

In the matter of:
Hiawatha Coal Company
(Formerly C.W. Mining Company)
Bear Canyon #4 Mine
ID No. 42-02335

Petition for Modification

Docket No. M-2007-044-C

PROPOSED ORDER OF DISMISSAL

On June 14, 2007, C.W. Mining 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. 44 et seq., for the modification of the application of 30 C.F.R. §75.350, a mandatory safety standard that states in relevant part,

- (a) The belt air course must not be used as a return air course; ...the belt air course must not be used to provide air to working sections or to areas where mechanized mining equipment is being installed or removed.

The Petitioner alleges that application of §75.350 will result in a diminution of safety to the miners when developing a three-entry system for longwall development and retreat mining due to probable adverse ground conditions utilizing the three-entry system compared to a two-entry system.

On November 7, 2007, MSHA conducted an investigation of the petition and filed a report of their findings and recommendations with the Administrator for Coal Mine Safety and Health. As part of the investigation, the Roof Control Division of MSHA's Pittsburgh Safety and Health Technology center conducted an evaluation of the ground control aspects at the mine and submitted a report of its findings.

On July 3, 2008, ownership of the Bear Canyon #4 Mine passed to Hiawatha Coal Company.

In regards to the Petitioner's allegation of diminution of safety using the three-entry system, during the investigation, no ground control problems associated with using multi-entry development were observed. However, the possibility exists that ground control will become more difficult under greater depths of cover.

After careful review of the findings in the reports and discussion with the Petitioner, it was determined that additional information is needed from computer modeling, convergence simulation, or studies to compare ground stability between the two entry system verses the three entry system under various depths of cover that encompass the projected mining area. Therefore, the Petitioner (current mine operator Hiawatha Coal Company) has requested that the petition be withdrawn.

Therefore, pursuant to the authority delegated by the Secretary of Labor to the Administrator for Coal Mine Safety and Health, the Petition for Modification of 30 C.F.R. §75.350 at the Hiawatha Coal Company's Bear Canyon #4 Mine is hereby:

DISMISSED.

Any party to this action desiring a hearing on this matter must file in accordance with 30 C.F.R. 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 may 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
Chief, Safety Division for
Coal Mine Safety and Health