

September 18, 2007

In the matter of:
Dominion Coal Corporation
Mine No. 26
I.D. No. 44-06718

Petition for Modification

Docket No. M-2006-090-C

PROPOSED DECISION AND ORDER

On December 18, 2006, a petition was filed by Vandyke Mining, Inc., seeking a modification of the application of 30 C.F.R. § 77.214(a) to the Dom No. 7 Mill Branch Refuse Pile, located in Whitewood, Buchanan County, Virginia. Subsequently the legal identity for Mine I.D. No. 44-06718 changed and the mine operator returned to being Dominion Coal Corporation and the mine name changed to Mine No. 26. Dominion Coal Corporation verbally advised the petition investigator that the company wished to continue to petition for modification of 30 C.F.R. § 77.214(a) to allow covering the mine portal site with mine refuse.

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 the miners under 30 C.F.R. § 77.214(a).

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.

Findings of Fact and Conclusion of Law

The requirements of 30 C.F.R. § 77.214, Refuse piles; general, provide that:

(a) Refuse piles constructed on or after July 1, 1971, shall be located in areas which are a safe distance from all underground mine airshafts, preparation plants, tipples, or other surface installations and such piles shall not be located over abandoned openings or steamlines.

The petitioner requested the standard be modified to allow disposal of mine refuse as backfill of the portal area of the now-abandoned and sealed underground Mine No. 26. This disposal

site is to be a refuse pile constructed over abandoned mine openings that have been properly sealed, with an appropriately sized drain through the lowest seal and continued through a compacted fill. The fill material is to be scalped rock from mine refuse, placed and compacted over the mine openings. A similar modification has been granted to Jewell Smokeless Coal Corporation, of which Dominion Coal Company is a subsidiary company (see the Proposed Decision and Order for Docket No. M-1998-068-C, issued December 16, 1998, and finalized January 15, 1998).

The alternative method proposed by the petitioner (as amended by MSHA) will at all time guarantee no less than the same measure of protection afforded the miners under 30 C.F.R. § 77.214(a).

On the basis of the petition and the findings of MSHA's investigation, Dominion Coal Corporation is granted a modification of the application of 30 C.F.R. § 77.214(a) to its Dominion No. 26 mine (Mine I.D. No. 44-06718) to allow placement of backfill material and coarse refuse at site I.D. 1211-VA5-0358-01 to cover four (4) sealed portal drift openings to the Dominion Coal Corporation's Mine No. 26 (formerly the Vandyke Mining, Inc., Dom No. 7 Mill Branch Refuse Pile and Vandyke Mining, Inc., Mine No. 2).

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 Dominion Coal Corporation's Petition for Modification of the application of 30 C.F.R. § 77.214(a) for Mine No. 26 is hereby:

GRANTED, conditioned upon full compliance of the petitioner regarding the following terms and conditions:

1. All sloughed overburden material shall be removed for at least 12 feet in front of and to either side of the four (4) exposed drift mine openings to allow placement of backfill material for sealing. The coal seam between mine openings shall also be covered with backfill material to seal the exposed coal from the later placement of coarse refuse.
2. An 18-inch high-density polyethylene (HDPE) or PVC pipe, extending through the fill area, shall be installed so as to create an effective wet seal. The pipe shall be installed in the lowest entry to prevent water from impounding in the mine void. At least the first 25 feet of the pipe shall be in the underground

entry where it is to be covered with acid-resistant rock riprap and wrapped with filter fabric.

3. Backfill material shall be impervious and non-combustible and must contain enough fine material to ensure an airtight seal as it is placed in 2-foot lifts compacted to 90% Proctor dry density.

4. The backfill material shall be placed in the exposed portal areas:
 - (a) to a minimum thickness of 4 feet above the seal drift openings;
 - (b) to 4 feet above any visible cracks in the exposed highwall; and
 - (c) to at least 4 feet over and above any part of this and any other exposed coal seams.

5. The backfill material shall ensure an airtight seal for the coal seam prior to the placement of any scalp rock or coal mine refuse rock over the backfill area.

Any party to this action desiring a hearing on this matter must file in accordance with 30 C.F.R. § 44.14, as 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 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