

November 16, 2007
In the matter of
Intrepid Potash NM, LLC
Intrepid Potash East Mine
I.D. No. 29-00170

Petition For Modification

Docket No. M-2007-004-M

PROPOSED Decision and Order

On March 12, 2007, a petition under 30 U.S.C. §811 (e) and 30 C.F.R. part 44 was filed by Intrepid Potash NM, LLC (Intrepid) seeking a modification of the application of 30 C.F.R. § 57.18028 to its Intrepid Potash East Mine located in Carlsbad, Eddy County, New Mexico. The petitioner alleged that the alternative method outlined in the petition would at all times guarantee no less than the same measure of protection for miners as afforded by the standard.

Standard 30 C.F.R. § 57.18028, *Mine emergency and self-rescuer training*, provides in part:

(b) On an annual basis, all persons who go underground shall be instructed in the Mine Safety and Health Administration course contained in Bureau of Mines Instruction Guide 2, "MSA W-65 Self-Rescuer" (March 1972) or Bureau of Mines Instruction Guide 3, "Permissible Drager 810 Respirator for Self-Rescue" (March 1972).

Intrepid proposed in another petition (M-2006-009-M) to require that miners wear 10 minute self contained self-rescue devices (SCSRs) on their belt in tandem with 1-hour SCSRs located within 500 feet or 5 minute walking distance from any miner, whichever is less. That petition was granted on October 29, 2007. The petitioner now requests that the annual instruction required by the standard be provided given for the SCSRs allow in petition in M-2006-009-M in lieu of instruction on self-rescuer devices.

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 and recommendations, this Proposed Decision and Order is issued.

Findings Of Fact And Conclusions Of Law

SCSRs provide more protection from a variety of toxic fumes than self-rescue devices which only provide protection from carbon monoxide exposure. Further, the combined duration of the two rescue devices exceeds that of the 1-hour self-rescuer provided for by the standard. Annual SCSR training will help ensure these devices are used. The petitioner's alternative method outlined in the petition will at all times guarantee no less than the same measure of protection for miners as afforded by the standard.

ORDER

Wherefore, pursuant to the authority delegated by the Secretary of Labor to the Administrator for Metal and Nonmetal Mine Safety and Health and pursuant to § 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. § 57.18028 to the Intrepid Potash East Mine, as it pertains to annual instruction on self-contained self-rescue devices in lieu of filter self-rescuer devices is hereby:

GRANTED, conditioned upon compliance with the following requirement:

1. On an annual basis every underground miner shall be trained in the use, limitations, care, and donning (including transition donning) of self-contained self-rescue devices.

Any party to this action desiring a hearing shall file a request for hearing within 30 days after service of the Proposed Decision and Order, in accordance with 30 C.F.R. Part 44.14, with the Administrator for Metal and Nonmetal 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 and Order. A party other than the petitioner who has requested a hearing shall also comment upon all issues of fact or law presented in the petition. 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, this Proposed Decision and Order will become final and shall be posted by the operator on the mine bulletin board at the mine.

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