

September 11, 2007

In the matter of:
R & D Coal Company, Inc.
R & D Coal Company Mine
ID No. 36-02053

Petition for Modification

Docket No. M-2006-035-C

PROPOSED ORDER OF DISMISSAL

On May 19, 2006, R & D Coal Company filed a petition pursuant to 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. § 811(c), and 30 CFR 44 et seq., for the modification of the application of 30 C.F.R. § 75.1714-2(c), a mandatory safety standard.

The petitioner states "Section 75.1714-2(c) requires where wearing or carrying of the self-contained self-rescuer is hazardous to the person, it shall be placed in a readily accessible location no greater than 25 feet from such person." The petitioner requests the standard be modified to allow the storage of self-contained self-rescuers within 200 feet of the working face.

MSHA conducted an investigation of the petitioned mine and found the mine to be abandoned and the surface openings sealed. MSHA's inspection personnel placed the mine in abandoned status on March 5, 2007. District personnel reported the surface opening sealed on April 25, 2007, and filed a petition investigation report on June 29, 2007.

As a consequence of the permanent closure and sealing of the mine, the petition is not needed and should be dismissed. Therefore, pursuant to the authority delegated by the Secretary of Labor to the Administrator for Coal Mine Safety and Health, R & D Coal Company's Petition for Modification of 30 C.F.R. § 75.1714-2(c) at the R & D Coal Company mine is hereby:

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.

Stephen J. Gigliotti
Acting Chief, Safety Division for
Coal Mine Safety and Health