

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 28 February 2006

CASE NO.: 2004-MSA-00006

In the Matter of:

**JIM WALTER RESOURCES, INC.,
(NO. 4 MINE, NO. 5 MINE, AND NO. 7 MINE),
Petitioner,**

v.

**MINE SAFETY AND HEALTH ADMINISTRATION (MSHA),
Respondent, and**

**UNITED MINE WORKERS OF AMERICA,
Party-in-Interest.**

Before: PAMELA LAKES WOOD
Administrative Law Judge

ORDER OF DISMISSAL

The instant case has been brought under section 101(c) of the Federal Mine Safety and Health Act of 1977, as amended, 30 U.S.C. §811(c), with implementing regulations at 30 C.F.R. Part 44. The matter before me consists of the Joint Motion to Dismiss filed by counsel for Respondent MSHA on behalf of both parties. For the reasons set forth below, the motion is granted and this case will be dismissed.

Proceedings were previously stayed based upon the informal agreement between the parties to first resolve a threshold jurisdictional issue that needed to be resolved by the Federal Mine Safety and Health Review Commission (specifically, whether the systems concerned in the petition are properly regulated under 30 C.F.R. Part 75 as underground installations or 30 C.F.R. Part 77 as surface installations). The next issue to be addressed was the Petitioner's alternative method of compliance with 30 C.F.R. §75.507 (for which modification was granted subject to certain conditions). Subsequently, the parties advised that a related matter was currently before Administrative Law Judge Jacqueline R. Bulluck of the Federal Mine Safety and Health Review Commission, and the stay was informally extended.

In the Joint Motion to Dismiss, the parties advised that on December 20, 2005, Judge Bulluck issued a decision in Docket No. SE 2005-28-R which generally addressed the law and facts involved in the instant proceedings. Specifically, the parties advised:

ALJ Bulluck's decision held that 30 C.F.R. §75.507-1 does not apply to submersible pumps located behind sealed areas in JWR's # 4, 5, and 7 Mines since the air in these areas is neither "intake" or "return" air by definition.

Joint Motion to Dismiss ¶2. The parties further advised that the Secretary of Labor had decided not to appeal Judge Bulluck's ruling and would cease enforcement of 30 C.F.R. §75.507-1 on the submersible pumps in the sealed areas of Respondent's #4, 5, and 7 mines as identified in the petition that is the subject of these proceedings.

In view of the above, the issues presented in this matter are now moot and there is no need for a hearing. Accordingly, good cause having been shown,

ORDER

IT IS HEREBY ORDERED that Joint Motion to Dismiss be, and hereby is, **GRANTED**, and this matter be, and hereby is, **DISMISSED**.

A
PAMELA LAKES WOOD
Administrative Law Judge

Washington, D.C.