

September 13, 2007

In the matter of  
San Juan Coal Company  
San Juan South Mine  
ID No. 29-02170

Petitions for Modification

Docket Nos. M-2006-078-C and  
M-2006-079-C

PROPOSED ORDER OF DISMISSAL

On September 14, 2006, San Juan Coal Company filed a petition pursuant to Section 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, for modification of the application of the mandatory safety standard 30 C.F.R. § 75.335(a)(2). On October 10, 2006, San Juan Coal Company filed a petition for the modification of the application of the mandatory safety standard 30 C.F.R. § 75.335(a)(1). Both petitions are applicable to the San Juan South Mine in San Juan County, New Mexico. The Petitioner alleges that application of these standards will result in a diminution of safety to the miners, and that the alternative methods proposed will at all times provide an equal or higher degree of safety as that provided by the existing standard.

When the petitions were filed, § 75.335(a)(1) required that seals installed after November 15, 1992 be constructed in accordance with the specified requirements of the standard. In addition, § 75.335(a)(2) allowed for use of alternative seal methods or materials to create a seal if it could withstand a static horizontal pressure of 20 pounds per square inch (psi) and the method of installation and the material used were approved in the ventilation plan.

On May 22, 2007, MSHA promulgated an emergency temporary standard (ETS) addressing hazards related to sealing of abandoned areas in underground coal mines which revised former § 75.335. New § 75.335 requires a three-tiered approach for overpressure loading criteria applicable to new seals: (1) 50-psi overpressure for sealed atmospheres that are monitored and maintained inert; (2) 120-psi overpressure for sealed atmospheres that are not monitored, are not maintained inert, and certain hazardous conditions are not present in the sealed atmosphere; and (3) an overpressure greater than 120 psi for sealed areas that are not monitored, are not maintained inert, and where higher explosion pressures are possible within those sealed areas. In addition, the ETS specifies requirements for sampling and monitoring the atmosphere of sealed areas, seal design applications, installation approval, the construction and repair of seals, and recordkeeping.

These ETS standards supersede the standards petitioned and Petitioner's alternative method does not guarantee no less than the same measure of protection afforded by the ETS standards.

Therefore, pursuant to the authority delegated by the Secretary of Labor to the Administrator for Coal Mine Safety and Health, Petitions for Modification Docket Nos. M-2006-078-C and M-2006-079-C, seeking modification of 30 C.F.R. § 75.335(a)(1) and (a)(2) at the San Juan Coal Company's San Juan South Mine are hereby:

DISMISSED without prejudice.

Any party to this action desiring a hearing on this matter must file in accordance with 30 C.F.R. § 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. If a hearing is requested, the request must 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 must 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 and must be posted by the operator on the mine bulletin board at the mine.

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