

In the matter of:
R S & W Coal Company Inc
R S & W Drift
ID No. 36-01818

Petition for Modification

Docket No. M-2007-065-C

PROPOSED ORDER OF DISMISSAL

On October 25, 2007, R S & W Coal Company, Inc. 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 for the modification of the application of 30 C.F.R. § 75.311(a), a mandatory safety standard.

30 C.F.R. § 75.311(a) requires that,

Main mine fans shall be continuously operated, except as otherwise approved in the ventilation plan, or when intentionally stopped for testing of automatic closing doors and fan signal devices, maintenance or adjustment of the fan, or to perform maintenance or repair work underground that cannot otherwise be made while the fan is operating.

The petitioner requests that the standard be modified to allow the main mine fan to be idle, i.e., shutdown, during non-working hours. The petitioner notes that the mine has operated for 23 years with an "approved fan stoppage plan" which allows the fan to be shut down when no one is in the mine and restarted one-half hour before the preshift examiner enters the mine each work day.

In June 2007, MSHA had notified the petitioner that the ventilation plan in effect at the mine was not adequate and MSHA had requested that, pursuant to 30 C.F.R. § 75.370, a revised ventilation plan be submitted to the district manager. MSHA's request was based on the results of the analysis of air samples that showed methane in the mine as well as the results of investigations that showed methane accumulations following the stoppage of main mine fans. MSHA's investigations indicated that, upon restarting the fans, methane levels increased then gradually declined, but methane levels remained elevated for longer than one-half hour.

Following extended negotiations, MSHA and the petitioner were at an impasse. In October 2008, because MSHA had not received any revision, the district manager rescinded the approval for the ventilation plan. In November 2008, a citation was issued to the petitioner for operating without an approved ventilation plan and the petitioner contested the citation. In December 2008, a hearing was held before Administrative

Law Judge David F. Barbour of the Federal Mine Safety and Health Review Commission to resolve the plan dispute. After 1½ days of testimony, and pursuant to the judge's request, the parties resumed negotiations in an attempt to resolve the matter. A settlement was reached wherein the petitioner agreed to revise the ventilation plan to operate the main mine fan for 1 hour before the preshift examiner entered the mine each work day. On January 26, 2009, the judge approved the settlement agreement, affirmed the citation, and set the penalty assessment for the citation. R S & W Coal Co., B & B Coal Co., Bear Gap Coal Co., 31 FMSHRC (Jan. 2009) (ALJ) (Docket Nos. PENN 2009-97-R involving Citation No. 7011308, PENN 2009-98-R involving Citation No. 7001051, and PENN 2009-99-R involving Citation No. 7011309).

As a consequence of the settlement agreement, 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 S & W Coal Company's Petition for Modification of 30 C.F.R. § 75.311(a) at the R S & W Drift 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 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