April 6, 2006

In the matter of Petition for Modification
Wabash Mine Holding Company
Wabash Mine
I.D. No. 11-00877 Docket No. M-2005-031-C

PROPOSED DECISION AND ORDER

On April 20, 2005, a petition was filed seeking a modification of the application of 30 CFR 75.364(b)(2) to Petitioner's Wabash Mine, located in Wabash County, Illinois. The Petitioner alleges that examination of the abandoned 1N/3W panel area presents a hazard to miners because of numerous roof falls and deteriorated roof, which prevent safe access. Therefore, Petitioner contends 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 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 (PDO) is issued.

Finding of Fact and Conclusion of Law

The petitioned standard, 30 CFR 75.364(b)(2) requires that:

> (b) *Hazardous conditions.* At least every seven days an examination for hazardous conditions at the following locations shall be made by a certified person designated by the operator:...(2) in at least one entry of each return aircourse, in its entirety, so that the entire aircourse is traveled.

The petitioner alleges that roof falls in several of the airways formerly providing access to the 1N/3W panel area blocks safe access to conduct the required examinations. The petitioner further alleges that roof falls shortly after mining at the entrance to the abandoned 1N/3W panel area made sealing the panel virtually impossible. Constructing seals to close off the entire area from the 1W#3b tail area to the mouth of 1N/3W would expose workers to extreme hazards due to the need to clean up and rehabilitate several roof falls as well as rehabilitate and re-support the access to the required seals. Roof falls in conjunction with deteriorating roof conditions have made examining the 1N/3W air course from the 1W#3b tail area to the west side of the existing 1N/3W seals extremely hazardous.

In the alternative to compliance with 30 CFR 75.364(b)(2), Petitioner proposes to establish an inlet evaluation point (EP) at the location shown on the attached map as "Intake EP", which are to be evaluated by a certified person on a weekly basis; and to establish two (2) outlet evaluation points at the locations shown on the attached map as "Permanent Outby EP", which are to be evaluated by a certified person on a weekly basis.

MSHA's investigation report and subsequent discussions with the investigators revealed that sealing only the 1N/3W panel would require significant roof fall cleanup and the rehabilitation of a safe travelable examination route. Alternatively, the entire area from the 1W#3b belt tail to the mouth of the 1N/3W/MWS can be sealed by constructing approximately 25 seals. Feasible seal locations immediately south of the 1W#3b belt tail will require rehabilitation, supplemental roof support, and the cleanup of a few roof falls. Both the submain connection with the 3W/MWS and the 1N/3W/MWS connection with the 3W/MWS can be sealed by constructing approximately 13 seals with comparatively minor cleanup and rehabilitation efforts. Access to these seal locations along the 3W/MWS does not need to be re-supported at this time.

The investigators were able to travel approximately 700 feet south of the proposed Intake EP location. Here they explored the entries across the submain, encountering highly deteriorated roof conditions that prevented further travel to the south. They also examined for potential seal locations in the accessible area south of the 1W#3b belt tail.

The condition of the roof at the proposed Permanent Outby EP located west of the 1N/3W/MWS seals was satisfactory, however conditions worsened as the investigators traveled west of this location. Due to roof falls and hazardous roof conditions, they were unable to proceed west of the unsealed 1N/3W panel mouth (along the 1N/3W/MWS) and were also unable to travel to the area of deepest penetration in the unsealed 1N/3W panel itself. The mouth of the panel was safely accessible through the easternmost panel entry only. The other four entries either contained roof falls or were inaccessible for evaluation. The investigators were able to travel five crosscuts inby the unsealed panel mouth of the 1N/3W. Safe ingress inby this location was not possible due to roof falls and bad roof. Air velocity near the panel mouth was approximately 50 feet per minute (fpm) flowing out of the panel. The quality tests showed concentrations of oxygen - 20.8%, methane - 0.0%, and carbon monoxide - 3 parts per million (ppm). Air movement five crosscuts inby the mouth was merely perceptible. The investigators were not able to examine the area of deepest penetration, 25 cross-cuts inby the panel mouth.

The investigators also examined the seven stoppings that isolate the southern end of the submain in the petition area from the 3W/MWS. The stoppings were found to be intact and the roof in this area was in relatively good condition. Roof conditions quickly deteriorated immediately north of this location, preventing safe travel in the submain.

The air supplied to the proposed Intake EP is a direct split from the downcast shaft at the Cowling Bottom. The proposed Intake EP is located upwind of the majority of the petition area. The quality tests at this location showed concentrations of oxygen - 20.9%, methane - 0.0%, and carbon monoxide - 0 ppm. Consequently, the air passing this location is used to ventilate the submains and the unsealed panel south of the proposed EP. On the northern end of the petition area, immediately adjacent to the 1W#3b Tail a line of stoppings and a regulator separate the air course of the Intake EP from this area. The integrity of these stoppings, the condition of the regulator, and the regulator's flow direction were not established due to the lack of safe access.

The two proposed Permanent Outby EP locations are downwind of the petition area. The quality tests at both locations showed concentrations of oxygen - 20.8%, methane - 0.0%, and carbon monoxide - 0 ppm. However, the air quality at the Permanent Outby EPs may not be representative of the conditions in the petitioned area, when basing the information entirely on an examination of the proposed EP locations. A diluting air current could be introduced from the submain connection with the 3W/MWS, if any one of the seven stoppings dividing the aircourses is compromised. Moreover, limiting the examinations to merely the proposed EPs does not ensure ventilation of the unsealed panel in accordance with 30 CFR 75.334(a), nor does it fulfill the required examinations of the area of deepest penetration as required in §75.364(a).

On the basis of the petition and the findings of MSHA's investigation, Wabash Mine Holding Company is not granted a modification of the application of 30 CFR 75.364(b)(2) to its Wabash Mine as applied to the examination of the 1N/3W panel area.

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 Petition for Modification of the application of 30 CFR 75.364(b)(2) in the Wabash 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.

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

Attachment: Exhibit A