

In the matter of:
Black Diamond Mining, Inc.
Sioux Bank Operation
ID No. 36-08822

Petition for Modification

Docket No. M-2008-027-C

PROPOSED ORDER OF DISMISSAL

On April 24, 2008, Black Diamond Mining, Inc. 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. § 77.1200(c) and (k), a mandatory safety standard that states,

The operator shall maintain an accurate and up-to-date map of the mine, on a scale of not less than 100 nor more than 500 feet to the inch, at or near the mine, in an area chosen by the mine operator, with a duplicate copy on file at a separate and distinct location, to minimize the danger of destruction by fire or other hazard. The map shall show:

...

(c) Contour lines passing through whole number elevations of the coalbed being mined. The spacing of such lines shall not exceed 25-foot elevation levels, except that a broader spacing of contour lines may be approved by the District Manager for steeply pitching coalbeds. Contour lines may be placed on overlays or tracings attached to mine maps...

(k) Underground mine workings underlying and within 1,000 feet of the active areas of the mine.

On October 23, 2008, the Mine Safety and Health Administration received a letter from Black Diamond Mining, Inc. requesting that the petition for modification be withdrawn.

MSHA's investigation confirms that Black Diamond Mining, Inc.'s, Sioux Bank Operation is a coal preparation facility that does not conduct coal vein mining activities and may not be required to show coal elevation contour lines on the 77.1200 mine map. However, under the Federal Mine Safety and Health Act of 1977's definition of a mine includes a coal preparation plant and refuse/culm bank reprocessing and waste disposal operations. Consequently, appropriate sections of 77.1200 are required to be shown on the Sioux Bank Operation's surface mine map.

Therefore, pursuant to the authority delegated by the Secretary of Labor to the Administrator for Coal Mine Safety and Health, Black Diamond Mining, Inc.'s Petition for Modification of 30 C.F.R. § 77.1200 (c) and (k) at the Sioux Bank Operation 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