

June 6, 2007

In the matter of:
Twentymile Coal Company
Foidel Creek Mine
I. D. No. 05-03836

Petition for Modification

Docket No. M-2006-013-C

PROPOSED DECISION AND ORDER

On March 30, 2006, a petition was filed seeking a modification of the application of 30 CFR 75.362(a)(2) to the Petitioner's Foidel Creek Mine, located in Routt County, Colorado. The Petitioner proposes an alternative method outlined in the petition that 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 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, this Proposed Decision and Order is issued.

Finding of Fact and Conclusion of Law

30 CFR 75.362(a)(2) requires

(a)(2) A person designated by the operator shall conduct an examination to assure compliance with the respirable dust control parameters specified in the mine ventilation plan. In those instances when a shift change is accomplished without an interruption in production on a section, the examination shall be made anytime within 1 hour of the shift change. In those instances when there is an interruption in production during the shift change, the examination shall be made before production begins on a section. Deficiencies in dust controls shall be corrected before production begins or resumes. The examination shall include air quantities and velocities, water pressures and flow rates, excessive leakage in the water delivery system, water spray numbers and orientations, section ventilation and control device placement, and any other dust suppression measures required by the ventilation plan. Measurements of the air velocity and quantity, water pressure and flow rates are not required if continuous monitoring of these controls is used and indicates that the dust controls are functioning properly.

The Petitioner proposes an alternate method in lieu of the standard on-shift exam as it applies to the examination of dust control parameters. The Petitioner's proposed method includes conducting the examination on the shift prior to the first production shift, within three hours of the end of the prior (maintenance) shift. Such examination will be conducted by experienced

personnel qualified to perform such examinations. In addition, the equipment will not be moved after the inspection is completed until production begins.

The alternative method proposed by Twentymile Coal Company will at all times guarantee no less than same measure of protection afforded the miners under 30 CFR 75.362(a)(2). The examination of the mining machine will still occur. In addition, the maintenance personnel may be more qualified to perform the required examinations than the production personnel are. The examination will take place on the maintenance down shift no more than three hours prior to the start of that production shift. The equipment will not be moved or used in mining or construction applications on the maintenance shift following the examination of the equipment for compliance with the dust suppression measures required by the mine's approved ventilation plan.

The air quantity and velocity readings at the face shall still be completed under the current 30 CFR 75.362(a)(2) regulations. MSHA's investigation noted that the proposed examinations will be done by well-qualified and experienced mechanics with proven familiarity with the dust control systems used on the mining equipment and their maintenance. To assure that those individuals conduct the examinations and any necessary repairs are made and are made known to the oncoming shifts machine operators, a written record of the examination is added to the terms and conditions as amended by MSHA. These terms and conditions will provide a level of safety equivalent to the standard requirement for an on-shift examination.

On the basis of the petition and the findings of MSHA's investigation, Twentymile Coal Company is granted a modification of the application of 30 CFR 75.362(a)(2) for its Foidel 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., § 811(c), it is hereby ordered that Twentymile Coal Company's Petition for Modification of the application of 30 CFR 75.362(a)(2) in the Foidel Creek Mine is hereby:

GRANTED, conditioned upon compliance with the following terms and conditions:

1. This modification applies only to the dust parameter examination for the production shift immediately following a maintenance (non-production) shift. Any production shift immediately following a previous production shift shall comply with 30 CFR 75.362(a)(2) as written.
2. A qualified maintenance person designated by the operator shall conduct an examination to assure compliance with the respirable dust control parameters specified in the current approved mine ventilation plan.

3. The examination shall include scrubber air quantities, water pressures and flow rates, excessive leakage in the water delivery system, and water spray numbers and orientations.
4. Deficiencies in dust controls shall be noted and corrected before production begins.
5. A written record of the examination identifying the qualified persons conducting the examination, the date and time of the examination and any repairs or adjustments made to comply with the dust control parameters of the approved mine ventilation plan shall be made by the examiners. The record shall be maintained on the working section, available for review by the personnel of the oncoming production shift and any other interested persons. The absence of a written record for the date and time not exceeding 3 hours prior to the oncoming production shift shall require that the oncoming shift perform a separate and complete examination.
6. After the maintenance shift examination has been completed, the examined piece of production equipment shall not be modified, maintained, or moved and the water system on the section shall not be modified in any way prior to production.
7. The production shift that is the recipient of this examination shall be responsible for completing the following portions of the on-shift examination on that production shift:
 - a. The air quantities and velocities.
 - b. The section ventilation and control device placement.
 - c. Any other dust suppression measures required by the ventilation plan.
8. The examination must comply with all other applicable requirements of the Federal Mine Safety and Health Act of 1977 and the applicable requirements of 30 CFR Part 75.
9. Within 60 days after this Proposed Decision and Order becomes final, the Petitioner must submit proposed revisions for its approved 30 CFR Part 48 training plan to the Coal Mine Safety and Health District Manager. These revisions must specify initial and refresher training regarding the terms and conditions stated in 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 must 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 must 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 therefore, the Decision and Order will become final and must be posted by the operator on the mine bulletin board at the mine.

Melinda Pon
Acting Deputy Administrator for
Coal Mine Safety and Health