

In the matter of
B. And B. Coal Company
Rock Ridge No. 1 Slope
I.D. No. 36-07741

Petition for Modification

Docket No. M-2003-050-C

PROPOSED DECISION AND ORDER

On June 12, 2003 B. And B. Coal Company filed a petition for modification of the application of 30 CFR 75.334(a)(2), 75.334(e) and 75.334(f)(3) to its Rock Ridge No. 1 Slope in Schuylkill County, Pennsylvania. The petition alleges that compliance with the regulation poses a diminution of safety and the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the standard.

MSHA personnel investigated the petition and reported their findings and recommendations to the Administrator for Coal Mine Safety and Health. After a careful review of the entire record, including the petition and MSHA's investigative report and recommendations, this Proposed Decision and Order is issued.

Finding of Fact and Conclusion of Law

The petitioner requests that certain sections of 75.334 be modified thereby permitting the former ventilation plan to be approved and reinstated. The petitioner alleges that compliance with the regulation and the current ventilation plan results in a diminution of safety to the miners.

The petition seeks modification of the application of 30 CFR 75.334(a)(2), 75.334(e) and 75.334(f)(3). The petition does not propose an alternate method but describes alleged hazards that may be present due to compliance with the approved mine ventilation plan.

The investigation report revealed that there is not sufficient evidence that the current ventilation plan results in a

diminution of safety or that the former ventilation plan provides for better working conditions. The petitioner alleges that the mine's pillared and worked out areas are properly ventilated. Although there is natural ventilation found in the anthracite region, especially in steeply pitched mines, the investigation revealed that although breaches to the surface do exist there is no evidence to indicate that natural ventilation will adequately ventilate worked out or pillared areas. No accurate monitor of random breaches is possible. In addition based on atmospheric pressure and temperature, the direction of air-flow may reverse or be non-existent.

For the reasons described above, MSHA has concluded that an alternative method has not been proposed by the Petitioner and a diminution of safety does not exist.

On the basis of the petition and the findings of MSHA's investigation, B. and B. Coal Company is not granted a modification of the application of 30 CFR 75.334(a)(2), 75.334(e) and 75.334(f)(3) to its Rock Ridge No. 1 Slope Mine.

ORDER

Wherefore, pursuant to the authority delegated by the Secretary of Labor to the Administrator for Coal Mine Safety and Health, and pursuant to Section 101(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C., sec. 811(c), it is ordered that B. and B. Coal Company's Petition for Modification of the application of 30 CFR 75.334(a)(2), 75.334(e) and 75.334(f)(3) to its Rock Ridge No. 1 Slope Mine is hereby:

DENIED

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
Deputy Administrator
for Coal Mine Safety and Health