

| In the matter of | Petition for Modification |
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| AEP Kentucky Coal L.L.C. | |
| Millard Processing, | I.D. No. 15-06733 |
| Beverly Ann Tipple, | I.D. No. 15-11870 |
| Rob Fork Processing, | I.D. No. 15-14468 |
| Elkhorn Loading Facility, | I.D. No. 15-16270 |
| Road Creek Mine #1, | I.D. No. 15-17008 |
| Three Mile Mine #1, | I.D. No. 15-17659 |
| Pettys Fork Mine #1, | I.D. No. 15-17742 |
| Big Branch Mine #1, | I.D. No. 15-17834 |
| Schoolhouse #1, | I.D. No. 15-18528 |

Docket No. 2002-058-C

PROPOSED DECISION AND ORDER

On June 26, 2002, AEP Kentucky Coal L.L.C. filed a petition seeking a modification of the application of 30 CFR 77.1607(u) to the following mines: Millard Processing, Rob Fork Processing, Elkhorn Loading Facility, Road Creek Mine #1, Three Mile Mine #1, Pettys Fork Mine #1, and Schoolhouse #1, located in Pike County; Big Branch Mine #1 located in Magoffin County and Beverly Ann Tipple located in Floyd County, Kentucky.

The Petitioner alleges that the alternative method outlined in the petition will at all times guarantee no less than the same measure of protection afforded by the standard.

MSHA's District Office and Directorate of Technical Support investigated the petition.

The District Office determined that no one is working at the Beverly Ann Tipple located in Floyd County, Kentucky and the mine has been in "abandoned" status since December 22, 1998. Because the petition is not needed for the Beverly Ann Tipple located in Floyd County, Kentucky, the petition as it applies to that mine only is hereby dismissed.

The Directorate Technical Support report states that more information is necessary in order to determine if the proposed alternative method for the other mines would at all times guarantee no less than the same measure of protection afforded by the standard. Specifically, the report states that the following information is necessary:

1. Details of the attachment methods and hardware that is to be attached to the "towed" equipment. The information must be provided for each type of equipment that will be towed.
2. Documentation showing that the attachment locations and hardware for both the towing equipment and towed equipment are certified by a Professional Engineer as being structurally adequate for each configuration. Alternatively, the company may obtain a written statement from the original equipment manufacturers (OEM) verifying that the attachment locations and hardware are structurally adequate for each configuration.
3. The maximum grade upon which equipment will be towed.
4. The maximum weight of equipment to be towed.
5. The minimum outside diameter of the shackles, shackle rollers, and pins where the synthetic towing slings will be attached.
6. Working strength of the synthetic towing slings.
7. Specifications for the synthetic towing slings that will be used at each mine site, along with information verifying that the towing sling is properly sized (including design safety factor) for the maximum road grade and maximum weight of the towed equipment.
8. Documentation showing that each towing configuration will include two towing slings. One sling should be identified as the working sling, and the other should be identified as the safety sling, similar to the requirements for a tow bar and safety chains. The safety sling should have slack in it when the working sling is taught.

MSHA requested this additional information from the mine operator's safety director on July 24, 2002. Since that time MSHA made four additional requests. As of this date, the information has not been received.

Consequently, MSHA can not determine if the proposed alternative method will at all times guarantee no less than the same measure of protection as the standard.

Therefore, the AEP Kentucky Coal, L.L.C. Petition for Modification for the application of 30 CFR 77.1607(u) as it applies to Millard Processing, Rob Fork Processing, Elkhorn Loading Facility, Road Creek Mine #1, Three Mile Mine #1, Pettys Fork Mine #1, Schoolhouse #1, and Big Branch Mine #1 is hereby dismissed without prejudice.

Any party to this action desiring a hearing on this matter must file in accordance with 30 CFR 44.14, within 30 days. The request for hearing must be filed with the Administrator for Coal Mine Safety and Health, 1100 Wilson Boulevard, Arlington, Virginia 22209-3939.

If a hearing is requested, the request shall contain a concise summary of position on the issues of fact or law desired to be raised by the party requesting the hearing, including specific objections to the proposed decision. A party other than Petitioner who has requested a hearing shall also comment upon all issues of fact or law presented in the petition, and any party to this action requesting a hearing may indicate a desired hearing site.

If no request for a hearing is filed within 30 days after service thereof, the Decision and Order will become final and must be posted by the operator on the mine bulletin board at the mine.

John F. Langton
Acting, Deputy Administrator
Coal Mine Safety and Health