

In the matter of
Omega Mining, Inc.

Petition for Modification

Beehive Mine
I.D. No. 44-05411

Hatfield Mine
I.D. No. 44-07104

Docket No. M-2009-064-C

PROPOSED DECISION AND ORDER

On December 15, 2009, Omega Mining, Inc. filed a petition under Section 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. Additional requested information was provided on March 08, 2010. The petition sought a modification of the application of 30 C.F.R. § 75.1506(c)(1) to Petitioner's Beehive Mine and Hatfield Mine, located in Russell County, Virginia. The petitioned standard, 30 C.F.R. § 75.1506(c)(1) states, in relevant part:

Refuge alternatives shall be provided at the following locations: Within 1,000 feet from the nearest working face.....

Petitioner proposes to maintain a refuge alternative to within 1,000 feet of the active section loading point and be allowed to develop a maximum of 200 feet in by the 1,000 foot location prior to the installation of the refuge alternative. Petitioner stated that this would allow the refuge alternative to be installed adjacent to the loading point of the active section while not interfering with ventilation or haulage. The Petitioner alleges that the alternative method will at all times provide the same measure of protection for the miners as the standard while eliminating the need for portable or prefabricated type refuge alternatives.

MSHA personnel conducted an investigation of the petition on March 29, 2010, and filed a report of their findings and recommendations with the Administrator for Coal Mine Safety and Health. After a careful review of the entire record, including the petition and MSHA's investigative report, this Proposed Decision and Order is issued.

Finding of Fact and Conclusion of Law

In support of the petition, the Petitioner states that strategic surface locations are necessary for providing adequate placement of the boreholes in relationship to active underground workings. Although this statement is true, correlating strategic surface

locations with active underground working are achievable by decreasing the spacing of the refuge alternatives without having to increase the distance of the refuge alternative from the working face.

NIOSH recommended that refuge alternatives be located as close as possible to the working faces to minimize the time and effort required to reach refuge alternatives. Lower coal seam heights, difficult bottom conditions and the presence of smoke, among other factors, would affect the travel time from the working face to the refuge alternative.

MSHA changed the distance in the final rule to 1,000 feet from the working face to the refuge alternative based on testimony and comments regarding the inability of miners on the working section to travel over 1,000 feet through smoke and debris to reach the refuge alternative, especially if injured or exhausted. MSHA determined that it is more protective to have a refuge alternative close to the working face so that persons can reach it more quickly.

Based on the information provided and the finding of fact, the application of the proposed alternative method in the petition does not, at all times, guarantee the same measures of protection afforded by the existing standard.

ORDER

Wherefore, pursuant to the authority delegated by the Secretary of Labor to the Administrator for Coal Mine Safety and Health, and pursuant to Section 101(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C., § 811(c), it is ordered that Omega Mining Inc.'s Petition for Modification of the application of 30 C.F.R. § 75.1506(c)(1) to Beehive Mine and Hatfield Mine is hereby:

DENIED.

Any party to this action desiring a hearing on this matter must file in accordance with 30 CFR 44.14, 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 Decision and Order will become final and must be posted by the operator on the mine bulletin board at the mine.

Charles J. Thomas
Acting Deputy Administrator for
Coal Mine Safety and Health