

In the matter of
Newtown Energy, Inc.
Eagle Mine
I.D. No. 46-08759
Coalburg No. 1 Mine
I.D. No. 46-08993
Coalburg No. 2 Mine
I.D. No. 46-09231
Peerless No. 1 Mine
I.D. No. 46-09258
Coalburg No. 3 Mine
I.D. No. 46-09259
Eagle No. 2 Mine
I.D. No. 46-09310

Petition for Modification

Docket No. M-2009-045-C

PROPOSED DECISION AND ORDER

On September 25, 2009, a petition was filed seeking a modification of the application of 30 C.F.R. § 75.1101-1(b) to Petitioner's Eagle and Coalburg No. 2 Mines, located in Kanawha County, West Virginia; and Eagle No. 2, Coalburg No. 3, Peerless No. 1, and Coalburg No. 1 Mines, located in Boone County, West Virginia. The petitioned standard, 30 C.F.R. § 75.1101-1(b) states, in relevant part:

Nozzles attached to the branch lines shall be full cone, corrosion resistant and be 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).

Contaminated mine water systems and corrosion deposits create restrictions which result in reduction or closure of the water spray orifices on fire suppression systems. In order to ensure that the fire system is functional and adequate, a method of visual examination coupled with a measuring mechanism of the residual water pressure would be necessary.

During MSHA's investigation, the Petitioner requested that Eagle No. 2 Mine (I.D. No. 46-09310), Peerless No. 1 Mine (I.D. No. 46-09258), and Coalburg No. 3 Mine (I.D. No. 46-09259) be removed from the petition as these three mines are permitted but have not begun production. As a result, the petition as it relates to these three mines is no longer needed and should be dismissed.

On the basis of the petition and the findings of MSHA's investigation, Newtown Energy, Inc is granted a modification of the application of 30 C.F.R. § 75.1101-1(b) to its Eagle Mine, Coalburg No. 1 Mine and Coalburg No. 2 Mine.

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 Newtown Energy Inc.'s Petition for Modification of the application of 30 C.F.R. § 75.1101-1(b) to its Eagle No. 2 Mine (I.D. No. 46-09310), Peerless No. 1 Mine (I.D. No. 46-09258), and Coalburg No. 3 Mine (I.D. No. 46-09259) is hereby:

DISMISSED.

The requested modification as it applies to the Eagle Mine, Coalburg No. 1 Mine, and Coalburg No. 2 Mine is hereby:

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

1. Once every 7 days, a person trained in the testing procedures specific to the water deluge type fire suppression systems utilized at each belt drive shall:
 - 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. Take residual water pressure measurements at the most hydraulic demanding nozzle to determine whether the system meets the manufacturer's specifications.
 - d. Record the results of the examination, functional test and residual water pressure measurements in a book maintained on the surface for that purpose. The record 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 tests shall be posted at or near each belt drive that utilizes a water deluge fire suppression system.

Within 60 days after this Proposed Decision and Order becomes final, the Petitioner shall submit proposed revisions for its approved 30 CFR 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 and yearly functional test during 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 CFR 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 22209-3939.

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. 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.

Charles J. Thomas
Acting Deputy Administrator for
Coal Mine Safety and Health