

whether the settlement is “*within the reaches of the public interest*.” More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).⁴ In determining whether a proposed settlement is in the public interest, a district court “must accord deference to the government’s predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.” SBC Commc’ns, 489 F. Supp. 2d at 17; see also Microsoft, 56 F.3d at 1461 (noting the need for courts to be “deferential to the government’s predictions as to the effect of the proposed remedies”); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States’ prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. “[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is ‘within the reaches of public interest.’” *United States v. Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975)), aff’d sub nom. *Maryland v. United States*, 460 U.S. 1001 (1983); see also *United States v. Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States “need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.” SBC Commc’ns, 489 F. Supp. 2d at 17.

Moreover, the court’s role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its

⁴ Cf. BNS, 858 F.2d at 464 (holding that the court’s “ultimate authority under the [APPA] is limited to approving or disapproving the consent decree”); *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to “look at the overall picture not hypercritically, nor with a microscope, but with an artist’s reducing glass”). See generally Microsoft, 56 F.3d at 1461 (discussing whether “the remedies [obtained in the decree are] so consonant with the allegations charged as to fall outside of the ‘reaches of the public interest’ ”).

Complaint, and does not authorize the court to “construct [its] own hypothetical case and then evaluate the decree against that case.” Microsoft, 56 F.3d at 1459. Because the “court’s authority to review the decree depends entirely on the government’s exercising its prosecutorial discretion by bringing a case in the first place,” it follows that “the court is only authorized to review the decree itself,” and not to “effectively redraft the complaint” to inquire into other matters that the United States did not pursue. *Id.* at 1459–60. As this Court recently confirmed in SBC Communications, courts “cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.” SBC Commc’ns, 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that “[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.” 15 U.S.C. 16(e)(2). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: “[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.” 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court’s “scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.” SBC Commc’ns, 489 F. Supp. 2d at 11.⁵

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the

⁵ See *United States v. Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the “Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone”); S. Rep. No. 93–298, 93d Cong., 1st Sess., at 6 (1973) (“Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.”); *United States v. Mid-Am. Dairymen, Inc.*, 1977-1 Trade Cas. (CCH) 61,508, at 71,980 (W.D. Mo. 1977) (“Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.”).

APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: February 25, 2008.
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BILLING CODE 4410-11-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of petitions for modification of existing mandatory safety standards.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification filed by the parties listed below to modify the application of existing mandatory safety standards published in Title 30 of the Code of Federal Regulations.

DATES: All comments on the petitions must be received by the Office of Standards, Regulations, and Variances on or before April 9, 2008.

ADDRESSES: You may submit your comments, identified by “docket number” on the subject line, by any of the following methods:

1. *Electronic mail:* Standards-Petitions@dol.gov.
2. *Facsimile:* 1–202–693–9441.
3. *Regular Mail:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2349, Arlington, Virginia 22209, Attention: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances.
4. *Hand-Delivery or Courier:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2349, Arlington, Virginia 22209, Attention: Patricia W. Silvey, Director,

Office of Standards, Regulations, and Variances.

We will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments. Individuals who submit comments by hand-delivery are required to check in at the receptionist desk on the 21st floor.

Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Jack Powasnik, Deputy Director, Office of Standards, Regulations, and Variances at 202-693-9443 (Voice), *powasnik.jack@dol.gov* (E-mail), or 202-693-9441 (Telefax), or contact Barbara Barron at 202-693-9447 (Voice), *barron.barbara@dol.gov* (E-mail), or 202-693-9441 (Telefax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary determines that: (1) An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or (2) that the application of such standard to such mine will result in a diminution of safety to the miners in such mine. In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modifications.

II. Petitions for Modification

Docket Number: M-2008-002-C.

Petitioner: Blue Diamond Coal Company, P.O. Box 47, Slem, Kentucky 41763.

Mine: Mine #75, MSHA I.D. No. 15-17478, located in Perry County, Kentucky.

Regulation Affected: 30 CFR 75.364(b)(2) (Weekly examination).

Modification Request: The petitioner requests a modification of the existing standard to permit check points (examination points) to be established in twelve locations of the Parallel Owens Branch Return Main due to water accumulations in these areas that prevent foot travel. The petitioner proposes to establish examination

points at certain points to evaluate airflow entering the Parallel Owens Branch Return Main and exiting Parallel Owens Branch Return Main. The petitioner also proposes to establish ventilation check points between certain breaks of the Parallel Owens Branch Return Main. The petitioner states that due to poor roof conditions and water accumulations and the distance from active works, it is impractical to expose personnel to traveling the affected area. The petitioner further states that no lesser degree of safety is ensured by traveling to both ends of the mains and verifying adequate air volume and quality at the evaluation points and check points. The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

Docket Number: M-2008-003-C.

Petitioner: Brooks Run Mining Company, LLC, 208 Business Street, Beckley, West Virginia 25801.

Mine: Wyoming No. 1 Mine, MSHA I.D. No. 46-09213 located in Wyoming County, West Virginia; and War Branch No. 1 Mine, MSHA I.D. No. 46-09055 and Cucumber Slope Mine, MSHA I.D. No. 46-09066 located in McDowell County, West Virginia.

Regulation Affected: 30 CFR 75.1101-1(b) (Deluge-type water spray systems).

Modification Request: The petitioner requests a modification of the existing standard to allow the deluge-type water spray to function without blow-off dust covers on the system nozzles. The petitioner proposes to conduct weekly inspection and functional testing of its complete deluge-type water spray system and remove blow-off dust cover from the nozzles. The petitioner asserts that application of the existing standard will at all times guarantee no less than the same measure of protection afforded the miners employed by the existing standard.

Docket Number: M-2008-004-C.

Petitioner: The American Coal Company, P.O. Box 727, Harrisburg, Illinois 62946.

Mine: Galatia Mine, MSHA I.D. No. 11-02752, located in Saline County, Illinois.

Regulation Affected: 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 30 CFR 18.35(a)(5)(i), (ii) (Portable (trailing) cables and cords).

Modification Request: The petitioner requests a modification of the existing standard to increase the maximum length of cables supplying power to permissible equipment used in continuous mining sections. The petitioner states that: (1) This petition

will only apply to trailing cables supplying three-phase, 995-volt power to continuous mining machines and trailing cables supplying three-phase, 480-volt power to roof bolters; (2) the maximum length of the 995-volt continuous mining machine trailing cables will be 950 feet and the maximum length of the 480-volt trailing cables for roof bolters will be 900 feet; (3) 995-volt continuous mining machine trailing cables will not be smaller than 2/0 and the 480-volt trailing cables for roof bolters will not be smaller than #2 American Wire Gauge (AWG); (4) all circuit breakers used to protect 2/0 trailing cables exceeding 850 feet in length will have instantaneous trip units calibrated to trip at 1,500 amperes and the trip setting will be sealed or locked and will have permanent legible permanent labels that will be maintained as legible to identify the circuit breaker as being suitable for protecting 2/0 cables; (5) replacement instantaneous trip units, used to protect 2/0 trailing cables, will be calibrated to trip at 1,500 amperes and the setting will be sealed or locked; (6) all circuit breakers used to protect #2 AWG trailing cables exceeding 700 feet in length will have instantaneous trip units calibrated to trip at 700 amperes, the trip setting will be sealed or locked, and the circuit breakers will have permanent legible labels that will be maintained as legible to identify the circuit breakers as being suitable for protecting #2 AWG cables; (7) replacement instantaneous trip units used to protect #2 AWG trailing cables will be calibrated to trip at 700 amperes and the setting will be sealed or locked; (8) the designated operator will visually examine the trailing cables during each production day to ensure that the cables are operating safely and the instantaneous settings of the calibrated breakers do not have seals or locks removed and do not exceed the stipulated settings; and (9) any trailing cable that is not in safe operating condition will be removed from service immediately and repaired or replaced; (10) each splice or repair in the trailing cables will be made in a workmanlike manner and in accordance with the instructions of the manufacturer of the splice or repair materials and will comply with 30 CFR 75.603 and 75.604; (11) permanent warning labels will be installed and maintained on the cover(s) of the power center identifying the location of each sealed or locked short-circuit protection device to warn the miners not to change or alter the short-circuit settings. Persons may review a complete description of petitioner's alternative

method and procedures at the MSHA address listed in the notice. The petitioner states that the alternative method will not be implemented until miners designated to examine the integrity of the seals or locks verify the short-circuit settings, and proper procedures training have been provided for examining trailing cables for defects and damage. The training for the miners will include the following elements: (1) Training in mining methods and operating procedures for protecting the trailing cables against damage; (2) training in the proper procedures for examining the trailing cables to ensure safe operating conditions; (3) training in the hazards of setting the instantaneous circuit breakers too high to adequately protect the trailing cables; and (4) training on how to verify that interrupting device(s) protecting the trailing cable(s) are properly set and maintained. The petitioner further states that within 60 days after the petition is granted, revisions to the Part 48 training plan will be submitted to the District Manager for the area in which the mine is located. The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection to the miners as would be provided by the existing standard.

Docket Number: M-2008-005-C.

Petitioner: Bear Gap Coal Company, 74 Kushwa Road, Spring Glen, Pennsylvania 17978.

Mine: N & L Slope Mine, MSHA I.D. No. 36-02203, located in Northumberland County, Pennsylvania.

Regulation Affected: 30 CFR 75.311(a) (Main mine fan operation).

Modification Request: The petitioner requests a modification of the existing standard to allow the main mine fan to be idle during non-working hours. The petitioner states that historically, the main mine fan operation has been shut down during non-working shifts, because of icing during the winter months. The petitioner proposes to use the following stipulations in the fan stoppage plan: (1) Shut the main mine fan down during idle periods; (2) no mechanized equipment will be used underground when the fan is idle; (3) no electric power circuits will be energized when the fan is idle; (4) the main mine fan will be operated for a minimum of one-half hour after the pressure recorder indicates that the normal mine ventilating pressure has been reached prior to any one entering the mine; (5) the slope gunboat may be used to make the required per-shift examination; (6) the communication circuit 9-volts will be energized prior to the pre-shift being made; (7) a certified person will conduct

an examination of the entire mine according to the requirements in 30 CFR 75.360; (8) persons will be allowed to enter the mine after it is determined to be safe and the pre-shift examination results have been recorded. The petitioner further states that repeated testing of methane concentrations have shown that concentration levels at no time have risen above 0.0 percent. The petitioner asserts that the proposed alternative method will in no way provide less than the same measure of protection afforded the miners under the existing standard.

Dated: March 4, 2008.

Jack Povasnik,

Deputy Director, Office of Standards, Regulations, and Variances.

[FR Doc. E8-4758 Filed 3-7-08; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

Agency Information Collection

Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection:

NUREG/BR-0238, Materials Annual Fee Billing Handbook.

NRC Form 628, "Financial EDI Authorization."

NUREG/BR-0254, Payment Methods.

NRC Form 629, "Authorization for Payment by Credit Card."

3. The form numbers if applicable: NRC Form 628 and NRC Form 629.

4. How often the collection is required: Annually.

5. Who will be required or asked to report: Anyone conducting business with the Nuclear Regulatory Commission including licensees, applicants and individuals who are required to pay a fee for inspections and licenses.

6. An estimate of the number of annual responses: 466 (10 for NRC Form 628 and 456 for NRC Form 629 and NUREG/BR-0254).

7. The estimated number of annual respondents: 466 (10 for NRC Form 628 and 456 for NRC Form 629 and NUREG/BR-0254).

8. An estimate of the total number of hours needed annually to complete the requirement or request: 38 (.8 hour for NRC Form 628 and 37 hours for NRC Form 629 and NUREG/BR-0254).

9. An indication of whether section 3507(d), Public Law 104-13 applies: N/A.

10. *Abstract:* The U.S. Department of the Treasury encourages the public to pay monies owed the government through use of the Automated Clearinghouse Network and credit

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Environmental Research and Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Environmental Research and Education (9487).

Dates: April 9, 2008, 9 a.m.-5 p.m.; April 10, 2008, 9 a.m.-1 p.m.

Place: Stafford I, Room 1235, National Science Foundation, 4201 Wilson Blvd., Arlington, Virginia 22230.

Type of Meeting: Open.

Contact Person: Alan Tessier, National Science Foundation, Suite 635, 4201 Wilson Blvd., Arlington, Virginia 22230. Phone 703-292-7198.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice, recommendations, and oversight concerning support for environmental research and education.

Agenda:

April 9

Introduction of New Members.

Update on recent NSF environmental activities.

Discussion of Sustainability Science. Break Out Groups.

April 10

Meeting with the Director (or Representative).

Discussion of Future AC/ERE activities.

Susanne Bolton,

Committee Management Officer.

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