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Issue Date: 07 May 2014

CASE NO: 2010-MSA-1

In the Matter of:

PARKWOOD RESOURCES,
Petitioner

v.

MINE SAFETY & HEALTH ADMINISTRATION (MSHA),
Party Opposing Petition

CASE NOS: 2011-MSA-2
2011-MSA-11
2011-MSA-12

In the Matter of:

ROSEBUD MINING COMPANY,
Petitioner

v.

MINE SAFETY & HEALTH ADMINISTRATION (MSHA),
Party Opposing Petition

DECISION APPROVING SETTLEMENT and ORDER OF DISMISSAL

This proceeding arises from identical modification petitions filed by Parkwood Resources (“Parkwood”) and Rosebud Mining Co. (“Rosebud”) with the Mine Safety and Health Administration (“MSHA”) requesting a modification of the application of 30 C.F.R. §§ 75.507-1(a) and 75.500(d) to fifteen underground coal mines located in Pennsylvania¹, pursuant to 30 U.S.C. § 101(c) and 30 C.F.R. § 44.13. Thirty C.F.R. § 75.507-1(a) states:

(a) All electric equipment, other than power-connection points, used in return air outby the last open crosscut in any coal mine shall be permissible except as provided in paragraphs (b) and (c) of this section.

¹ The Petitions were filed for the following Pennsylvania mines: Cherry Tree; Twin Rocks; Dutch Run; Tracy Lynne; Tom’s Run; Penfield; Mine 78; Lowry; Logansport; Little Toby; Heilwood; Darmac No. 2; Clementine; Beaver Valley; and Brush Valley.

Thirty C.F.R. § 75.500(d) states:

On and after March 30, 1971:

- (a) All junction or distribution boxes used for making multiple power connections inby the last open crosscut shall be permissible;
- (b) All handheld electric drills, blower and exhaust fans, electric pumps, and such other low horsepower electric face equipment as the Secretary may designate on or before May 30, 1970, which are taken into or used inby the last open crosscut of any coal mine shall be permissible;
- (c) All electric face equipment which is taken into or used inby the last open crosscut of any coal mine classified under any provision of law as gassy prior to March 30, 1970, shall be permissible; and
- (d) All other electric face equipment which is taken into or used inby the last crosscut of any coal mine, except a coal mine referred to in §75.501, which has not been classified under any provision of law as a gassy mine prior to March 30, 1970, shall be permissible.

The cases were consolidated by Order dated February 17, 2011. On March 29, 2011, Deputy Administrator Charles J. Thomas issued a Proposed Decision and Order denying Petitioner's requests for modification finding that the proposed alternative method would not guarantee, at all times, no less than the same measure of protection as the safety standard. On April 15, 2011, Petitioner requested a hearing on the March 29, 2011 Proposed Decision and Order.

The cases were assigned to the Honorable Administrative Law Judge Michael Lesniak. Hearings were held on September 13, 2011 through September 15, 2011, August 27, 2012 through August 29, 2012 and November 6, 2012. On April 11, 2013, ALJ Lesniak issued a Decision and Order granting Petitioner's request for modification and finding that their proposed alternative method would at all times guarantee no less than the same measure of protection afforded by the mandatory safety standard, as modified and supplemented by additional conditions of use. MSHA timely appealed ALJ Lesniak's decision to the Assistant Secretary of Labor for Mine Safety and Health ("Assistant Secretary").

On November 14, 2013, the Assistant Secretary issued a Decision and Order affirming the Decision and Order of ALJ Lesniak granting the Petitioner's modification petitions subject to modified and supplemented conditions. Thereafter, Petitioner's submitted a motion to remand the matter to the OALJ for further hearing and findings on two conditions of use contained in the Assistant Secretary's Order. On December 5, 2013, the Assistant Secretary issued a limited Order of Remand Regarding Conditions of Use Nos. 7 and 19 because the record did not contain specific evidence concerning those two new conditions of use.

The remanded case was assigned to the undersigned on December 13, 2013 and the matter was scheduled for a hearing on May 5 and 6, 2014 in Pittsburgh, Pennsylvania.

Thirty C.F.R. § 44.27 states:

(c) *Submission.* On or before expiration of the time granted for negotiations, the parties or their counsel may:

(1) Submit the proposed agreement to the Chief Administrative Law Judge or presiding administrative law judge, as appropriate, for his consideration; or

(2) Inform the Chief Administrative Law Judge or presiding administrative law judge, as appropriate, that agreement cannot be reached.

On April 28, 2014, MSHA submitted a Pre-Hearing Report in which it indicated that a settlement was anticipated. On May 1, 2014, the parties resolved their dispute and submitted an agreement containing consent findings, in accordance with 30 C.F.R. § 44.27.² The original agreements have been included in the record and are incorporated by reference herein.

Thirty C.F.R. § 44.27 further states:

(d) *Disposition.* In the event an agreement containing consent findings and rule or order is submitted within the time allowed, the Chief Administrative Law Judge or presiding administrative law judge, as appropriate, may accept the agreement by issuing his decision based upon the agreed findings.

The agreement has been carefully examined by the undersigned and it is approved based upon the agreed findings therein. The Petition for Modification of the application of 30 C.F.R. §§ 75.507-1(a) and 75.500(d) is granted, subject to the terms and conditions set forth in the parties' Consent Order.

² Thirty C.F.R. § 44.27(b) states that –

(b) *Contents.* Any agreement containing consent findings and rule or order disposing of a proceeding shall also provide:

(1) That the rule or order shall have the same effect as if made after a full hearing;

(2) That the record on which any rule or order may be based shall consist of the petition and agreement, and all other pertinent information, including: any request for hearing on the petition; the investigation report; discovery; motions and requests, filed in written form and rulings thereon; any documents or papers filed in connection with prehearing conferences; and, if a hearing has been held, the transcript of testimony and any proposed findings, conclusions, rules or orders, and supporting reasons as may have been filed.

(3) A waiver of further procedural steps before the administrative law judge and Assistant Secretary; and

(4) A waiver of any right to challenge or contest the validity of the findings and rule or order made in accordance with the agreement.

ORDER

WHEREFORE, it is ordered that the agreement containing the consent findings is accepted and the Petition for Modification in the above-styled matter is dismissed. This Order constitutes the final agency action.

DREW A. SWANK
Administrative Law Judge