



DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by Kepler Processing Company, LLC.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments identified by Docket No. MSHA-2026-0001 by any of the following methods:

1. *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments for MSHA-2026-0001.
2. *Fax:* 202-693-9441.
3. *Email:* petitioncomments@dol.gov
4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, Room C3522, 200 Constitution Ave NW, Washington, DC 20210.

Attention: Jessica D. Senk, Acting Director, Office of Standards, Regulations, and Variances.

Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202-693-9440 to make an appointment.

FOR FURTHER INFORMATION CONTACT: Jessica D. Senk, Office of Standards, Regulations, and Variances at 202-693-9440 (voice), Petitionsformodification@dol.gov (email), or 202-693-9441 (fax). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

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 of Labor 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. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M-2026-001-C

Petitioner: Kepler Processing Company, LLC 3864 R.D. Bailey Highway State Route 97, Pineville, WV, 24874.

Mine: Kepler No. 1 Prep Plant, MSHA ID No. 46-04637, located in Wyoming County, West Virginia.

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

Modification Request: The petitioner requests a modification of the existing standard, 30 CFR 77.214(a) as it pertains to coarse coal refuse highwall backfill. Specifically, the petitioner

requests approval for backfilling and reclamation of the abandoned mine openings associated with the inactive Road Fork Development Company, Inc. – Kepler Sewell Mine (MSHA ID No. 46-09287) using coarse coal refuse as the backfill material.

The petitioner states that:

(a) The petitioner seeks modification of 30 CFR 77.214(a), as it pertains to the Kepler Processing Company, LLC’s proposed coarse coal refuse highwall backfill.

(b) Specifically, the petitioner requests approval to backfill five mine openings, associated with the inactive Road Fork Development Company, Inc. – Kepler Sewell Mine (Sewell coal seam) portal area, with coarse coal refuse as an alternative method to those methods described in § 77.214(a).

(c) The portals are located at approximate Elevation 1622.

(d) The petitioner proposes that the construction of the coarse coal refuse fill will cover the portal entries and reclaim the highwall; however, § 77.214(a) generally states that refuse piles shall not be located over abandoned openings.

(e) The apparent intent of § 77.214(a) is to limit the potential for a “blowout” of mine water and to limit the potential for combustion of the refuse and/or coal seam.

(f) The proposed modification addresses these concerns and provides a practical method of backfilling the openings with coarse coal refuse that will provide an equivalent or greater measure of protection afforded by the standard (§ 77.214(a)).

(g) The petitioner states that mining of the Road Fork Development Company, Inc. Kepler Sewell Mine may resume in the near future and the coal blended with coal from the Road Fork No. 52 Mine when needed.

(h) Upon completion of the mining in the Kepler Sewell No. 1 Mine, the mine openings shall be sealed and the highwall reclaimed as presented herein.

(i) The petitioner seeks an alternative method to the mandatory safety standard, asserting it will provide the same or greater level of safety for miners.

The petitioner proposes the following alternative method:

(a) The petitioner proposes to use coarse coal refuse as a construction material to cover the openings and reclaim the highwall.

(b) Each of the five openings associated with the Kepler Sewell Fork Mine No. 1 portal area shall be back-stowed with soil and rock to a length of 25 feet as specified in 30 CFR 75.1711-2.

(c) A 6-inch, SDR 17 high density polyethylene (HDPE) pipe shall also be installed through the soil/rock in each of the seals to convey pooled water from the mine.

(d) Existing canopies, structures, and loose debris shall be removed prior to placing the backfill/ pipe.

(e) An underdrain system consisting of durable rock cobbles and a perforated pipe wrapped with filter fabric shall be installed at the base of the mine openings along the entire portal area.

(f) The wet seal mine opening pipes shall be connected to the perforated pipe within the underdrain.

(g) The proposed mine opening pipes shall be extended approximately 40 feet in by the opening and positioned along the rib to minimize damage to, and movement of, the pipes during backfilling operations.

(h) The underdrain shall be extended to discharge beyond the limits of the proposed coarse coal refuse fill.

(i) Additional soil and rock shall be placed at the openings and along the exposed coal seam between the openings to provide a 4-foot (minimum) barrier in all directions between the coal and proposed coarse coal refuse fill.

(j) An internal drainage system is proposed to provide a controlled outlet for any water that accumulates in by the portal area.

(k) The proposed soil and rock backfill zone isolates the mine workings and coal seam from the proposed coarse coal refuse fill minimizing any potential for a mine fire to spread to the refuse fill.

(l) Any exposed areas of the Sewell coal seam within the fill footprint shall be covered with at least four feet of soil and rock as the coal refuse backfill is placed.

(m) The coarse coal refuse shall be placed in 2-foot (max) thick compacted lifts. This requirement should preclude the potential for the refuse to spontaneously combust.

(n) The coarse coal refuse shall be placed in a manner which precludes the fill from impounding water.

There are no representatives of miners at Kepler No. 1 Prep Plant. A copy of this Petition has been posted on the bulletin board as of February 26, 2026. In support of the proposed alternative method, the petitioner has also submitted a location map, plan and sections of the proposed coarse coal refuse fill and mine opening seal details, and photographs of the existing conditions of the openings.

The petitioner asserts that the alternative method will guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Jessica D. Senk,

Acting Director,

Office of Standards, Regulations, and Variances.

[FR Doc. 2026-06516 Filed: 4/2/2026 8:45 am; Publication Date: 4/3/2026]