

November 26, 2007

In the matter of
Oak Grove Resources, LLC
Oak Grove Mine
I.D. No. 01-00851

Petition for Modification

Docket No. M-2007-004-C

PROPOSED DECISION AND ORDER

On January 10, 2007, a petition was filed seeking a modification of the application of 30 C.F.R. § 75.364(b)(2) to Petitioner's Oak Grove Mine, located in Jefferson County, Alabama. The Petitioner alleges that application of this standard will result in a diminution of safety to the miners. Petitioner also 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 without unnecessarily exposing persons to hazardous conditions.

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 and recommendation, this Proposed Decision and Order is issued.

Finding of Fact and Conclusion of Law

30 C.F.R. § 75.364, Weekly examination, states, in relevant part,

(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: ...

(2) In at least one entry of each return air course, in its entirety, so that the entire air course is traveled.

The petitioner alleges that a roof fall has blocked travel in the Second East Return aircourse for approximately one crosscut and has become unsafe for mine examiners to travel. In addition, the proposed alternative method of having a certified person take weekly air quantity and quality measurements at monitoring stations MS-A and MS-B as shown on the attached map at both sides of the roof fall, will provide the same measure of protection as the standard.

MSHA's investigation confirmed that a roof fall has blocked travel in the Second East Return aircourse for approximately one crosscut and has become unsafe for mine examiners to travel and the deteriorated roof has essentially rendered the roof fall

impractical to rehabilitate. In addition, the investigation also confirmed that the two proposed monitoring points were accessible. Application of 30 C.F.R. § 75.364(b)(2) to the subject mine will result in a diminution of safety to the miners and the special terms and conditions set out below will at all times provide a safe work environment to the miners.

On the basis of the petition and the findings of MSHA's investigation, Oak Grove Resources, LLC's request for a modification of the application of 30 C.F.R. § 75.364(b)(2) to its Oak Grove 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 Oak Grove Resources, LLC's Petition for Modification of the application of 30 C.F.R. § 75.364(b)(2) in the Oak Grove Mine is hereby:

GRANTED, for the examination of approximately one crosscut of unsafe-to-travel return air course in the Second East Return at the roof fall as indicated on the attached map conditioned upon compliance with the following terms and conditions:

1. Two monitoring stations (MS-A and MS-B) will allow effective evaluation of airflow through the air split used to ventilate the Second East Return air course at the inaccessible roof fall, the monitoring stations shall be established as follows:
 - (a) Monitoring station MS-A shall monitor the air inby the roof fall and be established as indicated on the attached map.
 - (b) Monitoring station MS-B shall monitor the air outby the roof fall and be established as indicated on the attached map.
2. Signs showing the safe travel route to each monitoring station shall be conspicuously posted in an adjacent travel entry. The monitoring stations and routes of travel to the monitoring stations shall be kept free of water accumulations.
3. A certified person shall conduct weekly evaluations at each of the monitoring stations. The evaluations shall include the quantity and quality of air entering or exiting the monitoring station. The evaluation shall also include a determination of any airflow from adjacent entries,

defined and measured as stated in Paragraph 8 below. These air measurements shall be made using MSHA-approved and calibrated hand-held multi-gas detectors to check the methane and oxygen gas concentrations and appropriate, calibrated anemometers to check airflow volume.

4. A diagram showing the normal direction of the airflow shall be posted at the monitoring stations. 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. At each monitoring station, a date board shall be provided where the date, time, and examiner's initials shall be recorded along with the measured quantity and quality of the air. Such results, including the condition of the accessible permanent ventilation controls creating the aircourse, shall also be recorded in a book kept on the surface and made accessible to all interested parties.
6. All monitoring station(s) and approaches to monitoring station(s) shall, at all times, be maintained in a safe condition. The roof shall be adequately supported by roof bolts or other suitable means to prevent deterioration of the roof in the vicinity of the stations.
7. Methane gas or other harmful, noxious, or poisonous gases shall not be permitted to accumulate in excess of legal limits for return air. An increase of 0.5 percent methane above the last previous methane reading or a 10 percent change in airflow quantity shall cause an immediate investigation of the affected area. The results of the investigation shall be immediately reported to the mine foreman.
8. The initial airflow from adjacent aircourses shall be determined during the first evaluation following implementation of this modification. Airflow from adjacent aircourses is defined as the difference between the air quantity entering and exiting the petitioned area, as measured at the monitoring stations. A 10 percent change from the initial airflows in the aircourse shall cause immediate examination and evaluation of the cause. Appropriate corrective action must then be taken. Following corrective action, a new "initial airflow" shall be determined and serve as the basis for subsequent evaluations.
9. The monitoring station location(s) shall be shown on the annually submitted mine ventilation map. The stations shall not be moved to

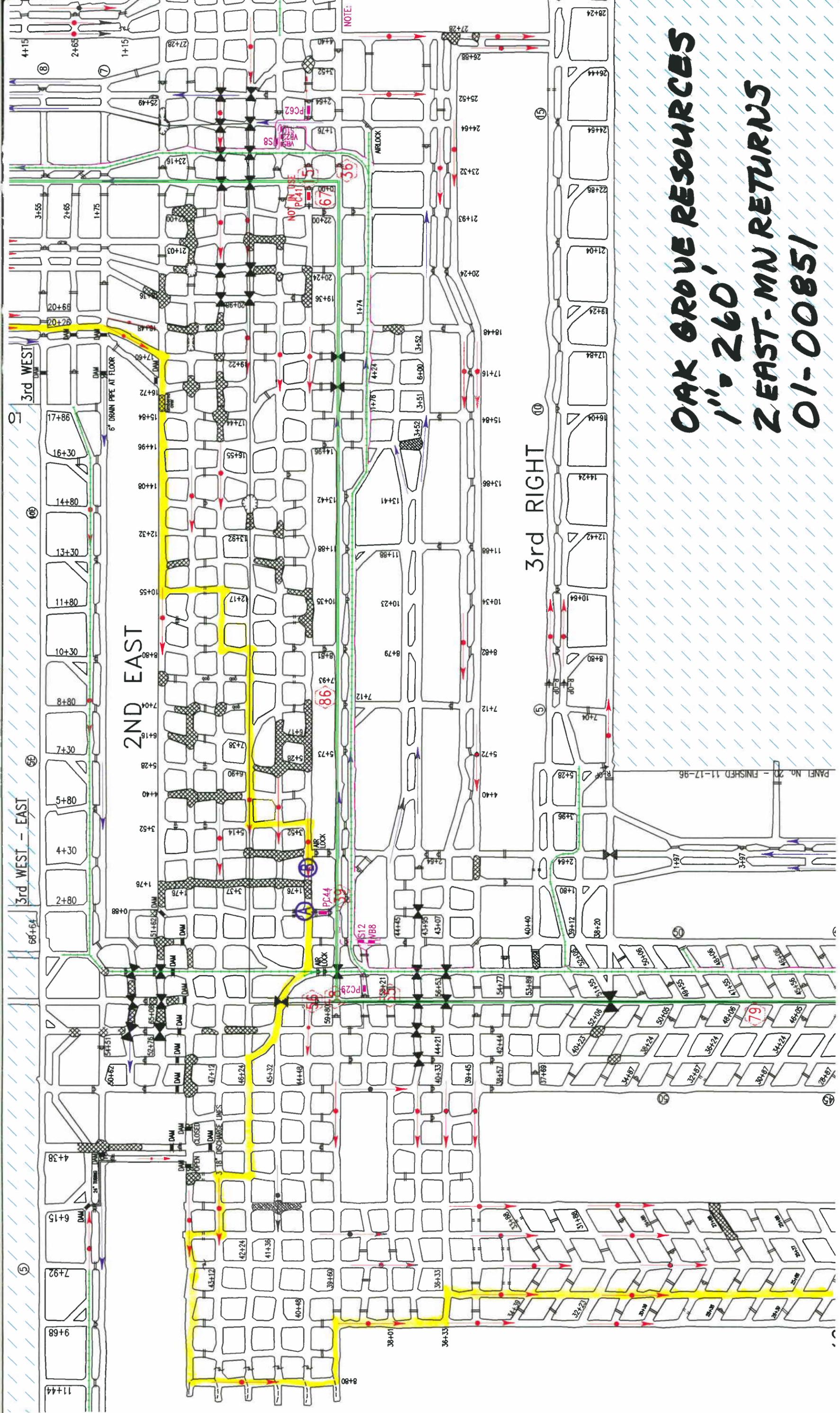
another location without prior approval by the District Manager as a part of the Ventilation Plan for the mine.

10. Prior to implementing this modification, all mine personnel shall be instructed that, except along designated routes, no travel into the petitioned area shall be permitted and all other approaches shall be fenced off or barricaded with "DO NOT ENTER" warning signs. Entrance into the area shall be permitted only to conduct investigations and correct problems with airflow as detected through the monitoring process and all such work shall be done under the supervision of an authorized person. All persons who work in the area shall be instructed in the emergency evacuation procedures and all provisions of 30 C.F.R. §§ 75.1502 and 75.383.
11. 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 this 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: Map of 2 East Main Returns



**OAK GROVE RESOURCES
1" 260',
EAST-MN RETURNS
01-00851**