



Issue Date: 31 December 2009

Case No.: 2009-MSA-00001

In the Matter of:

WEBSTER COUNTY COAL CORPORATION,
DOTIKI MINE,

Petitioner.

ORDER OF DISMISSAL

This cause of action arises pursuant to the Federal Mine Safety and Health Act of 1977, as amended (Act), U.S. Code, Title 30, § 951 et seq., and is governed by the implementing Regulations found at Code of Federal Regulations, Title 33, Part 44, as related to petitions for modification of mandatory safety standards. The request for hearing in this case was filed in the Office of Administrative Law Judges on October 8, 2008, by counsel for Webster County Coal Corporation's Dotiki Mine.

On April 4, 1988, Webster County Coal Corporation submitted a petition for modification of the application of 30 CFR § 75.1103-4(a) dealing with automatic fire sensor and warning device systems as applied to the Dotiki Mine in Webster County, Kentucky. On August 1, 1991, the Mine Safety and Health Administration granted the petition for modification. On August 13, 2008, the Mine Safety and Health Administration issued a Proposed Amended Decision and Order (PADO) which would modify the terms of the August 1, 1991, approved petition for modification. Such action is permitted under 30 CFR § 44.53(a) if there is either (1) a change in circumstances which originally supported the terms and condition of the 1991 modification, or (2) the Administrator determines that findings which originally supported the terms and conditions of the modification are no longer valid.

On November 23, 2009, the Parties filed a "Joint Motion to Resolve all Issues and to Dismiss." The Parties aver that a final rule was issued by the Mine Safety and Health Administration on December 31, 2008¹, that "will supersede all granted petitions for modification that allowed mine operators to use carbon monoxide sensors equivalent to point-type heat sensors" effective December 31, 2009. The new rule will require that all mines operating under approved petitions involving carbon monoxide sensors, including Defendant's subject mine, will be required to comply with the new federal regulation. The Parties submit that the federal rule "will supersede and moot the Proposed Amended Decision and Order, issued August 13, 2008 (PADO), and contested by Webster County Coal, LLP (WCC) by its Request for Hearing dated September 17, 2008" as of December 31, 2008. The Parties seek to have the Court issue an Order "vacating the PADO as moot" effective December 31, 2008, where upon the Defendant withdraws its request

¹ 73 Fed Reg. 80580 (December 31, 2008)

for hearing and the Parties agree that “this case may be dismissed.” The Parties agree that vacating the PADO as moot, withdrawing the request for hearing and dismissing the case will not adversely affect the safety and health of miners. By Order dated December 1, 2009, the formal hearing scheduled for January 14, 2010, in Madisonville, Kentucky was cancelled.

On December 31, 2008, the Department of Labor, Mine Safety and Health Administration, issued final rules addressing changes to 30 CFR Parts 6, 14, 18, 48 and 75, regarding “Flame-Resistant Conveyor Belt, Fire Prevention and Detection, and Use of Air From the Belt Entry.” The issue referred to formal hearing involved a PADO to the application of 30 CFR § 75.1103-4(a) dealing with automatic fire sensor and warning device systems as applied to the Dotiki Mine in Webster County, Kentucky, that would increase the location and number of carbon monoxide sensors in the Dotiki Mine. The PADO issue is mooted by the revised final rules that require all mine operators to comply with the amended requirements 30 CFR § 75.1103-4(a) involving automatic fire sensor and warning device systems that use carbon monoxide sensors as of December 31, 2009². Since the regulations set forth at 30 CFR § 75.1103-4(a) moot the disputed PADO and the Defendant has subsequently withdrawn its request for hearing, no issues remain to be adjudicated.

In that no issues remain to be resolved by formal hearing before the Office of Administrative Law Judges, the above captioned matter is DISMISSED pursuant to 30 CFR § 44.22.

A

ALAN L. BERGSTROM
Administrative Law Judge

ALB/jcb

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Notice of Appeal ("Notice") with the Assistant Secretary of Labor for Mine Safety and Health within thirty (30) days after service of the "Initial Decision" of the Administrative Law Judge. *See* 30 C.F.R. § 44.33(a). The Assistant Secretary's address is: Assistant Secretary for Mine Safety and Health, U.S. Department of Labor, Room 2322 TT#2, 200 Constitution Avenue, NW, Washington, DC 20210. Once an appeal is filed, all inquiries and correspondence should be directed to the Assistant Secretary.

At the time you file the Notice with the Assistant Secretary, you must serve it on all parties. *See* 30 C.F.R. §§ 44.6 and 44.33(a). If a party is represented by an attorney, then service must be made on the attorney. *See* 30 C.F.R. § 44.6(c).

If no Notice is timely filed, then the administrative law judge's "Initial Decision" becomes the final decision of the Secretary of Labor. *See* 30 C.F.R. § 44.32(a).

² 30 CFR Part 75, Subpart L; 73 Fed. Reg. 80580, 80614

