

In the matter of
Glady Fork Mining, Inc.
Mine No. 1
I.D. No. 46-01162

Petition for Modification

Docket No. M-2003-079-C

PROPOSED DECISION AND ORDER

September 10, 2003, Glady Fork Mining, Inc. filed a petition seeking a modification of the application of 30 CFR 75.364(b)(4) to the Petitioner's Mine No. 1, located in Upshur County, West Virginia. The Petitioner alleges that application of this standard will result in a diminution of safety to the miners and 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 personnel investigated 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, MSHA's investigative report and recommendations, this Proposed Decision and Order is issued.

Finding of Fact and Conclusion of Law

Section 75.364(b)(4) of CFR requires for:

- (b) *Hazardous conditions*: At least every 7 days, an examination for hazardous conditions at the following locations shall be made by a certified person designated by the operator:
 - (4) At each seal along return and bleeder air courses and at each seal along intake air courses not examined under CFR 75.360(b)(5).

The petitioner proposed daily evaluations at four locations as an alternative method of evaluating approaches to mine seals and the seals that are in locations unsafe for mine examiners to travel.

There are nine seals in an old works on the return air within approximately 1000 ft. of the main fan, which cannot be fully examined. The only walk way to them has fallen and the main roof is very unstable in this area. The area was developed in 1980 or

earlier. The mine management determined this area to be unsafe to travel. The air is checked going into the seals on the intake side at three locations and on the return at one location. The petitioner estimates the remaining mine life to be six to eight weeks of production.

MSHA's investigation evaluated the ability to examine nine (9) permanent seals located in old abandoned works on the return air course going to the main return exhaust fan located on the surface. That investigation confirmed that the nine seals and the return air course cannot be safely traveled or examined in its entirety because of adverse roof. The development of this area was under several stream valleys with less than 240 feet of cover. In addition to the stream valleys and poor cover, the area also has faults present that added to the geological instability of the roof. The roof in the affected area has continued to deteriorate, and the presence of large roof falls and gob disposal in the area has made travel for the mine examiner or rehabilitation work dangerous or nearly impossible. The unsafe-to-travel area is from 400 feet outby the present seal line.

MSHA's investigation of the area included the shaft and slope area through which the mine has gained access to the coal seam. The same geologic conditions that have caused the roof falls and unstable roof conditions in the mine have created unstable conditions in those areas as well. The mine has been idle for several months and a means of stabilizing the mine roof and regaining access to the mine seals has not been proposed.

In addition, MSHA's investigation revealed that the proposed evaluation points do not measure all the air traveling toward the seals and exiting the area. The location of the proposed evaluation points is approximately 400 feet outby the seal locations and the alternate method contains no provisions to assure the ventilation is reaching the seals. The seals may leak substantial amounts of contaminated air from the sealed area into the mine air. These structures cannot be examined to detect deterioration or failure nor can their condition be effectively evaluated.

For these reasons, MSHA has determined that the Petitioner's proposed alternative method would not guarantee at all times the same measure of protection as the standard.

On the basis of the petition and the findings of MSHA's investigation, Gladly Fork Mining Inc is not granted a

modification of the application of 30 CFR 75.364(b)(4) to its Mine No. 1.

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., sec. 811(c), it is ordered that Gladly Fork Mining Inc Petition for Modification for the application of 30 CFR 75.364(b)(4), a mandatory safety standard, for its Mine No. 1 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.

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 desire a 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 Langton
Deputy Administrator for
Coal Mine Safety and Health