

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET NW, 6TH FLOOR

WASHINGTON, D.C. 20006

April 21, 1997

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
v.	:	Docket Nos. SE 94-448
	:	SE 94-586-R
JIM WALTER RESOURCES, INC.	:	

BEFORE: Jordan, Chairman; Marks, Riley and Verheggen, Commissioners

DECISION

BY THE COMMISSION:

This contest proceeding arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. ' 801 et seq. (1994) (AMine Act@or AAct@). Following an evidentiary hearing, Administrative Law Judge David Barbour upheld order of withdrawal No. 3184217 issued to Jim Walter Resources, Inc. (AJWR@) under section 104(d)(2) of the Act, 30 U.S.C. ' 814(d)(2), by the Department of Labor's Mine Safety and Health Administration for JWR's violation of 30 C.F.R. ' 72.630(a) at its No. 4 Mine in Birmingham, Alabama. 17 FMSHRC 1423, 1424-27 (August 1995) (ALJ). The judge concluded that JWR violated the standard, that the violation was not significant and substantial, and that the violation resulted from JWR's unwarrantable failure. *Id.* at 1443, 1448, 1450. The Commission thereafter denied JWR's petition for discretionary review and motion for reconsideration. 17 FMSHRC 1682 (October 1995).

Subsequently, JWR filed a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit. On January 17, 1997, the court issued its decision affirming in part and reversing in part the decision of the Commission. *Jim Walter Resources, Inc. v. Secretary of Labor*, 103 F.3d 1020, 1027 (D.C. Cir. 1997). The court affirmed the judge's determination that JWR violated section 72.630(a), but reversed his conclusion that the violation resulted from JWR's unwarrantable failure and remanded the case to the Commission for further action consistent with the court's opinion. *Id.* On March 28, 1997, the court issued its mandate.

Pursuant to the court's order, we delete the unwarrantable failure designation and convert the section 104(d)(2) order to a citation under section 104(a) of the Mine Act, 30 U.S.C. § 814(a).

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Mary Lu Jordan, Chairman

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Marc Lincoln Marks, Commissioner

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James C. Riley, Commissioner

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Theodore F. Verheggen, Commissioner