

In the matter of:  
Blue Diamond Coal Company  
Mine #75  
I.D. No. 15-17478

Petition for Modification  
  
Docket No. M-2008-031-C

### PROPOSED ORDER OF DISMISSAL

On June 18, 2008, Blue Diamond 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. § 75.364(b)(2), a mandatory safety standard.

The petitioner requests modification of 30 C.F.R. § 75.364(b)(2), to allow the use of evaluation points to monitor air flow in an intake aircourse which was becoming unsafe to travel.

The petitioner had filed a petition for the modification of the application of 30 C.F.R. § 75.364(b)(2) for travel of one entry of each return air course due to adverse roof conditions. A review by an MSHA investigator indicated that the entries named in the petition were actually intake air courses that could not be traveled due to water. The correct standard, applicable to the travel of at least one entry of each intake aircourse, is 30 C.F.R. § 75.364(b)(1). The District determined on June 25, 2008 that the water had been removed from the affected area, making the air course safe to travel.

On January 22, 2009, MSHA received a request from the petitioner to withdraw the petition for modification assigned Docket No. M-2008-031-C. MSHA District personnel confirmed that the aircourse was being traveled in its entirety and that the aircourse roof conditions did not pose a hazard to the examiners.

### ORDER

Therefore, pursuant to the authority delegated by the Secretary of Labor to the Administrator for Coal Mine Safety and Health, Blue Diamond Coal Company's Petition for Modification of 30 C.F.R. § 75.364(b)(2) at #75 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.

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