

AMENDED

In the matter of
Cat Bird Mining, Inc.
No. 2 Mine
I.D. No. 44-06599

Petition for Modification

Docket No. M-2003-094-C

PROPOSED ORDER OF DISMISSAL

On November 25, 2003, The Banner Company filed a petition pursuant to 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. sec. 811(c), and 30 CFR 44 et seq., for the modification of the application of 30 CFR 75.364(b)(2) and (4), a mandatory safety standard.

On February 5, 2004, District 5 notified the Administrator for Coal Mine Safety and Health that, due to changed conditions at the mine, an investigation of the petitioners request was not possible and requested an extension of 45 days to conduct the investigation.

On April 5, 2004, District 5 notified the Administrator for Coal Mine Safety and Health that closure orders issued at the mine prevented an investigation of the petitioned area from being conducted. The mine operator has made no effort to abate the closure orders. Therefore, the district requests that the petition for modification Docket No. M-2003-094-C be dismissed.

On July 13, 2004, the Administrator for Coal Mine Safety and Health learned that as of June 1, 2004, ownership of the mine had been transferred from The Banner Company to Cat Bird Mining, Inc.

Therefore, pursuant to the authority delegated by the Secretary of Labor to the Administrator for Coal Mine Safety and Health, Cat Bird Mining, Inc.'s Petition for Modification of 30 CFR 75.364(b)(2) and (4), to its No. 2 Mine is dismissed.

Any party to this action desiring a hearing on this matter must file in accordance with 30 CFR 44 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 Order of Dismissal will become final.

Terry L. Bentley
Chief, Safety Division
for Coal Mine Safety and Health