

June 24, 2004

In the matter of  
Consolidation Coal Company  
Loveridge No. 22 Mine  
I.D. No.46-01433

Petition for Modification  
  
Docket No. M-2002-028-C

PROPOSED DECISION AND ORDER

On April 17, 2002, a petition was filed seeking to amend Docket No. M-1993-275-C that was granted June 27, 1994, and became final July 27, 1994, for the application of 30 CFR 75.364(b)(1) to Petitioner's Loveridge No. 22 Mine, located in Marion County, West Virginia. Petitioner also requested the standard 30 CFR 75.364(b)(1) in the original petition be modified 30 CFR 75.364(b)(2) to reflect that the petitioned area has been designated a return aircourse.

Petition Docket No. M-1993-075-C was filed on September 27, 1993, seeking a modification of the application of 30 CFR 75.364(b)(1). The standard requested for modification was subsequently determined to be 30 CFR 75.364(b)(2). The Petitioner alleged that application of this standard would result in a diminution of safety to the miners and that the alternative method proposed in the petition would at all times guarantee no less than the same measure of protection afforded by the standard.

Petitioner alleges in the request to amend the granting terms and conditions of Docket No. M-1993-275-C that the requirement to conduct daily evaluations at the monitoring stations is a diminution of safety for the miners (mine examiners) as compared to allowing those evaluations to be conducted once each week. On August 29, 2003, the petitioner indicated that the air returning to the Sugar Run exhaust fan after ventilating the No. 2 1/2 North Seals would be continuously monitored for oxygen and methane by an Atmospheric Monitoring System (AMS). The petitioner further alleges that the weekly examinations at the original monitoring stations and continuous monitoring by the AMS sensors will at all times guarantee no less than the same measure of protection afforded by the special terms and conditions of Docket No. M-1993-275-C.

MSHA personnel conducted an investigation of the petition to amend Docket No. M-1993-275-C and filed a report of their findings and recommendations with the Administrator for Coal Mine Safety and Health. The investigation report established that the air flowing in the petitioned area had not ventilated a

worked-out area or working faces. The aircourse has been designated a return aircourse for several years and, as a result, the aircourse is subject to 30 CFR 75.364(b)(2). This Proposed Decision and Order reflects that MSHA determination.

After a careful review of the entire record, including the petition and MSHA's investigative report and recommendation, this Proposed Decision and Order is issued.

#### Finding of Fact and Conclusion of Law

Application of 30 CFR 75.364(b)(2) to the subject mine will result in a diminution of safety to the miners and the special terms and conditions set out below will at all times provide a safe work environment to the miners.

MSHA's investigation and supplemental information, submitted for the requested amending of the granting terms and condition, confirmed that the petitioned area has continued to deteriorate and travel to the monitoring stations has become more difficult.

However, the requirement for daily examinations at the monitoring stations is not a diminution of safety because those monitoring stations continue to be safe to access for the required air quantity and quality measurements. Also, the 3 North and 22 North seals are still being examined weekly and the required downwind air quality and quantity measurements are being made.

MSHA has determined that the installation of AMS sensors to continuously monitor all of the air leaving 2 1/2 North at two additional monitoring station locations and making weekly examinations at all of the monitoring stations provides a viable alternative to maintain a daily evaluation schedule.

On the basis of the petition and the findings of MSHA's investigation, Consolidation Coal Company is granted an amended modification of the application of 30 CFR 75.364(b)(2) to its Loveridge No. 22 Mine. This Proposed Decision and Order when final shall supercede the Proposed Decision and Order under Docket No. M-1993-275-C.

#### 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 Consolidation Coal Company's Petition for Modification of the

application of 30 CFR 75.364(b)(2) in the Loveridge No. 22 Mine is hereby:

GRANTED, for continuous monitoring using intrinsically safe sensors installed as part of the mine's Atmospheric Monitoring System (AMS) and weekly evaluation of air entering and leaving the intake aircourses ventilating No. 3 North seals and No. 2 1/2 North seals, conditioned upon compliance with the following terms and conditions:

1. Ten monitoring stations shall be established to allow effective evaluation of the No. 1 West and the No. 2 1/2 North designated return aircourses between Main North and No. 2 1/2 North which ventilate the No. 3 North seals and the No. 2 1/2 North seals at the following locations:
  - a. In the crosscut immediately west of the Main North haulage marker 34+00 to monitor air entering No. 1 West. (Check Point A-1 B approximately 100 feet south of Station #1169)
  - b. In each of the two entries 1 1/2 crosscuts north of survey spad No. 1 and adjacent to the sump and pumping station to monitor air leaving No. 1 West. (Check Points B-1 ,approximately 105 feet north of Station #1, and C-1 ,approximately 110 feet north of Station #1)
  - c. In the crosscut between entries No. 6 and No. 7 and immediately outby the No. 6 seal of No. 3 North to monitor air flow between No. 3 North and No. 2 1/2 North. (3 North Point B approximately 200 feet east of Station #1175)
  - d. In or inby the regulator approximately 1 1/2 crosscuts north of survey spad No. 64 to monitor air leaving No. 1 West. (Check Point D-1 B approximately 140 feet southwest of Station #68)
  - e. In or immediately outby the regulator in crosscut No. 4, between entries No. 2 and No. 3 (1/2 crosscut east of survey spad No. 169) of No. 2 1/2 North to monitor air entering No. 2 1/2 North from No. 1 West. (Check Point E-1, approximately 40 feet southeast of Station #169)
  - f. In entry No. 4 approximately 100 feet outby survey spad No. 65 or No. 2 1/2 North to monitor air entering No. 2

1/2 North. (Check Point F-1, approximately 30 feet south of Station #66)

- g. In crosscut No. 8 between entries No. 8 and No. 9 and immediately outby No. 8 seal of No. 2 1/2 North to monitor air leaving No. 2 1/2 North. (Check Point G-1, approximately 185 feet north of Station #174)
  - f. In the heading and in the crosscut of the first intersection north of the Sugar Run Return Air Shaft to monitor all of the air leaving 2 1/2 North seals. AMS sensors shall be installed to monitor oxygen and methane at these monitoring stations (New Check Points H-1 and H-2)
2. Where AMS sensors are required, they shall be located such that the air flowing over the sensor is representative of the air flowing through the inaccessible common intake entries.
  3. A sign showing the safe travel route to each monitoring station shall be conspicuously posted in an adjacent travelable entry.
  4. Similar signs showing the safe travel routes to 3 North seals and the No. 2 1/2 North seals shall also be provided in adjacent travel entries.
  5. A diagram showing the normal direction of the airflow shall be posted at each monitoring station. The diagram shall be maintained in legible condition and any change in airflow direction shall be reported to the mine foreman for immediate investigation.
  6. A certified person shall:
    - a. Examine for hazardous conditions at the monitoring stations
    - b. The examination shall be conducted at least every 7 days and include:
      - (i) examining for hazards on the approaches to and at the monitoring stations;
      - (ii) visually examining the AMS sensors;
      - (iii) evaluating and measuring the quality and quantity

of air entering or leaving the monitoring stations. Air quality measurements shall determine the methane and oxygen concentrations using an MSHA approved hand-held device. Air quantity measurements shall be made using an appropriately calibrated anemometer. Methane gas or other harmful, noxious or poisonous gases shall not be permitted to accumulate in excess of legal limits for a return aircourse. An increase of 0.5 percent methane above the last previous reading or a 10 percent change in the airflow quantity at any monitoring station shall cause an immediate investigation of the affected area;

- (iv) determining if the air being continuously monitored is representative of the air moving through the common return aircourse entries by comparing the petitioned aircourse measurements to previous measurements and to air quality and quantity measurements for the adjacent, parallel return entry. Reduced airflow in the petitioned aircourse and increased airflow in the adjacent aircourse indicates whether additional roof falls or further roof deterioration is choking off airflow in front of the mine seals;
- (v) a determination of the each aircourse's leakage shall be made. An initial leakage determination shall be made during the first evaluation following implementation of this amended modification. Leakage is defined as the discrepancy between the air quantity entering and exiting the aircourse, as measured at the monitoring stations. A 10 percent change from the initial leakage in each aircourse shall cause immediate examination of all permanent ventilation structures. Damaged stoppings or other ventilation structures shall be repaired or replaced to minimize leakage;
  - (1) The difference between airflow quantity at check Point A-1 and the sum of the air flow quantities at Check Points B-1, C-1, D-1, and E-1 shall be used to evaluate leakage in the No. 1 West (No. 3 North seals) aircourse.
  - (2) The difference between the sum of air flow quantities at Check Points E-1 and F-1 and

the air flow quantity at Check Point G-1 shall be used to evaluate leakage in the No. 2 1/2 North aircourse.

(vi) The date, initials of the examiner, time, measured quantity and quality of air and the amount of aircourse leakage shall be recorded in a book, or on a date board, that shall be provided at the monitoring stations.

(vii) Determine, from the AMS surface location readouts, of the oxygen and methane concentrations from the sensors located at the monitoring stations (H-1 and H-2). This determination shall be made daily, within 3 hours preceding the first operating shift, and before anyone on that shift, including certified persons, enters the petitioned area or any underground area ventilated by the air that has ventilated the inaccessible common return entries and mine seals of No. 1 West, No. 3 North, and No. 2 1/2 North.

c. Record the results of each weekly examination and each daily determination of the air quality required by Paragraphs 6(a), (b) and (c) in a separate book on the surface which shall be made available to all interested parties. The certification, record keeping, and retention period requirements of 30 CFR 75.364(g), (h), and (i) shall be met.

7. An AMS meeting the minimum requirements of 30 CFR 75.351 shall be used to continuously monitor methane and oxygen concentrations. Sensor signals for each of the monitored gases shall activate alarms at the surface location. Oxygen and methane sensors shall be tested and calibrated in accordance with 30 CFR 75.351(f) and the manufacturers' instructions. Manufacturers' information concerning the calibration and accuracy of the sensors used shall be submitted to the District Manager as a part of the mine ventilation plan.

8. The AMS monitoring sensors for methane and oxygen shall be capable of providing both visual and audible signals.

a. A visual or audible alert signal shall be activated at the following initial levels:

(i) Oxygen            19.9%

- (ii) Methane            0.5%
  - b. An audible and visual alarm signal shall be activated at the following initial levels:
    - (i) Oxygen            19.5%
    - (ii) Methane           1.5%
  - c. In lieu of the above alert and alarm levels, the District Manager is authorized to require lower alert and alarm levels.
9. The mine emergency evacuation plan and fire fighting plan required by 30 CFR 75.1502 shall be revised to specify the action to be taken to determine the cause of the alert and alarm signals, the location(s) for withdrawal of miners for each alarm signal, the steps to be taken after the cause of an alert signal is determined, and the procedures to be followed if an alarm signal is activated. Such revisions shall be approved by the District Manager. The determination as to the appropriate response to alert and alarm signals generated by oxygen sensors shall be subject to the District Manager approval in the mine's 30 CFR 75.1502 program of instruction. The response to methane sensor alert and alarm signals is dictated by 30 CFR 75.323(b). A record of each alert and alarm signal given and the action taken shall be maintained at the mine for a period of 1 year.
10. Any time the District Manager determines that changes are necessary to ensure the air flowing over the monitoring stations is representative of the airflow ventilating the inaccessible return aircourse and inaccessible mine seals, changes shall be made through the mine ventilation plan approval process. Such changes may include:
- a. relocation of monitoring stations or adding monitoring stations should further roof deterioration render the present locations no longer representative of the air flow ventilating the inaccessible mine seals;
  - b. the installation of additional temporary or permanent ventilation controls or increasing the restriction of the regulator to force air across the AMS sensor equipped monitoring stations to meet the 5,000 cfm minimum airflow requirement;

- c. the elimination of continuous monitoring using AMS sensors where a minimum 50 fpm of air flow velocity across the sensors can not be ensured and establishing daily examinations, including gas checks using MSHA approved hand-held multi-gas detectors, and measuring air quantity using appropriate and calibrated anemometers at the monitoring stations; or
  - d. where the District Manager determines that the above changes to the terms and conditions cannot provide assurance that the mine seals are intact and effectively isolating the sealed area from the active area of the mine and that the air courses are effectively ventilating the mine seals, other actions may be required. Those actions may include any rehabilitation necessary to gain access to the seals or the construction of new mine seals which isolate the failed seals within a larger sealed area while action to revoke this PDO is taken pursuant to 30 CFR 44.52.
11. The permanent ventilation controls, monitoring stations and atmospheric monitoring system sensor locations shall be shown on the annual mine ventilation map submitted in accordance with 30 CFR 75.372.
  12. All monitoring stations and approaches to monitoring stations shall, at all times, be maintained in a safe condition. The roof shall be adequately supported by roof bolts or other suitable means to prevent deterioration of the roof in the vicinity of the stations.
  13. Special attention shall be given to providing and maintaining adequate roof support by roof bolts or other suitable means to prevent deterioration of the roof on the approaches to and in the vicinity of each of the No. 3 North Seals (8 seals) and No. 2 1/2 North seals (12 seals).
  14. Seals in No. 3 North and No. 2 1/2 North shall be examined in accordance with 30 CFR 75.364(b)(4) and 75.364(c)(3).
  15. Prior to implementing this alternative method, all mine personnel will be instructed that no travel into petitioned aircourse except along designated routes shall be permitted and all other approaches shall be fenced off or barricaded with "DO NOT ENTER" warning signs. Entry in the area shall

be permitted only to investigate and correct significant problems with airflow detected through the monitoring process and all such work will be done under the supervision of an authorized person. All persons who work in this area shall be instructed in the emergency evacuation procedures and all provisions of 30 CFR 75.1501 and 75.383.

16. Within 60 days after this Proposed Decision and Order becomes final, the Petitioner shall submit proposed revisions for its approved 30 CFR Part 48 training plan to the Coal Mine Safety and Health District Manager. These proposed revisions shall include initial and refresher training regarding compliance with the Proposed Decision and Order.

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.

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