

(citations omitted) (quoting *United States v. Gillette Co.*, 406 F. Supp. 713,716 (D. Mass. 1975)), *affd 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 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 "[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 the Congress that enacted the Tunney Act in 1974 intended, as Senator Tunney then 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 11.³

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by plaintiff United States in formulating the proposed Final Judgment.

DATED: October 30, 2007.

Respectfully submitted,

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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 December 19, 2007.

³ 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.").

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: Edward Sexauer, Chief, Regulatory Development Division at 202-693-9444 (Voice), sexauer.edward@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-2007-061-C.

Petitioner: D & R Coal Company, P.O. Box 728, Barbourville, Kentucky 40906.

Mine: Mine # 3, MSHA I.D. No. 15-19018, located in Knox County, Kentucky.

Regulation Affected: 30 CFR 75.342 (Methane monitors).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of hand-held continuous-duty methane and oxygen indicators in lieu of machine-mounted methane monitors on three-wheel tractors with drag bottom buckets. The petitioner states that: (1) All persons will be qualified to use the hand-held detectors; (2) a gas test will be taken to determine if any methane concentration is present in the atmosphere prior to allowing the coal-loading tractor in the face area and air quality will be monitored by the hand-held detector during each trip; (3) if one percent (1%) of methane is detected, the operator will manually de-energize his/her battery operated tractor immediately, production will immediately cease, work will be performed to eliminate the elevated methane levels, and production will resume when the methane has been lowered to less than one percent; (4) a spare continuous-duty hand-held methane and oxygen detector will be available to ensure that all coal hauling tractors are equipped with a working detector; and (5) the monitors will be inspected daily and fully charged, calibrated at least every 30 days, and will not be changed from manufacturer's specifications unless by a person qualified to do so. The petitioner asserts that application of the existing standard reduces protection and the proposed alternative method would greatly increase the safety and well being of miners.

Docket Number: M-2007-062-C.

Petitioner: D & R Coal Company, Inc., P.O. Box 728, Barbourville, Kentucky 40906.

Mine: Mine # 3, MSHA I.D. No. 15-19018, located in Knox County, Kentucky.

Regulation Affected: 30 CFR 75.380(f)(4) (Escapeways; bituminous and lignite mines).

Modification Request: The petitioner requests a modification of the existing to permit an alternative method for the use of mobile equipment traveling in the primary escapeway. The petitioner asserts that technology has not developed a fire suppression system that will fit on the type of equipment used in this mine, which is operated in the Blue Gem Seam of coal and has seam averaging 24 to 25 inches. The petitioner proposes to use portable fire

suppression equipment on three-wheel tractors in lieu of installing fire suppression systems. The petitioner proposes to use one twenty or two ten pound portable chemical fire extinguishers on each Mescher tractor used at the mine. If two extinguishers are used, a ten pound extinguisher will be mounted in the operators' deck with the other mounted on the tractor accessible to the operator. If one extinguisher is used, it will be mounted in the operators' deck. In either case, the petitioner proposes to use a total of twenty pounds of fire extinguisher capability on each Mescher tractor, which will be readily available to the operator. The petitioner states that: (1) The fire hazard potential on a Mescher tractor is extremely low because no hydraulics are used on these machines; (2) all other components of the tractor are permissible and are not susceptible to fire hazard; (3) the equipment operator will inspect each fire extinguisher daily before entering the primary escapeway; (4) a record of the inspections will be maintained; and (5) defective fire extinguishers will be replaced prior to entering the mine. The petitioner further states that: (1) The main travelway of the mine is also the primary escapeway; (2) the amount of time each Mescher tractor is in the primary escapeway is limited to the travel time to the face at the start of the shift, at mid-shift, to change batteries, and to travel out at the end of the shift during which time the drag bucket is empty and the tractor is not transporting coal; (3) portable fire suppression equipment can be used to direct the chemical fire suppressant by the operator in a more effective manner in case there is a fire; and (4) in this low coal mine the small fire extinguishers would be more effective to extinguish a fire than the machine-mounted systems. The petitioner also states that application of the existing standard will reduce the safety of the affected miners, since fire suppression equipment is not presently available for this type of equipment and currently, technology does not provide fire suppression equipment for the type of machinery used at the mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Docket Number: M-2007-063-C.

Petitioner: Alden Resources, LLC, 332 W. Cumberland Gap Parkway, Suite 100, Corbin, Kentucky 40701.

Mine: Bain Branch Refuse Piles (I.D. No. 1211-KY7-07157-01), MSHA I.D.

No. 15-17691, located in Whitley County, Kentucky.

Regulation Affected: 30 CFR 77.214(a) (Refuse piles; general).

Modification Request: The petitioner requests a modification of the existing standard because: (1) The proposed refuse pile is constructed over abandoned underground mine openings in the Blue Gem coal bed; (2) the abandoned openings have been sealed and backfilled with dirt; and (3) the abandoned pit is a "box-cut" and the refuse will be placed in 2-foot lifts and used to reclaim the pit to approximately the original contour. The petitioner states that: (1) The proposed modification will not reduce or diminish the safety of the proposed refuse pile since the pit being reclaimed is a box-cut and the dip of the coal seam is away from the portal area; (2) there is no danger of water from the abandoned workings saturating the fill and causing a failure; and (3) modification of the standard will allow for safe disposal of coal refuse at this site and will allow mining to continue in the area. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Docket Number: M-2007-064-C.

Petitioner: P & A Engineers and Consultants, Inc., for Stirrat Coal Company, P.O. Box 279, Louisa, Kentucky 41230.

Preparation Plant, MSHA I.D. No. 46-02515, located in Logan County, West Virginia.

Regulation Affected: 30 CFR 77.214(a) (Refuse piles; general).

Modification Request: The petitioner requests a modification of the existing standard to permit a dry refuse structure to be added to the existing plant and rescue facility located near Stirrat in Logan County, West Virginia. The petitioner states that: (1) The mine (Williamson Seam) was faced up using the conventional method of creating two mine benches and two high-walls for the mine entries; (2) it is estimated that mining was completed in Mid-1988; (3) the mine seals were certified by Registered Professional Engineer on September 20, 1988; and (4) upon completion of mining the portals were sealed and the high-walls were returned to an approximate 2:1 slope; and (5) a 6-inch Interior Diameter (ID) steel drain was installed eliminating any potential head of water on the mine seals. The petitioner has provided with this petition a photo of the installed drain pipe and the backfilled portals. The petitioner further states that: (1) The existing drain pipe will be routed to the outside and beyond the limits of the

coarse refuse fill; and (2) a rock filter will be placed around the extended pipe and wrapped in filter fabric (Mirafi 140N or equivalent) and extended through the refuse pile. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Docket Number: M-2007-065-C.

Petitioner: R S & W Coal Company, 207 Creek Road, Klingerstown, Pennsylvania 17941.

Mine: R S & W Drift Mine, MSHA I.D. No. 36-01818, located Schuylkill 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; (3) no electric power circuits enter the underground mine; (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 mine battery locomotive may be used to make the required pre-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 the gangway, chutes, and headings are developed in rock and tests have shown that measurements taken every three seconds at the main mine fan found no detectable methane concentrations. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Dated: November 13, 2007.

Jack Powasnik,

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

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LEGAL SERVICES CORPORATION

Notice of Intent To Award—Grant Awards for the Provision of Civil Legal Services to Eligible Low-Income Clients Beginning January 1, 2008

AGENCY: Legal Services Corporation.

ACTION: Announcement of intention to make FY 2008 Competitive Grant Awards.

SUMMARY: The Legal Services Corporation (LSC) hereby announces its intention to award grants and contracts to provide economical and effective delivery of high quality civil legal services to eligible low-income clients, beginning January 1, 2008.

DATES: All comments and recommendations must be received on or before the close of business on December 19, 2007.

ADDRESSES: Legal Services Corporation—Competitive Grants, Legal Services Corporation; 3333 K Street, NW., Third Floor; Washington, DC 2007.

FOR FURTHER INFORMATION CONTACT: Reginald Haley, Office of Program Performance, at (202) 295-1545, or haley@lsc.gov.

SUPPLEMENTARY INFORMATION: Pursuant to LSC's announcement of funding availability on April 13, 2007 (72 FR 18690), and Grant Renewal applications due on June 14, 2007, LSC intends to award funds to the following organizations to provide civil legal services in the indicated service areas. Amounts are subject to change.

Service area	Applicant name	Grant amount
Alabama:		
AL-4	Legal Services Alabama, Inc	\$6,194,159
MAL	Texas RioGrande Legal Aid, Inc	31,723
Alaska:		
AK-1	Alaska Legal Services Corporation	717,081
NAK-1	Alaska Legal Services Corporation	522,566
Arizona:		
AZ-2	DNA-Peoples Legal Services, Inc	520,360
AZ-3	Community Legal Services, Inc	3,755,950
AZ-5	Southern Arizona Legal Aid, Inc	1,811,524
MAZ	Community Legal Services, Inc	143,149
NAZ-5	DNA-Peoples Legal Services, Inc	2,521,402
NAZ-6	Southern Arizona Legal Aid, Inc	615,905
Arkansas:		
AR-6	Legal Aid of Arkansas, Inc	1,442,661
AR-7	Center for Arkansas Legal Services	2,153,508
MAR	Texas RioGrande Legal Aid, Inc	76,207
California:		
CA-1	California Indian Legal Services, Inc	32,757
CA-2	Greater Bakersfield Legal Assistance, Inc	910,038
CA-12	Inland Counties Legal Services, Inc	4,043,496
CA-14	Legal Aid Society of San Diego, Inc	2,827,558
CA-19	Legal Aid Society of Orange County, Inc	3,949,336
CA-26	Central California Legal Services	2,847,151
CA-27	Legal Services of Northern California, Inc	3,518,106
CA-28	Bay Area Legal Aid	4,147,448
CA-29	Legal Aid Foundation of Los Angeles	7,863,346
CA-30	Neighborhood Legal Services of Los Angeles County	4,644,807
CA-31	California Rural Legal Assistance, Inc	4,641,722
MCA	California Rural Legal Assistance, Inc	2,545,202