

June 11, 2007

In The Matter of
Vulcan Construction Materials, L.P.
Central Underground Mine
Mine I.D. No. 15-00016

PETITION FOR MODIFICATION

Docket No. M-2006-014-M

Proposed Decision and Order

On November 6, 2006, a petition was filed by Vulcan Construction Materials, L.P. seeking a modification of the application of 30 C.F.R. § 49.2(c) to petitioner's Central Underground Mine located in Lexington, Fayette County, Kentucky. The petitioner alleged that the alternative method outlined in the petition, which permitted team members to be on the rescue team who had not worked at mine in one of the last five years, would at all times guarantee no less than the same measure of protection afforded the miners by the application of the standard. The rescue team is the Eastwood Fire District Fire Fighting and Rescue Teams (rescue team).

Section 49.2 Availability of mine rescue teams, provides in part:

(c) To be considered for membership on a mine rescue team, each person must have been employed in an underground mine for a minimum of one year within the past five years. For the purpose of mine rescue work only, miners who are employed on the surface but work regularly underground shall meet the experience requirement. The underground experience requirement is waived for those miners on a mine rescue team on the effective date of this rule.

MSHA investigators conducted an investigation relevant to the merits of the petition and filed a report of their findings with the Administrator for Metal and Nonmetal 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.

Findings of Fact and Conclusions of Law

The alternative method set forth in this Proposed Decision and order will at all times guarantee equivalent protection for the miners.

The Central Underground Mine is a nongassy, multiple-level underground limestone mine. The mine normally operates five days per week with two 10-hour shifts per day, one production, and one maintenance. Total employment is 32 persons.

The Room and pillar mine is assessed by decline roadways. Limestone is drilled and blasted. Shot rock is then loaded onto haul trucks and transported to the underground

primary crushing plant where it is crushed and sized. The finished material is then conveyed to the surface for further processing and stockpiling.

The Eastwood District Fire Fighting and Mine Rescue Teams is a fire and rescue department team that has had required MSHA training and is located in Eastwood, Kentucky within close proximity to the mine. The 15 members of the team have had extensive training in fire fighting, evacuation, and rescue and are in compliance with the requirements of 30 C.F.R. § 49.7 and 30 C.F.R. § 49.8. This team has had underground training and is familiar with the mines for which they have provided mine rescue service. The team is on duty 24 hours a day, seven days per week and is able to provide immediate response to any mine emergency.

The Eastwood Fire Department's Mine Rescue Station was inspected on December 5, 2006 and January 8-9, 2007. The station has the MSHA required equipment, including 12 Bio Marine self-contained breathing apparatus with 4 hours capacity. The equipment is kept in a portable trailer that is ready for transportation and can be used as a command center with its own generator.

Compliance with this Order entitles Vulcan Construction Materials, L.P. to a modification of the application of 30 C.F.R. § 49.2(c) to its Central Mine.

Order

Wherefore, pursuant to the authority delegated by the Secretary of Labor to the Administrator, 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 a modification of the application of 30 C.F.R. § 49.2(c) to, Vulcan Construction Materials, L.P. as it pertains to using members of the Eastwood District Fire Fighting and Mine Rescue Teams that have not worked at a mine in one of the last five years to be members of the mine rescue team for the Central Mine, is hereby:

GRANTED, conditioned upon compliance with the following:

1. Mining experience shall not be a determining factor for membership on the mine rescue team once members of the Eastwood District Fire Fighting and Mine Rescue Teams meet the training conditions set forth in this Proposed Decision and Order.
2. The mine rescue team shall conduct training activities underground at the Central Underground Mine for a period of at least 4 hours every six months.
3. Training activities while underground shall focus on fighting fires and rescue and recovery activities.
4. A log shall be maintained for each training session required in stipulation No. 2. This log shall be maintained for 2 years and made available to an

MSHA representative and the miners' representative. The following information shall be recorded:

- a. The date and time of training.
 - b. The names of rescue team members trained.
 - c. Whether training was conducted wearing the breathing apparatus.
 - d. Locations in the mine where members were trained.
5. The rescue team may not enter the mine for rescue or firefighting once all personnel are accounted for without the prior approval of MSHA.

/s/ Felix A. Quintana

Felix A. Quintana
Administrator for Metal and Nonmetal
Mine Safety and Health