

In the matter of
Lone Mountain Processing, Inc.
Darby Fork Mine No. 1
I.D. No. 15-02263

Petition for Modification

Docket No. M-2002-043-C

PROPOSED ORDER OF DISMISSAL

On May 10, 2002, Lone Mountain Processing, Inc., filed a petition pursuant to 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. sec. 811(c), and 30 CFR 44 et seq., for the modification of the application of 30 CFR 75.901, to its Darby Fork No. 1 Mine, located in Harlan County, Kentucky.

MSHA personnel conducted an investigation of the petition and filed a report of their findings and recommendations with the Administrator for Coal Mine Safety and Health. MSHA investigation report determined that more information was needed in order to determine if the alternative method proposed would provide no less than the same level of protection as the standard. However, the petitioner failed to provide the necessary additional information. Consequently, MSHA is unable to determine if the alternative method proposed for 30 CFR 75.901 provides the same level of protection as the standard and the Darby Fork No. 1 Mine must comply with 30 CFR 75.701.

Therefore, pursuant to the authority delegated by the Secretary of Labor to the Administrator for Coal Mine Safety and Health, Lone Mountain Processing, Inc.'s, petition for modification of 30 CFR 75.901 to its Darby Fork No. 1 Mine is 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 shall 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.

Terry L. Bentley
Chief, Division of Safety
Coal Mine Safety and Health