FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
601 New Jersey Avenue, NW, Suite 9500
Washington, DC 20001-2021
Telephone No.: 202-434-9958
Telecopier No.: 202-434-9949

July 29, 2003

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDINGS
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. SE 2002-144
Petitioner,	:	A.C. No. 01-01322-04240
v.	:	
	:	Docket No. SE 2002-145
JIM WALTER RESOURCES, INC.,	:	A. C. No. 01-01322-04256
Respondent.	:	
	:	Docket No. SE 2002-148
	:	A. C. No. 01-01322-04247
	:	
	:	Docket No. SE 2002-150
	:	A.C. No. 01-01322-04245
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	:	Docket No. SE 2003-1
	:	A.C. No. 01-01322-04241
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	:	Docket No. SE 2003-2
	:	A.C. No. 01–01322-04242
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	:	Docket No. SE 2003-3
	:	A.C. No. 01-01322-04243
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	:	Docket No. SE 2003-4
	:	A.C. No. 01-01322-04244
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	:	Docket No. SE 2003-5
	:	A.C. No. 01-01322-04246
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	:	Docket No. SE 2003-6
	:	A. C. No. 01-01322-04248
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	:	Docket No. SE 2003-7
	:	A.C. No. 01-01322-04249
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	:	Docket No. SE 2003-8
	:	A.C. No. 01-01322-04250
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: Docket No. SE 2003-9
: A.C. No. 01-01322-04251
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: Docket No. SE 2003-10
: A.C. No. 01-01322-04252
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: Docket No. SE 2003-11
: A.C. No. 01-01322-04253
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: Docket No. SE 2003-12
: A.C. No. 01-01322-04254
:
: Docket No. SE 2003-13
: A.C. No. 01-01322-04255
:
: No. 5 Mine

ORDER DENYING CROSS MOTIONS FOR SUMMARY DECISION;
ORDER DISSOLVING STAY OF DISCOVERY;
ORGANIZATIONAL REQUIREMENTS AND;
ORDER SCHEDULING PREHEARING CONFERENCE

In these consolidated cases the Secretary of Labor ("Secretary") on behalf of her Mine Safety and Health Administration ("MSHA") alleges that Jim Walter Resources ("JWR" or "the company") violated numerous mandatory safety standards promulgated pursuant to the Federal Mine Safety and Health Act of 1977. 30 U.S.C. § 801, et seq. The Secretary seeks a civil penalty for each alleged violation, many of which arose out of the Secretary's investigation of two explosions that occurred at the company's No. 5 Mine on September 23, 2001.[1] The explosions took the lives of 13 miners and seriously injured three others.

After the cases were filed and assigned, I issued a pre-hearing order which, among other things, required the parties to confer and discuss settlement. While in the process of conferring, but prior to engaging in substantive settlement discussions, the parties instituted discovery. In response to the Secretary's discovery efforts, JWR filed a motion for partial summary decision, arguing that as a matter of law it is not responsible for many of the alleged violations because it did not control the mine at the time the citations were issued. JWR also filed a motion to stay discovery, asserting that a favorable ruling on its summary decision motion would obviate the need for discovery in many instances. I agreed with the company and stayed discovery. Subsequently, the Secretary filed a motion for partial summary decision asserting that there is no

[1] The No. 5 Mine is an underground bituminous coal mine located in Brookwood, Alabama.

basis for ruling in the company's favor, that JWR does not contest the factual allegations leading to the alleged violations and that the violations exist as charged.

The parties have briefed the issues thoroughly, and the motions are before me for decision.

SCENARIO OF EVENTS

The company asserts in pertinent part:

> 1. [O]n the evening of September 23, 2001, an accident involving a rock fall and two separate explosions occurred in the No. 4 section of the No. 5 Mine;
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> 2. [O]n September 23, 2001, MSHA Inspector Edward Nicholson issued Order No. 7676787[[2]] pursuant to section 103(k) of the Act (30 U.S.C. §813(k)[[3]]);
>
> 3. [A] few hours later, on September 23, 2001, Nicholson modified the order to cover the entire mine;
>
> 4. [T]he first JWR rescue team entered the mine at approximately 8:05 p.m., September 23, approximately two hours after the second explosion;
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> 5. [D]uring the remainder of September 23 and into the early morning of September 24, two JWR mine rescue teams advanced to the mouth of the No. 4 section to search for survivors, but the teams were removed at 6:25 a.m. on September 24 due to increased methane and C02 levels in the mine;

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[2] The order states: "A non-fatal explosion has occurred on the No. 4 section . . . [the order] is being issued to protect miners until the investigation is completed."

[3] Section 103(k) provides that in the event of an accident occurring in a mine an inspector "may issue such orders as he deems appropriate to insure the safety of any person in the . . . mine, and the operator . . . shall obtain the approval of . . . [MSHA] . . .to recover any person in such mine or to recover the coal . . . or to return the affected areas of such mine to normal." 30 U.S.C. §813(k). Orders issued pursuant to section 103(k) are referred to as "control orders."

> 6. [O]n September 24, a decision was made to flood the mine inby the 3 East Section (an area that included the No. 4 Section) to extinguish any remaining fires and to isolate the explosion area;
>
> 7. [F]rom September 25 to September 29, MSHA allowed JWR to pump water into that area of the mine;
>
> 8. [F]rom October 20 to November 3, JWR removed the water from the No. 4 Section;
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> 9. [O]n November 21, . . . JWR removed the remaining water from the No. 6 Section, which is located east of the entry to the No. 4 Section;
>
> 10. [O]n December 10, . . . JWR received permission to send miners on regular shifts into the mine to begin rehabilitation of the mine;
>
> 11. [O]n May 27, 2002, MSHA allowed coal production to resume on the H Panel Longwall.
>
> 13. [B]etween September 23, 2001, when . . . [the order] was issued and June 11, 2002, when the order was terminated, the order was modified 33 times[[4]];
>
> 14. [D]uring the same period, JWR and MSHA approved 49 addenda to the order which detailed specific steps JWR and MSHA personnel would take to recover the victims and return to normal mining operations[[5]];

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[4] In fact, MSHA modified the order 32 times. The thirty third "modification" (Order No. 7676787-33) terminated rather than modified the order (see JWR Mot., Exh. B at 34).

[5] The addenda were prepared by JWR and were approved by MSHA pursuant to section 103(k) of the Act which requires the operator to "obtain the approval of . . . [MSHA] of any plan to recover any person . . . in [the] mine or to recover the coal . . . or return affected areas of such mine to normal." 30 U.S.C. § 813(k). The addenda follow the same general format. Each states a purpose, the estimated time to accomplish the purpose, and the personnel needed for the purpose. Forty one of the addenda are signed by representatives of JWR, MSHA, the union, and the state. Six are signed by representatives of JWR, MSHA, and the union. One is not signed (No. 17) and one (No. 48) is missing from the submissions that accompany the motion (JWR Br. 5, Exh. D).

JWR states that for almost one month after the explosions, its and MSHA's focus remained on the recovery of miners killed in the accidents. The company asserts that because of the order it could not detect and correct violative conditions. Nor could it maintain the mine (JWR Br. 10). Indeed, a large part of the mine was still flooded (Id. at 11).

In early November the miners' bodies were located and removed. Following that, the focus turned to removing the remaining water from the mine (Id. 12). It was not until the last week in November, that conditions reached the point in some areas of the mine where rehabilitation work could be planned. During the last week in November, MSHA modified the order to allow a three day examination by JWR and union representatives of the area outby the 3 East section in order to create "detailed work schedules . . . for all . . . [miners] to return to those areas and repair and correct those hazards and or damages which [were] identified" (JWR Br. 12, quoting Addendum No. 42). The examination began on December 3, and Addendum No. 42 was followed by several other MSHA-approved addenda and modifications, which allowed repair and recovery work gradually to resume.

On December 4, Addendum No. 43 allowed some miners to begin repair work on the light system. On December 5, Addendum No. 44 allowed JWR and union personnel to examine the N. 5-9 shaft area to assess which areas could be rehabilitated. Miners entered the shaft area on December 6. On December 7, Modification No. 11 released for rehabilitation all areas outby the 3 East turnout (JWR Br. 13, Mod. No. 11, Exh. L).[6]

On December 8, the first portion of the surface area of the mine was released from the section 103(k) order. On December 9, Addendum No. 46 allowed JWR "to begin the reconstruction process at the No. 5 Mine by correcting hazards, repairing damage, and doing other mine related activities" (JWR Br. 13, quoting Exh. D, Addendum No. 46).[7]

On January 2, 2002, MSHA allowed company volunteers to work in areas still covered by the section 103(k) order. The miners were to remove debris prior to supporting a coal pillar near the 5-9 Shaft. On January 26, Modification No. 16 allowed the company access to all areas of the mine except for specified parts of the No. 4 Section and the No. 6 Section, which were not

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[6] In addition to releasing the area, the modification states that the returned area is "subject to the provisions of the Mine Act and 30 C.F.R." (JWR Br. 13, Exh. B, Mod. No. 11). JWR argues that "the language returning part of the mine to JWR for the purposes of the Mine Act and 30 C.F.R. . . . demonstrates that MSHA did not consider the controlled area to be subject to the normal laws and regulations before . . . [Modification No. 11] was issued" (JWR Br. 13, n. 6).

[7] Addendum 46 also states JWR must comply with "the provisions and examination requirements of 30 C.F.R. in this work area" (JWR. Br. 14, quoting Exh. D, Addendum 46). JWR asserts the language requiring compliance makes clear that MSHA did not view the area outby 3 East as subject to 30 C.F.R. prior to December 10 (JWR Br. 14).439

released to JWR until April 4, 2002 (JWR Br. 14, citing Exh. B, Mod. No. 16, n.7).[8] Also on January 26, MSHA allowed miners to perform reconstruction work in areas inby the 3 East Turnout (JWR Br. 15, Exh. D, Addendum 49).

On March 19, Modification 25 returned portions of the mine inby the 3 East Turnout to the quarterly MSHA inspection process (JWR Br. 15, citing Exh. B, Mod. 25). On April 4, Modification 28 allowed rehabilitation work to begin in the No. 6 Section and the No. 5-9 Shaft in fifty-foot increments (JWR Br. 16, citing Exh. B, Mod. 28). On April 26, Modification 29 allowed the company to begin rehabilitation work in the controlled portion of the No. 4 Section near the rock fall site (JWR Br. 16, Exh. B, Mod. 29).

On May 27, Modification No. 30 allowed JWR to resume coal production on the H panel long wall (JWR Br. 16, Exh. B, Mod. 30). On May 28, Modification No. 31 allowed JWR to remove the continuous mining machine from the No. 4 section of the mine and transport it to the surface (JWR Br. 16, Exh. B, Mod. 31). Finally, on June 5, 2002, Modification 32 allowed JWR to resume normal operations in the No. 4 section (JWR Br. 16, Exh. B, Mod. 32). MSHA terminated the section 103(k) control order on June 11, 2002 (JWR Br. 16, Exh. B., Mod. 33).

JWR'S ARGUMENTS

The company argues that the order, its modifications and its addenda show that MSHA, controlled "virtually every activity that occurred at the No. 5 Mine from . . . the date [the o]rder . . . was issued [until] the date the order was terminated" (JWR Br. 16). After the order was issued, its addenda and modifications released only specified portions of the mine to JWR, and MSHA continued to control all areas still covered by the order (Id. 22-23). Because of MSHA's control, JWR should not be held responsible for conditions which existed in parts of the mine over which it had no authority. Although the language in various modifications indicates that some inspectors believed that that until a part of the mine was released, the part was not subject to the Act and its mandatory standards, other MSHA's inspectors issued citations to JWR for conditions that existed in areas areas under MSHAs control.[9] Since JWR did not have access to these areas and since the areas were not bound by the requirements of 30 C.F.R., the citations should be vacated.

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[8] Modification No. 16 also states that from January 26 on, the area is to be governed by the Mine Act and 30 C.F.R. (JWR Br. 14-15, Exh. B No. 16).

[9] JWR asserts there are 45 such citations (see JWR Br. 17-18, 24-28), but it is careful to state that its motion does not cover: (1) citations issued for conditions that probably existed prior to the accident; (2) citations issued for violations that occurred during the recovery operation; and (3) citations issued for conditions existing in areas of the mine that had been released from the control order and which JWR had "ample time" to rehabilitate (JWR Br. 24).

THE SECRETARY'S RESPONSE AND CROSS MOTION

The Secretary's argues that the Act imposes on an operator strict liability for all violations and that nothing in the language or the legislative history of the Act indicates that an exception arises when a section 103(k) order is in effect (Sec's Mem. In Support of Cross Motion for Partial Summary Decision and In Opposition to Respondent's Motion for Partial Summary Decision ("Sec. Mem.") 5-6). If JWR had no control over a particular area, the company's negligence may be reduced and, hence, any civil penalty assessed may be less, but the company still is liable. (Sec. Mem 7). Because MSHA had the authority to issue the challenged citations and because the company is responsible for the cited conditions and does not contest the existence of the conditions, partial summary decision should be granted in the Secretary's favor (Sec. Mem. 17-19).

Alternatively, if the section 103(k) order relieved JWR of liability for violations occurring after imposition of the order, MSHA was not precluded from citing violations which occurred prior to the order but which were observed after the order was imposed, and the company has not established that the subject cited conditions occurred after the order was imposed (Sec. Mem. 8-9).

LIABILITY AND SECTION 103(K)

JWR's argument is premised on the proposition that an operator who does not control its mine or parts of its mine, can not examine, monitor, prevent and/or correct conditions that would violate the Act and regulations and, therefore, should not be held liable for them. This proposition is not new to the Act. It is a variant of an affirmative defense to liablity that the Commission and the courts have recognized – the impossibility of compliance defense.

The defense predates the Mine Act. It was enunciated by the Commission's predecessor, the Interior Board of Mine Operations Appeals ("IBMA"), which held that under the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. §801, et sec. (1969) ("Coal Act"), "Congress did not intend that a . . . notice [of violation] be issued or a civil penalty assessed where compliance with a mandatory health or safety standard is impossible due to unavailability of equipment, materials or qualified technicians." Buffalo Mining Co., 2 IBMA 226, 259 (September 20, 1973).

A variant of the defense was argued by Sewell Coal Company ("Sewell") when its mine was closed due to a strike and the company was able to employ only supervisory personnel underground. Due to the lack of union personnel, the mine deteriorated rapidly. An MSHA inspector, who was underground during the strike, cited Sewell for two conditions that violated Mine Act safety standards. The company did not contest the conditions but argued that its strike-caused lack of manpower made compliance impossible and therefore, that the citations should be vacated. A Commission Administrative Law Judge agreed, but the Commission reversed, finding the company had not established an impossibility of compliance defense as set forth in

Buffalo Mining. The Commission, adopting a case-by-case approach to the defense, found that compliance by Sewell was "difficult but not impossible." Sewell Coal Co., 3 FMSHRC 1380, 1382 (June 1981). The Commission stated, "the judge erred in recognizing an affirmative defense of impossibility of compliance in this case." 3 FMSHRC at 1382 (emphasis added).

The United States Court of Appeals for the District of Columbia Circuit affirmed the Commission and approved the Commission's approach of defining the scope of the defense on a case-by-case basis. Sewell Coal Co. v. FMSHRC, 686 Fed. 2d 1066, 1070 (D.C. Cir. 1982). The Court noted that neither the Coal Act nor the Mine Act exempt struck mines from safety standards and that neither the acts nor the regulations expressly recognize the defense.[10] Nevertheless, the Court approved the defense, finding it consistent with "principles that are implicit in the . . . Act." 686 F2d at 1070.[11]

I conclude the Court's approach in Sewell is applicable to JWR's asserted defense. A defense based on a lack of control due to the issuance of a section 103(k) order is not recognized in section 103(k), elsewhere in the Mine Act, or in the regulations. However, like the impossibility of compliance defense, it is consistent with "principles that are implicit in the . . . Act". 686 F2d at 1070.

The Act places the primary responsibility for preventing unsafe and unhealthy conditions in the nation's mines on "operators . . . with the assistance of the miners". 30 U.S.C. §801(e). The Act defines an "operator" in part as "[a]ny owner, lessee, or other person who operates, controls or supervises a . . . mine." 30 U.S.C. §802(d) (emphasis added). Therefore, by definition, operators must participate in and/or have authority over the operation, control or supervision of a mine. The purpose of the statutory definition is to assign responsibility for health and safety upon those entities that have actual authority over the conditions in the mine and/or who exhibit "substantial participation in the running of the mine," on the theory that such responsibility furthers compliance. National Industrial Sand Ass'n v. Marshall, 601 F2d 689, 701 (3rd Cir. 1979). When an owner, lessee or other person loses control or the authority to control the mine, the rationale no longer holds, and an affirmative defense based on the loss of control is implied.

Section 103(k) grants to the Secretary the extraordinary authority to take control of all or part of the mine away from the operator. Use of the authority can effectively place the Secretary in the shoes of the operator, and result in a disruption of the nexus between responsibility and

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[10] In Sewell the triggering notices of violation were issued under the Coal Act, but the Secretary's petition for assessment of penalty was filed after the Mine Act had taken effect, and the case was decided under the latter act (see 3 FMSHRC 1380 n.1).

[11] Thus, it is not accurate to state, as does the Secretary, that an operator always is liable for a violative condition. There are exceptions, impossibility of compliance being one.

compliance, a nexus that is a basis for the operator's liability. For this reason, I will recognize an affirmative defense based upon the Secretary's imposition of the section 103(k) order, provided the record establishes in each instance that the section 103(k) order as originally imposed or as subsequently modified and amended, deprived the company of its authority and control in the part of the mine where the cited condition existed, and that the condition would not have existed but for the presence of the order and its restrictions.[12]

THE CROSS MOTIONS

A motion for summary decision may be granted where: (1) there are no genuine issues of material fact; and (2) the movant is entitled to a decision as a matter of law. 29 C.F.R. §2700.67(b).

On JWR's part, the questions to be answered are whether the undisputed material facts establish the scope of the section 103(k) order at the time the conditions were cited and whether the cited conditions would have existed but for the imposition of the order. Put another way, did the order limit JWR's authority and control in the area cited and if so would the conditions have existed if the limitations had not been imposed? Obviously, the answer to the questions depends upon the particular conditions alleged in the subject citations and the impact of the restrictions of the order, its modifications, and its amendments on the conditions.

JWR argues that under the order and its modifications, MSHA controlled what work, if any, could be performed in areas covered by the order and that MSHA's inspector's issued citations for conditions they encountered before MSHA allowed JWR to perform rehabilitation and report work in the mine (JWR Br. 19). Even if true, this does not establish that the specific cited conditions would not have existed but for the restrictions imposed by the order and its modifications. For me to make these determinations, the record must be complete. The Secretary must present the testimony of her inspectors regarding the scope of the order and its modifications and their effect on the particular cited conditions. JWR then may offer the defensive testimony it believes is warranted. Therefore, I cannot grant JWR's motion.

Nor can I grant the Secretary's motion. As stated above, I do not agree with the Secretary that the issue of JWR's liability is resolved by rote application of the "strict liability" doctrine. I also disagree with her assertion that JWR does not dispute the existence of the conditions cited in the subject violations (Sec. Mem. 5-8). As I read JWR's motion, it is premised upon its argument that as a matter of law it may not be held liable for conditions in areas it could not access or maintain due to the section 103(k) order (JWR Br.4 n.1). If its argument does not lead to the partial summary decision it seeks, JWR reserves its right to challenge the merits of the citations (See e.g., Id. 12 n. 6).

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[12] I note, as JWR has pointed out, that at least some of MSHA's inspectors appear to agree. See e.g., Modification No. 11 (restoring the company's obligation to comply with the Act and the regulations in areas removed from the order).

The Secretary also argues that even if the JWR is not liable for conditions cited when the section 103(k) order was in effect, it is still liable for conditions pre-dating the order ("pre-existing conditions") (JWR Br.12). I agree, provided the facts, as subsequently determined, provide the basis for finding the existence of the alleged conditions, that the conditions violated the cited standards, and that the conditions occurred before the order took effect. I cannot make these findings without hearing from the inspectors and most likely from JWR's witnesses too.

For the foregoing reasons, the motions for partial summary decision are **DENIED.**

DISSOLUTION OF STAY ORDER

In view of the denial of the motions, the stay of discovery cases is **DISSOLVED** .

ORGANIZATIONAL REQUIREMENTS AND ORDERS

To facilitate the determination of these proceedings, counsels are **ORDERED** as follows:

1. **Master File and Docket**. The Commission's docket office will maintain a master docket and case file under the caption:

Secretary of Labor, Mine Safety)
and Health Administration,)
)
Petitioner)
)
v.)Docket No. SE 2002-144, etc.
)A.C. No. 01-0132204235
)
Jim Walter Resources, Inc.,)
)
Respondent)

All orders, pleadings, motions and other documents will, when filed and docketed in the master case, be deemed filed and docketed in each individual case to the extent applicable.

2. Captions; Separate Filing. Orders, pleadings, motions, and other documents applicable to all cases will bear the above caption and the notation "ALL CASES". They will be filed and docketed only in the master file. Documents intended to apply only to

a particular case will indicate in their caption the docket number of the case(s) to which they apply.

3. Discovery. The parties may engage in discovery, without regard to the limitations imposed by Commission Procedural Rule 56, 29 C.F.R. §2700.56, so long as it does not delay or otherwise interfere with the final disposition of these matters. Discovery requests and responses thereto, pursuant to Rule 58, 29 C.F.R. §2700.58, shall be served upon other counsel but shall not be filed, except as provided herein with the administrative law judge. The party responsible for service of the discovery material shall retain the original and become its custodian and, with respect to depositions, the deposing party shall retain the original deposition transcript and become its custodian and shall make it available for inspection by any party upon request. Any motion concerning discovery matters shall be accompanied by a copy of, or shall set forth verbatim, the relevant portion of any nonfiled discovery materials to which the motion is addressed. All discovery shall be completed no later than November 1, 2003.

3. Organization of Counsel. Counsels for the Secretary and counsels for the Respondents shall advise me within 10 days of the date of these orders who is to be designated as lead counsel and who is to be designated as liaison counsel for each party (name, address, telephone and fax number). Copies of all pleadings, motions, and other documents filed in these matters shall be served only on the lead and liaison counsels.

4. Trial. Subject to further order, the parties are directed to be ready for trial on all issues by November 14, 2003. Counsels are advised that the trial stage of the proceedings will be completed no later than February 15, 2004. Counsels are advised further that the undersigned intends to set a date for commencement of the trial at the Pretrial Conference scheduled below.

5. Pretrial Conference. It is **ORDERED** that a pretrial conference will be held at 8:30 a.m. in Birmingham, Alabama on September 5, 2003. (A specific site will be designated later.) At the conference the parties may be represented either by lead or liaison counsel, but only one counsel will speak for each party. The conference will be held for the following purposes:

a. Issue identification. Prior to the conference counsels are directed to confer and to identify for each other the issues

the parties contend must be addressed at trial. Counsel for the Secretary will offer a written stipulation, signed by lead counsels, of the issues upon which the parties jointly agree. Each counsel will offer a written statement of the issues he or she alone contends must be addressed. In addition, counsel for the Secretary orally will state the jointly agreed upon issues for the record, and each counsel will orally state the issues he or she alone contends must be addressed.

b. Discovery schedule. Prior to the conference Counsels are directed to confer and to agree upon a discovery schedule, recognizing that all discovery must be completed no later than October 31, 2003. Counsel for the Secretary will offer for the record a written discovery schedule, signed by lead counsels, and orally will read the agreed upon schedule into the record. If counsel are unable to agree, the judge arbitrarily will set a schedule for the parties.

c. Trial plan. There are 16 dockets in these cases (Docket No. SE 2002-140 has been severed and will be tried separately), and approximately 304 alleged violations. Prior to the conference, counsels are directed to confer and agree upon a structured plan for the trial all issues. In general, issues common to all dockets should be tried prior to allegations specific to particular dockets, and counsels will be expected to identify such issues in their statements of issues. Counsels are directed to be mindful that it may make for a more cogent record to try the alleged violations in a sequence dictated by the date the citations were issued or in a sequence dictated by the issuing inspectors rather then by the numerical sequence of the docket numbers. Counsel for the Secretary will orally describe the trial plan at the conference and will offer a written statement of the plan signed by lead counsels for inclusion in the record.

d. Appointment of settlement representatives and settlement deadline. Within 10 days of the date of these orders, each party shall appoint a representative to be responsible for its settlement negotiations. Prior to the conference counsels and the representatives are directed to confer and to agree upon a schedule for settlement discussions. Counsel for the Secretary orally will describe the schedule at the conference and will offer a written description of the schedule, signed by lead counsels, for inclusion in the record. The settlement discussions must be completed and a final report submitted, with appropriate motions to approve settlement, no later

than November 14, 2003, two weeks after the close of discovery. Settlement agreements will not be accepted after that date and all unresolved issues will be tried.

e. Other topics. At the close of discussions of the specified agenda, counsels may raise other matters they believe will aid in the disposition of these cases.

David Barbour
Chief Administrative Law Judge

Distribution: (Certified Mail)

Millard P. Darden, Jr., Esq., Leslie John Rodriguez, Esq., Office of the Solicitor, U. S. Department of Labor, 61 Forsyth Street, S.W., Room 7T10, Atlanta, GA 30303

David M. Smith, Esq., Janell M. Ahnert, Esq., Maynard, Cooper & Gale, P.C., 1901 Sixth Avenue North, 2400 AmSouth/Harbert Plaza, Birmingham, AL 35203

Guy Hensley, Esq, Jim Walter Resources, Inc., P.O. Box 133, Brookwood, AL 35444

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