

December 13, 2007

In the matter of
Consol Pennsylvania Coal Company
Bailey Mine
I.D. No. 36-07230

Petition for Modification

Docket No. M-2006-068-C

PROPOSED DECISION AND ORDER

On August 8, 2006, Consol Pennsylvania Coal Company filed a petition seeking a modification of the application of 30 C.F.R. § 75.364(b)(1) to the Petitioner's Bailey Mine, located in Greene County, Pennsylvania. 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.

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 and MSHA's investigative report and recommendations, this Proposed Decision and Order is issued.

Findings of Fact and Conclusion of Law

30 C.F.R. § 75.364(b)(1) states

(b) *Hazardous conditions.* At least every 7 days, an examination for hazardous conditions at the following locations shall be made by a certified person designated by the operator:

(1) In at least one entry of each intake air course, in its entirety, so that the entire air course is traveled.

The petition involves the inability to examine the intake air course in its entirety in the 1 South Main area because of significant adverse roof. The development of this area occurred from 1985 to 1992; roof conditions and rib conditions in this area have since deteriorated with very little access available. Due to the presence of large roof falls in the area, travel for the mine examiners or any miners conducting rehabilitation work

would be dangerous or nearly impossible. The affected area is ventilated by the Windy Gap Fan; the affected air course is not utilized to ventilate any active working sections and no mining has occurred in this area of the mine since 1990. The affected air course is located in excess of five miles from any active working section and is not utilized as an escapeway. The unsafe-to-travel area is from the mouth of 1 South to the Windy Gap Shaft extending some 11,400 feet along the 1 South Main air course. As an alternative to complying with the standard, the Petitioner proposes to establish evaluation points at the inby end of the air course at CP#1, at points near the 1 South Shafts at CP#2 and CP#3, and at the outby end of the air course near Windy Gap Shaft at CP#4 as indicated on Exhibit A (attached).

MSHA's investigation and review confirmed that the air course has severely deteriorated roof conditions, rendering it unsafe-for-travel. The standard requires that each intake air course in its entirety be traveled in order to identify hazardous conditions such as roof and rib conditions, ventilation controls, air direction, air quantity, oxygen deficiencies, fire hazards, and rock dust applications. Here, however, the application of the standard would subject mine examiners to the imminent hazard of severely deteriorated roof and ribs. In addition, performing work to rehabilitate the roof and ribs would expose the miners to similar hazards.

The petitioner's proposed alternative method, as modified and described in the Order below, will at all times guarantee no less than the same measure of protection afforded the miners by the applicable standard. Also, it will avoid exposing miners to the hazard of the severely deteriorated roof and ribs.

Accordingly, on the basis of the petition and the findings of MSHA's investigation, Consol Pennsylvania Coal Company is granted a modification of the application of 30 C.F.R. § 75.364(b)(1) to its Bailey 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 ordered that Consol Pennsylvania Coal Company's Petition for Modification of

the application of 30 C.F.R. § 75.364(b)(1) to its Bailey Mine is hereby:

GRANTED, for evaluation of the unsafe-for-examination intake air course segment (approximately 11,400 feet) known as the 1 South Mains, conditioned upon compliance with the following terms and conditions:

1. Monitoring stations that allow effective evaluation of the air entering and leaving this air course segment shall be established. Evaluation Points shall be established as indicated on Exhibit A at the inby end of the air course at CP#1, near the 1 South Shafts at CP#2 and CP#3, and at the outby end of the air course near Windy Gap Shaft at CP#4.
2. Weekly evaluations shall be conducted by a certified person at each of these monitoring stations. Each evaluation shall include measurement of the quality and quantity of air entering or leaving the monitoring station. Air quality measurements shall determine the methane, oxygen, and carbon monoxide concentrations using an MSHA-approved handheld device. Air quantity measurements shall use an appropriate, calibrated anemometer. The weekly 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 indications of water accumulation and immediately report any indications of water that may accumulate in 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 airflow quantity shall cause an immediate investigation of the affected area.

5. A diagram and/or enlarged map showing the normal direction of the airflow shall be posted at each monitoring station. The diagram shall be maintained in legible condition and any change in airflow direction shall be reported to the mine foreman for immediate investigation.
6. For each weekly examination, 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 examiner shall also record the date, time, and results of the examination and shall certify by signature that the examination was conducted in a record book kept on the surface and made accessible to all interested parties. The record shall be maintained for 1 year.
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. Barricades shall be erected to prevent persons from entering the un-examined areas. Precautions shall be taken to ensure that water accumulations shall not impede airflow or travel to the monitoring stations.
8. A weekly examination to verify the integrity of the stoppings along the tight side of 1 South Belt Entry where adjacent to the un-traveled air course (1 room to 86 room) shall be conducted. The results of this weekly examination will be entered into the Weekly Mine Examiners Record book. This record shall be maintained on the surface for a period of one year and made available for inspection by interested persons.
9. 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 C.F.R. § 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.
10. Prior to implementing this alternative method, all personnel shall be instructed that no travel into the

petitioned air course 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 airflow 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 C.F.R. §§ 75.1502 and 75.383.

11. Within 60 days after this Petition for Modification is granted, the Petitioner shall submit proposed revisions for their approved 30 C.F.R. § 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 C.F.R. § 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 C.F.R. § 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.

Terry L. Bentley
Acting Deputy Administrator for
Coal Mine Safety and Health