In the matter of Petition for Modification

Jim Walter Resources, Inc.
No. 4 Mine
I.D. No. 01-01247

No. 5 Mine
I.D. No. 01-01322

No. 7 Mine
I.D. No. 01-01401 Docket No. M-2006-062-C

PROPOSED DECISION AND ORDER

On July 5, 2006, Jim Walter Resources, Inc. (JWR) filed a petition for modification of the application of a Mine Safety and Health Administration (MSHA) mandatory safety standard to its No. 4, No. 5, and No. 7 mines located in Tuscaloosa County, Alabama. According to the petition, these mines are gassy, liberating between six and twelve million cubic feet of methane per day, but after the shaft openings are sealed, the atmosphere will be non-explosive relatively quickly. JWR asserts that an alternative method, i.e., an unvented concrete cap, will at all times guarantee no less than the same measure of protection afforded the miners by 30 C.F.R. § 75.1711-1, and that the application of Section 75.1711-1 will result in a diminution of safety to the miners. Specifically, JWR asserts that an unvented concrete cap on the shaft openings of its No. 4, No. 5, and No. 7 mines will maintain a static, non-explosive atmosphere. JWR further asserts that a vented concrete cap on these shaft openings will allow an explosive combination of methane and oxygen to exist immediately beneath the cap, and that this explosive mixture could ignite or explode by an ignition source such as lightning. Therefore, JWR requests that its petition be granted and that vented concrete caps not be required on the shaft openings of the No. 4, No. 5, and No. 7 mines.

Section 101(c) of the Mine Act provides:

> Upon petition by the operator or the representative of miners, the Secretary may modify the application of any mandatory safety standard to a coal or other mine if the Secretary determines that 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 that the application of such standard to such mine will result in a diminution of safety to the miners in such mine.

30 C.F.R. § 75.1711-1 provides:

> Shaft openings required to be sealed under § 75.1711 shall be effectively capped or filled. Filling shall be for the entire depth of the shaft and, for the first 50 feet from the bottom of the coalbed, the fill shall consist of incombustible material. Caps consisting of a 6-inch thick concrete cap or other equivalent means may be used for sealing. Caps shall be equipped with a vent pipe at least 2 inches in diameter extending for a distance of at least 15 feet above the surface of the shaft.

On November 17, 2006, the United Mine Workers of America (UMWA) submitted comments on JWR's petition. The UMWA stated that "Local Union 2368 does not object to a concrete cap without a vent pipe, provided this petition is referring to when all underground work has ceased at the JWR #5 mine" and that "Local Union 2245 and Local Union 2397 both request that since the hazard of lightning strikes is well documented, future sealing of all shafts at their operations [the No. #4 and #7 mines] must be accomplished by filling the entire shaft."

MSHA investigated the petition and the District Manager, the Chief of the Ventilation Division, and MSHA's Office of Technical Support reported their findings to the Administrator for Coal Mine Safety and Health. MSHA requested that JWR provide additional information on the proposed alternative method on November 21, 2007, and November 17, 2008; however, JWR has not submitted any additional information. After a careful review of the entire record, including the UMWA comments, MSHA is issuing this Proposed Decision and Order.

Findings of Fact and Conclusion of Law

30 C.F.R. § 75.1711-1 provides two methods of sealing shaft openings of coal mines that are inactive, permanently closed, or abandoned. To comply with Section 75.1711-1, JWR may either (1) fill the entire depth of the shaft consisting of incombustible material for the first 50 feet from the bottom of the coalbed, or (2) install a 6-inch thick concrete cap or other equivalent with a vent pipe at least 2 inches in diameter extending for a distance of at least 15 feet above the surface of the shaft.

JWR asserts that a vented concrete cap on the shaft openings of its No. 4, No. 5, and No. 7 mines will allow an explosive combination of methane and oxygen to exist

immediately beneath the cap, which may cause an ignition or explosion by a lightening strike or other ignition source. Therefore, JWR asserts that application of the standard results in a diminution of safety to the miners. Because Section 75.1711-1 provides alternative methods of sealing shaft opening, it is broadly adaptable to myriad circumstances. The standard affords JWR considerable leeway in adapting the safety requirements of the standard to the variable and unique conditions at its different mines. For decades, MSHA has provided assistance to mine operators regarding appropriate types of vent pipes. Vent pipes may be plumbed using non-conductive materials, grounded against static build up, and equipped with check valves. The use of an appropriate type of vent pipe helps ensure that a mine's methane liberation is vented to the outside without building up to an explosive range and that the atmosphere in the shaft is protected against ignition sources.

JWR's No. 4 and No. 7 mines are reported to be currently in service with a projected service life of over twenty years. MSHA's investigation shows that as of August 25, 2008, JWR's No. 5 mine is "permanently abandoned." Moreover, JWR reported that two of the shafts at the No. 5 mine are filled to the surface with earth and other materials, and the remaining two shafts were reported to be capped in compliance with Section 75.1711-1. MSHA notes that the No. 5 mine must remain in compliance with Section 75.1711-1. Therefore, the request for a modification as to the No. 5 mine is moot.

Alternatively, JWR does not claim that the application of Section 75.1711-1, consisting of filling the entire depth of each shaft opening with incombustible material for the first 50 feet from the bottom of the coalbed, creates a diminution of safety to miners. Accordingly, MSHA finds that the application of Section 75.1711-1 to JWR's No. 4 and No. 7 mines does not result in a diminution of safety to the miners in those mines.

In addition, JWR's alternative method, which consists of installing unvented concrete caps and relying on the mines' methane liberation to create a non-explosive atmosphere throughout the shaft, does not at all times guarantee no less than the same measure of protection afforded the miners under Section 75.1711-1. An unvented concrete cap may allow oxygen to enter the mine shaft because in mines where methane liberation is great, the pressure in the shaft may "float" an unventilated cap. This "float" would allow oxygen to leak into the shaft through gaps around the cap and could result in an explosive atmosphere. Furthermore, most shafts have pipes that carry mine water to the surface, and other drains which, unless removed or filled with concrete, will allow air to enter a capped shaft. Such inflows have allowed shafts that were temporarily capped with unventilated shaft seals in an effort to smother a mine fire to draw in air and explode, demolishing the cap and the head frame. Accordingly, MSHA finds that JWR's alternative method of achieving the result of Section 75.1711-1 does not at all

times guarantee no less than the same measure of protection afforded the miners of JWR's mines by Section 75.1711-1.

ORDER

Wherefore, pursuant to the authority delegated by the Secretary of Labor to the Administrator for Coal Mine Safety and Health and pursuant to Section 101(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 811(c), it is ordered that Jim Walter Resources, Inc.'s Petition for Modification of the application of 30 C.F.R. § 75.1711-1 for the No. 5 mine is hereby:

DISMISSED as moot and

The Petition for Modification of the application of 30 C.F.R. § 75.1711-1 for the No. 4 and No. 7 mines is hereby:

DENIED.

Any party to this section desiring a hearing on this matter must file in accordance with 30 C.F.R. § 44.14, within 30 days. The request for hearing must be filed with the Administrator for Coal Mine Safety and Health, 1100 Wilson Boulevard, Arlington, Virginia 22209-3939. If a hearing is requested, the request must contain a concise summary of position on the issues of fact or law desired to be raised by the party requesting the hearing, including specific objections to the proposed decision. A party other than Petitioner who has requested a hearing may also comment upon all issues of fact or law presented in the petition, and any party to this action requesting a hearing may indicate a desired hearing site. If no request for a hearing is filed within 30 days after service thereof, the Decision and Order will become final and must be posted by the operator on the mine bulletin board at the mine.

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Kevin G. Stricklin
Administrator for
Coal Mine Safety and Health