

In The Matter of
Arch Materials LLC
Batavia Mine
Mine I.D. No. 33-04578

PETITION FOR MODIFICATION

Docket No. M-2009-004-M

PROPOSED DECISION AND ORDER

On July 14, 2009, a petition was filed by Arch Materials LLC seeking a modification of the application of 30 CFR § 49.2(c) to petitioner's Batavia Mine located in Batavia, Clermont County, Ohio. The petitioner alleged that the alternative method outlined in the petition, which permitted team members to be on the rescue team who had not worked at mine in one of the last five years, would at all times guarantee no less than the same measure of protection afforded the miners by the application of the standard. The rescue team is the Eastwood Fire District Fire Fighting and Rescue Teams (rescue team).

Section 49.2 Availability of mine rescue teams, provides in part:

(c) To be considered for membership on a mine rescue team, each person must have been employed in an underground mine for a minimum of one year within the past five years. For the purpose of mine rescue work only, miners who are employed on the surface but work regularly underground shall meet the experience requirement. The underground experience requirement is waived for those miners on a mine rescue team on the effective date of this rule.

MSHA investigators conducted an investigation relevant to the merits of the petition and filed a report of their findings with the Administrator for Metal and Nonmetal 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.

FINDINGS OF FACT AND CONCLUSION OF LAW

The alternative method set forth in this Proposed Decision and order will at all times guarantee equivalent protection for the miners.

The Batavia Mine is a nongassy, single-level underground limestone mine that is still in development. The mine normally operates five days per week with two 8-hour shifts. Total underground employment is 9 persons. The room and pillar mine is accessed by two decline roadways, one of which is travelable over its entire length to the surface by

mobile equipment; the other of which is travelable over its entire length to the surface by miners on foot. Limestone is drilled and blasted. Shot rock is then loaded into a haul truck and transported to the slope bottom where it is fed into a portable crusher. The crushed rock feeds onto the slope belt for transport to the surface for further processing and stockpiling.

The Eastwood District Fire Fighting and Mine Rescue Team is a fire and rescue department team that has had required MSHA training and is located in Eastwood, Kentucky within 2-hr ground travel time to the mine. The 15 members of the team have had extensive training in fire fighting, evacuation, and rescue and are in compliance with the requirements of 30 CFR § 49.7 and 30 CFR § 49.8. This team has conducted underground training at the Batavia Mine and is familiar with the mine's operating practices. The team is on duty 24 hours a day, seven days per week and is able to provide immediate response to any mine emergency. The Eastwood District Fire Fighting and Mine Rescue Team currently provides mine rescue services for 12 underground mines in Kentucky.

The Eastwood Fire Department's Mine Rescue Station was inspected most recently on January 13, 2010. The station has the MSHA required equipment, including 12 Bio Marine self-contained breathing apparatus with 4 hours capacity. The equipment is kept in a portable trailer that is ready for transportation and can be used as a command center with its own generator.

Compliance with this Order entitles Arch Materials LLC to a modification of the application of 30 CFR § 49.2(c) to its Batavia Mine.

ORDER

Wherefore, pursuant to the authority delegated by the Secretary of Labor to the Administrator, 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 a modification of the application of 30 CFR § 49.2(c) to Arch Materials LLC, as it pertains to using members of the Eastwood District Fire Fighting and Mine Rescue Teams, who have not worked at a mine in one of the last five years, to be members of the mine rescue team for the Batavia Mine, is hereby:

GRANTED, conditioned upon compliance with the following:

1. Mining experience shall not be a determining factor for membership on the mine rescue team once members of the Eastwood District Fire Fighting and Mine Rescue Teams meet the training conditions set forth in this Proposed Decision and Order.
2. The mine rescue team shall conduct training activities underground at the Batavia Mine for a period of at least 4 hours every six months.
3. Training activities while underground shall focus on fighting fires and rescue and recovery activities.

4. A log shall be maintained for each training session required in stipulation No. 2. This log shall be maintained for 2 years and made available to an MSHA representative and the miners' representative. The following information shall be recorded:
 - (a) The date and time of training.
 - (b) The names of rescue team members trained.
 - (c) Whether training was conducted wearing the breathing apparatus.
 - (d) Locations in the mine where members were trained.
 - (e) The nature of the training and/or exercises conducted.

Any party to this action desiring a hearing must file a request for hearing within 30 days after service of the Proposed Decision and Order, in accordance with 30 CFR § 44.14, with the Administrator for Metal and Nonmetal Mine Safety and Health, 1100 Wilson Boulevard, Arlington, VA 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 the petitioner who has requested a hearing shall also comment upon all issues of fact or law presented in the petition. 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, this Proposed Decision and Order will become final and must be posted by the operator on the mine bulletin board at the mine.

/S/

Neal H. Merrifield
Acting Administrator for Metal and Nonmetal
Mine Safety and Health