

March 14, 2006

In the matter of:
R S & W Coal Company Inc
R S & W Drift
I.D. No 36-01818

Petition for Modification

Docket No. M-2005-005-C

PROPOSED DECISION AND ORDER

On January 27, 2005, a petition was filed seeking a modification of the application of 30 CFR 75.332(b)(1) and (b)(2) to Petitioner's R S & W Drift Mine, located in Schuylkill County, Pennsylvania. 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.

On February 11, 2005, comments on the requested modification were received from the United Mine Workers of America. Those comments objected to the Petitioner's proposal to permit the use of air passing through inaccessible abandoned workings and additional areas not examined under 30 CFR §§ 75.369, 75.361, and 75.364 that is currently mixing with the air in the intake haulage drift to ventilate the only active working section, provided the air meets the required quality specified in 30 CFR 75.321. The representative providing the comments was contacted and informed that due to the resulting diminution of safety to the miners, MSHA has granted the requested petition at other anthracite mines.

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.

Finding of Fact and Conclusion of Law

The mining and ventilation practices common to underground anthracite mines have developed mainly as a result of mining coal seams that can pitch from 20 to 90 degrees. Removal of coal from the pitched beds sometimes results in cracks and breaches to the surface. It is quite common for these breaches to allow air to enter and exit the mine through these unintentionally created openings. The fresh air that enters the mine through these openings aids in mine ventilation. At other times when the fan is off, these same openings provide a degree of natural ventilation to the mine. Moreover, some coal reserves have been

and continue to be accessed through old works that were not sealed. Such old works frequently have openings to the surface through breaches and cracks, which also allow outside air to enter and exit the mine. Atmospheric testing by industry and MSHA personnel has determined that air entering areas in the mine where persons work or travel through such breaches meets the air quality requirements specified in 30 CFR 75.321. Additionally, investigators found evidence to support the petitioner's claim that the installation of seals to prevent air from entering the mine from the surface openings would be impractical and subject miners to inherent hazards of coal bed pitch and entry configuration.

Consequently, application of 30 CFR 75.332(b)(1) and (b)(2) to the subject mine will result in a diminution of safety to the miners and the special terms and conditions set out below will at all times provide a safe work environment to the miners.

On the basis of the petition and the findings of MSHA's investigation, R S & W Coal Company, Inc is granted a modification of the application of 30 CFR 75.332(b)(1) and (b)(2) to its R S & W Drift 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 R S & W Coal Company's Petition for Modification of the application of 30 CFR 75.332(b)(1) and (b)(2) in the R S & W Drift Mine is hereby:

GRANTED, for the quality of air used to ventilate the R S & W Drift Mine, conditioned upon compliance with the following terms and conditions:

1. A certified person designated by the operator shall, before every shift, take an air reading at the entrance of the rock gangway just off the intake air haulage drift to determine the quality of air entering the working section by testing for methane, carbon dioxide, and oxygen deficiency.

If the air quality readings obtained at the mouth of the gangway:

- a. exceed 0.25 percent carbon dioxide;
- b. exceed 0.25 percent methane; or
- c. indicate less than 20.0 percent oxygen;

then only those miners whose presence is necessary to correct the condition and restore the air quality to no more than 0.25% carbon dioxide, no more than 0.25% methane, and at least 20% oxygen shall be permitted to enter the mine.

2. Air quality readings for methane, carbon dioxide, and oxygen shall be taken on the working section during the on-shift examination. Air quality readings shall also be taken at least once each shift where miner(s) are performing work outby the working section. If, at any time, the air quality does not meet the standards specified in stipulation No. 1 then:
 - a. all production work shall be immediately stopped;
 - b. all electrical equipment shall be deenergized; and
 - c. all miners, except those whose presence is necessary to correct the condition, shall be withdrawn from the mine.
3. The results of all air quality readings required in stipulation Nos. 1 and 2 shall be recorded in the preshift record book required under 30 CFR 75.360(f).
4. Within 60 days after this Proposed Decision and Order becomes final, the Petitioner shall submit proposed revisions to its approved 30 CFR Part 48 training plan to the Coal Mine Safety and Health District Manager. These proposed revisions shall include initial and refresher training regarding compliance with 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.

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.

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