

November 26, 2007

In the matter of
Monterey Coal Company
No. 1 Mine
I.D. No. 11-00726

Petition for Modification

Docket No. M-2006-066-C

PROPOSED DECISION AND ORDER

On July 24, 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. 1 Mine, located in Macoupin County, Illinois. The Petitioner alleges that examination of three intake aircourses located in Main East and in East Hornsby Access Entries, presents a hazard to miners because of roof falls and deteriorated roof, which prevent 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 seven 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.

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 deteriorating roof conditions have made examining three aircourses in Main East and East Hornsby Access Entries unsafe. Specifically, the petitioned areas are shown in the "Transition Zone" on the submitted map titled "Simplified Ventilation After North Main Fan On Line" (Exhibit A, attached). 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 (entrance and exit ends) of the aircourses on a weekly basis, and to install atmospheric monitoring system (AMS) sensors to continuously monitor the quality of the air exiting the petitioned area.

The petitioned area consists of three parallel intake aircourses located in Main East and in East Hornsby Access Entries. Two of the intake aircourses are located in Main East. The northern aircourse in Main East consists of two entries and the southern aircourse consists of three entries that reduce to two entries. The two aircourses in Main East are separated primarily by airtight arches installed in the belt entry. The third aircourse is located in the East Hornsby Access Entries, and consists of two entries. This aircourse is isolated by a barrier pillar to the north and a line of stoppings to the south. Each of the three aircourses has two entries where intake air enters. Then, after flowing approximately 900 feet through each of the aircourses in Main East and approximately 1,300 feet through the aircourse in East Hornsby Access Entries, the air from the three separate entries combines to exit through two regulators. Each of the three aircourses has isolated airflow that extends for a distance in excess of 600 feet. According to the preamble to MSHA's 1992 revision to the ventilation regulations,

“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.”

The Petitioner alleges that the petitioned area has roof falls and deteriorated roof conditions caused by a geological transition that occurs in this area. The roof conditions here transition from massive strong limestone to massive weak shale, causing great difficulty with supporting the roof. In Main East, the mine operator had to use arches with full lagging and pneumatically stowed rock in order to support the belt entry. The Petitioner alleges that traveling through the three aircourses in the petitioned area to perform weekly examinations would be a diminution of safety due to unsafe roof conditions. Likewise, attempting to rehabilitate the roof or construct seals in these aircourses would be hazardous to the miners. 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 (entrance and exit ends) of the aircourses on a weekly basis and to install atmospheric monitoring system (AMS) sensors to continuously monitor the quality of the air exiting the petitioned area.

Mr. Gary L. Richardson, Chairman of the Health and Safety Committee of the United Mine Workers of America Local 1613 expressed two concerns with this petition for modification. Specifically, he questioned the application of 30 C.F.R. §§ 75.334(a)(1) and 75.364(a)(1) to this petition.

Regarding § 75.334(a)(1), the regulation requires that:

- (a) Worked-out areas where no pillars have been recovered shall be – (1)
Ventilated so that methane-air mixtures and other gases, dusts, and fumes from throughout the worked-out areas are continuously diluted and routed into a return air course or to the surface or the mine.

It is MSHA's opinion that although the air flowing through the petitioned area is not routed into a return air course or to the surface, the petitioned area itself does not meet the definition of a worked-out area, as per 30 C.F.R. § 75.301, which states, "An area where mining has been completed, whether pillared or non-pillared, excluding developing entries, return air courses, and intake air courses". Since the air flowing through the petitioned area is intake air, the petitioned area is not a worked-out area, and 30 C.F.R. § 75.334(a)(1) does not apply.

Regarding § 75.364(a)(1), the regulation requires that, "At least every 7 days, a certified person shall examine unsealed worked-out areas where no pillars have been recovered by traveling to the area of deepest penetration...". As explained previously, the petitioned area is not a worked-out area and thus, this standard does not apply.

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 area was detected to be 0.0% methane, 20.9% oxygen, and zero parts per million (PPM) carbon monoxide. The air flowing through the petitioned area is not used to ventilate any working section. The entire mine liberates 9.7 million cubic feet of methane per day, but no methane was detected in the petitioned area. The investigator was unable to travel safely 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, Monterey Coal Company's request for a modification of the application of 30 C.F.R. § 75.364(b)(1) to its No. 1 Mine is hereby granted and the following order issued.

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 Monterey Coal Company's Petition for Modification of the application of 30 C.F.R. § 75.364(b)(1) in the No. 1 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 intake aircourses ventilating the Western Portion and Eastern Portion as shown on the attached Exhibit A map, conditioned upon compliance with the following terms and conditions:

1. Eight monitoring stations shall be established to allow effective evaluation of the affected area at the Monitoring Stations shown on exhibit A. Monitoring Stations MS-1, MS-2, MS-3, MS-4, MS-5 and MS-6 shall monitor the air entering the affected area and Monitoring Stations MS-7 and MS-8 shall monitor the air exiting the affected area. Monitoring Stations MS-7 and MS-8 shall be equipped with AMS sensors that will monitor for methane, oxygen and carbon monoxide.
2. 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.
3. Signs showing the safe travel routes to the monitoring stations shall be conspicuously posted from the travelway in the Central Portion.
4. 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.
5. A certified person shall:
 - (a) Examine each of the monitoring stations at least every 7 days, including:
 - i. Examine for hazards on the approaches to and at the monitoring stations;
 - ii. Perform visual examinations of the AMS sensors.
 - iii. Evaluate and measure the quality and quantity of air flowing past the monitoring stations. Air quality measurements shall determine the methane, oxygen, and carbon monoxide 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; and
 - iv. At each monitoring station, a date board shall be provided where the certified examiner shall record the date, time, his or her initials, and the measured quantity and quality of the air entering the affected area.
 - a. As a part of each preshift examination specified in 30 C.F.R. § 75.360, determine from the AMS surface location readouts the

oxygen, methane and carbon monoxide concentrations from the sensors located at the monitoring stations.

- b. Record the results of each weekly examination required by Paragraph 5(a) in a book on the surface that shall be made available to all interested parties. The certification, record keeping, and retention period requirements of 30 C.F.R. § 75.364(g), (h), and (i) shall be met.
 - c. Record the results of each preshift determination of the air quality required by Paragraph 5(a) in a book on the surface that 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.
6. 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, oxygen and carbon monoxide concentrations at the specified monitoring stations. The AMS must be calibrated and maintained in accordance with 30 C.F.R. § 75.351(n), (o), (p), and (q).
7. The AMS monitoring sensors for methane and oxygen shall be capable of providing both visual and audible signals.
 - (a) A visual and audible alert signal shall be activated for the following initial levels:
 - i. Oxygen: 19.9%
 - ii. Methane: 0.7%
 - iii. Carbon Monoxide: 5 ppm
 - (b) An audible and visual alarm signal shall be activated for the following initial levels:
 - i. Oxygen: 19.5%
 - ii. Methane: 1.0%
 - iii. Carbon Monoxide: 10 ppm
 - (c) In lieu of the above alert and alarm levels, the District Manager is authorized to require lower alert and alarm levels.

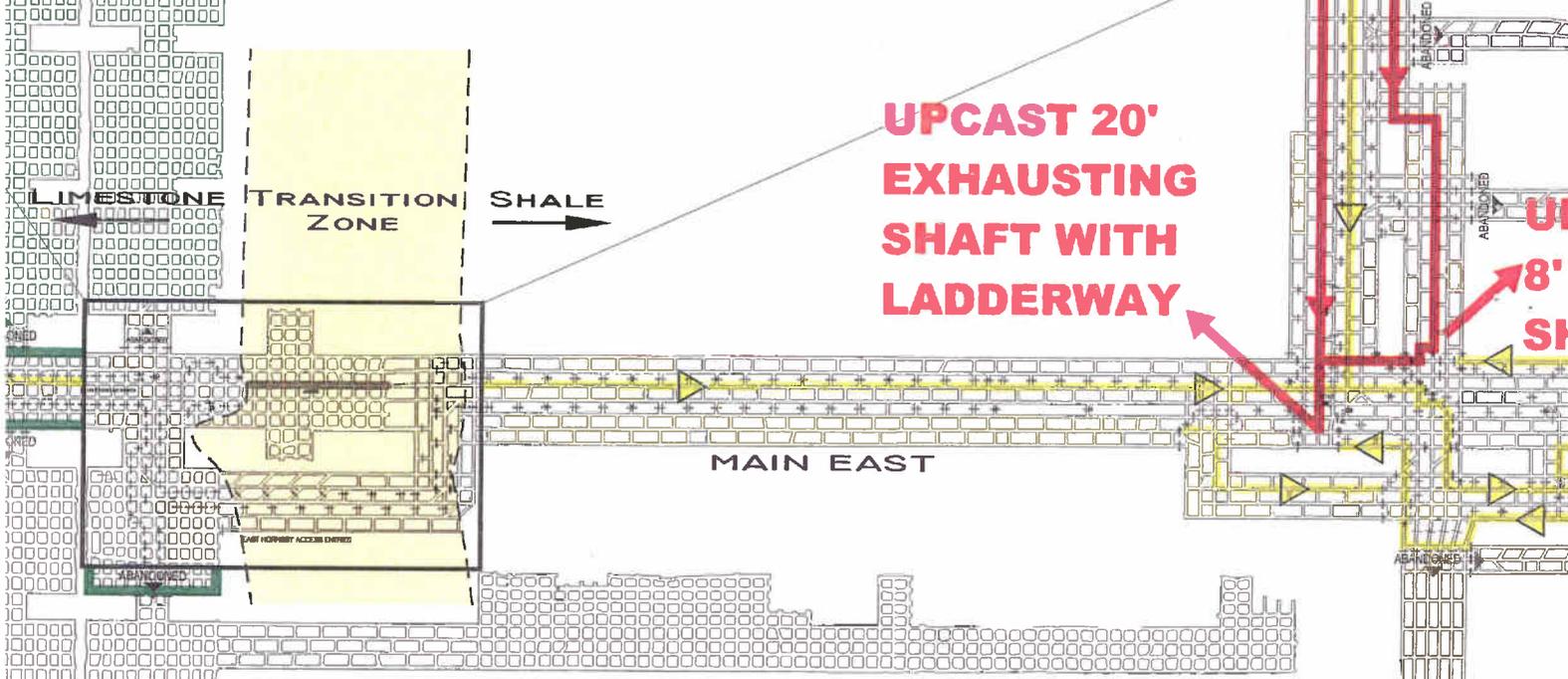
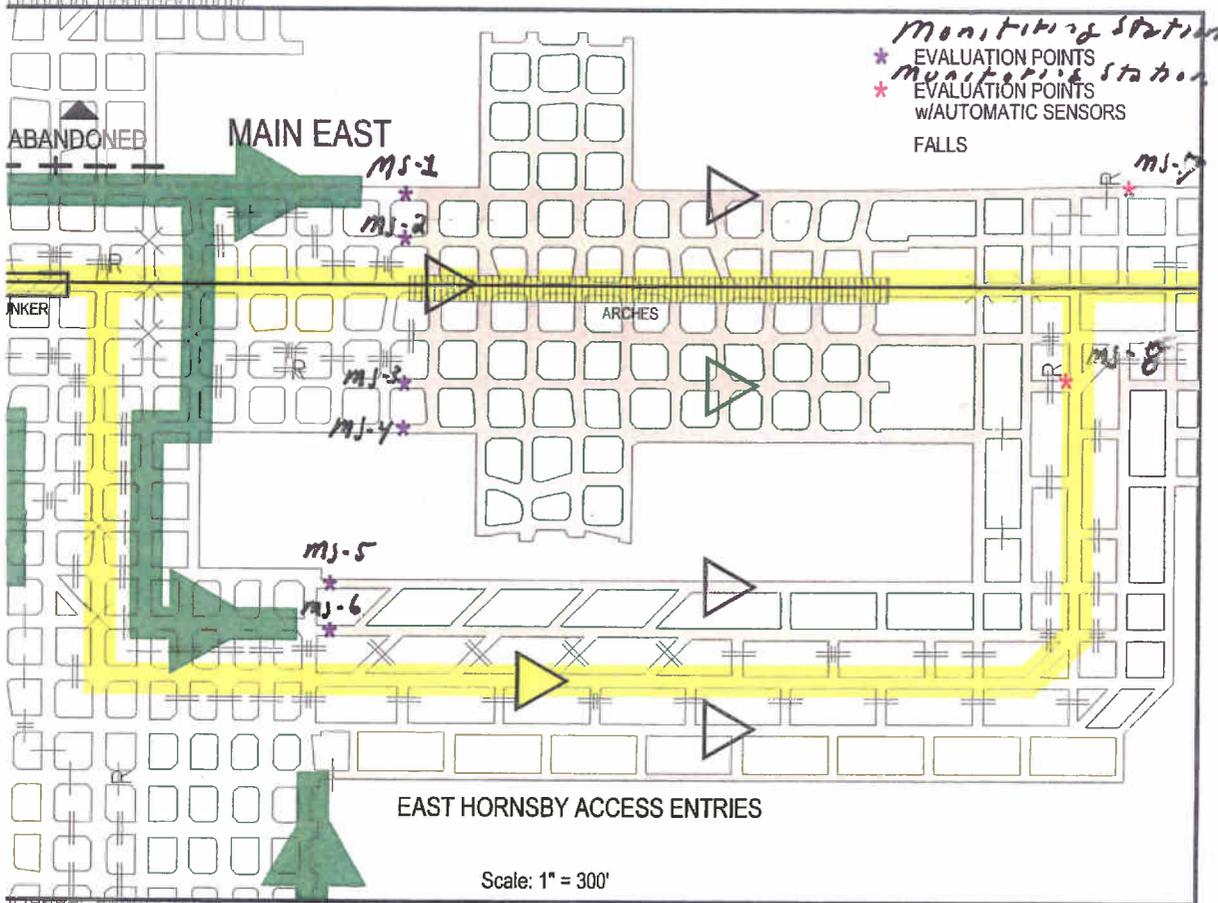
8. The mine emergency evacuation plan and fire fighting plan required by 30 C.F.R. § 75.1502 shall be revised to specify the action to be taken to determine the cause of the alert and alarm signals, the location(s) for withdrawal of miners for each alarm signal, the steps to be taken after the cause 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 determination as to the appropriate response to alert and alarm signals generated by the AMS shall be subject to the 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 1 year.
9. 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) relocation of monitoring stations or adding monitoring stations should further roof deterioration render the present locations no longer representative of the air flow ventilating either of the inaccessible intake air courses;
 - (b) the installation of 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;
 - (c) the elimination of continuous monitoring using AMS sensors where a minimum 50 fpm of air flow velocity across the sensors can not be ensured and establishing daily examinations, including gas checks using MSHA approved hand-held multi-gas detectors, and measuring air quantity using appropriate and calibrated anemometers at the monitoring stations.
10. 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.
11. All monitoring stations and approaches to monitoring stations shall be maintained in a safe condition, at all times. The roof shall be adequately supported by suitable means to prevent deterioration of the roof in the vicinity of the stations.
12. This petition does not apply to the required examinations of any seals. All seals in the vicinity of the petitioned area must be examined in accordance with 30 C.F.R. § 75.360(b)(5), unless approved by a separate petition for modification.
13. If an AMS sensor fails or is temporarily removed from service, any working sections ventilated with the air flowing past such sensor must cease production until the sensor

- is repaired or replaced. As an alternative, a qualified person as defined in 30 C.F.R. § 75.150, may be stationed continuously at the monitoring station with a properly calibrated, MSHA-approved, handheld gas detector. This person must be trained in the alert and alarm levels of this petition, and must be able to trigger an alert or alarm to the responsible person on the surface within 5 minutes of the occurrence.
14. Prior to implementing this alternative method, all mine personnel shall be instructed that travel, except along designated routes, shall not be permitted. All other approaches shall be fenced off or barricaded with "DO NOT ENTER" warning signs. Entrance into the area shall be permitted only to investigate and correct significant problems with airflow that are detected through the monitoring process and all such work shall be done under the direct supervision of a certified mine foreman. All persons who work in this area shall be instructed in the emergency evacuation procedures and all provisions of 30 C.F.R. §§ 75.1501 and 75.383.
 15. Within 60 days after this Proposed Decision and Order becomes final, the Petitioner shall submit proposed revisions for 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 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

Attachment: Exhibit A



MONTEREY COAL COMPANY CARLINVILLE, ILLINOIS			
SIMPLIFIED VENTILATION AFTER NORTH MAIN FAN ON LINE			
BY	DATE	LOCATION	NO. 1 MINE
DRAWN	RLS 5/30/06	DRAWING NO.	MCC-M1-B2033
APPROVED		SCALE	1" = 1000' & NOTED
		SHEET	

Exhibit A

M-2006-066-C