

In the matter of
KenAmerican Resources, Inc.
Paradise #9 Mine
I.D. No. 15-17741

Petition for Modification

Docket No. M-2003-080-C

PROPOSED DECISION AND ORDER

On October 21, 2003, a petition was filed seeking a modification of the application of 30 CFR 75.364(b)(2) to Petitioner's Paradise #9 Mine, located in Central City, Muhlenberg County, Kentucky. 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.

The petitioner alleges that requiring the weekly examinations of approximately 1,300 feet of the Main North and the Main East Side return aircourse exposes examiners to the hazards of roof and rib fall from deteriorated roof and rib conditions. Further, the only reason for traveling the return during examinations is to make air quality measurements. Petitioner asserts that an evaluation of the aircourse at four measuring point locations using air quality and quantity measurements taken by a certified person will provide the same measure of protection as traveling the aircourse segment.

MSHA personnel conducted an investigation of 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 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 provide a safe work environment for the miners.

MSHA=s petition investigation confirmed that the petitioned aircourse has experienced severe deterioration and roof falls which have rendered the aircourse inaccessible for examination and unsafe for travel by mine examiners. MSHA=s investigation indicated that measuring point locations in each of the common entries where air enters and leaves are needed.

On the basis of the petition and the findings of MSHA's investigation, KenAmerican Resources, Inc. is granted a modification of the application of 30 CFR 75.364(b)(2) to its Paradise #9 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 KenAmerican Resources, Inc. Petition for Modification of the application of 30 CFR 75.364(b)(2) in the Paradise #9 Mine is hereby:

GRANTED, for the unsafe-to-travel segment (approximately 1300 feet) of the Main North and Main East return aircourse, conditioned upon compliance with the following terms and conditions:

1. Four measuring point locations which allow effective evaluation of the air entering and leaving the unsafe-to-travel segment of the return aircourse shall be established at the following locations:
 - (a) In Main East return at x-cut #10(MPL 1B).
 - (b) In the SW ventilation entries at x-cut #7, #1 entry (MPL D).
 - (c) In the SW ventilation entries at x-cut #7, #2 entry (MPL C).
 - (d) In the Main North return at x-cut #1 (MPL 1A).

2. Weekly evaluations shall be conducted by a certified person at each of the measuring point locations (MPL 1B, MPL C, MPL D, MPL 1A). The evaluation shall include measurement of the quality and quantity of air entering or leaving the measuring point location. 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.
4. A sign showing the safe travel route to each monitoring station shall be conspicuously posted in an adjacent travelable entry.
5. Methane gas or other harmful, noxious or poisonous gases shall not be permitted to accumulate in excess of legal limits. An increase of 0.5 percent methane above the last previous reading or a 10 percent change in the air flow quantity at any monitoring station shall cause an immediate investigation of the affected area. Any difference in the quantities and qualities of air flows, or a change in the air flow directions, shall also be reported to the mine foreman. Any significant change in the pressure reading on the recording fan chart for the Main North and Main East shall cause an immediate investigation of the affected area.
6. 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.
7. The date, initials of the examiner, time and the measured quantity and quality of air shall be recorded in a book, or on a date board, that shall be provided at the measuring point locations. Such results shall be recorded in a book kept on the surface and made available to all interested parties.
8. All measuring point locations and approaches to measurement point locations shall, at all times, be maintained in 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 measuring point locations. Precautions shall be taken to ensure that roof falls and restrictions do not impede air flow or the travel to the measuring point locations.
9. The measuring point locations and representative air quantity and quality measurements for each measuring point location shall be shown on the annually submitted

mine ventilation map (30 CFR 75.372). Measuring point locations shall not be eliminated or moved without prior approval by the District Manager as a part of the Ventilation Plan for the mine.

10. Prior to implementing this Proposed Decision and Order, all personnel shall be instructed that no travel into the petitioned aircourse 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 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 provision of 30 CFR 75.1501, 75.1502 and 75.383.
11. 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.

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