

In the matter of:

Petition for Modification

**American Engineering & Construction Company
Baker Mine**

I.D. No. 15-14492

Docket No. M-2004-035-C

PROPOSED ORDER OF DISMISSAL

On July 29, 2004, an authorized agent for **American Engineering & Construction 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 **75.364(b)(4)**, a mandatory safety standard, at the Baker Mine, located in Webster County, Kentucky.

On October 6, 2004, MSHA District 10 inspection personnel notified the Division of Safety that the request for modification should be dismissed because the mine was in the process of being sealed in accordance with the seal plan that was submitted to the District 10 office on July 19, 2004. MSHA District 10 inspection personnel were contacted. They verified that the unsafe-to-travel segment of **Baker Mine** was sealed, eliminating the need to travel through the hazardous area. The affected seals are Numbers 9, 10, 11, 12, and 13, located in the Second and Third North Main Entries. The sealing of the mine eliminated the need for a modification of 30 CFR 75.364(b)(4).

Therefore, pursuant to the authority delegated by the Secretary of Labor to the Administrator for Coal Mine Safety and Health, **American Engineering & Construction Company's** Petition for Modification of 30 CFR **75.364(b)(4)** to its **Baker Mine** is hereby:

DISMISSED without prejudice.

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, Safety Division
Coal Mine Safety and Health