

June 6, 2007

In the matter of:
Excel Coal Company
Three S Slope
I.D. No. 36-09309

Petition for Modification

Docket No. M-2006-072-C

PROPOSED DECISION AND ORDER

On August 7, 2006, a petition was filed seeking a modification of the application of 30 CFR 49.6(a)(1)&(5) to Petitioner's Three S Slope, located in Northumberland County, Pennsylvania. This mine is serviced by Anthracite Underground Rescue, Inc., which operates the mine rescue station that provides coverage to the mines located in Dauphin, Northumberland, and Schuylkill Counties, Pennsylvania. The Petitioner alleges 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.

The requested modification is to allow the number of self-contained breathing apparatuses, permissible cap lamps, and battery charging rack space to be reduced from twelve units of each to eight units of each. The reduced amount of equipment is consistent with the reduced size of the anthracite mine rescue teams addressed by the modification of 30 CFR 49.2(b) (Docket No. M-2006-060-C). That modification allows three members and an alternate on each team rather than five members and an alternate. The smaller teams reflect the unique conditions of steeply-pitching anthracite coal seams.

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 requested modification of 30 CFR 49.6(a)(1)&(5) to Three S Slope will at all times provide a safe work environment. MSHA's investigation found that reducing the quantity of equipment required to be purchased and maintained at the anthracite mine

rescue station to a quantity consistent with the requirements of granted modifications currently in effect, which allow anthracite mines to be served by two mine rescue teams of three members each and an alternate, will provide the same measure of protection to the miners.

On the basis of the petition and the findings of MSHA's investigation, Excel Coal Company, is granted a modification of the application of 30 CFR 49.6(a)(1)&(5) to its Three S 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., § 811(c), it is ordered that Excel Coal Company's Petition for Modification of the application of 30 CFR 49.6(a)(1)&(5) in the Three S Slope is hereby:

GRANTED, upon compliance with the following terms and conditions:

1. Each mine rescue station shall be provided with at least the following equipment:
 - a. Eight self-contained oxygen breathing apparatus instead of twelve, each with a minimum of 2 hours capacity (approved by MSHA and NIOSH under 42 CFR 84, subpart H) and any necessary equipment for testing such breathing apparatus;
 - b. Eight permissible cap lamps instead of twelve and a charging rack.
2. All other requirements shall remain in effect.

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.

Melinda Pon
Acting, Deputy Administrator for
Coal Mine Safety and Health

