

In the matter of  
Nowacki Coal Company  
Nowacki Slope Mine  
I.D. No. 36-07592

Petition for Modification  
  
Docket No. M-2003-045-C

PROPOSED DECISION AND ORDER

On June 9, 2003, a petition was filed seeking a modification of the application of 30 CFR 75.364(b)(1), (4) and (5) to Petitioner's Nowacki Slope Mine, located in Brockton, Schuylkill County, Pennsylvania. On August 25, 2003, the petitioner filed an amendment to the proposed alternative method. 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.

Specifically, the Petitioner alleges that the intake air course and seals along the air course as well as the primary escapeway have become too hazardous to examine every seven days as the standard requires due to the slope pitch and wet conditions. The wet conditions present a significant fall hazard when either daily or weekly examinations are conducted at every ventilation control or opening along the steeply pitched intake haulage slope and escapeway.

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 recommendation, this Proposed Decision and Order is issued.

Finding of Fact and Conclusion of Law

A weekly examination for hazardous conditions at various locations in underground coal mines is required under 30 CFR 75.364(b). Under the petition, Nowacki Coal Company seeks to modify those parts of the standard that require an examination: in at least one entry of each intake air course [(b)(1)]; at each seal along return and bleeder air courses and at each seal along intake air courses not examined under 30 CFR 75.360(b)(5) during the preshift examination [(b)(4)]; and in each escapeway [(b)(5)].

An investigation into the merits of the petition revealed that the intake air course currently is being examined during the mine's preshift examination, which occurs at least once each day at the Nowacki Coal Company Slope Mine. The Administrator has concluded that this satisfies the weekly examination requirement of 30 CFR 75.364(b)(1). Moreover, since the intake air course has also been designated as the primary escapeway, the requirement in 30 CFR 75.364(b)(5) for a weekly examination of the primary escapeway is also fulfilled by the preshift examination of the intake air course. Further, the investigation determined that the operator, when conducting its weekly examination of the return air course in compliance with 30 CFR 75.364(b)(2), is also satisfying the requirement in subsection (b)(5) to examine the escapeways, since the return air course is designated as the alternate escapeway for the mine. For these reasons, Nowacki Coal Company's application for modification of 30 CFR 75.364(b)(1) and (b)(5) is dismissed as unnecessary since the company is, in fact, complying with these provisions at the Nowacki Coal Company Slope Mine.

With regard to petitioner's request to modify the application of 30 CFR 75.364(b)(4), the investigation revealed the following. On June 9, 2003, the petitioner filed a modification of 30 CFR 75.360(b)(5) for preshift examination of seals by Docket No. M-2003-044-C. That modification pending approval will permit the certified person to conduct a visual examination of the seals along the intake air course from the slowly moving gunboat located in the steep intake air slope rather than requiring the examiner to exit the gunboat and travel to each seal to determine if the seals are intact. The basis for granting the modification is that the wet and slippery conditions in this anthracite mine create a severe falling hazard for mine examiners who need to climb from the gunboat over the slope to the area where the seals are located to physically examine them. Moreover, the modification also requires that an examination of the intake seals be conducted every seven days, at which time the gunboat must be stopped at each seal to make the visual examination from the gunboat. If the condition of a seal cannot be determined visually from the gunboat, then the operator must make other arrangements, such as moving the seal closer to the intake slope, so the seal can be examined from the stopped gunboat to ensure it is intact. Only in those rare cases where other arrangements do not ensure that a visual examination can be made from the gunboat would the examiner have to leave the gunboat and physically examine the seal to see that it is intact. Since under 30 CFR 75.364(b)(4) seals located along the intake air course which are examined during the preshift examination are not required to be examined again during the weekly examination, a modification of that portion of 30 CFR 75.364(b)(4) which applies to examination of seals along the intake is not needed because these seals are

already being examined under the modified preshift examination requirements of 30 CFR 75.360(b)(5).

As for that portion of 30 CFR 75.364(b)(4) requiring a weekly examination of the seals located along the return air course, the investigation determined that in this steeply pitching anthracite mine the return air course (also the alternate escape-way) is located in a steep slope which must be traveled by a series of ladders on the sides of the slope to enter or exit the mine. Further, the vast majority of the return air seals are located such a short distance from the ladders in the slope that a visual examination of the seals from the ladder can determine whether or not the seals are functioning as intended. Anthracite mines are usually wet throughout the year, exposing miners to continual slipping and falling hazards. These wet conditions worsen when freezing temperatures cause ice to form on ladders near the top of the slopes, shafts, and approaches to seals which make hand and foot holds unsure and increase the danger of falling to miners. Under such adverse conditions, mine examiners who must dismount the installed ladders and physically travel to the return seals are at risk of falling and could be fatally or severely injured. As a result, MSHA has determined that a visual examination of the return air slope seals from the ladder to ensure that they are intact should be permitted in this case. An actual physical examination of these seals must be conducted only in the unlikely case that it is not possible to determine if the seal is intact from the ladder even after all other possible arrangements have been made. This approach significantly minimizes the risk of falling to the examiner, while still protecting miners from the risks of having mine gases from worked out areas enter the active workings should a seal failure occur. Therefore, application of that portion of 30 CFR 75.364(b)(4) that requires weekly physical examination of the return air seals will result in a diminution of safety to the miners. The special terms and conditions set out below will provide a safe work environment to the miners.

#### 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 Nowacki Coal Company's Petition for Modification of the application of 30 CFR 75.364(b)(1), (4) and (5) in the Middle Split Vein Slope Mine is hereby:

DISMISSED, for 30 CFR 75.364(b)(1) regarding weekly examination of the intake air course; for 30 CFR 75.364(b)(4) regarding weekly examination of seals located along the intake

air haulage course; and for 30 CFR 75.364(b)(5) regarding weekly travel of each escapeway in its entirety.

GRANTED, for 30 CFR 75.364(b)(4), to conduct examinations of the seals located along the return and bleeder air courses from the ladder on a weekly basis, not monthly as proposed by petitioner, conditioned upon compliance with the following terms and conditions:

1. A certified person designated by the operator shall, during the weekly examination, take air readings at the bottom and top of the return air slope to determine:
  - (a) the quality of air entering the bottom of the return air slope and exiting the return air slope by testing for methane and oxygen deficiency; and
  - (b) if the air is moving in the proper direction.

The results of each weekly examination shall be compared to the previous weekly examination, and any changes in the direction of flow of the air currents shall be reported to the mine foreman for immediate investigation. The results of this weekly examination shall be recorded in the weekly record required under 30 CFR 75.364(h).

2. The certified person shall make a visual examination of every seal on each side of the return air slope from the ladder to determine if the seals are intact and serving their intended purpose. If a seal cannot be visually examined from the ladder, arrangements shall be made, such as moving the seal closer to the return, to ensure an examination of the seal can be conducted. Any indication of seal deterioration shall require an immediate physical examination followed by corrective actions. The certified person, while climbing the ladder, shall also make a visual examination of the return air slope for hazardous conditions. All such conditions shall be corrected or posted with conspicuous danger signs and recorded in the weekly record required under 30 CFR 75.364(h).
3. Seals not examined from ladders and located along return and bleeder air courses are not covered under this modification and shall be inspected at least every seven days in accordance with 30 CFR 75.364(b)(4).
4. Within 60 days after this Proposed Decision and Order becomes final, the Petitioner shall submit proposed

revisions for its approved 30 CFR Part 48 training plan to the Coal Mine Safety and Health District Manager. The proposed revisions shall include initial and refresher training regarding compliance with the Proposed Decision and Order.

Any party to this action desiring a hearing on this matter must file in accordance with 30 CFR 44.14, 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 Decision and Order will become final and must be posted by the operator on the mine bulletin board at the mine.

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John F. Langton  
Deputy Administrator  
for Coal Mine Safety and Health