

October 23, 2007

In the matter of:
Rosebud Mining Company
Clementine Mine
I.D. No. 36-08862

Petition for Modification

Docket No. M-2006-005-C

PROPOSED DECISION AND ORDER

On January 23, 2006, a petition was filed seeking a modification of the application of 30 C.F.R. § 75.1710-1(a) to Petitioner's Clementine Mine, located in Armstrong County, Pennsylvania.

The Petitioner alleges that application of this standard will result in a diminution of safety to the miners and requests that the mine's two Long-Airdox Mobile Bridge Carriers, both Model Number MBC-27L, and the two Fletcher Dual Boom Roof Bolters, both Model RR-II, which will be working in mining heights of 38.5 to 48 inches be permitted to operate without cabs and canopies. The petitioner alleges that localized dips and elevation changes in the mine floor would cause mining equipment with canopies or cabs to dislodge roof bolts and that the cabs and canopies will limit visibility. The petitioner requests that mining equipment operate without cabs or canopies in mining heights of less than 48 inches, rather than 42 inches as required by the standard, until a consistent mining height of 48 inches is reached. The petitioner did not initially provide a complete listing of face equipment with serial numbers and equipment specifications nor mine maps showing mining heights and travelway heights in support of the requested modification.

Subsequently, the petitioner provided the serial numbers for three roof bolters to MSHA during or immediately following the petition investigation conducted at the mine, which is included in the investigation report dated June 6, 2006. In addition, a supplemental investigation report was submitted May 9, 2007. The supplemental report provided clarification regarding the visibility window on the MBC-27L bridge carriers and described the mine operator's proposed use of a safety post as an additional protection to the machine operator against being pinned or crushed between the machine frame and roof when the bridge carrier is used in mining heights at or below 48 inches and without a cab or canopy.

MSHA personnel conducted investigations of the petition and filed reports 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 reports, this Proposed Decision and Order is issued.

Findings of Fact and Conclusion of Law

MSHA has determined that application of this standard to the subject mine will not result in a diminution of safety to the miners for the mine's self-propelled electric face equipment operated in mining heights of 42 inches or greater.

The applicable standard, 30 C.F.R. § 75.1710-1(a) states, in relevant part:

(a) Except as provided in paragraph (f) of this section, all self-propelled diesel-powered and electric face equipment, including shuttle cars, which is employed in the active workings of each underground coal mine on and after January 1, 1973, shall...be equipped with substantially constructed canopies or cabs, located and installed in such a manner that when the operator is at the operating controls of such equipment he shall be protected from falls of roof, face, or rib, or from rib and face rolls.

MSHA has consistently interpreted this standard to require cabs or canopies on new electric face equipment or used equipment new to the mine that is operated in mining heights of 42 inches or greater (as measured from bottom of the mine floor to the mine roof)¹. MSHA's policy has always reflected the intent of the statutory canopy standard, which was meant to improve health and safety conditions and practices at underground coal mines in order to prevent death and serious physical harm. Congress mandated this standard due to the high fatality and injury rate due to roof falls. To combat the roof fall problem, Congress devised a two-pronged plan. One remedial course of action was aimed at reducing the number of falls by requiring operators to adopt various roof control practices, including comprehensive roof control plans. The second important remedial provision

¹ A full statement of MSHA's position is presented in the Mine Safety and Health Administration's Program Policy Manual, Volume V, Part 75, pages 137 through 140 (07/01/88 Release V-1).

authorizing the Secretary to protect miners from those falls that did occur was the requirement that cabs or canopies be installed on electric face equipment. In the express words of section 317(j) of the Mine Act, the devices were to be installed "to protect the miners operating such equipment from roof falls and from rib and face rolls."

Measurements taken by the investigating team on the active sections of the Petitioner's mine revealed mining heights ranged from 43 to 44.5 inches and that the mine was employing cable bolts that extended down from the roof approximately 3.25 inches. The machine heights, canopy heights, ground clearance, and wheel sizes for the petitioned equipment used at these locations were also measured. The petitioned equipment and an additional Long Airdox LRB-15-AR Single Boom Roof Bolter were examined and found to be operating with a 4- to 10-inch visibility window for the operator's compartments. The canopies were adjusted for use consistent with the projected mining heights of 42 inches and lower anticipated, based upon interpretations of coal core drilling plotted on mine maps, as mining height isopach lines. The investigation team's review of the mine's reported accidents found no incidents attributed to canopies striking the roof or from undue exertion raising and lowering or installing and removing canopies. The investigators found no damaged roof bolts or cable bolts where the equipment is being operated. When the canopies were positioned to retain 4.5 to 8 inches of roof clearance, the machine operator was still left a visibility window of 4.5 to 6.5 inches if no hydraulic hoses, supplies, or materials were allowed to obstruct the line of sight. MSHA's investigators reported the electric face equipment to which the petitioned modification is to apply to be as follows:

- a) Two sets of Long Airdox Mobile Bridge Carriers, Model MBC-27L, Serial Number 53434 (other units' serial numbers not recorded). The machines measured were working on the J Butt (mining height 46 to 54 inches) and K Butt (mining height 48 inches) sections with the individual unit's manually adjustable canopies set by leg pins adjusted to the prevailing working heights. On J Butt section, the canopy was set for 31 inches of height in the operator's compartment; the machine frame height was 31 inches, but hydraulic hoses and belting added 5 inches to the frame height, leaving the operator a 6-inch visibility window. On the K Butt section, the machine's frame height was 29 inches with no hoses or belting to reduce the clearance.

The machine's ground clearance was 5 inches at the operator compartment and the canopy was set to allow 36 inches of height within the operator compartment. Based upon these observations the investigators determined that either machine could operate safely at 42 inches of mining height by setting the canopy to an operator height of 30 inches, allowing approximately 5 inches of clearance between the canopy and mine roof.

- b) One Long Airdox LRB-15AR Single Boom Roof Bolter, Serial Number 62-916. The machine was measured as having a tire diameter of 27 inches, resulting in 6.5 inches of ground clearance. The canopy was in place with 29 inches of operator working height, a 9-inch visibility window, and 8.5 inches of clearance from the canopy top to roof. Where mining height is reduced to 42 inches, the top-to-roof clearance would be 4.5 inches.

- c) Two Fletcher RR-II Dual Boom Roof Bolters, Serial Nos. 2001003 (working in 49 to 53 inches of mining height on J Butt) and 93072 (working in 48 inches of mining height on K Butt). The roof bolter on J Butt had the canopy set with 29 inches of height in the operator's compartment, which allowed a visibility window of 6.5 inches. The machine was equipped with 24-inch tires, which resulted in 5 inches of ground clearance at the wheel. The machine has a rear lift of 9 to 11 inches, which resulted in approximately 9 inches of clearance between the top of the canopy and the mine roof. The roof bolter on K Butt has the same size tires and ground clearance as the bolter on J Butt. The operator's compartment was set at 34 inches, which resulted in a larger 10-inch operator visibility window and less clearance between the canopy and the roof (approximately 8 inches).

MSHA supplemental investigation of the Long Airdox Mobile Bridge Carriers noted that when the tire size allows a 5 inch ground clearance, the canopy is set with a 30-inch operator compartment height, and the height setting allows for 5 inches of clearance between the canopy and roof, only a 4-inch visibility window for the operator to see forward exists. The report notes that the MBC-27L units are of an older design that does not allow the operator compartment to be re-positioned hydraulically and the canopy posts are rigid and manually set. The investigator also described the proposed "cab stop post" as a single canopy post with a 6- to 8- inch diameter beveled cap piece. The

investigator noted that in the event of a sudden upward swing of the operators cab resulting from travel over uneven mine floor, the cab stop post would strike the roof, preventing further upward movement and preventing the operator from being thrown into the roof. The investigator allowed that while a cab stop post is clearly not an alternative to the standard requiring overhead protection from falling material, the device nevertheless does offer additional operator protection when the canopy is removed. The cab stop post could be left in place when the mining height falls below 42 inches, providing some operator protection even when a canopy is not required. During the supplemental investigation, the mine operator representative again expressed his belief that the reduced visibility of a canopy contributed to an October 4, 2005, injury. MSHA's investigator, however, noted that the injured miner was a worker pinned at a work location prohibited by the company's work procedures and not relevant to the petition investigation. The mine operator, when filing the accident report for the October 4, 2005, accident, attributed the injury of the miner to being pinned between the rib and the moving tail of the continuous miner with no mention of the mobile bridge carrier, mining height, or visibility issues.

Reducing either ground clearance or canopy to roof clearance would increase the equipment operator's visibility window. The mine has been active since January 2001 and opened with full knowledge of the coal seam thicknesses and mining heights and the physical dimensions of and regulatory requirements applicable to the mobile bridge carriers. The petitioned standard provides the equipment operators protection from fall of roof or rib; cabs provide added protection against machinery accidents involving miners being pinned between the bridge carrier and the rib or timbers. Bridge carriers, designed for low coal operations with floating cabs capable of working with the protection intended by the standard at mining heights well below 42 inches are available. Lastly, while the use of "cab stop post" may prevent an operator from being pinned between the machine body and the roof, it will not prevent the operator from being injured by roof rock dislodged by the stop post striking the roof immediately over the operator's compartment. In addition, the "cab stop post" will not prevent the operator from being pinned between the stop post cap and the mine roof nor will it prevent the operator from being thrown against the roof while the machine is in motion.

MSHA's investigators have determined that the application of the standard is not a diminution of safety. Removal of the canopies in mining heights below 48 inches rather than 42 inches as provided for in the standard is not necessary and would provide less protection for the equipment operators from falls of roof or being impacted against the roof during equipment moves.

On the basis of the petition and the findings of MSHA's investigation, Rosebud Mining Company's request for the modification of the application of 30 C.F.R. § 75.1710-1(a) for its Clementine Mine is denied for the three roof bolters and two mobile bridge carriers described above being operated in mining heights of less than 48 inches but greater than 42 inches.

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 Rosebud Mining Company's Petition for Modification of the application of 30 C.F.R. § 75.1710-1(a) for its Clementine Mine is hereby:

DENIED for the two sets of Long Airdox Mobile Bridge Carriers, Model MBC-27L, Serial Number 53434 (serial numbers of other units not recorded); two Fletcher RR-II Dual Boom Roof Bolters, Serial Nos. 2001003 and 93072 (the machines working on and investigated in J Butt and K Butt sections) and Long Airdox LRB-15AR Single Boom Roof Bolter, Serial Number 62-916 used on producing sections and in mining heights of less than 48 inches but greater than 42 inches.

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 22203.

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