

In the matter of:
Cumberland River Coal Company
Pardee Plant / Loadout
I.D. No. 44-05014

Petition for Modification

Docket No. M-2007-069-C

PROPOSED ORDER OF DISMISSAL

On January 4, 2008, Cumberland River 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. § 77.214(a), a mandatory safety standard.

The petitioner requests modification of 30 C.F.R. § 77.214(a), to allow backfilling of the mine bench and covering of the four (4) abandoned mine portals of the Old Dominion Energy, Inc. at the abandoned Dogwood No. 2 Mine (I.D. No. 44-07018) with surface mine spoil and covering the site with mine refuse. The site has been abandoned since March 13, 2008 and the resulting refuse pile is to be identified as 1211-VA5-0286-82 and to be constructed from mine refuse produced from the Pardee Plant / Loadout. This site is adjacent to and may later be incorporated in the Potcamp Fork Slurry Impoundment if any construction above Stage 3D occurs. On May 22, 2008, MSHA's District 5 investigator reported the mine workings sealed and equipped with appropriate drains, confirmed the site to be covered with non-combustible mine spoil, and indicated that the petitioner also wishes to add refuse material to the site from the Pardee Plant / Loadout (I.D. No. 44-05014), located in Wise County. On September 9 and 12, 2008, the petitioner submitted additional information indicating the work of backfilling the site with noncombustible material and installing a drain pipe in the lowest of the four portal entries had been completed. The petitioner reported having used approximately 100,000-plus yards of non-combustible surface mine spoil to backfill the site and provided calculations to justify the size of the drainpipe of 10-inch diameter, with the maximum head of water passing at one foot. The petitioner estimated the drainage area/mine working at 453 acres but did not provide a mine map or identify any other locations at which the underground mine workings approach the surface.

On October 15, 2008, the petitioner requested that the petition for modification (Docket No. M-2007-069-C) be withdrawn because the area is no longer need as a location at which to dispose of preparation plant refuse.

ORDER

Therefore, pursuant to the authority delegated by the Secretary of Labor to the Administrator for Coal Mine Safety and Health, Cumberland River Coal Company's Petition for Modification of 30 C.F.R. § 77.214 at the Dogwood No. 2 abandoned mine site 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