

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[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 *Gillette*, 406 F. Supp. at 716), *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).

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 compliant" to inquire into other matters that the United States might have but did not pursue. *Id.* at 1459-60.

VII. Determinative Documents

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

Dated: September 2, 2005.

Respectfully submitted,

David C. Kully (DC Bar #448763),

Jill A. Beard,

Attorneys for the United States, U.S. Department of Justice, Antitrust Division, Litigation III Section, 325 Seventh Street, NW., Suite 300, Washington, DC 20530, (202) 305-9969 (telephone), (202) 307-9952 (facsimile), David.Kully@usdoj.gov.

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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 inconsonant with the allegations charges as to fall outside of the 'reaches of the public interest'").

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Kingwood Mining Company, LLC

[Docket No. M-2005-062-C]

Kingwood Mining Company, LLC, Route 1 Box 294C, Newburg, West Virginia 26410 has filed a petition to modify the application of 30 CFR 75.364(b)(1) (Weekly examination) to its Whitetail K-Mine (MSHA I.D. No. 46-08751) located in Preston County, West Virginia. The petitioner requests a modification of the existing standard to permit monitoring stations to be established for the left side entries (looking inby) from the belt entry over of South Mains #2 at #8 crosscut to South Mains #4 at #9 crosscut due to deteriorating roof conditions. The petitioner proposes to establish monitoring stations (MS-S1, S2, S3, & S4) at inlet entries (MS-S3 and S4) at South #4 between #9-#10 crosscut and the outlet entries (MS-S1 and S2) at South #2 between #6-#7 crosscut. The petitioner will have a certified person examine the monitoring stations on a weekly basis for air quantity, quality, and direction, and record the results of the examination in a book. The petitioner will also examine the stopping line between the belt entry and the intake air entry area in question from the South Mains #2 at #4 crosscut to South Mains #4 at #9 crosscut each production day for integrity, and record the results in the daily belt examiners book. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. Mach Mining, LLC

[Docket No. M-2005-063-C]

Mach Mining, LLC, P.O. Box 300, Johnston City, Illinois 62951 has filed a petition to modify the application of 30 CFR 75.1909(b)(6) (Nonpermissible diesel-powered equipment; design and performance requirements) to its Mach #1 Mine (MSHA I.D. No. 11-03141) located in Williamson County, Illinois. The petitioner proposes to operate the Getman Roadbuilder as it was originally designed without front brakes. The petitioner will provide training to the grader operators on lowering the moldboard for additional stopping capability in emergency situations; train

operators to recognize the appropriate speeds to use on different roadway conditions; and limit the maximum speed of the Roadbuilder to 10 miles per hour. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via Federal eRulemaking Portal: <http://www.regulations.gov>; E-mail: zzMSHA-Comments@dol.gov; Fax: (202) 693-9441; or Regular Mail/Hand Delivery/Courier: Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before October 20, 2005. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia, this 15th day of September 2005.

Rebecca J. Smith,

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

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NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Extend an Information Collection

AGENCY: National Science Foundation (NSF).

ACTION: Notice and request for comments.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request clearance of this collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104-13), we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection for no longer than three years. **DATES:** Written comments on this notice must be received by November 21, 2005 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 292-7556; or send e-mail to