

September 18, 2007

In the matter of:
Black Beauty Coal Company
Francisco Mine - Underground Pit
I.D. No. 12-02295

Petition for Modification

Docket No. M-2007-021-C

PROPOSED DECISION AND ORDER

On March 28, 2007, a petition was filed seeking a modification of the application of 30 C.F.R. § 75.1909(b)(6) to Petitioner's Francisco Mine - Underground Pit, located in Gibson County, Indiana. The Petitioner proposes an alternative method outlined in the petition that 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 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

Section 75.1909(b)(6) provides that all self-propelled non-permissible diesel-powered equipment must have, in addition to all other requirements, service brakes that act on each wheel of the vehicle such that failure of any single component, except the brake actuation pedal or other similar actuation device, must not result in complete loss of service braking capability.

Petitioner proposes an alternate method in lieu of the front wheel brakes on the diesel-powered, six-wheeled Getman Road builder, Model RDG-1504S (Serial Number 6925) used at the Francisco Mine - Underground Pit. The "S" model Roadbuilder has dual brake systems on the four rear wheels and is designed to prevent loss of braking due to a single component failure. Petitioner proposes to limit the speed of the diesel grader to 10 miles per hour (mph) and to train the grader operators to drop the grader blade to provide additional stopping capability in an emergency.

The alternative method proposed by Black Beauty Coal Company (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 C.F.R. § 75.1909(b)(6). The diesel grader will be equipped with devices that limit speed to 10 mph and the grader operator(s) will be trained to lower the moldboard in emergency conditions. These terms and conditions will provide an equivalent level of safety to the standard requirement that each wheel of the grader be equipped with service brakes.

On the basis of the petition and the findings of MSHA's investigation, Black Beauty Coal Company, is granted a modification of the application of 30 C.F.R. § 75.1909(b)(6) to its Francisco Mine - Underground Pit.

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 Black Beauty Coal Company's Petition for Modification of the application of 30 C.F.R. § 75.1909(b)(6) in the Francisco Mine - Underground Pit is hereby:

GRANTED, conditioned upon compliance with the following terms and conditions:

1. This Proposed Decision and Order is limited in application to the diesel-powered, six-wheeled Getman Roadbuilder, Model RDG-1504S (Serial No. 6925).
2. The maximum speed on the diesel grader shall be limited to 10 mph by:
 - (a) Permanently blocking out any gear or any gear ratio that provides higher speeds. The device must limit the vehicle speed in both forward and reverse; and
 - (b) Using transmission(s) and differential(s) geared in accordance with the equipment manufacturer that limit(s) the maximum speed to 10 mph.
3. Prior to implementing the alternative method:
 - (a) The diesel graders must be inspected by MSHA to determine compliance with the terms and conditions of the Proposed Decision and Order.

- (b) Grader operators must be trained to recognize appropriate levels of speed for different road conditions and slopes.
 - (c) Grader operators must be trained to lower the moldboard (grader blade) to provide additional stopping capability in emergencies.
 - (d) Grader operators must be trained to recognize the transmission gear blocking device and its proper application and requirements.
4. The grader must comply with all other applicable requirements of the Federal Mine Safety and Health Act of 1977 and the applicable requirements of 30 C.F.R. Parts 75 and 77.
 5. Within 60 days after this Proposed Decision and Order becomes final, the Petitioner must submit proposed revisions for its approved 30 C.F.R. Part 48 training plan to the Coal Mine Safety and Health District Manager. These revisions must specify initial and refresher training regarding the terms and 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 C.F.R. § 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 must 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 must 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.

4

Acting Deputy Administrator for
Coal Mine Safety and Health