

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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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 K C Transport ("Respondent") filed with the undersigned cross-motions for partial summary decision in WEVA 2019-458.<sup>1</sup> The parties settled 18 of the 20 citations included in this docket prior to the motions for summary decision.<sup>2</sup> 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).<sup>3</sup>

<sup>1</sup> The parties were offered the opportunity to file Reply Briefs and they both did so on January 10, 2020.

<sup>2</sup> A Decision Approving Partial Settlement was issued on December 19, 2019.

<sup>3</sup> 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.

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 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.<sup>4</sup> 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.
3. The Elk Creek Prep Plant is owned and operated by Ramaco Resources, LLC. ("Ramaco Resources").

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(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.

<sup>4</sup> Joint Stipulations will be designated by JS ¶ followed by the stipulation number.

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 K C 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,<sup>5</sup> with all modifications and abatements, and may be admitted into evidence for the

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<sup>5</sup> The parties erroneously listed this citation as 9222038.

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 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.<sup>6</sup> 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.

### 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

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<sup>6</sup> 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.



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).<sup>7</sup> JS ¶ 5; SX-1; SX-2. The mandatory

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<sup>7</sup> Citation No. 9222038 states:

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

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 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.”<sup>8</sup> 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 K C Transport’s Emmett facility.” RB at 6. The Respondent argues that “because K C 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 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

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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.

<sup>8</sup> As will be discussed, *infra*, the parties did not in fact agree on this being the sole issue.

“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.<sup>9</sup>

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 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,

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<sup>9</sup> 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.

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.<sup>10</sup> Specifically, it is the portion of subsection (C) that mentions “structures, facilities, equipment, 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 (3<sup>rd</sup> 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

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<sup>10</sup> 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).

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 (4<sup>th</sup> 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).<sup>11</sup> 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, 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

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<sup>11</sup> 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).

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. of Transp.*, 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.<sup>12</sup> *Id.* at 2496. In *MSHA v. Jeppesen Gravel*, ALJ Melick

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<sup>12</sup> 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).

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

In *MSHA v. Maxim 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. *Maxim Rebuild Co. v. FMSHRC*, 848 F.3d 737, 740 (6<sup>th</sup> 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.”<sup>13</sup> *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 they may be found or made.” *Id.* at 740.<sup>14</sup> In reaching its conclusion, the Court stated that for the same

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<sup>13</sup> 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.

<sup>14</sup> 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 *Maxim 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 *Maxim Rebuild* decision does not



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 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).<sup>15</sup>

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

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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.

<sup>15</sup> 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 mining operations had been closed, "that the loading of trucks from the stockpiles would not be considered within MSHA's jurisdiction." *Id.*

*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 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.<sup>16</sup>

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<sup>16</sup> 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.

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 pay the Secretary of Labor the sum of \$8,251.00 within 30 days of this order.<sup>17</sup>

  
John Kent Lewis  
Administrative Law Judge

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<sup>17</sup> 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