

April 19, 2006

In The Matter of
Cotter Corporation
C-JD-9 Mine
Mine I.D. No. 05-03066

PETITION FOR MODIFICATION

Docket No. M-2004-007-M

Background

On June 23, 2004, Cotter Corporation (Cotter) filed a petition for modification of 30 CFR §57.11055, Inclined Escapeways, to petitioner's C-JD-9 Mine, (I.D. No. 05-03066), an underground uranium operation that uses the modified room and pillar method to recover the ore, located in Montrose County, Colorado. The underground mine contains combustible material, some of which has been treated to make it fire resistant and no explosive gases; therefore, the chance of a sustained fire is remote.

Standard 30 CFR §57.11055 Inclined escapeways, provides:

Any portion of a designated escapeway which is inclined more than 30 degrees from the horizontal and that is more than 300 feet in vertical extent shall be provided with an emergency hoisting facility.

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. The Petitioner requests that a portable hoist and head frame (hoist), mounted on a flat bed truck at the No. 3 borehole, be moved to a more secure location at Nucla, Colorado, approximately twenty-five (25) miles from the mine to prevent vandalism. In so doing, the hoist would not be immediately available for use in the event of a mine emergency as it is now. Petitioner stated that travel and hoist setup time would take about one and one-half (1½) hours from its storage site at Nucla, Colorado.

The Petitioner's alternative method of compliance with the standard would be to construct and maintain underground refuge chambers within thirty (30) minutes travel time of any work area. These refuge chambers would be used in lieu of the miners exiting the mine within one hour as required by 30 CFR § 57.11050(b). Use of the refuge chambers would allow the petitioner time to move the hoist from the storage yard at Nucla and erect it at the No. 3 borehole, the miners' designated secondary escapeway for use in an emergency. During winter nights, ventilation to the No. 3 borehole is incast to prevent freezing the main entry decline. The fan cannot be placed over the No. 3 borehole with the hoist in place.

Also, the Petitioner proposes to make semi-annual operational checks of the hoist when it is at the storage yard at Nucla and record the results in a logbook. The mine's

communication plan in place addresses how miners will contact the Nucla, Colorado, office in the event of an underground emergency. While miners are underground, an operator for the truck and hoist would be available to operate the equipment in the event of a mine emergency. Miners are equipped with self-rescuers rated at 60 minutes duration.

On July 28, 2004, 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. The report was clarified with additional information on October 13 and on November 8, 2005, and the additional findings and information were added to the file. 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

Application of 30 CFR 57.11055 to the subject mine will not result in a diminution of safety to the miners and the petitioner's proposed alternative method will not at all times provide a safe work environment for the miners.

MSHA's investigation determined that it is possible to safeguard the hoist to prevent vandalism. For example, safeguards, such as fencing and alarm or video systems, could be installed and monitored so the hoist could remain at its present location at the borehole. With the hoist remaining on site, removing the fan and installing the hoist over the No. 3 borehole would take a short time, allowing miners to promptly exit the mine in an emergency situation. Moreover, Petitioner could offset the fan and permanently install the hoist so that its removal and installation process would not be necessary.

A permanently installed hoist would allow miners to exit the mine in a prompt manner in an emergency situation. Moving the hoist to a location approximately twenty-five (25) miles from the mine would not provide miners with prompt egress from the underground mine in the event of an emergency. Travel time from Nucla to the mine, as stated by the petitioner, is approximately 1½ hours based on good weather and travel conditions. During inclement weather conditions, however, travel time could increase and the road to the No. 3 borehole may be impassable or difficult to travel. These conditions may increase the time miners would have to remain underground in a potentially dangerous situation. Consequently, miners could be indefinitely or fatally trapped underground if the primary escapeway was not available and the secondary escape route, the hoist, was also not immediately available for use.

Although Petitioner stated that the chance of a sustained fire is remote at the petitioned mine, emergencies such as fires, inundations, and massive ground falls historically

associated with underground mining disasters have sometimes occurred at mines where no potential was thought to exist. Prompt egress is the most critical factor to saving lives in many underground emergency situations.

Further, the alternative method proposed by the petitioner is not acceptable since it would be nothing more than meeting the requirements of 30 CFR Section 57.11050(b), which states, "In addition to separate escapeways, a method of refuge shall be provided for every employee who cannot reach the surface from his working place through at least two separate escapeways within a time limit of one hour using the normal exit method. These refuges must be positioned so that the employee can reach one of them within 30 minutes from the time he leaves his workplace."

Petitioner stated the miners are equipped with self-rescuers rated at 60 minutes duration. If the refuge chamber were not functional, the self rescuers would provide miners protection there for only one hour. In an emergency, miners would have to be able to exit the mine in one hour or less if the chamber is not available. If the hoist were located in Nucla, an exit within this time would not be possible.

The petitioner also referred to the communication plan located in the surface shop of the C-JD-9 Mine. Section 57.11053 requires an emergency escape and evacuation plan be established for underground miners. The communication plan does not address how locating an emergency hoist 25 miles from the mine would meet the requirements of section 57.11053.

In summary, the alternate method proposed by the petitioner would not at all times guarantee no less than the same measure of protection as afforded miners under 30 CFR Section 57.11055.

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., Section 811(c), it is hereby ordered that a modification of the application of 30 CFR §57.11055 to Cotter Corporation, as it applies to the alternative method of locating the hoist approximately twenty- five (25) miles from the No. 3 borehole at the C-JD-9 Mine is hereby **DENIED**.

/s/ Felix Quintana

Felix Quintana
Acting Administrator for
Metal and Nonmetal Mine Safety and Health