

In the matter of
San Juan Coal Company
San Juan South Mine
I. D. No. 29-02170

Petition for Modification

San Juan Deep Mine
I.D. No. 29-02201

Docket No. M-2001-100-C

PROPOSED DECISION AND ORDER

On October 15, 2001 San Juan Coal Company filed a petition for modification of the application of 30 CFR 75.362(d)(2) to its San Juan South and San Juan Deep Mines located in San Juan County, New Mexico. Later, the San Juan South and Deep Mines, I.D. Nos. 29-02170 and 29-02201, respectively, connected underground and the combined workings now use the San Juan South name and I.D. No. 29-02170.

The Petition alleges 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 conducted an investigation of the petition and filed a report with the Administrator. 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 petition seeks modification of the application of Section 75.362(d)(2) that requires:

"These methane tests shall be made at the face from under permanent roof support, using extendable probes or other acceptable means. When longwall or shortwall mining systems are used, these methane tests shall be made at the shearer, the plow, or cutting head. When mining has been stopped for more than 20 minutes, methane tests shall be conducted prior to the start up of equipment".

San Juan proposes as an alternative method equipping each continuous miner with a General Monitors S800 Methane Monitor. These monitors have detection sensors near the cutter drum, one sensor on each side of the cutting drum. San Juan also proposes to equip each roof-bolting machine with a General Monitors S800 Methane Monitor. These monitors would have detection sensors on ATRS with a total of one sensor. Tests would be made every

twenty minutes at the operator's station while the roof bolting machine is being operated in or inby the last open cross cut. San Juan states that the General Monitors S800 Methane Monitor meets the approval requirements for machine mounted and hand held detectors. The monitors provide a visual alert when the methane concentration reaches 1% and provides automatic shut down when the methane concentration reaches 2% at any of the sensors. The monitors would provide continuous methane monitoring near the roof and be calibrated at least every 31 days by a qualified person.

Subsequent to receipt of this petition, MSHA amended 30 CFR Section 75.362(d)(2) as it applies to methane tests at face areas from under permanent roof support during roof bolting. The amendment eliminated the need for a petition to modify the application of the standard for periodic methane tests at face areas during roof bolting and became effective August 8, 2003. If San Juan Coal Company complies with provisions of the alternative means described in 30 CFR 75.362(d)(3), the petition for modification as it applies to roof bolting machines is not necessary and the petition can be dismissed.

MSHA has fully considered the petitioner's alternative method as it applies to periodic methane tests at the face areas during continuous miner activities.

For the most part, as it applies to making periodic methane tests at face areas during continuous miner activities, the petitioner has not alleged grounds not previously considered by MSHA in promulgating the rule. During the promulgation process that resulted in the 1996 final rule, the Agency considered and addressed comments similar to the statements in the petition alleging a diminution of safety and presenting an alternative to compliance with the standard.

A discussion of these issues and their disposition appears in the preamble to the 1996 final rule in volume 61 of the Federal Register at page 9801 (March 11, 1996). Based on the studies referenced in the preamble, the Agency concluded that tests or monitoring at locations outby the face were not adequate or equivalent to testing at the face since substantial, potentially explosive, accumulations of methane could be undetected if tests are not performed at the face. The Agency is unaware of any reputable studies demonstrating that methane tests at outby locations reliably indicate either the volume or maximum concentration of methane at the face.

In addition, the petitioner alleges that application of the standard will result in accumulation of combustible material and roadway deterioration. These issues are addressed under separate

regulations that MSHA believes are unrelated to methane tests.

Since the rule was promulgated, probes for extended cuts have been developed that are inserted and removed on wheels or skids in contrast to hand-held cantilever designs, and back injuries are much less likely. Workable probes are commercially available and others can be readily constructed in-house. Moreover, other compliance options are available which can eliminate or minimize the use of probes.

In addition, the standard expressly provides that the tests are to be performed from under permanent roof support. Accordingly, application of the standard does not expose persons to unsupported roof. The Agency therefore concludes that the Petitioner has not alleged grounds upon which a petition for modification can be granted.

ORDER

Wherefore, pursuant to the authority delegated by the Secretary of Labor to the Administrator for Coal Mine Safety and Health, San Juan Coal Company's Petition for Modification of 30 CFR 75.362(d)(2) as it applies to making periodic methane tests at face areas of the San Juan South and San Juan Deep Mines during roof bolting activities is hereby:

DISMISSED, without prejudice.

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 San Juan Coal Company's Petition for Modification of the application of 30 CFR 75.362(d)(2) as it applies to continuous miners in the San Juan South and San Juan Deep Mine is hereby:

DENIED.

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.

John F. Langton
Deputy Administrator for
Coal Mine Safety and Health