

January 09, 2008
Phelps Dodge Tyrone, Inc.
Tyrone Mine
Mine I.D. No. 29-00159

Petition for Modification

Docket No. M-2007-008-M

Proposed Decision and Order

On August 20, 2007, Phelps Dodge Tyrone, Inc., filed a petition under 30 U.S.C. § 811 (c) and 30 C.F.R. Part 44 seeking a modification of the application of 30 C.F.R. § 56.14207 to its Tyrone Mine (No. 29-00159). The Tyrone Mine is a surface copper mine located in Grant County, New Mexico. The petitioner alleges that the alternative method outlined in the petition would at all times guarantee no less than the same measure of protection for miners provided by the standard.

Standard 30 C.F.R. § 56.14207 requires that:

Mobile equipment shall not be left unattended unless the controls are placed in the park position and the parking brake, if provided, is set. When parked on a grade, the wheels or tracks of mobile equipment shall be either chocked or turned into a bank.

The Petitioner requests a modification to the mandatory standard which would allow the equipment operators to utilize wheel chocks instead of setting parking brakes when their fleet of certain light trucks is parked over night. The petitioner states that some vehicles parked over night are experiencing freezing of braking systems after being exposed to wet and muddy conditions during the previous day then freezing temperatures at night.

On October 23, 2007, MSHA investigators conducted an investigation relevant to the merits of the petition and filed a report of their findings and recommendations 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

Petitioner's proposed alternative method will not at all times provide a safe work environment for miners and guarantee no less than the same measure of protection afforded the miners under 30 C.F.R. § 56.14207.

MSHA's investigation revealed that miners were concerned a granted petition for modification would create a larger problem. MSHA believes that allowing a seasonal modification to the standard is very subjective and would be difficult for the operator to comply with and difficult for MSHA inspectors to verify compliance. Furthermore, truck documentation notes that proper maintenance and keeping braking systems clean will prevent the systems from freezing. The company also has a cleaning station to their fleet of light trucks.

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 hereby ordered that a modification of the application of 30 CFR § 56.14207 to Phelps Dodge Tyrone, Inc., as it applies to refuge areas at the Tyrone Mine, is hereby **DENIED**.

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 C.F.R. § 44.14, with the Administrator for Metal and Nonmetal 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 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/Felix A. Quintana

Felix A. Quintana
Administrator for Metal and Nonmetal
Mine Safety and Health