

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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**FEB 16 2016**

SECRETARY OF LABOR  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),  
Petitioner,

v.

BRDARIC EXCAVATING, INC.,  
Respondent.

CIVIL PENALTY PROCEEDINGS

Docket No. PENN 2012-313-M  
A.C. No. 36-09216-289798

Docket No. PENN 2013-54-M  
A.C. No. 36-09216-304156

Docket No. PENN 2013-55-M  
A.C. No. 36-09216-304156

Mine: Buck Mountain Quarry

**ORDER DENYING RESPONDENT'S MOTION FOR SUMMARY DECISION AND  
GRANTING SECRETARY OF LABOR'S MOTION FOR SUMMARY DECISION**

Before: Judge Lewis

**I. PROCEDURAL HISTORY**

On February 22, 2012, Citation No. 8655952 was issued against Brdaric Excavating Inc. ("BEI") after John P. Brdaric Jr. ("Brdaric"), the Buck Mountain Quarry controller, refused to allow an MSHA inspector to enter the garage property, at 913 Miller Street, Luzerne, Pennsylvania, to conduct an inspection. Again, on May 14, 2012, MSHA was denied access to enter the garage property and Citation No. 8657882 was issued. On May 15, 2012, six citations were issued at the garage property for unsecured gas cylinders (8657883), no open flame warning (8657884), a blocked travel passageway (8657885), lack of electrical testing (8657886), an uninspected air compressor (8657890), and no recorded workplace examination (8657891).

Both parties filed motions for summary decision and a joint stipulation of facts on May 11, 2015. As part of the stipulations, the parties have agreed that if the Commission or a court of appeals determines that the garage is subject to MSHA jurisdiction, Citation No. 8657883, 8657884, 8657885, 8657886, 8657890, and 8657891 will be affirmed and assessed. Joint Stipulation. 73.<sup>1</sup> Conversely, if jurisdiction is not found, the aforementioned citations will be vacated. J.S. 74

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<sup>1</sup> Joint Stipulations will hereinafter be cited as J.S. followed by the stipulation numbers.

## II. STIPULATIONS

1. The citations at issue here involve conditions as they existed in February 2012 and May 2012. The parties agree that the following recitation of material facts accurately portrays conditions as they existed in 2012, unless otherwise stated.
2. Brdaric Excavating, Inc. is a corporation organized under the laws of Pennsylvania.
3. Until his death in September 2013, John P. Brdaric, Jr. was the sole shareholder of Brdaric Excavating, Inc.
4. Brdaric Excavating, Inc. provides excavation, site clearing, land grading, demolition, and related services to residential and commercial customers.
5. Brdaric Excavating, Inc. has a website at [www.brdaricexcavating.com](http://www.brdaricexcavating.com).
6. Until his death in September 2013, John P. Brdaric, Jr. was listed with MSHA as the controller of the Buck Mountain Quarry, a surface sandstone mine located in Luzerne County, PA.
7. Brdaric Excavating, Inc. is the operator of Buck Mountain Quarry, and has been the operator since March 2004.
8. Brdaric Excavating offers crushed stone, topsoil, clay, and other items from the quarry.
9. Brdaric Excavating delivers products from the quarry to customers' sites, or the customers can pick up material from the quarry.
10. Brdaric Excavating uses a variety of fixed equipment and vehicles at the quarry. Fixed equipment there includes conveyors, crushers, and screens. Vehicles include excavators, loaders, bulldozers, and a fuel truck.
11. Buck Mountain Quarry is a "mine" within the meaning of section 3(h) of the Mine Act, 30 U.S.C. § 802(h), and is therefore subject to the jurisdiction of the Mine Act.
12. Brdaric Excavating, Inc. has a non-coal surface mining permit from the Pennsylvania Department of Environmental Protection, Bureau of Mining and Reclamation, to operate Buck Mountain Quarry. The permit was issued on June 26, 1998.
13. Ronald A. Natt is an employee of Brdaric Excavating, Inc.
14. Ronald A. Natt is a mechanic who performed work at the Buck Mountain Quarry, in the garage, and other places.

15. Ronald A. Natt is the primary person who performs servicing and repairs on equipment and vehicles that Brdaric Excavating uses in the quarry, and for its non-quarry related activities.
16. Natt does most of that servicing and repair work in the quarry itself, using oil, parts, and equipment that are stored in the quarry.
17. Natt drives a Ford F750 pickup truck with a 14-foot auto-crane service body to the locations throughout the quarry where he performs servicing and repairs.
18. Natt also utilizes the pickup performing repair and maintenance on Brdaric Excavating equipment at non-quarry related sites when Brdaric Excavating is performing site work and/or demolition work.
19. The pickup truck contains Natt's tools, welding equipment, and other items, such as a grinder, all of which he uses when servicing and repairing equipment and vehicles in the quarry and outside the quarry.
20. The pickup truck is owned by Brdaric Excavating.
21. Several of Brdaric Excavating's other employees, including Jamie Fedor, Matthew Pacovsky, and Joseph Krogulski, spend at least a portion of their time working at the quarry.
22. Jamie Fedor was a quarry foreman in 2012 and drove her personal pickup truck throughout the quarry when she worked there.
23. Joseph Krogulski occasionally used welding equipment at the quarry; the equipment was stored on a pickup truck that Krogulski occasionally drove on quarry property.
24. Mr. Krogulski also performs non-quarry work for Brdaric Excavating at sites where Brdaric Excavating performs site work and demolition work.
25. Matthew G. Pacovsky is, and was during the relevant time frame, the safety director for Brdaric Excavating.
26. John P. Brdaric, Jr. also owned a garage located at 913 Miller Street, Luzerne, Pennsylvania.
27. The garage is a little over a mile away from the quarry, and the distance between the quarry and the garage can be driven in about five minutes.
28. The garage is not on the permitted area of the Buck Mountain Quarry site.

29. The garage is roughly 100 feet by 75 feet and includes work areas, a small office, and a bathroom. The work areas consist of four separate bays, accessed through three separate garage doors.
30. The garage is primarily used by mechanic Ronald Natt, although other Brdaric Excavating employees, including Joseph Krogulski and Matthew Pacovsky, also occasionally perform work there, either assisting Natt or doing their own work.
31. The garage is used to service and repair equipment and vehicles. Service includes oil changes, filter changes, chassis lubes, and hydraulic system service. State inspections for vehicles are also performed in the garage. Repair work in the garage includes repair to minor tools and saws.
32. The garage is also used to store oil, parts, air conditioning charging equipment, and other items.
33. An inventory of the garage's contents is attached as Joint Exhibit A.
34. The vast majority of the vehicles and pieces of equipment that are serviced and repaired in the garage are not used in the quarry, but instead are used for demolition, land grading, and similar jobs at customer sites.
35. The vast majority of the parts, oils, and equipment stored in the garage are not used to service and repair equipment and vehicles used in the quarry.
36. The vast majority of the machinery and equipment that is dedicated to the quarry and never used by Brdaric Excavating in its other businesses at remote sites is repaired and/or serviced at the quarry by Natt or Krogulski using their service trucks, and the parts, oils and filters required for this service/repair work are stored at the quarry.
37. From time to time Caterpillar and Commonwealth Equipment Company service quarry equipment on the mine site using their own service vehicles and tools.
38. Ronald Natt services and repairs some equipment and vehicles in the garage that are used in the quarry.
39. For example, according to Natt's deposition, Brdaric Excavating has "probably 15-20" Mack triaxle dump trucks that pick up materials at the quarry and deliver the materials to customer sites.
40. The dump trucks perform no other work at the quarry except to pick up mined materials from the quarry to be delivered to customer sites and to Brdaric Excavating's demolition and site work businesses.

41. The dump trucks are used for other, non-quarry related purposes as well when Brdaric Excavating is performing excavation or demolition work at customer sites.
42. Natt services and repairs the dump trucks in the garage, usually about every 2,000 miles, using parts and oils that are stored in the garage.
43. Parts and oils used to service the dump trucks are stored in the garage.
44. The dump trucks also receive their state inspections in the garage.
45. Natt keeps a written log of the important or major things that he works on.
46. A copy of the log is attached as Joint Exhibit B.
47. Entries for 2012 include the following:
  - On January 19, 2012, when the motor on a 988B wheel loader blew up at the quarry, Natt removed the motor and took it to the garage for repairs. He then took the motor back to the quarry to install it on the wheel loader.
  - On January 25, 2012, Natt replaced a rear axle on one of the dump trucks that are used to make deliveries from the quarry. The dump trucks are also used at off-site locations.
  - On January 27, 2012, Natt repaired a 2004 White Mack Granite dump truck in the garage; that truck is used to deliver materials from the quarry and is also used at off-site locations.
  - On January 28, 2012, Natt serviced a Granite 55 dump truck in the garage; that truck is used to deliver materials from the quarry and is also used at off-site locations.
  - On April 5, 2012, Natt serviced a Caterpillar 345 excavator in the garage; that excavator is used in the quarry as well as off-site locations.
  - On May 6, 2012, Natt serviced in the garage two 740 articulating Caterpillar trucks that are used in the quarry as well as at off-site locations.
48. The remaining entries for 2012 on Natt's log show that all remaining work was performed on non-quarry equipment either at the garage, or remote non-quarry sites, or was performed at the quarry utilizing Natt's service truck.
49. When Natt is working in the garage, he parks his Ford F750 pickup truck in the garage.

50. When the pickup truck needs servicing or repairs such as an oil change or tire change, Natt performs that work in the garage.
51. The Ford F750 pickup truck gets its state inspection in the garage as well.
52. The welding truck that Joseph Krogulski occasionally uses at the quarry is also serviced in the garage.
53. Jamie Fedor's personal pickup truck, which she drives on quarry property, has been serviced at the garage one or two times, and gets its state inspection there.
54. Brdaric Excavating stores air conditioning charging equipment in the garage that is used to charge vehicles used in the quarry.
55. The air conditioning charging equipment is also used to charge vehicles that are not used in the quarry.
56. John P. Brdaric, Jr. wrote to MSHA on February 28, 2012 regarding Citation #8655952 stating that the garage is not on mine property, that mine equipment is not serviced at the garage, and that the garage is not owned by Buck Mountain Quarry. The letter is misdated February 28, 2011.
57. Mr. Brdaric also related that MSHA had previously declined to exercise jurisdiction over the garage during Inspection #0899151 on February 28, 2008.
58. A copy of Mr. Brdaric's letter is attached as Joint Exhibit C.
59. A copy of MSHA's Inspection Report for Event #0899151 from February 28, 2008 is attached as Joint Exhibit D.
60. In addition to its quarry activities, Brdaric Excavating also performs demolition, land grading, and similar work at customer sites.
61. Brdaric Excavating employees who work at the quarry also perform work at customer sites.
62. Ronald Natt, for example, drives the Ford F750 pickup truck to customer sites to service and repair equipment and vehicles.
63. Natt does not know the amount of time he spends in the garage as compared to the time he spends at the quarry or at customer sites, and Brdaric being a family-owned business does not keep records of the work he does other than Mr. Natt's handwritten log.

64. Some of the vehicles and equipment that Brdaric Excavating uses in the quarry are also used at customer sites.
65. The Caterpillar 345 excavator, for example, is used in demolition work at customer sites.
66. In addition, the Mack triaxle dump trucks are used at customer sites to haul material.
67. On February 22, 2012, John P. Brdaric, Jr., denied MSHA inspectors access to the garage located at 913 Miller Street, Luzerne, Pennsylvania, on the ground that the garage was outside MSHA's jurisdiction.
68. On May 14, 2012, John P. Brdaric, Jr., denied MSHA inspectors access to the garage located at 913 Miller Street, Luzerne, Pennsylvania, on the ground that the garage was outside MSHA's jurisdiction.
69. This proceeding is subject to the jurisdiction of the Federal Mine Safety and Health Review Commission and its designated Administrative Law Judges pursuant to Sections 105 and 113 of the Act.
70. The individual whose signature appears in Block 22 of the citations at issue in this proceeding was acting in the official capacity and as an authorized representative of the Secretary of Labor when the citations were issued.
71. True copies of the citations at issue in this proceeding were served on Respondent as required by the Act.
72. The penalties at issue would not affect Brdaric Excavating's ability to remain in business.
73. If the Commission (or, if the matter is appealed, a court of appeals) determines that the garage located at 913 Miller Street, Luzerne, Pennsylvania, is within MSHA's regulatory jurisdiction, the parties agree that the citations in docket PENN 2013-55M (citations 8657883, 8657884, 8657885, 8657886, 8657890, and 8657891) and proposed penalties for that docket (\$875) should be affirmed and assessed. This stipulation is not intended to waive Brdaric Excavating's right to seek judicial review of any adverse decision on the jurisdictional question entered by the Administrative Law Judge or the Commission in an appropriate court of appeals.
74. If the Commission (or, if the matter is appealed, a court of appeals) determines that the garage located at 913 Miller Street, Luzerne, Pennsylvania, is not within MSHA's regulatory jurisdiction, the parties agree that the citations in docket PENN 2013-55-M (citations 8657883, 8657884, 8657885, 8657886, 8657890, and 8657891) should be vacated and that the proposed penalties for that docket should not be assessed. This stipulation is not intended to waive the Secretary's right to seek judicial review of any

adverse decision on the jurisdictional question entered by the Administrative Law Judge or the Commission in an appropriate court of appeals.

75. John P. Brdaric, Jr. died in September 2013.
76. Following John P. Brdaric, Jr.'s death, Brdaric Excavating's stock was evenly divided between his daughter, Jamie Fedor, and his son, John P. Brdaric III.
77. Ownership of the garage transferred to Jamie Fedor and John P. Brdaric III, also equally divided.
78. Brdaric Excavating continues to dispute MSHA jurisdiction over the garage.

J.S. 1-78.

### **III. CONTENTIONS OF THE PARTIES**

The Secretary asserts that the garage at 913 Miller Street, Luzerne, Pennsylvania is a mine under Section 3(h)(2), 30 U.S.C. §802(h)(2), of the Mine Act, and it falls under MSHA's jurisdiction. Sec'y.'s Mot. Summ. Decision 6-14.<sup>2</sup> Specifically, the Secretary contends that the garage is a facility that is used to service and repair equipment used at Buck Mountain Quarry, which qualifies the garage as a mine. S.M.S.D. 6-11.

Conversely, Respondent argues that the garage is not subject to MSHA jurisdiction, but instead OSHA jurisdiction. R.M.S.D. 4. Respondent contends that the vast majority of machines serviced and repaired at the garage are not an integral part of extracting minerals or mining, so the garage should not be subject to MSHA jurisdiction. R.M.S.D. 18.

### **IV. DISCUSSION**

#### **A. Summary Decision Standard**

Pursuant to Commission Rule 67(b) "a motion for summary decision shall be granted only if the entire record, including the pleadings, depositions, answers to interrogatories, admissions, and affidavits shows: (1) That there is no genuine issue as to any material fact; and (2) the moving party is entitled to summary decision as a matter of law." 29 C.F.R. § 2700.67(b).

Here the parties have stipulated to all material facts, and summary decision is appropriate.

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<sup>2</sup> Hereinafter, the Secretary's Motion for Summary Decision that was submitted on May 11, 2015 shall be abbreviated S.M.S.D, and Respondent's Motion for Summary Decisions that was submitted on May 11, 2015 shall be abbreviated R.M.S.D.



B. Findings of Fact and Conclusions of Law

Under the Mine Act, MSHA has jurisdiction over “each coal or other mine, the products of which enter commerce, or the operations or products of which affect commerce...each operator of such mine, and every miner in such mine.” 30 U.S.C. § 803. Section 3(h)(1)(C) defines a “coal or other mine” as:

lands, excavations...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...the milling of such minerals, or the work of preparing coal or other minerals.

30 U.S.C. § 802(h)(1)(C).

The Mine Act’s jurisdiction is broadly defined to include facilities and equipment to be used in mineral extraction and milling. *See* §802(h)(1)(C). At issue here is a facility. This facility is a garage that stored air conditioning charging equipment that is used to charge vehicles used in the quarry.<sup>3</sup> J.S. 54. Other equipment, such as dump trucks, an excavator, a 988B wheel loader motor, and articulating caterpillar trucks were repaired at the garage. J.S. 47, 54. The welding truck used by BEI employee Joseph Krogulski, which is used occasionally at the quarry, is serviced at the garage. J.S. 32, 52. Further, the truck used by BEI employee Ronald Natt (“Natt”) to service equipment at the quarry is repaired and kept parked at the garage; and, Natt is the primary person who repairs and services equipment and vehicles BEI uses in the quarry. J.S. 15, 17, 49, 50. With the garage being used for storage and repairs of the aforementioned quarry equipment and vehicles, this garage satisfies the plain reading of a facility used in mineral extraction and milling because the vehicles and charging equipment are used at the quarry. Thus, the garage is a mine and subject to MSHA jurisdiction.

The undersigned finds the statute’s language to be clear and unambiguous. Therefore, the plain language reading is appropriate in applying the “unambiguously expressed intent of Congress.” *Chevron U.S.A. Inc. v. Natural Res. Def. Council*, 467 U.S. 837, 842–43 (1984). Further analysis is consequently unnecessary.

Nonetheless, even when proceeding to the second prong of *Chevron*, MSHA jurisdiction over the garage is still appropriate. *Chevron U.S.A. Inc.* at 843. *Chevron*’s second prong asks “whether the agency’s answer is based on a permissible construction of the statute.” *Id.* “Deference is accorded to ‘an agency’s interpretation of the statute it is charged with administering when that interpretation is reasonable.’” *Lone Mountain Processing*, 20 FMSHRC

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<sup>3</sup> Buck Mountain Quarry is a mine that offers crushed stone, topsoil, clay, and other items from the quarry. J.S. 6,8.

927, 937 (Sept. 1998) (citing *Energy West Mining Co. v. FMSHRC*, 40 F.3d 457, 460 (D.C. Cir. 1994)). The Secretary's interpretation of the Mine Act should be affirmed when it is one of the "permissible interpretations the agency could have selected." *Lone Mountain Processing*, 20 FMSHRC at 937 (citing *Chevron*, 467 U.S. at 843; *Joy Techns., Inc. v. Sec'y of Labor*, 99 F.3d 991, 995 10th Cir. 1996), *cert. denied*, 117 S. Ct. 1691 (1997)).

The Secretary's interpretation is reasonable, considering the Act's legislative history. The Senate Committee stated its intention that "what is considered to be a mine and to be regulated under this Act be given the broadest possible interpretation, and ... that doubts be resolved in favor of inclusion of a facility within the coverage of the Act." S. Rep. No. 181, 95<sup>th</sup> Cong., 1<sup>st</sup> Sess. 14 (1977), *reprinted in* Senate Subcommittee on Labor, Committee on Human Resources, 95<sup>th</sup> Cong., 2<sup>nd</sup> Sess., *Legislative History of the Federal Mine Safety and Health Act of 1977* at 602 (1978). The Secretary's interpretation also supports the general purpose of the Act "to promote safety and health in the mining industry." S. Rep. No. 181 at 1.

The Commission has previously affirmed the Secretary's broad interpretation of what constitutes a mine. For example, the Commission has held that items inside of a garage used primarily for a sand and gravel mine such as a stove, grinder, and cylinders are "mines" for purposes of jurisdiction. *W.J. Bokus Indus., Inc.*, 16 FMSHRC 704 (Apr. 1994). While *W.J. Bokus* does not specifically reach the issue of jurisdiction for a garage, the Commission found that because miners worked in the garage and the cylinders, grinder, and stove were worked on by the miners or could affect the miners, these items were found to be mines. *Id.* at 708. Following the Commission's expansive finding that "the stove warmed the garage where miners worked and, thus, is an item of equipment used or to be used in mining," it logically follows that a garage that shelters miners from weather or other dangers would too be a facility used in mining. *Id.* at 708. The garage at issue—which stores and repairs quarry equipment—falls under the MSHA's jurisdictional reach.

Addressing the Respondent's argument that the distance between the garage and quarry of approximately one mile would preclude MSHA from exercising jurisdiction, this Court finds the distance to be minimal and in any case irrelevant to finding whether the garage is used in mineral extraction or milling. The Commission has found that a central supply shop that stored mining materials and supplies—although located at least one mile away from one of the operator's mines—was under MSHA jurisdiction.<sup>4</sup> *Jim Walter Res.*, 22 FMSHRC 21, 26 (Jan 2000). Thus, the garage's distance of slightly more than one mile from Buck Mountain Quarry is not determinative of whether it would fall under MSHA jurisdiction.

The Respondent's primary argument is that the garage is only used occasionally for isolated repairs. However, the Commission has held that only *de minimis* uses would prevent services from being subject to the Act. *Otis Elevator Co.*, 11 FMSHRC 1896, 1900–01 (Oct.

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<sup>4</sup> The Central Supply shop was one mile from the closest mine site, six miles from two mines, and twenty-five miles from the farthest mine owned by Jim Walters Resources. *Jim Walter Res.*, 22 FMSHRC at 22.

1989). “An independent contractor's presence at a mine may appropriately be measured by the significance of its presence, as well as by the duration or frequency of its presence.” *Lang Bros., Inc.*, 14 FMSHRC 413, 420 (Mar. 1992). While the Respondent argues only six vehicles used at the quarry were serviced or repaired at the garage in January, April, and May, the regularity of use and relationship between Buck Mountain Quarry and the garage is significant. J.S. 47. Six vehicles were repaired, air conditioning charging equipment used for quarry vehicles was stored at the garage, and Natt’s truck used at the quarry was stored and serviced at the garage. J.S. 15, 17, 47, 49, 50, 54. This is a regular relationship that is more than *de minimis* and justifies MSHA jurisdiction.

ALJ decisions have followed the expansive view on jurisdiction taken by the Secretary. In *Associated Sand & Gravel Co.* the ALJ found that “if a facility is used in support of mining activities to any extent, MSHA may choose to assert its jurisdiction.” 17 FMSHRC 1385, 1387 (Aug. 1995)(ALJ). *W.F. Saunders & Sons* also held “[i]t is immaterial that some of the equipment and machinery, or even most of it, may have been used in areas that may not have been under MSHA's jurisdiction.” *W.F. Saunders & Sons*, 1 FMSHRC 2130, 2132 (Dec. 1979)(ALJ). Additionally, in *Austin Powder Co.*, the ALJ found that a facility storing only 10% of the material used in a mining process “is more than enough to establish that its use is not *de minimis*. Using up to 10% of the stored materials would not signal ‘that it would be difficult to conclude that services were being performed.’” *Austin Powder Co.*, 37 FMSHRC 1337,1356-57 (June 2016)(ALJ) citing *Otis Elevator Co.*, 11 FMSHRC 1896, 1900-01 (Oct. 1989). These broad jurisdictional findings support the reasonableness of MSHA jurisdiction for the garage at issue.

The Respondent’s argument that the garage does not share corporate ownership with the quarry is not relevant to this Court’s determination as to whether the garage qualifies as a mine under the Act. The D.C. Circuit court has held that mine jurisdiction “does not require that those structures or facilities owned by a firm that also engages in the extraction of minerals from the ground or that they be located on property where such extraction occurs.” *Carolina Stalite Co.*, 734 F.2d 1547, 1552 (D.C. Cir. 1984). Thus, it is not dispositive that Buck Mountain Quarry is operated by BEI (of which John P. Brdaric was the sole shareholder) and the garage was owned by Brdaric in an individual capacity.

MSHA jurisdiction is appropriate under the plain reading of the Mine Act and under the Secretary’s interpretation. Therefore, Citation No. 8655952 and 8657882 denying MSHA inspectors access to the garage are affirmed.

### C. MSHA/OSHA Interagency Agreement

The Interagency Agreement between MSHA and OSHA holds that “the Federal Mine Safety and Health Act...authorizes the Secretary of Labor to promulgate and enforce safety and health standards regarding working conditions of employees engaged in underground and surface mineral extraction (mining), related operations, and preparation and milling of the minerals extracted.” MSHA/OSHA Interagency Agreement, 44 Fed. Reg. 22827, 22827 (March 29,

1979), *amended by* 48 Fed. Reg. 7521 (Feb. 22, 1983) (“Interagency Agreement”). Moreover, the agencies have stated that “the general principle is that as to unsafe and unhealthful working conditions on mine sites and in milling operations, the Secretary will apply the provision of the Mine Act and standards promulgated thereunder to eliminate those conditions.” *Id.*

The ALJ further notes that Point B.5. of the MOU specifically states that any jurisdictional “doubts” as to whether a physical establishment is subject to either authority by MSHA or OSHA should be “resolved in favor of the inclusion of a facility within the coverage of the Mine Act.” *Id.* at 22828; *Shamokin Filler Co.*, 33 FMSHRC 725, 728 (March 11, 2011) (ALJ). As a result, I reject the Respondent’s assertion that OSHA should have jurisdiction over the garage, because the garage falls under sections 802 and 803’s definition of a mine. 30 U.S.C. §§802(h)(1), 803.

Moreover, MSHA affords more protection for those working in mining conditions than OSHA. If MSHA jurisdiction was not asserted over this garage, there would not be adequate protection for the individuals working on mining equipment and there would be no liability for the garage operator if the mechanics improperly or inadequately repair or service mining equipment. In *Shamokin Filler Co.*, the Third Circuit emphasized “[b]ecause of the dangers inherent in mining, Congress also gave the Secretary more rigorous enforcement mechanisms under the Mine Act than under the OSH Act.” *Shamokin Filler Co.*, 772 F.3d 330, 333 (3d Cir. 2014). MSHA jurisdiction provides for protection at both the quarry and the garage.

#### D. Fair Notice

Under the Mine Act, facilities involved in mineral extraction or milling are subject to MSHA jurisdiction. 30 U.S.C. §803. This statute consequently provides notice of jurisdiction for the garage at issue here because the garage repaired and stored equipment and vehicles used in mineral extraction and milling at Buck Mountain Quarry. Further, notice of MSHA jurisdiction in garages and shops is available in the similar cases, such as, *W.J. Bokus* and *Jim Walters* cases. *W.J. Bokus*, 16 FMSHRC at 708 (finding jurisdiction over a stove, grinder, and cylinder inside a garage); *Jim Walter Res.*, 22 FMSHRC at 28 (finding jurisdiction over a central supply shop).

It is not necessary for MSHA to give specific notice to the Respondent that the garage could be subject to MSHA jurisdiction. Nonetheless, the Secretary quoted MSHA Inspector William MacDonald’s notes in 2008 stating he “[d]iscussed issue with the garage area and explained MSHA has jurisdiction over the garage area where mining equipment are [sic] repaired in this area.” S.M.S.D. at 13. He also wrote “[t]he company has decided as of today that no mining equipment will be repaired in the garage area.” *Id.* The Secretary’s evidence of a MSHA Inspector’s notes in Joint Exhibit D, show further notice given specifically to Buck Mountain Quarry that use of the garage for mining equipment repairs would invoke MSHA jurisdiction. *See id.* Accordingly, the Respondent has not been deprived of due process in having its garage subject to MSHA jurisdiction.

V. ORDER

The undersigned finds that MSHA has jurisdiction over the garage at issue, and that the Respondent had sufficient fair notice of the law. Accordingly:

The Respondent's Motion for Summary Decision is **DENIED**; and

The Secretary's Motion for Summary Decision is **GRANTED**.

Therefore, it is **ORDERED** that Citation No. 8655952 in PENN 2012-313-M and Citation No. 8657882 in PENN 2013-54-M should be affirmed.<sup>5</sup>

It is further **ORDERED** that the six citations in PENN 2013-55-M (Citation No. 8657883, 8657884, 8657885, 8657886, 8657890, and 8657891) and proposed penalties for that docket should be affirmed and assessed as per the parties Joint Stipulations. Accordingly, the Respondent shall pay \$2,987.00 within 30 days of this order.<sup>6</sup>



John Kent Lewis  
Administrative Law Judge

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<sup>5</sup> The parties stipulated by email on February 11, 2016, that Citations 8655952 and 8657882 should be affirmed, and the related penalties assessed, if jurisdiction is found.

<sup>6</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