

In the matter of:
Rosebud Mining Company
(formerly Penn View Mining, Inc.)
T.J.S. No. 6 Mine
I.D. No. 36-09464

Petition for Modification

Docket No. M-2008-024-C

PROPOSED DECISION AND ORDER

On May 13, 2008, Penn View Mining, Inc. filed a petition under Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. § 811(c) and 30 C.F.R. Part 44. The petition sought a modification of the application of 30 C.F.R. § 75.500(b), (c), and (d) to Petitioner's T.J.S. No. 6 Mine located in Armstrong County, Pennsylvania. On January 1, 2011, ownership of the mine transferred to Rosebud Mining Company.

Petitioner alleges that application of the standard would result in a diminution of safety to miners. The petitioner contends that due to the size, complexity, and location of the mining machines, it is nearly impossible and potentially unsafe to move the equipment outby the last open crosscut during breakdowns or repairs in order to use non-permissible testing and diagnostic equipment. The Petitioner contends 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.

The petitioned standard, 30 C.F.R § 75.500, states in relevant part,

- (b) All handheld electric drills, blower and exhaust fans, electric pumps, and such other low horsepower electric face equipment as the Secretary may designate on or before May 30, 1970, which are taken into or used inby the last open crosscut of any coal mine shall be permissible.
- (c) All electric face equipment which is taken into or used inby the last open crosscut of any coal mine classified under any provision of law as gassy prior to March 30, 1970, shall be permissible.
- (d) All other electric face equipment which is taken into or used inby the last crosscut of any coal mine... shall be permissible.

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

Since T.J.S. No. 6 Mine opened after March 30, 1970, 30 C.F.R § 75.500(c) is not applicable to this petition.

The alternative method proposed by the Petitioner, as amended by the terms and conditions in this order, will at all times guarantee no less than the same measure of protection afforded the miners under 30 C.F.R. § 75.500(d) for the non-permissible electronic testing and diagnostic equipment listed in the order below. The modification of the application of 30 C.F.R. § 75.500 (d) applies only to the use of the non-permissible electronic testing and diagnostic equipment listed below in or inby the last open crosscut. In addition, this modification does not allow the use of the non-permissible electronic testing and diagnostic equipment within 150 feet of pillar workings or longwall faces, and it does not apply to the use of these non-permissible electronic testing and diagnostic equipment in the return air outby the last open crosscut. The use of this equipment in these areas would require modifications of 30 C.F.R. §§ 75.1002 and 75.507-1 respectively.

This modification does not permit the use of electronic transits (electronic surveying equipment), battery-operated drills, or digital cameras in or inby the last open crosscut since none of these equipments performs a diagnostic or testing function. In addition, The Petitioner has failed to prove that the use of nonpermissible battery-powered electronic transits, drills, or digital cameras is not a possible ignition source for a methane or coal dust explosion. The instruction manuals for the non-permissible, battery-powered surveying equipment requested to be used -- a 6-volt Topcon DT209L Theodolite and a 6-volt Topcon DT104 Theodolite contain hazard warnings on use in coal mines and in areas that produce explosive gas. Specifically, the manuals for the 6-volt Topcon DT209L Theodolite and the 6-volt Topcon DT104 Theodolite contain the warning: "May ignite explosively" and "Never use an instrument near flammable gas, liquid matter, and do not use in a coal mine." MSHA found that the T.J.S. No. 6 Mine is a gassy mine that liberated 149,358 cubic feet of methane in a 24-hour period, pursuant to the results of bottle sampling conducted in the first quarter of fiscal year 2011. The use of non-permissible battery-powered electronic transits, drills, or digital cameras in an atmosphere containing an explosive level of methane could result in an ignition that could be catastrophic to all miners in the area where an explosion occurred. A primary purpose of the requirement in 30 C.F.R. § 75.500(c) that all electric face equipment taken into or used in or inby the last open crosscut of a mine be permissible is to ensure that such equipment will not cause a mine explosion or mine fire.

Furthermore, MSHA's investigations of similar petitions have revealed that the manual methods of setting survey stations have been successfully used for over thirty years.

Closed loop surveys can be carried out and closed without going into or inby the last open crosscut, and survey stations can be set in the last open crosscut without taking the non-permissible, battery-powered electronic surveying equipment into or beyond the last open crosscut. Therefore, the proposed alternative method consisting of use of nonpermissible battery-powered electronic transits, drills, or digital cameras will not, at all times, guarantee no less than the same measure of protection afforded the miners as 30 C.F.R. § 75.500(b) and (d).

During breakdowns, large pieces of mining equipment, such as continuous mining machines, would require being pulled or pushed outby the last open crosscut using multiple pieces of moving equipment and the use of steel ropes and chains. Specialized troubleshooting and diagnostic equipment has been designed specifically for determining the solution to complex mechanical problems. This specialized equipment, when used under the terms and conditions specified herein, would provide no less than the same measure of protection afforded by the standard.

On the basis of the petition and the findings of MSHA's investigation, Rosebud Mining Company is granted a modification of the application of 30 C.F.R. § 75.500(d) to its T.J.S. No. 6 Mine only for the use of the non-permissible electronic testing and diagnostic equipment listed below. Since this modification does not apply to battery-operated drills, 30 C.F.R. § 75.500(b) is not applicable to this modification.

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 Rosebud Mining Company's Petition for Modification of the application of 30 C.F.R. § 75.500(b), (c), and (d) in the T.J.S. No. 6 Mine is hereby:

GRANTED under 30 C.F.R. § 75.500(d), for the use of the specifically listed low-voltage or battery-powered non-permissible electronic testing and diagnostic equipment in or inby the last open crosscut, under controlled conditions, for testing and diagnosing the mining equipment, conditioned upon compliance with the following terms and conditions.

1. The use of non-permissible low-voltage or battery-powered electronic testing and diagnostic equipment shall be limited to laptop computers; oscilloscopes; vibration analysis machines; cable fault detectors; point temperature probes; infrared temperature devices and recorders; insulation testers (meggers); voltage, current, and power measurement devices and recorders; pressure and flow

measurement devices; signal analyzer devices; ultrasonic thickness gauges; electronic component testers; and electronic tachometers.

2. The above-listed non-permissible electronic testing and diagnostic equipment shall be used only when equivalent permissible equipment is not available.
3. All electronic testing and diagnostic equipment shall be used only by qualified persons as specified in 30 C.F.R. § 75.153 and in accordance with the manufacturer's recommended safe use procedures. The qualified person must examine the equipment prior to being used to ensure the equipment is being maintained in a safe operating condition. Defective equipment shall not be used. The examination results shall be recorded in the weekly examination of electrical equipment book and shall be made available to an authorized representative of the Secretary and the miners at the mine.
4. A qualified person as defined in existing 30 C.F.R. § 75.151 shall continuously monitor for methane immediately before and during the use of non-permissible electronic testing and diagnostic equipment in or inby the last open crosscut.
5. The above-listed non-permissible electronic testing and diagnostic equipment shall not be used if methane is detected in concentrations at or above 1.0 percent methane. When 1.0 percent or more of methane is detected while the non-permissible electronic equipment is being used, the equipment shall be de-energized immediately and the non-permissible electronic equipment shall be withdrawn outby the last open crosscut.
6. All hand-held methane detectors shall be MSHA-approved and maintained in permissible and proper operating condition as defined in existing 30 C.F.R. § 75.320.
7. Except for the time necessary to troubleshoot under actual mining conditions, coal production in the section shall cease. However, coal may remain in the equipment in order to test and diagnose the equipment "under load."
8. The above-listed non-permissible electronic testing and diagnostic equipment shall not be used to test equipment when float coal dust has accumulated on previously rockdusted surfaces, accumulated on equipment, or when float coal dust is in suspension.

9. Qualified personnel using electronic testing and diagnostic equipment shall be properly trained to recognize the hazards and limitations associated with the use of electronic testing and diagnostic equipment.
10. The petitioner shall include the above terms and conditions in the initial and annual refresher training as required in its approved Part 48 training plans to ensure that miners are aware of the stipulations contained in this petition.

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 after service of the Proposed Decision and Order. 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 and Order. A party other than petitioner who has requested a hearing may 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 Proposed Decision and Order will become final and must be posted by the operator on the mine bulletin board at the mine.

Charles J. Thomas
Deputy Administrator for
Coal Mine Safety and Health