No. _____

In The
Supreme Court of the United States

KC TRANSPORT, INC.,

Petitioner,

v.

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION; and FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

PETITION FOR WRIT OF CERTIORARI

JAMES P. MCHUGH
CHRISTOPHER D. PENCE
Pence Law Firm PLLC
10 Hale St., 4th Floor
P.O. Box 2548
Charleston, WV 25329

ADITYA DYNAR
Counsel of Record
ADAM GRIFFIN
ISAIAH MCKINNEY*
Pacific Legal Foundation
3100 Clarendon Blvd., Suite 1000
Arlington, VA 22201
Telephone: (202) 807-4472
ADynar@pacificlegal.org

* Member of the bar of Texas; supervised by members of the bar of this Court.

DAMIEN M. SCHIFF
Pacific Legal Foundation
555 Capitol Mall, Suite 1290
Sacramento, CA 95814

Counsel for Petitioner

Questions Presented

A federal mine inspector cited Petitioner KC Transport, Inc., for two alleged mining safety violations for trucks located in the company's maintenance yard, which the inspector held was a "coal or other mine," 30 U.S.C. § 802(h)(1), under the Federal Mine Safety and Health Amendments Act, *id.* §§ 801–966. This yard is not located at nor is it adjacent to any mining extraction site, processing plant, or appurtenant road.

Acknowledging a circuit split, the D.C. Circuit panel majority held below that a truck repair shop can be a mine even if it is not located at an extraction or processing site. Over a dissent, the majority found the statutory definition of "coal or other mine" to be ambiguous despite both the Secretary and KC having argued that the definition is unambiguous. But rather than resolve for itself this new-found ambiguity, the majority remanded the case, pursuant to the so-called *Chevron* Step One-and-a-Half doctrine, to give the Secretary yet another chance to override court decisions that the Secretary disagrees with by articulating a deference-worthy interpretation of the ambiguous statute.

The questions presented are:

1. Whether a truck or a truck repair shop that is not located at nor is adjacent to an extraction or processing site or an appurtenant road is a "coal or other mine" under 30 U.S.C. § 802(h)(1).

2. Whether the D.C. Circuit's *Chevron* Step One-and-a-Half doctrine should be abrogated.

Parties

Petitioner KC Transport, Inc., was the respondent in the D.C. Circuit and, before that, at the Federal Mine Safety and Health Review Commission.

Respondent Secretary of Labor, Mine Safety and Health Administration was the petitioner in the D.C. Circuit and, before that, at the Federal Mine Safety and Health Review Commission.

Respondent Federal Mine Safety and Health Review Commission was a respondent in the D.C. Circuit.

Corporate Disclosure Statement

KC Transport, Inc., is a privately owned West Virginia corporation. No publicly held entity holds 10% or more of its stock.

Statement of Related Proceedings

The following proceedings are directly related to this case:

- *Secretary of Labor, Mine Safety and Health Administration v. KC Transport, Inc., et al.*, No. 22-1071, 77 F.4th 1022 (D.C. Cir. Aug. 1, 2023)
- *Secretary of Labor, Mine Safety and Health Administration v. KC Transport, Inc.*, No. WEVA 2019-0458, 44 F.M.S.H.R.C. 211 (Rev. Comm'n Apr. 5, 2022)
- *Secretary of Labor, Mine Safety and Health Administration v. KC Transport, Inc.*, No. WEVA 2019-458, 42 F.M.S.H.R.C. 221 (ALJ Mar. 3, 2020).

Table of Contents

Appendix

Table of Authorities

Cases

Statutes

Regulation

Other Authorities

Petition for Writ of Certiorari

KC Transport, Inc., respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit.

Opinions Below

The panel opinion of the D.C. Circuit is reported at 77 F.4th 1022 and reproduced at App.1a–38a. The opinion of the Federal Mine Safety and Health Review Commission (Commission) is reported at 44 F.M.S.H.R.C. 211 and reproduced at App.41a–87a. The opinion of the Commission's administrative law judge (ALJ) is reported at 42 F.M.S.H.R.C. 221 and reproduced at App.88a–123a.

Jurisdiction

The date of the decision sought to be reviewed is August 1, 2023. The Chief Justice granted (No. 23A497) an extension of time within which to file the petition for writ of certiorari to and including February 12, 2024. This Court has jurisdiction under 28 U.S.C. § 1254(1) and 30 U.S.C. § 816(a)(1) (last sentence).

Statutory and Regulatory Provisions at Issue

Pertinent provisions of 30 U.S.C. § 802 and 30 C.F.R. § 77.404 are reproduced at App.127a–130a.

Statement of the Case

A. Legal Framework

Congress enacted the Federal Mine Safety and Health Amendments Act of 1977, Pub. L. No. 95-164, 91 Stat. 1290 (Mine Act), to protect the "health and safety" of "miner[s]." 30 U.S.C. § 801(a). To that end, the Act directs the establishment of standards to "prevent death," "serious physical harm," and "occupational diseases." *Id.* § 801(c). This case, however, is not about those safety standards, "but rather the jurisdictional boundaries to which they apply." App.2a.

The Act applies to "[e]ach coal or other mine, … each operator of such mine, and every miner in such mine." 30 U.S.C. § 803. The Act regulates "any individual working in a coal or other mine," which individual the Act defines as a "miner." *Id.* § 802(g). And it regulates each "operator," that is, any "person who operates, controls, or supervises a coal or other mine or any independent contractor performing services or construction at such mine." *Id.* §§ 802(d), 802(f) (defining "person" to include "corporation").

Key to the statutory scheme is the definition of "coal or other mine," 30 U.S.C. § 802(h), because other definitions, including "miner," *id.* § 802(g), and "operator," *id.* § 802(d), are tied to it. The Act defines "coal or other mine" as "(A) an area of land from which minerals are extracted, (B) private ways and roads appurtenant to such area," and "(C) … facilities, equipment, … or other property … used in, or to be used in, or resulting from … the work of extracting such minerals … , or used in, or to be used in, the

milling of such minerals, or the work of preparing coal or other minerals." *Id.* § 802(h)(1).

To enforce the Act, Congress created the Mine Safety and Health Administration (MSHA or Secretary) within the Department of Labor. 29 U.S.C. § 557a; 30 U.S.C. § 802(n) (defining "Administration"). MSHA develops and promulgates mandatory health or safety standards under the Act. 30 U.S.C. § 811(a). MSHA enforces these standards by conducting "frequent inspections," *id.* § 813(a), promulgating safety orders, *id.* § 813(k), and issuing citations for violations and assessing a corresponding "civil penalty," *id.* §§ 813(a), 814(a), 815(a), 820(a).

Mine operators may contest citations issued by MSHA. Citation contests are administratively adjudicated within the Commission, *id.* § 802(o). A separate federal agency entirely outside the Secretary of Labor's chain of command, the Commission comprises "five members, appointed by the President by and with the advice and consent of the Senate." *Id.* § 823(a).[1] A challenge to a citation is first heard before a Commission ALJ, *id.* § 823(d)(1), whose ruling either party may then challenge before the Commission itself, *id.* § 823(d)(2)(A)(i). Appeals from the Commission's decisions are taken to the

[1] The Act sets staggered six-year terms for each of the Commissioners. 30 U.S.C. § 823(b)(1). The Commissioners "may be removed by the President for inefficiency, neglect of duty, or malfeasance in office." *Id.* The Commission "shall appoint such additional administrative law judges as it deems necessary to carry out the functions of the Commission. Assignment, removal, and compensation of administrative law judges shall be in accordance with sections 3105, 3344, 5362 and 7521 of Title 5." *Id.* § 823(b)(2).

appropriate circuit court, *id.* § 816(a)(1), and thenceforth to this Court under 28 U.S.C. § 1254.

B. Factual Background

Petitioner KC Transport is a small-town trucking company based in Emmett, West Virginia, that hauls coal for nearby mines. App.7a. KC has a truck maintenance facility "about four or five miles away" from the nearest extraction site, App.7a, "over one mile" from a coal processing plant, App.8a, and "about 1000 feet" from a "haulage road," App.8a. Trucks that are repaired at KC's Emmett facility are a "mix of … off-road trucks, providing haulage for … five nearby mines" as well as "on-road trucks used in earth and gravel haulage for other customers." App.8a.

Until March 11, 2019, MSHA's inspectors "had never inspected, or even attempted to inspect," KC's trucks at the Emmett facility. App.8a. But that day, a coal mine "inspector went 'looking for trucks.'" App.8a. At KC's Emmett facility, he observed two of KC's trucks undergoing maintenance, and "[b]ecause neither of the two trucks w[as] 'blocked against motion,'" the inspector held KC to have violated 30 C.F.R. § 77.404(c), and issued two citations. App.9a. The proposed civil penalties for the two citations were $3,908 and $4,343. App.10a.

C. Administrative Adjudication

KC then administratively contested MSHA's authority to issue the citations. App.2a. KC argued that (1) its repair shop and trucks are not a "mine" under 30 U.S.C. § 802(h)(1)(C) and, therefore, MSHA had no authority to cite KC for violating any mining safety regulation, and (2) KC did not qualify as an "operator" under 30 U.S.C. § 802(d) at the time of the

citations because KC was not then working at a mine site. App.9a–10a. The Secretary argued that each of KC's trucks constituted a mine and was, therefore, "subject to MSHA jurisdiction irrespective of its location." App.45a.

On a joint stipulation of facts, App.7a, and cross-motions for summary decision, the ALJ rejected both the Secretary's and KC's interpretation of § 802(h)(1)(C). App.10a. But the ALJ ruled in the Secretary's favor because KC's "facility and the mining-related equipment located therein were too connected to the mining process to be excluded from the Mine Act's jurisdiction." App.10a. According to the ALJ, the Emmett "facility constituted a 'mine,'" and the trucks, because they "were used in mining and parked at the facility" qualified as "equipment" under § 802(h)(1)(C). App.10a.

On review, the Commission reversed the ALJ and vacated the two citations. App.10a. According to the Commission, § 802(h)(1) "unambiguously limits the 'mine' definition to extraction sites and lands appurtenant thereto." App.10a. The Commission concluded that "an independent repair, maintenance, or parking facility not located on or appurtenant to a mine site and not engaged in any extraction, milling, preparation, or other activities within the scope of [§ 802(h)(1)(A)] is not a mine[.]" App.67a. It also concluded that "tools, equipment, and the like not on a mine site or any appurtenance thereto and not engaged in any extraction, milling, preparation, or other activities within the scope of [§ 802(h)(1)(A)] are not mines[.]" App.67a. As to "operator" status, the Commission held that KC "was not an operator under [§ 802(d)]" because independent contractors are

subject to the Act only "while performing work at a mine site," and KC "was not performing services in a mine." App.62a. The Commission relied extensively on *Maxxim Rebuild Co. v. Federal Mine Safety & Health Review Commission*, 848 F.3d 737 (6th Cir. 2017), in rejecting the Secretary's position that MSHA has authority over any tools or equipment "not on a mine site that at one time were used on the mine site, or that could be brought to the mine site again." App.51a; *see also* App.49a, App.53a n.12, App.58a, App.63a–65a, App.69a.

D. D.C. Circuit Proceedings

The Secretary then petitioned the D.C. Circuit for review of the Commission's decision. App.3a.

The panel majority began its analysis with the proposition that the Secretary's interpretation of the Mine Act must be given deference by "both the Commission and the courts," App.11a (quoting S. Rep. No. 95-181, at 49, 1977 U.S.C.C.A.N. 3401, 3448). The panel majority then observed that, if the Secretary and the Commission "advance differing interpretations," App.11a, the "Secretary's litigating position," App.14a, not the Commission's, "is entitled to the deference described in *Chevron*[*U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984)]." App.11a (quoting *Sec'y of Labor v. Excel Mining, LLC*, 334 F.3d 1, 6 (D.C. Cir. 2003)). The Secretary argued, however, that deference was unnecessary because the Act unambiguously makes KC's Emmett facility and the trucks a mine. App.12a.

The panel majority disagreed, reasoning that "practical implications" and "historical background" demonstrate the statute's ambiguity. App.18a.

Rejecting the Secretary's interpretation and finding ambiguity after having gone looking for it, the majority gave interpretive advice to the Secretary: the "context, structure, and Congress's use of the phrase 'coal or other mine' throughout Chapter 22 of Title 30" "indicate[s] … location is central to the Mine Act." App.15a. But, the majority added, "the statutory language, broader context, and numerous practical concerns render subsection (C)'s meaning ambiguous." App.21a. In so holding, the D.C. Circuit majority expressly disagreed with the Sixth Circuit's interpretation and holding in *Maxxim*, which had found § 802(h)(1) to be unambiguously limited to extraction sites, 848 F.3d at 740–44. *See* App.17a.

Because the Secretary "incorrectly treat[ed] the statute as unambiguous," the panel majority held that "deference [wa]s not appropriate." App.11a. But rather than decide the statutory question, the panel majority "remanded the case to the Commission, instructing the Secretary to interpret the statute in recognition of its ambiguities." App.11a (citing *Sec'y of Labor v. National Cement Co. of California, Inc.*, 573 F.3d 788, 791 (D.C. Cir. 2009) (*National Cement II*)).

The panel justified this further governmental bite at the litigation apple under the D.C. Circuit's *Chevron* Step-One-and-a-Half doctrine, according to which an agency may still receive *Chevron* deference despite having adhered in litigation to an erroneous interpretation of a statute, provided the agency can justify its interpretation post hoc as a "reasonable" construction of the same statutory language it previously misconstrued. *See generally PDK Labs., Inc. v. U.S. Drug Enforcement Admin.*, 362 F.3d 786, 800 (D.C. Cir. 2004) (Roberts, J., concurring in part)

(critically reviewing *Chevron* Step One-and-a-Half). As a result, the majority "vacate[d] the Commission's decision and remand[ed] for it to obtain from the Secretary a *Chevron* step 2 interpretation." App.21a–22a, App.39a.

Circuit Judge Justin R. Walker dissented. App.25a–38a. In his view, "[t]o count as a 'mine,' a 'facility' like KC's shop must be located at an extraction site or a processing plant." App.25a. Because "KC's shop is not" so located, MSHA lacks authority over it. App.25a. In other words, he agreed with the Commission and the Sixth Circuit's *Maxxim* decision that the Act's definition of "mine" is a function of location, and thus certainly reaches mining "extraction sites." App.33a. But he would have added "processing plants," App.33a, to *Maxxim*'s "extraction site" geographic limit, 848 F.3d at 740.

Judge Walker then took issue with the majority's re-interpretive remand under the *Chevron* Step One-and-a-Half doctrine, calling it "[u]nwarranted." App.35a–37a. To remand for a "*Chevron* step 2 interpretation," App.22a, and then to defer, as that doctrine requires, "to the Secretary's interpretation of the now-ambiguous statute—at least if it's reasonable,"—relinquishes this Court's duty to decide all relevant questions of law and to interpret … statutory provisions." App.35a–36a (simplified). That is especially so given that the Secretary did "not as[k] ... for deference." *Id.*

Bolstering the inappropriateness of the re-interpretive remand were the "Secretary's shifting and self-serving interpretations." App.37a. At the ALJ stage, the Secretary insisted that "each *truck* independently constituted a 'mine,'" a position the

ALJ rejected as "absurd." App.37a. Then, on review before the Commission and the D.C. Circuit, the Secretary unsuccessfully "tweaked his position," claiming "that KC's truck-repair *facility* is a 'mine.'" App.37a. Remand in such situations would give the evidently interpretively-challenged Secretary "a third bite at the apple," while forcing a "small trucking business … once more to fight a moving target." App.37a.

Instead of such an ill-considered remand, Judge Walker would have simply employed "traditional tools of statutory construction" (as he did in explaining his reasons for concluding that KC's trucks and repair shop are not mines) to "discern Congress's meaning," App. 36a (quoting *SAS Institute Inc. v. Iancu*, 138 S. Ct. 1348, 1358 (2018)). He concluded that such uninvited "deference" to the Secretary's interpretation "is inappropriate." App.36a–37a (quoting *Guedes v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 140 S. Ct. 789, 790 (2020) (Gorsuch, J., concurring in denial of certiorari)).

In sum, the ALJ, the Commission, and the D.C. Circuit majority and dissent all rejected the Secretary's interpretation of 30 U.S.C. § 802(h). Yet thanks to the re-interpretive remand under the D.C. Circuit's *Chevron* Step One-and-a-Half doctrine, the Secretary now gets yet another chance to supply an interpretation that can be given *Chevron* deference by "both the Commission and the courts." App.11a.

Reasons for Granting the Petition

I. Courts Are Intractably Split in Construing the Mine Act

The majority and the dissent below acknowledged the rift amongst the circuits in construing the Mine Act—and dug it deeper. App.17a, 33a–34a. The D.C. and the Sixth Circuits have provided different answers to the question of whether a repair shop that works on mining-related vehicles or equipment is a "mine" for purposes of the Act.[2] The Sixth Circuit has held that a shop that repairs mining equipment but "is neither adjacent to nor part of a working mine" is plainly not a mine under the Act. *Maxxim*, 848 F.3d at 739. But the D.C. Circuit majority below held that at least some such shops could be regulated as mines.

Similarly, the Third, Fourth, Fifth, Seventh, Eighth, and Ninth Circuits have all provided different answers to the scope of MSHA's authority. The result is a statute that is plain in some circuits but fuzzy in others. Bringing uniformity to the Act's scope is a question of national importance that the Court should take up and resolve so lower courts, federal agencies, and regulated parties will have much-needed clarity.

---

[2] The D.C. Circuit panel majority held that the Commission's discussion of the "operator" definition in the Mine Act, 30 U.S.C. § 802(d), was improper and declined to reach that issue. App.22a–24a.

A. The Splits Are Complex and Getting Worse

1. There Is a Split Among Location-Focused Circuits

Start with Judge Walker's dissent below (as for the panel majority's view, *see infra* Part I.A.2). App.25a–38a. He would conclude that "a 'facility' like KC's shop must be located at an extraction site or a processing plant" to "count as a 'mine.'" App.25a; App.29a ("processing plant" is a place "where minerals like coal are milled or prepared, turning them from ore into usable products"). The Sixth Circuit, however, construed the statute to require adjacency when it held that a repair shop that "is neither adjacent to nor part of a working mine" is not a "mine" because the definition "refers to locations, equipment and other things in, above, beneath, or appurtenant to active mines." *Maxxim*, 848 F.3d at 739. So, while the Sixth Circuit would limit the Act's scope to *extraction sites*, Judge Walker would expand it to *processing* plants. App.33–34a (discussing *Maxxim*, 848 F.3d at 740).

Judge Walker and *Maxxim* both started with the words Congress enacted but reached different conclusions. App.26a (quoting 30 U.S.C. § 802(h)(1)); *Maxxim*, 848 F.3d at 740 (same). Unlike Judge Walker, *Maxxim* viewed the Act's drafter as someone who "went to a mine and wrote down everything he saw in, around, under, above, and next to the mine," 848 F.3d at 740, as opposed to also considering processing facilities. *Maxxim*'s conclusion about adjacency nevertheless proceeds naturally from this "next to the mine" construction of the statute. And its view of confining the definition to extraction sites follows from "everything that one would see in or

around a *working* mine." *Id.* (emphasis added). Notably, even the D.C. Circuit has elsewhere underscored the importance of adjacency in holding that a "processing facility" "immediately adjacent to a quarry" was within the purview of the Act. *Donovan v. Carolina Stalite Co.*, 734 F.2d 1547, 1548, 1552 (D.C. Cir. 1984).

A strong focus on location flows directly and plainly from the text of the statute. According to *Maxxim*, it's "location, location, location." 848 F.3d at 742. Indeed, all three subsections of § 802(h)(1) are "place connected and place driven." *Id.* But even when jurists correctly focus on the location, they disagree about the Act's scope (as the panel dissent below exemplifies). Some circuits that would look principally to the location would also look to the work done at the location.

This approach is illustrated by the Third Circuit's *Marshall v. Stoudt's Ferry Preparation Co.*, 602 F.2d 589 (3d Cir. 1979), decided closest in time to the Act's passage in 1977. *Marshall* held that a "preparation plant, which separates a low-grade fuel from sand and gravel dredged from a riverbed," is a "mine" under the Act. *Id.* at 590. That is so because the preparation plant engages in "the work of preparing coal or other minerals." 30 U.S.C. § 802(h)(1). *Marshall* represents a straightforward statutory construction with respect to "stationary" items enumerated in the definition, App.20a, and thus is consistent with the Act's "locational focus," *Maxxim*, 848 F.3d at 742, although it proceeds one step beyond *Maxxim*'s extraction-site

limitation.[3] *Accord Cyprus Industrial Minerals Co. v. Federal Mine Safety & Health Rev. Comm'n*, 664 F.2d 1116, 1118 (9th Cir. 1981) (citing *Marshall* and holding that the work of digging "a tunnel into a hill to assess the value of the talc deposits" is "ordinarily … mining" activity); *Director, Office of Workers' Compensation Programs, U.S. Dep't of Labor v. Ziegler Coal Co.*, 853 F.2d 529, 531–32, 535–37 (7th Cir. 1988) (concluding that MSHA lacked authority over an electrician in an electrical repair shop located more than a mile from the nearest coal extraction site repairing equipment brought to the shop from the mines).

2. There Is a Split Among Location-Plus Circuits

Still other circuits are location-plus jurisdictions, that is, location is pertinent but not determinative; also relevant is the nature of the off-site activity. The panel majority decision below falls squarely on the location-plus side of the circuit split. A "mine" is, the majority said, "(1) the physical extraction site, under subsection (A); (2) any 'private ways and roads appurtenant' to that extraction site, under subsection (B); and (3) the items 'used in, or to be used in, or resulting from' mining activity, under subsection (C)." App.14a–15a. Like *Maxxim*, which emphasized, "[l]ocation, location, location," 848 F.3d at 742, the

---

[3] In a later decision, the Third Circuit held that "any lands integral to the process of preparing coal for its ultimate consumer" would qualify. *RNS Servs., Inc. v. Sec'y of Labor*, 115 F.3d 182, 186 (3d Cir. 1997). Although still location-based, this interpretation would, per then-Judge Alito, be overbroad. *See id.* at 192 (Alito, J., dissenting) (limiting the "work of preparing coal" only to those "activities ... usually done by a coal mine operator, as that term is commonly understood").

D.C. Circuit majority acknowledged that "location is central to the Mine Act," App.15a. And based on that read, the majority rejected the Secretary's submission that "all 'machines, tools,' and even singular pieces of 'equipment,' could constitute a 'mine'—no matter their location—so long as they either were, or will be, 'used in' mining activity." App.15a.

But the majority rejected the proposition that location is determinative, concluding that § 802(h)(1)(C) is "ambiguous," App.21a, as to the extent to which activity outside of an extraction or processing site, or roads appurtenant thereto, can still be regulated. To so conclude, the majority relied on the Secretary's argument that "whether facilities or equipment constitute a 'mine'" depends on "a fact-based inquiry" that looks to "how closely related the relevant facility or equipment was to mining activity." App.19a. The panel majority below would thus consider "[l]ocation" as "but one factor that may be relevant to this 'use-in-mining' analysis." App.19a.

Although the Seventh Circuit has ostensibly taken this approach, the court has employed it to reduce MSHA's authority. For example, in *Jeroski v. Federal Mine Safety & Health Review Commission*, 697 F.3d 651 (7th Cir. 2012), the Seventh Circuit held that MSHA lacked authority to regulate janitors working at a cement plant. "[C]ement is made, not mined," Judge Posner wrote for the court. *Id.* at 652. And even though "minerals from which cement is made are mined, and the mined minerals are then milled" at the cement plant ("mine" includes "facilities … used in … the milling of [extracted] minerals," 30 U.S.C. § 802(h)), "janitors" at the cement plant are not

"engaged in milling," so MSHA lacked authority over the janitors. 697 F.3d at 652.

Likewise, the Eighth Circuit has adhered to a purpose-inflected interpretation of MSHA authority. In *Herman v. Associated Elec. Coop., Inc.*, 172 F.3d 1078 (8th Cir. 1999), the Eighth Circuit concluded that an electric utility "that receive[d] processed coal from a mine does not itself become a 'mine' by further processing the coal for combustion." *Id.* at 1083. "It is clear," the court noted, "that every company whose business brings it into contact with minerals is not to be classified as a mine within the meaning of section [802](h)." *Id.* at 1082. Nor can "all businesses that perform tasks listed under 'the work of preparing coal' in section 802(i) … be considered mines." *Id.* Rather, what mattered to the court is that the "coal-handling operations [at issue were] more properly characterized as 'manufacturing' than 'mining.'" *Id.* at 1083.

In contrast, the Fifth Circuit, observing that it "do[es] not entirely agree with the majority opinion of the Eighth Circuit in *Herman*," has concluded that § 802(h) expressly gives the Secretary the "authority to determine 'what constitutes mineral milling for purposes' of the Act." *In re Kaiser Aluminum & Chemical Co.*, 214 F.3d 586, 591, 593 (5th Cir. 2000) (quoting 30 U.S.C. § 802(h)(1) (second sentence)). The alleged mining company had argued that its processing plant was simply refining, not "milling," any material, just as the defendant in *Herman* had successfully argued that it was manufacturing, not mining. That would not matter, the Fifth Circuit concluded, because the Secretary's reasonable interpretation of what is "milling" for purposes of

§ 802(h) prevails. *Id.* at 591–93. *Kaiser* thus conflicts not only with *Herman*, but also with the Seventh Circuit's ruling in *Jeroski* which, as noted above, excluded from MSHA's regulatory ambit janitors working at a cement plant, despite the fact that the plant "mill[ed]" extracted minerals. 30 U.S.C. § 802(h)(1).

The Fourth Circuit's *Old Dominion Power Co. v. Donovan*, 772 F.2d 92 (4th Cir. 1985), adds another wrinkle, adopting an interpretation of the Act according to which what might well be an adequate basis for MSHA authority under even a strict location-based theory can still be not enough. In *Old Dominion*, the power company's employee "was electrocuted when he touched the energized transformer." *Id.* at 93. In challenging the resulting citation, the power company argued that the electrical substation where the fatality occurred was not a "mine" subject to MSHA's authority, and the Fourth Circuit agreed. *Id.* at 96. The court held that the power company's "only contact with the mine [was] the inspection, maintenance, and monthly reading of a meter for the purpose of sending a bill to a mine company for the sale of electricity." *Id.* "MSHA regulations do not apply, and were not intended to apply, to electric utilities such as Old Dominion whose sole relationship to the mine is the sale of electricity." *Id.* at 99. To be sure, the electric substation where the fatality occurred was "located on the property adjacent to a mine-access road." *Id.* at 93. Yet, despite that geographic connection, and even though the substation was owned by a coal company and produced electricity to be used for mining, *id.*, the substation was not a mine. As the Fourth Circuit explained, the statute's words would prevent such a

reading because the power company's employees do not "perfor[m]," 30 U.S.C. § 802(d), "the work of extracting … minerals … or the work of preparing coal or other minerals," at that location, *id.* § 802(h)(1).

B. Resolving the Splits Is a Question of Critical National Importance

The multifaceted circuit split has spread uncertainty across the nation as to MSHA's authority. And the split has become worse over the years.

This case illustrates how the Secretary's preferred rolling-mines reading of the Mine Act will wreak havoc in the mining and mining-allied transportation industries. Consider what has transpired in this case alone. The ALJ held KC's Emmett facility and trucks were "too connected to the mining process to be excluded from the Mine Act's jurisdiction." App.10a. But the Commission concluded (properly) that KC's facility is "not located on or appurtenant to a mine site" and not used in "any extraction, milling, preparation, or other activit[y] within the scope of [§ 802(h)]" and thus held that MSHA lacked authority. App.67a. Yet the Secretary continued to insist that its "rolling mines" reading should prevail. App.45a, 48a, 51a, 70a n.21. According to the Secretary's rolling-mines reading, the Act gives MSHA roving nationwide authority to inspect every hammer and tack that is "used in, or to be used in" mining-related activity, 30 U.S.C. § 802(h)(1). *See* Brian Hendrix, *Haul Trucks and Hammers Aren't "Mines"*, Coal Age (June 24, 2022).[4] That is an unsustainable, impractical, and unworkable interpretation of the Act.

---

[4] https://perma.cc/QLK7-MN47.

The majority below pointed to the open-ended nature of the rolling-mines interpretation as evidence of the statute's ambiguity. Still, the Act, as *Maxxim* correctly held, remains unambiguous, and where MSHA lacks authority, it is possible for the Secretary to assert authority through MSHA's cousin agency the Occupational Safety and Health Administration (OSHA). 848 F.3d at 742–43. *See, e.g.*, *Otis Elevator Co. v. Sec'y of Labor*, 921 F.2d 1285, 1287 (D.C. Cir. 1990) (Thomas, J., writing for the three-judge panel) (stating what is not within MSHA authority is under OSHA authority). But the Secretary cannot in one stroke amend both MSHA's and OSHA's spheres of authority by issuing a fly-by interpretation of the Mine Act. Then-Judge Thomas was correct to point out in *Otis* that MSHA's authority is purposefully narrow because OSHA's authority is so broad. KC does not "see[k] to hide from *any* regulation"; KC "thinks, quite reasonably, that the Secretary's authority applies to it through the Occupational Safety and Health Administration, not the Mine Safety and Health Administration." 848 F.3d at 743.

The Secretary of Labor, through OSHA, can "regulate these kinds of safety and health matters" at locations not covered by the Mine Act. *Maxxim*, 848 F.3d at 742. The result of the interpretation at issue, however, is that a hauling business that "occasionally uses its trucks to haul coal for nearby mines," App.25a, and its truck repair facility that "occasionally fixes mining trucks," App.27a, must guess whether MSHA or OSHA or both have inspection and citation authority over its trucks and facilities. The Secretary's broad interpretation would place every tire repair shop and fueling station within MSHA's authority.

Although many agencies have resorted to the self-help remedy of reading statutes to confer broad authority, this Court has consistently curtailed such efforts because broad interpretations would spread uncertainty across major sectors of the nation. *See, e.g.*, *West Virginia v. EPA*, 597 U.S. 697 (2022) (stopping EPA from broadly reading the Clean Air Act); *Alabama Ass'n of Realtors v. HHS*, 141 S. Ct. 2485 (2021) (halting HHS's broad reading of the Public Health Service Act as authorizing a nationwide eviction moratorium); *Biden v. Nebraska*, 143 S. Ct. 2355 (2023) (barring the broad reading of the HEROES Act to permit the Secretary of Education to forgive student debt); *National Fed'n of Indep. Business v. OSHA*, 595 U.S. 109 (2022) (ending OSHA's employer vaccine mandate stemming from a broad reading of the OSH Act).

The Secretary's shifting interpretations are another such end-run around the statute's text. Instead of construing the statute as written, the majority below went to great lengths to figure out how it could defer to "the Secretary's litigating position," App.14a (citing *Excel Mining, LLC*, 334 F.3d at 6; *Martin v. Occupational Safety & Health Rev. Comm'n*, 499 U.S. 144, 157 (1991))—even though this Court has directed quite specifically that courts "should decline to defer" to the agency's "'litigating position.'" *Kisor v. Wilkie*, 139 S. Ct. 2400, 2417 (2019) (quoting *Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142, 155 (2012)); *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 212 (1988) ("[W]e have declined to give deference to an agency counsel's interpretation of a statute" provided as "agency litigating positions."). Thus, resolving the split among the lower courts as to the Mine Act's scope merits this Court's review.

II. The *Chevron* Step One-and-a-Half Doctrine Is Egregiously Wrong and Should Be Abrogated

In situations where an agency declares that its preferred interpretation is compelled by Congress but the reviewing court concludes that the statute is ambiguous, the *Chevron* Step One-and-a-Half doctrine requires a remand for the agency to re-interpret the statute (even if the agency produces the same interpretation later). The key analytical move under *Chevron* Step One-and-a-Half is to say that deference at *Chevron* Step Two is reserved for situations where the agency "recognize[s]" the ambiguity in the statute. App.18a; *Peter Pan Bus Lines, Inc. v. Federal Motor Carrier Safety Admin.*, 471 F.3d 1350, 1354 (D.C. Cir. 2006); *Prill v. NLRB*, 755 F.2d 941, 956–57 (D.C. Cir. 1985).

Put another way, the *Chevron* Step One-and-a-Half doctrine says that when, according to the reviewing court, an "agency wrongly believes" that the agency's interpretation is "compelled by Congress," then "deference to [the] agency's interpretation of a statute is not appropriate," App.13a (quoting *PDK Labs.*, 362 F.3d at 798). In such circumstances, the court must "remand" to the agency "allowing [the agency] to interpret the statute's ambiguous language," App.4a. The court below confirmed that such re-interpretive remands under the *Chevron* Step One-and-a-Half doctrine are an established feature of D.C. Circuit jurisprudence. App.13a (citing *Peter Pan*, 471 F.3d at 1354). The doctrine applies to agency

interpretation issued via rulemaking as well as administrative adjudication.[5]

This Court is aware of D.C. Circuit-specific doctrines and has taken cases to abrogate them. In *Perez v. Mortgage Bankers Association*, 575 U.S. 92 (2015), for example, the Court took the case and abrogated the D.C. Circuit's *Paralyzed Veterans* doctrine. *Paralyzed Veterans of America v. D.C. Arena L.P.*, 117 F.3d 579 (D.C. Cir. 1997). Relevant to this case, the Court has implicitly criticized the *Chevron* Step One-and-a-Half doctrine, for example, in *Epic Systems Corp. v. Lewis*, 584 U.S. 497 (2018). There, as here, "the Executive seems [to be] of two minds." *Id.* at 520. The Secretary of Labor would interpret the Act to mean X and the Commission to mean Y. In such a situation, any re-interpretive remand ordered with a view to then defer to the Secretary's interpretation but not the Commission's "surely" makes "political accountability … a garble when the Executive speaks from both sides of its mouth, articulating no single position on which it might be held accountable." *Id.* Having impliedly criticized the application of *Chevron* Step One-and-a-Half doctrine in *Epic Systems* to cases like KC's, the Court now has the opportunity to abrogate it.

---

[5] *Alarm Industry Commc'ns Comm. v. FCC*, 131 F.3d 1066, 1072 (D.C. Cir. 1997); *City of Los Angeles Dep't of Airports v. DOT*, 103 F.3d 1027, 1034 (D.C. Cir. 1997); *Baltimore & Ohio R.R. Co. v. ICC*, 826 F.2d 1125, 1129 (D.C. Cir. 1987); *see also* Daniel J. Hemel & Aaron L. Nielson, Chevron *Step One-and-a-Half*, 84 U. Chi. L. Rev. 757 (2017).

A. *Chevron* Step One-and-a-Half Is Impractical, Unworkable, and Unfair

Chevron Step One-and-a-Half is particularly problematic in situations, as here, where MSHA's mine inspector issues peremptory citations premised on drive-by interpretations; then, the agency's attorneys issue a makeshift interpretation of the statute by way of evolving litigating positions taken to support the inspector's interpretation in front of a separate adjudicating body, the Commission. Where, as here, the agency appeals, it has an incentive to choose the D.C. Circuit, which would be all too happy to find ambiguity and issue a *Chevron* Step One-and-a-Half remand. *See, e.g.*, *Relentless, Inc. v. Dep't of Com.*, No. 22-1219, Oral Arg. Tr. 41:22–42:15 (Jan. 17, 2024) (noting the D.C. Circuit's well-exploited tendency).

Chief among the doctrine's critics was then-Judge John G. Roberts, Jr. *See PDK Labs.*, 362 F.3d at 808–10 (Roberts, J., concurring in part and in the judgment). His *PDK* concurrence noted that remand for re-interpretation is not called for unless there is "real and genuine doubt concerning what interpretation the agency would choose." *Id.* at 808. When, as with the Secretary's interpretation at issue here, there is no such doubt as to how the agency would interpret the Mine Act's scope, remand for reinterpretation "outstrips its rationale" and "'convert[s] judicial review of agency action into a ping-pong game.'" *Id.* at 809.

There is irrefutable logic to the *PDK* concurrence. "The very fact that an agency has read the statute in a particular way" is itself strong "evidence" that the agency "prefers the interpretation it adopted to the

one that it did not adopt." Nicholas Bagley, *Remedial Restraint in Administrative Law*, 117 Colum. L. Rev. 253, 297 (2017) (discussing *Prill*). That is particularly true in the context of split administrative enforcement actions like this one where both the Secretary and the Commission, two separate executive agencies, have each given starkly different interpretations of the Mine Act.

Judge Walker, dissenting below, flagged a related problem with the *Chevron* Step One-and-a-Half doctrine. He wrote that the doctrine "is [u]nwarranted" because "deference is inappropriate." App.35a–36a. *Chevron* Step One-and-a-Half "too readily relinquishes th[e federal courts'] duty to decide all relevant questions of law and to interpret statutory provisions." App. 36a (simplified). The result of turning interpretation into a ping-pong game is that "a small trucking business is forced once more to fight a moving target [and] … turn square corners … twice." App.37a (simplified).

The latter point about unfairness is particularly salient. *National Cement* illustrates it well. There, the D.C. Circuit remanded the case for re-interpretation over Judge Rogers' dissent. *Sec'y of Labor v. National Cement Co. of Cal., Inc.*, 494 F.3d 1066, 1077 (D.C. Cir. 2007). On remand, the Commission ordered full briefing from the Secretary and the company. *Sec'y of Labor v. National Cement Co. of California, Inc.*, 30 F.M.S.H.R.C. 668, 671 (Rev. Comm'n Aug. 26, 2008). The briefing comprised overlength briefs and even sur-replies. *Id.* at 671–72 & n.4. The Commission once again disagreed with the Secretary's interpretation, concluding that it was "not a permissible construction of " § 802(h)(1)(B). *Id.* at 682. The Secretary once

again appealed to the D.C. Circuit, where a different panel unanimously deferred to the Secretary's interpretation and concluded that it was "reasonable" under *Chevron* Step Two. *National Cement II*, 573 F.3d at 797.

That did not end the case. Having concluded that the Secretary has the authority to cite the cement company, the court remanded "for proceedings on the merits of the citation," *id.*, and the parties litigated that in front of the Commission's ALJ. *Sec'y of Labor v. National Cement Co. of California, Inc.*, 31 F.M.S.H.R.C. 1100 (Rev. Comm'n Oct. 26, 2009) (ordering ALJ to decide the merits).

Chevron Step One-and-a-Half, in practice, is a game designed to ensure the governmental litigant emerges victorious almost all of the time by the sheer act of fatiguing the regulated party to spend a lot of money and many a year going back and forth between the ALJ, Commission, and federal courts. This Court should call timeout and abrogate the doctrine.

B. *Chevron* Step One-and-a-Half, as Applied to the Mine Act, Disregards Congress's Split-Enforcement Scheme

When one agency disagrees with a sister agency's interpretation, the court's job is not to place an uninvited thumb on the scale and give the litigating agency interpretive supremacy over the adjudicating agency. The fact that Congress created a split-enforcement mechanism evinces Congress's intent that the *Commission*'s (not MSHA's) interpretation should be deferred to (if deference is owed at all). MSHA and the Commission are separate agencies. 29 U.S.C. § 557a; 30 U.S.C. § 823. And Congress gave the

Commission the authority to decide questions of law. 30 U.S.C. § 816. But the *Chevron* Step One-and-a-Half doctrine instructs the Commission to disregard its own well-considered interpretation and adopt the interpretation supplied by the agency litigating before it. *National Cement*, 494 F.3d at 1077 ("[W]e vacate the Commission's decision and remand for it to obtain from the Secretary a *Chevron* step 2 interpretation of [30 U.S.C. § 802(h)(1)(B)].").

Whatever its virtues may be in other contexts,[6] a remand frustrates Congress's scheme of separating enforcement and adjudication in the Mine Act context. And it exacerbates the separation-of-powers problem by converting statutory interpretation into a "ping-pong game," *PDK*, 362 F.3d at 809 (Roberts, J., concurring in part), while small businesses like KC Transport must either acquiesce and pay thousands in civil penalties or bounce around from ALJ to Commission to D.C. Circuit to Commission and back.

C. A *Chevron* Step One-and-a-Half Remand Contravenes the Mine Act's Authorized Remedies

Chevron Step One-and-a-Half re-interpretive remands are outside the scope of judicial remedies specified in the Mine Act. 30 U.S.C. § 816(a)(1). The statute permits the circuit courts to issue "a decree affirming, modifying, or setting aside, in whole or in part, the order of the Commission and enforcing the same to the extent that such order is affirmed or modified." *Id. Remand* is not within the court's toolbox

---

[6] *See, e.g.*, Hemel & Nielson, 84 U. Chi. L. Rev. at 801–15 (discussing the *Chevron* Step One-and-a-Half doctrine).

under the Mine Act; it can only affirm, modify, or set aside.[7]

Perhaps the *Chevron* Step One-and-a-Half doctrine rests on the notion, mistaken or not, that remand falls within the ambit of remedies a court can award for agency action or inaction under the Administrative Procedure Act, 5 U.S.C. § 706. But that argument fails in the Mine Act context because 30 U.S.C. § 956 states that "the provisions of sections 551 to 559 and sections 701 to 706 of Title 5 shall not apply to the making of any order, notice, or decision made pursuant to this chapter, or to any proceeding for the review thereof." Remands like the ones available under 5 U.S.C. § 706 are therefore *not* available under the Mine Act's statutory scheme.

III. If the Court Is Not Prepared to Grant Certiorari Now, It Should Hold the Petition Pending Resolution of *Loper Bright* and *Relentless*

Both questions presented are certworthy now and, for the reasons stated above, the Court should grant the Petition. The scope of MSHA authority is a matter of critical national importance on which the circuit splits have become worse. And the continued validity of re-interpretive remands could remain an issue regardless of the outcome in *Loper Bright* and *Relentless*. Alternatively, the Court should hold the Petition until it decides the fate of *Chevron* deference and then dispose of this Petition accordingly.

---

[7] The Act authorizes only a limited, non-substantive interim remand for the presentation of additional evidence to the Commission. *See* 30 U.S.C. § 816(a)(1).

Judge Walker, in dissent, was correct to point out that the *Chevron* Step One-and-a-Half doctrine is unwarranted because *Chevron* deference is inappropriate. App.35a–36a. The D.C. Circuit's *Chevron* Step One-and-a-Half doctrine is a consequence of *Chevron*. *See Akzo Nobel Salt, Inc. v. Federal Mine Safety & Health Rev. Comm'n*, 212 F.3d 1301, 1304–05 (D.C. Cir. 2000). *Chevron* incentivizes the D.C. Circuit to find ways to defer, and it perpetuates the ills of "reflexive deference" to "statutory provisions that concern the scope of [the agency's] authority." *Pereira v. Sessions*, 138 S. Ct. 2105, 2120 (2018) (Kennedy, J., concurring). If *Chevron* goes out the window, then *Chevron* Step One-and-a-Half does too. Given the forthcoming decisions in *Loper Bright* (No. 22-451) and *Relentless* (No. 22-1219), this Court should hold the Petition until those cases are resolved. And then, if appropriate, the Court should grant certiorari, vacate the D.C. Circuit's decision, and remand to the D.C. Circuit (GVR). GVR is "an integral part of this Court's practice." *Lawrence ex rel. Lawrence v. Chater*, 516 U.S. 163, 166 (1996) (*per curiam*). This Court has "GVR'd in light of a wide range of developments." *Id.* This Court "regularly hold[s] cases" when "plenary review is being conducted" in a case that, when it is decided, would make GVR in the held case appropriate. *Stutson v. United States*, 516 U.S. 163, 181 (1996) (Scalia, J., dissenting).

If this Court decides to overrule *Chevron*, or even if it clarifies the proper application of *Chevron* deference without overruling the doctrine, that decision will affect the D.C. Circuit's interpretation of § 802(h)(1) and the outcome of this case. And if the D.C. Circuit can no longer apply the *Chevron*

framework, or if it must apply it differently, it would then have to decide whether and how the *Chevron* Step One-and-a-Half doctrine fits within that new framework announced by this Court in *Loper Bright* and *Relentless*.

The panel majority below did not offer a non-*Chevron* reason for its holding, and even criticized the Secretary for not presenting a *Chevron*-sensitive litigating position to the court. After oral argument, the court, on its own motion, issued a rare order for supplemental briefs asking parties to brief, among other things, whether the "Secretary waived *Chevron* deference when [the Secretary's] counsel stated at oral argument that the statute was unambiguous, and he was not asking for deference under *Chevron*." D.C. Cir. No. 22-1071, Order (Dec. 30, 2022). The Secretary's supplemental brief stated flatly that "if the statute is ambiguous," then the Secretary's "interpretation is owed *Chevron* deference." D.C. Cir. No. 22-1071, Pet'r's Suppl. Br. at 12 (Jan. 13, 2023). *Chevron* thus suffuses this case. Accordingly, the Court, if it is not prepared to grant review now on the specific questions presented, should then hold the petition pending resolution of *Loper Bright* and *Relentless* to be then disposed of accordingly.

Conclusion

The petition for writ of certiorari should be granted—or held pending the disposition of *Loper Bright* and *Relentless*.

DATED: February 2024.

Respectfully submitted,

JAMES P. MCHUGH
CHRISTOPHER D. PENCE
Pence Law Firm PLLC
10 Hale St., 4th Floor
P.O. Box 2548
Charleston, WV 25329

ADITYA DYNAR
Counsel of Record
ADAM GRIFFIN
ISAIAH MCKINNEY*
Pacific Legal Foundation
3100 Clarendon Blvd., Suite 1000
Arlington, VA 22201
Telephone: (202) 807-4472
ADynar@pacificlegal.org

DAMIEN M. SCHIFF
Pacific Legal Foundation
555 Capitol Mall, Suite 1290
Sacramento, CA 95814

* Member of the bar of Texas; supervised by members of the bar of this Court.

Counsel for Petitioner

Appendix

Table of Contents

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued December 15, 2022 Decided August 1, 2023

No. 22-1071

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION,
PETITIONER

v.

KC TRANSPORT, INC. AND FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION,
RESPONDENTS

On Petition for Review of a Decision of the
Federal Mine Safety and Health Review Commission

Susannah M. Maltz, Attorney, U.S. Department of Labor, argued the cause for petitioner. With her on the briefs was *Emily Toler Scott*, Counsel for Appellate Litigation.

James P. McHugh argued the cause for respondent KC Transport, Inc. With him on the brief was *Christopher D. Pence*. *Thaddeus Jason Riley* entered an appearance.

Before: WILKINS, WALKER, and PAN, *Circuit Judges*.

Opinion for the Court filed by *Circuit Judge* WILKINS.

Dissenting opinion filed by *Circuit Judge* WALKER.

WILKINS, *Circuit Judge*: Congress affirmed the importance of regulating effective health and safety standards within the mining industry when it enacted the 1977 Federal Mine Safety and Health Amendments Act ("Mine Act"), Pub. L. No. 95-164, 91 Stat. 1290 (1977) (codified as amended at 30 U.S.C. § 801 *et seq.*). This dispute does not concern the substance of the Mine Act's safety standards, but rather the jurisdictional boundaries to which they apply.

KC Transport is an independent trucking company that provides various hauling services. Some of its clients include mining companies, and KC Transport used a facility, located over one mile from one of its client's mining extraction sites, as a maintenance area. A Mine Safety and Health Administration ("MSHA") inspector visited this area, after having inspected the nearby mine, and observed two of KC Transport's trucks undergoing maintenance. Both trucks were raised, unblocked from motion, and one truck had a person standing underneath it. Because the trucks' conditions violated safety standard 30 C.F.R. § 77.404(c), the MSHA inspector issued KC Transport two citations. KC Transport contested MSHA's jurisdiction to issue the citations, arguing that the Mine Act does not apply. If the Mine Act does apply, however, KC Transport concedes that its trucks violated safety standards and the citations are thus valid.

The Mine Act governs the regulation of "coal or other mine[s,]" 30 U.S.C. § 802(h)(1), as well as the activities of those who "operate[], control[], or supervise[,]" or "perform[] services or construction at such mine[s]," called "operator[s,]" *id.* § 802(d). Its

jurisdiction covers all "mines," which are defined by statute as: (A) extraction sites; (B) the "private ways and roads appurtenant" thereto; and (C) a list of items "used in, or to be used in, or resulting from," mining-related activity. *Id.* § 802(h)(1).

In the proceeding on review challenging MSHA's jurisdiction, the Federal Mine Safety and Health Review Commission ("Commission") held that for the list of items, in § 802(h)(1)(C), to be considered a "mine," the items had to be located at an extraction site, *id.* § 802(h)(1)(A), or the roads appurtenant thereto, *id.* § 802(h)(1)(B). Because neither the trucks nor the facility, associated with the citations at issue, were located on land covered under subsections (A)–(B), the Commission found they failed to constitute a "mine" and vacated the citations. The Commission also found that, as an independent contractor not engaged in servicing a mine at the time of citation, KC Transport failed to qualify as an "operator" under § 802(d) of the Mine Act.

The Secretary of Labor ("the Secretary"), acting through MSHA, appeals the Commission's decision and asks us to uphold the two citations as an appropriate exercise of the Secretary's jurisdiction under the Mine Act. In the Secretary's view, subsection (C) of the "mine" definition covers KC Transport's facility and trucks because they were "used in" mining activity. *See* § 802(h)(1)(C).

Given the Mine Act's language, context, and our binding precedent, we find that the Commission erred in its interpretation of the "mine" and "operator" definitions. And we generally defer to the Secretary's reasonable interpretation of an ambiguous statute—even when the Commission disagrees. *See Martin v.*

Occupational Safety & Health Rev. Comm'n, 499 U.S. 144, 158 (1991); *Excel Mining*, 334 F.3d at 6. But here, the Secretary's position treats subsection (C) as unambiguous and makes no meaningful effort to address the numerous practical concerns that would arise under such an interpretation. Therefore, and in conformity with our precedent, we vacate and remand the Commission's decision, allowing the Secretary to interpret the statute's ambiguous language. *See Sec'y of Lab. v. Nat'l Cement Co. of Cal., Inc.* ("*National Cement I*"), 494 F.3d 1066, 1077 (D.C. Cir. 2007).

I.

A.

Congress enacted the Federal Coal Mine Health and Safety Act ("Coal Act") in 1969 with the purpose of "improv[ing] mandatory health or safety standards to protect the health and safety of the Nation's coal miners[.]" Pub. L. No. 91-173, § 2(g), 83 Stat. 742, 743 (1969). As our nation's use of mines continued, so too did the occurrence of mining-related incidents. For example, 226 miners tragically died from unexpected mine explosions in West Virginia, Ohio, and Pennsylvania in 1940 alone. *See* J. Davitt McAteer, *The Federal Mine Safety and Health Act of 1977: Preserving a Law that Works*, 98 W. Va. L. Rev. 1105, 1113 (1996). Additional incidents also took the lives of 119 miners in Illinois in 1951; 78 miners in West Virginia in 1968; 91 miners in Idaho in 1972; and 26 miners in Kentucky in 1976. *Id.*

Because several forms of mine-related property were not enumerated in the Coal Act's mine definition, incidents like the collapse of a retention dam left confusion as to whether the Coal Act's

protections applied. This lack of clarity put the Act's jurisdictional bounds in question, prompting congressional action. Indeed, upon enacting the more comprehensive 1977 Mine Act, Congress cited the 1972 collapse of the West Virginia retention dam—"result[ing] in a large number of deaths, and untold hardship to downstream residents[]"—as a reason to amend the "mine" definition. S. REP. NO. 95–181, at 14 (1977) (explaining the need to clarify the "mine" definition as "the Committee [was] greatly concerned that at [the time of the 1972 dam incident], the scope of the authority of the Bureau of Mines to regulate such structures . . . was questioned [under the Coal Act]").

The Mine Act established one regulatory scheme, covering the mining of coal, metals, and non-metals. *See Sec'y of Lab. v. Excel Mining, LLC*, 334 F.3d 1, 3 (D.C. Cir. 2003) (citing 30 U.S.C. § 961(a)). In doing so, Congress affirmed that "the first priority and concern of all in the coal or other mining industry must be the health and safety of its most precious resource—the miner[.]" 30 U.S.C. § 801(a). It also aimed "to provide more effective means and measures for improving the working conditions" in American mines and "to prevent death[,] serious physical harm, and . . . occupational diseases[.]" *Id.* § 801(c). The Secretary is authorized to enforce this goal, and the Mine Act "created within the Department of Labor a new agency, [MSHA], to administer its provisions." *Am. Coal Co. v. FMSHRC*, 796 F.3d 18, 21 (D.C. Cir. 2015). Under this structure, the Secretary "develop[s] and "promulgate[s]" "improved mandatory health or safety standards for the protection of life" in mines. 30 U.S.C. § 811(a). MSHA enforces these standards by conducting regular inspections, *see* § 813(a); issuing

safety orders, *see* § 813(k); and issuing citations for violations, *see* §§ 813(a), 815(a); for the Secretary to then assess and assign a corresponding penalty, *see* § 820(a). Any resulting citations, orders, or penalties may be reviewed by the Commission. In practice, mine operators may contest citations before an administrative law judge ("ALJ"), and either party may subsequently appeal the ALJ's decision to the Commission. *Am. Coal Co.*, 796 F.3d at 21.

Given the nature of this case, it is important to emphasize that no part of this miner-safety-centered process applies absent jurisdiction. Whether property is subject to the Mine Act's frequent inspections and other procedures is thus contingent upon whether the property constitutes a "mine." A "coal or other mine" is defined under 30 U.S.C. § 802(h)(1) as:

> (A) an area of land from which minerals are extracted in nonliquid form or, if in liquid form, are extracted with workers underground, (B) private ways and roads appurtenant to such area, and *(C)* lands, excavations, underground passageways, shafts, slopes, tunnels and workings, structures, *facilities, equipment, machines, tools, or other property* including impoundments, retention dams, and tailings ponds, on the surface or underground, *used in, or to be used in, or resulting from, the work of extracting such minerals* from their natural deposits in nonliquid form, or if in liquid form, with workers underground, *or used in, or to be used in, the milling of such minerals*, or the work of preparing coal or

> other minerals, and includes custom coal preparation facilities.

30 U.S.C. § 802(h) (emphases added). In sum, the statute's jurisdiction over "mines" covers: (1) extraction sites; (2) the "private ways and roads appurtenant" thereto; and (3) a list of items "used in, or to be used in," mining-related activity. *Id.*

B.

The material facts are undisputed. *See* J.A. 4–13 (Joint Stipulations). KC Transport is an independent trucking company that operates truck maintenance and storage, and also provides hauling services to various businesses for different materials (*e.g.*, coal, earth, and gravel). The following events took place at one of KC Transport's locations—the Emmett facility located in Emmett, West Virginia.

One of KC Transport's clients is a coal mine operator named Ramaco Resources ("Ramaco") that maintains five mines near the Emmett facility ("facility"). Ramaco's representatives informed KC Transport that it could use the facility for maintenance, as Ramaco had no plans to operate a coal mine there. KC Transport accepted and began using the facility as its "maintenance area/shop." J.A. 7. KC Transport also obtained commercial insurance covering the facility.

At the time in question, the facility included only a parking area and two maintenance shipping containers. The facility was described as a "convenient centralized maintenance facility . . . for KC Transport," J.A. 7, and KC Transport used it to operate about 35 trucks. Ramaco's deep mines are about four to five miles away, and its strip mines are

about six miles away. An estimated "60% of the [facility's] services" supported Ramaco's five nearby mines, and the remaining 40% of services aided other companies like "American Electric Power [] and other coal operators." J.A. 7. The types of trucks at the facility are a mix of (1) off-road trucks, providing haulage for Ramaco's five nearby mines; and (2) on-road trucks used in earth and gravel haulage for other customers, as well as coal haulage services for non-Ramaco customers.

The facility is on Right Hand Fork Road located over one mile from one of Ramaco's coal plants, the Elk Creek Preparation Plant. Right Hand Fork Road is a road off of the haulage road that runs past Elk Creek Plant and dead ends on the other side of the facility. The facility is about 1000 feet from the haulage road, and while the road leading "into the KC Transport facility is not a coal haulage road[,] [it] does branch off from a haulage road." J.A. 6. The only way to access the facility is by advancing through a gate entrance on Right Hand Fork Road, and while part of the haul-road is public, everything past the gate is reserved for authorized persons. During this time, however, the gate was not operational.

On March 11, 2019, an MSHA coal mine inspector visited Ramaco's nearby Elk Creek Prep Plant. Although MSHA had never inspected, or even attempted to inspect, KC Transport's trucks at the facility, MSHA regularly inspected KC Transport's trucks along the haulage road, as well as at the Elk Creek Plant. Upon completing the Elk Creek Plant inspection, the inspector went "looking for trucks" that MSHA had previously cited and intended to terminate those citations. J.A. 5; *see* 30 U.S.C.

§ 814(e)(3). The inspector traveled over a mile along the haulage road, turned off this road onto Right Hand Fork Road, continued along this road for about 1000 feet, and ultimately reached the facility.

Upon arriving at the facility, the inspector observed KC Transport's trucks undergoing maintenance. According to MSHA safety regulations, "[r]epairs or maintenance shall not be performed on machinery until the power is off and the machinery is blocked against motion, except where machinery motion is necessary to make adjustments." 30 C.F.R. § 77.404(c). Two of KC Transport's trucks, however, were unblocked. Notably, because these particular trucks "were not licensed to haul products over public roads[,]" they were "only being operated on private land," J.A. 10, and "regularly used to haul coal from the five Ramaco mines to the Elk Creek prep plant[,]" J.A. 8. At the time of inspection, the first truck was "jacked up with the wheels and tires off both back axles[,]" and "[w]ork [was] being performed on the brakes located on the back axles of the truck." J.A. 30–31. The second truck was raised and a miner was underneath it, "standing on the frame of the truck[.]" J.A. 31; *see* J.A. 58. Because neither of the two trucks were "blocked against motion," the inspector found KC Transport in violation of 30 C.F.R. § 77.404(c), and issued Citations Nos. 9222038 and 9222040.

C.

The primary issues in this litigation concern jurisdiction: (1) whether the facility or the two trucks constituted a "mine" under 30 U.S.C. § 802(h)(1)(C) of the Mine Act, such that MSHA had the authority to cite KC Transport for violating safety regulation 30 C.F.R. § 77.404(c); and (2) whether an independent

contractor like KC Transport only qualifies as an "operator" under 30 U.S.C. § 802(d) when actively working at a mine site. If the Mine Act *does* apply, the parties agree both citations should be upheld and KC Transport owes a penalty fee of $3,908 regarding citation No. 9222038, and $4,343 regarding citation No. 9222040. *See* J.A. 12–13.

Once KC Transport contested the two citations, both the Secretary and KC Transport filed cross-motions, requesting summary decision of the jurisdictional issue. The ALJ rejected the parties' interpretations of subsection (C), but ultimately ruled in MSHA's favor and upheld the two citations as a proper exercise of the Mine Act's jurisdiction. In the ALJ's view, the facility and the mining-related equipment located therein were too connected to the mining process to be excluded from the Mine Act's jurisdiction. Thus, the ALJ found the facility constituted a "mine" under the subsection (C)'s plain meaning, "and because the trucks were used in mining and parked at the facility," they qualified as "equipment" under subsection (C). J.A. 84.

On appeal, a divided Commission reversed the ALJ's finding of jurisdiction and vacated the two contested citations. According to the majority, 30 U.S.C. § 802(h)(1) unambiguously limits the "mine" definition to extraction sites and lands appurtenant thereto. Thus, the Commission held "that an independent repair, maintenance, or parking facility not located on or appurtenant to a mine site and not engaged in any extraction, milling, preparation, or other activities within the scope of subsection 3(h)(1)(A) is not a mine within the meaning of section 3(h) of the Mine Act." J.A. 168. In a secondary holding,

the Commission also found that KC Transport did not qualify as an "operator" under the Mine Act, because "[a]s an independent contractor, KC Transport is an operator subject to MSHA jurisdiction [only] while performing work at a mine site." J.A. 165. One commissioner dissented, taking an even broader view than the ALJ, and argued that regardless of the facility, trucks constitute mines as they were "used in" mining and are "integral" to that process. J.A. 176. The Secretary filed a petition for review of the Commission's decision.

II.

We review the Commission's legal findings *de novo*. *See Am. Coal Co.*, 796 F.3d at 23. "Under the Mine Act, the Secretary's interpretation of the law must 'be given weight by both the Commission and the courts.'" *Excel Mining*, 334 F.3d at 5–6 (quoting *Sec'y of Lab. v. Cannelton Indus., Inc.*, 867 F.2d 1432, 1435 (D.C. Cir. 1989) (quoting S. REP. NO. 95–181, at 49)). Should the Secretary and the Commission advance differing interpretations, "it is . . . the Secretary rather than the Commission who is entitled to the deference described in *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984)." *Excel Mining*, 334 F.3d at 6 (cleaned up); *see also Am. Coal*, 796 F.3d at 23–24. But if the Secretary incorrectly treats the statute as unambiguous, such that deference is not appropriate, we have previously remanded the case to the Commission, instructing the Secretary to interpret the statute in recognition of its ambiguities. *See Sec'y of Lab. v. Nat'l Cement Co. of Cal., Inc. ("National Cement II")*, 573 F.3d 788, 791 (D.C. Cir. 2009).

A.

"Under these circumstances, the Secretary's litigating position before the Commission is as much an exercise of delegated lawmaking powers as is the Secretary's promulgation of a workplace health and safety standard." *Martin*, 499 U.S. at 157. Accordingly, we turn to the Secretary's argument, maintaining that the trucks at issue fell under the Mine Act's jurisdiction under a plain reading of subsection (C). The Secretary maintains this Court should uphold the contested citations because 30 U.S.C. § 802(h)(1)(C) unambiguously grants MSHA jurisdiction over both the trucks and the maintenance facility. Under this interpretation, subsection (C) unambiguously extends the Mine Act's jurisdiction to cover each of the enumerated types of items if "used in, or to be used in" mining. Because the trucks are "equipment," and because both the trucks and the facility were "used in" mining activity, the Secretary argues they satisfy the "mine" definition.

Although advancing an opposing interpretation, the Secretary, like KC Transport in defending the Commission's decision, asserts that the Act's "mine" definition is unambiguous. As such, the Secretary urges us to uphold the citations as a proper exercise of MSHA's jurisdiction under a plain reading of the statute.

This was the case in *National Cement I*, 494 F.3d at 1066. The central issue there was whether "a road National Cement use[d] to access its cement processing plant [] pursuant to a nonexclusive right-of-way grant" constituted a "mine" under 30 U.S.C. § 802(h)(1). *Id.* at 1068. The Secretary defended its jurisdiction over the private road, arguing that

because the road led to a cement processing plant, it unambiguously constituted a "private way[] and road[] appurtenant to" an extraction area under a plain reading of subsection (B), 30 U.S.C. § 802(h)(1)(B). Finding subsection (B) ambiguous, we declined to "accord the Secretary's litigating position *Chevron* deference because she incorrectly treated the statute as unambiguous and interpreted it accordingly." *Nat'l Cement I*, 494 F.3d at 1073 (citing *Peter Pan Bus Lines, Inc. v. Fed. Motor Carrier Safety Admin.*, 471 F.3d 1350, 1354 (D.C. Cir. 2006) ("[D]eference to an agency's interpretation of a statute is not appropriate when the agency wrongly believes that interpretation is compelled by Congress." (internal quotation marks omitted))).

As we explained, the statute's use of the term "private" could encompass either a "group or class of persons," or "a particular person[,]"—and similarly, "appurtenant" could mean a road either "subject to a transferable right of way benefitting the mine lessee," or "dedicated exclusively to the use of the mine." *Nat'l Cement I*, 494 F.3d at 1074. Thus, we vacated and remanded the Commission's decision for the Secretary to interpret the ambiguous provision. On remand, the Secretary relied on two subsections and argued that subsection (B) extended over the road itself, while subsection (C) covered the mine-related vehicles traveling on the road. *See* 573 F.3d at 794. Satisfied that this interpretation reasonably accounted for the statute's ambiguities, the *National Cement II* Court found "the Secretary's interpretation of subsection (B)" was "entitled" to deference. *Id.* at 793.

Such an approach was not unique to *National Cement I*, as we took a similar path in *Akzo Nobel Salt,*

Inc. v. Federal Mine Safety and Health Review Commission, 212 F.3d 1301, 1304–05 (D.C. Cir. 2000). There, the Secretary asserted that a regulation unambiguously applied to and covered the citation at issue. We disagreed and found the regulation's language ambiguous. The Secretary, however, "never grappled with" the "regulation's clear ambiguity[,]" and because the Secretary had taken inconsistent positions, we vacated and remanded the Commission's decision. *Id.* at 1305 (instructing the Commission to secure the Secretary's regulatory interpretation, "and to resolve the case applying standard deference principles to that interpretation").

To be clear, it is the Secretary's litigating position resulting from a citation—not the Commission's position—that is ordinarily owed deference. *See Excel Mining, LLC*, 334 F.3d at 6 (citing *Martin*, 499 U.S. at 157). We cannot defer, however, when the Secretary's position mistakenly advances an interpretation *compelled* by Congress when the statute is in fact ambiguous. And as our case law shows, we have previously addressed such a mistake by remanding the case for the Secretary to account for the identified ambiguity.

As we discuss below, here again, we are faced with a situation where the Secretary incorrectly asserts that the relevant text—30 U.S.C. § 802(h)(1)(C)—is unambiguous. Thus, we remand the case, allowing the Secretary to address § 802(h)(1)(C)'s ambiguities.

Beginning with the statutory text, recall that § 802(h)(1) defines a "mine" as: (1) the physical extraction site, under subsection (A); (2) any "private ways and roads appurtenant" to that extraction site, under subsection (B); and (3) the items "used in, or to

be used in, or resulting from" mining activity, under subsection (C). Congress's inclusion of subsection (C) clarifies that the Mine Act extends beyond the land and roads covered in subsections (A)–(B). The Secretary argues the "mine" definition must be read so broadly that it incorporates each of subsection (C)'s items as an individual "mine." Put differently, the Secretary advances a view under which all "machines, tools," and even singular pieces of "equipment," could constitute a "mine"—no matter their location—so long as they either were, or will be, "used in" mining activity. But certain "equipment[]"—like a truck—is mobile, and without a clear locational limit, it is impossible to ensure MSHA could monitor the equipment's location and complete the statutorily mandated inspection requirements.

As indicated by its context, structure, and Congress's use of the phrase "coal or other mine" throughout Chapter 22 of Title 30—location is central to the Mine Act. Consider the process through which MSHA ensures compliance with the Mine Act's safety regulations. To start, Congress instructs that "[e]ach operator of a coal or other mine subject to this chapter *shall* file with the Secretary the name and *address* of such mine[.]" 30 U.S.C. § 819(d) (emphases added). In addition to recording the mine's location, Congress also instructed that each "coal or other mine" "shall" be inspected yearly, four times a year for "each underground coal or other mine[,]" and twice a year for "each surface coal or other mine." *Id.* § 813(a).

The statute delineates the limited circumstances under which the Secretary "may give advance notice of inspections[,]" and provides that authorized representatives "*shall* have a right of entry to, upon,

or through any coal or other mine." *Id.* (emphasis added). No discretion is accorded once the inspection is underway, and the Mine Act *requires* inspectors to issue a citation upon belief "that an operator of a coal or other mine" violated "any mandatory health or safety standard, rule, order, regulation, or order[.]" *Id.* § 814(a)).

In addition to requiring a physical address for inspection purposes, the Mine Act also mandates that each "coal or other mine" operator "designate a responsible official" "in charge of health and safety" for each identified mine. *Id.* § 819(d). The Mine Act even outlines certain design requirements for every identified mine. "At each coal or other mine there shall be maintained an office with a conspicuous sign designating it as the office of such mine." *Id.* § 819(a). This office must also include "a bulletin board" near the entrance such that "orders, citations, notices and decisions required by law or regulation . . . may be posted[.]" *Id.* It is, thus, clear that no operator could comply with these provisions without first identifying a physical address for each of its mines.

The Commission's interpretation fares no better than the Secretary's, because treating subsection (C) as inherently connected to subsections (A)–(B) cannot be harmonized with the statutory structure under which there are three separate and independent subsections. *See id.* § 802(h)(1)(A)–(C). If a "mine" is so clearly defined under subsections (A)–(B), what then to make of subsection (C)? Because the Commission finds it "clear that neither the purpose nor the language of the Act indicate a further geographical extension of jurisdiction under subsection (C)[,]" it reasons that subsection (C) *must*

be read as "catalog[ing] various mining-related places . . . and objects" that are used in mining activity at physical extraction sites described in subsection (A), or the roads appurtenant thereto, described in subsection (B). J.A. 163–64; *see Maxxim Rebuild Co. v. FMSHRC*, 848 F.3d 737, 740 (6th Cir. 2017) (explaining that subsection (C) reads as though "the author went to a mine and wrote down everything he saw in, around, under, above, and next to the mine" and limiting the definition "only to everything that one would see in or around a working mine" itself). Not so.

One need only look to Congress's concerns—cited when explaining its decision to revise the Coal Act's "mine" definition—to conclude that subsection (C) was incorporated to specify that non-extraction site property may *also* constitute a "mine" when it (1) is "used in," (2) will "be used in," or (3) "result[s] from" the work of extracting or preparing minerals. 30 U.S.C. § 802(h)(1)(C). As briefly mentioned in relation to the deadly mining-related incidents, subsection (C) was necessary—at least in part—to ensure the Mine Act's jurisdiction extended to physical manifestations like dams that may be distant from the actual extraction site. Limiting jurisdiction to the land in subsections (A)–(B) would effectively omit subsection (C) and could exclude the very property Congress intended to cover.

The Commission's decision cannot stand for another fundamental reason: such a narrow view of 30 U.S.C. § 802(h)(1) conflicts with this Circuit's precedent under which we have clarified that the Mine Act extends beyond structures on extraction sites. In *Donovan v. Carolina Stalite Co.*, we explained

that the Mine Act "does not require that those structures or facilities [listed in subsection (C)] . . . be located on property where such extraction occurs." 734 F.2d 1547, 1548, 1552 (D.C. Cir. 1984) (finding that a "slate gravel processing facility" placed on "property immediately adjacent to a quarry" fell under the Mine Act's jurisdiction). Importantly, we also endorsed the view that MSHA's "jurisdictional bases were expanded accordingly [in the 1977 Mine Act] to reach not only the 'areas . . . from which minerals are extracted,' but also the 'structures . . . which are used or are to be used in . . . the preparation of the extracted minerals.'" *Id.* at 1554 (quoting S. REP. NO. 95–181). This conclusion applies equally to all property listed in subsection (C) which, as relevant here, includes both "structures" and "equipment."

Although the Secretary nominally recognized that the statute could be ambiguous, and advanced an alternative argument seeking our deference, at no point during this litigation did the Secretary grapple with the conflicting, practical implications of the advanced interpretation. *See* Sec'y Br. 38–42; Sec'y Reply Br. 5, 14–17; Sec'y Supp. Br. 11–13. Nor did the Secretary acknowledge the statute's ambiguity as demonstrated by its historical background. For instance, when passing the 1977 Mine Act, Congress explained it would "enlarge[] the definition of 'mine' in [30 U.S.C. § 802(h)] to include those mines previously covered by the [1966] Federal Metal and Non-Metallic, Mine Safety Act ['Metal Act']." S. REP. NO. 95–181, at 59; *see* Pub. L. No. 89-577, 80 Stat. 772 (1966) (repealed 1977). The Metal Act fell under the Department of Interior, and the Mining Enforcement and Safety Administration ("MESA") exercised the agency enforcement role like the one MSHA occupies

today. When referring to the Metal Act's jurisdiction, a 1974 MESA-OSHA Memorandum of Understanding ("MOU") explained that a "mine," under this predecessor to the Mine Act, included "mineral extraction (mining) operations" as well as "milling and preparation facilities and other surface facilities used in mining or milling." 39 Fed. Reg. 27,382, 27,383 (July 26, 1974) (summarizing 30 U.S.C. § 721(b)). From this, MESA "interpret[ed] its authority to include the prescription and enforcement of standards regarding" a variety of operations, locations, and "transportation." *Id.* But nowhere in the later 1979 MSHA-OSHA MOU, pertaining to the 1977 Mine Act, is there any mention of MSHA's authority as covering transportation. 44 Fed. Reg. 22,827, 22,827 (Apr. 17, 1979). What this might, or might not, signify—in relation to subsection (C)'s scope today—remains a mystery as the Secretary's briefs failed to discuss it. This lack of analysis further indicates the need to remand for the Secretary to engage with subsection (C)'s ambiguity.

In the Secretary's view, however, any risk of incorrectly broadening subsection (C) is mitigated by a functional analysis that officials conduct in determining whether certain facilities or equipment constitute a "mine." Framed as a limitation, the Secretary argues that whether facilities or equipment constitute a "mine" depends only on a fact-based inquiry under which one must evaluate how closely related the relevant facility or equipment was to mining activity. Location is but one factor that may be relevant to this "use-in-mining" analysis. Oral Arg. Tr. at 10:3; *see id.* at 9–17; Sec'y Supp. Br. 13, 21. But such a fact-based inquiry does nothing to explain how MSHA might locate mobile equipment, such as the

trucks at issue here, and fulfill its *mandatory* obligations to "make frequent inspections." 30 U.S.C. § 813(a). Indeed, without an identifiable address, how will inspectors know where to find all equipment that has, or will be, "used in" mining? And how long after equipment is "used in" mining does it still qualify as a "mine" if no longer located on mine-related property? The Secretary's broad and categorical view, although temptingly clear in theory, ultimately creates many more questions in practice. These questions bespeak ambiguity, and the Secretary's litigation position must explain how they were taken into account.

We note that all but *three* of the items enumerated in subsection (C) constitute physical manifestations. The physical manifestations—including, for example, "tunnels and workings, structures, facilities, . . . [and] retention dams[]"—are similar to the extraction sites and roads outlined in subsections (A)–(B) because they are stationary and, thus, associated with a particular location. 30 U.S.C. § 802(h)(1)(C). The three movable items—"equipment, machines, [and] tools," *id.*—stand alone as property subject to much broader, non-mining related definitions. And as "[a] canon related to *noscitur a sociis, ejusdem generis,* counsels: 'Where general words follow specific words in a statutory enumeration, the general words are usually construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words.'" *Yates v. United States*, 574 U.S. 528, 545 (2015) (cleaned up). One way of interpreting subsection (C) is therefore to view the three movable items included in the middle of the list in relation, and as connected, to the preceding physical manifestations.

As applied here, there is at least a question of whether "equipment, machines, [and] tools," when read within the wider Chapter 22 context, constitute "coal or other mine[s]" only when there is an established connection to the fixed physical manifestations listed before and after them. 30 U.S.C. § 802(h)(1)(C). It is unclear, however, whether such an established connection impacts the circumstances under which the three movable types of property remain "mines" when not physically connected to the manifestations listed in subsections (A)–(C). At a minimum, the statutory language, broader context, and numerous practical concerns render subsection (C)'s meaning ambiguous.

Our dissenting colleague contends that "an item listed in subsection (C) must be located at an extraction site or a processing plant to count as a 'mine' under the Act." Dissenting Op. 8. This restrictive construction of the statute countermands our observation in *Donovan* that the Act included a "sweeping definition of a mine[,]" 734 F.2d at 1554 (internal quotation marks omitted), as well as our ruling in *National Cement II* that the "broad statutory definition of 'mine[]' . . . extends the protections of the Mine Act beyond the actual site where mining takes place." 573 F.3d at 795. The dissent's interpretation also contradicts our recognition in *National Cement I* that, as a procedural matter, the Secretary should "confront" the breadth and ambiguity of the Act in the first instance. 494 F.3d at 430. In that case, we held that because the definitional terms of "mine" in subsection (B) of the Mine Act "are ambiguous and the Secretary instead interpreted them as having a plain, unambiguous meaning, we vacate the Commission's decision and remand for it to obtain from the

Secretary a *Chevron* step 2 interpretation[.]" *Id.*; *see also Akzo Nobel Salt, Inc.*, 212 F.3d at 1304–05 (explaining that while the Secretary asserted that a Mine Act regulation unambiguously applied, we found the regulation's language ambiguous and remanded for the Secretary to "grappl[e] with" the "regulation's clear ambiguity"). We are of course bound by our precedent. *LaShawn A. v. Barry*, 87 F.3d 1389, 1393 (D.C. Cir. 1996). The dissent's oversimplification also elides the interpretive difficulty that arises when a truck is cited while located on an extraction or processing site, but MSHA later goes looking for the truck outside the extraction or processing area to determine whether the cited violations have been abated—which is exactly how the present dispute began. *See supra* at 8; J.A. 5. Does the statute unambiguously provide that MSHA loses jurisdiction over a truck once it leaves the extraction or processing area? Apparently so, under the dissent's view. But that reading of the statute renders enforcement of the Mine Act unworkable, frustrating Congress's intent.

B.

The Commission's secondary ruling, concerning the Mine Act's "operator" definition, faces a similar fate as its first. An "operator" is defined under § 802(d) as "any owner, lessee, or other person who operates, controls, or supervises a coal or other mine or any independent contractor *performing services* or construction at such mine[.]" 30 U.S.C. § 802(d) (emphasis added). To further confirm that the Secretary lacked jurisdiction to issue the citations, the Commission held that KC Transport failed to qualify as an "operator" under the Mine Act. It reasoned that "[a]s an independent contractor," KC Transport only

qualifies as "an operator subject to MSHA jurisdiction while performing work at a mine site[,]" and "[w]hen the citations were issued" here, "KC Transport was not performing services in a mine." J.A. 165. Because the trucks were parked and off the mine site, "KC Transport was not performing services in a mine[]" when the two citations were issued and, therefore, was not an "operator." *Id.*

The Secretary asks us to vacate the ruling, not only because the Commission incorrectly narrowed the circumstances under which an independent contractor qualifies as an "operator" under the Mine Act, but also because it exceeded its jurisdiction by deciding an unraised issue in the first instance. We find it especially telling that KC Transport chooses not to defend the Commission's "operator" ruling on the merits. Instead, KC Transport insists this is a non-issue, because rather than a secondary holding, the Commission merely quoted statutory language discussing "operators" to further support its "mine" definition ruling. This argument is clearly rebutted by the record, revealing the Commission found KC Transport "was not an operator under section 3(d)" because it "was not performing services in a mine[.]" J.A. 165. We therefore review the Commission's secondary "operator" holding and find it lacked jurisdiction to make such a ruling.

The Commission's jurisdiction is limited to questions that were reviewed by the ALJ, and then included in the petition for discretionary relief on appeal. *See* 30 U.S.C. § 823(d)(2). However, the record shows that the ALJ never considered KC Transport's "operator" status. As the parties' joint stipulations confirm, KC Transport conceded that its trucks'

conditions violated 30 C.F.R. § 77.404(c) "should the [ALJ] find that MSHA did have jurisdiction over the *trucks*[.]" J.A. 12 (emphasis added). KC Transport then repeated this concession in its briefs before the ALJ, and both parties advanced arguments that focused exclusively on the Mine Act's jurisdiction concerning the trucks and, or, the facility. Neither party so much cited 30 U.S.C. § 802(d)'s "operator" definition, and there is no trace of such a discussion in the ALJ's decision. *See* J.A. 75 ("The parties have stipulated that should this Court find that MSHA had jurisdiction over the trucks and location, the cited conditions would constitute violations of 30 C.F.R. § 77.404(c)[.]"). And the parties maintained the same focus on 30 U.S.C. § 802(h)(1)'s "mine" definition before the Commission. Thus, KC Transport's "operator" status was not questioned until the Commission issued its majority decision.

Because the Commission resolved this unraised issue on its own without the benefit of briefing—and in the first instance—it failed to abide by its jurisdictional boundaries under 30 U.S.C. § 823(d)(2). And although there is a process through which the Commission may exercise its discretion to reach additional issues, *see id.* § 823(d)(2)(B), nothing in the record shows it followed that procedure here.

* * *

To be sure, the Mine Act is intentionally broad, and this characteristic helps enable the government to protect and promote miner safety. *Am. Coal Co.*, 796 F.3d at 25. We reiterate, however, that broad authority does not equate limitless jurisdiction. *Nat'l Cement I*, 494 F.3d at 1077. It is the courts' role to ensure this broad authority is exercised within its

jurisdictional bounds, and we use a variety of tools to do so. Ensuring that the Secretary adopts a reasonable interpretation of its jurisdiction by grappling with the questions and challenges posed by an ambiguous statute is one of the devices in our toolkit. But without such an interpretation here, there is nothing to which we may defer. *Id.* at 1075. Heeding the lessons of *National Cement I* & *II*, we vacate the Commission's decision and remand for the Secretary to reconsider its position pursuant to a revised interpretation of subsection (C), after recognizing its ambiguity and addressing the questions outlined in this opinion. *See id.* at 1077.

So ordered.

WALKER, *Circuit Judge*, dissenting:

KC Transport is a small trucking company. It occasionally uses its trucks to haul coal for nearby mines. When those trucks break down, KC repairs them at its truck-repair shop — some four miles away from the nearest mine.

Because KC's shop repairs mining trucks, the Secretary of Labor says the shop is a "mine." In his view, any "facilit[y]" "used in . . . the work of extracting [coal]" is a "mine" under the Mine Act. 30 U.S.C. § 802(h)(1). And that puts KC's truck-repair shop within the Mine Safety and Health Administration's jurisdiction.

I disagree. To count as a "mine," a "facility" like KC's shop must be located at an extraction site or a processing plant. KC's shop is not. So the Administration lacks jurisdiction over it.

I would thus deny the Secretary's petition for review.

I. Background

A. Mine Safety and Health Administration's Jurisdiction

The Mine Act tasks the Secretary of Labor with setting health-and-safety standards for mines. 30 U.S.C. § 811. To enforce those standards, the Mine Safety and Health Administration must "make frequent inspections and investigations" of "mines." *Id.* § 813(a); *see* 29 U.S.C. § 557a. If a mine operator fails to meet the agency's safety standards, it may issue a citation. 30 U.S.C. §§ 813, 802(d) (a mine "operator" "operates, controls, or supervises a . . . mine").

Because the Administration may inspect and cite only "mines," its jurisdiction depends on the Mine Act's definition of "coal and other mines":

> (A) an area of land from which minerals are extracted in nonliquid form or, if in liquid form, are extracted with workers underground,
>
> (B) private ways and roads appurtenant to such area, and
>
> (C) lands, excavations, underground passage-ways, shafts, slopes, tunnels and workings, structures, **facilities**, equipment, machines, tools, or other property including impoundments, retention dams, and tailings ponds, on the surface or underground, **used in**, or to be used in,

> or resulting from, the work of **extracting** such minerals from their natural deposits in nonliquid form, or if in liquid form, with workers underground, or used in, or to be used in, the **milling** of such minerals, or the work of **preparing coal or other minerals**, and includes custom coal preparation facilities.

Id. § 802(h)(1) (emphases added).

Here, we must decide if a truck-repair shop that occasionally fixes mining trucks is a "mine" within the Administration's jurisdiction.

B. KC Transport's Citations

KC Transport has a contract to haul coal at Ramaco Resources' mines near Emmett, West Virginia. To help KC with the job, Ramaco lets KC use a patch of land off a private road near the mines to maintain its trucks. KC built a parking lot on the land and installed two shipping containers to use as a maintenance shop.

KC's shop is about a mile away from Ramaco's coal-processing plant and more than four miles away from Ramaco's nearest extraction site. In addition to its arrangement with Ramaco, KC uses trucks from the shop to serve customers that don't mine coal (or anything else). For instance, it has a "large earth moving project" for a different company. JA 7.

In 2019, a mine-safety inspector visited KC's repair shop. He noticed that KC was servicing two dump trucks, but had not taken sufficient precautions to prevent the truck beds from moving during

maintenance. That, the inspector decided, was a violation of the Administration's regulations. 30 C.F.R. § 77.404(c). So he issued KC two citations, one for each truck.

Rather than pay the citations, KC challenged them before the Mine Safety Commission. It argued that the Administration lacked jurisdiction to issue the citations. The agency may issue citations only to "an operator of a coal or other mine," and, KC pointed out, its repair shop is not a "mine." 30 U.S.C. § 814(a).

An administrative law judge rejected KC's challenge, holding that its shop is a "mine" under the Act. Because repairing mining trucks is "essential to the coal hauling and preparation process," JA 91, the ALJ reasoned that the shop is a "facilit[y]" that is "used in . . . the work of extracting . . . minerals." 30 U.S.C. § 802(h)(1)).

On appeal, the Commission reversed. It held that the ALJ's reading of the statute divorced select words in the definition of "mine" from their context. The full definition — quoted above — is filled with geographic language suggesting that a facility must be close to an extraction site to count as a mine. *Id.* § 802(h)(1). Because KC's shop is "distant from a mine site, owned by an independent company, and used for parking and repairing its vehicles," it did not count as a "mine." JA 164. So the agency lacked jurisdiction over it.

Unhappy with the Commission's decision, the Secretary petitioned this court for review, challenging

the Commission's interpretation of the Mine Act. I would deny the Secretary's petition.[1]

II. KC's Shop Is Not A "Mine"

KC's truck-repair shop is not a "mine" under the Mine Act because it is not located at an extraction site or at a processing plant (where minerals like coal are milled or prepared, turning them from ore into usable products).

A. The Act's Definition of "Mine" Has Geographic Limits

Though the Mine Act's definition of "mine" has no express geographic limit, the statute's "carefully calibrated scheme" confirms that there is one. *Turkiye Halk Bankasi A.S. v. United States*, 143 S. Ct. 940, 947 (2023) (looking to the statutory scheme to cabin the reach of a seemingly broad statutory provision); Antonin Scalia, *A Matter of Interpretation* 24 (1997) ("the good textualist is not a literalist").

Recall that the Act defines "mine" in three subsections. 30 U.S.C. § 802(h)(1). To count as a mine, a facility must meet the criteria in one of those subsections. *Secretary of Labor v. National Cement*

---

[1] "[A] constitutional quandary [is] raised by a federal court resolving a lawsuit," like this one, "between two Executive Branch agencies." *United States Postal Service v. Postal Regulatory Commission*, 963 F.3d 137, 143 (D.C. Cir. 2020) (Rao, J, concurring). "[S]uch disputes do not appear to constitute a case or controversy for purposes of Article III," because "agencies involved in intra-Executive Branch disputes are not adverse to one another (rather, they are both subordinate parts of a single organization headed by one CEO)." *SEC v. FLRA*, 568 F.3d 990, 997 (D.C. Cir. 2009) (Kavanaugh, J., concurring). Our precedents, however, allow such suits to proceed.

Co. of California, Inc., 573 F.3d 788, 795 (D.C. Cir. 2009) (each subsection independently defines "mine").

Two subsections have express geographic limits: Subsection (A) extends only to excavation sites, covering "area[s] of land from which minerals are extracted," and subsection (B) includes "roads appurtenant to such area[s]." 30 U.S.C. § 802(h)(1).

That leaves us with subsection (C). It's a catch-all list of additional things that may count as mines if they are "used in" "extracting," "preparing," or "milling." *Id.* § 802(h)(1)(C). That list breaks down into three categories:

- *Structures found at excavation sites*: "excavations, underground passageways, shafts, slopes, tunnels and workings."
- *Generic items*: "lands, . . . structures, facilities, equipment, machines, tools."
- *Structures found at preparation plants*: "impoundments, retention dams, and tailings ponds."[2]

---

[2] "Tailings" are a waste product generated by coal processing. They are a "residue separated in the preparation of various products (such as grain or ores)." Tailing (def. 1), *Merriam-Webster* (2023). "[I]mpoundments, retention dams, and tailings ponds" are all structures used to store tailings. 30 U.S.C. § 802(h). An "impoundment" is a generic term for a structure used to "retain tailings." *Technical Report: Design and Evaluation of Tailings Dams*, EPA, at 5 (Aug. 1994), https://perma.cc/68LA-UJRF. A "retention dam" is a method of storing tailings in which the "dam[] [is] constructed at full height at the beginning of the disposal" (in other retention designs the height of the embankment is increased as tailings are added). *Id.* at 6. And a tailings "pond" is a body of wastewater held in by a dam or impoundment. *See id.* at 30.

Because words "are known by their companions," it makes sense to read the generic items in light of the two other categories in the list. *Gutierrez v. Ada*, 528 U.S. 250, 255 (2000). Doing so suggests that lands, structures, facilities, and equipment must either be at an excavation site or at a processing plant to count as "mines" under the Act. *Cf. Donovan v. Carolina Stalite Co.*, 734 F.2d 1547, 1548, 1552 (D.C. Cir. 1984) (subsection (C) "does not require" that processing facilities "be located on property where . . . extraction occurs," so a processing facility "immediately adjacent to a quarry" was a "mine").

Reading the Act that way reveals a geographic limit that neatly mirrors the Act's express functional limit. Under the Act's functional limit, no item on the list in subsection (C) counts as a "mine" unless it is "used in, or to be used in, or resulting from, the work of extracting . . . minerals . . . or . . . the milling of such minerals, or . . . preparing coal or other minerals." 30 U.S.C. § 802(h)(1)(C).[3] Because milling is a type of coal preparation, the Act's functional test boils down to asking whether an item on the list is used in extracting or processing coal. Similarly, the Act's geographic limit asks whether an item is at an extraction site or a processing plant.

---

[3] Milling involves grinding coal into smaller chunks so that it is commercially usable. *See* Peter T. Luckie & Leonard G. Austin, *Coal Grinding Technology*, Dept. Energy (1980), https://perma.cc/EW37-MDVA (describing how several types of coal mills operate). Coal preparation involves extracting coal from the raw material extracted at a mine site. *See* 30 U.S.C. § 802(i) (defining the "work of preparing the coal" as covering the gamut of coal processing: "breaking, crushing, sizing, cleaning, washing, drying, mixing, storing, and loading").

Now consider the Secretary's literal reading of the statute. The Secretary contends that the Administration's jurisdiction depends only on *function*, not *location*. Pet. Br. 16. In the Secretary's view, any "piece of equipment" or "facility" can be a mine, no matter where it is located. *Id.*

The rest of the statute shows why that reading doesn't work. Many of the Act's provisions assume that a "mine" has a readily identifiable location. Thus, mine "operator[s]" must "file with the Secretary" their mine's "name and address." 30 U.S.C. § 819(d). And at "each . . . mine" there must be "an office with a conspicuous sign designating it as the office of such mine." *Id.* § 819(a). Similarly, the Mine Safety and Health Administration must annually inspect each "coal or other mine." *Id.* § 813(a).

Those requirements would make no sense if a mine's location was unfixed.

Take an example. An independent contractor uses his truck for a mining job each Wednesday. The rest of the week he drives his truck 200 miles away for use on a construction site. Even when it's 200 miles away, that truck is a "mine" on a literal reading of the statute: It is a "machine[]" that is "used in, or to be used in, . . . the work of extracting . . . minerals." *Id.* § 802(h)(1). Yet that result clashes with the Act's commands to install "an office with a conspicuous sign" and to file a mine's "name and address." *Id.* § 819(a), (d); *see also Maxxim Rebuild Co., LLC v. Federal Mine Safety & Health Review Commission*, 848 F.3d 737, 742 (6th Cir. 2017) (noting that "other definitions in the Mine Act portray a mine as a place").

The literal reading's problems only deepen from there. The Act covers "independent contractor[s]" when they are "performing services or construction at [a] mine." 30 U.S.C. § 802(d). But if the Act has no geographic limit, the agency could inspect contractors anywhere they go — including at their homes. That's because a contractor's tools and machinery are "used in, or to be used in" extraction wherever they are. *Id.* § 802(h)(1)(C).

Such absurd results are not required by the Act's text. Reading the definition of "mine" in context shows that an item listed in subsection (C) must be located at an extraction site or a processing plant to count as a "mine" under the Act.

B. Processing Plants Fall Within the Geographic Limits

The Commission and the Sixth Circuit both held, as I would, that the Act has a geographic limit. But they interpreted that limit to cover only extraction sites. I part company with them there. Textual clues suggest that the Act covers *both* extraction sites (where ore is dug out of the ground) *and* processing plants (where ore is made into a usable product).

In *Maxxim Rebuild*, the Sixth Circuit held that "facilities and equipment" count as "mines" under the Act only "if they are in or adjacent to — in essence part of" an *extraction site*. 848 F.3d at 740. The court reasoned that the list in subsection (C) reads as if the "author went to a mine and wrote down everything he saw in, around, under, above, and next to the mine." *Id.* The Commission adopted the Sixth Circuit's interpretation in its decision in this case.

But subsection (C)'s list reads more like the "author went to a mine [and a processing plant] and wrote down everything he saw." *Id.* That's because three items on the list — "impoundments, retention dams, and tailings ponds" — are associated with coal *processing*, not coal *extraction*. 30 U.S.C. § 802(h)(1)(C); *see supra* note 2.

The rest of § 802(h)(1)(C) confirms that processing plants are included in the Act's geographic sweep. Any item in the list counts as a "mine" if it is "used in, or to be used in . . . the work of *preparing coal*." 30 U.S.C. § 802(h)(1)(C) (emphasis added). And the list ends by expressly stating that a "mine" "includes custom coal preparation facilities." *Id.*

Plus, because many preparation plants are not located at extraction sites, the Sixth Circuit's reading would produce an odd regulatory checkerboard. Some processing plants would be covered and others not, depending on how close they are to an extraction site. *See Standards of Performance for Coal Preparation and Processing Plants*, 74 Fed. Reg. 51,950, 51,961 (Oct. 8, 2009) (noting that coal-preparation plants may be at "mine sites" or other "industrial sites"). That outcome is hard to square with Congress's express view that "coal preparation facilities" are covered by the Act. 30 U.S.C. § 802(h)(1)(C).

Finally, interpreting § 802(h)(1)(C) to cover processing plants avoids surplusage. If subsection (C) were limited to items at an extraction site, it would largely collapse into subsection (A), which covers "area[s] of land from which minerals are extracted."

Id. But reading subsection (C) to include processing plants gives it a distinct role in the statutory scheme.[4]

III. Remand to the Commission is Unwarranted

Though I read the Mine Act's definition of "mine" more narrowly than the Commission, I agree with its bottom-line conclusion. KC's truck repair shop is not a "mine" under the Act because it is not at an extraction site or processing plant. So I would deny the Secretary's petition for review. *See Calcutt v. FDIC*, 143 S. Ct. 1317, 1321 (2023) (we may affirm an agency, despite disagreeing with its reasoning, if the agency "was *required* to take [the] action" at issue (cleaned up)).

Today's majority takes a different tack. It first decides that the statute is ambiguous. Then, it remands to the agency to let the Secretary have a crack at interpreting it. Presumably, once the case comes back up on review, this court will defer under *Chevron* to the Secretary's interpretation of the now-

---

[4] My interpretation is consistent with precedent. *Cf.* Maj. Op. 19–20. To repeat, I understand the items listed in § 801(h)(1)(C) to count as "mines" if they are located either at an extraction site (where mining occurs) or at a processing plant (where ore is turned into a usable product). So like *National Cement II*, I would not limit the Act's reach to "the actual site where mining occurs." *Secretary of Labor v. National Cement Co. of California, Inc.*, 573 F.3d 788, 791 (D.C. Cir. 2009). And like *Donovan*, I would consider a processing plant "adjacent to a quarry" to be a "mine." *Donovan v. Carolina Stalite Co.*, 734 F.2d 1547, 1552 (D.C. Cir. 1984). As for whether *National Cement I*, 494 F.3d 1066, 1076 (D.C. Cir. 2007), means that "the Secretary should 'confront' the breadth and ambiguity of the Act" before a court may interpret it, Maj. Op. 20, "go take a look at the decision," *Andy Warhol Foundation for the Visual Arts, Inc. v. Goldsmith*, 143 S. Ct. 1258, 1293 n.2 (2023) (Kagan, J., dissenting) ("I'll take my chances on readers' good judgment").

ambiguous statute — at least if it's reasonable. *See Chevron v. Natural Resources Defense Council*, 467 U.S. 837 (1984); *Secretary of Labor v. National Cement*, 494 F.3d 1066, 1068 (D.C. Cir. 2007) (remanding to let the Secretary interpret an ambiguous statute).

But that approach too readily relinquishes this Court's duty to "decide all relevant questions of law" and to "interpret . . . statutory provisions." 5 U.S.C. § 706. Deference under *Chevron* is appropriate only in those rare cases when "employing traditional tools of statutory construction" leaves a court "unable to discern Congress's meaning." *SAS Institute Inc. v. Iancu*, 138 S. Ct. 1348, 1358 (2018) (quoting *Chevron*, 467 U.S. at 843 n.9). And even then, a court must satisfy itself that Congress meant to leave a "gap for the agency to fill" using its expertise. *Chevron*, 467 U.S. at 843.

That is not this case. As the parties agree, the meaning of the Mine Act depends on principles of statutory interpretation — not an exercise of policymaking discretion by the Secretary. Thus, the Commission interpreted the Act using "the traditional tools of statutory construction." JA 161. And the Secretary's opening brief acknowledged that "[t]he text is all that is necessary to divine the meaning of what constitutes a mine." Pet. Br. 17. At argument, the Secretary reiterated: "[T]he statute is unambiguous. The Secretary is not asking this Court for deference. The Secretary is simply asking that this Court read the plain meaning of the statute, you know, as the Secretary does." Oral Arg. Tr. 39.

In those circumstances, deference is inappropriate. When the "executive branch . . . ask[s] the court to do

what courts usually do in statutory interpretation disputes [and] supply its best independent judgment about what the law means," courts should not "place[] an uninvited thumb on the scale in favor of the government." *Guedes v. Bureau of Alcohol, Tobacco, Fire-arms & Explosives*, 140 S. Ct. 789, 790 (2020) (Gorsuch, J., concurring in denial of certiorari); *see also HollyFrontier Cheyenne Refining, LLC v. Renewable Fuels Association*, 141 S. Ct. 2172, 2180 (2021) (refusing to defer when "the government [did] not invok[e] *Chevron*").

Indeed, the Secretary's shifting and self-serving interpretations of the Mine Act show just how inappropriate remand is here. When KC Transport first contested its citations before the ALJ, the Secretary insisted that he had jurisdiction because "each *truck* independently constituted a 'mine'" under the Act. JA 156. After the ALJ rejected that argument — in his view, calling trucks "rolling mines" was "absurd" — the Secretary tweaked his position, now contending that KC's truck-repair *facility* is a "mine." *Id.*; Pet. Br. 17. Today's remand gives the Secretary a third bite at the apple.

What's the upshot? A small trucking business is forced once more to fight a moving target. "While it is true enough . . . that one who deals with the Government may need to turn square corners he need not turn them twice" — let alone three times. *United States v. Winstar Corp.*, 518 U.S. 839, 922 (1996) (Scalia, J., concurring) (cleaned up).

Because I agree with the parties that this case can be resolved using the traditional tools of statutory interpretation, I would do just that.

* * *

To count as a "mine" under the Mine Act, a "facility" like KC's shop must be located at an extraction site or a processing plant. KC's shop is not. So the Administration lacks jurisdiction over it.

Because the majority disagrees, I respectfully dissent.

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22-1071 **September Term, 2022**
FILED ON: AUGUST 1, 2023

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION,
PETITIONER

V.

KC TRANSPORT, INC. AND FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION,
RESPONDENTS

On Petition for Review of a Decision of the
Federal Mine Safety and Health Review Commission

Before: WILKINS, WALKER, and PAN, *Circuit Judges*

J U D G M E N T

This cause came on to be heard on the petition for review of a decision of the Federal Mine Safety and Health Review Commission and was argued by counsel. On consideration thereof and in accordance with the opinion of the court filed herein this date, it is

ORDERED and **ADJUDGED** that the Commission's decision be vacated and the case be remanded for the Secretary to reconsider its position pursuant to a revised interpretation of subsection (C), 30 U.S.C. § 802(h)(1)(C), after recognizing its ambiguity and addressing the questions outlined in the opinion of the court filed herein this date.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

By:
Daniel J. Reidy
Deputy Clerk

Date: August 1, 2023

Opinion for the court filed by Circuit Judge Wilkins.
Dissenting opinion filed by Circuit Judge Walker.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVENUE, NW, SUITE 520N

WASHINGTON, DC 20004-1710

April 5, 2022

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA)	:	Docket No. WEVA 2019-0458
v.	:	
KC TRANSPORT, INC.	:	

BEFORE: Traynor, Chair; Althen and Rajkovich, Commissioners

DECISION

BY: Althen and Rajkovich, Commissioners

This proceeding arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2012) ("Act" or "Mine Act"). It involves two citations issued to the trucking company, KC Transport, Inc., regarding haul trucks parked for maintenance at the company's facility in Emmett, West Virginia.[1] The

[1] A settlement regarding 18 of the 20 citations in this docket was approved by the Judge below on December 19, 2019. The two remaining citations, Nos. 9222038 and 9222040, both allege violations of 30 C.F.R. § 77.404(c) ("Repairs or maintenance shall not be performed on machinery until the power is off and the machinery is blocked against motion."). If MSHA is found to have jurisdiction, the parties stipulated the facts of the violations and

only issue before the Commission is whether the Mine Safety and Health Administration ("MSHA") had jurisdiction to issue the citations.

The parties filed cross-motions for summary decision on the jurisdictional issue. The Secretary asserted stand-alone jurisdiction over the trucks. The Judge rejected that argument; however, the Judge found MSHA had jurisdiction over the facility and, therefore, over the trucks while they were at the facility. 42 FMSHRC 221 (Mar. 2020) (ALJ). KC Transport appeals.

For the reasons below, we reverse the Judge's decision, grant KC Transport's motion for summary decision, and vacate the two citations. In doing so, we affirm the finding that MSHA did not have jurisdiction over the cited trucks and reverse the Judge's finding of jurisdiction over the KC Transport facility.

I.

Factual and Procedural Background

A. Summary of Uncontested Facts

KC Transport is an independent trucking company that provides coal, earth, and gravel hauling services to various businesses, including (but not limited to) coal operators such as Ramaco Resources ("Ramaco"). Jt. Stips. 7, 8. KC Transport operates maintenance and storage facilities at five locations, including at Emmett, West Virginia (the "Emmett facility").[2] The

---

reached an agreement concerning gravity, negligence, and appropriate penalty amounts. Jt. Stips. 39–42.

[2] The parties' stipulations did not provide any facts regarding the other locations.

Emmett facility is located on Right Hand Fork Road, approximately 1,000 feet from a haulage road that serves Ramaco's Elk Creek Prep Plant and other Ramaco mines. The haulage road is partly public; there is a gate limiting access near the Elk Creek Plant, beyond which Ramaco maintains the road. To reach the Emmett facility, one must pass through the gate, travel up the haulage road, then turn onto the public Right Hand Fork Road. The facility is over a mile from the prep plant, with three mines approximately four to five miles distant and additional mines about six miles remote. Jt. Stips. 9-12, 24-26.

KC Transport operates approximately 35 trucks from the Emmett facility. These trucks include off-road trucks that provide haulage for nearby mines and on-road trucks that provide haulage services completely unrelated to mining. Approximately 60% of services from the facility are for Ramaco. The facility is not on mine property, and Ramaco does not employ personnel or maintain equipment at KC Transport's facility. KC Transport shares the facility's parking area with a logging company. Jt. Stips. 13–15, 17, 20, 30. When the relevant citations were issued, KC Transport had not yet built a maintenance shop at the facility, so KC Transport used shipping containers and service trucks for maintenance needs. Jt. Stip. 6. The area was, essentially, a parking lot with an open storage area.

The relevant events occurred on March 11, 2019. An MSHA Inspector was searching for trucks that he had cited while they were at Ramaco's Elk Creek Prep Plant during a recent inspection. He intended to terminate those citations. When he arrived at the KC

Transport facility's parking area, he discovered ongoing maintenance work on two trucks and issued the two new subject citations. Jt. Stips. 2–5. The citations allege that the trucks were not blocked against motion while raised for repair in violation of 30 C.F.R. § 77.404(c).[3] The trucks were parked for maintenance at the KC Transport parking lot when cited. Jt. Stips. 18, 19.

The cited trucks are regularly inspected by MSHA when on-site at a Ramaco property or along Ramaco's haulage road, but MSHA had never inspected the Emmett facility. Jt. Stip. 29. MSHA never sought to inspect the facility before March 11, 2019, and the inspector did not attempt to inspect any other vehicles at or other parts of the facility that day.[4]

B. Procedural Background

The parties filed cross-motions for summary decision before the Judge on the issue of jurisdiction. Both parties relied upon the definition of "coal or other

---

[3] Section 77.404(c) provides, "[r]epairs or maintenance shall not be performed on machinery until the power is off and the machinery is blocked against motion, except where machinery motion is necessary to make adjustments."

[4] The parties stipulated that eleven months earlier, on April 3, 2018, MSHA issued two citations to KC Transport at a muddy parking area that KC Transport then had adjacent to where the haulage road intersects Right Hand Fork Road. MSHA later vacated those citations. Sometime between April 2018 and March 2019, KC Transport constructed its new facility 1,000 feet away from the Right Hand Fork Road's haulage road. Jt. Stips. 21–23. MSHA knew of the new location as demonstrated by the inspector going to the facility. However, MSHA did not attempt to inspect the facility or trucks located at it until April 2019. Having traveled to the facility for a different purpose than inspecting, the inspector issued the citations in dispute.

mine" in Section 3(h)(1) of the Mine Act, 30 U.S.C. § 802(h)(1).[5] The Secretary argued that each truck independently constituted a "mine" under subsection 3(h)(1)(C) and was, therefore, subject to MSHA jurisdiction irrespective of its location. KC Transport countered that the Mine Act only provides jurisdiction over equipment in or appurtenant to a mine as defined in section 3(h)(1)(A) or (B). Therefore, KC Transport claimed the facility was not a mine, and MSHA did not have jurisdiction over the trucks while at the facility.

As a preliminary matter, the Judge noted that the parties disagreed as to the jurisdictional question at issue: the Secretary argued that each truck independently constituted a mine, while the operator argued that the facility was not a mine and, therefore, MSHA could not issue citations for the trucks parked at it. 42 FMSHRC at 229–30. The Judge rejected both arguments, finding that the Secretary's approach would create "rolling mines" and lead to "absurd results," but that the facility fell "within the definition" of a mine. *Id.* at 231, 237. The Judge ultimately found MSHA jurisdiction over the facility and both trucks, concluding that the trucks were at

---

[5] Section 3(h)(1) of the Act defines a "mine" as:

> (A) an area of land from which minerals are extracted . . . (B) private ways and roads appurtenant to such area, and (C) lands, excavations, underground passageways, shafts, slopes, tunnels and workings, structures, facilities, equipment, machines, tools, or other property . . . used in, or to be used in, or resulting from, the work of extracting such minerals . . . or used in, or to be used in, the milling of such minerals, or the work of preparing coal or other minerals, and includes custom coal preparation facilities.

30 U.S.C. § 802(h)(1).

the KC Transport maintenance facility, which he found to be a "mine." By implication, therefore, he found the trucks were "mines" within subsection 3(h)(1)(C) only when located on a mine or haulage road. He held that maintaining trucks to haul coal was integral to the mining process. Therefore, both the facility and the trucks at the facility were "used in" mining under section 3(h)(1)(C) of the Mine Act. *Id.* at 230–32, 237–38.

On appeal, the parties reiterate their arguments. KC Transport claims the Judge erred in finding jurisdiction over the trucks at the facility because only equipment and facilities that are in or appurtenant to working mines (as defined in section 3(h)(1)(A)) are subject to MSHA jurisdiction, and the facility does not engage in coal extraction or preparation within the scope of Subsection (A). The Secretary counters that the Commission must evaluate subsection (C) independently and that the plain language of the definition covers the trucks and facility because they are "used in" mining.[6]

---

[6] KC Transport contends that the Judge erred in even addressing MSHA's jurisdiction over the facility. Noting that the Secretary had not sought such jurisdiction, the company claims the Judge should not have reached an issue for which there was no live case or controversy. As we are reversing the Judge's finding of jurisdiction over the facility, we need not address this argument in depth. However, we note that it was necessary to discuss the facility's jurisdictional status under KC Transport's rationale. The company asserted that the trucks were not subject to MSHA jurisdiction because the facility was not a mine. Mot. for Sum. Dec. at 1, 6.

II.

Disposition

This case comes before us in an unusual posture. Before the Judge's decision, MSHA did not assert or attempt to exercise jurisdiction over the KC Transport facility. Nor did it do so after citing the trucks while they were at the facility. On cross-motions for summary judgment on the truck citations, the Judge awarded MSHA unasked-for jurisdiction over the facility. Before us, the Secretary vigorously seeks to retain MSHA's unrequested prize.

Vital to this analysis is that KC Transport is an independent contractor and that no mining activities or structures within the scope of subsection (A) occur at its facility. Further, MSHA does not assert the KC Transport facility is on a road or private way appurtenant to Ramaco's operation. The Secretary asserts MSHA jurisdiction over trucks and a facility owned by this independent contractor situated on land where no mining is occurring. The Secretary's effort must fail.

A. The Secretary's Arguments

The Secretary principally argues that the definition of a "mine" is plain and that we must apply a *Chevron* analysis.[7] Under step one of the analysis (*Chevron I*), if Congress has spoken in subsection 3(h) to the precise issue in dispute, the matter is ended, and we must accept Congress' directive. According to the Secretary, subsection 3(h)(1)(C) plainly applies to all tools, equipment, machines, etc. actually used in or

---

[7] *Chevron USA Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842–43 (1984).

to be used in mining regardless of whether they are on a mine site, a site appurtenant to the mine site, or elsewhere. The Secretary would permit no further inquiry. Secondarily, by footnote, the Secretary argues that if we do not apply *Chevron I*, we must conduct an analysis under step two of *Chevron* (*Chevron II*) and defer to the Secretary's construction. S. Resp. Br. at 8 n.3.

1. Plain Meaning

We find no support for the Secretary's proposition that the definition of a "mine" in the Mine Act plainly applies to offsite, non-mining storage and repair facilities or all tools, equipment, and machines located off a mine site that have a use in mining. The Secretary would find tools and equipment to be mines regardless of their location. Thus, as the Judge pointed out, a truck sitting in a diner parking lot would be a "mine." 42 FMSHRC at 231. If a miner used his own hammer at work, it would be a "mine" even when located in his home workshop. The Judge was correct that such a construction of the term "mine" would be absurd. If jurisdiction follows equipment as it travels away from the mine, there is no point at which jurisdiction ceases.

The Secretary invokes this "plain meaning" basis for jurisdiction over the trucks because they were "used in" mining previously and most likely would be used in the future. S. Resp. at 7–11; 42 FMSHRC at 230–32, 237–38. The Secretary argues for jurisdiction over the independent KC Transport facility because it provides offsite parking and repair for trucks used in mining. S. Resp. at 12–15. It is a fixed location away from any mine site, and no mining occurs at the site. The difficulty with the Secretary's argument is that it

seizes on the words "used in" within the lengthy definition rather than undertaking any analysis of the definition as a whole or its role in securing miners' safety. Such focus results in an absurd interpretation that certainly is not "plain."

In rejecting the Secretary's assertion under almost similar facts, the U.S. Court of Appeals for the Sixth Circuit recently made the specific finding that MSHA's theory would create "no stopping point." *Maxxim Rebuild Co. LLC v. Federal Mine Safety and Health Review Commission*, 848 F.3d 737, 743 (6th Cir. 2017). In fact, *Maxxim* did not involve merely trucks or other tools; it involved a facility far more closely related to mining than the KC Transport facility. The circuit court did not accept the Secretary's limitless definition of a mine.

In reaching this conclusion, the circuit court essentially followed the same logic as the Judge applied to the trucks (standing alone) in this case. The Secretary's grossly overbroad interpretation creates an absurdity, and avoidance of absurd results in reviewing statutes is a "golden rule of statutory interpretation." 2A Sutherland Construction § 45.12 (7th ed.). The Commission recognizes this principle. *Sims Crane*, 40 FMSHRC 301, 303 (Apr. 2018) ("[S]tatutes and regulations should not be construed to produce an absurd result.")

Beyond the absurdity of such unlimited inspection reach, we cannot square the proposed interpretation that every tool, machine, etc., is a separate and distinct "mine" regardless of location or current usage with a resultant imposition of the Mine Act's mandatory inspection requirements. Section 103(a) of the Act requires the Secretary to "make inspections of

each underground coal or other mine in its entirety at least four times a year."[8] 30 U.S.C. § 813(a). The duty to make such inspections is not optional; the Mine Act mandates suchinspections. Yet, we have not been made aware of any MSHA policy, program, or proceduresfor inspecting warehouses, repair shops, storage areas, and other facilities that are not on or at a mine site.

Separate from the absurdity of MSHA's construction, there is no merit to the Secretary's proposition that the lengthy, multi-tiered definition of a mine "plainly" applies to the offsite parking and repair facility of an independent entity and trucks neither on a mine site nor engaged in mining activity. It is not "plain" that Congress meant the phrase "used in" to be taken in such a literal sense that tools on shelves of independent supply stores would be deemed to be "mines."[9]

Certainly, a tool present in a mine remains within MSHA's jurisdiction even though it is not actively being used at a particular moment. It is there and readily available for use in mining. However, when it is not at the mine, it cannot be engaged in mining and it is not a "mine."

Further, as discussed below, the definition of a "mine" focuses on land areas where mining is

---

[8] We explain below that section 103(a) requires "frequent inspections and investigations in coal or other mines each year." The use of the word "in" further emphasizes the locational aspect to mines for jurisdictional purposes.

[9] As Judge Learned Hand wisely opined, "there is no surer way to misread any document that to read it literally." *Guiseppi v. Walling*, 144 F.2d 608, 623, 624 (2d Cir. 1944) (J. Hand, concurring).

occurring, on private ways appurtenant to such lands, and on equipment used to extract and prepare mined material. It is certainly not "plain" that Mine Act jurisdiction applies to tools, equipment, machines, etc., not on a mine site that at one time were used on the mine site, or that could be brought to the mine site again.

Turning again to the Sixth Circuit's Maxxim decision, the circuit court addresses this precise point in construing the definition of "mine" in the Mine Act. The circuit court states:

> But context and perspective are everything. In pulling back the lens, we see several indications that the power of the Mine Safety and Health Administration extends only to such facilities and equipment if they are in or adjacent to—in essence part of—a working mine.

Maxxim, 848 F.3d at 740. Thus, the Secretary's interpretation of subsection 3(h) would make the definition absurd. Further, the complexity of the definition and the many factors we take into account below demonstrate that the definition of a "mine" is not "plain." The Secretary's interpretation does not warrant *Chevron I* regard.

2. *Chevron* II/*Skidmore* deference

Because MSHA's definition of a "mine" is absurd, we do not owe it deference. We could proceed immediately to our interpretation. Nonetheless, we

examine deference under *Chevron* II[10] and *Skidmore*[11] standards.

Under *Chevron* II, the Commission reviews whether the Secretary's interpretation of the Act is reasonable. If so, the Commission must accept it, even if it differs from how the Commission would have interpreted the statute in the absence of the Secretary's interpretation. *Marfork Coal Company, Inc.*, 29 FMSHRC 626, 630 (Aug. 2007). Separately, if the Commission decides an MSHA interpretation does not warrant *Chevron* II deference, the Commission may afford the interpretation a lesser degree of deference under the *Skidmore* standard. *The American Coal Company*, 38 FMSHRC 1972, 1979 n.9 (Aug. 2016). That standard is whether the Secretary's interpretation is persuasive.

In this case, the Secretary's position is a litigation position, rather than a formal position taken after a demonstrated internal review or policy consideration, let alone public notice and comment. Indeed, regarding jurisdiction over the KC Transport facility, it is a position taken on appeal and not expressed before the Judge. Only after the Judge decreed unrequested jurisdiction did the Secretary assert jurisdiction over the facility at the second stage of litigation.

Thus, the Secretary did not develop this position by an objective standard found in MSHA's rules or policy statements. Instead, this is a matter of retaining an unasked-for litigation award. As a late-blooming litigation tactic, the interpretation would

---

[10] *Chevron*, 467 U.S. at 842–43.

[11] *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944).

receive only weak Skidmore deference—namely, deference only to the extent it has the power to persuade. *Knox Creek Coal Corp. v. Secretary of Labor*, 811 F.3d 148, 159–60 (4th Cir. 2016).[12]

In any event, given the guides identified and discussed below, the Secretary's proffered interpretation is neither reasonable nor persuasive. We turn to the proper construction of section 3(h). In doing so, we employ the "traditional tools of statutory construction," including an examination of the statute's text, legislative history, and structure, as well as its purpose. *See Chevron*, 467 U.S. at 842–43.

B. MSHA does not have Jurisdiction Over KC Transport's Parking and Repair Facility or Trucks Parked at the Facility.

The purpose of the Mine Act is to protect individuals performing work "*in the Nation's coal or*

---

[12] We recognize, of course, that in other cases the Secretary has also asserted jurisdiction over off-site facilities. We find no record of a thoughtful policy-driven basis for such claims. Indeed, in the Maxxim case, the respondent, Maxxim, was a wholly-owned subsidiary of a mining company. Maxxim operated seven shops. Five were inspected by the Occupational Safety and Health Administration and two, including the subject shop, were inspected by MSHA. The Secretary did not explain any logic or legal reason for such differences. Further, as here, the Secretary did not provide evidence that MSHA had developed any consistent policy for the exercise of jurisdiction over off-site facilities. In this case, MSHA certainly knew of the existence and location of the facility but did not seek to exercise any jurisdiction or perform any statutorily required inspections until after an inspector went to the site and impulsively issued citations for two trucks. Even then, MSHA did not assert jurisdiction over the facility. The actions of MSHA regarding such facilities and off-site equipment demonstrate only a pattern of random, sporadic action rather than implementation of a thoughtful policy.

other mines." *See generally* 30 U.S.C. § 801 (emphasis added). The repeated references to conditions "in" coal or other mines demonstrate that Congress was concerned with the health and safety of miners as they engage in mining tasks. Necessarily, therefore, the Mine Act addresses the full range of activities and instrumentalities used in those mines. That focus differs substantially from defining a mine to include all tools and equipment, regardless of use and wherever they are located.

KC Transport operates a trucking and repair facility that is neither in a mine nor appurtenant to a mine. KC Transport is an independent entity unrelated to any mining enterprise and supplies trucking services to mining and non-mining customers. Jt. Stip. 39. Applying the proper construction tools, we find no support for finding that KC Transport's facility or trucks are "mines." No support exists in the language of the Mine Act's predecessor statute (the Coal Act), the legislative history of the Mine Act, the text of the Mine Act, important precedential decisions of the United States Circuit Courts of Appeal for the Sixth and Seventh Circuits, or common sense.

1. The Federal Coal Mine Health and Safety Act of 1969 ("Coal Act")

The Coal Act defined a "mine" by reference to activities conducted upon, under, or above a land area that constituted a mining operation. The statute defined a coal mine as:

> an area of land *and* all structures, facilities, machinery, tools, equipment, shafts, slopes, tunnels, excavations, and

> other property, real or personal, placed upon, under, or above the surface of such land by any person, used in, or to be used in, or resulting from, the work of extracting in such area bituminous coal . . . and the work of preparing the coal so extracted.

30 U.S.C. § 802(h) (1976) (emphasis added).

This definition contains the conjunctive "and" linking two distinct aspects of a coal mine. The first aspect covered "land" as it related to the extraction of coal. This aspect covered "lands" where extractive mining, milling, or preparation occurs. The conjunctive "and" then brought under the Coal Act real or personal property used in mining on such lands. Most importantly, the Coal Act applied to property "placed upon, under, or above the surface of *such* land." *Id.* (emphasis added). Thus, the coverage reached and applied only to personal or real property related to extracting coal *in that land*. This definition plainly does not reach beyond the land and property used in or resulting from extracting or preparing coal.

2. Legislative History of the Mine Act

In passing the Mine Act some eight years later, Congress did not express any intent to expand the jurisdiction of MSHA (the newly formed enforcement agency) beyond the scope exercised by its predecessor the Mine Enforcement Safety Administration ("MESA")[13] under the Coal Act. Thus, the Mine Act's legislative history does not demonstrate an intention

---

[13] MESA was an agency within the Department of the Interior. The Mine Act created MSHA and moved mine safety enforcement to the new agency within the Department of Labor.

to expand the geographical scope of MSHA jurisdiction to lands or areas removed from the mine, such as independent contractor maintenance facilities, or to facilities where mining equipment is stored, repaired, or sold.

While Congress modified the Coal Act's definition of "mine" in the Mine Act, Congress explicitly stated that it intended to *clarify* the scope of the definition:

> [T]he definition of 'mine' is *clarified* to include the areas, both underground and on the surface, from which minerals are extracted. . . . Also included in the definition of 'mine' are lands, excavations, shafts, slopes, and other property, including impoundments, retention dams, and tailings ponds. These latter were not specifically enumerated in the definition of mine under the Coal Act. It has always been the Committee's express intention that these facilities be included in the definition of mine and subject to regulation under the Act, and the Committee here expressly enumerates these facilities within the definition of mine in order to *clarify* its intent.

S. Rep. No. 95-181, at 14 (1977), *reprinted in* Senate Subcomm. on Labor, Comm. on Human Res., *Legislative History of the Federal Mine Safety and Health Act of 1977*, at 602 (1978) ("Legis. Hist.") (emphasis added).

The updated definition simply "enumerated" types of facilities that were already presumed to be subject

to MSHA jurisdiction under the Coal Act. The definition did not expand MSHA's jurisdiction in any broad sense. Congress' clarification to include these large structures of impoundments, retention dams, and tailings ponds on a mining site does not support expanding jurisdiction to mining equipment wherever it is located.[14]

3. The Mine Act Definition of a "Mine" and Related Terms

Section 3(h)(1) of the Mine Act defines a "coal or other mine" in relevant part as:

> (A) an area of land from which minerals are extracted in nonliquid form or, if in liquid form, are extracted with workers underground, (B) private ways and roads appurtenant to such area, and (C) lands, excavations, underground passageways, shafts, slopes, tunnels and workings, structures, facilities, equipment, machines, tools, or other property including impoundments, retention dams, and tailings ponds, on the surface or underground, used in, or to be used in, or resulting from, the work of extracting such minerals from their natural deposits . . . or used in, or to be used in,

---

[14] While the legislative history concludes with the statement that "doubts" regarding jurisdiction should "be resolved in favor of inclusion of a facility within the coverage of the Act," MSHA cannot create jurisdiction by wrongly asserting jurisdiction and then arguing that there exists a "doubt" about it. In this case, MSHA either did not think it had jurisdiction over the Emmett facility or at least did not act on such a thought or seek jurisdiction over the facility until after the Judge's decision.

> the milling of such minerals, or the work of preparing coal or other minerals, and includes custom coal preparation facilities.

30 U.S.C. § 802(h)(1).

As seen in the plain language, all three subsections include a locational connection to working mines. Subsection (A) covers relevant "area[s] of land from which minerals are extracted," while (B) includes ways and roads "appurtenant to such area." Subsection (C) then catalogs various mining-related places (e.g., lands, underground passageways, retention dams, tailing ponds) and objects that serve a mining-related purpose in such areas (i.e., structures, facilities, equipment, machines, and tools used in mining). *See Maxxim*, 848 F.3d at 740–42.

Each of these definitions relates to work in or at a mine. The definition of "mine" in subsection (C) specifically refers to things "on the surface or underground." 30 U.S.C. § 802(h)(1)(C). "[S]urface" and "underground" are terms of art in mining and mining regulation. They are used to differentiate distinct areas of what is generally understood to be a mine site in the normal sense. "Surface" and "underground" do not suggest areas off the mine site. The use of "surface" does not mean the drafters used it to corral in off-site areas.

Other definitions in the Mine Act are similarly locational. An "operator" is defined as "any owner, lessee, or other person who operates, controls, or supervises *a coal or other mine* or any independent contractor performing services or construction *at such mine*." 30 U.S.C. § 802(d) (emphasis added). An agent

means "any person charged with responsibility for the operation of all or a part of *a coal or other mine* or the supervision of the miners *in a coal or other mine*." 30 U.S.C. § 802(e). A miner is an "individual working *in a coal or other mine*." 30 U.S.C. § 802(g). Section 103(a) (related to inspections) provides, "[a]uthorized representatives of the Secretary or the Secretary of Health and Human Services shall make frequent inspections and investigations *in coal or other mines*." 30 U.S.C. § 813(a) (emphasis added). MSHA must thoroughly inspect operations conducting mining, milling, and preparation activities and all instruments and instrumentalities used in such operations. It is not required to leave the mine site and track down tools, equipment, machines, trucks, and other instruments when they are on a site unrelated to mining. Certainly, the record in *Maxxim, supra*, demonstrates that MSHA does not fulfill its inspection obligations by inspecting only two of seven identical facilities owned and operated by subsidiaries of the same mining company.

In statutes, words are known by the company they keep. *Gustafson v. Alloyd Co., Inc.*, 513 U.S. 561, 575 (1995) ("[A] word is known by the company it keeps (the doctrine of *noscitur a sociis*)"). Just as in the federal courts, the Commission applies this rule to avoid ascribing to one word or phrase a meaning so broad that it is inconsistent with its accompanying words, thus giving "unintended breadth to the Acts of Congress." *Jarecki v. G.D. Searle & Co.*, 367 U.S. 303, 307 (1961).

In context, the definition of a "mine" states—consistent with the surrounding language, intent of the drafters, and purpose of the Mine Act—that

MSHA jurisdiction extends to lands used in mining and appurtenant roads, and equipment and structures thereupon. The statute's goal is to protect miners from hazards found in mines or on appurtenant private ways. The Mine Act does not follow equipment after its removal to facilities where mining does not occur, nor does it apply to equipment before it has entered or after it has left a mine site because operators could use the equipment for mining in the future.

Subsection (B)'s coverage of appurtenant ways is clearly connected to lands covered by Subsection (A). The small extension of jurisdiction specifically to cover "appurtenant" roads is consistent with the larger protective purpose of the Act. Those areas may expose individuals to mining-related hazards. For the reasons above, it is clear that neither the purpose nor the language of the Act indicate a further geographical extension of jurisdiction under subsection (C). Coverage over appurtenant ways and roads under subsection (B) does not somehow imply coverage over lands distant from a mine site, owned by an independent company, and used for parking and repairing its vehicles.[15]

---

[15] The Secretary cites *State of AK Dep't of Transp.*, 36 FMSHRC 2642, 2647–48 (Oct. 2014). There, the Commission considered an argument that equipment used along a public road to extract sand and gravel could not be a "mine" because it was not a "private way or road appurtenant" to an area of extraction. The Commission quickly dismissed that argument, finding the activity on that road constituted both extraction (mining) and milling. Therefore, the activity fell squarely under subsection (A) as land upon which mining and milling occurred. In turn, the activities fell under subsection (C) because the equipment's use

4. As an "Independent Contractor," KC Transport is an "Operator" Only When "Performing Services at a Mine."

"Operators" fall into two categories, as noted above. An entity that does not own, lease, operate, control, or supervise a coal or other mine is an "operator" only when that entity, acting as an independent contractor, *physically* performs services *at a mine*. 30 U.S.C. § 802(d).

When KC Transport's trucks are at its parking area off the mine site, the trucks are not performing services at a mine, and KC Transport is not an "operator" for the Act's purposes. There is no reason to believe Congress envisioned MSHA following independent contractors back to their home locations, or anywhere else, away from the actual mine after their services.

Congress expressly addressed independent contractors to ensure that all employees working in a mine "are miners within the definition of the [Act]." S. Rep. No. 95-181 at 14; *Legis. Hist.* at 602. In other words, persons exposed to the same hazards as miners deserve the same protections granted to miners, regardless of their employer. *United Energy Syncs. Inc. v. MSHA*, 35 F.3d 971, 974–76 (4th Cir. 1994). Conversely, persons not working in a mine but who provide non-mining services off a mine site do not face mining hazards. Such workers do not require the Mine Act's extra protection and may otherwise be

---

was on land where mining was occurring. The case provides no support for the proposition that MSHA has jurisdiction over lands that are not appurtenant to a mine site and where no mining activities occur.

appropriately protected by the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 *et seq.*; *Old Dominion Power Co. v. Donovan*, 772 F2d 92, 95 (4th Cir. 1985). These jurisdictional concepts regarding independent contractors providing services at mines find expression in the Congressional intent and statutory purpose.

The Secretary concedes that KC Transport is an independent contractor that provides coal haulage services at Ramaco mines and the Elk Creek Plant as part of its business activities. Jt. Stips. 7, 10, 11. It offers services to other non-mining entities, as well. Jt. Stips. 7, 15. As an independent contractor, KC Transport is an operator subject to MSHA jurisdiction while performing work at a mine site.

Here, the inspector cited trucks that were not performing services at a mine. They had *left* the mine site where the trucks were "used in mining" and returned to the separately and independently-owned Emmett facility for parking and repair. Jt. Stips. 15–17. When the citations were issued, KC Transport was not performing services in a mine. Jt. Stip. 19. Thus, it was not an operator under section 3(d), further confirming that the Secretary did not have jurisdiction to issue the relevant citations.[16]

---

[16] We note that MSHA stated on the citations that the violations occurred at the Elk Creek Plant, despite the fact that the citations were issued in an area that was not on Ramaco property. *See* Citation Nos. 9222038 and 9222040. We view this as indicating MSHA's belief—which is borne out both in its standard inspection regimen and its citation form—that its exercise of jurisdiction over a contractor is necessarily contingent upon the contractor's activities occurring at a site within Mine Act jurisdiction.

KC Transport used its Emmett facility for its independent contract trucking business that served both coal and non-coal customers. There is no evidence that Ramaco or any other coal operator used the facility for any mining functions or activities that might cause it to be considered a mining facility. *See Harman Mining Corp. v FMSHRC*, 671 F.2d 794 (4th Cir. 1981).

5. Important Federal Circuit Court decisions in *Ziegler Coal* and *Maxxim Rebuild Co.* Demonstrate that KC Transport's Facility is not a "Mine."

Federal circuit courts have accepted these underlying jurisdictional precepts for more than 30 years. In *Dep't of Labor v. Ziegler Coal Co.*, 853 F.2d 529, 533–34 (7th Cir. 1988), the Seventh Circuit noted the "geographical component" of the situs of a facility:

> The statutory definition of a coal mine plainly contemplates that the facilities used in the work of extracting coal must be located *on or below the area of land where the coal is extracted*, milled, or prepared. Section 802(h) speaks in terms of "an area of land" and facilities "placed upon . . . the surface of such land" used "in the work of extracting in such area [coal] . . . from its natural deposits."

Id. (emphasis added).

Ziegler involved a repair shop located approximately one and one-half miles away from the nearest Ziegler mine. *Id.* at 531. The court recognized that the Mine Act's legislative history contains a generous construction of the term "coal mine" but

specifically noted that "this does not justify *disregarding* the statutory language which speaks in terms of the area in which coal is being extracted." *Id.* at 534 (emphasis added). The shop dealt only with equipment used in mining, but the court recognized that it was "one-step removed from those facilities used to perform work directly on the extracted coal." *Id.* at 536. The court went on to recognize "that a repair shop might be essential to an efficient mining operation, but this alone is insufficient to satisfy [section] 802(i)." *Id.*

Even more importantly, the U.S. Court of Appeals for the Sixth Circuit directly addressed circumstances nearly identical to this case in the previously cited *Maxxim* case. The Commission had applied a prior Commission case, *Jim Walter Res., Inc.*, 22 FMSHRC 21 (Jan. 2000), to affirm a finding that MSHA had jurisdiction over a maintenance shop that repaired, rebuilt, and fabricated mining equipment and parts for mining equipment. *Maxxim Rebuild Co. v. FMSHRC*, 38 FMSHRC 605 (Apr. 2016).

The facts in *Maxxim* were considerably more robust than the facts presented in this case. The shop operator (Maxxim) was a wholly-owned subsidiary of a mining company (Alpha Natural Resources) rather than a wholly independent business. The shop's location was on property owned by Sidney Coal Company, a sister company to Maxxim and a mining subsidiary of Alpha Natural Resources. *Id.* at 607. Maxxim's employees regularly went to the mining operation to complete boreholes to accommodate blasting equipment furnished by Maxxim. *Id.* The Commission found the work by Maxxim made the

shop a "mine" though not located on an actual mining site.

The Sixth Circuit unanimously reversed the Commission.[17] In doing so, the circuit court emphasized the need for context and perspective. Looking at the case from the standpoint of protecting miners from mining hazards, the circuit court found jurisdiction extended to facilities and equipment if they are in or adjacent to—in essence, part of—a working mine. Again, this finding applied to a wholly-owned subsidiary of a mining company with a related company for which Maxxim supplied services engaged in active mining.

Quoting the Mine Act definitions cited above, as well as the definitions in Title IV of the Mine Act, the circuit court found these provisions teach:

> [A] lesson taught many times before. "A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme [ ] because the same terminology is used elsewhere in a context that makes its meaning clear or because only one of the permissible meanings produces a

[17] We do not hold that we are required to find the Seventh Circuit's decision in Ziegler or the Sixth Circuit's decision in *Maxxim* binding upon us for a case arising in the Fourth Circuit. Nevertheless, we recognize both as superior authorities. *See Westmoreland Coal Co.*, 11 FMSHRC 960, 964 (June 1989); *Ray, emp. by Leo Journagan Constr. Co. Inc.*, 20 FMSHRC 1014, 1025 (Sept 1998). As discussed herein, we find that both circuit courts' reasoning is consistent with the plain text, larger statutory context, and purpose of the Mine Act. We are in full accord with these decisions. For that reason, we write in agreement with, and rely upon, both decisions.

> substantive effect that is compatible with the rest of the law."

Id. at 742 (citation omitted).

Going further, the circuit court considered the irrational practical implications of finding jurisdiction, including the common sense points raised below. Thus, the Sixth Circuit squarely held that MSHA did not have jurisdiction over the Maxxim facility, a repair shop more closely related to actual mining activities than the Emmett facility of KC Transport.

Finally, the circuit court noted that the Commission relied upon its finding of jurisdiction in Jim Walter Resources, supra. The court found that Jim Walter was decided incorrectly, stating:

> Far better, it seems to us, to stand by the text and context of § 802(h)(1), which limit the agency's jurisdiction to locations and equipment that are part of or adjacent to extraction, milling, and preparation sites.

Id. at 744.

We are in accord with and fully accept the circuit court's analysis. Not only as a matter of authority, but because it aligns with the positions identified above following from the Coal Act, the Mine Act's legislative history, definitions in the Mine Act, and KC Transport's independent contractor status, as well as common sense as discussed below. We recognize that our decision today departs from the *Jim Walter*

approach and certain prior Commission cases.[18] Our holding is that an independent repair, maintenance, or parking facility not located on or appurtenant to a mine site and not engaged in any extraction, milling, preparation, or other activities within the scope of subsection 3(h)(1)(A) is not a mine within the meaning of section 3(h) of the Mine Act. We further hold that tools, equipment, and the like not on a mine site or any appurtenance thereto and not engaged in any extraction, milling, preparation or other activities within the scope of subsection 3(h)(A) are not mines within the scope of subsection 3(h) of the Mine Act. Today's decision is consistent with the history, language, statutory framework, legislative intent, and two well-considered federal circuit court of appeals decisions.

6. Common Sense

Finally, we are well-advised to follow the Sixth Circuit's path and take an overall view of the business in which KC Transport is engaged and the illogical consequences of accepting the Secretary's construction of the Mine Act. KC Transport is an independent commercial trucking firm. It provides trucking services to different types of customers and stays in business by carrying different materials. In short, it is engaged in commercial trucking like thousands of other commercial trucking firms. When its trucks are in a mine providing services, they must conform to MSHA standards. Therefore, any assertion that denying jurisdiction over trucks at the KC Transport facility means that they could enter a mine and engage in extraction related work, without

---

[18] *W.J. Bokus Indus. Inc.*, 16 FMSHRC 704, 708 (Apr. 1994); *US Steel Mining Co. Inc.*, 10 FMSHRC 146 (Feb. 1988).

complying with MSHA's requirements, is without merit.[19]

The jurisdictional standard we describe is consistent with a common sense understanding of the Mine Act's purpose, namely protecting miners from *hazards associated with mining*. *See* 30 U.S.C. § 801. Common sense dictates that jurisdiction should not attach in situations, such as here, where no such risks particular to a mine exist at an independent parking area and garage removed from a mine site. No stipulation suggests that repair work at the Emmett facility is different, in any respect, from the same type of work performed on tens of thousands of trucks throughout the nation at other facilities or, indeed, on any other KC Transport truck that hauls material other than coal. The record shows no difference in activities at the Emmett facility between contractor trucks hauling coal and contractor trucks moving non-coal materials.

---

[19] Our dissenting colleague asserts the majority approach would compromise safety by impeding the inspector's ability to issue citations. MSHA knew of the facility but never asserted a right to inspect the facility. Even then, MSHA only sought jurisdiction over the trucks. Indeed, MSHA went there to vacate citations issued on the trucks while on the mine site. If an inspector finds a pre-shift violation while examining a contractor's truck on the mine site, he may and will cite it, and similarly, an inspector can and should cite any equipment defect he sees on the mine site. *See, e.g., Ames Construction Inc.*, 33 FMSHRC 1607, 1611 (July 2011), *aff'd* 676 F.3d 1109 (D.C. Cir. 2012) (where independent contractor was performing services at a mine and was therefore an operator under the Act, contractor can be found strictly liable for a violation of a mandatory standard occurring at the mine). At no point is a truck allowed on the mine with a mine safety violation. Thus, the same vigorous safety enforcement applies.

As explained in *Maxxim*, *supra*, Congress tailored the Mine Act to protect against dangers that arise from handling coal and other minerals, not generic risks associated with making or repairing equipment. 848 F.3d at 743; *see also United Energy Svcs. Inc. v. MSHA*, 35 F3d 971, 975 (4th Cir. 1994) (emphasizing that employees deserve the same protections as miners if they are subject to the same risks). Jurisdiction over an independent and *offsite* truck repair facility, not exposing employees to any hazards associated with the mining process, does not serve the Mine Act's purpose.[20]

A manufacturing plant is not a mine because it manufactures equipment for use in mining and an electrical utility plant is not a mine only because it uses coal. *Id.* at 743; *Herman v. Assoc. Elec. Coop.*, 172 F.3d 1078, 1082–83 (8th Cir. 1999); *see also Bush & Burchett Inc v. Reich*, 117 F.3d 932 (6th Cir. 1997). If jurisdiction follows each piece of equipment, regardless of its travel away from the mine, then, as the Sixth Circuit said, there would be no stopping point. *Id.* at 744. Such an unbounded jurisdictional approach clearly leads to absurd results. A supervisor's pickup truck used at the mine for mining purposes would be subject to MSHA regulations—but not in the supervisor's garage at home.

The jurisdictional principles announced here apply equally to the attempt to exercise jurisdiction over the

---

[20] By no means is safety ignored in this situation. Where Mine Act jurisdiction does not apply, other jurisdictional oversight does, such as the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 *et seq.*, or additional state safety or transportation enforcement agencies. Nothing in the record casts doubt upon their enforcement capabilities.

KC Transport facility and the trucks parked there.[21] The KC Transport facility is only one of the hundreds of facilities that manufacture, store, or repair the vast amount of equipment used in mines. Thus, we share the opinion and observations of the Sixth Circuit in *Maxxim* regarding attaching MSHA jurisdiction to any facility or any piece of equipment with *some* connection to mining, regardless of whether that connection exposes employees to relevant mining hazards.

IV.

Conclusion

For the preceding reasons, we find that the Secretary did not have jurisdiction to issue Citation Nos. 9222038 and 9222040 involving trucks parked at KC Transport's Emmett Facility. Accordingly, we reverse the Judge's decision, grant KC Transport's Motion for Summary Decision, and vacate the citations.

/s/ William I. Althen
William I. Althen, Commissioner

/s/ Marco M. Rajkovich, Jr.
Marco M. Rajkovich, Jr., Commissioner

Chair Traynor, dissenting:

The question on review is whether an inspector from the Secretary of Labor's Mine Safety and Health

[21] In reversing the Judge's finding of jurisdiction over the facility, we note the Judge's correct rejection of the Secretary's "rolling mines" theory of jurisdiction over the trucks as stand-alone pieces of equipment at a parking/repair facility. 42 FMSHRC at 231.

Administration ("MSHA") had jurisdiction to issue citations to KC Transport, Inc., when he observed its employees violate a mandatory safety standard while repairing coal haul trucks at KC Transport's parking lot. As I will demonstrate, Congress has directly spoken to the issue; the Mine Act plainly states that "equipment . . . used in, or to be used in" mining processes are subject to the provisions of the Mine Act. 30 U.S.C. § 802(h)(1)(C).

A. Factual Summary

On March 11, 2019, MSHA Inspector John M. Smith traveled down a public road in Logan County, West Virginia and arrived at a manned-gate controlled by Ramaco Resources. The gate marked the point where the public road became Ramaco's private mine haul road. Only authorized personnel are permitted access to the mine road, which connects five coal mines (three deep mines, one strip mine and a highwall mine) with the Elk Creek Preparation Plant. The road, mines, and preparation plant are all owned and operated by Ramaco and subject to the provisions of the Mine Act.

Inspector Smith first traveled to the Elk Creek Plant. From the plant, Inspector Smith traveled about a mile down the haul road to KC Transport's parking lot. KC Transport is an independent contractor that provides haulage services at these Ramaco mine properties.[1] KC Transport's off-road trucks regularly haul coal from the five mines, over the haul road and

[1] KC Transport operates truck maintenance and storage facilities at five different locations. The Emmett, West Virginia facility at issue contained approximately 35 trucks, including both off-road trucks and on-road trucks.

to the Elk Creek Plant. The off-road trucks were not licensed to travel on-road at the time of the inspection and, therefore, were operated exclusively at Ramaco's mine complex. On this day, Inspector Smith was following-up on citations that had been previously issued to KC Transport's trucks during a MSHA inspection of a Ramaco mine.

KC Transport parks and maintains its trucks at a sand and gravel parking lot built on land controlled by Ramaco. The lot is separated from the haul road by an approximately 1000-foot side road. At the time of the inspection, KC Transport was in the process of constructing a maintenance facility next to the parking lot and was using two shipping containers and two service trucks to conduct repairs.[2] KC Transport shares the lot with a logging company.

In addition to the off-road trucks, KC Transport also operates on-road trucks out of this facility providing services for other customers. This was the first time that MSHA issued a citation for conduct that occurred at this newly-constructed parking lot.[3] However, MSHA regularly inspects the same exact trucks when operated at Ramaco's mines and on its roads.

On March 11, 2019, during his visit to the parking lot, Inspector Smith observed two Mack haul trucks

---

[2] On the day Inspector Smith issued these citations he did not attempt to inspect the shipping containers, service trucks or any other trucks located at KC Transport's facility.

[3] In April 2018, MSHA visited a different KC Transport parking lot. MSHA issued citations that were later vacated. After those citations were issued, KC Transport constructed the subject sand and gravel parking lot, in an area that was further from the mine haul road than its previous lot.

undergoing repairs. The trucks were not blocked against motion as required by the mandatory safety standard at 30 C.F.R. § 77.404(c). Accordingly, Inspector Smith issued two citations to KC Transport. Inspector Smith also issued an imminent danger order pursuant to section 107(a) of the Mine Act because a person was standing underneath the raised unblocked bed of one truck, a serious hazard that could result in a fatal injury. The issuance of the imminent danger order authorized the inspector to withdraw the individual from danger. The order is not at issue in this case.

The parties filed cross motions for summary decision with the Judge. KC Transport agreed to accept the two citations as issued if the Judge found that MSHA had properly asserted jurisdiction. Commission Procedural Rule 67, 29 C.F.R. § 2700.67, authorizes a Judge to grant summary decision if the entire record shows there is no genuine issue of material fact and the moving party is entitled to summary decision as a matter of law. KC Transport argued that MSHA lacked jurisdiction to issue the citations because the repairs were being performed at a facility that was not a "mine." The Secretary argued that MSHA has jurisdiction to enforce safety standards governing equipment "used in" mining.

The Judge granted the Secretary's motion for summary judgement, finding MSHA jurisdiction over the trucks as well as the parking lot facility.

B. Analysis

On review, KC Transport argues that section 3(h)(1)(C) of the Mine Act only covers equipment connected to "mines" as specified in sections 3(h)(1)(A)

and (B). The Secretary maintains that section 3(h)(1)(C) covers equipment that is "used in" mining irrespective of its location. The Commission reviews a Judge's decision to grant summary decision *de novo*. *M-Class Mining, LLC*, 41 FMSHRC 579, 582 (Sept. 2019) (citations omitted).

The Mine Act provides that "[e]ach coal or other mine, the products of which enter commerce, or the operations or products of which affect commerce, and each operator of such mine, and every miner in such mine shall be subject to the provisions of this Act." 30 U.S.C. § 803. Section 3(h)(1) of the Mine Act defines a "coal or other mine" in relevant part as:

> (A) An area of land from which minerals are extracted in nonliquid form or, if in liquid form, are extracted with workers underground, (B) private ways and roads appurtenant to such area, and (C) lands, excavations, underground passageways, shafts, slopes, tunnels and workings, structures, facilities, equipment, machines, tools, or other property including impoundments, retention dams, and tailings ponds, on the surface or underground, used in, or to be used in, or resulting from, the work of extracting such minerals from their natural deposits . . . or used in, or to be used in, the milling of such minerals, or the work of preparing coal or other minerals, and includes custom coal preparation facilities.

30 U.S.C. § 802(h)(1).

Under the plain language of the Mine Act, the Mack coal haul trucks are "equipment . . . used in, or to be used in" "extracting" and "preparing coal" and thus I would find that the citations were properly issued. *Chevron U.S.A. Inc. v. National Resources Defense Council, Inc.*, 467 U.S. 837, 842–43 (1984) (Under step one of *Chevron*, we ask "whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.").

In the legislative history of the Act, Congress made it clear "that what is considered to be a mine and to be regulated under this Act be given the *broadest possibl[e] interpretation*." S. Rep. No. 95-181, at 14 (1977), *reprinted in* Senate Subcomm. on Labor, Comm. on Human Res., Legislative History of the Federal Mine Safety and Health Act of 1977, at 602 (1978) ("Legis. Hist") (emphasis added).[4] Congress further stated that "doubts [shall] be resolved in favor of inclusion of a facility within the coverage of the Act." *Id.* Accordingly, the Commission has consistently construed section 3(h)(1) broadly in favor of Mine Act coverage and recognized that "jurisdictional doubts [shall] be resolved in favor of coverage by the Mine Act." *Calmat Company of Arizona*, 27 FMSHRC 617, 624 (Sept. 2005) (holding

---

[4] Indeed, in *Marshall v. Stoudt's Ferry Preparation Co.*, 602 F.2d 589, 591–92 (3d Cir. 1979), *cert. denied*, 444 US 1015 (1980), the court stated that "the statute makes clear that the concept that was to be conveyed by the word ["mine"] is much more encompassing than the usual meaning attributed to it—the word means what the statute says it means."

that the cited haul trucks "were clearly related to mining operations and within MSHA's jurisdiction.").

In fact, the Commission has repeatedly held that pursuant to section 3(h)(1)(C), "equipment" that is "used in, or to be used in" mining is subject to the provisions of the Mine Act, even when located at a place that is not a "mine" pursuant to sections 3(h)(1)(A) and (B).[5] *See W.J. Bokus Industries, Inc.*, 16 FMSHRC 704, 708 (Apr. 1994); *see also State of AK Dep't of Transp.*, 36 FMSHRC 2642, 2647–48 (Oct. 2014) (holding that equipment used to extract material is subject to the provisions of the Mine Act and noting that lack of jurisdiction over a public road under subsection (B) does not foreclose jurisdiction over operations on that road under (A) or (C)). That is because under section 3(h)(1)(C) whether a particular piece of equipment is subject to the provisions of the Mine Act is primarily resolved by examining the equipment's function (not its location or ownership).[6]

In *W.J. Bokus*, the Commission held that "[u]nder section 3(h)(1), the Secretary need only establish that the items in issue *were used or to be used in mining*." 16 FMSHRC at 708 (emphasis added). Bokus Industries operated a sand and gravel mine on a portion of its property. An asphalt plant was also located on the property. Bokus had an arrangement

---

[5] The Commission generally considers whether the equipment "used in" coal preparation or extraction is "essential to" or "integral to" the process. *See Maxxim Rebuild Co., LLC*, 38 FMSHRC 605, 607 (Apr. 2016).

[6] And not by reference to the folk notion of two Commissioners in the majority who declare that the technical definition of a "mine" in the Act cannot possibly encompass trucks parked immediately adjacent to mine property.

by which it leased the asphalt plant to another company. Bokus also leased a garage, located adjacent to the asphalt plant, to the asphalt company. Under the terms of the lease, both Bokus Industries and the asphalt company could jointly use the garage. On review, the Commission held that it was not necessary to determine whether the garage was a "mine," because the evidence established that the cited pieces of equipment in the garage "were used or to be used in mining." *Id.* at 708. In so holding, the Commission relied upon the function of the cited equipment.[7]

In *Jim Walter Res, Inc.*, 22 FMSHRC 21 (Jan. 2000), the Commission reaffirmed that "whether a mine operator's equipment is covered by the Mine Act *is not determined by its location but rather by its function*—that is, whether it is used in extracting or preparing coal." *Id.* at 27 n.11 (emphasis added). The Commission held that the supply shop at issue and its contents were subject to the provisions of the Mine Act because the "facilit[y]" was a "mine" and because it held "equipment . . . used in or to be used in" mining. *Id.* at 25.

My colleagues rely on the anomalous Sixth Circuit opinion in *Maxxim Rebuild*, 848 F.3d 737 (6th Cir. 2017), for their finding that these haul trucks were not subject to MSHA jurisdiction at the time the citations were issued.[8] My colleagues are wrong. Even under

---

[7] *See also Justis Supply & Machine Shop*, 22 FMSHRC 1292, 1296 (Nov. 2000) (finding MSHA jurisdiction over a dragline assembly site where the record demonstrates that the dragline was intended for use at a nearby mine).

[8] My colleagues rely upon *U.S. Dept of Labor v. Ziegler Coal Co.*, 853 F.2d 529 (7th Cir. 1988), in which the court reviews a

the narrow interpretation of section 3(h)(1) articulated in *Maxxim*, the citations and the Judge's decision should be affirmed.[9]

Maxxim concerned a repair shop that mostly serviced mining equipment for Alpha Natural Resources—a large coal producer and Maxxim's parent company. *Id.* at 739. The shop also included a warehouse which stored at least one piece of equipment for Alpha. The Commission affirmed that MSHA properly asserted jurisdiction over the shop.[10] The Sixth Circuit reversed, holding that section 3(h)(1) of the Mine Act limited the agency's jurisdiction "to locations and equipment that are part of or adjacent to extraction, milling, and preparation sites." *Id.* at 744. The Sixth Circuit stated that the Mine Act does not govern "'machines, tools, or other property" wherever they may be found or made. *Id.* at

---

decision of the Benefits Review Board. Slip op. at 13. Because *Ziegler* neither concerns a decision of the Federal Mine Safety and Health Review Commission, nor MSHA jurisdiction, it is not relevant to our inquiry.

[9] The Sixth Circuit's decision in *Maxxim* is not binding on a case arising in the Fourth Circuit. As *Maxxim* is inconsistent with the plain language of section 3(h)(1) of the Mine Act, as well as its legislative history and Commission precedent, I believe it was wrongly decided. However, as demonstrated infra, even under the Sixth Circuit's narrow interpretation of section 3(h)(1), the Judge's decision in this case should be affirmed.

[10] The Commission concluded that under the plain language of section 3(h)(1)(C) the shop was subject to MSHA jurisdiction because it was a "facility" that was "used in" the process of "extracting" and preparing coal; the Maxxim facility worked on equipment that was integral to the mining process. 38 FMSHRC 605, 607 (Apr. 2016). Substantial evidence supported the Judge's conclusion that a significant part of the work performed at the shop was mining related. *Id.* at 608.

740. Instead, "equipment" covered by subsection (C) "*must be connected* to a working mine." *Id.* at 741 (emphasis added). The Sixth Circuit stated that section 3(h)(1) (A), (B), and (C) "are place connected, and place driven." The court ultimately held that the shop at issue "was not attached to or adjacent to a working mine," instead it was "one-step removed from" a "mine" and that "it makes no difference that Alpha's mines may one day use the shop's fabricated or repaired equipment" to extract coal. *Id.* at 742–43.

The facts of the case currently before the Commission are readily distinguishable from the facts in *Maxxim*. First, let's consider the location. The parking lot is not "one-step removed" from a mine site. Instead, it sits on a large tract of land that contains five working mines and a coal prep plant. Furthermore, it is *adjacent to an active mine haul road* (about 1000 feet away) which connects five mines and a preparation plant. Each of these entities, including the mine haul road, are a "mine." 30 U.S.C. § 803(h)(1)(B) ("private ways and roads appurtenant to such area"). Moreover, one cannot access the parking lot without first traveling through a manned gate controlled by the mine operator.

Second, and more importantly, let's consider direct evidence of the trucks' function. The two trucks are each "connected to a working mine" because the parties stipulated that each was "regularly used to haul coal from the five Ramaco mines to the Elk Creek prep plant" and are regularly inspected by MSHA. Jt. Stips. 18, 29. These stipulations are dispositive evidence of the trucks' function. In addition, the trucks were parked and undergoing maintenance work previously mandated by MSHA at the time these

citations were issued. The repairs were necessary so that the trucks could continue hauling coal for Ramaco. These particular trucks were not licensed to travel over public roads at the time the citations were issued and thus could only be operated on Ramaco's property. Jt. Stip. 27. Accordingly, both trucks were obviously connected to a working mine. Even under *Maxxim*, the Secretary rightfully asserted Mine Act jurisdiction.

In summary, substantial evidence supports the Judge's finding that the coal haul trucks are "equipment" "used in" mining as defined at 30 U.S.C. § 802(h)(1). Furthermore, the Secretary demonstrated that the trucks are essential and integral to mining operations. The location of the parking lot, adjacent to the mine haul road, provides additional evidence of the trucks' function.[11] The Judge's finding of jurisdiction should be affirmed. Insofar as the Judge believed he had to address the jurisdiction over the facility to affirm jurisdiction over the trucks, he was in error.[12]

---

[11] Considering the location of the equipment as circumstantial evidence of function, while also requiring direct evidence of the equipment's function, helps to address KC Transport's concerns regarding overbroad MSHA jurisdiction. For example, certain implications can logically be drawn if a truck is parked at its manufacturer's warehouse versus being parked at a mine operator's on-site repair shop.

[12] The Judge primarily conducted a functional analysis, finding that the trucks perform "an integral part of the mining and preparation process" by transporting coal from the mines to the prep plant, and "the maintenance of the trucks at the facility is [also] essential to the coal hauling and preparation process." 42 FMSHRC at 237–38. However, the Judge also states that "the

C. The Result of the Majority's Ruling

The majority's decision will result in decreased enforcement of safety standards governing the maintenance and operation of mining equipment at off-site facilities or on-site separate facilities. As a result, those workplaces will become more dangerous.

Powered haulage accounts for a large percentage of the fatal injuries in mining. In 2017, 50% of fatal injuries at mines involved powered haulage.[13] Haul trucks in particular present a variety of safety hazards. Two of the fatal injuries in 2017 occurred when a 340-ton haul truck collided with a passenger van at a mine site.[14]

More recently, from October 1 to December 13, 2021, five of the ten total fatal injuries at mines involved powered haulage.[15] In an attempt to better address those hazards, MSHA recently issued a notice of proposed rule-making to require mine operators to

---

location of the trucks and the maintenance facility matter." *Id.* at 237. Essentially, in so doing, he was stating that location can serve as evidence that the equipment is "used in" the extraction or preparation of coal.

[13] Jennica Bellanca, *Mining Project: Characterization of Haul Truck Health and Safety Issues*, The National Institute for Occupational Safety and Health (NIOSH), www.cdc.gov/niosh/mining/researchprogram/projects/index.html.

[14] MSHA, *Fatality Alert #11 & #12 – October 31, 2017*, Mine Safety and Health Administration, www.msha.gov/data-reports/fatality-reports/2017/fatality-11-12-october-31-2017/fatality-alert.

[15] *MSHA: 'Work with us' as powered haulage, other concerns persist*, Safety and Health Magazine, www.safetyandhealthmagazine.com/articles/22065-msha-work-with-us-as-powered-haulage-other-concerns-persist.

develop and implement powered haulage safety programs. *Safety Program for Surface Mobile Equipment*, 86 Fed. Reg. 50496 (Sept. 9, 2021). Apparently, as a result of the majority's decision, KC Transport will not be required to comply with this particular MSHA rule while maintaining trucks at its parking lot.

Of course, injuries can also occur during the maintenance of haul trucks. Recently, a mechanic was fatally injured when a haul truck bed collapsed on him while he was working on the truck.[16] The citation and imminent danger order issued to KC Transport on March 11, 2019, cite eerily similar facts. Inspector Smith observed a miner standing underneath the truck bed while it was in a raised position, without having been blocked to prevent motion. According to my colleagues' ruling, MSHA inspectors are not permitted to issue an order to stop work if they observe a similar dangerous occurrence in the future.

However, the complete implications of their ruling remain unclear. In fact, it gives rise to a number of questions. For instance, suppose an MSHA inspector stops a truck at a Ramaco mine. The inspector discovers that the KC Transport driver conducted an inadequate pre-shift examination earlier in the day.[17]

---

[16] MSHA, *October 19, 2021 Fatality – Fatality Alert*, Mine Safety and Health Administration, www.msha.gov/data-reports/fatality-reports/2021/october-19-2021-fatality/fatality-alert.

[17] The mandatory safety standard at 30 C.F.R. § 77.1606(a) states that "[m]obile loading and haulage equipment shall be inspected by a competent person before such equipment is placed in operation," and that safety defects shall be "recorded and reported."

If the pre-shift examination occurred at the parking lot, can MSHA issue a citation? Suppose the truck is later involved in a fatal accident at a mine. Are MSHA's accident investigators permitted to consider whether improper maintenance at the parking lot was a contributing factor? Or perhaps an MSHA inspector observes a haul truck driving on the mine road with an obvious equipment defect. The inspector follows the truck to the parking lot. Does the truck's presence at the lot prevent the MSHA inspector from issuing a citation for a defect that he observed at the mine road?

These questions and confusion demonstrate the absurdity of my colleagues' interpretation. Impeding MSHA's ability to prevent and investigate accidents that involve coal haul trucks frustrates Congress's goals in passing the Mine Act. 30 U.S.C. § 801(c) ("[H]ere is an urgent need to provide more effective means and measures for improving the working conditions and practices in the Nation's coal or other mines in order to prevent death and serious physical harm"). Haul truck accidents lead to fatal injuries.

Instead of permitting MSHA to ensure that mining equipment complies with minimum mandatory safety standards, my colleagues issue a decision that designates an area an "MSHA free zone." I am concerned that their decision will become a how-to-guide, used by the most cynical mine operators to avoid regulations.

My colleagues contend that the trucks at the parking lot are subject to the provisions of the Occupational Safety and Health Act, 29 U.S.C. § 651, and thus safety will not be compromised. They fail to acknowledge that the Occupational Safety and Health Administration ("OSHA") does not have the budget or

the man-power to inspect even a fraction of the workplaces currently in its jurisdiction.

OSHA ended fiscal year 2021 with only 750 inspectors, the lowest number of inspectors in the 51-year history of the agency.[18] With similar staffing levels it would take 165 years for OSHA inspectors to visit every workplace in its jurisdiction once.[19] In contrast, the Mine Act requires MSHA to inspect each surface mine at least two times a year and each underground mine at least four times a year. 30 U.S.C. § 813(a). MSHA inspectors will continue to regularly visit Ramaco's mining complex, however, OSHA inspectors will rarely, if ever, be on the premises.[20]

Accordingly, miner safety would be best promoted if equipment "used in" mining was inspected by

---

[18] Bruce Rolfson, *Federal Workplace Safety Inspector Numbers Fall Under Biden*, Bloomberg Law, https://news.bloomberglaw.com/safety/federal-workplace-safety-inspector-numbers-tumble-under-biden.

[19] David Michaels and Jordan Braab, *The Occupational Safety and Health Administration at 50: Protecting Workers in a Changing Economy*, National Library of Medicine, www.ncbi.nlm.nih.gov/pmc/articles/PMC7144438/.

[20] The Mine Act also provides miners with other enhanced protections that are absent from the Occupational Safety and Health Act, including the right to temporary reinstatement to their position if fired for engaging in protected safety related activity. 30 U.S.C. § 815(c)(2).

Furthermore, MSHA inspectors have been granted greater access to inspect properties as compared to their OSHA counterparts. *Cf. Marshall v. Barlow's, Inc.*, 436 U.S. 307 (1978) (warrantless inspection under the OSH Act violates the 4th amendment); *Donovan v. Dewey*, 452 U.S. 594, 606 (1981) (warrantless Mine Act inspections are "constitutionally permissible").

MSHA inspectors, as Congress intended. Thus, I dissent.

/s/ Arthur R. Traynor, III
Arthur R. Traynor, III, Chair

Distribution:

Christopher D. Pence, Esq.
Hardy Pence PLLC
10 Hale Street, 4th Floor (25301)
P.O. Box 2548
Charleston, WV 25329
cpence@hardypence.com

James P. McHugh, Esq.
Hardy Pence PLLC
10 Hale Street, 4th Floor (25301)
P.O. Box 2548
Charleston, WV 25329
jmchugh@hardypence.com

Robert S. Wilson, Esquire
U.S. Department of Labor, Office of the Solicitor
201 12th Street South
Arlington, VA 22202-5450
wilson.robert.s@dol.gov

Stephen S. Adkins
Conference Litigation Representative
U.S. Department of Labor
Mine Safety and Health Administration
4499 Appalachian Highway
Pineville, WV 24874
adkins.stephen@dol.gov

John M. McCracken, Esq.
Office of the Solicitor
U.S. Department of Labor
Mine Safety and Health Division
201 12th Street South, Suite 401
Arlington, VA 22202-5452
McCracken.John.M@dol.gov

Emily Toler Scott
Senior Trial Attorney
Office of the Solicitor
U.S. Department of Labor
Mine Safety and Health Division
201 12th Street South, Suite 401
Arlington, VA 22202-5452
scott.emily.t@dol.gov

April Nelson, Esq.
Office of the Solicitor
U.S. Department of Labor
Mine Safety and Health Division
201 12th Street South, Suite 401
Arlington, VA 22202-5452
Nelson.April@dol.gov

Melanie Garris
U.S. Department of Labor
Office of Civil Penalty Compliance
Mine Safety and Health Administration
201 12th Street South, Suite 401
Arlington, VA 22202-5452
Garris.Melanie@dol.gov

Chief Administrative Law Judge Glynn F. Voisin
Federal Mine Safety & Health Review Commission
1331 Pennsylvania Avenue, NW, Suite 520N
Washington, DC 20004-1710
GVoisin@fmshrc.gov

Administrative Law Judge John Lewis
Federal Mine Safety Health Review Commission
875 Green Tree Road,
7 Parkway Center, Suite 290
Pittsburgh, PA 15220
jlewis@fmshrc.gov

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
7 PARKWAY CENTER, SUITE 290
875 GREENTREE ROAD
PITTSBURGH, PA 15220
TELEPHONE: 412-920-7240 / FAX: 412-928-8689

MAR -3 2020

SECRETARY OF LABOR MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), Petitioner, v. K C TRANSPORT, INC., Respondent.	CIVIL PENALTY PROCEEDING Docket No. WEVA 2019-458 A.C. No. 46-02444-487883 A8938 Mine: Elk Creek Plant

ORDER DENYING RESPONDENT'S MOTION FOR SUMMARY DECISION
ORDER GRANTING SECRETARY'S MOTION FOR SUMMARY DECISION
ORDER TO MODIFY
ORDER TO PAY

Before: Judge Lewis

On December 20, 2019, The Secretary of Labor ("Secretary") and KC Transport ("Respondent") filed with the undersigned cross-motions for partial

summary decision in WEVA 2019-458.[1] The parties settled 18 of the 20 citations included in this docket prior to the motions for summary decision.[2] The two remaining citations at issue in the motions for summary decision are Citation Nos. 9222038 and 9222040, both for alleged violations of 30 C.F.R. § 77.404(c).[3] Both citations were issued for conditions of trucks owned by Respondent that were in the parking area of K C Transport's truck maintenance facility in Emmett, West Virginia (the "Emmett facility" or "maintenance facility") at the time the citations were issued. The Respondent is challenging Mine Act jurisdiction over the Emmett facility and the trucks parked therein. The parties have stipulated

---

[1] The parties were offered the opportunity to file Reply Briefs and they both did so on January 10, 2020.

[2] A Decision Approving Partial Settlement was issued on December 19, 2019.

[3] The full text of the Regulation is as follows:

> **§ 77.404 Machinery and equipment; operation and maintenance.**
>
> (a) Mobile and stationary machinery and equipment shall be maintained in safe operating condition and machinery or equipment in unsafe condition shall be removed from service immediately.
> (b) Machinery and equipment shall be operated only by persons trained in the use of and authorized to operate such machinery or equipment.
> (c) Repairs or maintenance shall not be performed on machinery until the power is off and the machinery is blocked against motion, except where machinery motion is necessary to make adjustments.
> (d) Machinery shall not be lubricated while in motion where a hazard exists, unless equipped with extended fittings or cups.

30 C.F.R. § 77.404.

that should this Court find that MSHA had jurisdiction over the trucks and location, the cited conditions would constitute violations of 30 C.F.R. § 77.404(c), that both violations were abated in good faith, that the gravity findings are accurate, and that the negligence for each citation should be modified from moderate to low. The parties further stipulated that the appropriate penalty amount for Citation No. 9222038 would be $3,908.00 and the appropriate penalty amount for Citation No. 9222040 would be $4,343.00. Accordingly, the only matter before this Court is a jurisdictional question.

For the following reasons, I grant the Secretary's Motion for Summary Decision and deny the Respondent's Motion for Summary Decision.

Undisputed Facts

The parties in this case have worked diligently in creating a detailed list of joint stipulations.[4] They are as follows:

1. The Administrative Law Judge and the Federal Mine Safety and Health Review Commission have jurisdiction to hear and decide civil penalty proceedings pursuant to Section 105 of the Federal Mine Safety and Health Act of 1977.
2. On March 11, 2019, MSHA Coal Mine Inspector John M Smith was conducting inspection activities at the Elk Creek Prep Plant, Mine ID 46-02444.

[4] Joint Stipulations will be designated by JS ¶ followed by the stipulation number.

3. The Elk Creek Prep Plant is owned and operated by Ramaco Resources, LLC. ("Ramaco Resources").

4. After completing his activities at the Elk Creek Prep Plant on March 11, 2019, CMI Smith traveled more than a mile up the hollow along the haul-road and then turned off the haul-road at Right Hand Fork Road and followed Right Hand Fork Road across a creek about 1000 feet to a location where K C Transport had constructed a parking area with two maintenance shipping containers. K C Transport purchased the gravel and stone for the parking lot and constructed the parking area. K C Transport also has commercial insurance to cover this facility.

5. Inspector Smith traveled up the haul-road and Right Hand Fork Road because he was looking for trucks to issue terminations for previously issued citations. When he reached K.C. Transport's maintenance lot, he observed the trucks cited in Citation Nos. 9222038 and 9222040.

6. At the time of the citations, K C Transport was in the process of constructing a new maintenance shop at that location. The construction materials for a planned approximately 60' x 70' metal building for the new maintenance shop had arrived at the site but were staged on pallets and the metal building had not yet been constructed. The parking area for the planned maintenance shop had been constructed and K C was using

two shipping containers and two service trucks for its maintenance needs.

7. K C Transport is an independent trucking company which provides hauling services to various businesses, including coal hauling, earth hauling and gravel hauling.

8. K C Transport provides coal hauling services to various coal mine operators, including, but not limited to Ramaco Resources.

9. K C Transport operates truck maintenance and storage facilities at five (5) locations, including one at Bluefield West Virginia, one at Taz[e]well, Virginia, two at Princeton, West Virginia, one at Man, West Virginia and the one at issue in this proceeding in Emmett, West Virginia.

10. The new K C Transport maintenance area is located on Right Hand Fork Road, which is a road off the haulage road, which runs past the Elk Creek Plant operated by Ramaco Resources. It is located approximately 1000 feet from the haulage road.

11. The K C Transport maintenance facility is more than a mile up the hollow from the Elk Creek Plant. The Elk Creek Preparation Plant is the nearest coal extraction/preparation facility to K C Transport's maintenance facility.

12. There is a gate at the entrance to the K C Transport facility on Right Hand Fork Road and there is no other way into the hollow where it is located. At the time Citation Nos. 9222038 and 9222040 were issued, the gate

was in need of repair and was not operational. KC Transport usually operates this maintenance facility on a 24-hour, 6 day a week basis. Right Hand Fork Road dead ends on the other side of the KC Transport facility. The road into the K C Transport facility is not a coal haulage road but does branch off from a haulage road.

13. K C Transport shares the parking area for its maintenance facility with a logging company. Ramaco Resources has no personnel or equipment at the facility.

14. K C Transport operates both on-road and off-road trucks out of this facility. The off-road trucks provide haulage for five (5) nearby Ramaco Resources' mines. The on-road trucks provide earth haulage services for AEP, gravel haulage services to other customers and coal haulage services for customers other than Ramaco Resources.

15. KC Transport asserts that about 60% of the services from this KC facility are to the five (5) nearby Ramaco Resource mines, including the 3 deep mines, a strip mine and a highwall mine. The other 40% of K C Transport's work from this location is to provide services for companies other than Ramaco Resources, including American Electric Power ("AEP") and other coal operators. For example, for the past 4–5 months, K C Transport has been working on a large earth moving project for AEP and the trucks working on this project are parked and maintained at the Emmett shop. Although the Secretary has no knowledge of

these facts, the Secretary does not dispute the company's assertions.

16. This facility provides a convenient centralized maintenance facility in Logan County for KC Transport.

17. Representatives of Ramaco told K C Transport they could use the area where the trucks referenced in Citation Nos. 9222038 and 9222040 were located for a maintenance facility and assured K C Transport that this area was not on permitted, bonded mine property, so Ramaco would not be operating there. The Secretary has no evidence that K C Transports' facility is on permitted, bonded mine property. Ramaco Resources has no plans to operate a coal mine at the location where K C Transport maintains its maintenance area/shop. K C Transport uses the property for purposes of maintaining a portion of its truck fleet, including those trucks servicing the Ramaco Resources mines and customers other than Ramaco Resources.

18. The haul trucks cited in Citation Nos. 9222038 and 9222040 were owned by K C Transport and were located at KC Transport's Emmett, West Virginia maintenance facility when cited. The haul trucks referenced in Citation Nos. 9222038 and 9222040 were regularly used to haul coal from the five Ramaco mines to the Elk Creek prep plant at the time of the citations.

19. At the time that CMI Smith inspected the haul trucks referenced in Citation Nos. 9222038

and 9222040, the trucks were not hauling coal, were not on a haul-road and were parked at K C Transport's maintenance area for maintenance work to be performed on the trucks.

20. On March 11, 2019, K C Transport's maintenance/shop area, where the trucks referenced in Citation Nos. 9222038 and 9222040 were located, was property that was not permitted or bonded by the state of West Virginia. See Respondent's Exhibit A (map).

21. Until the Citation Nos. 9222038 and 9222040 were issued, MSHA never sought to enter or inspect K C Transport's Emmett maintenance shop or parking area at any time, from the time K C Transport constructed the parking lot to the time the citations were issued. MSHA has not attempted to enter or inspect this area or the trucks while at this location, since the citations.

22. On one occasion, on April 3, 2018, MSHA did cite a work trailer and muddy parking area that K.C. Transport had adjacent to where the haulage road intersects with Right Hand Fork Road. (Citation Nos. 9174394 and 9174395). However, MSHA vacated the citations for the work trailer and muddy parking lot. After this incident, K C Transport elected to construct the new facility approximately 1000 feet away from the haulage road up Right Hand Fork Road.

23. When Citation Nos. 9222038 and 9222040 were issued, MSHA did not attempt to inspect

the shipping containers, service trucks or any other trucks at the location, nor did MSHA inspect the logging trucks which were located at K C Transport's maintenance area.

24. To get to KC transport' s Emmett facility, it is necessary to pass along the Ramaco Resources, LLC's Elk Creek Plant haul-road until reaching the Right Hand Fork Road hollow where the facility is located. Then it is necessary to cross a creek and drive 1000' up Right Hand Fork Road to the facility.

25. KC Transport's maintenance facility where these trucks were inspected is located more than a mile from the Elk Creek Plant, approximately 4–5 miles from three (3) deep mines operated by Ramaco Resources, LLC and six (6) miles from a strip mines and highwall mines operated by Ramaco Resources. Thus, the closest location where coal is mined or prepared is more than a mile from this facility.

26. All of the Ramaco mines are accessed via the haul-road. That haul-road is a public road for some distance. However, before reaching the Elk Creek Plant, there is a gate limiting public access to the haul-road beyond that location. The gate is manned and only authorized persons are permitted beyond that point. The haul-road beyond the gate is maintained by Ramaco Resources and is no longer a public road. KC Transport's maintenance area is also accessed only by traveling through the gate and up the haul-road to the turn-off at Right

Hand Fork Rd, although Right Hand Fork Road is not part of the haul-road.

27. At various times, the cited trucks have hauled coal from each of the Ramaco mines to the Elk Creek Plant. The cited trucks were not licensed to haul products over public roads at the time the citations were issued, but they have been in the past and they may be in the future.

28. On or about March 11, 2019, the trucks referenced in Citation Nos. 9222038 and 9222040 were only being operated on private land, including haul-roads operated by Ramaco Resources. There were other trucks parked at that same location which were used by K C Transport to haul coal and materials other than coal and for customers other than Ramaco.

29. The cited trucks are inspected regularly by MSHA when they are at the five (5) Ramaco Resources LLC mines and at the Elk Creek prep plant and along the haul-road. They had never previously been inspected at K C Transport's maintenance facility/parking area.

30. K C Transport operates about 35 trucks from the Emmett, West Virginia, Maintenance Facility.

31. The proposed penalty amounts that have been assessed for the violations at issue pursuant to 30 U.S.C. Section 820(a) will not affect the ability of K C Transport to remain in business.

32. MSHA Coal Mine Inspector John M Smith was acting in his official capacity and as an

authorized representatives of the Secretary of Labor when Citation Nos. 9222038 and 9222040 involved in this proceeding were issued.

33. True copies of each of the citations that are at issue in this proceeding along with all continuation forms and modifications, were served on K C Transport or its agent as required by the Act.

34. Each of the violations involved in this matter were abated in good faith.

35. Government Exhibit 1 is an authentic copy of Citation No. 9222038, with all modifications and abatements, and may be admitted into evidence for the purpose of establishing its issuance and not for the purpose of establishing the accuracy of any statements asserted therein.

36. Government Exhibit 2 is an authentic copy of Citation No. 9222040,[5] with all modifications and abatements, and may be admitted into evidence for the purpose of establishing its issuance and not for the purpose of establishing the accuracy of any statements asserted therein.

37. Respondent's Exhibit A is a map of the area. Neither party contests its authenticity and it may be admitted into evidence for the purpose of demonstrating the layout of the area and the permitted, bonded areas for the Court as well

[5] The parties erroneously listed this citation as 9222038.

as the location of K C Transport's facility in relation to the Elk Creek Plant.

38. With respect to Citation Nos. 9222038 and 9222040, K C Transport contests that MSHA had jurisdiction over the trucks referenced in the citations, while located at KC Transport's Emmett, WV maintenance facility. K C Transport argues that both citations should be vacated for lack of jurisdiction at this location.

39. With respect to Citation Nos. 9222038 and 9222040, should the administrative law judge find that MSHA did have jurisdiction over the trucks, while at K C Transport's maintenance facility, K C Transport concedes that the conditions then present would violate 77.404(c) if the trucks had been subject to jurisdiction. With respect to Citation Nos. 9222038 and 9222040, should the administrative law judge affirm the finding that 77.404(c) was violated, the parties have agreed that the gravity findings set forth in the citations shall be affirmed.

40. With respect to Citation Nos. 9222038 and 9222040, should the administrative law judge find jurisdiction and affirm the finding that 77.404(c) was violated, the negligence for each citation shall be modified from moderate to low.

41. With respect to Citation No. 9222038, should the administrative law judge find jurisdiction and affirm the finding that 77.404(c) was violated, the parties agree that the appropriate penalty amount is $3,908.00.

42. With respect to Citation No. 9222040, should the administrative law judge find jurisdiction and affirm the finding that 77.404(c) was violated, the parties agree that the appropriate penalty amount is $4,343.00.

43. For purposes of Section 110(i) of the Act, the proposed penalty amounts are appropriate given the operator's history of violations and the size of the operator.

44. Government Exhibit 3 is a photograph depicting how the truck referenced in Citation No. 9222038 appeared at the time of inspection.

45. Government Exhibit 4 is a photograph depicting how the truck referenced in Citation No. 9222040 appeared at the time of inspection.

Secretary Motion for Partial Summary Decision, 3–12.[6] Respondent's Motion for Summary Decision, 1–3; Secretary's Motion for Summary Decision, 4–5. In addition to the stipulated facts, the parties each submitted exhibits.

---

[6] References to the Secretary of Labor's exhibits are designated as "SX." References to Respondent's exhibits are designated "RX." References to the Secretary's Motion for Partial Summary Decision are designated "SB" followed by the page number. References to the Secretary's Reply Brief are designated "SRB" followed by the page number. References to the Respondent's Memorandum of Law in Support of Motion for Summary Decision are designated "RB" followed by the page number. References to Respondent's Reply Brief are designated "RRB" followed by the page number.

Summary Decision Standard

The Court may grant summary decision where the "entire record...shows: (1) That there is no genuine issue as to any material fact; and (2) That the moving party is entitled to summary decision as a matter of law." 29 C.F.R. § 2700.67(b); *see also UMWA, Local 2368 v. Jim Walter Res., Inc.*, 24 FMSHRC 797, 799 (July 2002); *Energy West Mining*, 17 FMSHRC 1313, 1316 (Aug. 1995) *(citing Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986), which interpreted Fed.R.Civ.P. 56). The Commission has analogized its Rule 67 to Federal Rule of Civil Procedure 56, which authorizes summary judgments upon a proper showing of a lack of a genuine, triable issue of material fact. *Hanson Aggregates New York, Inc.*, 29 FMSHRC 4, 9 (Jan. 2007). A material fact is "a fact that is significant or essential to the issue or matter at hand." *Black's Law Dictionary* (9th ed. 2009, *fact).* "There is a genuine issue of material fact if the nonmoving party has produced evidence such that a reasonable factfinder could return a verdict in its favor." *Greenberg v. Bellsouth Telecommunications, Inc.*, 498 F.3d 1258, 1263 (11th Cir. 2007) (citation omitted). The court must evaluate the evidence "in the light most favorable to ... the party opposing the motion." *Hanson Aggregates*, 29 FMSHRC at 9. Any inferences drawn "from the underlying facts contained in [the] materials [supporting the motion] must be viewed in the light most favorable to the party opposing the motion." *Id.* Though the moving party bears the initial burden of informing the court of the basis for its motion, it is not required to negate the nonmoving party's claims. *Celotex*, 477 U.S. at 323. "When the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that

there is some metaphysical doubt as to the material facts.... Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial.'" *Scott v. Harris*, 550 U.S. 372, 380 (2007) (citation omitted).

Analysis

This case concerns the limits of MSHA jurisdiction, and like many jurisdictional cases, it raises difficult, often novel issues, driven by the precise facts of the case. As Judge Manning has eloquently stated, "Jurisdictional issues under the Mine Act are often factually complex. The Commission and various federal circuit courts have wrestled with these issues... Whether MSHA has jurisdiction under the specific facts at issue here will be one of the key issues in these cases." *Cox Transportation Corp.*, 22 FMSHRC 568, 569–70 (April 5, 2000) (ALJ). The case is made even more difficult because even though both parties are arguing about jurisdiction, their arguments are often not directed at each other.

K C Transport is an independent trucking business that provides hauling services to various businesses, including coal and gravel mines. JS ¶¶ 7, 8. It owns and operates five maintenance and storage facilities in Virginia and West Virginia. JS ¶ 9. At issue here are trucks that were located in the Emmett, West Virginia maintenance facility (hereinafter referred to as the "maintenance facility"). JS ¶¶ 4–6. The maintenance facility provides off-road trucks for haulage for five nearby Ramaco Resources mines and on-road trucks for earth haulage services for American Electric Power ("AEP"), as well as trucks for gravel and coal haulage for other customers. JS ¶ 14. Approximately 60% of the services from the

maintenance facility are for the five nearby Ramaco Resources mines, including three deep mines, a strip mine, and a highwall mine. JS ¶ 15. The other 40% of K C Transport's work from this facility provides services for AEP and other coal operators. JS ¶ 15. At the time of the citations, K C Transport was in the process of constructing a new maintenance shop at this location. JS ¶ 6.

In order to get to the maintenance facility, one travels along the Ramaco Resources Elk Creek Plant haul-road until reaching the Right Hand Fork Road, following that road for approximately 1,000 feet, until reaching the facility. JS ¶¶ 4, 10, 24. The haul-road "is a public road for some distance." JS ¶ 26. The maintenance facility is located more than a mile from the Elk Creek Plant, approximately four to five miles from three deep mines operated by Ramaco Resources, and six miles from strip mines and highwall mines operated by Ramaco. Therefore, the closest location where coal is mined or prepared is more than a mile from the maintenance facility. JS ¶ 25.

Here, an MSHA inspector at the Elk Creek Prep Plant traveled more than a mile up the hollow along the haul-road, then turned at the Right Hand Fork Road and traveled along it for approximately 1,000 feet, crossed a creek, and arrived at the maintenance facility. JS ¶ 4. Once he arrived, he cited two trucks that were undergoing maintenance at the off-site K C Transport maintenance facility for violations of 30 C.F.R. § 77.404(c).[7] JS ¶ 5; SX-1; SX-2. The mandatory

[7] Citation No. 9222038 states:

standard provides that "repairs or maintenance shall not be performed on machinery until the power is off and the machinery is blocked against motion, except where machinery motion is necessary to make adjustments." 30 C.F.R. § 77.404(c). At the time the trucks were cited, the trucks were not hauling coal or on a haul-road; rather, they were parked at the maintenance facility for maintenance work. JS ¶ 19. The cited trucks have hauled coal from each of the Ramaco mines to the Elk Creek Plant. JS ¶ 27. The parties agree as to the gravity, negligence, and penalty amounts if this Court finds jurisdiction over the trucks here. JS ¶ 39–43.

Contentions of the Parties

A difficult aspect of this case is that the parties do not seem to be on the same page as to what issue is

---

> The red Mack tandem coal truck Co# 120 is jacked up with the wheels and tires off both back axles and is not blocked to prevent motion. The rear of the truck is jacked up by using blocking under the back end of the bed and using the motion of the bed when raised to lift the back wheels off the ground. Work is being preformed [sic] on the brakes located on the back axles of the truck. Standard 77.404(c) was cited 1 time in two years at mine 4602444 (0 to the operator, 1 to a contractor).

GX-1. Citation No. 9222040 states:

> The bed on the Mack Co#5 coal truck is in the raised position and is not blocked against motion. A miner is observed standing on the frame of the truck under the raised unblocked bed. This citation was factor that contributed to the issuance of Imminent Danger Order No. 9222039 dated 3/11/2019. Therefore, no abatement time was set. Standard 77.404(c) was cited 2 times in two years at mine 4602444 (2 to contractor 77.404(c)).

SX-2.

before the Court, with the Secretary arguing for jurisdiction over the trucks and the Respondent arguing against jurisdiction over the maintenance facility. The Secretary states in its opening brief, "The parties agree that the only issue in dispute concerning the citations is whether the trucks are subject to MSHA coverage."[8] SB at 1. Throughout its brief, the Secretary's arguments are almost entirely in support of the trucks, rather than the facility, being under MSHA's jurisdiction. The Secretary clarifies that "whether the maintenance area is a mine subject to MSHA coverage need not be decided in this case to determine whether MSHA coverage applied to the subject trucks." SRB at 1.

In contrast, the Respondent states that "all that remains for the Court to decide is the purely legal issue of whether MSHA had jurisdiction over KC Transport's Emmett facility." RB at 6. The Respondent argues that "because KC Transport's Emmett facility is not a 'coal or other mine,' as defined in the Federal Mine Safety and Health Act of 1977 ('Mine Act'), the Court should find that MSHA was without jurisdiction over the facility and that Citation Nos. 9222038 and 9222040 should be vacated." RB at 1. The Respondent's brief vacillates between arguing against this position that the Secretary does not take and arguing that MSHA cannot assert jurisdiction over the trucks without jurisdiction over the maintenance facility. RB at 8.

The Secretary argues that the definition of a "mine" was intended to be read broadly, and that the trucks referenced in the citations are equipment that

---

[8] As will be discussed, *infra*, the parties did not in fact agree on this being the sole issue.

were used in the extraction and preparation of coal and therefore subject to Mine Act coverage. SB at 14. The Secretary makes clear that its argument is that the trucks, not the maintenance facility or any structures on the site, are under MSHA jurisdiction. SRB at 1. The Secretary argues that though the Act is clear, if this Court finds ambiguity, the Secretary should be accorded *Chevron* deference. SB at 15–16. If this Court does not extend MSHA jurisdiction to the trucks, the Secretary asserts that it would create "a bifurcated coverage scheme [that] would be impractical, if not impracticable, and would lead to confusion on the part of miners and the operator itself as to what standards were applicable at any given time." *Id.* at 19. The Secretary refers to this bifurcated coverage between MSHA and OSHA as "an absurd result." SRB at 3.

The Respondent argues that off-site facilities, such as the maintenance facility here, are not under MSHA jurisdiction. RB at 6–7. It further argues that location is key to understanding whether MSHA has jurisdiction over equipment, and that MSHA cannot simply attach jurisdiction to a piece of mobile equipment and follow that equipment "wherever it goes." RB at 2. It argues that MSHA can cite the trucks at issue while they are at any of the Ramaco mines or Elk Creek preparation plant, but not when they are located in an area that is not under MSHA's jurisdiction.

Because the parties' briefs raise both the issue of whether the maintenance facility is a mine and whether the trucks are mines, this Court will consider both questions. Based on the following analysis, this Court rejects the Secretary's argument that each of

these trucks constituted a "mine" under the Act no matter where they are located. However, this Court also rejects the Respondent's argument that the maintenance facility was not a "mine" under the Act. Rather, this Court finds that the maintenance facility was a "mine" under Section 3(h)(1)(C), and because the trucks were used in mining and parked at the facility, they constituted "equipment" under the same section. However, MSHA's jurisdiction over the trucks is not limitless; though it is clear that MSHA had jurisdiction in the instant case, it would likely lack such jurisdiction if the trucks were at a non-mining site performing non-mining activities.

Case Disposition

The first inquiry here must be "whether Congress has directly spoken to the precise question at issue." *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842 (1984); *Thunder Basin Coal Co.*, 18 FMSHRC 582, 584 (Apr. 1996). "If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." *Chevron*, 467 U.S. at 842–843. "In ascertaining the plain meaning of the statute, courts utilize traditional tools of construction, including an examination of the 'particular statutory language at issue, as well as the language and design of the statute as a whole,' to determine whether Congress had an intention on the specific question at issue. *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988); *Local Union 1261, UMWA v. FMSHRC*, 917 F.2d at 44; *Coal Employment Project v. Dole*, 889 F.2d 1127, 1131 (D.C. Cir. 1989)." *MSHA v. Jim Walter Resources, Inc.*, 22 FMSHRC 21 (Jan. 31, 2000). If it is

found that Congress has not addressed the question at issue, "the court does not simply impose its own construction on the statute... Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute." *Chevron*, 467 U.S. at 842–843.

Examining the Mine Act, as well as relevant legislative history, I find that Congress has directly spoken to the precise question at issue. Though the definition of a "mine" under the Mine Act is broad and was intended to be read expansively, it was not intended to be limitless. The Secretary's argument that MSHA has jurisdiction over a truck that was used to haul coal, no matter where that truck is located, expands MSHA' s jurisdiction to every road, parking lot, garage, and facility in the country. Mobile equipment such as trucks would essentially become rolling mines under the Secretary's interpretation. Under the Secretary's interpretation, if the trucks at issue here were hundreds of miles from the mine and were undergoing maintenance at a private mechanic, MSHA would have jurisdiction over those trucks. If the trucks were parked at a diner while the drivers ate, MSHA would have jurisdiction. If the trucks were hauling lumber for a lumberyard, MSHA would have jurisdiction. Beyond the absurdity of MSHA having geographically and functionally limitless jurisdiction over the trucks, there would also be the problem that any person working on the truck or driving it at any time might be considered a miner under Section 3(g) ("'miner' means any individual working in a coal or other mine." 30 U.S.C. 802(g).)

"In enacting the statute, Congress was plainly aware that the mining industry is among the most hazardous in the country and that the poor health and safety record of this industry has significant deleterious effects on interstate commerce." *Donovan v. Dewey*, 452 U.S. 594, 602 (1981). As a result, Congress took care to put in place a strict regulatory scheme to protect the health and safety of miners at a mine. However, it carefully described what constituted a mine, creating three general categories that were geographically and functionally centered. Congress's definition does not include trucks in whatever location they may be and whatever they may be doing. However, the Mine Act clearly defines a mine in a manner that includes, under the facts of this case, both the maintenance facility and the equipment (or trucks) therein. While MSHA cannot simply attach jurisdiction to the trucks and follow them wherever they may drive, it can assert jurisdiction over the maintenance facility and all the equipment at the facility that is used for mining.[9]

Section 4 of the Mine Act makes clear that "Each coal or other mine, the products of which enter commerce, or the operations or products of which affect commerce, and each operator of such mine, and every miner in such mine shall be subject to the

---

[9] It should be noted that if MSHA asserts jurisdiction over the maintenance facility, trucks and other equipment contained on the site, it must conduct inspections "of the mine in its entirety at least two times a year." 30 U.S.C. § 813(a). In the instant case, the MSHA inspector only inspected the trucks, and "did not inspect the shipping containers, service trucks or any other truck at the location." JS ¶ 23. It is not entirely clear from the record whether all this equipment was mining-related, but if so, MSHA would be required to conduct such comprehensive inspections.

provisions of this chapter." 30 U.S.C. § 803. The Act further provides in Section 3(h)(1) three categories of definitions for what constitutes a "coal or other mine" as:

> (A) an area of land from which minerals are extracted in nonliquid form or, if in liquid form, are extracted with workers underground, (B) private ways and roads appurtenant to such area, and (C) lands, excavations, underground passageways, shafts, slopes, tunnels and workings, structures, facilities, equipment, machines, tools, or other property including impoundments, retention dams, and tailings ponds, on the surface or underground, used in, or to be used in, or resulting from, the work of extracting such minerals from their natural deposits in nonliquid form, or if in liquid form, with workers underground, or used in, or to be used in, the milling of such minerals, or the work of preparing coal or other minerals, and includes custom coal preparation facilities.

30 U.S.C. § 802(h)(1). Because the controversy in this case concerns whether either the maintenance facility and/or the trucks could constitute a "mine," it is clear that subsection (A) concerning land, and subsection (B) concerning private ways and roads, are not at issue.[10] Specifically, it is the portion of subsection (C) that mentions "structures, facilities, equipment,

---

[10] In *National Cement Co. of Ca. Inc.*, the Secretary took the position that Section 3(h)(1)(B) covers roads, but not vehicles on those roads. 573 F.3d 788, 794–796 (D.C. Cir. 2009).

machines, tools…used in, or to be used in, or resulting from, the work of extracting such minerals from their natural deposits….or used in, or to be used in, the milling of such minerals, or the work of preparing coal or other minerals," that the Secretary argues provides jurisdiction over the trucks. SB at 13.

When analyzing the definition of "mine" under the Act, one must not be "governed by ordinary English usage," but rather by the broad definition and intent that Congress set forth. *Donovan v. Carolina Stalite Co.*, 734 F.2d 1547, 1551 (D.C. Cir. 1984). The Commission has repeatedly emphasized that "The definition of a 'coal or other mine' in section 3(h) of the Mine Act is broad, sweeping and expansive." *MSHA v. KenAmerican Resources, Inc.*, 42 FMSHRC 1, 6 note 12 (Jan. 16, 2020); *Jim Walter Resources*, 22 FMSHRC at 24; *MSHA v. Justis Supply & Machine Shop*, 22 FMSHRC 1292, 1296 (Nov. 03, 2000). This description was based on the congressional intent of the Mine Act. The Senate Report accompanying the Mine Act states that "it is the Committee's intention that what is considered to be a mine and to be regulated under this Act be given the broadest possibl[e] interpretation." *Donovan v. Carolina Stalite Co.*, 734 F.2d 1547, 1554–55 (D.C. Cir. 1984) (quoting S. Rep. No. 461, 95th Cong., 1st Sess. 37 (1977), U.S. Code Cong. & Admin. News 1977, 3401, 3414). "Close jurisdictional questions are to 'be resolved in favor of inclusion of a facility within the coverage of the Act.' *Id.*

Following this directive to interpret the definition of a mine broadly, ALJs, the Commission, and Federal Courts of Appeal have found a broad variety of lands, roads, structures, facilities, and equipment to constitute a mine. Combined these provide a general

framework for the breadth and limits of MSHA jurisdiction, as well as the appropriate analysis to determine jurisdiction.

In *Marshall v. Stoudt's Ferry Preparation Co.*, the Third Circuit held that a preparation plant that separated low-grade fuel from sand and gravel dredged from a riverbed was a mine. 602 F.2d 589 (3rd Cir. 1979). Analyzing the Act's use of the words, "structure" and "facility," the Court stated that "although it may seem incongruous to apply the label 'mine' to the kind of plant operated by Stoudt's Ferry, the statute makes clear that the concept that was to be conveyed by the word is much more encompassing than the usual meaning attributed to it[. T]he word means what the statute says it means." *Id.* at 592. Similarly, In *Harman Min. Corp. v. FMSHRC*, the Fourth Circuit held that a plant's "car dropping" facility, where railroad cars were loaded with coal, was a mine. 671 F.2d 794 (4th Cir. 1981). The Court held that the broad definition of "mine" included "all of the facilities used at a coal preparation plant." *Id.* at 796. In *Donovan v. Carolina Stalite Co.*, the D.C. Circuit held that a slate gravel processing facility that was immediately adjacent to a quarry, but was not engaged in direct slate extraction was a mine because it fit within Section (C)'s inclusion of "structures." 734 F.2d 1547 (D.C. Cir. 1984).

In *National Cement Co. of Ca. Inc.*, the D.C. Circuit held that the Secretary's interpretation of Section 3(h)(1) was reasonable when it argued that Mine Act jurisdiction extended to a private road leading to the plant. 573 F.3d 788 (D.C. Cir. 2009). In this case, the Secretary explained the interplay between the three subsections of Section 3(h)(1)(B), which the Court

accepted as reasonable. The Secretary interpreted the word "area" in Subsection (A) as "all-encompassing because virtually everything in an extraction area ... is necessarily related to [mining] activity." *Id.* at 794. The Secretary interpreted Subsection (B) to cover mining roads, but not the vehicles traveling on those roads. *Id.* Lastly, the Secretary interpreted Subsection (C) to cover mining related vehicles traveling on mining roads. *Id.* at 795. "Subsections (B) and (C) can be read to work in tandem." *Id.*

In the seminal case, *MSHA v. Jim Walter Resources, Inc.*, the Commission held that a central supply shop used to repair and maintain electrical and mechanical equipment at nearby mines was a mine under the Act. 22 FMSHRC 21 (Jan. 2000).[11] The Commission reasoned that the language of the Mine Act was clear, stating:

> The stipulated record is equally clear in establishing that the Central Supply Shop is a dedicated off-site facility of a (multiple) mine operator where employees receive, stock, maintain, and deliver equipment, tools, and supplies used at JWR's coal extraction sites,

---

[11] Similarly, in *MSHA v. U.S. Steel Mining Co.*, the Commission held that an off-site central repair shop, which had a separate Mine ID, and "exists and functions to repair and maintain electrical and mechanical equipment used in or to be used in USSM's underground and surface coal mines and its coal cleaning plant" constituted a separate "surface coal mine" under the Act. 10 FMSHRC 146, 149 (Feb. 1988). Also, in *MSHA v. W.F. Saunders & Sons*, ALJ Melick held that a preparation plant's truck shop and storeroom, which was primarily used to store and repair trucks used in mining, was a mine under the Act. 1 FMSHRC 2130 (Dec. 28, 1979) (ALJ).

> preparation plants, and Central Supply Shop, including, inter alia, rock dust, line curtains, hard hats, machine parts, and conveyor belts. Consequently, there is Mine Act jurisdiction because a ""mine" includes "facilities" and "equipment ... used in or to be used in" JWR's mining operations or coal preparation facilities.

Id. At 25. In dicta, the Commission cited to the *W.J. Bokus Industries* for the proposition that "whether a mine operator's equipment is covered by the Mine Act is not determined by its location but rather by its function — that is, whether it is used in extracting or preparing coal." *Id.* at Note 11.

In *MSHA v. W.J. Bokus Industries, Inc.,* the Commission found that gas cylinders kept in a garage adjacent to an asphalt plant and beside an office used by the mine were under MSHA jurisdiction. 16 FMSHRC 704 (April 1994). The garage was regularly used by miners on mining-related tasks. *Id.* at 708. In *W.J. Bokus,* it was unclear whether the ALJ found the garage itself to be under MSHA jurisdiction, but the Secretary's position appeared to be that the equipment in the garage was under MSHA jurisdiction *because* the garage was under MSHA jurisdiction ("The Secretary assert[ed] that the judge 'accepted that MSHA had jurisdiction over the garage.' He infers that the judge would not have examined jurisdiction over items in the garage unless he assumed that MSHA had jurisdiction over the garage itself." 16 FMSHRC at 707, FN 9). However, in reversing the ALJ, the Commission made clear that "we need not reach the issue raised by the Secretary,

that the garage was a 'structure' or 'facility' used in mining and, therefore, a 'mine' within the meaning of section 3(h)(1) of the Mine Act." Id. at 708.

In *MSHA v. Justis Supply & Machine Shop,* the Commission relied on *Jim Walter Resources* to conclude that an off-site dragline assembly site was a mine under the Act. 22 FMSHRC 1292 (Nov. 2000). The Commission found that the dragline was equipment "to be used in" mining coal, and the site and employees at the site were devoted to building the dragline that would be used at the mine. Therefore, the dragline assembly site was a mine under the Act.

In *MSHA v. State of Alaska, Dept. ofTransp.,* the Commission held that a SAG Screener, a mobile piece of equipment that excavated material at pits along a gravel road and which had its own MSHA Mine ID, was a mine under the Act. 36 FMSHRC 2642 (Oct. 2014). The Commission examined Subsections (A) and (C) in conjunction and held that even though the dedicated right-of-way may not fall under the definition of "private ways and roads" in Subsection (B), it was a piece of equipment used in a mining area.

In *MSHA v. Austin Powder*, ALJ Andrews rejected the Respondent's arguments that because an off-site storage facility was "not employed in" mining at the quarry, it was not a "mine." 37 FMSHRC 1337, 1349 (June 8, 2015). He found that the storage facility was used to store explosives and related materials used in mining, and was therefore a "facility" under the Act. *Id.* at 1352. Similarly, In *MSHA v. Youngquist Brothers Rock, Inc.*, ALJ Gill found that MSHA had jurisdiction to cite a truck that may have been on a section of the mine property where a restaurant was located. 36 FMSHRC 2492 (Sept. 19, 2014) (ALJ).

Judge Gill's analysis focused on the location of the truck when it was cited and he found jurisdiction specifically because it was on an area that fell under the definition of a "mine." Further relevant to the instant case, in *Youngquist* MSHA's position was that if the truck been outside the mine gates, MSHA would not have had jurisdiction over it.[12] *Id.* at 2496. In *MSHA v. Jeppesen Gravel*, ALJ Melick held that a Caterpillar front end loader was under the Mine Act's jurisdiction when it was being used to load gravel in a private way or road appurtenant to the area where the gravel was extracted. 32 FMSHRC 1749 (Nov. 18, 2010) (ALJ). In *MSHA v. Northern Illinois Service Co.*, ALJ Gill held that MSHA had jurisdiction over a service truck and its contents when that truck was on mine premises, even if it was also used at non-mine locations. 36 FMSHRC 2811 (Nov. 10, 2014) (ALJ).

More recently, ALJ Simonton held that a parking lot and office that were located on mine property and adjacent to the plant's active extraction sites was a mine under the Act. *MSHA v. Rain for Rent*, 40 FMSHRC 1267, 1271 (Aug. 22, 2018). The Judge emphasized that the "parking lot is on Natividad Plant property, adjacent to active extraction sites, and used for mine-related purposes." *Id.* at 1272. In finding jurisdiction, Judge Simonton concluded that the "office and parking lot are thus geographically and functionally related to the mining process at

---

[12] MSHA has stated this position in several cases. In *MSHA v. Drillex, Inc.*, the inspector "further confirmed that his enforcement jurisdiction over the respondent is limited to any trucks actually found on quarry or mine properties, and that in the instant case, he inspected the truck after it was driven onto the mine site in question." 9 FMSHRC 1972, 1975 (Nov. 24, 1987).

Natividad Plant and are subject to MSHA jurisdiction under the Act." *Id.*

In *MSHA v. Maxxim Rebuild Co.*, the Commission held that an off-site maintenance shop that was used primarily to maintain, repair, and fabricate equipment used in the mining process was a mine under the Act. 38 FMSHRC 605 (April 2016). However, this decision was reversed by the Sixth Circuit, in a sweeping decision that rejected *Jim Walter Resources* and much of the Commission's reasoning on jurisdiction. *Maxxim Rebuild Co. v. FMSHRC*, 848 F.3d 737, 740 (6th Cir. 2017). In looking at the three subsections in the definition of a "mine," the Court emphasized, "Location, location, location: All three definitions are place connected and place driven." Id. at 742. The Sixth Circuit held that MSHA jurisdiction "extends only to such facilities and equipment if they are in or adjacent to—in essence part of—a working mine."[13] *Id.* at 740. Since the maintenance shop was not attached to or adjacent to a working mine, it did not fall under the Act's definition of a mine. *Id.* at 742. With regards to equipment, the Court held that such equipment's use in mining is not dispositive of MSHA jurisdiction. "It does not cover mining 'equipment' or for that matter mining 'machines, tools, or other property' wherever

[13] Similarly, in *MSHA v. Pickett Mining Group*, ALJ Rae found that MSHA lacked jurisdiction over a Ford tractor. 36 FMSHRC 2444 (Sept. 8, 2014) (ALJ). Judge Rae's analysis looked at the location of the tractor and its use. She found that there was no evidence that the tractor has been or will be used in mining activities, and that at the time of citation the tractor was not located at any location that could be deemed part of an extraction area.

they may be found or made." *Id.* at 740.[14] In reaching its conclusion, the Court stated that for the same reason it was rejecting the Commission's decision in *Maxxim Rebuild,* it rejected the Commission's decision in *Jim Walter Resources*. *Id.* at 744. Throughout the decision, the Court expressed dismay that the Secretary's position provided no natural limits. It emphasized that "The Secretary's interpretation also has no stopping point," Id. at 743, and that the definition's "locational focus" provides such a limit. *Id.* at 742.

This is not the only instance of a judge expressing that MSHA's jurisdiction, while broad, must have limits. In *Bush & Burchett, Inc. v. Reich*, the Sixth Circuit rejected the argument that any road appurtenant to a mine was within MSHA's jurisdiction, stating:

> Not only does the statute not compel such a reading, but also such a reading is

---

[14] While the Respondent uses the Sixth Circuit position to advance its argument, the Secretary uses the Commission decision to advance its argument. RB at 10–12; SB at 14. The Secretary argues that not only is the Sixth Circuit's reversal of the Commission in *Maxxim Rebuild* not binding precedent in this case, which arises out of the Fourth Circuit, but that "the lower unanimous decision by the Commission affirming MSHA coverage is the applicable precedent for this case." SRB at 2. This Court questions the Secretary's argument that a Circuit Court reversal (without remand) only disturbs the Commission's decision in the applicable Circuit. Nonetheless, whether the Commission's decision still governs ultimately has little bearing on the instant decision. This is due to the fact that the Commission's *Maxxim Rebuild* decision does not stand alone for the proposition that off-site facilities and equipment are under MSHA jurisdiction. Rather, it is but one of many cases over decades of jurisprudence analyzing Mine Act jurisdiction.

> contrary to common sense. Without some limitation on the meaning of "roads appurtenant to," MSHA jurisdiction could conceivably extend to unfathomable lengths since any road appurtenant to a mine that connects to the outside world would necessarily run into yet other roads, thus becoming one contiguous road. Because of the potential reach of MSHA jurisdiction if the definition in § 802(h)(1)(B) is left unfettered, "private ways and roads" cannot simply mean "any road." Otherwise, there could conceivably be no limit to MSHA jurisdiction, a result Congress clearly did not intend.

117 F.3d 932, 937 (6th Cir. 1997). Similarly, *Dilip K. Paul v. P.B – K.B.B.*, Inc., the Commission held that an engineering office that was responsible for designing an exploratory shaft, as well as providing personnel, equipment, and materials, was not a mine under the Act. 7 FMSHRC 1784 (Nov. 21, 1985). The Commission stated that "while we have recognized that the definition of 'coal or other mine' provided in section 3(h) of the Mine Act is expansive and is to be interpreted broadly, the inclusive nature of the Act's coverage is not without bounds." *Id.* at 1787 (citations omitted).[15]

---

[15] In *MSHA v. Ammon Enterprises*, ALJ Zielinski discussed in dicta the question of whether MSHA would have jurisdiction over trucks loading mined materials that were stockpiled and separated by a screen, calling it a "gray area." 2008 WL 4190445 at Note 9 (July 10, 2008) (ALJ). He further stated that if the

Analyzing this jurisdictional map that arises through a review of the outer bounds of the Mine Act's definition of a "mine," the facility and equipment at issue here falls squarely within the definition. The off-site maintenance facility and trucks at issue here are much like the central supply shop at issue in *Jim Walter Resources,* the gas cylinders at issue in *W.J. Bokus,* the off-site dragline assembly site at issue in *Justis Supply* & *Machine Shop*, the off-site Screener at issue in *State of Alaska Department of Transportation*, the off-site storage facility at issue in *Austin Powder*, and other cases discussed *supra.* The Respondent is correct that the location of the trucks and the maintenance facility matter, and that the Secretary's idea of the trucks being rolling mines would lead to an absurdity.

However, in this instance, the maintenance and trucks were located four to five miles from Ramaco's three deep mines and more than a mile from the Elk Creek Plant. JS ¶ 25. In *Jim Walter Resources*, the central shop was not on the property of any one of the coal extraction sites, but rather one mile from the closest site, six miles from two of the sites, and 25 miles from the farthest site. 22 FMSHRC at 22. In *U.S. Steel Mining Co.*, the shop at issue was located approximately eight and a half miles from one mine, five miles from another mine, and a half mile from the cleaning plant. 10 FMSHRC at 147. The location of K C Transport's maintenance facility is not remote from the extraction and processing sites. Indeed, its

---

mining operations had been closed, "that the loading of trucks from the stockpiles would not be considered within MSHA's jurisdiction." *Id.*

proximity leads to the second question concerning the maintenance facility and trucks' functions.

K C Transport asserted that approximately 60% of the services from the maintenance facility are to the five nearby Ramaco Resource mines, and the other 40% is split between other companies, including other coal operators. JS ¶ 15. These services include operating on-road and off-road trucks used in coal, gravel, and earth haulage. JS ¶ 14. The two cited trucks at issue here have been used at various times to haul coal from each of the Ramaco mines to the Elk Creek Plant. JS ¶ 27. The trucks used to haul the coal from the mine to the processing facility fit well within the Mine Act's definition of equipment used in the work of preparing coal. The transportation of coal from those mines to that preparation plant is an integral part of the mining and preparation process. Furthermore, the maintenance of the trucks at the facility is essential to the coal hauling and preparation process. This interpretation is in line with the Commission's reasoning in *W.J. Bokus*, where the Commission found compressed gas cylinders, a stove, and a grinder to be equipment used in mining. 16 FMSHRC at 707–709. The Commission reasoned that miners worked in the garage where the gas cylinders were kept on mining-related tasks, the grinder had been used to maintain mining equipment, and the stove warmed the garage where the miners worked. *Id.*

I find the possibility of the "bifurcated coverage scheme" that the Secretary warns of to be not quite as absurd as the Secretary states. In fact, it is already in existence many times over in most aspects of mining and other industries. There are various interagency

agreements and memoranda of understanding between OSHA and MSHA precisely because jurisdiction often shifts between the agencies. *See eg State of Alaska, Dept. of Transportation*, 36 FMSHRC 2642; *W.J. Bokus Industries*, 16 FMSHRC 704. Despite the Secretary's dire warnings of a bifurcated coverage scheme covering the trucks when they are on mines and/or engaged in mining-related activities, and when they are not on mines engaged in activity unrelated to mining, this Court is confident that the Department of Labor can adequately determine which agency and statute provides coverage.[16]

Therefore, this Court finds that MSHA had jurisdiction over the trucks at issue as well as the maintenance facility. Accordingly, under the prior agreement of the parties, Citation No. 9222038 is affirmed, but modified to "low" negligence with a penalty amount of $3,908.00. Citation No. 9222040 is affirmed, but modified to "low" negligence with a penalty amount of $4,343.00.

ORDER

It is **ORDERED** that Citation Nos. 9222038 and 9222040 be modified to "low" negligence, and the Respondent, K C Transport, Inc., is **ORDERED** to

---

[16] Judge Manning described the various statutory jurisdictions controlled by the Secretary of Labor thusly: "The Secretary takes what is often called a 'nooks and crannies' approach when interpreting OSHA jurisdiction. OSHA fills in the nooks and crannies that other safety statutes do not cover." *Cox Transportation Corp.*, 22 FMSHRC at 580.

pay the Secretary of Labor the sum of $8,251.00 within 30 days of this order.[17]

/s/ John Kent Lewis
John Kent Lewis
Administrative Law Judge

Distribution:

Robert S. Wilson, Esq., U.S. Dept. of Labor, 201 12th St. South, Suite 401, Arlington, VA 22202-5450

Stephen S. Adkins, CLR, MSHA, 4499 Appalachian Highway, Pineville, WV 24874

James P. McHugh, Esq. & Christopher D. Pence, Esq., Hardy Pence PLLC, 10 Hale Street, 4th Floor, P.O. Box 2548, Charleston, WV 25329

[17] Payment should be sent to: MINE SAFETY AND HEALTH ADMINISTRATION, U.S. DEPARTMENT OF LABOR, PAYMENT OFFICE, P. O. BOX 790390, ST. LOUIS, MO 63179-0390

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22-1071 **September Term, 2023**

MSHR-WEVA2019-0458

Filed On: October 3, 2023

Secretary of Labor, Mine Safety and Health Administration,

Petitioner

v.

KC Transport, Inc. and Federal Mine Safety and Health Review Commission,

Respondents

BEFORE: Srinivasan, Chief Judge; Henderson, Millett, Pillard, Wilkins, Katsas, Rao, Walker, Childs, Pan, and Garcia, Circuit Judges

O R D E R

Upon consideration of respondent's petition for rehearing en banc, which includes a motion to hold the decision on rehearing in abeyance, the opposition to the motion, and the reply, and the absence of a request by any member of the court for a vote on the petition, it is

ORDERED that the motion be denied. It is

FURTHER ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22-1071 **September Term, 2023**

MSHR-WEVA2019-0458

Filed On: October 3, 2023

Secretary of Labor, Mine Safety and Health Administration,

Petitioner

v.

KC Transport, Inc. and Federal Mine Safety and Health Review Commission,

Respondents

BEFORE: Wilkins, Walker, and Pan, Circuit Judges

O R D E R

Upon consideration of respondent's petition for panel rehearing filed on September 12, 2023, which includes a motion to hold the decision on rehearing in abeyance, the opposition to the motion, and the reply, it is

ORDERED that the motion be denied. It is

FURTHER ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk

30 U.S.C. § 802

§ 802. Definitions

For the purpose of this chapter, the term—

(a) "Secretary" means the Secretary of Labor or his delegate;

* * * * *

(d) "operator" means any owner, lessee, or other person who operates, controls, or supervises a coal or other mine or any independent contractor performing services or construction at such mine;

(e) "agent" means any person charged with responsibility for the operation of all or a part of a coal or other mine or the supervision of the miners in a coal or other mine;

(f) "person" means any individual, partnership, association, corporation, firm, subsidiary of a corporation, or other organization;

(g) "miner" means any individual working in a coal or other mine;

(h)(1) "coal or other mine" means (A) an area of land from which minerals are extracted in nonliquid form or, if in liquid form, are extracted with workers underground, (B) private ways and roads appurtenant to such area, and (C) lands, excavations, underground passageways, shafts, slopes, tunnels and workings, structures, facilities, equipment, machines, tools, or other property including impoundments, retention dams, and tailings ponds, on the surface or underground, used in, or to be used in, or resulting from, the work of extracting such minerals from their

natural deposits in nonliquid form, or if in liquid form, with workers underground, or used in, or to be used in, the milling of such minerals, or the work of preparing coal or other minerals, and includes custom coal preparation facilities. In making a determination of what constitutes mineral milling for purposes of this chapter, the Secretary shall give due consideration to the convenience of administration resulting from the delegation to one Assistant Secretary of all authority with respect to the health and safety of miners employed at one physical establishment;

(2) For purposes of subchapters II, III, and IV, "coal mine" means an area of land and all structures, facilities, machinery, tools, equipment, shafts, slopes, tunnels, excavations, and other property, real or personal, placed upon, under, or above the surface of such land by any person, used in, or to be used in, or resulting from, the work of extracting in such area bituminous coal, lignite, or anthracite from its natural deposits in the earth by any means or method, and the work of preparing the coal so extracted, and includes custom coal preparation facilities;

(i) "work of preparing the coal" means the breaking, crushing, sizing, cleaning, washing, drying, mixing, storing, and loading of bituminous coal, lignite, or anthracite, and such other work of preparing such coal as is usually done by the operator of the coal mine;

* * * * *

(n) "Administration" means the Mine Safety and Health Administration in the Department of Labor.

(o) "Commission" means the Federal Mine Safety and Health Review Commission.

30 C.F.R. § 77.404

Machinery and equipment;
operation and maintenance.

(a) Mobile and stationary machinery and equipment shall be maintained in safe operating condition and machinery or equipment in unsafe condition shall be removed from service immediately.

(b) Machinery and equipment shall be operated only by persons trained in the use of and authorized to operate such machinery or equipment.

(c) Repairs or maintenance shall not be performed on machinery until the power is off and the machinery is blocked against motion, except where machinery motion is necessary to make adjustments.

(d) Machinery shall not be lubricated while in motion where a hazard exists, unless equipped with extended fittings or cups.