

April 3, 2007

In the matter of:
Black Beauty Coal Company
Air Quality No. 1 Mine
I.D. No. 12-02010

Petition for Modification

Docket No. M-2005-054-C

PROPOSED ORDER OF DISMISSAL

On July 6, 2005, Black Beauty 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. Sec. 811(c), and 30 CFR 44 *et seq.*, for the modification of the application of 30 CFR 75.380(d)(5) to its Air Quality No. 1 Mine, located in Knox County, Indiana.

Petitioner sought a modification of 30 CFR 75.380(d)(5), which requires

(d) Each escapeway shall be--

(5) Located to follow the most direct, safe and practical route to the nearest mine opening suitable for the safe evacuation of miners;...

Petitioner requested a modification of the standard to permit the continued use of the existing escapeway from Unit 1 (1L/MS) number 1 entry at number 56 crosscut to the Main South (number 7 entry number 61 crosscut) intake escapeway. The petitioner alleged that the proposed alternative method would provide at least the same measure of protection as the existing standard.

On September 29, 2006, MSHA District 8 personnel determined that although the escapeway currently in use at the Air Quality No. 1 Mine is not the most direct route, it does represent the most practical escapeway, meaning that the mine is in compliance with the requirements of 30 CFR 75.380(d)(5). Therefore, the petition is not needed and it should be dismissed.

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., Sec. 811(c), it is ordered that Black Beauty Coal Company's Petition for Modification of the application of 30 CFR 75.380(d)(5) in its Air Quality No. 1 Mine is hereby

DISMISSED

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.

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 Decision and Order will become final and must be posted by the operator on the mine bulletin board at the mine.

Michael G. Kalich
Acting Chief, Division of Safety
Coal Mine Safety and Health