

In the matter of:
Abate Irwin, Inc. (Contractor)
Contractor I.D. No. THY
Consol Pennsylvania Coal Company (Mine Operator)
Bailey Mine
Mine I.D. No. 36-07230

Petition for Modification

Docket No. M-2004-006-C

PROPOSED DECISION AND ORDER

On January 12, 2004, a petition was filed by Abate Irwin, Inc. (Contractor), seeking a modification of the application of 30 CFR 77.1710(g) at the Consol Pennsylvania Coal Company's Bailey Mine Preparation Plant located in Green County, Pennsylvania. The petitioner proposes an alternative method that 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 reports and recommendations, this Proposed Decision and Order is issued.

Finding of Fact and Conclusion of Law

Section 30 CFR 77.1710(g) provides that each employee working in a surface coal mine or in the surface work areas of an underground coal mine shall be required to wear safety belts and lines where there is danger of falling.

Petitioner proposes an alternative method in lieu of tying-off during the steel erection process. Petitioner proposes to comply with all of the requirements of 29 CFR 1926, Subpart R, during the steel erection process.

The investigation revealed that 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 77.1710(g). Petitioner will comply with all the requirements of 20 CFR 1926, Subpart R during the steel erection process, including the training requirements. In addition, the petitioner will use journeymen ironworkers who have specialized training and experience in steel erection procedures.

On the basis of the petition and the findings of MSHA's investigation, Abate Irwin, Inc., is granted a modification of the application of 30 CFR 77.1710(g) to Consol Pennsylvania Coal Company's Bailey Mine Preparation Plant.

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 Abate Irwin, Inc.'s Petition for Modification of the application of 30 CFR 77.1710(g) in the Consol Pennsylvania Coal Company's Bailey Mine Preparation Plant is hereby:

GRANTED, condition upon compliance with the following terms and conditions:

1. The proposed Decision and Order is limited in application to the steel erection process at the Bailey Mine Preparation Plant only.
2. All steel erection activities shall be conducted in compliance with all requirements of 29 CFR 1926, Subpart R.
3. Only Connectors, Riggers, and List Men who are journeymen members of the International Association of Bridge, Structural, and Ornamental Ironworkers Union shall be used for the steel erection process.
4. Within 60 days after this Proposed Decision and Order becomes final, the petitioner (Abate Irwin, Inc.) shall submit proposed revisions for its approved 30 CFR Part 48 training plan to the District Manager. These proposed revisions shall specify initial and refresher training regarding compliance with the conditions specified by 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
Deputy Administrator for
Coal Mine Safety and Health