

April 20, 2005

In the matter of:  
J & J Coal Company  
Rocky Top Mine  
I.D. No. 36-09072

Petition for Modification  
  
Docket No. M-2004-046-C

PROPOSED DECISION AND ORDER

On October 27, 2004, a petition was filed seeking a modification of the application of 30 CFR 75.335 to Petitioner's Rocky Top Mine, located in Schuylkill County, Pennsylvania. 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.

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

Application of 30 CFR 75.335(a)(1) to the subject mine will result in a diminution of safety to the miners and the special terms and conditions set out below will at all times provide a safe work environment to the miners.

On the basis of the petition and the findings of MSHA's investigation, J & J Coal Company is granted a modification of the application of 30 CFR 75.335(a)(1) to its Rocky Top 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

J & J Coal Company's Petition for Modification of the application of 30 CFR 75.335(a)(1) in the Rocky Top Mine is hereby:

GRANTED, for seals installed in this mine, conditioned upon compliance with the following terms and conditions:

1. Seals shall be constructed of overlapping layers of hardwood in a parallel fashion with staggered seams and shall be at least 2 inches thick. The material used in the construction of seals shall also be specified in the ventilation plan.
2. Seals shall be installed against the roof, floor, and ribs in a manner that minimizes leakage. The method of seal construction shall also be specified in the ventilation plan.
3. Seals installed after the effective date of this modification shall be coated on all accessible surfaces with a non-water-soluble, flame-retardant material that will minimize leakage and that has a flame-spread index of 25 or less, as tested under ASTM E162-87, "Surface Flammability of Materials Using a Radiant Heat Energy Source."
4. Seals installed before the effective date of this modification that exhibit sufficient evidence of water saturation, either through visual observation or by touch, to render them noncombustible do not need to be coated with flame-retardant material. Seals that do not exhibit evidence of water saturation shall have all accessible surfaces coated in accordance with stipulation Number 3.
5. Prior to implementing this alternate method, an investigation of the seals installed in this mine shall be conducted to determine that the seals are being maintained to serve the purpose for which they were intended.

6. In the event mining progresses below water level, the seals constructed below water level shall be equipped with water traps.
7. 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