December 13, 2007

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

Petition for Modification

Docket No. M-2006-045-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)(1) and 75.364(b)(4) to Petitioner's Wabash Mine, located in Wabash County, Illinois. The Petitioner alleges that examination of Main East Seals Number 4 through Number 10, as shown on the attached map (Exhibit A), presents a hazard to miners because of numerous roof falls and deteriorated roof conditions, which prevent safe access to the seals. As a result, 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 similar petition for this mine pertaining to Main East Seals (Docket No. M-2005-030-C) was denied 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 standards, 30 C.F.R. §§75.364(b)(1) and 75.364(b)(4), require

> (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: (1) In at least one entry of each intake air course, in its entirety, so that the entire air course is traveled...(4) At each seal along return and bleeder air courses and at each seal along intake air courses not examined under §75.360(b)(5).

The Petitioner alleges that roof falls in several of the airways formerly providing access to these seals block safe access to conduct the required examinations. The Petitioner further states that air that passes by these seals does not ventilate any working section, but, rather, is traveling to a nearby return air shaft.

MSHA's investigation report and subsequent discussions with the investigators revealed that the investigators were not able to travel to any of the seals specified in this petition due to numerous roof falls and generally hazardous roof conditions. The investigators observed that the petitioner had installed minimal supplemental roof support in the petitioned area and that little effort had been made to clean up and improve the deteriorated conditions. In contrast, the mine has demonstrated the ability to adequately maintain the roof in this vicinity. The underground supply road, which is adjacent to the petitioned area, has been maintained in a safe condition.

The roof conditions between Main East Seals Number 3 and Number 4 are deteriorated. At a location five crosscuts south of the "Proposed Outby EP", the investigators measured an air quantity of 17,599 cubic feet per minute (cfm) and they detected 0.2% methane and 20.8% oxygen.

The Main South Seals Numbers 8 through 11 were accessible and were examined by MSHA investigators. Near Main South Seal Number 11, the investigators observed perceptible air movement and detected 0.0% methane and 20.8% oxygen. The airflow at this location flows away from the petitioned area.

The investigators found that the Main South Seals Numbers 1 through 7 and the Main East Seals Numbers 4 through 10 are ventilated with intake air that flows down the slope, past the seals, and to the nearby return air shaft. This air is not used to ventilate any working section. The map shows that this air course is separated from the belt air course by permanent stoppings. However, the integrity of these stoppings could not be assessed due to roof falls and hazardous roof conditions in the area. These stoppings, as well as ventilation controls that direct air towards the seals, are included in this petition to not be examined weekly. During a recent safety and health inspection, methane liberation at this mine was measured to be 1,739,524 cubic feet per day. The Federal Mine Safety and Health Act of 1977 considers any mine that liberates more than 1,000,000 cubic feet of methane per day to be liberating an “excessive” quantity and requires MSHA to inspect those mines more frequently than other coal mines. 30 U.S.C. §813(i). Considering the potential ignition sources found in belt entries, if the ventilation controls included in this petition were damaged and not fully isolating the seals from the belt entries as intended, methane emanating from a defective seal could combine with an ignition source in the belt entry to create an explosion. The seriousness of this condition would be further exacerbated by the fact that the belt entry is the alternate escapeway for the mine.

Reportedly, the Main East Seals were constructed with a foamed cementitious mix of Tekseal® cement. These types of seals were likely constructed to withstand little more than the then-required minimum static horizontal pressure of 20 pounds per square inch (psi) for so-called alternative seals. After explosions involving alternative seals at the Sago Mine and the Kentucky Darby Mine No. 1 resulted in the deaths of 17 miners in early 2006, on May 22, 2007, MSHA issued an emergency temporary standard (ETS) requiring that all new seals be designed to withstand an overpressure of 50 psi if the atmosphere in the sealed area is monitored and maintained inert; an overpressure of 120 psi if the atmosphere is not monitored and is not maintained inert and when certain specified conditions are not present; and an overpressure greater than 120 psi if the atmosphere is not monitored and is not maintained inert and certain specified conditions are present. The ETS further requires sampling and monitoring of the atmosphere behind existing seals. 72 Fed. Reg. 28796. By not traveling to and

examining these seals, Petitioner could allow a potentially explosive atmosphere to develop behind these seals. If the atmosphere were to explode, it is doubtful the existing alternative seals could contain the blast.

As an alternative means of compliance, the petitioner proposes to establish a permanent monitoring station to monitor oxygen and methane at a location in the air course downwind of the Main East Seals. This system would activate an alarm in the communication center and in the lamp room on the surface when certain methane or oxygen levels were reached. As proposed, the monitoring station would not be representative of the airflow reaching the entry nearest each seal. Some of the ventilation controls currently directing airflow to the seals in the petitioned area are inaccessible permanent stoppings; curtains are likely to have been used as well. As such, it would be plausible for the ventilating current to bypass the areas near the seals due to a crushed stopping or a fallen curtain. The EP locations and the monitoring station, as proposed by the petitioner, would not be able to detect this because, in the event of a short circuit of the ventilating current, the monitoring station would not be assessing the air immediately after it passes the seals. Consequently, methane could accumulate in the areas in front of the seals. Additionally, potentially hazardous conditions arising from seal deterioration or from accumulations of explosive concentrations of methane behind the seals cannot be physically assessed utilizing the proposed alternate method. 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. 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)(1) and (b)(4) to its Wabash Mine for Main East Seals Number 4 through Number 10.

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.

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