

CCASE:  
SOL (MSHA) V. PEABODY COAL  
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April 30, 1993

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
v.	:	Docket Nos. KENT 91-179-R
	:	KENT 91-185-R
PEABODY COAL COMPANY	:	

ORDER

The Commission issued a decision in this matter on March 25, 1993, affirming in part and reversing in part the decision of the administrative law judge and remanding to the judge the issue of whether a disputed ventilation plan provision was "suitable" to the conditions of the mines in question. 15 FMSHRC 381, 389 (March 1993). The Commission has subsequently received from Peabody Coal Company ("Peabody") a Petition For Reconsideration and For Stay Of Decision Pending Reconsideration ("Petition"). The Commission also has received from the Secretary of Labor a Response To Petition For Reconsideration ("Response").

All Commissioners have considered Peabody's Petition and the Secretary's Response and have agreed unanimously that the Chairman may issue an order setting forth their disposition of the Petition.

The Commission held that the Secretary bears the general burden of proving that the disputed plan provision was suitable to the mines in question. 15 FMSHRC at 388. Peabody's Petition requests the Commission to clarify that the Secretary bears the burden of proving not only that the disputed plan provision was suitable but also that Peabody's previously approved ventilation plans were no longer suitable. Petition at 4-7. The Secretary's Response states that, in the present case, where he seeks to have Peabody make changes in previously approved plans, he has no objection to bearing a burden of proving both the non-suitability of those plans and the suitability of the disputed plan provision. Response at 1 & n.1, 3.

Upon consideration of the Petition and Response, the Commissioners have determined unanimously that the issues raised in the Petition are best resolved in the first instance by the administrative law judge on remand. Accordingly, the Petition is denied.

For the Commission:

Arlene Holen  
Chairman