



Issue Date: 14 January 2015

CASE NO.: 2015-MSA-00001

IN THE MATTER OF

**JIM WALTER RESOURCES INC.,
Petitioner**

v.

**MINE SAFETY & HEALTH ADMINISTRATION (MSHA)
Party Opposing Petition**

**INITIAL DECISION AND ORDER GRANTING
MSHA'S MOTION TO DISMISS**

This matter involves Jim Walter Resources, Inc., (JWR) request for modification of a mandatory safety standard promulgated under the Federal Mine Safety and Health Act of 1977 ("the Act"). In accordance with 30 U.S.C § 811(c), mine operators may apply for modification of mandatory standards. The procedures set forth in 30 C.F.R. Part 44 govern such requests for modification.

Title 30 C.F.R. Part 75 sets forth mandatory standards for underground coal mines, promulgated in accordance with the Act's procedures. Section 75.1506(a)(3) sets forth standards mandating use of part 7 approved components on refuge alternatives in underground mines. On October 28, 2013, JWR filed a Petition for Modification of Mandatory Standard 30 CFR § 75.1506(a)(3) as it applied to JWR's No. 4 and No. 7 Mines located in Tuscaloosa, Alabama.

Pursuant to 30 CFR § 44.13, the petition for modification was investigated. On September 2, 2014, the Chief of the Safety Division for Coal Mine Safety and Health issued a Proposed Decision and Order dismissing the petition finding that part 7 approved components had been installed and that modification of mandatory safety standard 30 CFR § 75.1506(a)(3) was no longer needed.

On October 2, 2014, JWR filed a request for hearing. On December 15, 2014, MSHA filed a Motion to Dismiss asserting that the relief JWR sought in the petition for modification was no longer necessary. MSHA asserts that JWR petitioned to be allowed to use "grandfathered" components in its refuge alternatives until "part 7 approved components" were ready. MSHA asserts that the part 7 approved components have been installed in the refuge alternatives in JWR's No. 4 and No. 7 mines. As such, JWR has no further need to use the once "grandfathered" components as JWR has the precise refuge alternative components that its needs to comply with the relevant mandatory standard of 30 CFR § 75.1506(a)(3).

In responding to MSHA's Motion to Dismiss, JWR acknowledges that by May 13, 2014, it had completed installation of part 7 approved components in the refuge alternatives in JWR's No. 4 and No. 7 mines.

Under §101(c) of the Act, the Secretary may modify application of any mandatory safety requirement to an individual 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." As of May 13, 2014, the standards set forth in § 75.1506(a)(3) have been met in JWR's No. 4 and No. 7 mines and there is no need for the Secretary to determine if the alternative method proposed by JWR will provide the same measure of protection afforded the miners by § 75.1506(a)(3). I find the issues raised in the Petition for Modification of Mandatory Standard 30 CFR § 75.1506(a)(3) as it applied to JWR's No. 4 and No. 7 Mines are therefore moot. Accordingly, I hereby dismiss the petition as moot.

ORDER

MSHA's Motion to Dismiss is hereby **GRANTED**. The Petition for Modification of Mandatory Standard 30 CFR § 75.1506(a)(3) as it applied to Jim Walter Resources, Inc.'s No. 4 and No. 7 Mines is hereby **DISMISSED WITH PREJUDICE**.

So ORDERED.

LARRY W. PRICE
ADMINISTRATIVE LAW JUDGE

NOTICE OF REVIEW

[NOTICE OF APPEAL RIGHTS: To appeal, you must file a Notice of Appeal ("Notice") with the Assistant Secretary of Labor for Mine Safety and Health within thirty (30) days after service of the "Initial Decision" of the Administrative Law Judge. *See* 30 C.F.R. § 44.33(a). The Assistant Secretary's address is: Assistant Secretary for Mine Safety and Health, U.S. Department of Labor, Room 2322 TT#2, 200 Constitution Avenue, NW, Washington, DC 20210. Once an appeal is filed, all inquiries and correspondence should be directed to the Assistant Secretary.

At the time you file the Notice with the Assistant Secretary, you must serve it on all parties. *See* 30 C.F.R. §§ 44.6 and 44.33(a). If a party is represented by an attorney, then service must be made on the attorney. *See* 30 C.F.R. § 44.6(c).

If no Notice is timely filed, then the administrative law judge's "Initial Decision" becomes the final decision of the Secretary of Labor. *See* 30 C.F.R. § 44.32(a).