



Billing Code: 4520-43-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 Title 30 of the Code of Federal Regulations 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.

DATES: All comments on the petitions must be received by MSHA's Office of Standards, Regulations, and Variances on or before [INSERT DATE 30 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202-5452,

Attention: Sheila McConnell, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. 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 (E-mail), 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-2016-009-M.

Petitioner: Coeur Alaska, Inc., 1700 Lincoln Street, Suite 4700, Denver, Colorado 80203.

Mine: Kensington Mine, MSHA I.D. No. 50-01544, located in Juneau County, Alaska.

Regulation Affected: 30 CFR 57.11052(d) (refuge areas).

Modification Request: The petitioner requests a modification of the existing standard for refuge areas applied to the development and exploration areas at its Kensington mine.

The petitioner seeks approval to use the recently installed Strata-manufactured, 12-person emergency refuge chambers – portable (ERCP), which are equipped with internal air and water supplies, without having to provide compressed air and waterlines. The petitioner states that:

(1) On July 12, 2016, Coeur submitted a petition for modification (PFM #1) seeking relief from § 57.11050. PFM #1 seeks relief from MSHA's requirement that Coeur provides a refuge chamber within 1,000 feet of the development face in the mine. During Coeur's discussions with MSHA as part of the review of PFM #1 and Coeur's compliance with § 57.11050, Coeur learned that a second petition for modification (PFM #2) was necessary to seek relief from § 57.11052(d). The petitioner requests that MSHA consider PFM #2 in conjunction with information submitted previously for PFM #1 because the factual basis for both petitions and means of compliance for both standards are intertwined. These means of compliance will provide the same or greater measure of safety as the existing regulations.

(2) The petitioner owns and operates the Kensington mine, an underground gold mine located in Juneau County, Alaska. Kensington utilizes both transverse and longitudinal long-hole stoping. In both methods, a single development drift is driven through waste rock adjacent to the ore body. When this drift reaches planned elevations, level accesses are developed to provide entry points to the ore body for exploration and later ore production. Once the level development and exploration are completed at a planned elevation, the ore is extracted either perpendicular (transverse stoping) or parallel to the strike of the ore (longitudinal stoping).

(3) With PFM #1, Coeur sought relief from MSHA's interpretation of 30 CFR 57.11050 that would require that a refuge chamber be located within 1,000 feet of the development face. Part of the basis for PFM #1 is that the petitioner's miners at the development face can walk to the existing refuge chamber within 30 minutes as required by the standard and the existing location of the permanent refuge chamber complies with § 57.11050. Also, the petitioner has voluntarily elected to provide an ERCP in the vicinity of the development face, and to reposition that ERCP from time to time as development advances.

(4) Because ERCP is equipped with a minimum of a 72-hour internal air supply for up to 12 miners, and more than 20 gallons of potable water, the petitioner seeks relief from the requirement in § 57.11052(d) to connect compressed air and waterlines to the ERCP each time it is repositioned.

(5) The ERCP as constructed by the manufacturer complies with § 57.11052 because the ERCP has internal air and water sources. Kensington has been in operation since 1987. The petitioner has operated the mine since 1995, and between 1995 and

2009, activities were exclusively exploration and development. Coeur did not begin production until 2010, with limited production areas. The portions of the Kensington mine that are relevant to PFM #2 are still in the exploration and development phases – no production is occurring in these areas. During the fourth quarter of 2016, Kensington typically had nine stopes associated with production, and approximately three main development drifts in which exploration and development are taking place. The precise number of stopes and drifts may vary slightly from one month to the next.

Currently, 100 percent of Kensington's operations below the 480 level are either development or exploration. At present, the ERCP is positioned within 1,000 feet from the development face, and the current location of Kensington's permanent refuge station adjacent to the 585 Downramp complies with the requirements of §§ 57.11050 and 57.11052(d) because the miners working in the development area can reach it within 30 minutes, and compressed airlines and waterlines are installed at that station.

(6) The ERCP is located directly below the 330 level access, and has air and waterlines connected to it. However, the ERCP will not remain in this location permanently. The petitioner will relocate the ERCP in the future as development activities advance. The ERCP is more than a reinforced metal compartment to physically shield miners following an underground emergency – it is a self-contained chamber with own sources for electrical power, breathable air, water, food, and a lavatory. Even without being connected to mine services, the ERCP can provide electrical power and breathable air to occupants for a minimum of 72 hours if the atmosphere outside the ERCP is contaminated. The ERCP is equipped with enough potable water to last three days with up to 12 occupants.

(7) Section 57.11052(d) requires that every refuge area be provided with compressed air lines, waterlines, suitable hand tools, and stopping materials. Based on our research, there is no regulatory or judicial history that explains the purpose behind a requirement for compressed air lines and waterlines. Accordingly, petitioner assumes that these lines are intended to serve the purpose a reasonably prudent person, familiar with the mining industry, would expect – to provide a source of breathable air and potable water to miners inside a refuge area.

As a matter of simple logic, an operator complies with § 57.11052(d) by prepositioning hand tools and stopping materials inside the refuge area for future use. Similarly, if air and water could be prepositioned in a refuge area for future use, the operator would be complying with the standard. Historically, it was difficult to ensure that sufficient breathable air and potable water would be available in a refuge area. Today, the technology behind the ERCP enables the petitioner to provide a sustainable environment for its miners and a viable time window for mine rescue teams to reach the ERCP following an emergency, thereby rendering the requirement for external air waterlines obsolete – particularly when the ERCP is a supplemental device in addition to Kensington’s existing permanent refuge stations.

(8) Section 57.11052(d) does not specify a minimum quantity, volume or pressure for air lines and water lines, and the regulation makes no mention of independent power sources or lengths of time the air and waterlines need to be available at the refuge area. The standard simply requires they be provided. The ERCP provides breathable air and potable water. Kensington already complies with the standards requirement. This capability to provide known quantities of air and water internally is a

benefit to the ERCP occupants because there is no risk of interrupted air and water access from external damage to the lines, and the known quantities allow mine rescue teams to make informed decisions regarding the length of time that an ERCP can provide a sustainable environment for its occupants.

(9) Installing air lines and water lines each time the ERCP is relocated to remain in proximity to the development face would result in a diminution of safety; however, requested relief provides an equivalent degree of safety to § 57.11051(d).

Kensington's underground operations take place in a dynamic environment, and its exploration and development areas are dominated by self-propelled mobile equipment and blasting activities. At desired development rates, Kensington typically advances its faces in development drifts twice per day, with each advance being a 12-foot length. If the ERCP will have to be relocated from time to time to remain in the vicinity of the development face, as contemplated in PFM #1, the ERCP would have to be relocated on a recurring basis.

(10) Repeated movement of the ERCP puts miners at risk for several reasons. An ERCP cannot simply be parked on the decline because of its size – it would block access between the development drift face and the escapeways. To allow for the decline to remain clear, a cutout into the rib must be made to park the ERCP, making the relocation more complex.

(11) Damage to the ERCP will put miners at risk as the refuge may not function as intended. Each time the ERCP is relocated, there is a potential that the ERCP will be damaged in some manner. Similarly, if a compressed air line and waterline need to be run and connected to each new location for the ERCP, there is a chance that the lines or

the connections will be damaged. Potential damage to the ERCP and the external airline and waterlines increases each time they are moved, disconnected, rerouted, reconnected, and tested. The risk of damaging the lines and connectors is eliminated by relying on the ERCP's self-contained capabilities.

The ERCP can only provide a safety benefit to miners while the device is operational. To the extent an ERCP is unavailable while being relocated, that window of non-availability will increase while the air and water lines are being run, connected and tested for the new location. As such, complying with § 57.11052(d) with respect to the relocating of the ERCP will have a detrimental effect on miner safety.

(12) There are significant costs associated with each movement of an ERCP. The ERCP is roughly 15-feet long, and requires a cutout that is 30-feet deep. The development costs at Kensington are approximately \$1,500 per foot, meaning that each 30-foot cutout will cost \$45,000 to create. Installing air, water and shotcrete will add to the figure. Moving the unit will take 2 miners approximately 12 hours, at a labor cost of \$1,136. In total, the average cost to relocate a portable refuge one time is almost \$50,000. To the extent these costs can be controlled by alleviating redundant or unnecessary requirements, Coeur's submits this petition.

The petitioner asserts that the alternative method will at all times provide the same measure of protection as the existing standard.

Sheila McConnell
Director
Office of Standards, Regulations, and Variances
[FR Doc. 2017-02297 Filed: 2/2/2017 8:45 am; Publication Date: 2/3/2017]