

August 14, 2007

In the matter of
Energy West Mining Company

Petition for Modification

Deer Creek Mine
I.D. No. 42-00121

Bridger Underground Coal Mine
I.D. No. 48-01646

Docket No. M-2006-087-C

PROPOSED DECISION AND ORDER

On December 5, 2006, a petition was filed seeking to amend a modification of the application of 30 CFR 75.1909(b)(6) granted at Petitioner's Deer Creek Mine, located in Emery County, Utah and Trail Mountain Mine (I.D. No. 42-01211), located in Sweetwater County, Wyoming.

Energy West Mining Company was previously granted a modification of 30 CFR 75.1909(b)(6) to allow the use of a Getman Roadbuilder Model RDG-1504C (Serial No. 91-318) at the Trail Mountain Mine and a Model G600U road grader (Serial No. 6579) at the Deer Creek Mine based upon compliance with specific terms and conditions. The Proposed Decision and Order, Docket No. M-1999-108-C, was issued June 16, 2000 and became final July 16, 2000. Subsequently, the Trail Mountain Mine was idled for several years and was placed in a permanently abandoned status. A proposed Decision and Order to Revoke all modifications granted to the Trail Mountain (underground) Mine was issued August 20, 2004 and was finalized September 19, 2004. In addition, a modification to allow use of a Getman Roadbuilder Model RDG-1504C (Serial No. 904-946-0496360) at the Bridger Underground Mine was granted to Pacific Minerals under Docket No. M-2006-008-C, issued June 20, 2006 and finalized July 20, 2006.

The modifications that were granted under Docket Nos. M-1999-108-C and M-2006-008-C allowed specific diesel-powered, rubber-tired equipment lacking brakes on all wheels to be used at specific locations addressed in the investigations. In the request to amend, however, the petitioner did not identify the original granting terms and conditions nor the manufacturer, the

model, or serial number of the petitioned equipment nor did Petitioner specify at which mines the specific equipment would be used. Additional information was requested and it was determined the amendment was to request the following changes to the previously granted modifications of 30 CFR 75.1909(b)(6):

1. The petitioner requested that the modification address use of any of three Getman Roadbuilder Model RDG-1504C road graders (Serial No. 6579, 6819, or 6926) at the Bridger Underground Mine or the Deer Creek Mine.
2. The petitioner requested the removal of all reference to the diesel-powered road grader Model G600U.
3. Trail Mountain Mine is not to be subject to the amended terms and conditions.
4. The training, equipment modifications, and operating requirements used in previous modifications are to be used in the amended terms and conditions.

MSHA personnel conducted investigations of the petition and filed reports of their findings and recommendations with the Administrator for Coal Mine Safety and Health. After a careful review of the entire record, including the petition and MSHA's investigative reports, this Proposed Decision and Order is issued.

Finding of Fact and Conclusion of Law

30 CFR 75.1909(b)(6) provides that

(b) Self-propelled nonpermissible diesel-powered equipment must have...

(6) Service brakes that act on each wheel of the vehicle and that are designed such that failure of any single component, except the brake actuation pedal or other similar actuation device, must not result in a complete loss of service braking capability;

The terms and conditions of the decision to grant the previous modifications of 30 CFR 75.1909(b)(6) allow the use of three different diesel powered road graders: one at each of three different mines; one of those mines is now in abandoned status with its modifications formally revoked. However, the terms and conditions of both modifications stipulated the same equipment

modifications, limits on operating speeds, and special task training for the operators. The only significant change to those requirements in the request for an amended modification is to update the list of equipment to verified serial numbers and to allow any of the listed units to be used at either Deer Creek Mine or Bridger Underground Mine while retaining the remainder of the terms and conditions unchanged.

Petitioner proposes an alternate method in lieu of front wheel brakes on the diesel-powered, six-wheeled Getman Roadbuilders, Model RDG-1504C (Serial Nos. 6579, 6819, and 6926) used at the Deer Creek Mine or Bridger Underground mine. Petitioner proposes to limit the speed of the RDG-1504C diesel grader to 10 miles per hour (mph) and to train the RDG-1504C diesel grader operators to drop the grader blade (moldboard) to provide additional stopping capability in emergencies.

The alternative method proposed by Energy West Mining Company (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 75.1909(b)(6). These terms and conditions will provide a level of safety equivalent to the standard requirement that each wheel of the grader be equipped with service brakes.

On the basis of the petition and the findings of MSHA's investigation, Energy West Mining Company is granted a modification of the application of 30 CFR 75.1909(b)(6) to its Deer Creek Mine and Bridger Underground Mine.

When this proposed decision and order becomes final, it will supercede and replace the Decisions and Orders granted under Docket Nos. M-1999-108-C and M-2006-008-C. No modification allowing the use of a G600U or Getman Model G600U will exist at any Western Energy Mine and only those units specified in the final terms and conditions of this decision may be used at the Deer Creek Mine or Bridger Underground 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 Energy West Mining Company's Petition for Modification of the

application of 30 CFR 75.1909(b)(6) in the Deer Creek Mine and Bridger Underground Mine is hereby:

GRANTED, conditioned upon compliance with the following terms and conditions:

1. This Proposed Decision and Order is limited in application to the Getman Model No. RDG-1504C diesel graders (Serial Nos. 6579, 6819, and 6926) to be used at Deer Creek Mine or Bridger Underground Mine.
2. The maximum speed on the Getman Roadbuilder RDG-1504C diesel graders shall be limited to 10 mph by:
 - (a) permanently blocking out the gear(s) or any gear ratio(s) that provide higher speeds. The device shall limit the vehicle speed in both forward and reverse; and
 - (b) using transmission(s) and differential(s) geared in accordance with the equipment manufacturer which limits the maximum speed to 10 mph.
3. Prior to implementing the alternative method:
 - (a) the diesel grader shall be inspected by MSHA to determine compliance with the terms and conditions of the Proposed Decision and Order;
 - (b) grader operators shall be trained to recognize appropriate levels of speed for different road conditions and slopes;
 - (c) grader operators shall be trained to lower the moldboard (grader blade) to provide additional stopping capability in emergencies; and
 - (d) grader operators shall be trained to recognize the transmission gear blocking device and its proper application and requirements.
4. The grader shall comply with all other applicable requirements of the Federal Mine Safety and Health Act of 1977 and the applicable requirements of 30 CFR, Parts 75 and 77.

5. Within 60 days after this Proposed Decision and Order becomes final, the Petitioner must submit proposed revisions for its approved 30 CFR Part 48 training plan to the Coal Mine Safety and Health District Manager. These revisions must specify initial and refresher training regarding the 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