

August 31, 2007

In the matter of:
S & M Coal Company
Buck Mountain Slope
ID No. 36-02022

Petition for Modification

Docket No. M-2006-038-C

PROPOSED ORDER OF DISMISSAL

On May 26, 2006, S & M 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 C.F.R. part 44 et seq., for the modification of the application of 30 C.F.R. § 75.381(c)(5), a mandatory safety standard.

The petitioner states "Section 75.381(c)(5) requires, in part, that Escapeways: anthracite mines, be provided with a continuous directional lifeline or equivalent device." The petitioner requests an exemption from the standard so that continuous directional lifelines would not be required at the petitioner's mine.

The petitioner alleges:

1. "Anthracite mines are pitching seams that are inherently directional. Entries are either driven horizontal in one direction or vertical with the pitching geology. When you enter the mine if the mine roof is on your right side, it is basic knowledge to know that when you [are] leaving the mine, the mine roof will be on your left side. Even if vision is impaired, it is impossible to loose your sense of direction, simply by the location of the roof and rib."
2. "In addition, application of this standard would cause a diminution of safety in that, stretching any type of line across the opening of a vertical entry which could result in a tripping hazard with a fall potential in excess of 30 to 60 feet."
3. "Anthracite coal is low in volatile matter and the lack of mechanization coupled with the

reduced production capacity of anthracite mines has resulted in no significant liberation of explosive gases. The risk of fire at an underground anthracite mine is less than that of a city structure; therefore, the requirement for an additional SCSR cannot be justified. 30 C.F.R. currently recognizes these differences and grants relief to anthracite mines in the current standards reflected in [30] CFR 75.302, [30] CFR 75.333(e)(2), [30] CFR 75.333(e)(4), [30] CFR 75.325(e)(1), [30] CFR 75.325(e)(2), [30] CFR 75.325(e)(3), [30] CFR 75.371(jj), [30] CFR 75.381, and [30] CFR 75.404. Also, Petitions for Modification have been granted for [30] CFR 75.334(a)(1) and (b)(2), [30] CFR 75.364(b)(5), [30] CFR 75.335(a)(1), [30] CFR 75.340, [30] CFR 75.360(b)(5), [30] CFR 75.364(b)(1) and [30] CFR 75.364(b)(2)."

4. "There is only 1 working shift with less than ten men and all work is done by hand labor. There is no electric face equipment."
5. "A methane ignition has never occurred. Because of the pitching seams, methane bleeds to the surface. Damp and wet conditions occur in the entire mine."
6. "Historically in anthracite mines, fire has not been a significant hazard, as a result of the low volatile matter of the coal. This is reflected in the numerous granted petitions related to firefighting."
7. "Finally, I the petitioner, aver that a decision in my favor will in no way provide less than the same measure of protection afforded the miners under the existing standard."

A handwritten note from Darryl Koperna (the petitioner), dated June 28, 2007, and received in MSHA Headquarters on August 7, 2007, informed the Agency that the required lifelines had been installed in the mine and the request for a modification under Docket No. M-2006-038-C was withdrawn. The MSHA District Office was contacted and confirmed by telephone that the lifelines had

been installed and the installations were not found to diminish the safety of miners where the lines cross vertical openings. Consequently, the requested modification is no longer 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, S & M Coal Company's Petition for Modification of 30 C.F.R. § 75.381(c)(5) at the Buck Mountain Slope mine is hereby:

DISMISSED.

Any party to this action desiring a hearing on this matter must file in accordance with 30 C.F.R. pt. 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