

November 4, 2005

In the matter of:
Hopkins County Coal, LLC
Elk Creek Mine
I.D. No. 15-18826

Petition for Modification

Docket No. M-2005-034-C

PROPOSED DECISION AND ORDER

On May 10, 2005, a petition was filed seeking modification of the application of 30 CFR 75.1103-4(a) to Petitioner's Elk Creek Mine, located in Hopkins County, Kentucky. 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 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 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 75.1103-4(a).

The petitioner used terms and conditions from previously granted petitions as the proposed alternative method. Recently, MSHA has adopted revised language for granting modifications of 30 CFR 75.1103-4(a) to maintain consistency with the regulatory changes made to allow the use of belt air to ventilate working sections, which became final as amended on April 2, 2004. Those revisions remove reference to limiting the air velocity in the belt entry and set specific carbon monoxide alert and alarm levels at 5 and 10 parts per million (ppm); other minor wording changes were made, which, together, result in no decrease in the effectiveness of the fire detection system.

On the basis of the petition and the findings of MSHA's investigation, Hopkins County Coal, LLC is granted a modification of the application of 30 CFR 75.1103-4(a) to its Elk Creek 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 Hopkins County Coal, LLC's Petition for Modification of the application of 30 CFR 75.1103-4(a) in the Elk Creek Mine is hereby:

GRANTED, for the use of a carbon monoxide monitoring system that identifies the location of sensors in lieu of identifying belt flights, conditioned upon compliance with the following terms and conditions:

1. An early-warning fire detection system (carbon monoxide monitoring system) shall be installed as follows:
 - a. Sensors shall be installed near the center and in the upper third of the belt entry in a location that would not expose personnel working on the system to unsafe situations. Sensors shall not be located in intersections, abnormally high areas, or in other areas where airflow patterns do not permit products of combustion to be carried to the sensors.
 - b. Sensors shall be installed not more than 100 feet downwind of each belt drive unit, each tailpiece transfer point, each belt take-up, and at intervals not to exceed 1,000 feet along each conveyor belt entry except as provided in condition 3a. If the belt drive, tailpiece, and/or take-up for a single transfer point are installed together in the same aircourse, they may be monitored with one sensor located not more than 100 feet downwind of the last component and at other locations in any entry that is part of the belt aircourse as required and specified in the mine ventilation plan.
 - c. Sensors shall be installed upwind at a distance no greater than 50 feet from the point where the

belt aircourse is combined with another aircourse or splits into multiple aircourses.

2. The early-warning fire detection system shall be designed and maintained as follows:
 - a. The carbon monoxide monitoring system shall be capable of providing both visual and audible signals. A visual or audible alert signal shall be activated when the carbon monoxide level at any sensor reaches 5 ppm above the ambient level for the mine. An audible and visual alarm signal distinguishable from the alert signal shall be activated when the carbon monoxide level at any sensor reaches 10 ppm above the ambient level for the mine. The District Manager is authorized to require lower alert and alarm levels.
 - b. Audible and visual alarm devices used on the sections shall be of the permissible type if installed in areas where permissible equipment is required. Alarm devices shall give visual and audible signals that can be seen and heard on the working sections and at a location on the surface of the mine where at least one responsible person is on duty at all times when miners are underground. Alert devices shall give visual or audible signals that can be seen or heard at such surface location.
 - c. The carbon monoxide sensor located at or near the section loading point shall activate the alarm signal on the working section.
 - d. The carbon monoxide monitoring system shall activate alert and alarm signals at a location on the surface of the mine where at least one responsible person is on duty at all times when miners are underground.
 - e. The carbon monoxide monitoring system shall be capable of monitoring electrical continuity and detecting electrical malfunctions such as open circuits, short circuits, and ground faults in the system.

- f. The carbon monoxide monitoring system shall be capable of identifying any activated sensor(s). A map or schematic identifying each belt flight and the details for the monitoring system shall be posted at the mine.
 - g. The carbon monoxide monitoring system shall be capable of giving warning of a fire for a minimum of 4 hours after the source of power to the belt is removed as required by 30 CFR 75.1103-4(e). When power is removed due to fan stoppage, the carbon monoxide monitoring system shall be de-energized if it is not intrinsically safe as required by 30 CFR 75.313(e).
3. Velocity in the belt conveyor entry shall meet the following requirements:
- a. The air in the belt conveyor entry shall have a velocity of at least 50 feet per minute and have a definite and distinct movement in the designated direction. In areas along the belt entry where air velocities are less than 50 feet per minute, the sensor spacing must not exceed 350 feet. The maximum air velocity in the belt entry must be no greater than 500 feet per minute, unless otherwise approved in the mine ventilation plan. Air velocities must be compatible with all fire detection systems and fire suppression systems used in the belt entry.
 - b. Velocity measurements shall be determined at locations in the entry that are representative of the cross-sectional areas found throughout the entry and not at locations where the entry is abnormally high (e.g. belt drives) or low (e.g. under overcasts).
4. When the carbon monoxide monitoring system gives a visual or audible alert signal, all miners in the working sections on the same split of air shall be notified immediately and an investigation shall be conducted to determine the cause of the actuation. When the carbon monoxide system gives an audible and visual alarm signal, all miners in the same split(s) of air shall be withdrawn immediately to a safe

location at least one sensor outby the sensor(s) activating the alarm, unless the cause is known not to be a hazard to the miners. When the carbon monoxide warning system gives an audible and visual alarm signal at shift change, no one shall be permitted to enter the mine except qualified persons designated to investigate the source of the alarm. If miners are en-route underground, they shall be held at or withdrawn to a safe location, at least one sensor outby the sensor(s) activating the alarm. When a determination is made as to the source of the alarm and that the mine is safe to enter, the miners shall be permitted underground. The mine evacuation plan required by 30 CFR 75.1502 shall be revised to specify the actions to be taken for alert and alarm signals. Such revisions shall be approved by the District Manager. A record of each alert and alarm signal given and the action taken shall be maintained at the mine for a period of one year.

5. Personnel stationed at the surface location described in condition 2(d) shall have two-way communications with all working sections. When the established alert and alarm levels are reached, such persons shall notify all working sections and other locations where personnel are normally assigned to work (e.g. belt transfers). Personnel stationed at the surface location shall also be trained in the operation of the carbon monoxide monitoring system and in the proper procedures to follow in the event of an emergency or malfunction and, in that event, shall take appropriate action immediately.
6. The carbon monoxide monitoring system shall be examined visually at least once each shift. The monitoring system shall be inspected at intervals not exceeding seven (7) days to ensure that the system is operating properly. The monitoring system shall be calibrated with mixtures of known concentrations of carbon monoxide and air at intervals not to exceed 31 calendar days. An inspection record shall be maintained on the surface and made available to all interested persons. The inspection record shall show the date and time of each weekly inspection and monthly calibration and all maintenance performed,

whether at the time of the weekly inspection or otherwise.

7. If, at any time, the carbon monoxide monitoring system or any portion of the system required by this Proposed Decision and Order has been deenergized for reasons such as routine maintenance or failure of a sensor unit, the belt conveyor may continue to operate, provided the miners in the affected working section are notified and the affected portion of the belt conveyor entry is continuously patrolled and monitored for carbon monoxide in the following manner until the affected monitoring system is returned to normal operation:

- a. The patrolling and monitoring must be conducted by a person or persons trained in the mine evacuation plan, the operation of a handheld carbon monoxide detection device, use of the two-way communication device provided, and the following procedures:

- (1) The trained person(s) performing monitoring shall be provided with a two-way communication device enabling the person(s) to communicate with the surface;
- (2) Each of these trained persons shall be provided with a hand-held carbon monoxide detection device. A carbon monoxide detection device shall also be available for use on each working section;
- (3) If one sensor becomes inoperative, the trained person shall monitor at that sensor location;
- (4) If two or more adjacent sensors become inoperative, a trained person shall patrol and monitor the affected area; and
- (5) If the complete system becomes inoperative, a sufficient number of trained persons shall patrol and monitor the affected entries of the mine so that the affected entries are traveled in their entirety once each hour.

- b. The procedure outlined above is applicable only for a short period of time that is to be determined by the reasonable amount of time required to repair or replace the equipment causing the malfunction. The mine operator shall begin corrective action immediately and continue until the defective equipment causing the malfunction is replaced or repaired. The responsible person on the surface shall immediately establish two-way communication with the working section(s) and notify them of the particular malfunction(s) or problem.
8. The details for the early-warning fire detection system including, but not necessarily limited to, type of monitor; specific sensor location on the mine map; and the alert, alarm, and ambient levels shall be included as a part of the mine ventilation plan required by 30 CFR 75.370. The District Manager may require additional carbon monoxide sensors to be installed as part of said plan to ensure the safety of the miners.
9. Prior to implementing the alternative method, the early-warning fire detection system shall be inspected by MSHA and shall be fully operational and in compliance with the terms and conditions of this Proposed Decision and Order.
10. 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. These proposed revisions shall specify initial and refresher training regarding the 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 22203-3939.

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 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