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SOL (MSHA) V. JIM WALTER RESOURCES
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FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION
WASHINGTON, D.C.
April 29, 1985

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

v. Docket No. SE 84-57

JIM WALTER RESOURCES, INC.

BEFORE: Backley, Acting Chairman; Lastowka and Nelson,
Commissioners

DECISION

BY THE COMMISSION:

This civil penalty proceeding arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. (1982), mirrors the issues presented in Jim Walter Resources, 7 FMSHRC _____, Docket No. SE 84-23 (decided this same date) ("Jim Walter Resources I"). The citation at issue in this case alleges a violation of 30 C.F.R.

75.1403-5(g) for failure to provide 24 inches of unobstructed clearance along both sides of a coal-carrying belt conveyor due to the presence of large rocks, timbers, belt, belt structures, and the closeness of the ribs. The underlying notice to provide safeguard, issued pursuant to 30 C.F.R. 75.1403, is the same notice involved in Jim Walter Resources I, and the issue presented is also the same: whether section 75.1403-5(g) applies to coal-carrying belt conveyors.

In lieu of a hearing, the parties stipulated that the condition occurred as described in the citation; that the belt conveyor was a coal-carrying conveyor; and that the earlier decision of the Commission's Chief Administrative Law Judge, in Jim Walter Resources I, 6 FMSHRC 1815, 1819.(July 1984)(ALJ), controlled. Based on that decision's finding that section 75.1403-5(g) does not apply

to coal-carrying belt conveyors, the judge vacated the citation.
6 FMSHRC 2723 (December 1984)(ALJ). We granted the Secretary's
petition for discretionary review.

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For the reasons explained in our decision in Jim Walter Resources I, we conclude that section 75.1403-5(g) does apply to coal-carrying belt conveyors. Accordingly, we reverse the judge's decision here. We remand for further proceedings and findings as to whether the conditions cited constitute a violation of the safeguard issued under section 75.1403-5(g). See Southern Ohio Coal Co., 7 FMSHRC _____, Docket No. WEVA 84-166 (issued this same date).1/

Richard V. Backley, Acting Chairman
James A. Lastowka, Commissioner
L. Clair Nelson, Commissioner

1/ Pursuant to section 113(c) of the Mine Act, 30 U.S.C. 823(c), we have designated ourselves as a panel of three members to exercise the powers of the Commission.

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Distribution

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