

Cir. 1981)); *see also Microsoft*, 56 F.3d at 1460–62. Case law requires that

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "within the reaches of the public interest." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

*Bechtel*, 648 F.2d at 666 (emphasis added) (citations omitted)<sup>2</sup>

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "(A) proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'" *United States v. Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *Gillette*, 406 F. Supp. at 716), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983); *see also United States v. Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the Court to "construct (its) own hypothetical case and then evaluate the decree against that case." *Microsoft*, 56 F.3d at 1459. Because the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself," and not to "effectively

redraft the complaint" to inquire into other matters that the United States might have but did not pursue. *Id.* at 1459–60.

### VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: July 22, 2003.

Respectfully submitted,  
Michael K. Hammaker,  
DC Bar No. 233684, U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, NW., Suite 3000, Washington, DC 20530, (202) 307-0938.

### Certificate of Service

I hereby certify that a copy of the foregoing has been served upon Waste Management, Inc., Allied Waste Industries, Inc., and the State of New Jersey by placing a copy of this Competitive Impact Statement in the U.S. mail, first class and postage prepaid, directed to each of the above-named parties at the addresses given below, this 22nd day of July, 2003.

Counsel for Defendant Waste Management, Inc.,  
James R. Weiss,  
Preston Gates Ellis & Rouvelas Meeds LLP,  
1735 New York Avenue, NW., Suite 500,  
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Counsel for Defendant Allied Waste Industries, Inc.,  
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Counsel for Plaintiff State of New Jersey,  
Andrew L. Rossner,  
Assistant Attorney General—Deputy Director,  
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[FR Doc. 03-20521 Filed 8-11-03; 8:45 am]

BILLING CODE 4410-11-M

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

#### Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

#### 1. Jim Walter Resources, Inc.

[Docket No. M-2003-054-C]

Jim Walter Resources, Inc., P.O. Box 133, Brookwood, Alabama 35444 has filed a petition to modify the application of 30 CFR 75.503 (Permissible electric face equipment; maintenance) to its No. 4 Mine (MSHA I.D. No. 01-01247) located in Tuscaloosa County, Alabama. The petitioner requests a modification of the existing standard to allow use of extended length cables on underground coal mining equipment. The petitioner proposes to use the extended length cable to power 2,400-volt continuous mining machines. The petitioner has listed in this petition for modification specific terms and conditions that would be followed when its proposed alternative method is implemented. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

#### 2. Jim Walter Resources, Inc.

[Docket No. M-2003-055-C]

Jim Walter Resources, Inc., P.O. Box 133, Brookwood, Alabama 35444 has filed a petition to modify the application of 30 CFR 75.1002 (Location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its No. 4 Mine (MSHA I.D. No. 01-01247) located in Tuscaloosa County, Alabama. The petitioner proposes to use 2,400-volt high-voltage trailing cable to power a continuous miner in by the last open crosscut and within 150 feet of pillar workings. The petitioner has listed in this petition for modification specific terms and conditions that would be followed when its proposed alternative method is implemented. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

#### Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to comments@msha.gov, or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2352, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before September 11, 2003. Copies of these petitions are available for inspection at that address.

<sup>2</sup> Cf. *BNS*, 858 F.2d at 463 (holding that the court's "ultimate authority under the (APPA) is limited to approving or disapproving the consent decree"); *Gillette*, 406 F. Supp. at 716 (noting that, in this way, the court is constrained to "look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass"). *See generally Microsoft*, 56 F.3d at 1461 (discussing whether "the remedies (obtained in the decree are) so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'").

Dated at Arlington, Virginia this 5th day of August 2003.

**Marvin W. Nichols, Jr.,**

*Director, Office of Standards, Regulations, and Variances.*

[FR Doc. 03-20438 Filed 8-11-03; 8:45 am]

**BILLING CODE 4510-43-P**

## **NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES**

### **National Endowment for the Arts;**

#### **Leadership Initiatives Advisory Panel**

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Leadership Initiatives Advisory Panel, AccessAbility section, will be held by teleconference from 2 p.m.–3:30 p.m. on Friday, August 29, 2003, from Room 724 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of April 30, 2003, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Panel Coordinator, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5691.

Dated: August 5, 2003.

**Kathy Plowitz-Worden,**

*Panel Coordinator, Panel Operations, National Endowment for the Arts.*

[FR Doc. 03-20450 Filed 8-11-03; 8:45 am]

**BILLING CODE 7537-01-P**

## **NATIONAL SCIENCE FOUNDATION**

### **National Science Board and Its Subdivisions; Sunshine Act Meeting**

**FEDERAL REGISTER CORRECTION OF PREVIOUS ANNOUNCEMENT:** Volume 68, Number 153, pp. 47369-47370 **Federal Register**, August 8, 2003, Sunshine Act 03-20353

#### **DATE AND TIME:**

August 13, 2003: 8:30 a.m.–5 p.m.

Concurrent Sessions:

9 a.m.–9:40 a.m. Closed Session

9:40 a.m.–12 noon Open Session  
12:30 p.m.–12:50 p.m. Open Session  
12:50 p.m.–1:15 p.m. Closed Session  
1:30 p.m.–3:30 p.m. Open Session  
1:30 p.m.–3 p.m. Open Session  
3:15 p.m.–3:30 p.m. Closed Session  
3:30 p.m.–5:30 p.m. Open Session  
3:30 p.m.–4:30 p.m. Open Session

August 14, 2003: 8 a.m.–3:30 p.m.

Concurrent Sessions:

8 a.m.–9:15 a.m. Closed Session  
9:15 a.m.–10:30 a.m. Open Session  
8:30 a.m.–10:30 a.m. Open Session  
10:30 a.m.–12 noon Closed Session  
12:30 p.m.–3:30 p.m. Open Session

**PLACE:** The National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, <http://www.nsf.gov/nsb>.

**FOR FURTHER INFORMATION CONTACT:** NSF Information Center (703) 292-5111.

**STATUS:** Part of this meeting will be closed to the public. Part of this meeting will be open to the public

**MATTERS TO BE CONSIDERED:**

**Wednesday, August 13, 2003**

Open

Committee on Strategy and Budget (9:40 a.m.–12 noon)

Room 1235

- Draft Strategic Plan
- Discussion: Report Required by

Section 22 of the NSF Authorization Act

- Introduction
- S&E Workforce
- Expanding Institutional

Participation

- S&E Research Infrastructure
- Size and Duration of Grants
- Overall Spending

Recommendations

Executive Committee (12:30 p.m.–12:50 p.m.)

Room 1295

- Minutes
- Welcome New Executive Officer

Committee on Audit and Oversight (1:30 p.m.–3 p.m.)

Room 1295

- Minutes
- Audit Update—KPMG
- IG Act Anniversary
- GAO Review of NSF Business

Analysis Plan Contract

- Cost-Sharing Policy Update
- CFO Update
- CIO Update

Subcommittee on S&E Indicators (1:30 p.m.–3:30 p.m.)

Room 1295

- Approval of Minutes
- S&E Indicators 2004 Overview

Chapter

- Distribution of the Orange Book for Agency Review

• S&E Indicators 2004 Companion Piece

Ad Hoc Task Group on Long-Lived Data Collections (3:30 p.m.–5:30 p.m.) Room 1240

• Issues Facing NSF on Long-Lived Data Collections: Reports from Directorates

• Future Activities  
Task Force on S&E Workforce Policy (3:30 p.m.–4:30 p.m.) Room 1235

• Approval of Minutes, May 21 and July 10

• Discussion of comments from Board members on the revised draft report (NSB-03-69)

- Report on Comments Received
- Publicity Plan and Schedule for the Final Report; Roll-out Event Options
- Cover and Title

Closed

Committee on Strategy & Budget (9 a.m.–9:40 a.m.)

Room 1235

- FY 2005 NSF Budget

- FY 2005 NSB Budget

Executive Committee (12:50 p.m.–1:15 p.m.)

Room 1295

- Director's Items
- Specific Personnel Matters
- Future Budgets

Audit & Oversight (3:15 p.m.–3:30 p.m.)

Room 1295

- Presentation of OIG FY 2005 Budget
- Briefing About Active Investigation

**Thursday, August 14, 2003**

Open

Committee on Programs and Plans (9:15 a.m.–10:30 a.m.)

Room 1235

- Minutes/Announcements

• Section 14 Authorization—Letter to Congress Regarding Delegation of Authority on Approval of MREFC Items

- High Risk Research
- Management of Large

Computational Facilities

- Long-Lived Data Collections: Status

Report

- Infrastructure Committee

Committee on Education and Human Resources (8:30 a.m.–10:30 a.m.) Room 1295

Minutes

- Minutes

- Comments from the Chair

- Discussion: NWP Task Force Report

- Reports from Working Groups (K–12, Undergraduate & Graduate)

- Report from Subcommittee on S&E Indicators

- Focus on the Future: BIO 2010

(continued)