

In the matter of
Bear Gap Coal Company
N & L Slope
I.D. No. 36-02203

Petition for Modification

Docket No. M-2008-006-C

PROPOSED DECISION AND ORDER

On March 6, 2008, a petition was filed seeking a modification of the application of 30 C.F.R. § 75.1714-2(c) to Petitioner's, N & L Slope mine located in Northumberland County, Pennsylvania.

The petitioner requests modification of 30 C.F.R. § 75.1714-2(c) as it applies to this underground anthracite mine to allow the storage of self-contained self-rescuers (SCSRs) within 60 feet vertically of the working face. The alternative method does not include the wearing of a filter-type self-rescuers as required by 30 C.F.R. § 75.1714-2(e)(2) and is, consequently, a proposal which cannot be approved by the District Manager. The petitioner asserts that an SCSR has never been and will never be used in an anthracite mine, so not carrying an SCSR or maintaining it within twenty-five feet neither poses a delay in donning nor increases the risk of not having an SCSR in the event of emergency evacuation through smoke or oxygen-depleted or toxic air. Consequently, the petitioner asserts that wearing an SCSR cannot pose a hazard (as required for the District Manager to approve SCSR storage under 30 C.F.R. § 75.1714-2(c)), since an SCSR will never need to be worn.

MSHA conducted an investigation of the petitioned mine and found the mine operator had not applied for an SCSR storage plan under 30 C.F.R. § 75.1714-2(e), which allows the District Manager to approve the storage of SCSR under specified conditions. The requirements of the standard follow:

30 C.F.R. § 75.1714-2 Self-rescue devices; use and location requirements.

- (a) Self-rescue devices shall be used and located as prescribed in paragraphs (b) through (f) of this section.
- (b) Except as provided in paragraph (c), (d), (e), or (f) of this section, self-rescue devices shall be worn or carried at all times by each person when underground.

- (c) Where the wearing or carrying of the self-rescue device is hazardous to the person, it shall be placed in a readily accessible location no greater than 25 feet from such person.
- (d) Where a person works on or around equipment, the self-rescue device may be placed in a readily accessible location on such equipment.
- (e) A mine operator may apply to the District Manager under § 75.1502 for permission to place the SCSR more than 25 feet away.
 - (1) The District Manager shall consider the following factors in deciding whether to permit an operator to place an SCSR more than 25 feet from a miner:
 - (i) Distance from affected sections to surface,
 - (ii) Pitch of seam in affected sections,
 - (iii) Height of coal seam in affected sections,
 - (iv) Location of escapeways,
 - (v) Proposed location of SCSRs,
 - (vi) Type of work performed by affected miners,
 - (vii) Degree of risk to which affected miners are exposed,
 - (viii) Potential for breaking into oxygen-deficient atmospheres,
 - (ix) Type of risk to which affected miners are exposed,
 - (x) Accident history of mine, and
 - (xi) Other matters bearing upon the safety of miners.
 - (2) Such application shall not be approved by the District Manager unless it provides that, while underground, all miners whose SCSR is more than 25 feet away shall have a FSR [filter-type self rescuer] approved by MSHA and NIOSH under 42 CFR part 84 sufficient to enable each miner to get to an SCSR.

- (3) An operator may not obtain permission under paragraph (e) of this section to place SCSRs more than 25 feet away from miners on trips into and out of the mine.

Petitioner justified the requested modification (storage of SCSRs up to 60 feet vertically from the working place) by asserting that there is little risk of fire or explosion in anthracite mines because there is no electric equipment at the mine, rendering the use of any SCSRs or FSRs unlikely. The petitioner alleges trip and fall hazards are increased in the narrow entries when wearing or carrying an SCSR. In addition, the petitioner asserts that carrying the SCSR increases the risk of damaging it and increasing the frequency with which units need to be replaced.

The petitioner asserts that the alternative method will guarantee no less than the same measure of protection afforded the miners under the existing standard.

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 is issued.

Findings of Fact and Conclusion of Law

In response to the Sago and Aracoma Alma mine tragedies, Congress enacted the Mine Improvement and New Emergency Response Act of 2006 (MINER Act), which was signed by the President on June 15, 2006. The MINER Act included new requirements for SCSR storage, training, accident notification, and lifelines. The new requirements were in addition to SCSRs already required under 30 C.F.R. § 75.1714-2. The existing standards were originally promulgated in 1978, amended by an Emergency Temporary Standard that went into effect June 30, 1987, and were amended and became effective as final rules April 29, 1988 [43 FR 54241-54247, Nov. 21 1978, as amended at 53 FR 10332-10336, March 30 1988]. These original standards and the subsequent additional requirements of the MINER Act include no exemptions or special storage provisions based upon the volatility of the coal being mined and specifically no exemptions for underground anthracite mining except for allowing a reduced number of participants on mine rescue teams.

During the investigation, the petitioner clarified the proposed alternative method; MSHA determined the petitioner did not intend that miners be required to wear FSR devices and the petitioner did not intend to have such FSR equipment available for the personnel affected by the petition. Therefore, the petitioner's modification affects 30 C.F.R. § 75.1714-2(a) through (f).

MSHA's investigation determined that no hazard unique to wearing an SCSR exists, i.e. a hazard not applicable to any or all tools, supplies, or materials carried to working face by a miner on his person or hoisted or lifted to a work place. Similarly, the investigation found that the wearing of a filter type self-rescuer (FSR) presents no hazard unique to the FSR in that FSRs are smaller and lighter than SCSRs. None of the SCSRs examined at the mine exhibited any damage attributable to wear or being carried up the chutes and breasts.

The petitioner asserts that carrying supplies up the mine's narrow entries while wearing the SCSRs may expose miners to increased trip and fall hazards (a diminution of safety to miners). However, the investigation found the coal thickness on the #4 Vein currently being worked to be 8 feet and the chutes and breasts to be 10 to 20 feet in width and supported by timbers on five-foot centers. Such entry dimensions place no restrictions or added risk to safe travel when wearing an SCSR or FSR.

MSHA's investigation found that SCSRs can be safely worn or stored within 25 feet of the miners. The investigation also found the petitioner's proposal not to have or wear FSRs and to neither carry SCSR in and out of the mine nor have SCSRs on the mantrip is outside of the District Manager's authority to approve in an SCSR storage plan submitted under the provisions of 30 CFR 75.1714-2(e). The investigation found that the proposal provides less safety than having the rescue devices available and ready for use. MSHA could not confirm the petitioner's assertion that an SCSR will never need to be used, although MSHA's investigation did find mine-specific conditions that do not support that assertion. Bottle samples have found traces of methane in the mine that did not naturally ventilate to the surface. In addition, similar anthracite mines have experienced methane ignitions that resulted in fatalities and fires on the surface drawn into the mine or in the mine itself in accumulated combustible materials such as explosives boxes and other trash not promptly and properly removed. The investigation also found that other underground anthracite mines have encountered oxygen-deficient air and have had inundations of gas and water and such events could occur at the petitioner's mine in the future.

Failure to provide miners with SCSRs, readily available and within 25 feet or FSRs, if SCSRs are stored in approved and appropriate storage locations, cannot be considered as providing any of the intended protection afforded by the standard.

The petitioner argues that there has never been an SCSR used in an anthracite mine. However, since there was no reporting requirement for the use of an SCSR until 30 C.F.R. § 75.1714-8 (Reporting SCSR inventory and malfunctions; retention of SCSRs) was promulgated and became effective [71 FR 11454, Dec. 8, 2006], there are no viable records or statistics of use or the circumstances of any usage of an FSR or SCSR. The

exception is for those accident events where mine explosions or fires have resulted in multiple fatalities and the use or failure to use SCSRs was a significant part of the investigation. No such investigation is known to have occurred at an anthracite mine since SCSRs were introduced in coal mines in 1978. Only three fatal accidents involving blasting and methane explosions have occurred in anthracite mines and SCSRs were not used in any of those events.

Petitioner contends that a methane ignition has never occurred in an anthracite mine because, due to pitching seams, methane bleeds to the surface and wet conditions abound in the mines. He also argues there is no electric face equipment. Nevertheless, the anthracite mining industry has practiced the same basic mining methods and mined in the same coal fields from 1847 to the present and has experienced many methane mine explosion and mine fire disasters (each event with five or more miners killed). The current mines utilize the same non-mechanized mining methods to recover those anthracite deposits still accessible and above the mine pool elevations of flooded nearby mines. Even though the remaining underground anthracite mines are shallower and smaller than the historic anthracite collieries, there have been those three (3) methane explosions that resulted in fatalities and serious injuries of miners since 1983. There have also been numerous events where lighter-than-air mixtures of methane and blasting fumes have been trapped in the breast (vertical or inclined dead end mine working) and oxygen-deficient air has been found in low areas of active mine workings.

Petitioner argues that there is only one working shift with fewer than three miners. Working one shift per day with fewer miners reduces 1) the amount of coal mined, 2) the amount of underground mine workings developed, 3) the complexity of the mine and the need for mechanization to single locomotive, and 4) the rate at which methane is liberated. These elements can reduce the frequency of methane explosions and fires and the number of miners affected, but the hazards remain and serious accidents can and do continue to occur. While most underground anthracite mines employ fewer than 10 miners and work one shift per day, it is a basic premise of the Mine Act that the interim rules and promulgated regulations provide a standard for the protection of the health and safety of all miners without regard to the size of the mining operation.

Petitioner asserts that fire has not been a significant hazard because of the low volatile content of anthracite coal. However, the history of anthracite mine accidents contains numerous serious methane explosions that filled mines with fumes, smoke, and dust. Mine fires have occurred in the slope timbering and in refuse improperly allowed to accumulate underground. In addition, fires on the mine surface have been drawn into the mine workings. Furthermore, underground anthracite mining utilizes significant quantities of explosives to break the coal from solid faces without the use of relief holes or relief cuts/kerfs. Those explosives release great volumes of fumes, methane, and

dust that take hours to dissipate even when areas are fully and properly ventilated. Dead-end entries or breasts do not self-ventilate.

Finally, Petitioner argues that modifications granted to other anthracite mines support his contention that the risk of fire is reduced at such mines. However, the modifications mentioned in the petition were not granted based upon the low volatile matter content of anthracite but on the alternative method of compliance required for each.

MSHA concludes that application of 30 C.F.R. § 75.1714-2 provides the intended protection to miners and that petitioner's alternative method will not at all times guarantee no less than the same measure of protection.

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 Bear Gap Coal Company's Petition for Modification of the application of 30 C.F.R. § 75.1714-2 in the N & L Slope 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 22209-3939. 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 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.

Kevin G. Stricklin
Administrator for
Coal Mine Safety and Health