October 16, 2007

In the matter of Petition for Modification
Mallie Coal Company, Inc.
Mine No. 7
ID No. 15-19007 Docket No. M-2007-037-C

PROPOSED DECISION AND ORDER

On May 11, 2007, a petition was filed seeking a modification of the application of 30 C.F.R. § 75.380(f)(4)(i) to Petitioner's Mine No. 7, located in Knox County, Kentucky. The Petitioner alleges that the proposed alternative method will at all times provide the same measure of protection as 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 (PDO) is issued.

Finding of Fact and Conclusion of Law

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 C.F.R. § 75.380(f)(4)(i).

The requirements of 30 C.F.R. § 75.380, Escapeways; bituminous and lignite mines, provide that:

> (4) Mobile equipment operated in the primary escapeway, except for continuous miners and as provided in paragraphs (f)(5), (f)(6), and (f)(7) of this section, shall be equipped with a fire suppression system installed according to §§ 75.1107-3 through 75.1107-16 that is—
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> > (i) Manually operated and attended continuously by a person trained in the system’s function and use;

The Petitioner claimed that fire suppression technology is not available to fit the equipment being used in its mining height. MSHA previously confirmed the validity of this claim. There are no fire suppression systems on the market, from any supplier, for equipment operated in coal seam heights 25 inches or less. The smallest canister manufactured is 18 inches. MSHA's investigation confirmed that the mine's height averages 28 inches and it has extensive areas where the height is 25 inches or less. Therefore, mounting this canister on this small frame height equipment would not be practical.

Usually, the Mescher tractors are driven in and out of the mine in the primary intake escapeway twice per shift for mantrip purposes (beginning and end). In addition, the tractors are driven in the primary intake escapeway a low number of times during shifts to haul supplies to the section or to have their batteries exchanged. The Mescher tractors are used in the outby areas of the mine to transport personnel and supplies. On the working section, the tractors are also used to transport coal from the working face to the dumping point. Title 30 C.F.R. § 75.380(f)(5)(ii) permits battery-powered personnel carriers and small mobile equipment designed and used only for carrying people and small hand tools to operate in the intake escapeway with two (2) 10-lb fire extinguishers and without a fire suppression system. The Mescher tractors do not meet the 30 C.F.R. § 75.380 (f)(5)(ii) definition of small mobile equipment as they are not designed and used only for carrying people and small hand tools; the tractors, however, are battery-powered and they have no hydraulics. Therefore, the tractors have the same type of fire source (96-volt batteries) as the small mobile equipment referenced in 30 C.F.R. § 75.380(f)(5)(ii). The investigation report revealed that the Mescher tractors do not have a fire history.

On the basis of the petition and the findings of MSHA's investigation, Mallie Coal Company, Inc., is granted a modification of the application of 30 C.F.R. § 75.380(f)(4)(i) to its Mine No. 7.

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

Mallie Coal Company, Inc.’s, Petition for Modification of the application of 30 C.F.R. § 75.380(f)(4)(i) in the Mine No. 7 is hereby:

GRANTED, for Mescher three-wheel tractors to be operated in the primary intake escapeway conditioned upon compliance with the following terms and conditions:

1. Each tractor shall be provided with a total of 20 pounds of multipurpose dry chemical, in any combination of 5-pound and/or 10-pound portable fire extinguishers;

2. Ten pounds, either two 5-pound or one 10-pound, of the total 20 pounds multipurpose dry chemical extinguishment shall be mounted in the deck of the Mescher tractor and be readily accessible by the operator;

3. Fire extinguishers required in stipulation No. 1 shall be inspected daily by the equipment operator prior to the tractor entering the primary intake escapeway;

4. The tractors shall be battery-powered with no hydraulics;

5. All tractors shall be maintained in a permissible condition; and

6. Within 60 days of the PDO being granted, the Petitioner shall submit proposed revisions for its approved 30 C.F.R. Part 48 training plan to the MSHA's District Manager. These proposed revisions shall include initial and refresher training regarding compliance with the PDO.

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 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.

Terry L. Bentley
Acting Deputy Administrator for
Coal Mine Safety and Health