

December 17, 2007

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

Petition for Modification  
  
Docket No. M-2006-033-C

PROPOSED DECISION AND ORDER

On May 19, 2006, a petition was filed seeking a modification of the application of 30 C.F.R. § 75.381(c)(5) to Petitioner's Orchard Slope mine, located in Schuylkill County, Pennsylvania. 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.

Section 75.381(c)(5) requires that escapeways in anthracite mines be provided with a continuous directional lifeline or equivalent device. The petitioner requests an exemption from the standard so that continuous directional lifelines would not be required at the petitioner's mine.

MSHA personnel conducted an investigation on the petitioner's reasons that continuous directional lifelines were not needed in this mine 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. § 75.381(c)(5) to the subject mine will not result in a diminution of safety to the miners and 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. § 75.381(c)(5) which was 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. § 75.381, *Escapeways; anthracite mines*, which became effective December 8, 2006, states, in relevant part,

(c) Each escapeway shall be. . .

(5) Provided with a continuous, durable directional lifeline or equivalent device that shall be--

(i) Installed and maintained throughout the entire length of each escapeway as defined in paragraph (b) of this section;

(ii) Flame-resistant in accordance with the requirements of part 18 of this chapter upon replacement of existing lifelines; but in no case later than June 15, 2009;

(iii) Marked with a reflective material every 25 feet;

(iv) Located in such a manner for miners to use effectively to escape;

(v) Equipped with directional indicators, signifying the route of escape, placed at intervals not exceeding 100 feet. When cones are used as directional indicators, they shall be installed so that the tapered section points inby; and

(vi) Securely attached to and marked to provide tactile feedback indicating the location of any SCSR storage locations in the escapeways.

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 evacuate the mine as quickly as possible. In an effort to assist miners in the evacuation of the mine under extreme conditions of panic and poor visibility, mine operators shall install and maintain continuous, directional lifelines in both the primary and alternate escapeways to provide guidance to miners exiting the mine.

A directional lifeline is generally a rope made of durable material, although 30 C.F.R. § 75.381 (c)(5) allows an equivalent device, such as a pipe or handrail. Some commenters stated that a track or belt structure could be considered an equivalent device. MSHA clarified in the preamble to the standard that a lifeline must provide tactile feedback to indicate the direction of escape. In an emergency, visibility may be limited and render devices such as a track or belt structure ineffective as a means of indicating direction. MSHA is concerned that the mine operator will be unable to attach tactile directional indicators that are resistant to physical damage to a track or belt structure. Because tactile directional indicators on track or belt structure are likely to be damaged during normal mining activities, MSHA is of the opinion that a track or belt structure would not provide safety equivalent to a lifeline and considers them to be unreliable and impractical. In addition, a track used as a lifeline would require escaping miners to crawl to use the tactile indicators on the track.

The final rule at 30 C.F.R. § 75.381(c)(5) requires that lifelines be positioned so that miners can use them effectively to escape. Proper positioning of the lifeline regarding height, accessibility, and location as determined by mining conditions improves the ability of miners to use lifelines effectively to escape during emergency situations.

Petitioner argued in the petition that lifelines are not needed in the subject mine because the head and foot wall remain in fixed relative locations within the mine due to anthracite mines' inherently directional nature, an effect of the seam being mined. This argument ignores several pertinent considerations:

1. A miner or visitor could become disoriented in the event of an explosion or in dust raised during blasting or in blasting fumes.
2. During a mine emergency, affected persons may be new to or unfamiliar with the mine's workings.
3. Unfamiliar areas can exist even in a well-known mine, such as rock tunnels to adjacent mines or coal seams or

connections to areas of adjacent worked-out areas when such areas are seldom traveled.

4. Mining methods change with time and some anthracite mines have different configurations within the same mine. For example, areas where slant mining connects with workings done using normal on-seam development of gangways and monkey headings for developing overhead breasts and connecting minor headings.

Petitioner argued that extending a lifeline across a vertical opening could result in a fall that could exceed 30 to 60 feet because the lifeline would constitute a tripping hazard. However, Petitioner's argument ignores the fact that escapeways in monkey headings generally cross such openings using plank-on-post bridges or, preferably, the chute is left filled with coal until the escapeway is no longer needed. The cones and configuration of the lifeline can and should assist a person traveling the route of a bridge or potential obstacle even where visibility is lost to dust, fumes, or smoke.

Petitioner argued that because of the low volatile content of anthracite coal and that there is no electric face equipment in his mine the possibility of fires or explosions are nonexistent. 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 argued that modifications granted to other anthracite mines lend support to the contention that the risk of fire is reduced at such mines and lifelines are not needed. However, the modifications Petitioner mentioned 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.

Petitioner argued that lifelines are not needed in the subject mine because there is only one working shift with fewer than ten men working. Arguably, 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 a 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, the 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.

MSHA's investigation concluded that application of 30 C.F.R. § 75.381(c)(5) to the subject mine will not result a diminution of safety and that exempting the mine from the standard will not at all times guarantee no less than the same measure of protection afforded by the standard.

#### 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. § 75.381(c)(5) 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 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.

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Terry L. Bentley  
Acting Deputy Administrator for  
Coal Mine Safety and Health