

August 16, 2004

In the matter of:
Tito Coal
Whites Vein Slope Mine
I.D. No. 36-06815

Petition for Modification

Docket No. M-2003-062-C

PROPOSED DECISION AND ORDER

On August 25, 2003, a petition was filed seeking a modification of the application of 30 CFR 75.1002(a) to Petitioner's Whites Vein Slope Mine, located in Schuylkill County, Pennsylvania. The Petitioner alleges that the alternative method outlined in the petition will at all times guarantee no less than the same measure of protection afforded by the standard.

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

The review of the petition and the investigation report reveals that the mining and ventilation practices common to underground anthracite mines have developed mainly as a result of mining coal seams that can pitch from 20 to 90 degrees. Coal extraction in these seams creates openings; some of which breach to the surface. The surface openings permit additional fresh air to enter mines and assist in total mine ventilation. The pitch of anthracite mines also helps to control and prevent accumulations of methane, which is lighter than air and will naturally migrate from lower working places to upper mine areas to be exhausted by the mine fan or liberated through surface openings when the mine fan is not operating.

The alternative method proposed by the Petitioner (as amended by the recommendations of MSHA) will at all times guarantee no less than the same measure of protection afforded the miners under 30 CFR 75.1002(a).

On the basis of the petition and the findings of MSHA's investigation, Tito Coal is granted a modification of the application of 30 CFR 75.1002(a) to its Whites Vein Slope Mine.

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 Tito Coal's Petition for Modification of the application of 30 CFR 75.1002(a) in the Whites Vein Slope Mine is hereby:

GRANTED, for the use of non-permissible battery-powered locomotives and associated non-permissible electric components located within 150 feet from pillar workings, conditioned upon compliance with the following terms and conditions:

1. At no time shall the non-permissible battery-powered locomotives and associated non-permissible electric components be taken in by the last open crosscut or in by any open chute. Open chutes are openings that are absent of any ventilation control devices that provide separation of intake and return aircourses.
2. The associated non-permissible electric components shall be located in the intake air gangway. Pillar retreat mining using such equipment shall conclude at the first miner heading above the monkey heading or at least 20 feet above the monkey heading.
3. The non-permissible battery-powered locomotives and associated non-permissible electric components shall not be energized or operated anytime the preshift examination detects 0.25% or more methane in the intake air passing over them.
4. On-shift tests for methane shall be taken every two hours at the locations of non-permissible battery-powered locomotives when located within 150 feet from pillar workings. The non-permissible battery-powered locomotives shall not be operated if 0.25% or more methane is detected in the intake air passing over them.
5. On-shift tests for methane shall be taken every two hours at the locations of non-permissible associated non-permissible electric components when located within 150 feet from pillar workings (including times of pillar development and recovery). The associated non-permissible electric components shall be immediately deenergized if 0.25% or more methane is detected in the intake air passing over them.
6. Results of the methane tests conducted during the on-shift examinations as specified in Stipulation Nos. 4 and 5 must be recorded in a book provided for that purpose on the surface.

7. The non-permissible battery-powered locomotives shall be located at least 150 feet away from pillar workings upon completion of coal production activities during each shift.
8. The associated non-permissible electric components shall be:
 - (a) Attended while energized; and
 - (b) Deenergized upon completion of coal production activities during each shift.
9. Within 60 days after the 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. These proposed revisions shall specify 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.

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