

PART II
DEFINITIONS

C. COAL MINE

The definition of a coal mine is important in that an individual is considered a miner only to the extent that work is performed in or around a coal mine or coal preparation facility. See Part II A. of the Desk Book. For purposes of the Act, a coal mine is broadly defined as an area of land and all structures, facilities, machinery, tools, equipment, shafts, slopes, tunnels, excavations, and other property, real or personal, placed upon, under, or above the surface of such land by any person, used in, or to be used in, or resulting from, the work of extracting in such area bituminous coal, lignite, or anthracite, from its natural deposits in the earth by any means or method, and the work of preparing the coal so extracted, and includes custom coal preparation facilities. 30 U.S.C. §802(h)(2); see 20 C.F.R. §725.101(a)(23).

The Board noted that a clay mine that also produces coal will be considered a coal mine under the Act if coal mining constitutes at least a substantial part of the activity and exposure. It was error to translate the substantial activity standard to a one of primary activity as it is unlikely that a clay mining company would engage in coal mining as its primary activity. The Board held, following *Hinton v. Director, OWCP*, No. 84-3299 (6th Cir., Mar. 22, 1985)(unpublished), that a determination of whether the miner's employers had a sufficient economic interest in the coal generated in clay mining is pertinent to the dispositive issue of whether coal mining was a substantial part of the clay miner's work. *Smith v. Director, OWCP*, 9 BLR 1-25 (1986)(Brown, J., dissenting).

CASE LISTINGS

[cement company that purchased raw coal and processed it for its own use not a coal preparation facility] *Ferris v. Director, OWCP*, 3 BLR 1-320 (1981); *McKee v. Director, OWCP*, 2 BLR 1-804 (1980).

[construction firm that erected and repaired coal preparation facilities is coal mine operator] *Hughes v. Heyl & Patterson, Inc.*, 647 F.2d 452, 3 BLR 2-15 (4th Cir. 1981).

[definition of coal mine includes both surface and underground mines] *Malinski v. Arch Mineral Corp.*, 4 BLR 1-270 (1981); *Battaglia v. Peabody Coal Co.*, 3 BLR 1-729

(1981), *vacated and remanded on other grounds*, 690 F.2d 106, 5 BLR 2-1 (7th Cir. 1982).

[Sixth Circuit held that the definition of a coal mine is inextricably related to the function rather than the physical characteristics of the land itself] ***Southard v. Director, OWCP***, 732 F.2d 66, 6 BLR 2-26 (6th Cir. 1984).

[Mines that are subject to the inspection and citation provisions of 30 U.S.C. §802(h)(1) not necessarily coal mines for purposes of the Act] ***Weikel v. M.E. Wallace Co.***, 6 BLR 1-858 (1984).

[claimant's work at opening of mine shaft and at periphery of a pit mine occurred in or around a coal mine as defined in 20 C.F.R. §725.101(a)(23)] ***Tackett v. Director, OWCP***, 6 BLR 1-1081 (1984).

A coke manufacturing plant is not a coal mine] ***Morris v. Director, OWCP***, 6 BLR 1-653 (9183); ***Vasquez v. Director, OWCP***, 6 BLR 1-373 (1987); see ***Sexton v. Mathews***, 538 F.2d 88 (4th Cir. 1976).

[clay mine that also produces coal is coal mine if coal mining constitutes "at least a substantial part of the activity and exposure." Not here as coal was generally removed to extract clay deposits and was not used for any purpose other than the employees' personal use] ***Wisor v. Director, OWCP***, 6 BLR 1-727 (1984), *aff'd*, 748 F.2d 176, 7 BLR 2-46 (3d Cir. 1984); see also ***Montel v. Weinberger***, 546 F.2d 679, 1 BLR 2-16 (6th Cir. 1976).

[definition of coal mine under 20 C.F.R. §725.101(a)(23), includes strippings where claimant picked coal] ***Hutnick v. Director, OWCP***, 7 BLR 1-326 (1984).

DIGESTS

A facility used in the preparation of coal, wherever it is located, constitutes a coal mine under the Act. ***Foreman v. Director, OWCP***, 794 F.2d 569, 9 BLR 2-90 (11th Cir. 1986).

A construction worker who worked in a surface mine construction project that was not yet operable and who did not work in the vicinity of an operable mine was not a miner under the Act. ***Director, OWCP v. Zeigler Coal Co., [Wheeler]***, 853 F.2d 529 (7th Cir. 1988).

The phrase "in or around a coal mine" does not necessarily mean "on coal mine property." For instance, in ***Baker v. United States Steel Corp.***, 867 F.2d 1297, 12 BLR

2-213 (11th Cir. 1989), the Eleventh Circuit held that in determining "situs," the geographical distance of the work area from a mine is but one relevant factor to be considered in determining whether the miner worked "in or around a coal mine." The application of a "fixed distance" rule, however, is not appropriate. Rather, the administrative law judge must consider all relevant circumstances underlying each particular claim. ***Baker, supra.***

The Board affirmed the administrative law judge's finding that in light of employer's new technology, the carbonaceous material from employer's culm bank has extractable anthracite coal in it. The Board affirmed the finding that the culm material processed by employer is coal based in part on the finding that employer operated a preparation plant to prepare the culm material for energy use, and that the preparation plant's operation was subject to safety regulations and operational safeguards mandated by MSHA, thus, its activities are subject to regulation under 30 U.S.C. §802(1). The Board specifically upheld as proper the finding that employer sells "anthracite waste material," a material "akin" to coal. Therefore, it was permissible for the administrative law judge to conclude, pursuant to ***Marshall v. Stoudt's Ferry Preparation Co.***, 602 F.2d 589 (3d Cir. 1979), *cert. denied*, 444 U.S. 1010 (1980), that "the carbonaceous material, which has coal in it, albeit a small amount, was rendered marketable by the Waste Management preparation facility, and therefore, covered under the Act and regulations." ***Schegan v. Waste Management and Processors, Inc.***, 18 BLR 1-41 (1994).

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