

In the matter of:
Rosebud Mining Company
Tusky Mine, ID 33-04509;
Tom's Run Mine, ID 36-08525;
Beaver Valley Mine, ID 36-08725;
Logansport Mine, ID 36-08841;
Little Toby Mine, ID 36-08847;
Clementine Mine, ID 36-08862;
Lowry Mine, ID 36-09287;
Penfield Mine, ID 36-09355;
Mine 78, ID 36-09371

Petition for Modification

Docket No. M-2008-034-C

PROPOSED ORDER OF DISMISSAL

On June 26, 2008, a petition was filed seeking a modification of the application of 30 C.F.R. § 75.1100-2(e)(2) to Petitioner's Tusky Mine located in Tuscarawas County, Ohio; Tom's Run and Clementine Mines in Indiana County, Pennsylvania; Logansport and Clementine Mines, located in Armstrong County, Pennsylvania; Beaver Valley Mine, Beaver County, Pennsylvania; Little Toby Mine located in Elk County, Pennsylvania; Penfield Mine located in Clearfield County, Pennsylvania; and Mine 78 located in Somerset County, Pennsylvania. The Petitioner alleges that the alternate method outlined in the petition will at all times guarantee no less than the same measure of protection afforded by the standard.

30 C.F.R. § 75.1100-2(e)(2) provides that "One portable fire extinguisher and 240 pounds of rock dust shall be provided at each temporary electrical installation." Petitioner proposes to provide two (2) portable fire extinguishers having at least twice the required capacity or one (1) fire extinguisher having twice the required capacity at each temporary electrical installation in lieu of one (1) fire extinguisher and 240 lbs. of rock dust.

On September 15, 2008, the Mine Safety and Health Administration (MSHA) published a final rule revising the standard for the quantity and location of firefighting equipment in underground coal mines (73 FR 53124). The revised final rule, which became effective on October 15, 2008, removes §§ 75.1100-2(e)(1) and 75.1100-2(e)(2) and replaces them with amended § 75.1100-2(e). The final rule has eliminated the separate requirements for "permanent" and "temporary" electrical installations. The final rule for § 75.1100-2(e) provides:

Electrical installations. At each electrical installation, the operator shall provide two portable fire extinguishers that have a nominal capacity of 5 pounds of dry chemical, or one extinguisher that has a nominal capacity of at least 10 pounds of dry chemical, and which have a 2-A:10-B:C or higher rating.

Because of the aforementioned final rule, the petition for the modification of the application of 30 C.F.R. § 75.1100-2(e)(2) is not required because the proposed alternate method for the Tusky, Tom's Run, Beaver Valley, Logansport, Little Toby, Clementine, Lowry, and Penfield Mines and Mine 78 complies with the revised standard. Consequently, the modification is no longer needed and should be dismissed.

ORDER

Therefore, pursuant to the authority delegated by the Secretary of Labor to the Administrator for Coal Mine Safety and Health, Rosebud Mining Company's Petition for Modification of 30 C.F.R. § 75.1100-2(e)(2) to its Tusky, Tom's Run, Beaver Valley, Logansport, Little Toby, Clementine, Lowry, and Penfield Mines and Mine 78 is hereby:

DISMISSED.

Any party to this action desiring a hearing on this matter must file in accordance with 30 C.F.R. § 44.14 within 30 days. The request for the 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.

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