public hearings. Comments and public hearing transcripts are available on MSHA's website at <http://www.msha.gov/tscripts.htm>. MSHA considered all relevant comments when developing the final rule.

In response to the Sago and Aracoma Alma mine tragedies, Congress enacted the Mine Improvement and New Emergency Response Act of 2006 (MINER Act), which was signed by the President on June 15, 2006. The MINER Act amended the Mine Act and included provisions that addressed some of the same requirements as the ETS. The MINER Act included requirements for SCSR storage, training, accident notification, and lifelines.

The final rule 30 C.F.R. § 75.1714-4, *Additional Self-Contained Self-Rescuers*, which became effective December 8, 2006, states, in part,

(a) *Additional SCSRs in work places.* In addition to the requirements in §§ 75.1714, 75.1714-1, 75.1714-2, and 75.1714-3 of this part, the mine operator shall provide the following:

(1) At least one additional SCSR, which provides protection for a period of one hour or longer, for each person at a fixed underground work location.

(2) Additional SCSRs along the normal travel routes for pumpers, examiners, and other persons who do not have a fixed work location to be stored at a distance an average miner could walk in 30 minutes. The SCSR storage locations shall be determined by using one of the methods found under paragraph (c)(2) of this section.

(b) *Additional SCSRs on mantrips.* If a mantrip or mobile equipment is used to enter or exit the mine, at least one additional SCSR, which provides protection for a period of one hour or longer, shall be available for each person who uses such transportation from portal to portal.

(c) *Additional SCSRs in escapeways.* When each person underground cannot safely evacuate the mine within 30 minutes, the mine operator shall provide additional SCSRs stored in each required escapeway.

(1) Each storage location shall contain at least one SCSR, which provides protection for a period

of one hour or longer, for every person who will be in by that location.

(2) Storage locations shall be spaced along each escapeway at 30-minute travel distances...

(d) *Additional SCSRs in hardened rooms.* As an alternative to providing SCSR storage locations in each escapeway, the mine operator may store SCSRs in a hardened room located between adjacent escapeways...

(e) *Storage location accessibility.* All SCSRs required under this section shall be stored according to the manufacturers' instructions, in conspicuous locations readily accessible by each person in the mine.

In the event of a mine emergency, the first line of defense is to evacuate the mine. It is MSHA's intent that miners not required to respond to a mine emergency are to evacuate the mine as quickly as possible. The standard's requirements for additional SCSRs are an additional measure of protection and increase the chances that the miners will escape safely.

The Petitioner argues that there has never been a SCSR used in an anthracite mine. However, since there is no reporting requirement for the use of an SCSR, there can be no viable record or statistic of a use or the circumstances of any usage of SCSR. The exception is for those accident events where mine explosions or fires have resulted in multiple fatalities and the use or fail to use SCSRs was a significant part of the investigation. No such investigation is known to have occurred in anthracite since SCSRs were introduced in coal mines in 1978. Only three fatal accidents involving blasting and methane explosions have occurred in anthracite mines and those occurred prior to the implementation of the SCSR regulations in anthracite mines.

Petitioner also argues that a methane ignition has never occurred in an anthracite mine because of pitching seams, methane bleeds to the surface and wet conditions abound in the mines. He also argues there is no electric face equipment. Nevertheless, the anthracite mining industry has practiced the same basic mining methods and mined in the same coal fields since 1847 to present and has experienced many methane mine

explosion and mine fire disasters (each event with five or more miners killed). The current mines utilize the same non-mechanized mining methods to recover those anthracite deposits still accessible and above the mine pool elevations of flooded nearby mines. Even though the remaining underground anthracite mines are shallower and smaller than the historic anthracite collieries, there have been three (3) methane explosions that resulted in fatalities and serious injuries of miners since 1983. There have also been numerous events where lighter-than-air mixtures of methane and blasting fumes have been trapped in the breast (vertical or inclined dead end mine working) and oxygen-deficient air has been found in low areas of active mine workings.

Petitioner argues that there is only one working shift with fewer than ten men working. Working one shift per day with fewer than ten miners reduces 1) the amount of coal mined, 2) the amount of underground mine workings developed, 3) the complexity of the mine and the need for mechanization to single locomotive, and 4) the rate at which methane is liberated. These elements can reduce the frequency of methane explosions and fires and the number of miners affected, but the hazards remain and serious accidents can and do continue to occur. While most underground anthracite mines employ fewer than 10 miners and work one shift per day, it is a basic premise of the Mine Act that the interim rules and promulgated regulations provide a standard for the protection of the health and safety of all miners without regard to the size of the mining operation.

Petitioner asserts that fire has not been a significant hazard because of the low volatile content of anthracite coal. However, the history of anthracite mine accidents contains numerous serious methane explosions that filled mines with fumes, smoke, and dust. Mine fires have occurred in the slope timbering and in refuse improperly allowed to accumulate underground. In addition, fires on the mine surface have been drawn into the mine workings. Furthermore, underground anthracite mining utilizes significant quantities of explosives to break the coal from solid faces without the use of relief holes or relief cuts/kerfs. Those explosives release great volumes of fumes, methane, and dust that take hours to dissipate even when areas are fully and properly ventilated. Dead-end entries or breasts do not self-ventilate.

Petitioner also argues that modifications granted to other anthracite mines support his contention that the risk of fire is reduced at such mines. However, the modifications mentioned in the petition were not granted based upon the low volatile matter content of anthracite but on the alternative method of compliance required for each. The petitioner's statement that modifications have been granted for 30 C.F.R §§ 75.364(b)(1), 75.364(b)(2), and 75.364(b)(5) is incorrect, as is the assertion that 30 C.F.R. § 75.371(jj) grants relief for anthracite mines.

One Anthracite Region Petitioner has proposed to properly train miners in the donning and use of a single SCSR by having the miners to wear an SCSR for one hour as the alternative method to having at least two units per miner. However, current standards already require annual training using realistic training units that simulate the heat and resistance of actually using an SCSR, in addition to other quarterly SCSR training. See 30 C.F.R. § 75.1504 (b) and (c). MSHA does not agree that additional training is an adequate substitute for additional SCSRs.

MSHA concludes that application of 30 C.F.R. § 75.1714-4(a)-(e) provides the intended protection to miners and that petitioner's alternative method will not at all times guarantee no less than the same measure of protection.

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. § 811(c), it is ordered that Orchard Coal Company's Petition for Modification of the application of 30 C.F.R. § 75.1714-4(a) through (e) in the Orchard Slope Mine is hereby:

DENIED.

Any party to this action desiring a hearing on this matter must file in accordance with 30 C.F.R. § 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 may 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.

Kenneth A. Murray
Deputy Administrator for
Coal Mine Safety and Health