

November 27, 2007

In the matter of  
Armstrong Coal Company, Inc.  
Big Run Mine  
I.D. No. 15-18552

Petition for Modification  
  
Docket No. M-2007-049-C

PROPOSED ORDER OF DISMISSAL

On July 30, 2007, Armstrong 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. § 75.1908(a)(1), a mandatory safety standard.

The petitioned standard, 30 C.F.R. § 75.1908(a)(1), Nonpermissible diesel-powered equipment; categories, states,

- (a) Heavy-duty diesel-powered equipment includes -
- (1) Equipment that cuts or moves rock or coal;

The petitioner sought modification to use a diesel-powered A. L. Lee mini-track machine, serial No. 95-877, to clean the intake air escapeway from spad No. 0+90 to 53+80. The scoop was to be used to load and haul bottom rock from the escapeway to increase the entry height.

MSHA conducted an investigation of the petitioned mine and filed a petition investigation report on October 19, 2007. The investigation report included a verbal request by the petitioner for an expedited decision because the mine was anticipated to resume production in April 2008. Petitioner contacted MSHA by email to inquire into the status of the requested modification on October 23, 2007. When Petitioner was advised that such requests for modification had been denied to previous petitioners and that a final decision would require approximately ninety days to process, allowing for drafting and review of a decision and order and a required 30 day public notice publication, the petitioner decided to withdraw the petition. On November 8, 2007, the petitioner requested to withdraw the petition by email with a letter attachment to be

sent by registered mail. MSHA received the letter requesting the petition be withdrawn on November 16, 2007.

As a consequence, the petition has been withdrawn and should be dismissed.

Therefore, pursuant to the authority delegated by the Secretary of Labor to the Administrator for Coal Mine Safety and Health, Armstrong Coal Company, Inc.'s Petition for Modification of 30 CFR 75.1908(a)(1) at the Big Run Mine is hereby:

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.

---

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