

In The Matter of
Swenson Granite Company, LLC
Swenson Gray Quarry
MSHA ID No. 27-00083

PETITION FOR MODIFICATION

Docket No. M-2006-010-M

PROPOSED DECISION AND ORDER

On July 24, 2006, Swenson Granite Company, LLC, filed a petition for modification of Title 30 Code of Federal Regulations (30 C.F.R.) § 56.19009 for petitioner's Swenson Gray Quarry, (I.D. No. 27-00083), a surface dimension granite stone mine. The mine is located in Merrimack County, New Hampshire.

Essentially, petitioner alleges that application of this standard is infeasible and impractical at this mine. The petitioner also alleges that the alternative method proposed in its petition will at all times guarantee no less the same measure of protection afforded by the standard without unnecessarily exposing persons to hazardous conditions.

On July 25 and 26, 2006, Mine Safety and Health Administration (MSHA) investigators conducted an investigation relevant to the merits of the petition and filed a report of their findings and recommendations with MSHA's 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 CONCLUSION OF LAW

The applicable standard 30 C.F.R. § 56.19009, *Position indicator*, provides:
An accurate and reliable indicator of the position of the cage, skip, bucket, or cars in the shaft shall be provided.

The petitioner alleges that "[t]his standard may have been written for underground mines where there is NO visual contact at all and safety and position indicators rely on limit switches and proximity devices." Petitioner further alleges that "[t]he quarry

floor is not flat and we would need to set men down in many different locations as well as maintain our high walls regarding loose material on a regular basis.”

The petitioner’s alternative method of compliance would consist of their time-proven method of using hand signals, relying on a constant view of the hook and manbox and, if conditions do not allow for good visibility, stopping and waiting for visibility to improve. The petitioner’s hand signal method of compliance relies on hand signals relayed to the hoist operator by a miner at the rim of the quarry who, in turn, receives signals from a miner in the manbox or a miner on the pit floor when lowering and/or stopping the movement of the manbox.

The petitioner’s proposed alternative method of compliance with 30 C.F.R. § 56.19009 does not provide an equivalent level of safety for miners for the following reasons: (a) training procedures for miners involved with hoisting duties have not been developed; (b) a standard code of hoisting hand signals has not been formally established; (c) legible hoisting signal codes have not been posted; and (d) MSHA’s investigation found several safety deficiencies (e.g., high speed fall system not operable, locking mechanism not installed on the hoist drum, audible alarm did not sound when upper and lower angle limits were reached) on the hoist. Further, when hoisting miners, a position indicator, even though redundant, would assist the hoist man in locating the quarry floor which is crucial when lowering miners. In summary, the alternate method proposed by the petitioner would not at all times guarantee no less than the same measure of protection as afforded miners under 30 C.F.R. § 56. 19009. Therefore, on the basis of the petition and the findings of MSHA’s investigative report, Swenson Granite Company, LLC, is not granted a modification of the application of 30 C.F.R. § 56.19009 to its Swenson Gray Quarry.

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 C.F.R. § 56. 19009, as it applies to the alternative method of complying with the requirement to have a position indicator on the hoist at the Swenson Gray Quarry is hereby **DENIED**.

Any party to this action desiring a hearing must file a request for hearing within 30 days after service of the Proposed Decision and Order, in accordance with 30 C.F.R. § 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 must 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