

In the matter of
Anker West Virginia
Mining Company
Spruce Fork No.1 Mine
I.D. No. 46-08622

Petition for Modification

Docket No. M-2003-038-C

PROPOSED DECISION AND ORDER

May 8, 2003, Anker West Virginia Mining Company filed a petition seeking a modification of the application of 30 CFR 75.364(b)(1) to the Petitioner's Spruce Fork No.1 Mine, located in Upshur County, West Virginia. 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.

MSHA personnel investigated the petition and filed a report of their findings and recommendations with the Administrator for Coal Mine Safety and Health. After a careful review of the entire record, including the petition, MSHA's investigative report and recommendations, this Proposed Decision and Order is issued.

Finding of Fact and Conclusion of Law

Application of 30 CFR 75.364(b)(1) to the subject mine will result in a diminution of safety to the miners and the special terms and conditions will provide a safe work environment for the miners.

The petition involves the inability to examine the intake air course in its entirety because of adverse roof. The development of this area was under several stream valleys with less than 240 feet of cover. In addition to the stream valleys and poor cover, the area also had faults present that added to the geological instability of the roof. The roof in the affected area has continued to deteriorate, and the presence of large roof falls in the area has made travel for the mine examiner or rehabilitation work dangerous or nearly impossible. The unsafe-to-travel area is from spad 428 to spad 388 extending some 3,100 feet along the A Mains air course. Instead of complying with the standard, the Petitioner proposes establishing evaluation points at the inby end of the aircourse near spad 388 and the outby end of the aircourse near spad 428. This intake aircourse splits at spad 428

and goes around a barrier block some 3,100 feet long, then rejoins at spad 388 to become one aircourse again. The split is traveled on a weekly basis and is the Primary escapeway. The A Mains aircourse has several falls blocking the safe travel of an examiner and has been endangered off by mine management.

MSHA's investigation and review of the area confirmed that the air course has adverse roof rendering it unsafe-for-travel. Supporting the roof in the area would expose the miners to additional hazards.

On the basis of the petition and the findings of MSHA's investigation, Anker West Virginia Mining Company is granted a modification of the application of 30 CFR 75.364(b)(1) to its Spruce Fork No.1 Mine.

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 Anker West Virginia Mining Company's Petition for Modification for the application of 30 CFR 75.364(b)(1) to its Spruce Fork No. 1 Mine is hereby:

GRANTED, for evaluation of the unsafe-for-examination intake air course segment (approximately 3,100 feet) known as the A Mains Air Course Area, conditioned upon compliance with the following terms and conditions:

1. Monitoring stations which allow effective evaluation of the air entering and leaving this air course segment shall be established at the following locations:
 - a) Evaluation Point Numbers 1 and 2 will evaluate the air flow entering the petition area and shall be located in the No. 6 and No. 7 entries of A Mains just inby No. 45 block at A Mains/B Mains Junction.
 - b) Evaluation Point Numbers 3, 4, 5, and 6 will evaluate the air flow exiting the petition area and evaluation point numbers 3 and 4 shall be located in the No. 1 and No. 2 entries of C-1 Panel, 3 and 1/2 blocks inby the mouth of the panel astride Gas Well No. 389. Evaluation point numbers 5 and 6 shall be located in the No. 7 and No. 8 entries of A Mains just inby Survey Station

3781 and just outby the intake escapeway overcasts crossing the top end of A Mains.

2. Weekly evaluations shall be conducted by a certified person at each of these monitoring stations. Each evaluation shall include measurement of the quality and quantity of air entering or leaving the monitoring station. Air quality measurements shall determine the methane, oxygen, and carbon monoxide concentrations using an MSHA approved hand-held device. Air quantity measurements shall use an appropriate, calibrated anemometer. The weekly evaluations shall include an examination for hazards along the route(s) of travel to the monitoring stations and at the monitoring stations. Mine examiners shall be alert to indications of water accumulation and immediately report any indications of water which may accumulate in the inaccessible petitioned area.
3. A sign showing the safe travel route to each monitoring station shall be conspicuously posted in an adjacent travelable entry.
4. Methane gas or other harmful, noxious or poisonous gases shall not be permitted to accumulate in excess of legal limits for intake air. An increase of 0.5 percent or more methane above the last previous reading or a 10 percent change in the air flow quantity shall cause an immediate investigation of the affected area.
5. A diagram and/or enlarged map showing the normal direction of the air flow shall be posted at each monitoring station. The diagram shall be maintained in legible condition and any change in air flow direction shall be reported to the mine foreman for immediate investigation.
6. The date, initials of the examiner, and time shall be marked on a date board that shall be provided at each of the monitoring stations. The results of the examination shall be recorded in a book kept on the surface and made accessible to all interested parties.
7. 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. Precautions shall be taken to ensure that water accumulations shall not impede air flow or travel to the monitoring stations.

8. The monitoring station locations and representative air quantity and quality measurements for each monitoring station location shall be shown on the annually submitted mine ventilation map (30 CFR 75.372). Station locations shall not be moved under this proposed Decision and Order without prior approval by the District Manager as a part of the Ventilation Plan for the mine.
9. Prior to implementing this alternative method, all personnel shall be instructed that no travel into the petitioned air course segment shall be permitted and all other approaches shall be fenced off or barricaded with "DO NOT ENTER" warning signs. Entry into the area shall be permitted only to investigate and correct significant problems with air flow detected through the monitoring process. All such work shall be done under the supervision of an authorized person. All persons who work in the area shall be instructed in the emergency evacuation procedures and all provisions of 30 CFR 75.1502 and 75.383.
10. Within 60 days after this Petition for Modification is granted, the Petitioner shall submit proposed revisions for their approved 30 CFR Part 48 training plan to the Coal Mine Safety and Health District Manager. These proposed revisions shall specify initial and refresher training regarding the alternative method outlined in the petition and the terms and conditions stated in the Proposed Decision and Order. The procedures of 30 CFR 48.3 for approval of proposed revisions to already approved training plans shall apply.

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.

John Langton
Deputy Administrator
for Coal Mine Safety and Health