

December 13, 2007

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

Petition for Modification

Docket No. M-2006-044-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 examination of the abandoned 1N/3W panel area presents a hazard to miners because of numerous roof falls and deteriorated roof conditions that prevent safe access. 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. This petition is very similar to the petition identified by docket number M-2005-031-C, which was denied for this mine on April 6, 2006.

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.

Finding 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 that occurred shortly after mining at the entrance to the abandoned 1N/3W panel area made sealing the panel virtually impossible. Also, the petitioner alleges that constructing seals to close off the entire area from the 1W3B Tail to the mouth of 1N/3W would expose workers to 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.

The Petitioner further alleges that roof falls in conjunction with deteriorating roof conditions have made examining the 1N/3W air course from the 1W3B Tail to the west side of the existing 1N/3W seals hazardous.

As an alternative to compliance with 30 C.F.R. § 75.364(b)(2), the Petitioner proposes to establish one inlet evaluation point (EP) at the location shown on the attached map (Exhibit A) as "Intake EP", which is to be evaluated by a certified person on a weekly basis; and to establish two 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-to-travel examination route. Alternatively, the entire area from the 1W3B Tail to the mouth of 1N/3W/MWS could be sealed by constructing approximately 25 seals. A few of the seal locations near the 1W3B Tail might require rehabilitation, supplemental roof support, and the cleanup of roof falls. However, alternative seal locations with even fewer roof hazards could be established in the 1W3B Tail vicinity by diverting the conveyor belt to the entry adjacent to the solid rib. From

Exhibit A, it appears that the belt has already been diverted by two entries in this vicinity. Thus, the requisite additional belt drive equipment appears to be readily available and would need to be moved only one more entry. Both the southern and eastern ends of the petitioned area could be sealed by constructing approximately 11 seals with only minor cleanup and rehabilitation efforts. Access to these seal locations does not need to be re-supported at this time.

The investigators were able to travel to the proposed "Intake EP" location, but could not advance more than a few feet farther due to roof falls and adverse roof conditions. Airflow at this location was merely perceptible.

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 adverse roof conditions, they were unable to proceed west of the unsealed 1N/3W panel mouth. The mouth of the 1N/3W panel was safely accessible through only one entry. The other four entries either contained roof falls or were inaccessible for evaluation. The investigators were able to travel only 16 crosscuts inby the unsealed mouth of the 1N/3W panel. Safe ingress inby this location was not possible due to roof falls and adverse roof conditions. Airflow at this location was merely perceptible. The investigators were not able to examine the area of deepest penetration, which is 25 crosscuts inby the panel mouth.

As shown on the map, air enters the petitioned area from the north through two entries, which converge into one entry. After the air passes through the petitioned area, it exits through as many as eight locations to the east. This petition proposes to monitor the air entering the petitioned area at one location in the northern end ("Intake EP"), and to monitor air exiting the petitioned area at two locations on the eastern end ("Permanent Outby EP"). As proposed, the EPs would not provide a true representation of the air entering and exiting the petitioned area. The distance between the proposed "Intake EP" and the closest "Permanent Outby EP" is more than 4,000 feet. In addition, 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 area have the potential to short-circuit the ventilation without any

indication of a problem at the proposed EPs, a condition that could allow 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.

Also, this petition does not fulfill the requirement to examine the area of deepest penetration of the 1N/3W Panel as specified in 30 C.F.R. § 75.364(a)(1). The roof falls and deteriorated roof conditions present in the 1N/3W Panel have the potential to short-circuit the ventilation and fill the entire 1N/3W Panel with methane. Without an examiner traveling to the point of deepest penetration, this potential buildup of methane could occur without any indication of a problem at the proposed EPs. An explosion of this quantity of methane could have disastrous effects.

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 its alternative method guarantees no less than the same measure of protection afforded 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, Petitioner could seal the entire petitioned area, which then would not be 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 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., § 811(c), it is ordered that the Petition for Modification of the application of 30 C.F.R. § 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 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