

December 13, 2007

In the matter of
Wabash Mine Holding Company
Wabash Mine
I.D. No. 11-00877

Petition for Modification

Docket No. M-2006-043-C

PROPOSED DECISION AND ORDER

On May 30, 2006, a petition was filed seeking a modification of the application of 30 C.F.R. § 75.364(b)(2) to the Petitioner's Wabash Mine, located in Wabash County, Illinois. The Petitioner alleges that examinations of the abandoned B1 Panel and the southern entries of the fault crossing present a hazard to miners because of numerous roof falls and deteriorated roof conditions, which prevent safe travel through the areas. Therefore, the 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.

A total of four petitions (Docket Nos. M-2006-043-C, M-2006-044-C, M-2006-045-C, and M-2006-046-C) were submitted by the Petitioner on May 30, 2006. All four petitions allege that the Petitioner cannot comply with the weekly examination requirements as specified in 30 C.F.R. § 75.364 due to a diminution of safety. The four petitions allege that certain intake entries, return entries, and seals cannot be examined safely due to roof falls and deteriorating roof conditions. The four petitions combined represent a substantial portion of the large Wabash Mine. In total, the Petitioner requests that approximately 59,700 feet (11.3 miles) of entries and 28 seals not be examined weekly.

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.

Findings of Fact and Conclusion of Law

The petitioned standard, 30 C.F.R. § 75.364(b)(2) requires that:

(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:...(2) In at least one entry of each return air course, in its entirety, so that the entire air course is traveled.

The Petitioner alleges that roof falls, in conjunction with deteriorating roof conditions have made examining the abandoned B1 Panel area and the southern entries of the fault crossing hazardous.

As an alternative to traveling those air courses in their entirety as required by 30 C.F.R. § 75.364(b)(2), the Petitioner proposes to establish a total of four evaluation points (EPs) as follows: One EP on the western end of B1 Panel and one EP on the northern end of B1 Panel; one EP on the southwestern end of the fault crossing and one EP on the southeastern end of the fault crossing. The EPs and the petitioned areas are shown on the attached maps, marked as "Exhibit A", that the Petitioner submitted with the original petition. The Petitioner proposes to have a certified person examine these evaluation points on a weekly basis.

The abandoned B1 Panel area as depicted on the map consists of two parallel return air courses separated by a narrow barrier pillar. The northern air course (B2 Panel) has approximately eight entries and turns northeastward near its end. The southern air course (B1 Panel) has approximately seven to eight entries and turns northward near its end. The barrier pillar maintains complete separation between the air courses for a distance of nearly 8,000 feet until both air courses connect with the Main West returns. The southern entries of the fault crossing, as depicted on the map, consist of eight entries (with crosscuts) that converge to two parallel entries to cross the New Harmony Fault. The length of the two parallel fault-crossing entries exceeds 600 feet between connecting crosscuts. These entries are shown to be ventilated with return air.

According to the preamble to MSHA's 1992 revision to the ventilation regulations (57 Fed. Reg. at 20870),

The Agency does not consider air courses that are common only at each end to be the same air course if the separation between the common openings is more than 600 feet. Weekly examination of all such separate air courses is necessary to ensure that the ventilation system of the mine is functioning properly.

Program Information Bulletin (PIB) No. P06-13 offers further clarification of this issue. Additionally, the map indicates that stoppings exist within both air courses that prevent commonality within each air course.

MSHA's investigation report and subsequent discussions with the investigators revealed that the investigators traveled approximately 1,200 feet into the B2 Panel from the western end before their progress was impeded by adverse roof conditions. In the B1 Panel, the investigators could travel only two crosscuts before their progress was impeded by adverse roof conditions. At the proposed B1 Panel Inby EP, the investigators found perceptible air movement and detected 19.9% oxygen and 0.1% methane. The investigators traveled to the Outby EP for the B1 Panel, but could not proceed farther into the panel due to unsafe conditions caused by roof falls, deteriorated roof conditions, and low oxygen levels. At this location, the investigators found merely perceptible air movement and only 19.1% oxygen. The investigators noted that extensive clean up of roof falls and significant rehabilitation of deteriorated roof conditions would be required in order to safely travel the abandoned B1 and B2 Panels. Alternatively, the entire area could be sealed by constructing approximately 13 seals. This may require some rehabilitation work to access the seal locations. However, if sealing of the B1 and B2 Panels was combined with the sealing of Main West returns (a course of action discussed in the Proposed Decision and Order for Docket No. M-2006-046-C), seal locations could be selected that required minimal rehabilitation work.

At the fault crossing, the investigators could not travel through the petitioned area due to the accumulation of water across all entries. Consequently, the deteriorated roof conditions alleged by the Petitioner could not be verified. At the proposed Inby EP, the investigators measured an air quantity of 38,858 cubic feet per minute (cfm), and detected 20.8% oxygen

and 0.0% methane. At the proposed Outby EP, the investigators measured an air quantity of 72,688 cfm, and detected 20.8% oxygen and 0.0% methane.

As shown on the map, air enters the abandoned B2 Panel through eight entries, exits the Panel through four entries, and exits the petitioned area by approximately 18 locations. The Petitioner proposes zero evaluation points to evaluate the airflow through this panel. Air enters the abandoned B1 Panel through six entries and exits through two entries. The Petitioner proposes one evaluation point to monitor the air entering the B1 Panel and one EP to monitor the air exiting the panel. As shown on the map, air enters the fault crossing petitioned area through eight entries and exits through two entries. The Petitioner proposes one evaluation point to monitor the air entering this petitioned area and one EP to monitor the air exiting the petitioned area. The Petitioner proposes to have a certified person evaluate all of the proposed EPs on a weekly basis.

As proposed, the EPs would not provide a true representation of the air entering and exiting the petitioned areas. There are far more inlet and outlet points than there are EPs. None of the airflow through the abandoned B2 Panel would be monitored whatsoever. Further evidence of the inadequacy of the proposed EPs is found in the large discrepancy in the air readings at the EPs for the fault crossing area. The air quantity at the inby EP was 38,858 cfm, and the air quantity at the outby EP was 72,688 cfm. Additionally, the alternative method proposed by the Petitioner would not ensure ventilation of the petitioned area in accordance with 30 C.F.R. § 75.334(a). The roof falls and deteriorated roof conditions present in the petitioned areas have the potential to short-circuit the ventilation without any indication of a problem at the proposed EPs, potentially allowing dangerous concentrations of methane to accumulate. During a recent MSHA inspection, this mine was found to liberate 1,739,524 cubic feet of methane per day. As stated in the preamble for 30 C.F.R. § 75.364, 61 Fed. Reg. at 9803,

Over the course of time, hazards such as methane accumulations and obstructions to ventilation can develop in these areas and can result in an explosion or loss of ventilation if not discovered and corrected.

The EPs as proposed do not provide the ability to ascertain the existence of such hazards. For this reason, Petitioner has not established that the proposed alternative method guarantees no less than the same measure of protection afforded the miners by the standard. In addition, while Petitioner argues that application of the standard will result in a diminution of safety, Petitioner could conduct significant roof fall cleanup and rehabilitation of deteriorating roof conditions to permit safe travel throughout the relevant air courses to conduct the required weekly examinations. Alternatively, for at least one portion of the petitioned area, the abandoned B1 panel, Petitioner could seal this entire area, which would render it not subject to the required examinations under the standard. Therefore, Petitioner has not established that it cannot comply with the standard without a diminution of safety.

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 C.F.R. § 75.364(b)(2) to its Wabash 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. § 811(c), it is ordered that Petition for Modification of the application of 30 C.F.R. § 75.364(b)(1) and (b)(4) in the Wabash Mine is hereby:

DENIED.

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 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 may 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