

In the matter of
Brooks Run Mining Company

Petition for Modification

Wyoming No.1 Mine
I.D. No. 46-09213

Cucumber Mine
I.D. No. 46-09066

War Branch No. 1 Mine
I.D. No. 46-09055

Docket No. M-2008-003-C

PROPOSED DECISION AND ORDER

On February 12, 2008, a petition was filed seeking a modification of the application of 30 C.F.R. § 75.1101-1(b) to Petitioner's Wyoming No. 1 Mine, located in Wyoming County, West Virginia; and Cucumber and War Branch No. 1 Mines, located in McDowell County, West Virginia.

The petitioned standard states, in relevant part,
(b) Nozzles attached to the branch lines shall be full cone, corrosion resistant and provided with blow-off dust covers...

Petitioner proposes to conduct weekly examinations and functional testing of the deluge fire suppression systems as an alternative method of complying with the standard. 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 proposed alternative method, as amended by MSHA, will at all times provide the same measure of protection to the miners as afforded the miners under 30 C.F.R. § 75.1101-1(b).

On the basis of the petition and the findings of MSHA's investigation, Brooks Run Mining Company is granted a modification of the application of 30 C.F.R. § 75.1101-1(b) to its Wyoming No. 1, Cucumber, and War Branch No. 1 Mines.

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 Brooks Run Mining Company's Petition for Modification of the application of 30 C.F.R. § 75.1101-1(b) to the Wyoming No. 1, Cucumber, and War Branch No. 1 Mines is hereby:

GRANTED, for weekly examination and functional testing of deluge type fire suppression systems installed at conveyor belt drives in lieu of blow-off dust covers for nozzles of water deluge fire suppression systems, conditioned upon compliance with the following terms and conditions:

1. A person trained in the testing procedures specific to the water deluge-type fire suppression systems utilized at each belt drive shall once every seven (7) days:
 - (a) Conduct a visual examination of each of the water deluge-type fire suppression systems.
 - (b) Conduct a function test of the water deluge-type fire suppression systems by actuating the system and observing its performance.
 - (c) Record the results of the examination and functional test in a book maintained on the surface for that purpose. Records shall be made available to the authorized representative of the Secretary and retained at the mine for one year.
2. Any malfunction or clogged nozzle detected as a result of the weekly examination or functional test shall be corrected immediately.

3. The procedure used to perform the functional test shall be posted at or near each belt drive that utilizes a water deluge-type fire suppression system.
4. 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 specify the procedure used to conduct the weekly functional test and initial and refresher training regarding the conditions specified by 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.

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 may 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.

Kenneth A Murray
Deputy Administrator for
Coal Mine Safety and Health