

June 6, 2007

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

Petition for Modification

Docket No. M-2006-015-C

PROPOSED DECISION AND ORDER

On March 30, 2006, Twentymile Coal Company filed a petition for modification of the application of 30 CFR 75.324 to its Foidel Creek Mine, located in Oak Creek, Routt County, Colorado. The Petitioner alleges that the alternative method outlined 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 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 petitioner seeks a modification of the application of 30 CFR 75.324 to allow intentional ventilation changes without removing all persons except those who are making the change in ventilation from the mine and without de-energizing the power in the affected area. The petitioner alleges that the ventilation changes will be made only to access the belt entry from the adjacent intake entry in order to perform non-production type work such as conveyor belt installation, conveyor belt removal, or emergency work such as repairs due to conveyor belt breakage, removal of coal spillage, or work to control roof conditions. The petitioner also alleges that access will be provided by utilizing either a man door, equipment doors, or temporarily removing a portion of a stopping.

30 CFR 75.324, Intentional changes in the ventilation system, provides in relevant part:

(b) Intentional changes shall be made only under the following conditions:

(1) Electric power shall be removed from areas affected by the ventilation change and mechanized equipment in those areas shall be shut off before the ventilation change begins.

(2) Only persons making the change in ventilation shall be in the mine.

(3) Electric power shall not be restored to the areas affected by the ventilation change and mechanized equipment shall not be restarted until a certified person has examined these areas for methane accumulation and for oxygen deficiency and has determined that the areas are safe.

As an alternative to compliance with the standard, the petitioner proposes the following:

- a. The affected beltline will be locked out and tagged and the power removed from the outby belts on the same split, except when power is needed to install or remove belting. No coal movement will take place on those belts.
- b. The affected beltline shall not be a designated escapeway.
- c. The designated escapeways for the longwall, if it is the affected section, shall contain intake air and be coursed to opposite direction portals or shafts from the longwall face.
- d. The carbon monoxide monitoring system in the beltline must be in operation.
- e. Communications to the surface and inby section must be available in the immediate vicinity of the area that is affected by the air change.
- f. A certified fire boss or certified mine foreman must be present during the initial stopping removal or opening of the man door or equipment door.
- g. At the time of the initial stopping(s) removal or opening of doors, no employee will be inby that location.

- h. The amount of the panel beltline that would reverse when access is allowed shall be limited by the installation of gateroad overcasts installed at intervals not to exceed 5,000 feet. The first overcast outby the longwall face will be removed as the longwall face is a maximum of 2,000 feet inby the return location after all overcasts have been removed from service.
- i. Once the stoppings or doors have been opened and the belt air removed, the outby belts may be operated if all employees are prohibited from proceeding inby the location where the belt and intake are in common.

MSHA has fully considered the petitioner's grounds for the alternative method as it applies to intentional ventilation changes without removing all persons except those who are making the change in ventilation from the mine and without de-energizing the power in the affected area.

During the rule promulgation process, the Agency considered and addressed comments similar to the petitioner's request that persons other than those making the ventilation change be allowed to remain underground. Because of the complexity of most mine ventilation systems and the difficulty in predicting the effect of a change on the entire system, MSHA concluded that electrical power must be de-energized in the affected area before an intentional ventilation change and only those persons needed to make the change be allowed to remain underground. MSHA also concluded that, due to the unpredictable nature of the effects of a change to the ventilation system, electrical power must not be restored until the affected area is evaluated and determined to be safe by a certified examiner. A discussion of these issues and their disposition appears in the preamble to the 1992 final rule on safety standards for underground coal mine ventilation in volume 57 of the *Federal Register* at pages 20879 and 20880 (May 15, 1992) and in the preamble to the superceding 1996 final rule in volume 61 of the *Federal Register* at pages 9779 and 9780.

In addition, the petitioner's proposed alternative method not only does not at all times guarantee no less than the same measure of protection afforded by the standard, but is in direct violation of 30 CFR 75.380(g) requiring the separation of the primary intake escapeway from the belt haulage entries for its entire length.

MSHA recognizes the need to access the belt entry or any other entry from an adjacent entry to perform the type of work listed in the petition and has addressed this issue in 30 CFR 75.333(d). The standard permits the use of airlock doors to provide the access the petitioner is requesting in a manner that complies with both 30 CFR 75.324 and 30 CFR 75.380(g). Therefore, the petition for modification as it applies to accessing the belt entry from the adjacent intake is not necessary.

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, 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 Twentymile Coal Company's Petition for Modification of the application of 30 CFR 75.324 as it applies to intentional ventilation changes without having to remove all persons except those who are making the change in ventilation from the mine and without de-energizing the power in the affected area 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