

August 22, 2005

In the matter of:
Hopkins county Coal LLC
Elk Creek Mine
I.D. No. 15-18826

Petition for Modification

Docket No. M-2005-036-C

PROPOSED DECISION AND ORDER

On May 12, 2005, a petition was filed seeking a modification of the application of 30 CFR 75.1101-1(b) to Petitioner's Elk Creek Mine, located in Hopkins County, Kentucky. Petitioner proposes to conduct weekly examinations and functional testing of the deluge fire suppression systems as an alternative method of complying with the standard. 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 recommendations, this Proposed Decision and Order is issued.

Finding of Fact and Conclusion of Law

The proposed alternative method, as amended by MSHA, will at all times provide the same measure of protection to the miners as afforded the miners under 30 CFR 75.1101-1(b).

MSHA has added a requirement that the mine's Part 48 training plan address the terms and conditions of the requested modification.

On the basis of the petition and the findings of MSHA's investigation, Hopkins County Coal, LLC is granted a modification of the application of 30 CFR 75.1101-1(b) to its Elk Creek 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 Hopkins County Coal, LLC's petition for modification of the application of 30 CFR 75.1101-1(b) to the Elk Creek Mine is hereby:

GRANTED, for the deluge-type water spray systems installed at belt-conveyor drives in lieu of blow-off dust covers for nozzles, conditioned upon compliance with the following terms and conditions:

1. Once every 7 days, a person trained in the testing procedures specific to the deluge-type water spray fire suppression systems utilized at each belt drive shall:
 - (a) Conduct a visual examination of each of the deluge-type water spray fire suppression systems.
 - (b) Conduct a functional test of the deluge-type water spray fire suppression systems by actuating the system and observing its performance.
 - (c) Record the results of the examination and functional test in a book maintained on the surface for that purpose. The record shall be made available to authorized representatives of the Secretary and retained at the mine for one year.
2. A clogged nozzle or any other malfunction detected as a result of the weekly examination and functional test shall be corrected immediately.
3. The procedure used to perform the functional test shall be posted at or near each belt drive that utilizes a deluge-type water spray fire suppression system.
4. 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 specify the procedure used to conduct the weekly functional test and initial

and refresher training regarding the conditions specified by 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