

June 6, 2007

In the matter of:  
Excel Coal Company  
Three S Slope  
I.D. No. 36-09309

Petition for Modification  
  
Docket No. M-2006-057-C

PROPOSED DECISION AND ORDER

On June 6, 2006, a petition was filed seeking a modification of the application of 30 CFR 75.1400 to Petitioner's Three S Slope, located in Northumberland 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, this Proposed Decision and Order is issued.

Finding of Fact and Conclusion of Law

The investigation revealed that application of 30 CFR 75.1400 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.

MSHA's investigation verified that the hoist rope size and the secondary safety attachment provided the necessary strength to exceed three times the strength required by 30 CFR 75.1431(a). In addition, the MSHA investigators confirmed that safety catches remain commercially unavailable for use on hoisted conveyances on the high pitch and undulating slopes typical of the anthracite region.

On the basis of the petition and the findings of MSHA's investigation, Excel Coal Company is granted a modification of the application of 30 CFR 75.1400 to its Three S Slope.

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., § 811(c), it is ordered that Excel Coal Company's Petition for Modification of the application of 30 CFR 75.1400 in the Three S Slope is hereby:

GRANTED, for the use of the hoist conveyance (gunboat) without safety catches, conditioned upon compliance with the following terms and conditions:

1. A communication signal system, audible to the hoist operator, shall be installed so that it can be activated from the gunboat at any location along the intake haulage slope.
2. The design safety factor of the hoist rope shall be maintained at all times not less than three times the value specified in 30 CFR 75.1431.
3. A detailed inspection procedure of the ropes and terminations used at the mine shall be posted in the hoist house and complied with at all times.
4. A secondary safety connection shall be securely fastened around the gunboat and securely fastened to the hoisting rope at a point above the main connecting device. The secondary safety connection must be, at a minimum,  $\frac{3}{4}$ -inch diameter wire rope properly terminated above the main hoisting rope attachment with at least two clips on each end or with equivalent-strength chains.
5. At least 2 feet of clearance must be maintained between the highest part of the secondary attachment and the head sheave when the gunboat is positioned in the full dump position.
6. Within 60 days after this Proposed Decision and Order becomes final, the Petitioner shall submit proposed revisions for their 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 conditions stated in 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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Melinda Pon  
Acting Deputy Administrator for  
Coal Mine Safety and Health