

In the matter of:
Twentymile Coal Company
Foidel Creek Mine
ID No. 05-03836

Petition for Modification

Docket No. M-2007-046-C

PROPOSED ORDER OF DISMISSAL

On June 25, 2007, Twentymile 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. § 44 *et seq.*, for the modification of the application of 30 C.F.R. § 75.335(c), a mandatory safety standard that stated "Welding, cutting, and soldering with an arc or flame are prohibited within 150 feet of a seal." When this petition for modification was submitted, an Emergency Temporary Standard, the Final Rule for 30 C.F.R. § 75, Sealing of Abandoned Areas, issued May 22, 2007, and promulgated under the provisions of the MINER Act was in effect.

The Final Rule on Sealing of Abandoned Areas was adopted April 18, 2008; the rule renumbered 30 C.F.R. § 75.335(c) as 30 C.F.R. § 75.337(f). 30 C.F.R. § 75.337(f) states:

(f) Welding, cutting, and soldering. Welding, cutting, and soldering with an arc or flame are prohibited within 150 feet of a seal. An operator may request a different location in the ventilation plan to be approved by the District Manager. The operator's request must address methods the mine operator will use to continuously monitor atmospheric conditions in the sealed area during welding or burning; the airflow conditions in and around the work area; the rock dust and water application methods; the availability of fire extinguishers on hand; the procedures to maintain safe conditions, and other relevant factors.

Pursuant to the Final Rule, the mine operator may submit procedures in its ventilation plan that address welding, cutting, or soldering within 150 feet of a seal for District Manager approval. If the desired alternative method is denied, the mine operator may seek to contest a citation before the Federal Mine Safety and Health Review Commission and/or submit a Petition for Modification under 30 C.F.R. § 44. Accordingly, the petition as submitted is not appropriate or needed at this time and should be dismissed.

Therefore, pursuant to the authority delegated by the Secretary of Labor to the Administrator for Coal Mine Safety and Health, Twentymile Coal Company's Petition for Modification of 30 C.F.R. § 75.337(f) at the Foidel Creek 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