

In the matter of:
Dakota Westmoreland Corporation
Beulah Mine
Mine I.D. No. 32-00043

Petition for Modification

Docket No. 2004-018-C

PROPOSED DECISION AND ORDER

On April 29, 2004, **Dakota Westmoreland Corporation** filed a petition seeking a modification of the application of 30 CFR 77.1607(u) to the **Beulah Mine** located in **Mercer County, North Dakota**. The Petitioner alleges that the alternative method outlined in the petition will at all times guarantee no less than the same measure of protection afforded by the standard.

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 (PDO) is issued.

Finding of Fact and Conclusion of Law

The alternative method proposed by the Petitioner (as amended by the recommendations of MSHA) will at all times guarantee no less than the same measure of protection afforded the miners under 30 CFR 77.1607(u).

The standard 30 CFR 77.1607(u) states: "Tow bars shall be used to tow heavy equipment and a safety chain shall be used in conjunction with each tow bar."

Petitioner requests a variance to use a portable hydraulic unit (power pack) to tow large trucks in lieu of a tow bar and chain.

On the basis of the petition and the findings of MSHA's investigation, **Dakota Westmoreland Corporation** is granted a modification of the application of 30 CFR 77.1607(u) to its **Beulah 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 **Dakota Westmoreland Corp.**'s Petition for Modification of the application of 30 CFR

77.1607(u) in the **Beulah Mine** is hereby:

GRANTED, for the use of a **portable compressor such as the DeWalt Model D55275 (8 horsepower, 17 gallon, 16.2 cubic feet per minute at 100 pounds per square inch) or a similar compressor with the same capacities and rating for towing large wheel haul trucks at the Beulah Mine**, conditioned upon compliance with the following terms and conditions:

1. **The proposed towing system shall only apply to vehicles with a “fail safe” braking system and emergency steering capabilities.**
2. **The steel cable used to tow a disabled vehicle shall be a minimum of 1 inch in diameter, at least 30 feet long, maintained in good condition, and attached on both ends with clevises or equivalent attachments. Connecting the towing cable between vehicles must be done when the vehicles are at a protected location and the engines are not running.**
3. **Radio communications between the towed and towing vehicles must be maintained at all times when the vehicles are moving. The towed vehicle driver must be able to see at least 10 feet in front of the vehicle. Towing speed shall not exceed 5 miles per hour (mph).**
4. **The engine driven air compressor “power pack” shall be adequately designed to supply the correct air pressures as recommended by the towed vehicle manufacturer. The power pack shall be securely mounted to the towed vehicle as to not impede the operation of the vehicle or pose safety hazards such as broken air lines or exhaust fumes that may enter the operator’s compartment. The power pack shall not impede the ability to exit the vehicle quickly.**
5. **The power pack shall operate at all times when the vehicle is being towed to maintain normal braking and steering functions. The power pack must be examined prior to each use by a qualified mechanic trained to perform the examination.**
6. **Prior to towing operation, testing of the brakes and steering shall be performed at a protected location. The test must include fully pressurizing the air system to assure the brakes function properly and then depleting the air system to assure the fail safe brakes reapply at the proper pressures.**
7. **Prior to implementing the petition requirements, all qualified operators and mechanics shall be trained in proper use of the power**

pack. They shall be task-trained to perform the installation of the power pack and to recognize conditions that would prohibit use of the power pack to tow a vehicle.

- 8. Compliance with all other 30 CFR regulations pertaining to operating mobile equipment shall be maintained.**
- 9. No more than 60 days after this Proposed Decision and Order becomes final, the Petitioner shall submit revisions to its approved 30 CFR Part 48 training plan that address the requirements in the petition to the Coal Mine Safety and Health District Manager.**

Any party to this action desiring a hearing on this matter must file within 30 days in accordance with 30 CFR 44.14. 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