

October 23, 2007

In the matter of
Jim Walters Resources, Inc.
No. 7 Mine
I.D. No. 01-01401

Petition for Modification

Docket No. M-2006-063-C

PROPOSED DECISION AND ORDER

On July 5, 2006, a petition was filed seeking a modification of the application of 30 C.F.R. § 75.364(b)(1) to the Petitioner's No. 7 Mine, located in Tuscaloosa County, Alabama. The Petitioner alleges that examination of two intake aircourses of the mine, as shown on the submitted map titled "Exhibit A No. 7 Mine," dated 3/26/07,¹ presents a hazard to miners because significant segments of these areas have fallen into disrepair, thereby preventing safe travel through the aircourses. Therefore, the Petitioner contends 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.

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 (PDO) is issued.

Finding of Fact and Conclusion of Law

The petitioned standard, 30 C.F.R. § 75.364(b)(1) requires that:

(b) *Hazardous conditions.* At least every 7 days, an examination for hazardous conditions at the following locations shall be made by a certified person designated by the operator:...(1) In at least one entry of each intake aircourse, in its entirety, so that the entire aircourse is traveled.

¹ A map titled "Exhibit A No. 7 Mine" dated 6/22/06 was attached to the Petition for Modification at issue. The Petitioner subsequently submitted an updated version of this map with a date of 3/26/07.

The Petitioner alleges that application of this standard would result in a diminution of safety to the miners and that the alternative method proposed in the petition would at all times guarantee no less than the same measure of protection afforded by the standard. The Petitioner states that significant segments ("Western Segment" and "Eastern Segment") of two intake aircourses, the "Western Portion" and the "Eastern Portion," as labeled on the aforementioned Exhibit A No. 7 Mine map, have fallen into disrepair. These conditions have made examining these 2 areas to the north of 7-2, 7-3, and 7-4 intake air shafts hazardous. In the alternative to compliance with 30 C.F.R. § 75.364(b)(1), the Petitioner proposes to monitor the air quantity and quality at each end of the two segments on a weekly basis.

The vicinity of the petitioned area consists of three parallel intake aircourses located to the north of the 7-2, 7-3, and 7-4 intake air shafts. The aircourses are labeled as Western Portion, Central Portion, and Eastern Portion and are comprised of four entries, six entries, and four entries, respectively. The aircourses are separated by barrier pillars. Crosscuts through the barrier pillars connect the aircourses at irregular intervals. Many of the connecting crosscuts are more than 600 feet apart. According to the preamble to MSHA's 1992 safety standards for underground coal mine ventilation rule,

The Agency does not consider air courses that are common only at each end to be the same air course if the separation between the common openings is more than 600 feet. Weekly examination of all such separate air courses is necessary to ensure that the ventilation system of the mine is functioning properly. 57 FR 20868, 20870.

Program Information Bulletin Number P06-13 offers further clarification of this issue.

The Petitioner alleges that a segment of the Western Portion (spanning 43 crosscuts and approximately 4,700 feet) and a segment of the Eastern Portion (spanning seven crosscuts and approximately 800 feet) have numerous roof falls and areas of bad roof and ribs. The Petitioner alleges that performing an examination for hazardous conditions at least every seven days as specified under the standard would be a diminution of safety due to the conditions that would be encountered. Likewise, attempting to rehabilitate these segments would be hazardous to

the miners. The Petitioner states that sealing these segments would also create a diminution of safety because the air flowing through the segments is necessary to remove harmful methane and respirable dust from the active workings.

MSHA's investigation report and subsequent discussions with the investigators revealed that approximately 125,000 cubic feet per minute (cfm) of intake air flows through the Western Portion and approximately 95,000 cfm of intake air flows through the Eastern Portion. Air quality through the petitioned areas was detected to be 0.0% methane, 20.9% oxygen, and 0 parts per million (ppm) carbon monoxide. The air flowing through the petitioned area is used to ventilate three working continuous miner sections and one working longwall section. The entire mine liberates 9.7 million cubic feet of methane per day, but no measurable amount of methane was detected in the petitioned areas. The investigator was unable to safely travel through the petitioned Eastern and Western Portions due to hazards from roof falls and adverse roof conditions.

On the basis of the petition and the findings of MSHA's investigation, Jim Walter Resources, Inc. is granted a modification of the application of 30 C.F.R. § 75.364(b)(1) to its No. 7 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. § 811(c), it is ordered that Jim Walter Resources, Inc.'s Petition for Modification of the application of 30 C.F.R. § 75.364(b)(1) in the No. 7 Mine is hereby:

GRANTED, for continuous monitoring, using intrinsically safe sensors installed as part of the mine's Atmospheric Monitoring System (AMS), and weekly evaluation of air entering and leaving the unsafe-to-travel segments ("Eastern" and "Western" Segments) of the intake aircourses ventilating the Western Portion and Eastern Portion, as shown on the aforementioned Exhibit A map dated 3/26/07, conditioned upon compliance with the following terms and conditions:

1. In order to isolate the airflow between the Western Portion and the Central Portion, stoppings shall be built and maintained at the following eight locations:
 - a. Between spad 2969 and spad 3005;
 - b. Between spad 2968 and spad 3004;
 - c. Between spad 2970 and spad 3002;
 - d. Between spad 2971 and spad 3003;
 - e. Between spad 2265 and spad 2306;
 - f. Between spad 2266 and spad 2305;
 - g. Between spad 2267 and spad 2304; and
 - h. Between spad 2268 and spad 2303.

2. Near the northern and southern ends of the Western Portion, stoppings shall be built and maintained at the following six locations:
 - a. Between spad 3527 and spad 3495;
 - b. Between spad 3526 and spad 3496;
 - c. Between spad 3524 and spad 3498;
 - d. Between spad 1647 and spad 1633;
 - e. Between spad 1646 and spad 1613; and
 - f. Between spad 1649 and spad 1615.

3. Monitoring stations shall be established to allow effective evaluation of the affected area of the Western Portion at the following two locations:
 - a. Between spad 3525 and spad 3497. AMS sensors shall also be installed to monitor oxygen and methane at this monitoring station; and
 - b. Between spad 1648 and spad 1616.

4. Near the northern and southern ends of the Eastern Portion, stoppings shall be built and maintained at the following five locations:
 - a. Between spad 2473 and spad 2455;
 - b. Between spad 2474 and spad 2454;
 - c. Between spad 2472 and spad 2452;
 - d. Between 20 and 90 feet downwind of spad 2085; and
 - e. Between 20 and 90 feet downwind of spad 2113.
5. Monitoring stations shall be established to allow effective evaluation of the affected area of the Eastern Portion at the following three locations:
 - a. Between spad 2471 and spad 2451. AMS sensors shall also be installed to monitor oxygen and methane at this monitoring station;
 - b. Between 20 and 90 feet downwind of spad 2066; and
 - c. Between 20 and 90 feet downwind of spad 2153.
6. Where AMS sensors are required, they shall be located such that the air flowing over the sensor is representative of the air flowing through the inaccessible intake entries.
7. Signs showing the safe travel routes to the monitoring stations shall be conspicuously posted to guide the examiners from the travelway in the Central Portion to the monitoring stations in the petitioned areas.
8. A diagram showing the normal direction of the airflow shall be posted at each monitoring station. The diagram shall be maintained in legible condition and any change in airflow direction shall be reported to the mine foreman for immediate investigation.
9. A certified person shall:
 - a. Examine each of the five monitoring stations at least every seven days. The examinations shall include:

- (i) Examining for hazards on the approaches to and at the monitoring stations;
 - (ii) Performing visual examinations of the AMS sensors. At each monitoring station, if the readings for methane or oxygen differ by 0.5 percent or more between the handheld gas detector and the AMS sensor, the AMS shall be repaired or taken out of service before the end of the current shift;
 - (iii) Evaluating and measuring the quality and quantity of air flowing past the monitoring stations. Air quality measurements shall determine the methane and oxygen concentrations using an MSHA-approved hand-held device. Air quantity measurements shall be made using an appropriately calibrated anemometer. Methane gas or other harmful, noxious, or poisonous gases shall not be permitted to accumulate in excess of legal limits for an intake aircourse. At any monitoring station, an increase of 0.3 percent methane above the previous reading or a 10 percent change in the airflow quantity from the previous reading shall cause an immediate investigation of the affected area, with prompt remedial action being taken as needed. In the Western Portion, the quantity of air entering the area via the monitoring station specified in Paragraph 3(b) must be compared with the quantity of air exiting the area via the monitoring station specified in Paragraph 3(a). If a difference of more than 10 percent is found to exist, an investigation of the stoppings specified in Paragraphs 1 and 2 shall commence immediately, with prompt remedial action being taken as needed; and
 - (iv) Recording the date, time, initials of the examiner, and measured quantity and quality of air in a book or on a date board that shall be provided at each monitoring station.
- b. As a part of each preshift examination performed in accordance with 30 C.F.R. § 75.360(a)(1), determine from the AMS surface location readouts the oxygen and

methane concentrations from the sensors located at the monitoring stations.

- c. Record the results of each weekly examination required by Paragraph 9(a) in a book on the surface, which shall be made available to all interested parties. The certification, recordkeeping, and retention period requirements of 30 C.F.R. § 75.364(g), (h), and (i) shall be met.
 - d. Record the results of each preshift determination of the air quality required by Paragraph 9(b) in a book on the surface, which shall be made available to all interested parties. The certification, recordkeeping, and retention period requirements of 30 C.F.R. § 75.360(e), (f), and (g) shall be met.
10. An AMS meeting all of the applicable requirements of 30 C.F.R. § 75.351(a), (b), (c), (d), (k), and (l) shall be used to continuously monitor methane and oxygen concentrations at the monitoring stations specified in paragraphs 3a and 5a, above. The AMS must be calibrated and maintained in accordance with 30 C.F.R. § 75.351(n), (o), and (p). In addition, all AMS operators must be trained in accordance with 30 C.F.R. § 75.351(q).
 11. The AMS monitoring sensors for methane and oxygen shall be capable of providing both visual and audible signals at the underground sensor locations and at an AMS surface location that complies with the requirements of 30 C.F.R. § 75.351(b)(1), (2), (3), and (4).
 - a. A visual and audible alert signal shall be activated for the following initial levels:
 - (i) Oxygen: 19.9%
 - (ii) Methane: 0.7%.
 - b. An audible and visual alarm signal shall be activated for the following initial levels:
 - (i) Oxygen 19.5%
 - (ii) Methane 1.0%.

- c. In lieu of the above alert and alarm levels, the District Manager is authorized to require more stringent alert and alarm levels.
12. The mine emergency evacuation and fire fighting plan required by 30 C.F.R. § 75.1502 shall be revised to specify the action to be taken to determine the cause of the alert and alarm signals, the location(s) for withdrawal of miners for each alarm signal, the steps to be taken after the cause of an alert signal is determined, and the procedures to be followed if an alarm signal is activated. Such revisions shall be approved by the District Manager. The appropriate response to alert and alarm signals generated by oxygen sensors shall also be subject to District Manager approval in the mine's 30 C.F.R. § 75.1502 program of instruction. The response to methane sensor alert and alarm signals is dictated by 30 C.F.R. § 75.323(b). 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.
13. Any time the District Manager determines that changes are necessary to ensure the air flowing over the monitoring stations is representative of the airflow ventilating the inaccessible intake aircourses, changes shall be made through the mine ventilation plan approval process. Such changes may include:
 - a. Relocating or adding monitoring stations should further roof deterioration render the present locations specified in paragraphs 3 and 5 no longer representative of the air flow ventilating either of the inaccessible intake air courses;
 - b. Installing additional temporary or permanent ventilation controls or adjusting a regulator to direct air across the AMS sensor-equipped monitoring stations to meet the minimum airflow requirements of the AMS sensor;
14. The permanent ventilation controls, monitoring stations, and AMS sensor locations shall be shown on the annual mine ventilation map submitted in accordance with 30 C.F.R. § 75.372.

15. All monitoring stations and approaches to monitoring stations shall, at all times, be maintained in a safe condition. The roof shall be adequately supported by suitable means to prevent deterioration of the roof in the vicinity of the stations.
16. This petition does not apply to the required examinations of any seals. All seals in the vicinity of the petitioned areas must be examined in accordance with 30 C.F.R. § 75.360(b)(5).
17. If an AMS sensor fails or is temporarily removed from service, it must be repaired or replaced as soon as possible. In the interim, the requirements of Paragraphs 9(a)(i), 9(a)(iii), and 9(a)(iv) must be performed as part of the preshift examination specified in 30 C.F.R. § 75.360(a)(1) for all monitoring stations in the affected aircourse. The results of such examination shall be recorded in a book on the surface, which shall be made available to all interested parties. The certification, record keeping, and retention period requirements of 30 C.F.R. § 75.360(e), (f), and (g) shall be met. While using this interim procedure, the Petitioner must be working diligently to repair or replace the defective AMS sensor.
18. Prior to implementing this alternative method, all mine personnel shall be instructed that travel into the petitioned aircourses, except along designated routes, shall not be permitted and all other approaches shall be fenced off or barricaded with "DO NOT ENTER" warning signs.
19. Within 60 days after this Proposed Decision and Order becomes final, the Petitioner shall submit proposed revisions to its approved 30 C.F.R. 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 C.F.R. § 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.

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