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MSHA V. JIM WALTER RESOURCES  
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FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION  
WASHINGTON, D.C.  
January 13, 1989

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

v.

Docket Nos. SE 87-8  
SE 86-105-R

JIM WALTER RESOURCES, INC.

BEFORE: Ford, Chairman; Backley, Doyle, Lastowka and Nelson,  
Commissioners

DECISION

BY THE COMMISSION:

The issue in this consolidated contest and civil penalty proceeding arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (.1982)("Mine Act"), is whether Jim Walter Resources ("JWR") violated mandatory safety standard 30 C.F.R. § 75.500(d).<sup>1/</sup> Commission Administrative Law Judge Avram Weisberger

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<sup>1/</sup> 30 C.F.R. § 75.500 essentially restates section 305(a)(1) of the Mine Act, 30 U.S.C. § 865(a)(1), and provides:

On and after March 30, 1971:

(a) All junction or distribution boxes used for making multiple power connections in by the last open crosscut shall be permissible;

(b) All handheld electric drills, blower and exhaust fans, electric pumps, and such other low horsepower electric face equipment as the Secretary may designate on or before May 30, 1970, which are

taken into or used in by the last open crosscut of any coal mine shall be permissible;

(c) All electric face equipment which is taken into or used in by the last open crosscut of any coal mine classified under any provision of law as gassy prior to March 30, 1970, shall be permissible; and

(d) All other electric face equipment which is taken into or used in by the last crosscut of any

concluded that JWR violated the standard and assessed a \$500 civil penalty. 9 FMSHRC 983 (May 1987)(ALJ). We granted JWR's petition for discretionary review challenging the judge's finding of violation. For the reasons that follow, we affirm.

JWR's No. 5 mine is an underground coal mine located in Tuscaloosa County, Alabama. A unique longwall method of mining is used in the mine resulting in large, uneven pillars (blocks) of coal and in interrupted crosscuts between the various entries. On July 1, 1986, Carl Early, an inspector of the Department of Labor's Mine Safety and Health Administration ("MSHA"), conducted an inspection of the mine pursuant to section 103(i) of the Mine Act.<sup>2/</sup> In the mine's No. 8 section, Early observed a distribution box, used to supply power to shuttle cars, located in a crosscut between the No. 2 and No. 3 entries.<sup>3/</sup> The distribution box was not permissible. Concluding that the location of the non-permissible electrical face equipment was in violation of 30 C.F.R. § 75.500(a), see n.1 supra, and that the violation significantly and substantially contributed to a mine safety hazard and was caused by JWR's unwarrantable failure to comply with the standard, Early issued an order pursuant to section 104(d)(2) of the Mine Act. 30 U.S.C. § 814(d)(2).<sup>4/</sup>

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coal mine, except a coal mine referred to in § 75.501, which has not been classified under any provision of law as a gassy mine prior to March 30, 1970, shall be permissible.

30 C.F.R. § 75.501 is not applicable to this proceeding.

<sup>2/</sup> Section 103(i) requires that a spot inspection be conducted every five working days of all or part of each mine that liberates more than 1 million cubic feet of methane every 24 hours. 30 U.S.C. 813(i).

<sup>3/</sup> The inspector also determined that a non permissible scoop charger located in the same line of crosscuts between the No. 3 and No. 4 entries also violated the standard. The Administrative Law Judge, however, found no violation as to the scoop charger and his action in this respect is not before us on review.

<sup>4/</sup> Section 104(d)(2) of the Mine Act, 30 U.S.C. § 814(d)(2), states in part:

(2) If a withdrawal order with respect to any area in a coal or other mine has been issued pursuant to paragraph (1), a withdrawal order shall

promptly be issued by an authorized representative of the Secretary who finds upon any subsequent inspection the existence in such mine of violations similar to those that resulted in the issuance of the withdrawal order under paragraph (1) until such time as an inspection of such mine discloses no similar violations....

Section 104(d)(1) of the Mine Act, 30 U.S.C. § 814(d)(1), requires

After JWR contested the validity of the order of withdrawal, MSHA modified the order to allege a violation of section 75.500(d).5/ Subsequently, the Secretary proposed a civil penalty of \$1,000 for the violation and a hearing was held.

At the hearing, the parties stipulated that the distribution box was in non-permissible condition and that, if a violation of section 75.500(d) was found by the judge, the violation was of a significant and substantial nature. The parties disagreed as to whether the non-permissible equipment was located in a last open crosscut and therefore violated section 75.500(d), and whether, if there was a violation, it was caused by JWR's unwarrantable failure to comply.

Government Exhibit 2, a schematic drawing of the No. 8 section, was received into evidence and was used by the witnesses as an aid in explaining the location of the subject equipment in relation to the mining configuration of the No. 8 section. As an aid to our discussion a black and white copy of Government Exhibit 2, reduced in size, is attached to this decision and incorporated herein.

Inspector Early explained that the black areas on Exhibit 2 depict the pillars of coal in the No. 8 section, the lettered areas depict crosscuts, and the numbered areas depict entries. The lightly shaded area designated "F" represents the crosscut in which the distribution box was located. Early described a crosscut as "a cut through connecting two entries," and described "F" as "the last crosscut connecting the number two and three entries." Tr. 21, 26. Early described "A" and "H" as the "last open crosscuts" between the Nos. 1 and 2 and the Nos. 3 and 4 entries, respectively. Early stated that during the normal mining cycle, the continuous mining machine, shuttle cars, roof-bolters and the scoop traveled through "F" to get from one side of the section to the other, and that the equipment was required to be in permissible condition. Early stated that methane buildup frequently occurred in "F" whenever the check curtain in the No 3 entry was down or damaged.

MSHA ventilation specialist Jerry Vann described "F" as the last open crosscut between the Nos. 2 and 3 entries, and he described "A" and "H" as the last open crosscuts for purposes of the air readings required by the mandatory safety standards regulating mine ventilation. Tr. 74, 86, 108-09. 6/

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that an inspector issue a citation if he finds that a violation is "of such nature as could significantly and substantially contribute

to a mine safety or health hazard" and is caused by the operator's "unwarrantable failure ... to comply" and that an order of withdrawal be issued if, during the same inspection or any subsequent inspection within 90 days after the issuance of such citation, he finds another "unwarrantable failure" violation.

5/ No explanation of this modification appears in the record and no issue concerning the propriety thereof is before us on review.

6/ The mandatory safety standards regarding air quantity, quality,

Charles Stewart, JWR's deputy mine manager, described "F" as the "last connecting crosscut" between the Nos. 2 and 3 entries and as the crosscut through which permissible equipment had to travel from one entry to the other. Stewart described "A" and "H" as areas subject to the ventilation requirements of 30 C.F.R. §§ 75.302 and 75.316, standards that reference the "last open crosscut." Tr. 158-59, 183-85. 7/

The Secretary argued to the judge that "F" was the last crosscut connecting the Nos. 2 and 3 entries. Therefore, the presence of the non-permissible distribution box in "F" established a violation of section 75.500(d). JWR argued that crosscut "F" cannot be a last open crosscut because other mandatory safety and health standards reference the term "last open crosscut" in a manner that would exclude crosscut "F." JWR maintained that, in light of these other standards (30 C.F.R. §§ 75.200-7(b)(3)(iii), 75.301-3(a) and 75.302(a)), a last open crosscut can be identified as the final tunnel (crosscut) that connects two entries and, in which crosscut, roof bolts must be tested. It is also the crosscut that separates the intake air from return air, through which a required volume of air must pass, and from which line brattice must be maintained to the working face. Lastly, it is the crosscut through which the air contaminated with methane and dust from the mining process passes. JWR Br. to ALJ at 7-8. JWR contended that when these requirements are applied to the crosscuts at the No. 5 Mine, crosscut "F" cannot be categorized as a last open crosscut.

In his decision, the judge rejected JWR's arguments stating that it would be "unduly restrictive to hold that the identification of the 'last open crosscut' for the purposes set forth in the [standards] cited by [JWR] mandates identification of the same crosscut for the purposes enumerated in section 75.500(d)." 9 FMSHRC at 985. Rather, the judge stated that he would be guided by Congress' intent in requiring that only permissible electrical equipment be taken into or used in by the last open crosscut "to assure that such equipment will not cause a

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and velocity in underground coal mines contain repeated references to the term "last open crosscut." See, e.g., 30 C.F.R. §§ 75.301, 75.301-3; See also n.5, *infra*.

7/ Section 75.302 requires that "[p]roperly installed and adequately maintained line brattice ... shall be continuously used from the last open crosscut of any entry or room of each working section to provide adequate ventilation to the working faces...."

Section 75.316-1(a)(10) requires the mine operator to submit to MSHA a mine map that includes the volume of air passing through the last open crosscut in each set of entries and rooms at each working face. 30 C.F.R. § 75.316-(b)(1) requires the mine operator to submit to MSHA a ventilation system and methane and dust control plan that shows methane and dust control practices in all "active working places," and 30 C.F.R. § 75.2(g)(2) defines "working place" as "the area of a coal mine inby the last open crosscut."



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mine explosion or a mine fire." Id. 8/ The judge accepted the testimony of MSHA witnesses Early and Vann that methane was frequently detected in "F" and that any interruption of the check curtain in the No. 3 entry would permit a methane buildup. The Judge concluded:

[T]o hold that the crosscut in which the distribution box was located, is other than the last crosscut, would clearly lessen the assurance against a mine explosion or fire, and would accordingly be violative of the expressed purpose of section 318(i)... Furthermore ... [the Secretary's witnesses] all testified, in essence, that to their knowledge the only way that the crosscut in which the distribution box is located is referred to, is as the last crosscut.

9 FMSHRC at 986. The judge therefore concluded that JWR violated section 75.500(d) by having the non-permissible distribution box in "F," "which is the last crosscut between entries 2 and 3 and which is the last crosscut referred to in section 75.500(d)." Id. The Judge assessed a \$500 civil penalty for the violation.

On review, JWR repeats the arguments made below and argues that the judge improperly found that the distribution box was in a location that violated section 75.500(d). JWR contends that "A" and "H" are the last open crosscuts in entries No. 2 and 3, and that the judge's finding of "F" as the last crosscut for purposes of section 75.500(d) results in an inconsistent application of the other mandatory standards referencing last open crosscuts. We do not agree.

Section 75.500(d) prohibits the bringing of non-permissible electric equipment into or inby the last crosscut.<sup>9/</sup> The term "last

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<sup>8/</sup> Section 318(i) of the Act, 30 U.S.C. § 878(i), defines permissible electric face equipment as:

[A]ll electrically operated equipment taken into or used inby the last open crosscut of an entry or a room of any coal mine the electrical parts of which ... are designed, constructed, and installed, in accordance with the specifications of the Secretary, to assure that such equipment will not cause a mine explosion or mine fire....

9/ Sections 75.500(a), (b) and (c) use the term "last open crosscut." Section 75.500(d), however, references the "last crosscut." JWR states that "the terms 'last crosscut' and 'last open crosscut' are synonymous in the mining industry. There is no difference between the term 'last open crosscut' and 'last crosscut.'" JWR Brief at 6 n.1. For purposes of interpreting section 75.500, we agree. See, e.g., Legislative History of the Federal Coal Mine Health and Safety Act of 1969, Senate Subcommittee on Labor, 94th Cong., 1st Sess., at 53, 194, 749, 833, 1477, 1527 (1975). Therefore, we use the terms interchangeably

crosscut" or "last open crosscut" is not defined in either the Mine Act or its implementing regulations. However, a "crosscut" is recognized to be a passageway or opening driven between entries for ventilation and haulage purposes. U.S. Department of Interior, Dictionary of Mining, Mineral, and Related Terms 280 (1968) ("DMMRT"). A "last open crosscut" is that open passageway connecting entries closest to the working face. 10/ See Peabody Coal Co., KENT 86-94-R, slip op. at 5.6 (11 FMSHRC \_\_\_\_, January 12, 1989.) Given the mining configuration in use at JWR's mine, as represented in Government Exhibit 2, attached, we conclude that "F" is the last open crosscut between the Nos. 2 and 3 entries.

The inspector testified without dispute that during the normal mining cycle the Nos. 1, 2, 3 and 4 entries are driven forward. Coal is cut in one entry at a time. Tr. 41-45. Intake air travels across "F" and up the No. 3 entry to ventilate the working face in the No. 4 entry. Tr. 34-37. Further, during the cycle the continuous mining machine, shuttle cars, roof bolters and the scoop travel across "F" to get from one side of Section 8 to the other. Tr. 38-47. Thus, "F" is the last open passageway between the Nos. 2 and 3 entries that is used for ventilation and haulage purposes in this working section. See e.g., Tr. 26, 136-137, 185.

As the judge correctly stated, "There was no crosscut connecting entries 2 and 3 which was further in by the crosscut in which the distribution box was located." 9 FMSHRC at 985. Thus, we hold that substantial evidence supports the judge's conclusion that under the mining configuration followed at the time of citation, "F" was the last crosscut between Nos. 2 and 3 entries. 9 FMSHRC at 986.

We do not agree with JWR that, in light of other mandatory safety and health standards referencing the term "last open crosscut" and imposing various safety requirements in such crosscuts, it is fatally inconsistent or conflicting to hold that 75.500(d) applies to crosscut "F" because compliance with those other requirements may not be logical or necessary in crosscut "F." We agree with the arguments of the Secretary that each standard using the term "last open crosscut" requires "that certain activities be conducted in an area in which it has been deemed most crucial" and that when interpreting these standards "due consideration must be given to their intended purpose as evidenced by their specific terms." Sec. Br. 8, 10. For example, air flow is required to be measured at the last open crosscut "that separates the intake and return air courses." 30 C.F.R. 75.301-3(a). Since crosscut "F" does not separate the intake and return air courses, the Secretary maintains that the

air measurements required by that standard need not be taken at crosscut "F." Tr. 76; Sec. Br. 9. Similarly, line brattice is required from the last open crosscut of an entry "to provide adequate

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throughout this decision.

10/ A "working face" is "any place in a coal mine in which work of extracting coal from its natural deposit in the earth during the mining cycle is performed...." 30 U.S.C. § 878(g)(1); 30 C.F.R. § 75.2(g)(1). See also DMMRT 407, 1244 (definitions of "face" and "working face").

ventilation to the working faces." 30 C.F.R. 75.302(a). Because in JWR's configuration installing line brattice from crosscut "F" would impede the flow of air up the Nos. 2 and 3 entries, the Secretary represents that line brattice would not be required from crosscut "F" to the working faces. Sec. Br. 9-10. The Secretary also states that the torque-testing requirements of 30 C.F.R. 75.200-7(b)(3)(iii) apply only to roof bolts in parts of entries closer to the working face than crosscut "F" to ensure the proper installation of the most recently installed bolts. Sec. Br. 9. In sum, the Secretary represents that none of these standards exclusively defines "last open crosscut"; they simply require that certain activities be conducted addressing specific concerns usually presented by last open crosscuts, but not presented in crosscut "F" under this particular mining configuration. As we stated in Peabody, supra, "we recognize that in any given coal mine, the mining methodology may uniquely determine the last open crosscut. Thus, we must leave to future cases any descriptive refinements necessitated by other particular mining configurations." Slip op. at 6, fn. 8 (11 FMSHRC\_\_\_\_, January 12, 1989).

We agree with the Secretary's arguments. We note that in fact no citations were issued by the Secretary alleging violations of the other standards pointed to by JWR. We further note that we will remain cognizant of the representations and arguments made here by the Secretary in the unlikely event that the discussed regulations were to be interpreted in a manner inconsistent with the interpretation proffered in the present case. Therefore, we conclude that the requirements of these other standards do not prevent the classification of crosscut "F" as a last open crosscut for purposes of section 75.500.

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For the foregoing reasons, we agree with the judge that "F" was the last crosscut for purposes of section 75.500(d), and we concur in his finding that JWR violated the regulation by locating the non-permissible distribution box in "F." Accordingly, we affirm the judge's decision.

Ford B. Ford, Chairman

Richard V. Backley, Commission

Joyce A. Doyle, Commissioner

James A. Lastowka, Commissioner

L. Clair Nelson, Commissioner

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