

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

CARGILL, INC.,

Petitioner,

v.

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

Respondent.

No. 26-3287

On Motion to Dismiss for Lack of Jurisdiction

Petition for Review of an Order of the Federal Mine Safety and Health Review Commission.

Nos. LAKE 2022-0285; LAKE 2023-0013.

Decided and Filed: September 23, 2026

Before: SUTTON, Chief Judge, CLAY and BUSH, Circuit Judges.

COUNSEL

ON MOTION TO DISMISS: Susannah M. Maltz, UNITED STATES DEPARTMENT OF LABOR, Washington, D.C., for Respondent. **ON RESPONSE:** Joseph S. Diedrich, HUSCH BLACKWELL LLP, Washington, D.C., for Petitioner.

ORDER

Cargill, Inc., owner of a salt mine in Cleveland, seeks review of an order issued by the Federal Mine Safety and Health Review Commission that reversed an administrative law judge's decision and remanded the matter for further proceedings. The Secretary of Labor, Mine Safety

and Health Administration moves to dismiss the petition given the absence of a final order. Because the Commission's order is not a final one, we grant the motion and dismiss the petition.

Hidden beneath Cleveland is a massive mine where Cargill employees harvest road salt by blasting the rock face with explosives. The miners send debris on a conveyor belt to an underground mill to be crushed and hoisted to the surface. Along with salt, blasting also produces nitrogen dioxide.

The Mine Safety and Health Act requires all operators to maintain "at least two separate and distinct travelable passageways" in "safe condition" for use as "escapeways." 30 U.S.C. § 877(f)(1); *see* 30 C.F.R. § 57.11051. Nitrogen dioxide is noxious, and elevated levels make passageways unsafe. *Sec'y of Lab. v. Cargill, Inc.*, 48 F.M.S.H.R.C. 100, 101 (2026). In July 2022, an inspector from the Mine Safety and Health Administration tested an area in the Cleveland Mine that Cargill designated as an escapeway and found nitrogen dioxide concentrations up to 10.3 parts per million. *See Cargill, Inc. v. Sec'y of Lab.*, 46 F.M.S.H.R.C. 667, 671 (2024). The Secretary deems a passageway unsafe when nitrogen dioxide levels exceed five parts per million, prompting the inspector to cite Cargill for a "significant and substantial" violation. *Cargill*, 48 F.M.S.H.R.C. at 100.

Cargill contested the violation before an administrative law judge. *See Cargill*, 46 F.M.S.H.R.C. at 668. Finding that nitrogen dioxide levels below 15 parts per million would not impair a miner's ability to escape, the judge vacated the citation. *Id.* at 705–09. He also found that Cargill lacked sufficient notice of the Secretary's interpretation that five parts per million was the threshold for safety. *Id.* at 708 n.32.

The Secretary petitioned for review before the Commission. The Commission concluded that Cargill "should have been aware that exceeding the 5-ppm limit for NO₂ would render the secondary escapeway unsafe in violation of section 57.11051(a)" and reversed. *Cargill*, 48 F.M.S.H.R.C. at 100–01. It remanded the matter to the administrative law judge with instructions to "determine the appropriate penalty amount after resolving any outstanding issues, such as the 'significant and substantial' nature of the violation." *Id.* at 107. Rather than wait for

the judge to do so, Cargill petitioned for review. The Secretary moves to dismiss the petition as premature.

Unless Congress specifically tells us otherwise, we may review administrative decisions only after the agency process results in a final order. “The strong presumption,” the Supreme Court has explained, “is that judicial review will be available only when agency action becomes final.” *Bell v. New Jersey*, 461 U.S. 773, 778 (1983). This is not a new idea, whether with respect to agency decisions or run-of-the-mine district court decisions. “[E]ver since the first Judiciary Act, Congress has been loathe to authorize review of interim steps in a proceeding.” *Rochester Tel. Corp. v. United States*, 307 U.S. 125, 131 (1939). Its hesitance is part procedural philosophy and part constitutional necessity. A finality requirement “guards against piecemeal appeals” and protects judicial resources. *Page Plus of Atlanta, Inc. v. Owl Wireless, LLC*, 733 F.3d 658, 659 (6th Cir. 2013). Some interlocutory orders, moreover, threaten at most a contingent future injury, making them potentially unripe under Article III. *See, e.g., United States v. L.A. & Salt Lake R.R. Co.*, 273 U.S. 299, 309–10 (1927) (“so-called order” was not an appealable order under the Urgent Deficiencies Act because there was no case or controversy). Congress thus sensibly polices interlocutory review, such as by creating a rule that only final district court judgments may be appealed, subject to limited exceptions. *See* 28 U.S.C. §§ 1291–92.

For similar reasons and consistent with *Bell*, we presume that Congress requires a final agency decision before a petitioner may seek review of an administrator’s action in the federal courts. This background principle allows the agency to develop a factual background and apply a statute free from the “premature interruption of the administrative process.” *McKart v. United States*, 395 U.S. 185, 193–94 (1969). When the agency has finished its work and any concrete and particularized injury has materialized, federal judges enter the picture, checking the agency’s work by interpreting the statute afresh. In creating this division of labor, Congress commits agencies and judges to their proper spheres of authority. *See Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 214–15 (1994).

A background presumption of required finality is a presumption, however, not a conclusive requirement. That means Congress may rebut the presumption with “language or

structure” that “demonstrates” it intended to allow for the appeal of an interlocutory agency order. *Mach Mining, LLC v. EEOC*, 575 U.S. 480, 486 (2015) (explaining how Congress can rebut the similarly strong presumption in favor of judicial review of final agency action).

In this instance, Congress did not rebut the presumption of finality when it enacted the Mine Safety and Health Act and authorized review of the agency’s decisions. The relevant statute gives us authority to review an appeal of “[a]ny person adversely affected or aggrieved by an order of the Commission.” 30 U.S.C. § 816(a)(1). Mere permission to review “an order” by the agency does not alter the background imperative of finality. The Supreme Court long ago rejected an argument that a remand order was reviewable under the Federal Power Act’s authorization of appeals from administrative “orders,” construing the statute to extend only “to orders of a definitive character,” not mere “interlocutory directions.” *Fed. Power Comm’n v. Metro. Edison Co.*, 304 U.S. 375, 383–84 (1938). Lower courts, including ours, have consistently determined that Congress’s permission to seek review of administrative “orders” does not abrogate the finality requirement. *See, e.g., Burdue v. FAA*, 774 F.3d 1076, 1080 (6th Cir. 2014); *Rosenthal & Co. v. Commodity Futures Trading Comm’n*, 614 F.2d 1121, 1126–27 (7th Cir. 1980).

Statutory text must be read in context, and “[s]ometimes context indicates that a technical meaning applies.” Antonin Scalia & Bryan A. Garner, *Reading Law* 73 (2012). The relevant context here is that an administrative agency issued the order. “Administrative order” has a special meaning, namely the “final disposition of a matter before an administrative agency.” *Administrative order*, Black’s Law Dictionary 43 (5th ed. 1979). The Administrative Procedure Act, too, incorporates a finality component, defining an order as “the whole or a part of a final disposition . . . of an agency.” 5 U.S.C. § 551(6); *see Cytori Therapeutics, Inc. v. FDA*, 715 F.3d 922, 926 (D.C. Cir. 2013) (Kavanaugh, J.) (treating as conclusive this definition absent a separate statutory definition). The Supreme Court has confirmed that an intermediate proceeding within an agency is not “a part of a final disposition.” *Int’l Tel. & Tel. Corp. v. Loc. 134, Int’l Bhd. of Elec. Workers, AFL-CIO*, 419 U.S. 428, 443–44 (1975). Where Congress “borrows terms of art in which are accumulated the legal tradition and meaning” of the administrative state’s entire existence, “it presumably knows and adopts the cluster of ideas that

were attached to each borrowed word.” *Lackey v. Stinnie*, 604 U.S. 192, 200 (2025) (quotation omitted). “[P]ost-APA statutes” like the Act, no surprise, thus “typically incorporate the APA’s concepts and distinctions.” *New England Tel. & Tel. Co. v. Pub. Utils. Comm’n*, 742 F.2d 1, 5 (1st Cir. 1984) (Breyer, J.).

All of this explains why every circuit to consider this issue has concluded that the Act does not rebut *Bell*’s strong finality presumption. See *Monterey Coal Co. v. Fed. Mine Safety & Health Rev. Comm’n*, 635 F.2d 291, 292–93 (4th Cir. 1980); *Jim Walter Res., Inc. v. Fed. Mine Safety & Health Rev. Comm’n*, 920 F.2d 738, 743–44 (11th Cir. 1990) (per curiam); *Meredith v. Fed. Mine Safety & Health Rev. Comm’n*, 177 F.3d 1042, 1047–48 (D.C. Cir. 1999).

To all of this, Cargill has two responses. The first is to point to an express finality requirement in § 816(b) when the Secretary files an appeal. Noting that Congress knows how to impose a finality requirement when it wishes to and noting that no such word appears in § 816(a)(1) when other parties seek review, it argues that Congress must have meant to allow review of interlocutory orders like this one. That is a fair point and might suffice in an ordinary case. But “the force of any negative implication . . . depends on context.” *Rutherford v. United States*, 146 S. Ct. 1320, 1332 (2026) (alteration in original). Today’s context comes with a strong presumption of finality across all administrative review provisions. The mere use of “final” elsewhere in the same statute does not suffice to alter the customary reading of “order” in administrative-review provisions.

Even reading §§ 816(a)(1) and 816(b) in tandem, Congress did not clearly show that it wanted to grant different appellate privileges to the regulators and to the regulated. Section 816(b) begins by saying that the Secretary “may *also* obtain review” of Commission orders. 30 U.S.C. § 816(b) (emphasis added). “Also” means likewise. *Also*, Webster’s New Collegiate Dictionary 33 (8th ed. 1979); see *Also*, Black’s Law Dictionary 71 (5th ed. 1979) (the two words have “nearly the same” meaning). These words signal continuity with what precedes them, not a significant departure from it. If Congress meant to give the Secretary a much narrower route to federal review, “also” would have been an unusual way to indicate that intention. The better reading is that Congress wanted to specify the Secretary as an additional holder of the review right, not to impose a materially different condition on that right. The end of the sentence

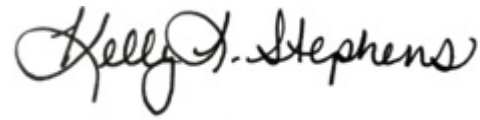
reinforces this point: “[T]he provisions of subsection (a) shall govern such proceedings to the extent applicable.” 30 U.S.C. § 816(b). Congress expressly incorporated subsection (a) because it viewed the two subsections as doing together what judicial review provisions almost always do: vesting the government and industry with reciprocal access to the federal courts.

Cargill’s second response is to argue that, even if § 816(a)(1) requires finality, the Commission’s remand order satisfies the requirement. We disagree. Finality has two conditions: “First, the action must mark the consummation of the agency’s decisionmaking process . . . [and] must not be of a merely tentative or interlocutory nature. And second, the action must be one by which rights or obligations have been determined, or from which legal consequences will flow.” *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997) (quotations and citations omitted). We have long recognized that orders remanding for further administrative proceedings do not satisfy these requirements. *See, e.g., Canada Coal Co. v. Stiltner*, 866 F.2d 153, 156 (6th Cir. 1989). The Commission determined that Cargill broke the law, but substantive questions remain to be adjudicated. It directed the administrative law judge to resolve these outstanding issues, including the “significant and substantial” nature of the violation. That determination is no trifle. A significant and substantial finding brings heightened punishments for a subsequent violation. *See* 30 U.S.C. §§ 814(d)(1), 814(e). And it would help inform the consequences of this one, say by determining what penalty Cargill owes. *Id.* § 820.

Even so, Cargill insists, the Commission’s order resolves the “core” issue of the case—the violation of the safe passageways rule. But cores have peripheries, such as the size of any penalty. Cargill will be entitled to ask for our review of that ruling, peripheral though it may be. *See Mach Mining, LLC v. Sec’y of Lab.*, 809 F.3d 1259, 1263 (D.C. Cir. 2016) (conceding liability but challenging a significant and substantial finding). What Cargill really wants is permission to bring a piecemeal appeal. Yet that’s just what the finality requirement prevents. It bears adding that, while collateral orders are sometimes excepted from the final order requirement, *see Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546 (1949), Cargill does not argue that this exception applies.

For these reasons, the motion to dismiss is **GRANTED** and the petition is **DISMISSED**.

ENTERED BY ORDER OF THE COURT

A handwritten signature in black ink, reading "Kelly L. Stephens". The signature is written in a cursive, flowing style with a large initial "K".

Kelly L. Stephens, Clerk