

May 22, 2007

In the matter of
Orchard Coal Company
Orchard Slope
I.D. No. 36-08346

Petition for Modification

Docket No. M-2006-041-C

PROPOSED DECISION AND ORDER

On May 26, 2006, Orchard Coal Company filed a petition seeking a modification of the application of 30 CFR 75.360 to its Orchard Slope, located in Schuylkill County, Pennsylvania. 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 petition filed by Orchard Coal Company involves a 70-degree pitch shaft that will be used to ventilate mine workings planned in the Orchard Vein, which averages 120 inches thickness on an average pitch of 70 degrees. The mines are usually wet and freezing temperatures cause ice to form on ladders and travelways near the top of the slopes, shafts, and approaches to seals, which makes hand and foot holds unsure and increases the danger of falling to miners. Moreover, outby areas of anthracite coal mines do not normally liberate significant amounts of methane nor does methane regularly accumulate in sealed areas of anthracite mines.

The petitioned standard, 30 CFR 75.360(b)(5), requires that seals along intake air courses be examined during preshift examinations. The Petitioner alleges that the location within the shaft would require the examiner to climb a ladder or stairs and would be a diminution of safety. Because other safe methods of reaching the area are available, such as by a hoist conveyance or by stairs with landings, the Agency finds that the

application of the standard would not result in a diminution of safety.

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 75.360(b)(5).

On the basis of the petition and the findings of MSHA's investigation, Orchard Coal Company is granted a modification of the application of 30 CFR 75.360(b)(5) to its Orchard Slope.

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 Orchard Coal Company's Petition for Modification of the application of 30 CFR 75.360 in the Orchard Slope is hereby:

GRANTED, to allow evaluation of the seals off the shaft, from the gunboat in the intake air haulage slope of this mine conditioned upon compliance with the following terms and conditions:

1. A certified person designated by the operator shall, before every shift, take air readings at the top of the slope and in the gangway just off the slope to determine:
 - a. The quality of air entering the mine and working section by testing for methane and oxygen deficiency;
 - b. The volume of air entering the working section; and
 - c. If the air is moving in the proper direction.
2. The results of each preshift examination shall be compared to the previous preshift examination and any changes in the direction of flow of the air currents shall be reported to the mine foreman for immediate investigation. If, at any time, air measurements taken at the same location indicate a change in quantity of 25 per cent or more from the average reading taken during the previous two-week period, and immediate investigation of the affected area shall be conducted. Corrective action shall be immediately taken to

restore the air quantity to its specified volumes. The results of this preshift examination shall be recorded in the daily record required under 30 CFR 75.360(g).

3. Prior to the preshift examination being conducted, the gunboat shall be run through one complete cycle of operation to determine that it is operating properly. No persons or materials shall be allowed to be hoisted in the gunboat during this test. Any unsafe conditions discovered or observed shall be immediately corrected before the gunboat is used to transport men or materials. The results of this examination shall be recorded in the daily record required under 30 CFR 75.1400-4.
4. The gunboat will travel at a speed that will allow the certified person to make a visual examination of every seal on each side of the slope to determine if the seals are intact and serving their intended purpose. Any indication of seal deterioration will require immediate physical examination followed by corrective actions. The certified person, while traveling in the gunboat, shall also make a visual examination of the slope for hazardous conditions. All such hazardous conditions shall be corrected or posted with a conspicuous danger sign and recorded.
5. Prior to implementing this alternate method and at least every seven days thereafter, an examination to determine the condition of the seals shall be conducted by:
 - a. Physically traveling to each seal location; or
 - b. Stopping the gunboat and making a visual examination of each seal.
 - c. Seals located along return, bleeder, and intake air courses not covered under this modification shall be inspected at least every seven days in accordance with 30 CFR 75.364 (b) (4).
6. Within 60 days after the proposed decision and order granting a petition, the petitioner shall submit a proposed revision to the approved 30 CFR Part 48 training plan to the Coal Mine Safety and Health District Manager. The revision shall include initial or refresher training regarding compliance with the alternative method stated in the petition. The training plan will also include the

special 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 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.

Terry L. Bentley
Acting Deputy Administrator for
Coal Mine Safety and Health