

In the matter of
Mettiki Coal Corporation
Mettiki Mine
I.D. No. 18-00621

Petition for Modification

Docket No. M-98-067-C

PROPOSED DECISION AND ORDER

On June 16, 1998, a petition was filed seeking a modification of the application of 30 CFR 75.500(b) to Petitioner's Mettiki Mine, located in Garrett County, Maryland. The Petitioner alleges 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.

MSHA personnel conducted an investigation of the petition and filed a report of their findings and recommendations 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 and recommendation, a Proposed Decision and Order was issued on March 4, 1999. Subsequently, District 3 commented that the recording requirement in stipulation No. 5 was unnecessary. Also, the stipulations did not have a means for MSHA to inspect the equipment prior to its initial use to determine compliance. Therefore, this new PDO is issued which deletes the recording requirement in stipulation No. 5 and adds an additional requirement to provide a means for MSHA to inspect the equipment to be used prior to its initial use underground. This PDO supersedes the PDO issued on March 4, 1999.

After a careful review of the entire record, including the petition, and MSHA's investigative report and recommendation, this Proposed Decision and Order is issued.

Finding of Fact and Conclusion of Law

The alternative method proposed by the Petitioner (as amended by the recommendations of MSHA) will at all times guarantee no less than the same measure of protection afforded the miners under 30 CFR 75.500(b).

On the basis of the petition and the findings of MSHA's investigation, Mettiki Coal Corporation is granted a modification of the application of 30 CFR 75.500(b) to its Mettiki 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., sec. 811(c), it is ordered that Mettiki Coal Corporation's Petition for Modification of the application of 30 CFR 75.500(b) in the Mettiki Mine is hereby:

GRANTED, for the use of low voltage or battery powered non-permissible electronic testing and diagnostic equipment in or inby the last open crosscut in the Mettiki Mine, under controlled conditions, conditioned upon compliance with the following terms and conditions:

1. The use of non-permissible low voltage or battery powered electronic testing and diagnostic equipment shall be limited to laptop computers, tachometers, power demand recorders, thickness meters, light meters, oscilloscopes, vibration analysis machines, meggers, and cable fault detectors (impulse generators and detectors). Other testing and diagnostic equipment may be used if approved in advance by MSHA's District 3 Manager.
2. Non-permissible electronic testing and diagnostic equipment shall be used only when equivalent permissible equipment does not exist.
3. All other test and diagnostic equipment used in or inby the last open crosscut shall be permissible.
4. All non-permissible electronic testing and diagnostic equipment shall be examined by a qualified person (as defined in existing 30 CFR 75.153) prior to use to ensure the equipment is being maintained in a safe operating condition. The results of the examination shall be recorded in the weekly electrical equipment examination record book and shall be made available to an authorized representative of the Secretary and the miners at the mine.
5. A qualified person as defined in existing 30 CFR 75.151 shall continuously monitor for methane immediately before and continuously during the use of non-permissible electronic test and diagnostic equipment used in or inby the last open crosscut.
6. Non-permissible electronic testing and diagnostic equipment shall not be used if methane is detected in concentrations at or above 1.0 percent methane. When 1.0 percent or more of methane is detected while the non-permissible electronic equipment is being used, the equipment shall be de-energized immediately and withdrawn outby the last open crosscut.

7. All hand-held methane detectors shall be MSHA approved and maintained in permissible and proper operating condition as defined in existing 30 CFR 75.320.
8. Except for the time necessary to trouble shoot under actual mining conditions, coal production in the working section shall cease; however, coal may remain in or on the equipment in order to test and diagnose the equipment under "load".
9. Non-permissible electronic test and diagnostic equipment shall not be used to test equipment when float coal dust is in suspension.
10. All electronic test and diagnostic equipment shall be used in accordance with the manufacturer's recommended safe use practices.
11. Qualified personnel engaged in the use of electronic test and diagnostic equipment shall be properly trained to recognize the hazards and limitations associated with the use of electronic test and diagnostic equipment.
12. The non-permissible low voltage or battery powered electronic testing and diagnostic equipment shall not be put into service until MSHA has inspected the equipment and determined that it is in compliance with all the above terms and conditions. The Petitioner shall notify MSHA before additional non-permissible electronic testing and diagnostic equipment is put into service within 150 feet of pillar workings. The notice shall provide a reasonable time for MSHA to inspect such equipment before being used.
13. Within 60 days after this Proposed Decision and Order becomes final, the Petitioner shall submit proposed revisions for its approved 30 CFR Part 48 training plan to the Coal Mine Safety and Health District Manager. In addition to the requirements specified in items Nos. 10 and 11, these proposed revisions shall specify initial and refresher training regarding the terms and conditions stated in the Proposed Decision and Order.

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, 4015 Wilson Boulevard, Arlington, Virginia 22203.

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.

Robert A. Elam
Deputy Administrator
for Coal Mine Safety and Health

Certificate of Service

I hereby certify that a copy of this proposed decision was served personally or mailed, postage prepaid, this _____ day of _____, 1999, to:

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Mine Safety and Health Technician

cc: Mr. Dominic N.Fornaro
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Case File

MCS:DCripps:syl:12/07/98

Retyped to delete recording requirement as suggested by
District 3:PMHall:syl:4/2/99