

February 22, 2008

In the matter of  
D & R Coal Company, Inc.  
Mine No. 3  
ID No. 15-19018

Petition for Modification  
  
Docket No. M-2007-061-C

PROPOSED DECISION AND ORDER

On October 2, 2007, a petition was filed seeking a modification of the application of 30 C.F.R. § 75.342 to Petitioner's Mine No. 3, located in Knox County, Kentucky. The Petitioner alleges that the alternative method outlined 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 is issued.

Finding of Fact and Conclusion of Law

The petitioned standard, 30 C.F.R. § 75.342, Methane Monitors, states, in part

(a)(1) MSHA-approved methane monitors shall be installed on all face cutting machines, continuous miners, longwall face equipment, loading machines, and other mechanized equipment used to extract or load coal within the working place.

The petitioner seeks modification to use a hand-held continuous multi-gas detector, which detects oxygen, methane, and carbon monoxide, in lieu of a machine-mounted methane monitor for the three wheel tractors (Mescher tractors). The tractors are used to load and haul coal from the mine faces.

The alternative method proposed by the Petitioner (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 C.F.R. § 75.342.

On the basis of the petition and the findings of MSHA's investigation, D & R Coal Company, Inc., is granted a modification of the application of 30 C.F.R. § 75.342 to its Mine No. 3.

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 D & R Coal Company, Inc.'s, Petition for Modification of the application of 30 C.F.R. § 75.342 in the Mine No. 3 is hereby:

GRANTED, for the Mescher permissible, three-wheel, battery-powered tractors used to load coal, conditioned upon compliance with the following terms and conditions:

1. An MSHA-approved multi-gas detector capable of monitoring carbon monoxide, methane, and oxygen shall be provided on each mine tractor used to transport coal from the working faces of this mine. The device shall be a continuous-duty oxygen, methane, and carbon monoxide monitor that continually displays percentage of oxygen present, unless the District Manager determines that the amount of methane or carbon monoxide be displayed. The appropriate concentration of gas must be displayed when the push-button switch on the case is pressed. The instrument shall constantly monitor carbon monoxide, methane, and oxygen and shall automatically sound an audible alarm for each at predetermined levels.
2. The alarm settings shall be set initially and be maintained at the factory setting of 50 parts per million of carbon monoxide, 1.0 percent of methane, and 19.5 percent of oxygen.
3. Prior to the mine tractor entering the working face for the first time, a methane test shall be conducted in the face area by a person qualified in methane testing.

4. Each trip thereafter, the mine atmosphere shall be continually monitored by the multi-gas detector from the tractor operator's deck provided the elapsed time from leaving the working face does not exceed 20 minutes.
5. In the event of 1 percent or more of methane or 50 parts per million of carbon monoxide being detected the monitor shall automatically give an audible warning alarm. The operator shall promptly deenergize the tractor manually. Coal production shall cease immediately on the section and action shall be taken to eliminate the methane, carbon monoxide, or low oxygen atmosphere before production is resumed.
6. The MSHA-approved multi-gas detector shall be mounted as close as practical to the bucket in a shock-resistant holder that has appropriate openings for the sensors and readout.
7. A spare continuous-duty detector shall be provided to assure compliance with this Proposed Decision and Order.
8. At the end of the shift, each detector shall be removed from the tractor, inspected, and be fully charged by a qualified person.
9. The mine operator shall establish a maintenance program for the monitors that details servicing and calibration procedures. Calibration, including alarm settings, shall be made only by a qualified person. A record of these procedures shall be available for inspection by interested parties. Examination and calibration of each detector shall not exceed intervals of 30 calendar days.
10. All tractor operators shall be certified or qualified in detection of carbon monoxide, methane, and oxygen deficiency and be trained in the procedure to be followed in the event that low oxygen or that one or both of the gases are found and need corrective action taken.

11. If 0.25 percent or more of methane is ever detected in the mine, this occurrence shall be recorded in the appropriate mine examination book on the surface and the MSHA District Manager shall be immediately notified. The Agency will take appropriate steps to revoke this petition pursuant to 30 C.F.R. § 44.52.
12. 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 plans to the Coal Mine Safety and Health District Manager. These proposed revisions shall specify 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.

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