

In the matter of
Bowie Resources Limited
Bowie No. 3 Mine
I.D. No. **05-04758**

Petition for Modification

Docket No. **M-2003-075-C**

PROPOSED DECISION AND ORDER

On **September 30, 2003, Bowie Resources Limited** filed a petition seeking a modification of the application of 30 CFR, 75.1726(a) **at its Bowie No. 3 Mine located in Delta County, Colorado.** The Petitioner alleges that the alternative method outlined 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, this Proposed Decision and Order is issued.

Finding of Fact and Conclusion of Law

Section 75.1726(a), which petitioner seeks to modify, provides that men shall not work on or from a piece of mobile equipment in a raised position until it has been blocked in place securely. This does not preclude the use of equipment specifically designed as elevated mobile work platforms. **Bowie Resources Limited** petition for modification proposes to modify existing scoops for use as mobile work platforms. The proposed alternative method does at all times guarantee no less than the same measure of protection afforded by the standard.

On the basis of the petition and the findings of MSHA's investigation, **Bowie Resources Limited** is **granted** a modification of the application of 30 CFR, 75.1726(a), at its **Bowie No. 3 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 **Bowie Resources Limited's** Petition for Modification of the application of 30 CFR, 75.1726(a), in the **Bowie No. 3 Mine** is hereby:

GRANTED, conditioned upon:

A. Compliance with the following modifications to the specified Wagner Scoops and buckets at the Bowie No. 2 Mine:

1. This petition applies only to Wagner LST5S, Serial Nos. SAIIP0363, Company I.D. No. E-19; SAIIP0364, Company I.D. No. E-20; and 47081, Company No. E-21; Wagner ST3.5S, Serial Nos. SA04P0301, Company No. E-28; SA04P0307, Company No. E-29; and SA04P0318, Company No. E-30;
2. Installation of internal, automatic, hydraulic load locking valves on the scoop bucket lift arms and the tilt actuator;
3. Installation and use of a scoop bucket control lever locking pin;
4. Installation of brackets or cutting holes to attach safety belt lanyards to provide employee fall protection;
5. Securing of cable tubs to the scoop bucket with chains; and
6. Installation of waist-high chains around the cable tub.

B. Compliance with the following operational restrictions:

1. If the scoop is moved while miners are in the modified bucket:

- a) The bucket must first be lowered to a safe tramming level and the bucket control lever locking pin installed;
 - b) The scoop must travel at a safe tramming speed and no further than 10-feet at a time; and
2. Once the scoop has stopped at a work station, the scoop operator must place the scoop transmission in neutral and engage the parking brake.
 3. The Scoop operator will remain in the scoop cab whenever miners are in the scoop bucket.
 4. Safety belt lanyards to provide fall protection must be used by each employee in the scoop bucket when performing work from a raised position.
 5. At least once each shift, when one of the above specified scoops is used to perform work from a raised position with miners in the scoop bucket the scoop must be inspected by a person as defined in 75.1915. The inspection must verify the correct operation of the hydraulic load lock valves, the machines braking system and other safety devices. The inspection must be made prior to miners working from a raised position. A record of safety defects and corrections must be recorded and made available to interested parties for at least one year.
 6. Movement of the scoop when miners are in the bucket and the bucket is elevated greater than 4 feet is not permitted.
 7. Means must be provided to prevent accidental raising the miners into the roof.
 8. Persons must not ride in the workstation except to perform the specific work task.
 9. Prior to implementing the alternative method:
 - (a) the diesel scoops must be inspected by MSHA to determine compliance with the terms and conditions of the Proposed Decision and Order;
 - (b) scoop operators and persons performing work in the elevated bucket must be task trained to recognize appropriate levels of speed for different road

conditions and slopes. The training must be specific to the task they are performing;

- (c) the mine operator must develop a Job Safety Analysis (JSA) for each work task. Persons doing the task must understand the procedure(s).
 - (d) The scoops must comply with all other applicable requirements of the Federal Mine Safety and Health Act of 1977 and the applicable requirements of 30 CFR, Parts 75 and 77.
10. Within 60 days after this Proposed Decision and Order becomes final, the Petitioner must submit proposed revisions for its approved 30 CFR Part 48 training plan to the Coal Mine Safety and Health District Manager. These revisions must 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, 1100 Wilson Boulevard, Arlington, Virginia 22209-3939.

If a hearing is requested, the request must 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 must 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.

John F. Langton
Acting Deputy Administrator
for Coal Mine Safety and Health