UNITED STATES DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
FOR MINE SAFETY AND HEALTH

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| In the Matter of: | ) | PETITION FOR MODIFICATION |
| | ) | |
| PARKWOOD RESOURCES, INC., | ) | CASE NOS. 2010-MSA-1 |
| ROSEBUD MINING CO. | ) | 2011-MSA-2 |
| | ) | 2011-MSA-11 |
| | | 2011-MSA-12 |

DECISION AND ORDER

This matter is before me on Parkwood Resources Inc.'s and Rosebud Mining Company's (collectively "Rosebud's") Statement of Objections to Facilitate Appellate Review of Disputed Conditions. On November 14, 2013, I issued a decision and order affirming Department of Labor Administrative Law Judge Michael P. Lesniak's decision granting Rosebud's petitions for modification of 30 C.F.R. § 75.507-1(a) and 30 C.F.R. § 75.500(d) to allow the use of non-permissible electronic surveying equipment in or inby the last open crosscut and in return air, as modified and supplemented by conditions set forth in the November 14, 2013, decision and order.

On December 5, 2013, I granted Rosebud's motion to remand the matter for further hearings and findings on the limited issues of the appropriateness of condition of use number 7 in the November 14, 2013, decision and order (relating to verifying adequate air movement) and condition of use number 19 in the November 14, 2013, decision and order (relating to verifying

adequate rock-dusting). I also stayed implementation of the November 14, 2013, decision and order.

On May 1, 2014, the parties submitted to the administrative law judge an agreement resolving only the two disputed conditions that were remanded to the judge. Specifically, the parties agreed to the following four conditions to replace the two conditions that were remanded:

> a. As an additional safety check, prior to setting up and energizing non-permissible electronic surveying equipment in or inby the last open crosscut or in the return, the surveyor(s) shall conduct a visual examination of the immediate area for evidence that the areas appear to be sufficiently rock-dusted in accordance with 30 C.F.R. § 75.403 and for the presence of accumulated float coal dust. This provision contemplates only a visual examination by the surveyors. If the rock-dusting appears insufficient or the presence of accumulated coal dust is observed, the equipment may not be energized until sufficient rock dust has been applied and/or the accumulations of coal dust have been cleaned-up. If non-permissible electronic surveying equipment is to be used in an unrock-dusted area within 40 feet of a working face where a continuous miner is used to extract coal, the area is to be rock-dusted prior to energizing the electronic surveying equipment.
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> b. When using non-permissible electronic surveying equipment in or inby the last open crosscut or in the return, the surveyor must confirm by measurement or by inquiry of the person in charge of the section, that the air quantity on the section, on that shift, in the last open crosscut is the quantity that is required by the mine's ventilation plan.
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> c. Prior to energizing any of the non-permissible surveying equipment in or inby the last open crosscut or in the return, methane tests must be made no more than eight inches from the roof or floor at the location of the equipment.

d. All areas to be surveyed must be pre-shifted according to 30 C.F.R. § 75.360 prior to surveying. If the area was not pre-shifted, a supplemental examination according to 30 C.F.R. § 75.361 must be performed before any non-certified person enters the area. If the area has been examined according to 30 C.F.R. § 75.360 or 30 C.F.R. § 75.361, additional examination is not required. Date, time and initials must be present at several locations to show that the entire area has been examined.

The judge approved the parties' agreement on May 7, 2014.[1]

Rosebud's Statement of Objections To Facilitate Appellate Review asserts that my November 14, 2013, decision and order did not properly apply the standard for granting petitions for modification and that several conditions in the November 14, 2013, order are unnecessary to meet that standard.

The Administrator generally opposes all of Rosebud's objections as in the nature of a motion for reconsideration that essentially reargues matters already unsuccessfully litigated. The Administrator also asserts that the objections are beyond the scope of the remand order. In addition, the Administrator disagrees with Rosebud's specific objections and urges that I properly applied the standard for granting petitions for modification.

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[1] I have reviewed the parties' agreement on remand and am satisfied that the conditions of use set forth in the November 14, 2013, decision and order, as modified by the parties' agreement (and as clarified by this decision and order), satisfy the standard for granting petitions for modification set forth in Section 101(c) of the Mine Act, 30 U.S.C. § 811(c).

I agree with the Administrator that Rosebud's Statement of Objections is in the nature of a motion for reconsideration and treat it as such. I have considered Rosebud's objections and for the reasons stated below, and for the reasons stated in my November 14, 2013, decision and order, I am not persuaded by them. As also explained below, however, I am clarifying the condition relating to requiring that batteries be fully charged.

1. The Condition That Coal Production Stop While Non-Permissible Electronic Surveying Equipment Is Used In or Inby the Last Open Crosscut Or In the Return

Nothing Rosebud asserts convinces me that the condition that coal production stop while non-permissible electronic surveying equipment is used in or inby the last open crosscut or in the return is not necessary to promote the same safety goals as the standards with no less than the same degree of success.

Rosebud urges that the condition is unnecessary because surveying will not be conducted in an entry where production is occurring,[2] surveying will not be set up close to the face,[3] surveying generally will be upwind of the continuous mining machine, and, even when it is downwind, methane and dust will be

[2] Although initially stating that he did not survey in the entry where the continuous miner is mining, Rosebud Surveying Manager Michael Groff then testified that "*usually* we coordinate ourselves in different entries." Tr. I at 128 (emphasis added). It is unclear what entries he may have been surveying in.

[3] The evidence does not support Rosebud's assertion that surveying is not conducted close to the face. Rosebud Surveying Manager Groff testified that he has taken shots as close as 50 feet from the face. *See*, Tr. I at 467-68.

removed by the ventilation system and scrubbers on the continuous mining machines. Rosebud further asserts that in the return, the float coal dust will precipitate out of the air flow or be dispersed by the ventilation. *See* Obj. at 18-19. In making these assertions, Rosebud largely fails to provide record cites. See Obj. at 18-19. I therefore need not consider them. 30 C.F.R. § 44.33(c). To the extent that Rosebud has properly raised the assertions and there is any record support for them, they are still unconvincing.

As I concluded in my November 14, 2013, decision and order, because methane is liberated and coal dust is created during production, requiring that surveyors not use non-permissible electronic surveying equipment in or inby the last open crosscut or in returns when production on the section is occurring will reduce the likelihood of a methane or dust ignition or explosion. *See* November 14, 2013, Dec. and Order at 38-9.

Rosebud's position that the condition is unnecessary is based in part on the presence of asserted ventilation systems and scrubbers -- features that are part of the redundant safety measures that are in place to protect against fires, ignitions, and explosions. These safety measures are present whether surveyors use mechanical, permissible, or non-permissible surveying equipment. Because, as Rosebud acknowledges, using non-permissible surveying equipment increases the risk of an ignition (*see e.g.*, Tr. II at 202-3), ventilation systems that

are already in place do not offset the decrease in safety from using non-permissible electronic equipment, rather they are requirements that provide an added margin of safety in any underground coal mine. Further, ventilation systems do not always work effectively and operators do not always comply with ventilation requirements. That is one of the reasons that, to protect against ignitions and explosions, the Mine Act and its standards require redundant safety measures, including ventilation and permissibility requirements.

Moreover, nothing in the petitions or the judge's decision requires members of the surveying crew not to survey in the entries where production is occurring, not to survey close to the face, and not to conduct surveying downwind of the continuous mining machine. In addition, regardless of whether surveying occurs in the entries where production is occurring, the petitions allow surveying in returns which have ventilated the working face and where float coal dust tends to collect. *See* 76 Fed. Reg. 35968-01, 35969 (June 21, 2011). See also RBX-31 (diagram from Cherry Tree ventilation plan); Tr. II at 11.

Rosebud also asserts that the condition is unnecessary because surveyors could not survey (or breathe) when the amounts of dust reach the lower explosive limits. Obj. 21, 23. I have already rejected this argument and have found that float coal dust is a concern when using non-permissible electronic equipment because coal dust may enter the equipment and layer on

internal components causing the equipment to overheat, because coal dust can be put into suspension rapidly, and particularly because of manufacturer's warnings against using the equipment in dusty environments. *See* November 14, 2013, Dec. and Order at 31-35. Further, contrary to the premise of Rosebud's argument, the condition that coal production stop when non-permissible equipment is used in or inby the last open crosscut or in returns protects miners not only from coal dust explosions but also from methane explosions.

Rosebud also contends that the condition is unnecessary because surveying equipment is used in the middle of the entry,[4] surveyors spend minimal time in or inby the last open crosscut or in the return,[5] and surveying equipment, unlike other equipment that is required to be permissible, does not liberate methane or generate coal dust. Although these circumstances, if true, might mean that the risk of using non-permissible surveying equipment is less than the risk of using other types of non-permissible equipment, nothing in the record convinces me

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[4] The evidence does not support Rosebud's assertion that surveying equipment is always used in the middle of the entry. Rosebud Surveying Manager Michael Groff, who was qualified as an expert in surveying, acknowledged that he does not always set up in the middle of the entry. Tr. I at 120.

[5] Although the time that surveyors spend in or inby the last open crosscut or in the return relative to their other surveying work may be minimal, the record indicates that mine surveying occurs on a regular basis. *E.g.*, Tr. I at 33; Sept. Stip. ¶ 33. Therefore, the cumulative time that non-permissible surveying equipment is used in high risk areas may not be minimal.

that the circumstances would sufficiently offset the dangers of using non-permissible equipment in or inby the last open crosscut or in returns so as to warrant elimination of any of the conditions of use I am requiring which I find are all necessary to satisfy the standard for granting petitions for modification.

I also reject Rosebud's suggestion that the ALJ's conditions of use are adequate to ensure that methane will not reach explosive levels because the area where the equipment is used is continuously monitored for methane and if one percent methane is detected the equipment must be shut off. See Obj. at 6. Apart from my finding that methane detectors may fail and may not be properly calibrated (Nov. 14, 2013, Dec. and Order at 36), I credit expert witness Chad Huntley's testimony that there is a lag time in methane detectors and that if there were a sudden inundation of methane, by the time the methane detector registered one percent methane, and by the time the surveyor reacted to shut the surveying equipment off, there might already be an explosive amount of methane surrounding the equipment. Tr. I at 337-38. As Huntley testified, the act of shutting off the equipment might itself create a spark. Tr. I at 338.

Further, the argument that electronic equipment does not cut into coal overlooks the fact that the permissibility standards apply both to electric equipment that cuts into coal and to electric equipment that does not cut into coal. *See* 30

C.F.R. § 75.507-1(a) and 30 C.F.R. § 75.500(d). Indeed, the petitions for modification which MSHA has granted, and on which Rosebud has relied to support its position that the petitions for modification in this case should be granted, allow the use of non-permissible equipment that does not cut into coal. *See e.g.*, RX-7, 16-24, 26, 27. Significantly, the alternative methods in these modifications require that, except for time necessary to troubleshoot under actual mining conditions, production on the section cease when using the equipment. *See Id.*

I reject Rosebud's argument that because, when using diagnostic and testing equipment, production necessarily stops, it is irrelevant that MSHA included similar conditions in other granted modifications under which operators may use diagnostic and testing equipment in high risk areas under certain conditions. Obj. at 20. If, in fact, production must stop to use the diagnostic and testing equipment in question, that would not mean that a requirement that stopping production is not necessary to meet the standard for granting petitions for modification.

Moreover, as I pointed out in my earlier decision, the consent agreement in *In re Twenty Mile Coal Company (Foidel Creek Mine) (RBX-7)* allowing the use of non-permissible electronic surveying equipment in or inby the last open crosscut, which Rosebud used as a general basis for urging that

the petitions in this case be granted, also includes the requirement that coal production on the section cease.[6] *See* November 14, 2013, Dec. and Order at 39-40.

2. The Condition Prohibiting the Use of Non-Permissible Electronic Surveying Equipment In Or Inby the Last Open Crosscut Or In the Return Where Float Coal Dust Is In Suspension

Nothing asserted by Rosebud convinces me that the condition prohibiting the use of non-permissible electronic surveying equipment in or inby the last open crosscut or in the return where float coal dust is in suspension is not necessary to promote the same safety goals as the standards with no less than the same degree of success.

Rosebud objects to the condition as unclear and unnecessary, although acknowledging that it included the condition in its petitions for modification. Obj. at 20. The condition was also included in the judge's decision and Rosebud did not initially object to it. *See* ALJ Dec. at 17.

Rosebud asserts that the provision is unclear because MSHA has taken the position that there is always some float coal dust

[6] Although the conditions of use I am ordering in this case include conditions that are not included in the *In re Twenty Mile Coal Company (Foidel Creek Mine)* Order (RBX-7), for the reasons stated herein and in the November 14, 2013, decision and order, I find that all of the conditions of use I am requiring in this case are necessary to satisfy Section 101(c)'s standard for granting petitions for modification. In that regard, I note that the Foidel Creek order includes some more stringent conditions of use, including a requirement that surveying with non-permissible equipment not occur if methane greater than .5 percent is detected. *See Id.*

in suspension.[7] *See* Obj. at 20. As the Administrator points out, however, his position has been that it is impossible to implement this condition unless all mining ceases because during mining float coal dust is generated. Resp. at 6. Because I am requiring that Rosebud not use non-permissible surveying equipment during coal production on the section, I do not find that the condition is inconsistent with the Administrator's position. In any event, it is hard to imagine that Rosebud would have included the provision in its petitions for modification if compliance were not possible.

I believe that the condition is necessary for the reasons stated in my November 14, 2013, decision and order in which I explained my concern that explosive amounts of float coal dust can be rapidly placed in suspension, my concern that float coal dust might layer on components of the equipment causing overheating and malfunctioning, and in light of manufacturer's safety warnings against using the equipment in dusty areas. See Nov. 14, 2013, Dec. and Order at 31-34 & n.17, 40. Further, the condition has been included in the granted-modifications which Rosebud has urged are a basis for granting the petitions for modification in this case. *See e.g.*, Rosebud Proposed Findings of Fact, Conclusions of Law and Post Hearing Brief at 47-49; Sept. Stip. ¶ 64, RBX-16-24, 26, 27. For these reasons, I

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[7] I interpret this provision to allow for a visual determination of whether there is float coal dust in suspension.

reject Rosebud's objections to the condition and find that it is necessary to meet the standard for granting petitions for modification in Section 101(c) of the Mine Act.

3. The Condition Requiring That Two Qualified Members of the Surveying Crew Continuously Monitor for Methane.

Nothing asserted by Rosebud convinces me that the condition requiring that two qualified members of the surveying crew continuously monitor for methane is not necessary to satisfy the standard for granting petitions for modification. Generally, two members of the surveying crew are needed to operate a total station and surveying crews consist of two members. RBX-30 at 5; *E.g.*, Sept. Stip. ¶¶ 24, 27, 30, 36, 39, 42, 57. The members of the surveying crew are not always positioned in the same location. See RBX-30 at 5. As I explained in my November 14, 2013, decision and order, methane detectors may fail, methane detectors may not be properly calibrated, and the transit man may not remain with the surveying equipment. See Nov. 14, 2013, Dec. and Order at 36. Moreover, it is unclear whether, on any given shift, the same crew member will always act as the transit man.[8] Accordingly, even if, as Rosebud asserts, the transit man in fact always remains with the equipment, if only one crew member were continuously monitoring for methane, it would not

[8] For example, at Mine 78 two surveyors (as opposed to one surveyor and one miner) generally work together. Sept. 15, 2011, Stip. ¶ 39. *See also, Id. at* ¶¶ 30, 57 (indicating that surveying crews at the Tracy Lynne Mine and the Clementine Mine may consist of two surveyors).

necessarily follow that that crew member would always be performing the duties of the transit man and that the person continuously monitoring for methane would always remain with the equipment.[9]

4. The Condition Requiring Fully Charged Batteries Before The Equipment Is Taken In Or Inby the Last Open-Crosscut Or Into the Return

Rosebud asserts that the condition that non-permissible electronic surveying equipment have fully charged batteries before the equipment is taken in or inby the last open crosscut or into the return is unclear, impractical, and unnecessary. Obj. at 25-26. I intend for this condition to require that, upon entry into the mine, all batteries for the non-permissible electronic surveying equipment must be fully charged and am amending the condition to so clarify.

One of the hazards of non-intrinsically safe equipment is arcing or sparking at battery terminals. Tr. I at 290. I credit expert witness Huntley's testimony that battery packs may spark and ignite methane when they are disconnected. Tr. II at 262-63. Huntley's testimony was corroborated by the testimony

[9] My decision and order also requires that a qualified crew member carrying a methane detector remain with the equipment. If only one member of the crew were required to be qualified and to carry a methane detector, and if, on any given shift, more than one member of the crew acts as the transit man, the crew member who first performs the duties of transit man could well forget to transfer the methane detector to the second crew member when that crew member takes over the transit man duties. Further, the second member of the crew would have to be qualified.

of Rosebud Mining Engineer David Cobaugh who testified that there is a potential for sparking when batteries are connected and disconnected. Tr. I at 80, 87. In my November 14, 2013 decision and order, I credited the common sense testimony of former surveyor Randy Caramellino that if a surveyor has a problem with his battery, he may be tempted to remove the battery and try to fix the problem without going outby. *See* Nov. 14, 2013, Dec. and Order at 37 (citing Tr. I at 359). To minimize the need for disconnecting batteries, it is therefore important to require that batteries be fully charged on entry into the mine and nothing in Rosebud's objections convinces me that this condition is not necessary to satisfy the standard for granting petitions for modification.

5. The Condition Requiring That Replacement Batteries For the Non-Permissible Electronic Surveying Equipment Not Be Brought In Or Inby the Last Open Crosscut Or Into the Return

Nothing asserted by Rosebud convinces me that the condition requiring that replacement batteries not be brought in or inby the last open crosscut or into the return is not necessary to satisfy the standard for granting the petitions for modification. If there is a problem with the equipment or if the batteries run out, the condition minimizes the temptation for a member of the surveying crew to disconnect batteries while he is still in or inby the last open crosscut or in the return. See Nov. 14, 2013, Dec. and Order at 37-38; Tr. I at 359. Given

the potential for batteries to spark when they are disconnected (Tr. I at 80, 87; Tr. II at 262-64), this condition is important to minimize the likelihood of a methane or dust explosion and I find that this condition is necessary to satisfy the standard for granting petitions for modification.

6. The Condition Providing That Non-Permissible Electronic Surveying Equipment Shall Not Be Used If Viable New Mechanical Surveying Equipment Is Commercially Available.

For the reasons set forth in my November 14, 2013, decision and order, I disagree with Rosebud's assertion that the condition that non-permissible electronic surveying equipment not be used if viable new mechanical surveying equipment is commercially available is unnecessary. *See* November 14, 2013, Dec. and Order at 43-45 and n.23. Although the evidence in this case is that electronic surveying equipment is more accurate and efficient than mechanical equipment, I continue to believe that there is no reason to allow non-permissible electronic surveying equipment if viable mechanical equipment is commercially available. To be viable, the equipment must be sufficiently accurate for use in underground mines. *See Id.* If viable new mechanical equipment is available there is no reason that MSHA's limited resources should be spent ensuring that Rosebud complies with the conditions of use set forth in this order.

7. The Description of Equipment Allowed Under This Order

I disagree with Rosebud's concern that the November 14, 2013, decision and order limits the surveying equipment that can be used under the order to the equipment Rosebud now possesses and that the condition therefore is in conflict with the requirements that the equipment be replaced on a scheduled basis. *See* Obj. at 28. The order provides that the modifications apply to specific surveying equipment "and similar low voltage battery-operated equipment." *See* Nov. 14, 2013, Dec. and Order at 47. This language permits Rosebud to use theodolites and total stations that are similar to the specific low voltage battery-operated total stations and theodolites that Rosebud petitioned to use in this case. By the term "similar," I mean total stations and theodolites that have equivalent or greater protection from explosion, ignition, and fire hazards.

For all of the above reasons, and for the reasons stated in my November 14, 2013, decision and order, I find that Rosebud's petitions for modification should be granted under the conditions set forth in my November 14, 2013, decision and order, as modified by the parties' stipulations on remand, and as clarified and modified by this decision and order.

Accordingly, I lift the stay of that order, as modified by the parties' stipulations on remand and as clarified and modified by this decision and order. Specifically:

Rosebud may use the following electronic surveying equipment and similar low voltage battery-operated equipment in or inby the last open crosscut or in return air subject to the conditions of this order:

1. A 6 volt Topcon DT209L theodolite;
2. A 6 volt Topcon DT104L theodolite;
3. A 7.2 volt Topcon GTS-213 total station;
4. A 7.2 volt Topcon GPS-223 total station;
5. A 7.2 volt Topcon GPT-3003 W total station; and
6. A 7.2 volt Topcon GPT-3103 W total station.

1. Rosebud will maintain a separate log book for each piece of electronic surveying equipment. The logbooks will be kept in the mine office where the equipment is located and will be available for audit by MSHA inspectors. The log book will contain the date of manufacture and/or purchase of that particular theodolite or total station.

2. All non-permissible battery-powered surveying equipment to be used in return air or in or inby the last open crosscut shall be examined prior to use to ensure the equipment is being maintained in a safe operating condition. In addition, the equipment will be examined at intervals not to exceed seven days by a qualified person as defined in 30 C.F.R. § 75.153; examination results shall be recorded weekly in the equipment's log book. These checks shall include:

i. Checking the instrument for any physical damage and the integrity of the case;
ii. Removing the battery and inspecting for corrosion;
iii. Inspecting the contact points to ensure a secure connection to the battery;
iv. Reinserting the battery and power up and shut down to ensure proper connections; and
v. Checking the battery compartment cover to ensure that it is securely fastened.

3. At least two persons in the surveying crew shall be qualified persons as defined in 30 C.F.R. § 75.151 and shall continuously monitor for methane immediately before and during the use of non-permissible surveying equipment in or inby the last open crosscut or in the return. While the equipment is used in or inby the last open crosscut or in the return one qualified

person who is continuously monitoring for methane shall remain with the electronic surveying equipment.

4. All hand-held methane detectors shall be MSHA-approved and maintained in permissible and proper operating condition as defined in existing 30 C.F.R. 75.320.

5. All methane detectors must provide visual and audible warnings when methane is detected at or above 1.0 percent.

6. Non-permissible surveying equipment shall not be used if methane is detected in concentrations at or above 1.0 percent methane. When 1.0 percent or more of methane is detected while the non-permissible surveying equipment is being used, the equipment shall be de-energized immediately and the non-permissible electronic equipment withdrawn outby the last open crosscut. Before re-entering the area, corrective action must be completed to reduce the level of methane and the atmosphere must be checked to ensure that it is safe to resume surveying activities in or inby the last open crosscut or in the return air.

7. Non-permissible equipment shall not be used where float coal dust is in suspension.

8. Non-permissible surveying equipment shall not be used when coal production is occurring in the section. All mining in the section shall cease prior to use of the equipment in or inby the last open crosscut or in the return.

9. Batteries contained in the surveying equipment must be "changed out" or "charged" in fresh air outby the last open crosscut. Replacement batteries for the electronic surveying equipment shall not be brought in or inby the last open crosscut or in the return. On each entry into the mine, all batteries for the electronic surveying equipment must be fully charged.

10. Qualified personnel engaged in the use of surveying equipment shall be properly trained to recognize the hazards and limitations associated with the use of surveying equipment.

11. All members of the surveying crew shall receive specific training on the terms and conditions of this

decision and order before using non-permissible electronic equipment in or inby the last open crosscut or in the return.

12. Before putting into service a piece of non-permissible surveying equipment that will be used in or inby the last open crosscut or in the return, Rosebud shall ensure that MSHA has sufficient notice to allow MSHA to initially inspect the equipment and determine that it is in compliance with the terms and conditions of this order.

13. Non-permissible electronic surveying equipment shall only be used until equivalent permissible electronic surveying equipment is available or if viable new mechanical surveying equipment is not commercially available.

14. Within 60 days after the Proposed Decision and Order becomes final, Rosebud shall submit proposed revisions for its approved 30 C.F.R. Part 48 training plan to the Coal Mine Safety and Health District Manager. These proposed revisions shall specify initial and refresher training regarding the terms and conditions stated in this Decision and Order. When training is conducted on the terms and conditions in this decision and order, an MSHA Certificate of Training (Form 5000-23) shall be completed. Comments shall be included on the Certificate of Training indicating that it was surveyor training.

15. Rosebud shall replace or retire from service any electronic surveying instrument that was acquired prior to December 31, 2001 within one year of this Order becoming final. Rosebud shall replace or retire from service any electronic surveying instrument that was acquired between January 1, 2002 and December 31, 2007 within two years of this Order becoming final. Within three years of the date that this Order becomes final, Rosebud shall replace or retire from service any theodolite that was acquired more than five years prior to the date that this Order became final or any total station acquired more than ten years prior to the day that this Order became final. After five years, Rosebud will maintain a cycle of purchasing new electronic surveying equipment whereby theodolites will be no older than five years from date of manufacture and total stations will be no older than 10 years from date of manufacture.

16. Rosebud is to ensure that all surveying contractors hired by Rosebud are using relatively new electronic equipment, i.e. theodolites no older than five years from date of manufacture and total stations no older than 10 years of date of manufacture.

17. Rosebud is to ensure that all non-permissible electronic surveying equipment is serviced according to the manufacturer's recommendations. Dates of service will be recorded in the equipment's log book and a description of the work performed.

18. As an additional safety check, prior to setting up and energizing non-permissible electronic surveying equipment in or inby the last open crosscut or in the return, the surveyor(s) shall conduct a visual examination of the immediate area for evidence that the areas appear to be sufficiently rock-dusted in accordance with 30 C.F.R. § 75.403 and for the presence of accumulated float coal dust. This provision contemplates only a visual examination by the surveyors. If the rock-dusting appears insufficient or the presence of accumulated coal dust is observed, the equipment may not be energized until sufficient rock dust has been applied and/or the accumulations of coal dust have been cleaned-up. If non-permissible electronic surveying equipment is to be used in an unrock-dusted area within 40 feet of a working face where a continuous miner is used to extract coal, the area is to be rock-dusted prior to energizing the electronic surveying equipment.

19. When using non-permissible electronic surveying equipment in or inby the last open crosscut or in the return, the surveyor must confirm by measurement or by inquiry of the person in charge of the section, that the air quantity on the section, on that shift, in the last open crosscut is the quantity that is required by the mine's ventilation plan.

20. Prior to energizing any of the non-permissible surveying equipment in or inby the last open crosscut or in the return, methane tests must be made no more than eight inches from the roof or floor at the location of the equipment.

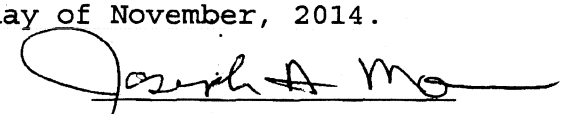
21. All areas to be surveyed must be pre-shifted according to 30 C.F.R. § 75.360 prior to surveying.

If the area was not pre-shifted, a supplemental examination according to 30 C.F.R. § 75.361 must be performed before any non-certified person enters the area. If the area has been examined according to 30 C.F.R. § 75.360 or 30 C.F.R. § 75.361, an additional examination is not required. Date, time and initials must be present at several locations to show that the entire area has been examined.

22. Except for conditions 15 and 16, all conditions of use in this decision and order shall apply to all non-permissible electronic surveying equipment used in or inby the last open crosscut or in a return, regardless of whether the equipment is used by Rosebud or by an independent contractor.

Upon receipt hereof, Rosebud is directed to post this Decision and Order in unobstructed locations on the bulletin boards and/or in other conspicuous places where notices to miners are ordinarily posted, at all the mines for which this Decision and Order applies, for a period of not less than 60 consecutive days.

SO ORDERED on this 24th day of November, 2014.



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