



State of West Virginia
Office of the Attorney General

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Eugene White, Director
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Dear Director White:

You have asked for an Opinion of the Attorney General pertaining to the scope of a mine operator's duty to inspect operations under West Virginia Code § 22A-2-53c(10)(e). This Opinion is being issued pursuant to West Virginia Code § 5-3-1, which provides that the Attorney General "shall give written opinions . . . upon questions of law, whenever required to do so, in writing, by . . . any . . . state officer, board or commission." To the extent this Opinion relies on facts, it depends solely on the factual assertions set forth in your correspondence with the Office of the Attorney General.

Your request describes a question that has arisen concerning a particular coal mine that has an active West Virginia underground mine permit, but has ceased producing coal. The mine's openings have been barricaded with dirt and the mine operator is currently in the process of dismantling mining equipment located on the surface—including loading the equipment onto trailers and moving it offsite.

Your letter raises the following legal question:

Do the provisions of West Virginia Code § 22A-2-53c(10)(e) requiring a mine operator to inspect mining operations every twenty-four hours, and record the results of such inspections, apply where the mine operator is engaged only in the process of dismantling, loading, and moving surface mining equipment?

We conclude that the best reading of the statute is that the daily inspection and recording requirements do not apply under the particular facts you describe. We also note, however, that this is a close question of statutory interpretation that the Supreme Court of Appeals of West Virginia has not addressed. If the meaning of “mining operations” were to arise in litigation, a reviewing court might thus conclude, under principles of deference to a longstanding agency interpretation, that a contrary reading is a reasonable interpretation of a potentially ambiguous term.

Discussion

West Virginia Code § 22A-2-53c imposes affirmative duties and obligations on underground coal mine operators in order to ensure safe operating conditions. Specifically, Section 22A-2-53c(10)(e) provides:

When mining operations are performed within any twenty-four hour period, operations shall be inspected at least every twenty-four hours to assure safe operation and compliance with the law and rules. The results of which inspection shall be recorded.

Chapter 22A of the West Virginia Code does not provide a definition for the term “mining operations.” The Chapter’s definition section does, however, define “mine”:

The term “mine” includes the shafts, slopes, drifts or inclines connected with, or intended in the future to be connected with, excavations penetrating coal seams or strata, which excavations are ventilated by one general air current or divisions thereof, and connected by one general system of mine haulage over which coal may be delivered to one or more points outside the mine, *and the surface structures or equipment connected or associated therewith which contribute directly or indirectly to the mining, preparation or handling of coal, or construction thereof.*

W. Va. Code § 22A-1-2(a)(6) (emphasis added). This definition makes clear that “surface structures and equipment” are part of a mine only where they are “connected or associated” with underground structures and “contribute directly or indirectly” to mining, coal preparation, or underground construction. *Id.* The same factors that distinguish between surface structures that are (and are not) part of a “mine” can also resolve what subset of surface operations are properly classified as “mining” operations: activities surrounding the structures that “contribute” to ongoing mining and construction-related activity.

Several statutory features support the conclusion that above-ground activities are “mining operations” only where they support *current* mining activity. To begin, tying the inspection and recording requirements to “operations” puts the statute’s focus on action—as opposed to structures that supported mining activity in the past. The definition of “mine” similarly uses present tense to describe surface structures that “contribute directly or indirectly” to mining activity. W. Va. Code § 22A-1-2(a)(6). The Legislature could have included structures that “contributed” or are “capable of contributing” as well; the fact it did not is particularly telling where the same definition goes out of its way to include features that are both currently connected to excavations or intended to be connected “in the future.” *Id.* Similarly, Section

22A-1-2 describes the concept of “active workings” as “all places in a mine that are ventilated and *inspected regularly*.” *Id.* § 22A-1-2(c)(2) (emphasis added). Interpreting the daily inspection requirement too broadly would thus create tension with the Legislature’s apparent understanding that some parts of a mine—those not part of its “active” workings—lack regular inspections.

The West Virginia Surface Coal Mining and Reclamation Act also suggests that the Legislature did not intend for “mining operations” to include removing a mine’s surface structures. This statute is in a separate but related chapter of the Code, and statutory provisions “which relate to the same subject matter should be read and applied together, so that the Legislature’s intention can be gathered from the whole of the enactments.” Syl. pt. 3, *Smith v. State Workmen’s Comp. Com’r*, 159 W. Va. 108, 219 S.E.2d 361 (1975). Under the Surface Coal Mining and Reclamation Act, “mining operations” are defined as “[a]ctivities conducted on the surface of lands for the removal of coal, or . . . surface operations and surface impacts incident to an underground coal mine.” W. Va. Code § 22-3-3(u)(1). This definition indicates that when it comes to above-ground activity, mining operations are either tied directly to removing coal or are related to that same goal. It does not encompass—or at least not necessarily—activities necessary to remove materials that *used to* remove coal. Reading this definition *in pari materia* with Section 22A-2-53c is accordingly additional evidence that daily inspections are not required where a mine no longer processes coal and all that remains is to dismantle and remove no-longer-needed equipment.

We recognize, however, that despite these text- and context-based cues the meaning of “mining operations” in Section 22A-2-53c(10)(e) is a close question. The Legislature did not define this key term, and the Supreme Court of Appeals has not had an opportunity to weigh in. Further, the Office of Miners’ Health, Safety & Training has a duty to “give prime consideration to the protection of the safety and health of persons employed within or at the mines of this state” when enforcing Chapter 22A. W. Va. Code § 22A-1-1(b). And the Supreme Court of Appeals has explained that where it is necessary to interpret mining-related statutes, “the legislation is to be interpreted liberally to effect the purpose of protecting the health and safety of the miner.” *United Mine Workers of Am. v. Faerber*, 179 W. Va. 65, 69, 365 S.E.2d 345, 349 (1986) (citation omitted). These health-and-safety concerns are less pressing under the specific facts you describe—you explain that the mine in question still has an active underground mining permit, and the Code requires regular safety disclosures for all mines on active status as well as “frequent examinations” “by the mine inspector during the tenure of the permit.” W. Va. Code §§ 22A-2-77, 22A-2-78. Nevertheless, if a reviewing court finds the definition of “mining operations” ambiguous, this safety-promoting presumption may support a broader reading.

We therefore conclude that the best interpretation of Section 22A-2-53c given its terms and statutory context is that “mining operations” does not include activities limited to disassembling and removing materials after underground mining operations have been shuttered. But we also emphasize that a reviewing court might defer to a contrary agency interpretation as a “permissible” reading of an undefined statute. *See Sniffin v. Cline*, 193 W. Va. 370, 374, 456 S.E.2d 451, 455 (1995) (citing *Chevron U.S.A., Inc. v. Natural Res. Defense Council, Inc.*, 467 U.S. 837, 843 (1984)). Indeed, reviewing courts frequently uphold longstanding and consistent agency interpretations that reasonably interpret ambiguous text. *Appalachian Power Co. v. State*

Tax Dep't of W. Va., 195 W. Va. 573, 591 n. 24, 466 S.E.2d 424, 442 n. 24 (1995). Our conclusion when reviewing the statute on its own terms might thus change were this case to arise in a context that implicates the doctrine of agency deference.

Sincerely,



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Lindsay See
Solicitor General

Virginia Payne
Assistant Solicitor General