

December 13, 2007

In the matter of
Wabash Mine Holding Company
Wabash Mine
I.D. No. 11-00877

Petition for Modification

Docket No. M-2006-046-C

PROPOSED DECISION AND ORDER

On May 30, 2006, a petition was filed seeking a modification of the application of 30 C.F.R. § 75.364(b)(2) to Petitioner's Wabash Mine, located in Wabash County, Illinois. Petitioner alleges that examination of the Main West return air courses and the 2 South/3 West return air courses presents a hazard to miners because of numerous roof falls and deteriorated roof conditions, which prevent safe travel through the areas. Petitioner contends that, as a result, the 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.

A total of four petitions (Docket Nos. M-2006-043-C, M-2006-044-C, M-2006-045-C, and M-2006-046-C) were submitted by the Petitioner on May 30, 2006. All four petitions allege that the Petitioner cannot comply with the weekly examination requirements as specified in 30 C.F.R. § 75.364 due to a diminution of safety. The four petitions allege that certain intake entries, return entries, and seals cannot be examined safely due to roof falls and deteriorating roof conditions. The four petitions combined represent a substantial portion of the large Wabash Mine. In total, the Petitioner requests that approximately 59,700 feet (11.3 miles) of entries and 28 seals not be examined weekly.

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 (PDO) is issued.

Finding of Fact and Conclusion of Law

The petitioned standard, 30 C.F.R. § 75.364(b)(2) requires that:

(b) *Hazardous conditions.* At least every 7 days, an examination for hazardous conditions at the following locations shall be made by a certified person designated by the operator:...(2) In at least one entry of each return air course, in its entirety, so that the entire air course is traveled.

The Petitioner alleges that roof falls, in conjunction with deteriorating roof conditions have made examining the Main West return air courses and the 2 South/3 West return air courses hazardous.

As an alternative method of compliance with the requirements of 30 C.F.R. § 75.364(b)(2), the Petitioner proposes to establish a total of six evaluation points (EPs) as follows: Two EPs at the northern side and two EPs at the southern side of the petitioned area in the Main West returns; and one evaluation point (EP) at the eastern side and one EP at the western side of the petitioned area in 2 South/3 West. The EPs and the petitioned areas are shown on the map that the Petitioner submitted with the original application; this map is attached as "Exhibit A." The Petitioner proposes to have a certified person examine these evaluation points on a weekly basis.

The Main West returns consist of two parallel return air courses separated by narrow barrier pillars. The western air course has eight entries and the eastern air course has seven to eight entries. Crosscuts through the barrier pillar exist in several locations that serve to connect the air courses. The 2 South/3 West returns consist of two parallel return air courses separated by barrier pillars. The northern air course has approximately six entries and the southern air course has approximately seven entries. Crosscuts through the barrier pillars exist in several locations, which serve to connect the air courses. However, many of the connections are more than 600 feet apart. According to the preamble to MSHA's 1992 revision to the ventilation regulations, 57 Fed. Reg. at 20870,

The Agency does not consider air courses that are common only at each end to be the same air course if the separation between the common openings is more

than 600 feet. Weekly examination of all such separate air courses is necessary to ensure that the ventilation system of the mine is functioning properly.

Program Information Bulletin (PIB) No. P06-13 offers further clarification of this issue. Additionally, stoppings exist within the air courses that prevent commonality within each air course.

Near the midpoint of the western air course in Main West returns is the 2 West Crossover, which consists of four to seven entries that connect with the belt entries. In the eastern air course of the Main West returns, there are a total of 14 seals, which isolate three separate abandoned areas. Near 2 South/3 West, Exhibit A indicates another panel (unnamed) to the south of the southern return air course described above. Two entries in this air course, covering a distance of 18 crosscuts, are shown as part of the petitioned area. The map indicates that these entries are ventilated with intake air.

MSHA's investigation report and subsequent discussions with the investigators revealed:

- In the western air course of the Main West returns, the investigators traveled between the northern EP and the 2 West Crossover. At a point along the way, they measured an air velocity of 90 feet per minute (fpm) and detected 0.0% methane and 20.2% oxygen. They were unable to travel between the 2 West Crossover and the southern EP due to roof falls and adverse roof conditions.
- In the eastern air course of Main West returns, the investigators were unable to travel between the northern EP and the 2 West Crossover due to roof falls and adverse roof conditions. They were able to travel between the 2 West Crossover and the southern EP, where they measured an air velocity of 36 fpm, and detected 0.2% methane and 20.2% oxygen. The entire petitioned area in the Main West returns could be sealed by constructing approximately 34 seals.
- In 2 South/3 West, the investigators were able to safely travel nearly all of the petitioned areas, including the northern air course, the southern air course, and the 2

intake entries to the south. The only location where they could not travel was between crosscuts 53 and 60 in the southern air course. Travel through this area was impeded by water, which had been allowed to accumulate to a depth of between 1 foot and 5 feet from the roof. The operator had made no effort to remove the water from this area. Although the investigators encountered roof falls and adverse roof conditions in a few locations within the petitioned area of 2 South/3 West, the overall condition of the petitioned area could be made safe to travel with only minor roof and rib rehabilitation efforts and by pumping the accumulated water.

As shown on the map for the Main West returns, air enters the western air course of the petitioned area through four entries at the southern end and through as many as seven entries in the 2 West crossover. The air exits the western air course through eight entries. The Petitioner proposes one evaluation point to monitor the air entering the western air course and one EP to monitor the air exiting the western air course. Also in the Main West returns, air enters the eastern air course through eight entries at the southern end and through two entries that convey airflow from the abandoned B-1 panel. Airflow in the eastern air course passes by 14 seals before exiting the northern end through seven entries. The Petitioner proposes one evaluation point to monitor the air entering the eastern air course and one EP to monitor the air exiting the eastern air course.

As shown on the map for 2 South/3 West, air enters the northern air course through six entries at the eastern end and six entries on the northwestern end. Air enters the southern air course through seven entries at the eastern end and four entries at the southern end. The Petitioner proposes one evaluation point to monitor the air entering the northern air course and zero EPs to monitor the air entering the southern air course. Air exits both the northern and southern air courses through an indeterminate number of entries. The Petitioner proposes one EP to monitor the air exiting the vicinity of 2 South/3 West.

For the unnamed intake air course to the south of the southern air course in 2 South/3 West, air enters through one entry and exits through three entries. The Petitioner proposes zero EPs to monitor airflow into or out of this area.

As proposed, the EPs would not provide a true representation of the air entering and exiting the petitioned areas. In the Main West returns, the distance between the proposed entrance and exit EPs is more than 10,000 feet. In the 2 South/3 West returns, the distance between the proposed entrance and exit EPs is approximately 6,000 feet. Additionally, the alternative method proposed by the Petitioner would not ensure ventilation of the petitioned area in accordance with 30 C.F.R. § 75.334(a). The roof falls and deteriorated roof conditions present in the petitioned area have the potential to short-circuit the ventilation without any indication of a problem at the proposed EPs, potentially allowing dangerous concentrations of methane to accumulate. Further exacerbating this condition is the methane contained behind the 14 seals in the Main West returns. If one of the seals were to leak, an enormous quantity of an explosive concentration of methane could accumulate without any indication of such a hazard at the EPs. During a recent MSHA inspection, this mine was found to liberate 1,739,524 cubic feet of methane per day. As stated in the preamble for 30 C.F.R. § 75.364, 61 Fed. Reg. at 9803,

Over the course of time, hazards such as methane accumulations and obstructions to ventilation can develop in these areas and can result in an explosion or loss of ventilation if not discovered and corrected.

The EPs as proposed do not provide the ability to ascertain the existence of such hazards.

Further, as proposed, this petition does not fulfill the requirement to examine the intake airway in the two entries to the south of 2 South/3 West as specified in 30 C.F.R. § 75.364(b)(1). The investigators stated that this area could be safely traveled with only minor rehabilitation work needed.

In addition, this petition does not fulfill the requirement to examine the 14 seals in Main West returns as specified in 30 C.F.R. § 75.364(b)(4). Reportedly, these seals are pumpable seals and were likely constructed to withstand little more than the then-required minimum static horizontal pressure of 20 pounds per square inch (psi) for so-called "alternative" seals. After explosions involving alternative seals at the Sago Mine and the Kentucky Darby Mine No. 1 resulted in the deaths of 17 miners in early 2006, on May 22, 2007, MSHA issued an emergency

temporary standard (ETS) requiring that all new seals be designed to withstand an overpressure of 50 psi if the atmosphere in the sealed area is monitored and maintained inert; an overpressure of 120 psi if the atmosphere is not monitored and is not maintained inert and when certain specified conditions are not present; and an overpressure greater than 120 psi if the atmosphere is not monitored and is not maintained inert and certain specified conditions are present. The ETS further requires sampling and monitoring of the atmosphere behind existing seals. 72 Fed. Reg. 28796. Not traveling to and monitoring these seals could result in a potentially explosive atmosphere developing behind the seals. If the atmosphere were to explode, it is doubtful the existing alternative seals could contain the blast.

The petitioner's proposed alternative method does not provide the ability to ascertain the existence of these hazards. For this reason, the petitioner has not established that its proposed alternative method guarantees no less than the same measure of protection afforded by the standard. In addition, while Petitioner argues that application of the standard will result in a diminution of safety, in the petitioned area at 2 South/3 West, Petitioner could conduct minor roof and rib rehabilitation and pump accumulated water to permit safe travel throughout the relevant air courses to conduct the required weekly examinations. Further, in the petitioned area of the Main West returns, Petitioner could seal the entire petitioned area, which would then not be subject to the required examinations under the standard. Therefore, Petitioner has not established that it cannot comply with the standard without a diminution of safety.

On the basis of the petition and the findings of MSHA's investigation, Wabash Mine Holding Company is not granted a modification of the application of 30 C.F.R. § 75.364(b)(2) to its Wabash Mine for the Main West and 2 South/3 West return air courses.

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 Petition for Modification of the application of 30 C.F.R. § 75.364(b)(2) in the Wabash 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.

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.

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