

CCASE:
JIM WALTER RESOURCES V. MSHA
DDATE:
19920702
TTEXT:
July 2, 1992
JIM WALTER RESOURCES, INC.

v.

Docket No. SPECIAL 92-01

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

ORDER

On June 25, 1992, counsel for Jim Walter Resources, Inc. ("JWR"), submitted for filing with the Commission's Office of Administrative Law Judges a document entitled "Notice of Contest and Motion for Partial Relief from Final Order." A corrected cover page to the motion, submitted on June 26, 1992, makes clear that the motion is intended to be lodged with the Commission itself. Essentially, the motion seeks to reopen an unspecified number of uncontested and closed cases in which JWR paid civil penalties proposed by the Department of Labor's Mine Safety and Health Administration ("MSHA"). The asserted grounds for relief are that the penalties were proposed, in part, on the basis of MSHA's Program Policy Letter No. P90-III-4 (May 29, 1990), which the Commission concluded could be "accorded no legal weight or effect" in Drummond Co., 14 FMSHRC 661, 690 (May 1992), and related cases.

Subsequent to JWR's submission, the American Mining Congress ("AMC") submitted a motion to participate in this matter as an amicus curiae on the side of JWR. Counsel for the Secretary of Labor then submitted an unopposed motion requesting an enlargement of time in which to file a statement in opposition to JWR's motion.

For administrative purposes only, this matter, which involves unique issues possibly affecting a large number of closed penalty matters, will be assigned the docket reference "No. Special 92-01." The parties' various papers are hereby accepted for filing under that docket number. The assignment of a docket number and acceptance for filing does not mean, nor is meant to suggest, that the Commission has determined that it possesses jurisdiction in this matter or is thereby ruling on any issues raised in the parties' papers.

The Commission has determined administratively that counsel for the Secretary of Labor has no objection to the AMC's amicus participation. The AMC's motion adequately sets forth the basis of its interest in this matter and why its participation would be desirable. Cf. Fed. R. App. P. 29. Upon

consideration of the AMC's motion, it is granted and the AMC is hereby
~1114

permitted to participate as amicus in this proceeding.

Upon consideration of the Secretary's motion for enlargement of time,
it is granted and the Secretary has until July 27, 1992, to file her
statement of opposition in this matter.

For the Commission:

Ford B. Ford

Chairman