

determination was signed on February 17, 2012. The Notice of Determination was published in the **Federal Register** on March 6, 2012 (77 FR 13355).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The negative determination of the TAA petition filed on behalf of workers at the subject firm was based on the findings that the subject firm did not, during the period under investigation, shift to a foreign country production of articles like or directly competitive with the fence boards produced by the workers or acquire such production from a foreign country. Additionally, the findings revealed that the workers' separation, or threat of separation, was not related to any increase in imports, by the subject firm or its customers, of articles like or directly competitive with fence boards; and that the workers' firm is not a supplier or a downstream producer to a firm that employed a group of workers who are eligible to apply for TAA.

In the request for reconsideration, the petitioner stated that worker separations are attributable to increased import competition of articles like or directly competitive with the fence boards produced by the workers, to foreign competition of raw material used in the production of fence boards, and to the Canadian practice of using Bark Beetle affected timber. The documentation supplied by the petitioner included import and export data, news and opinion articles, printed web pages, and a copy of a certification of another fencing company (based on increased imports by that company's major declining customers).

The Department has carefully reviewed the petitioner's allegations and support documentation, as well as previously-submitted information.

The petitioner did not supply facts not previously considered; nor provide additional documentation indicating that there was either (1) a mistake in the determination of facts not previously considered or (2) a misinterpretation of facts or of the law justifying reconsideration of the initial determination. Based on these findings,

the Department determines that 29 CFR 90.18(c) has not been met.

Conclusion

After careful review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 24th day of April 2012.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2012-11056 Filed 5-7-12; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR Part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below to modify the application of existing mandatory safety standards codified in Title 30 of the Code of Federal Regulations.

DATES: All comments on the petitions must be received by the Office of Standards, Regulations and Variances on or before June 7, 2012.

ADDRESSES: You may submit your comments, identified by "docket number" on the subject line, by any of the following methods:

1. *Electronic Mail:* zzMSHA-comments@dol.gov. Include the docket number of the petition in the subject line of the message.

2. *Facsimile:* 202-693-9441.

3. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209-3939, Attention: George F. Triebsch, Director, Office of Standards, Regulations and Variances. Persons delivering documents are required to check in at the receptionist's desk on the 21st floor. Individuals may inspect copies of the petitions and comments

during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

FOR FURTHER INFORMATION CONTACT:

Barbara Barron, Office of Standards, Regulations and Variances at 202-693-9447 (Voice), barron.barbara@dol.gov (Email), or 202-693-9441 (Facsimile). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

(1) An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

(2) That the application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket Number: M-2012-062-C.

Petitioner: Signal Peak Energy, LLC, 100 Portal Drive, Roundup, Montana 59072.

Mine: Bull Mountain Mine No. 1, MSHA I.D. No. 24-01950, 100 Portal Drive, Roundup, Montana 59072, located in Musselshell County, Montana.

Regulation Affected: 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of nonpermissible electronic testing or diagnostic equipment in or in by the last open crosscut. The equipment includes laptop computers, oscilloscopes, vibration analysis machines, cable fault detectors, point temperature probes, infrared temperature devices, insulation testers (meggers), voltage, current, and power measurement devices, signal analyzer devices, ultrasonic thickness gauges, electronic component testers, electronic tachometers, total stations,

laser distance meters, 36-volt battery drills, and data collectors. Other testing and diagnostic equipment may be used if approved in advance by MSHA's District Office. The petitioner states that:

(1) All other test and diagnostic equipment used in or inby the last open crosscut will be permissible.

(2) All nonpermissible testing and diagnostic equipment used in or inby the last open crosscut will be examined by a qualified person, as defined in 30 CFR 75.153, prior to use to ensure that the equipment is being maintained in a safe operating condition. The results of the examinations will be recorded in the weekly examination book and will be made available to an authorized representative of the Secretary and miners at the mine.

(3) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible electronic test and diagnostic equipment in or inby the last open crosscut.

(4) Nonpermissible electronic testing and diagnostic equipment will not be used if methane is detected in concentrations at or above 1.0 percent. When 1.0 percent or more of methane is detected while the nonpermissible electronic equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment will be withdrawn to outby the last open crosscut.

(5) All hand-held methane detectors will be MSHA approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(6) Except for time necessary to troubleshoot under actual mining conditions, coal production in the section will cease. However, coal may remain in or on the equipment to test and diagnose the equipment under "load."

(7) Nonpermissible electronic test and diagnostic equipment will not be used to test equipment when float coal dust is in suspension.

(8) All electronic test and diagnostic equipment will be used in accordance with the manufacturer's recommended safe use procedures.

(9) Qualified personnel who use electronic test and diagnostic equipment will be properly trained to recognize the hazards and limitations associated with the use of electronic test diagnostic equipment.

(10) Any piece of equipment subject to this petition will not be put in service until MSHA has initially inspected the equipment.

(11) Within 60 days after this Proposed Decision and Order becomes

final, the petitioner will submit proposed revisions for its approved 30 CFR Part 48 training plan to the District Manager. In addition to the requirements specified in this petition, these proposed revisions will specify initial and refresher training regarding the terms and conditions stated in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

Docket Number: M-2012-063-C.

Petitioner: Sebree Mining, LLC, 2668 State Route 120E, Providence, Kentucky 42450.

Mine: Sebree Mine, MSHA I.D. No. 15-19264, located in Webster County, Kentucky.

Regulation Affected: 30 CFR 75.1700 (Oil and gas wells).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance for leaving barrier pillars around oil and gas wells. The petitioner proposes to mine through oil and gas wells in all mineable coalbeds. As alternative to leaving 300-foot coal barriers, the petitioner proposes the following terms and conditions:

The petitioner proposes to use the following procedures for cleaning out, preparing, plugging, and replugging oil and gas wells:

(1) A diligent effort will be made to completely clean out the well from the surface to at least 100 feet below the base of the lowest mineable coal seam. A diligent effort will be made to remove all material from the entire diameter of the well, wall to wall, with the exception of clearly defined surface casing.

(2) For each well, a diligent effort will be made to prepare down-hole logs for each well that will consist of a caliper survey and log(s) suitable for determining the top, bottom, and thickness of all coal seams. A down-hole camera survey may be used in lieu of down-hole logs.

(3) If it is not possible to remove all the casing, appropriate steps will be taken to ensure the annulus between the casing and the well walls are filled with expanding cement and contain no voids. If the casing cannot be removed, it will be cut or milled at all minable coal seams. Perforations or rips will be made 50 feet above and below the coal seams. If determined by the use of a casing bond log that the annulus at the coal seams to be mined are already adequately sealed with cement, then

perforating or ripping will not be required.

(4) If the cleaned-out well produces gas, or the uppermost hydrocarbon-producing stratum is within 500 feet of the lowest minable coal seam, either a mechanical bridge plug or a cal-seal plug will be placed in competent stratum 100 feet below the lowest minable coal seam, but above the top of the uppermost hydrocarbon-producing stratum. If it is not possible to set a mechanical bridge plug, an appropriately sized packer may be used.

The petitioner proposes to use the following procedures for plugging or replugging oil and gas wells to the surface:

(1) Expanding slurry cement will be pumped down the well to form a plug that runs from at least 100 feet below the base of the lowest minable coal seam to the surface.

(2) Portland cement or a lightweight cement mixture may be used to fill the area from 100 feet above the top of the uppermost minable coal seam to the surface.

(3) Steel turnings or other magnetic particles will be embedded in the top of the cement near the surface or, if the surface casing is present, it can be used to serve as a permanent magnetic monument of the well.

(4) If the hole cannot be marked with a physical monument (i.e., prime farmland), high resolution GPS coordinates will be used.

The petitioner proposes to use the following procedures after approval has been granted by the District Manager to mine within the safety barrier or to mine through a plugged or replugged well:

(1) A representative of the operator, a representative of the Kentucky OMSL, or the MSHA District Manager may request that a conference be conducted prior to mining through a plugged well. The purpose of the conference will be to review, evaluate, and accommodate any abnormal or unusual circumstances related to the condition of the well or surrounding strata when such conditions are encountered.

(2) The District Manager will be notified at least a week prior to mining through a well to provide an opportunity to have an MSHA representative present.

(3) When using continuous mining methods, drivage sights will be installed at the last open crosscut near the place to be mined to ensure intersection of the well. The drivage sights will not be more than 100 feet from the well.

(4) Firefighting equipment, including fire extinguishers, rock dust, and sufficient fire hose to reach the working

face area will be available. The fire hose will be located near the working face.

(5) Sufficient supplies of roof support and ventilation materials will be available and located near the working face. In addition, an emergency plug and/or plugs will be available within the immediate area of the well intersection.

(6) Equipment involved in mining through the well will be checked for permissibility and serviced on the maintenance shift prior to mining through the well. The methane monitor on the continuous mining machine involved in mining through the well will also be calibrated on the maintenance shift prior to mining through the well.

(7) When mining is in progress, tests for methane will be made with a hand-held methane detector at least every 10 minutes, from the time that mining with the continuous mining machine is within 30 feet of the well until the well is intersected, and immediately prior to mining through. During the actual cutting-through process, no individual will be allowed on the return side until mining-through has been completed and the area has been examined and declared safe.

(8) The working area will be free from accumulations of coal dust and coal spillages, and rock dust will be placed on the roof, rib, and floor to within 20 feet of the face when mining through the well.

(9) When the well is intersected, all equipment will be deenergized and the place thoroughly examined and determined safe before mining is resumed.

(10) Any casing will be removed and no open flame will be permitted in the area until adequate ventilation has been established around the well.

(11) After a well has been intersected and the working place determined safe, mining will continue in by the well at a distance sufficient to permit adequate ventilation around the area of the well.

(12) No person will be permitted in the area of the mining-through operation except those actually engaged in the operation, company personnel, personnel from MSHA, and personnel from the Kentucky OMSL.

(13) The mining-through operation will be under the direct supervision of a certified individual. Instructions concerning the mining-through operation will be issued only by the certified individual in charge. MSHA personnel may interrupt or halt the mining through operation when necessary for the safety of the miners.

(14) Within 30 days after this Order becomes final, the petitioner will submit

proposed revisions for its approved mine emergency evacuation and firefighting plan required by 30 CFR 75.1501. The petitioner will revise the plans to include the hazards and evacuation procedures to be used for well intersections.

The petitioner further states that this petition will apply to all types of mining (conventional, continuous, and longwall) and asserts that the proposed alternative method will at all times provide a measure of protection no less than that of the existing standard.

Docket Number: M-2012-064-C.

Petitioner: Lone Mountain Processing, Inc., Drawer C, St. Charles, Virginia 24282.

Mine: Mine No. 1, MSHA I.D. No. 15-18734, Route 636 Benedict Road, St. Charles, Virginia 24282, located in Harlan County, Kentucky.

Regulation Affected: 30 CFR 75.208 (Warning devices).

Modification Request: The petitioner requests a modification of the existing standard to permit a readily visible warning to be posted at the second row of permanent roof support outby unsupported roof or a physical barrier to be installed to impede travel beyond permanent support, except during the installation of roof supports. The petitioner states that:

(1) The Kentucky Office of Mine Safety and Licensing requires "a warning device to be installed on the second row of permanent roof support outby unsupported roof."

(2) MSHA's approved Precautions for Remote Control Operation of Continuous Mining Machines states that "While using remote controls, the continuous mining machine operator and all other persons will position themselves no closer than the second 'full row' of installed roof bolts outby the face."

(3) This petition is necessary to improve safety and to attain commonality between State and Federal regulations.

(4) Safety increases when the distance an employee keeps from unsupported roof increases.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

Docket Number: M-2012-065-C.

Petitioner: ICG Tygart Valley, LLC, 1200 Tygart Drive, Grafton, West Virginia 26354.

Mine: Tygart #1 Mine, MSHA I.D. No. 46-09192, located in Taylor County, West Virginia.

Regulation Affected: 30 CFR 75.1700 (Oil and gas wells).

Modification Request: The petitioner requests a modification of the existing standard requiring that barriers be established and maintained around oil and gas wells penetrating coalbeds or underground areas of coal mines to permit an alternative method of compliance. The petitioner states that:

(1) The mine is projected to encounter vertical in-seam boreholes, typical to oil and natural gas wells, as mine development progresses.

(2) The active development section is approaching these boreholes, and is projected to encounter additional boreholes in the future as mining operations continue.

(3) The procedure presented in this petition will be used to ensure that mining through these boreholes is accomplished safely and, as an alternative to compliance with 30 CFR 75.1700, will provide no less than the same measure of protection to the miners, as required by the MSHA standard.

The petitioner proposes to use the following procedures when plugging oil or gas wells:

(1) Prior to plugging an oil or gas well, a diligent effort will be made to clean the borehole to the original total depth. If this depth cannot be reached, the borehole will be cleaned out to a depth that would permit the placement of at least 200 feet of expanding cement below the base of the lowest minable coal bed.

(2) When cleaning the borehole, a diligent effort will be made to remove all of the casing in the borehole. If it is not possible to remove all of the casing, the casing that remains will be perforated or ripped at intervals spaced close enough to permit expanding cement slurry to infiltrate the annulus between the casing and the borehole wall for a distance of at least 200 feet below the base of the lowest minable coal bed.

(3) If the cleaned-out borehole produces gas, a mechanical bridge plug will be placed in the borehole in a competent stratum at least 200 feet below the base of the lowest minable coal bed, but above the top of the uppermost hydrocarbon-producing stratum. If it is not possible to set a mechanical bridge plug, a substantial brush plug may be used in its place.

The District Manager may allow the use of other effective methods of stopping any and all gas flow emitting from the wellbore before placement of cement through the minable coal seam(s). Such approval will be documented in a written response to the operators' submittal of a detailed explanation of the method to be used

and an engineering evaluation of the relative effectiveness of the alternative.

(4) A suite of logs will be made, consisting of a caliper survey, directional deviation survey, and log(s) suitable for determining the top and bottom of the lowest minable coal bed and potential hydrocarbon-producing strata and the location for the bridge plug.

(5) If the uppermost hydrocarbon-producing stratum is within 200 feet of the base of the lowest minable coal bed, properly placed mechanical bridge plugs or a suitable brush plug described in paragraph (3) above will be used to isolate the hydrocarbon-producing stratum from the expanding cement plug. Nevertheless, a minimum of 200 feet of expanding cement will be placed below the lowest minable coal bed.

(6) The wellbore will be completely filled and circulated with a gel that inhibits any flow of gas, supports the walls of the borehole, and increases the density of the expanding cement. This gel will be pumped through open-end tubing run to a point approximately 20 feet above the bottom of the cleaned out area of the borehole or bridge plug.

The petitioner proposes to use the following procedures when plugging gas and oil wells to the surface:

(1) A cement plug will be set in the wellbore by pumping expanding cement slurry down the tubing to displace the gel and fill the borehole to the surface. As an alternative, the cement slurry may be pumped down the tubing so that the borehole is filled. There will be at least 200 feet of expanding cement below the base of the lowest minable coal bed.

(2) A marker conforming to the requirements of the state regulatory authority will be installed at the borehole, or a small quantity of steel turnings or other small magnetic particles will be embedded in the top of the cement near the surface. The method used will be suitable to serve as a permanent magnetic monument of the borehole.

The following procedures will be used for the vent pipe method for plugging oil and gas wells:

(1) A 4½-inch or larger pipe will be run into the wellbore to a depth of 100 feet below the lowest minable coal bed and wedged to a smaller diameter pipe that, if desired, will extend to a point approximately 20 feet above the bottom of the cleaned-out area of the borehole or bridge plug.

(2) A cement plug will be set in the wellbore by pumping expanding cement slurry, Portland cement, or a Portland cement-fly ash mixture down the tubing to displace the gel so that the borehole is filled with cement. The borehole and

the vent pipe will be filled with expanding cement for a minimum of 200 feet below the base of the lowest minable coal bed. The top of the expanding cement will extend upward to a point approximately 100 feet above the top of the lowest minable coal bed.

(3) All fluid will be evacuated from the vent pipe to facilitate testing for gases. During the evacuation of fluid, the expanding cement will not be disturbed.

(4) The top of the vent pipe will be protected to prevent liquids or solids from entering the wellbore, but permit ready access to the full internal diameter of the vent pipe when necessary.

The petitioner proposes to use the following procedures when plugging oil or gas wells for subsequent use as degasification boreholes:

(1) A cement plug will be set in the wellbore by pumping expanding cement slurry down the tubing to displace the gel and provide at least 200 feet of expanding cement below the lowest minable coal bed. The top of the expanding cement will extend upward to a point above the top of the coal bed being mined. This distance will be based on the average height of the roof strata breakage for the mine.

(2) To facilitate methane drainage, degasification casing of suitable diameter, slotted or perforated throughout its lower 150 to 200 feet, will be set in the borehole to a point 10 to 30 feet above the top of the expanding cement.

(3) The annulus between the degasification casing and the borehole wall will be cemented from a point immediately above the slots or perforations to the surface.

(4) The degasification casing will be cleaned out for its total length.

(5) The top of the degasification casing will be fitted with a wellhead equipped as required by the District Manager. Such equipment may include check valves, shut-in valves, sampling port, flame arrestor equipment, and security fencing.

The following alternative procedures for preparing and plugging oil and gas wells will apply to wells that the petitioner and the District Manager agree cannot be completely cleaned out due to damage to the well caused by subsidence, caving, or other factors; as determined by the petitioner and agreed to by the District Manager. These provisions will apply unless alternative measures are agreed upon and based upon a plan submitted to the District Manager:

(1) The petitioner will drill a hole adjacent and parallel to the well to a

depth of at least 200 feet below the lowest minable coal seam.

(2) The petitioner will use a geophysical sensing device to locate any casing that may remain in the well.

(3) If the well contains casing(s), the petitioner will drill into the well from the parallel hole. From 10 feet below the coal seam to 10 feet above the coal seam, the petitioner will perforate or rip all casings at intervals of at least 5 feet. Beyond this distance, the petitioner will perforate or rip at least every 50 feet from at least 200 feet below the base of the lowest minable coal seam up to 100 feet above the seam being mined. The petitioner will fill the annulus between the casing, and between the casings and the well wall with expanding cement (minimum 0.5 percent expansion upon setting), and will ensure that these areas contain no voids. If the petitioner, using a casing bond log, can demonstrate to the satisfaction of the District Manager that the annulus of the well is adequately sealed with cement, then the petitioner will not be required to perforate or rip the casing for that particular well or fill these areas with cement. When multiple casing and tubing strings are present in the coal horizon(s), any casing that remains will be ripped or perforated and filled with expanding cement as indicated above. An acceptable casing bond log for each casing and tubing string is needed if used in lieu of ripping or perforating multiple strings.

(4) Where the petitioner determines and the District Manager agrees that there is insufficient casing in the well to allow the method outlined in paragraph (3) above to be used, then the petitioner will use a horizontal hydraulic fracturing technique to intercept the original well. From at least 200 feet below the base of the lowest minable coal seam to a point at least 50 feet above the seam being mined, the petitioner will fracture at least six places at intervals to be agreed upon by the petitioner and the District Manager after considering the geological strata and the pressure within the well. The petitioner will then pump expanding cement into the fractured well in sufficient quantities and in a manner that fills all intercepted voids.

(5) The petitioner will prepare down-hole logs for each well. The logs will consist of a caliper survey and log(s) suitable for determining the top, bottom, and thickness of all coal seams and potential hydrocarbon-producing strata and the location for the bridge plug. The petitioner may obtain the logs from the adjacent hole rather than the well if the condition of the well makes it impractical to insert the equipment

necessary to obtain the log. The District Manager may approve the use of a down-hole camera survey in lieu of down-hole logs if, in his or her judgment, such logs would not be suitable for obtaining the data or are impractical to obtain due to the condition of the drill hole. A journal will be maintained describing the length and type material used to plug the well; the length of casing(s) removed, perforated, or ripped or left in place; and other pertinent information concerning sealing the well.

(6) After the petitioner has plugged the well, the petitioner will plug the open portions of both holes from the bottom to the surface with Portland cement or a lightweight cement mixture. The petitioner will embed steel turnings or other small magnetic particles in the top of the cement near the surface to serve as a permanent magnetic monument of the well. In the alternative, a 4½-inch or larger casing set in cement will extend at least 36 inches above the ground level. A combination of the methods outlined in paragraph (3) and (4) above may have to be used in a single well, depending upon the conditions of the hole and the presence of casings. The petitioner and the District Manager may discuss the nature of each hole and the District Manager may require the use of more than one method.

The petitioner proposes to use the following cut-through procedures whenever the safety barrier diameter is reduced to a distance less than the District Manager would approve pursuant to § 75.1700 or the petitioner proceeds with an intent to cut through a plugged well:

(1) Prior to reducing the safety barrier to a distance less than the District Manager would approve or proceeding with intent to cut through a plugged well, the petitioner will notify the District Manager.

(2) Mining in close proximity to or through a plugged well will be done on a shift approved by the District Manager.

(3) The District Manager, a representative of the miners, and the appropriate States agency will be notified by the operator in sufficient time prior to the mining-through operation to provide an opportunity for them to have a representative present.

(4) When using continuous mining equipment, drivage sights will be installed at the last open crosscut near the place to be mined to ensure intersection of the well. The drivage sights will not be more than 50 feet from the well. When using longwall mining methods, drivage sights will be installed

on 10-foot centers for a distance of 50 feet in advance of the well bore. The drivage sights will be installed in the headgate and tailgate.

(5) Firefighting equipment, including fire extinguishers, rock dust, and sufficient fire hose to reach the working face area of the mining-through will be available when either the conventional or continuous mining method is used. The fire hose will be located in the last open crosscut of the entry or room. All fire hoses will be ready for operation during the mining-through.

(6) Sufficient supplies of roof support and ventilation materials will be available and located at the last open crosscut. In addition, an emergency plug and/or plugs will be available in the immediate area of the cut-through.

(7) The quantity of air required by the approved mine ventilation plan, but not less than 6,000 cubic feet per minute (cfm) of air for scrubber-equipped continuous miners or not less than 9,000 cfm for continuous miner sections using auxiliary fans or line brattice only, will be used to ventilate the working face during the mining-through operation. The quantity of air required by the ventilation plan, but not less than 30,000 cfm, will reach the working face of each longwall during the mining-through operation.

(8) Equipment will be checked for permissibility and serviced on the shift prior to mining-through the well. The methane monitors on the continuous mining machine or the longwall shear and face will be calibrated on the shift prior to mining through the well.

(9) When mining is in progress, tests for methane will be made with a hand-held methane detector at least every 10 minutes from the time that mining with the continuous mining machine is within 30 feet of the well until the well is intersected and immediately prior to mining through. When mining with longwall mining equipment, tests for methane will be made at least every 10 minutes when the longwall face is within 10 feet of the well. During the actual cutting-through process, no individual will be allowed on the return side until mining through has been completed and the area has been examined and declared safe.

(10) When using continuous mining methods, the working area will be free from accumulations of coal dust and coal spillages, and rock dust will be placed on the roof, rib, and floor to within 20 feet of the face when mining through or near the well on the shift or shifts during which the cut-through will occur. On longwall sections, rock-dusting will be conducted and placed

on the roof, rib, and floor up to both headgate and tailgate gob.

(11) When the wellbore is intersected, all equipment will be deenergized and the area thoroughly examined and determined safe before mining is resumed. Any well casing will be removed and no open flame will be permitted in the area until adequate ventilation has been established around the wellbore.

(12) After a well has been intersected and the working area determined safe, mining will continue in by the well at a distance sufficient to permit adequate ventilation around the area of the wellbore.

(13) No person will be permitted in the area of the mining-through operation except those actually engaged in the operation, company personnel, representatives of the miners, personnel from MSHA, and personnel from the appropriate State agency.

(14) The mining-through operation will be under the direct supervision of a certified official. Instructions concerning the mining-through operation will be issued only by the certified official in charge. MSHA personnel may interrupt or halt the mining-through operation when necessary for the safety of the miners.

(15) The petitioner will file a plugging affidavit setting forth the persons who participated in the work, a description of the plugging work, and a certification by the petitioner that the well has been plugged as described.

(16) Within 60 days after the Proposed Decision and Order (PDO) becomes final, the petitioner will submit proposed revisions for its approved 30 CFR Part 48 training plan to the District Manager. The provisions will include initial and refresher training regarding compliance with the terms and conditions stated in the PDO.

The petitioner asserts that the proposed alternative method will at all times guarantee miners no less than the same measure of protection as afforded by the existing standard.

Docket Number: M-2012-002-M.

Petitioner: Hecla Greens Creek Mining Company, P.O. Box 32199, Juneau, Alaska 99803.

Mine: Greens Creek Mine, MSHA I.D. No. 50-01267, located in Juneau County, Alaska.

Regulation Affected: 30 CFR 57.14130 (Roll-over protective structures (ROPS) and seat belts for surface equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit employees to be transported 1,600 feet to and from the surface dry facility to work sites underground using underground mine

tractors, due to the increase in injuries from slips, trips, and falls, and an increase of human-to-bear encounters. The petitioner states that:

(1) It is common practice at many U.S. mines to transport personnel from surface dry facilities to work sites underground with tractors equipped with rear man-baskets for standing passengers, fender seats with seat belts, a driver's seat with seat belts, and ROPS designed to protect the driver. The tractors are used because they have more robust drivelines and braking systems and are elevated to better handle underground conditions.

(2) At Greens Creek Mine, the route between the dry area (miner shower facilities and meeting area) and the mine portal is flat, and the entire 1,600-foot distance is surfaced with cement and protected by guardrails with a posted speed limit of 10 miles per hour or less depending on road conditions.

(3) The tractors used at Greens Creek Mine are equipped with ROPS designed for the driver only and are fitted with manufactured rear baskets to accommodate standing riders. Some of the tractors also have fender seats. All seats are equipped with seat belts and seat belt use is mandatory.

(4) Since becoming aware of a citation given to a neighboring mine, the petitioner asserts that they have been proactive in complying with § 57.14130. However, the petitioner believes that this compliance has proven to be harmful to employees as they have seen an increase of slips, trips, and falls during the winter months with snow and ice accumulations. Employees have also been placed at risk during the spring and summer months because of the large population of brown bears that inhabit the Greens Creek mine site. Admiralty Island, where the Greens Creek mine is located, has a larger brown bear population per square mile than any other location in the world. Wildlife biologist estimates suggest a brown bear population of 2.34 bears per square mile on Admiralty Island.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M-2012-003-M.

Petitioner: Minnesota Mining and Manufacturing, 144 Rosecrans Street, Wausau, Wisconsin 54401.

Mine: 3M Wausau Mine, MSHA I.D. No. 47-02918; Graystone Plant, MSHA I.D. No. 47-00119, 144 Rosecrans Street, Wausau, Wisconsin 54401, located in Marathon County, Wisconsin.

Regulation Affected: 30 CFR 56.13020 (Use of compressed air).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of clothes cleaning booths at the Wausau Mine and Graystone Plant. The petitioner proposes to implement a clothes cleaning booth process that has been jointly developed with and successfully tested by the National Institute for Occupational Safety and Health (NIOSH). That process uses controlled compressed air for cleaning miners' dust-laden clothing. The petitioner states that:

(1) Data has been obtained from NIOSH that has determined that contaminated worker clothing can be a major contributor to increased employee dust exposure.

(2) The clothes cleaning process uses a regulated compressed air nozzle manifold at ≤ 30 pounds per square inch (psig) to blow dust from a worker's clothing. The process is performed in an enclosed booth, capturing the dust and then delivering it to a stack located outside of the plant.

(3) The booth is under negative pressure, with air moving downward, away from the worker's breathing zone and, therefore, no dust escapes to contaminate the work environment or other workers.

(4) The worker entering the booth is required to wear full-seal eye goggles, hearing protection, and a half-mask respirator. No significant safety or health concerns have been identified because the eyes are protected by full-seal goggles, the skin is protected by work clothes, hearing is protected by ear plugs or muffs, the lungs are protected by a respirator, and air is limited to 30 psig, which is the Occupational Safety and Health Administration's limit for cleaning purposes.

(5) Air monitoring has shown minimal to no respirable dust contamination inside the respirator during this process. The testing also showed no increase in respirable dust levels anywhere inside the plant.

(6) The engineering controls and mandatory personal protective equipment associated with this NIOSH-tested clothes cleaning process will afford miners a more effective clothes cleaning method. This will provide a direct reduction of miners' exposures to respirable crystalline silica dust, thus reducing their health risks while providing no less a degree of safety than that provided by the standard.

The petitioner further states that the following provisions will be provided if this petition is approved:

(1) Only miners trained in the operation of the NIOSH-tested clothes cleaning booth process will be

permitted to use the clothes cleaning process.

(2) The petitioner will incorporate clothes cleaning booth process training in its Part 46 training plan.

(3) In lieu of 30 CFR 56.13020, whereby compressed air is not permitted to be directed towards a person, all miners entering the NIOSH-tested clothes cleaning booth process will be required to wear full-seal goggles for eye protection, ear plugs or muffs for hearing protection, and fit-tested respirators for respiratory protection.

(4) The NIOSH-tested clothes cleaning booth process will have a caution sign, conspicuously posted, indicating that the use of respiratory protection, hearing protection, and safety goggles are required before entering the booth.

(5) The air pressure through the spray manifold will be limited to 30 psig. The air spray manifold will consist of 2-foot square, $\frac{1}{4}$ -inch hot rolled steel tubing, capped at the base, actuated by an electrically controlled ball valve at the top, providing a yield strength safety factor of more than 20 when compared to the 30 psig operating pressure.

(6) The air spray manifold will contain 27 total nozzles of which 26 will be Spraying Systems Co. Nozzle No. AA727-23, 18.4 SCFM @ 30 psig. The 27th and lowermost nozzle will be Spraying Systems Co. Nozzle No. AA707-23, 19.2 SCFM @ 30 psig.

(7) The uppermost spray nozzle will be located at a height of not more than 56 inches. This places the nozzle height at shoulder height for the 50th percentile male U.S. worker according to "Ergonomics—How to Design for Ease and Efficiency," 2nd Edition, Kroemer, K.H., Kroemer, H.B., Kroemer, Elbert, K.D., Prentice Hall, NJ, 2001. Those miners with a shoulder height less than the 50th percentile male will use the mechanical air spray deflector, which is quick, effective, and easy to use.

(8) Spray nozzles have been recessed into the manifold, which is designed to eliminate the possibility of incidental contact with the air nozzles during use of the clothes cleaning process.

(9) Airflow through the manifold during the cleaning cycle will occur only if the measured differential pressure on the exhaust system and pressure on the main air line are within proper operating ranges. If at any time either the differential pressure or line pressure falls outside preset limits, the cleaning cycle will automatically stop via an electrical interlock system.

(10) The NIOSH-tested clothes cleaning booth is permanently ducted to the outside of the plant. Airflow through the clothes cleaning booth will be

sufficient to maintain negative pressure during use of the clothes cleaning system to prevent contamination of the environment outside of the booth.

(11) The air receiver tank supplying air to the manifold system will be of sufficient volume to permit not less than 20 seconds of continuous cleaning time. Airflow through the booth will be in the downward direction, thereby moving contaminants away from the miners' breathing zone. Miners entering the NIOSH-tested clothes cleaning booth will perform regular user checks, examining the valves and nozzle for damage or malfunction and ensuring that the door is fully closed before opening the air valve.

(12) The petitioner will ensure that periodic maintenance checks are performed in accordance with the NIOSH recommendations contained within the "Clothes Cleaning Process Instruction Manual."

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Dated: May 3, 2012.

George F. Triebsch,

Director, Office of Standards, Regulations and Variances.

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR Part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below to modify the application of existing mandatory safety standards codified in Title 30 of the Code of Federal Regulations.

DATES: All comments on the petitions must be received by the Office of Standards, Regulations and Variances on or before June 7, 2012.

ADDRESSES: You may submit your comments, identified by "docket number" on the subject line, by any of the following methods:

1. *Electronic Mail:* zzMSHA-comments@dol.gov. Include the docket number of the petition in the subject line of the message.

2. *Facsimile:* 202-693-9441.

3. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209-3939, Attention: George F. Triebsch, Director, Office of Standards, Regulations and Variances. Persons delivering documents are required to check in at the receptionist's desk on the 21st floor. Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

FOR FURTHER INFORMATION CONTACT:

Barbara Barron, Office of Standards, Regulations and Variances at 202-693-9447 (Voice), barron.barbara@dol.gov (Email), or 202-693-9441 (Facsimile). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

(1) An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

(2) That the application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket Number: M-2012-066-C.

Petitioner: Perry County Coal Corporation, 1845 S. KY Hwy. 15, Hazard, Kentucky 41701.

Mine: E3-1 Mine, MSHA I.D. No. 15-18662; E4-1 Mine, MSHA I.D. No. 15-18565; and E4-2 Mine, MSHA I.D. No. 15-19015, located in Perry County, Kentucky.

Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

Modification Request: The petitioner requests a modification of the existing

standard to permit the use of battery-powered nonpermissible surveying equipment in and inby the last open crosscut, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and laptop computers. The petitioner proposes to use up-to-date, practical, and accurate technology in the preparation of mine maps to ensure the safety of the miners by providing proper and accurate mining directional control in the mine. The petitioner states that:

(1) Underground mining, by its nature, size, and complexity, and the relative closeness to other abandoned mines, gas/oil wells, and other features, requires that accurate and precise measurements be completed in a prompt and efficient manner. The use of currently available non-electronic equipment is less accurate and less dependable than the available electronic equipment and requires more exposure of surveyors to hazardous mining environments.

(2) Application of the existing standard will result in a diminution of safety to the miners.

(3) As an alternative method, the petitioner will examine all nonpermissible electronic surveying equipment to ensure that the equipment is being maintained in a safe operating condition prior to use in or inby the last open crosscut. The petitioner will have a qualified person, as defined in 30 CFR 75.153, to examine the equipment at intervals not to exceed 7 days. Results of the examinations will be recorded in the weekly examination of electrical equipment book. The examinations will include:

(i) Checking the instrument for any physical damage and the integrity of the case;

(ii) Removing the battery and inspecting for corrosion and damage;

(iii) Inspecting the contact points to ensure a secure connection to the battery;

(iv) Reinserting the battery and powering up and shutting down the instrument to ensure proper connections; and

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(4) A qualified person, as defined in 30 CFR 75.151, will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in or inby the last open crosscut or in the return.

(5) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above 1.0 percent. When 1.0 percent or more