

July 8, 2004

In The Matter of
Cotter Corporation
C-JD-9 Mine
Mine I.D. No. 05-03066

PETITION FOR MODIFICATION

Docket No. M-2004-001-M

Background

On January 20, 2004, Cotter Corporation filed a petition for modification of 30 CFR §57.14130(a)(4), roll-over protective structures (ROPS) and seat belts for surface equipment, to petitioner's C-JD-9 Mine, (I.D. No. 05-03066), located in Montrose County, Colorado. The mine is an underground uranium operation using the modified room and pillar method to recover the ore.

The relevant standard 30 CFR §57.14130, Roll-over protective structures (ROPS) and seat belts, (for surface equipment) provides:

- (a) *Equipment included.* Roll-over protective structures (ROPS) and seat belts shall be installed on-----
 - (4) The tractor portion of semi-mounted scrapers, dumpers, water wagons, bottom-dump wagons, rear-dump wagons, and towed fifth wheel attachments;

The Petitioner uses rubber tired diesel Elmac Model D5 and Getman Model 644 five ton haulage trucks to haul the ore from underground to the surface area of the underground mine. The petitioner requests that the underground haulage trucks be allowed limited operation on the surface without rollover protective structures and seat belts.

To support the request the Petitioner states that the haulage trucks normally travel a distance of 100 to 150 feet from the portal to dump the ore near the stockpile area and the haulage trucks while on the surface are not operated on the elevated stockpile or other elevated roadways. On occasion the haulage trucks travel less than 200 feet from the portal to the maintenance shop for maintenance/repairs. Further, there is limited equipment activity where the haul trucks travel and any potential for a roll over resulting from a collision would be eliminated.

The petitioner alleges that the proposed alternative method of operating the haul trucks on flat surfaces where equipment activity is limited instead of

installing ROPS and seat belts on the haulage trucks would provide protection equal to the standard. The petitioner also stated that requiring the use of ROPS on the haulage trucks would result in a diminution of safety to the miners. To support the diminution of safety premise, the haulage trucks are operated in tight quarters and ROPS would have to be installed high enough to allow for operator head room.

On March 16, 2004, MSHA investigators conducted an investigation relevant to the merits of the petition and filed a report of their findings and recommendations 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 Conclusion of Law

30 CFR §57.14130(a)(4) requires that ROPS and seat belts be installed on specific mobile equipment. The petitioner asserts that the ROPS and seat belts are not necessary since the haulage units do not travel on the elevated stockpile, the elevated roadways, and uneven surfaces. There is limited equipment activity where the haulage units travel on the surface. Additionally, petitioner also stated that requiring the use of ROPS on the haulage trucks would result in a diminution of safety to the miners.

However, MSHA believes that the petitioner's mining equipment is exposed to varying terrains and the equipment may be susceptible to a roll-over in level or near level areas under certain conditions depending on the distribution of the load on the equipment. MSHA's investigation determined that the Elmac Model D5 haulage truck was originally provided by the equipment manufacturer with a ROPS, which was removed by the petitioner.

The engineered protections provided by seat belts and roll-over protective structures are designed to provide miners a level of safety to prevent injuries or fatal accidents. The petitioner has not demonstrated that the requested modification would provide equal or greater protection for the miners as compliance with the standard. Further, the petitioner has not shown that the installation of ROPS would be a diminution of safety to the miners.

It is MSHA's position that mobile equipment used at surface areas of underground mines is surface equipment. MSHA promulgated this standard to address a number of serious hazards that can occur when miners operate a piece of mobile equipment on the surface. Although equipment comes from the underground mining area, it is still required to operate on the surface and must

meet all applicable standards when used on surface areas of a mine.

The Secretary's interpretation of the standard requires ROPS and seat belts to be installed on all equipment listed in the standard even if the equipment is used intermittently or for short periods of time on the surface area of an underground mine. The petitioners equipment is listed in subsection (a) (3) of the cited standard as requiring ROPS and a seat belt when operating on the surface of an underground mine. It is immaterial whether the amount of time the equipment is used on the surface is brief in comparison to the amount of time the equipment is used underground.

The alternative method proposed by the petitioner would not at all times guarantee no less than the same measure of protection afforded under the standard.

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., Section 811(c), it is hereby ordered that a modification of the application of 30 CFR §57.14130(a)(4) to Cotter Corporation, as it applies to the alternative method of only operating the haul trucks non elevated roadways and even surfaces instead of installing ROPS and seat belts on the haulage trucks for the C-JD-9 Mine is hereby **DENIED**.

/s/ for Felix Quintana

Robert M. Friend
Administrator for
Metal and Nonmetal Mine Safety and Health