

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,  
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### 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.

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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'").