

**August 22, 2005**

In the matter of:  
Cumberland Coal Resources, LP  
Cumberland Mine  
I.D. No. 36-05018

Petition for Modification  
  
Docket No. M-2004-052-C

PROPOSED DECISION AND ORDER

On December 20, 2004, with amendment on January 11, 2005, Cumberland Coal Resources, LP filed a petition seeking a modification of the application of 30 CFR 75.364(b)(1) to the Petitioner's Cumberland Mine, located in Green County, Pennsylvania. The Petitioner alleges 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 area of the mine is not possible and the special terms and conditions will provide a safe work environment for the miners.

The petition involves the inability to examine the intake aircourse in its entirety because of a water collection sump that was constructed in the intake air course that is approximately 15 to 20 feet deep and 600 feet in length. As indicated on the attached map, the No. 7 Main Sump is located between crosscuts 46 and 51 in the No. 5 entry of the East Mains. The intake air course is isolated by stoppings and is subject to weekly examinations under 30 CFR 75.364(b)(1). The roof and ribs in the sump area have been supported with supplemental support. The Petitioner proposes establishing evaluation points at the 47 and 51 crosscuts, as indicated on the attached map.

On the basis of the petition and the findings of MSHA's investigation, Cumberland Coal Resources, LP is granted a modification of the application of 30 CFR 75.364(b)(1) to its Cumberland 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 Cumberland Coal Resources, LP's Petition for Modification for the application of 30 CFR 75.364(b)(1) to its Cumberland Mine is hereby:

GRANTED, for evaluation of the intake aircourse segment (approximately 600 feet) known as the No. 7 Main Sump Area, conditioned upon compliance with the following terms and conditions:

1. Monitoring stations that allow effective evaluation of the air entering and leaving this segment of aircourse shall be established at the following locations:
  - a) Evaluation Point MP EM #1 will evaluate the airflow entering the petitioned area and shall be located in the No. 5 entry of East Mains at the 47 crosscut.
  - b) Evaluation Point MP EM #2 will evaluate the air flow exiting the petition area and shall be located at the inby end of the sump near the 51 crosscut.
2. Daily evaluations shall be conducted by a certified person at each of these monitoring stations. At the MP EM #2 evaluation point, air quality and quantity measurements shall be taken of the air leaving the monitoring station. At the MP EM #1 evaluation point, air quality measurements shall be taken of the air entering 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 daily 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 excessive water accumulations and immediately report any indications of water that may interfere with the airflow through 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 airflow 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 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 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.

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