

In the matter of  
Frasure Creek Mining, LLC

Petition for Modification

Deep Mine No. 15  
I.D. No. 46-09209

Isaban Deep Mine No. 3  
I.D. No. 46-09245

Mine No. 5  
I.D. No. 46-08942

Docket No. M-2009-010-C

### PROPOSED DECISION AND ORDER

On April 14, 2009, Frasure Creek Mining, LLC filed a petition under Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. § 811(c) and 30 C.F.R. Part 44. The petition sought a modification of the application of 30 C.F.R. § 75.1101-1(b) to Petitioner's Deep Mine No. 15, located in Fayette County, West Virginia; Isaban Deep Mine No. 3, located in Mingo County, West Virginia; and Mine No. 5, located in Fayette County, West Virginia.

The petitioned standard, 30 C.F.R. § 75.1101-1(b), states, in relevant part:

Nozzles attached to the branch lines shall be full cone, corrosion resistant and provided with blow-off dust covers...

Petitioner proposes to conduct weekly examinations and functional testing of the deluge-type water spray fire suppression systems and to remove blow-off dust covers from their nozzles as an alternative method of complying with the standard. 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 the miners by the standard.

MSHA personnel conducted an investigation of the petition on June 11, 2009 at Deep Mine No. 15 and filed a report of their findings and recommendations with the Acting Chief, Division of Safety, for Coal Mine Safety and Health. The investigative report indicates that Mine No. 5 (I.D. No. 46-08942) and Isaban Deep Mine No. 3 (I.D. No. 46-09245) were abandoned subsequent to the filing of the petition and that Petitioner requested that these two mines be removed from the petition. 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 proposed alternative method, as amended by MSHA, will at all times provide the same measure of protection to the miners as afforded the miners under 30 C.F.R. § 75.1101-1(b).

Contaminated mine water systems and corrosion deposits create restrictions which result in reduction or closure of the water spray orifices on fire suppression systems. In order to ensure that the fire suppression system is functional and adequate, a method of visual examination coupled with a measuring mechanism of the residual water pressure would be necessary.

On the basis of the petition and the findings of MSHA's investigation, Frasure Creek Mining, LLC, is granted a modification of the application of 30 C.F.R. § 75.1101-1(b) to its Deep Mine No. 15 and Petitioner's petition for modification is dismissed as it applies to its Isaban Deep Mine No. 3 and Mine No. 5.

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 Frasure Creek Mining, LLC's Petition for Modification of the application of 30 C.F.R. § 75.1101-1(b) is hereby:

DISMISSED for its Isaban Deep Mine No. 3 (I.D. No. 46-09245) and Mine No. 5 (I.D. No. 46-08942)

GRANTED for the Deep Mine No. 15 (I.D. No. 46-09209), for weekly examination and functional testing of deluge-type water spray fire suppression systems installed at conveyor belt drives in lieu of blow-off dust covers for nozzles of deluge-type water spray fire suppression systems, conditioned upon compliance with the following terms and conditions:

1. Once every seven (7) days, a person trained in the procedures for testing the deluge-type water spray fire suppression systems utilized at each belt drive shall:
  - a. Conduct a visual examination of each of the deluge-type water spray fire suppression systems.
  - b. Conduct a functional test of the deluge-type water spray fire suppression systems by actuating the system and observing their performance.

- c. Take residual pressure measurements at the most hydraulically demanding nozzle to determine whether the system meets the manufacturer's specifications.
  - d. Record the results of the examination, functional test, and residual water pressure measurements, and any malfunction or clogged nozzle detected in a book maintained on the surface for that purpose. The record shall be made available to the authorized representative of the Secretary and retained at the mine for one year.
2. Any malfunction or clogged nozzle detected as a result of the weekly examination or functional test shall be corrected immediately.
  3. The procedure used to perform the functional test shall be posted at or near each belt drive that utilizes a deluge-type water spray fire suppression system.

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. These proposed revisions shall specify the procedure used to conduct the weekly functional test specified by the Proposed Decision and Order and these proposed revisions shall be provided to miners during initial and refresher training.

Any party to this action desiring a hearing on this matter must file a request for a hearing within 30 days after service of the Proposed Decision and Order, in accordance with 30 CFR 44.14,. 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 may 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, this Proposed 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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Charles J. Thomas  
Deputy Administrator for  
Coal Mine Safety and Health