

May 25, 2007

In the matter of
Twentymile Coal Company
Foidel Creek Mine
ID No. 05-03836

Petition for Modification

Docket No. M-2006-012-C

PROPOSED DECISION AND ORDER

On March 30, 2006 Twentymile Coal Company (Twentymile) filed a petition for modification of the application of 30 CFR 75.362(d)(2) to its Foidel Creek Mine, I.D. No. 05-03836, located in Oak Creek, Routt County, Colorado.

The Petitioner alleges a diminution of safety to the miners and proposes an alternative method that will not 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 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 is issued.

Finding of Fact and Conclusion of Law

The petition seeks modification of the application of 30 CFR 75.362(d)(2), which states:

(2) 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 the cutting head. When mining has been stopped for more than 20 minutes, methane tests shall be conducted prior to the start up of equipment.

The petitioner alleges that compliance with § 75.362(d)(2) results in a diminution of safety and makes the following allegations in support:

Twentymile Coal Company alleges that it takes cuts on its continuous miner sections up to 40 feet in depth and that compliance with the standard requires the use of a 40-foot extendable probe. Twentymile alleges that such 40-foot probes increase miners' exposure to back injuries, roof falls, pinch point, and crushing-type injuries. In addition, Twentymile alleges that the use of such probes also requires, on occasion, the withdrawal of the continuous miner from the immediate face area beyond the last rows of permanent support and this additional maneuvering of equipment caused by the use of extendable probes leads to deterioration of floor conditions, which can result in the accumulation of combustible materials and poorer roadway conditions.

Twentymile Coal Company proposes the following alternative method:

1. That methane tests be taken in compliance with 30 CFR 75.362(d)(2) as long as they can be done without a probe from under supported mine roof. In working places before the continuous mining machine is to be taken into the place or energized and the last row of permanent roof support is sufficiently back from the face that the required methane test cannot be taken without the use of a probe, Twentymile proposes using a probe with a maximum extension of 16 feet from inby the second row of supports to make the methane test. If a 16-foot probe is utilized, a methane test using the onboard methane detection system, which draws a sample from the face, will be performed once the continuous mining machine is trammed to a location beyond supported mine roof.
2. In working places, before the roof bolting machines, scoops, or other equipment is to be taken into the place or energized inby the last open crosscut, but outby the last row of permanent roof support, and the last row of permanent roof support is sufficiently back from the face that required methane test cannot be taken without the use of a probe, Twentymile proposes to conduct the methane test using a probe with a maximum extension of 16 feet inby the second row of supports. When the equipment is energized, Twentymile proposes to conduct methane tests at the last row of permanent roof support every twenty minutes unless the equipment is taken inby the face ventilation device, in which case a probe with a maximum extension of 16 feet will

be utilized inby the second row of supports to conduct the methane test every twenty minutes.

3. In working places before the roof bolting machine is to be taken into the place or energized inby the last open crosscut and inby the last row of permanent roof support and the last row of permanent roof support is sufficiently back from the face where the required methane test cannot be taken without the use of a probe, Twentymile proposes to use a probe with a maximum extension of 16 feet inby the second row of supports to conduct the methane test. In addition, Twentymile proposes to install a methane monitor on the roof-bolting machine that will provide a visual alert when the methane concentration reaches 1.0%. When the methane monitor detects 1.0% of methane, Twentymile proposes to back the machine up a short distance (approximately 2 feet) to permit air circulation at the face; to position a miner behind the second row of permanent roof support who will use a probe to check for methane 16 feet inby the second row of supports; and, if upon checking with a probe the methane is less than 1.0%, to recommence mining; if, upon checking with the probe, methane is not less than 1.0%, to make adjustments in ventilation until methane is reduced below 1.0%.

MSHA has fully considered the petitioner's grounds for alleging application of 30 CFR 75.362(d)(2) to the subject mine would result in a diminution of safety to the miners and the petitioner's proposed alternative methods as they apply to periodic methane tests at the face areas.

The petitioner's allegation that application of the standard will result in accumulations of combustible material and roadway deterioration is not supported by any documentation submitted by the petitioner, is unrelated to methane tests, and is addressed under separate regulations. Similarly, the petitioner has not submitted any documentation to support the allegation that application of the standard will expose miners to pinch-point and crushing type injuries.

For the most part, the petitioner has not alleged grounds not previously considered by MSHA in promulgating the 1996 final rule. During the promulgation process, the Agency considered and addressed comments similar to the statements in the petition alleging that application of the standard could result in a diminution of safety to the miners and the proposed alternative

methods 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 go undetected if tests are not performed at the face. MSHA is unaware of any tests that relate the concentration of methane at the face with the concentration at the last row of bolts. Also, after receiving comments and testimony during the aforementioned promulgation process, MSHA concluded that taking methane tests at the face is a "reasonable approach and will achieve the desired safety results without undue risk of back injuries." See 61 FR 9801.

Concerning Petitioner's allegation that use of probes exposes miners to roof falls, the standard expressly requires that the tests 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.

Finally, on August 8, 2003, MSHA amended 30 CFR 75.362(d)(2) as stipulated in § 75.362(d)(3), to allow for an alternative method of complying with § 75.362(d)(2) during roof bolting. If Twentymile Coal Company complies with the provisions of the alternative means described in 30 CFR 75.362(d)(3), the petition for modification as it applies to roof bolting machines during roof bolting is not necessary.

Thus, application of 30 CFR 75.362(d)(2) to the subject mine will not result in a diminution of safety to the miners and the alternative methods proposed by the Petitioner will not at all times guarantee no less than the same measure of protection afforded by the standard. On the basis of the petition and the findings of MSHA's investigation, Twentymile Coal Company is not granted a modification of 30 CFR 75.362(d)(2) to the Foidel Creek Mine.

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 Twentymile Coal Company's Petition for Modification of the application of 30 CFR 75.362(d)(2) in the Foidel Creek 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.

Terry L. Bentley
Acting Deputy Administrator for
Coal Mine Safety and Health