



COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF MINES, MINERALS AND ENERGY  
DIVISION OF MINED LAND RECLAMATION  
P. O. DRAWER 900; BIG STONE GAP, VA 24219  
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### Informal Hearing Determination

**Company:** Baden Reclamation Company, Inc,      **Permit No.:** 1101953  
**Subject:** Notice of Violation WAC0008321      Violations 1 and 2 of 2  
**Hearing:** March 6, 2012 @ 10:00 AM      **Location:** Company Office  
**Participants:** Les Vincent (Permit Engineer), Bill Cronce (DMLR Inspector)

### Summary of Informal Hearing

Information provided concerning Authorization to Operate (AO) listed in part 1 of 2 for Notice of Violation (N.O.V.) # WAC0008321:

This part of the N.O.V. cited the operator for failing to submit a notice to the DMLR of the company's intention to cease mining and reclamation for more than 30 days. The informal hearing began with Inspector Cronce identifying the various mining areas of the permit that have been disturbed and not completely reclaimed. Area # 1 consists of the portion of the permit located beside State Rt. # 83. Area # 2 consists of a portion of the permit that is located near a main power line. Area # 3 consists of an area East of Basin # 6. Area # 4 includes the Northwest portion of the permit area.

Inspector Cronce stated that at the time the N.O.V. was issued, Area 2 and Area 4 was already covered by a notice of Temporary Cessation (T.C.). He also stated that a section of the mining area associated with the highwall North of Basin # 7 and the area between Basin # 7 and Basin # 8 did not need a T. C. since reclamation work was occurring in those areas (Area # 1) by a contractor (Mc Fall contractor). Inspector Cronce stated that mining and/or reclamation activity had ceased in Area # 3 at the end of October of 2011. He stated that he had discussed the need to submit a T.C. notice on this area with coal company personnel. Inspector Cronce referenced an e-mail that detailed the dates and times that he had discussed this with company personnel. He stated that no T.C. notice was submitted and he issued a N.O.V. on 1/18/12 for Area # 3.

Mr. Vincent stated that Baden Reclamation Company, Inc. did not agree that they were in violation of failing to submit a notice of Temporary Cessation. He stated that at the time the N.O.V. was issued, there were certain areas that were being reclaimed. Mr. Vincent stated that company officials (Mr. Justice and Mr. Mc Amis) had met with Butch Lambert, Department of Mines, Minerals, and Energy (DMME) Deputy Director, approximately 2 weeks prior to the issuance of this N.O.V. He stated that in that meeting the mining status of this permit was discussed. Mr. Vincent stated that it was his understanding that Mr. Justice had asked Mr.

Lambert if a notice of temporary cessation was required for this permit. Mr. Vincent stated that Mr. Mc Amis returned from that meeting and informed him and other company personnel that Mr. Lambert had told Mr. Justice that a notice of Temporary Cessation was not needed if work was occurring on the permit. Mr. Vincent stated that according to his information, Mr. Lambert had stated that DMLR didn't really split up areas on permits when determining if a T.C. notice is required. Mr. Vincent stated that the company was proceeding under that assumption and was really surprised when the N.O.V. was issued.

Mr. Vincent stated that a plan dated 2/21/12 was submitted to DMLR that outlines, for a number of permits, what areas need to be placed in Temporary Cessation and when those areas will be placed in Temporary Cessation. He stated that the plan included the area covered by this N.O.V. He stated that they were continuing to work with DMLR inspectors to address all the various issues on the listed permits.

Information provided concerning Water Monitoring (WM) listed in part 2 of 2 for Notice of Violation (N.O.V.) # WAC0008321:

Mr. Vincent stated that the company disagreed that a WM violation occurred for monitoring point SW-10. Mr. Vincent submitted a written statement from company employee, Jon Lawson, which was presented as the company's official response to this WM violation. This official response is included in its entirety as written.

The official response is:

*"This point was initially a baseline point for the acreage amendment. Once the application was approved in Spring 2011, EMI continued to sample but did not report because their system kept it as a baseline point.*

*Once the delinquency report was available at DMLR in October 2011 (for 2<sup>nd</sup> quarter) the point was changed to a MPID and reported correctly for the 4<sup>th</sup> quarter. The timing of the delinquency report affected our reporting in the 3<sup>rd</sup> quarter. All information on this point was provided to DMLR as soon as the issue came to light."*

**Informal Hearing Recommendation**

This informal hearing was concluded on 3/12/12 upon completion of reviewing the permit file, National Pollutant Discharge Elimination System (NPDES) requirements, inspection reports, applicable portions of the Pre-amble to the Federal Register, and the Virginia Coal Surface Mining Reclamation Regulations (VCSMRR).

Inspector Cronce issued Part 1 of 2 of N.O.V. # WAC0008321 on 1/18/12 for failing to submit a notice of Temporary Cessation for certain areas not being actively mined or reclaimed and not

already covered by a notice of Temporary Cessation. The specific area that is alleged to be in violation of Section 4 VAC 25-130-816.131 (b) is referred to as mining Area # 3 (based on information obtained at this informal hearing). The other mining areas were either in T.C. or reclamation activity was occurring.

The regulation cited requires, among other items, that the permittee submit to the Division a notice of their intentions to cease or abandon mining and reclamation operations if the cessation will last for more than 30 days. A review of the DMLR records details that on October 27, 2011 mining equipment was being loaded and taken from the site with no other work occurring on the permit. The inspector and company personnel are in agreement with the dates listed in the inspection reports and there is no disagreement that no mining or reclamation activity has occurred for more than 30 days in mining area # 3. However, the permittee contends that the regulations do not require a notice of Temporary Cessation if mining and/or reclamation activity is occurring on any area of a permitted surface coal mining operation. Furthermore, the permittee contends that they had been led to believe that this was the correct interpretation of Section 4 VAC 25-130-816.131 (b) by DMME management.

A careful review of this section makes it very clear that a notice of Temporary cessation must be filed with the Division when both mining and reclamation activities cease on the entire operation. The information conveyed from DMME management to the permittee is correct in respect to when mining and reclamation operations cease on the entire permit. However, does the section also require a notice of T.C. to be filed if only certain portions of a permit cease mining and reclamation operations? In order to answer that question, one must look at the intent of this regulation. The pre-amble of the Federal Regulations dated March 13, 1979 sheds some light on why the regulators required a notice of T.C. to be filed.

*“...Section 101(e) of the Act states that one purpose of the Act is to minimize, so far as practical, the adverse environmental effects of mining operations. The provision in Section 816.131(b) would assure notification to the regulatory authority of those activities which would protect or improve the environment and assure that the provisions of this Section were being met. It also would give the regulatory authority the opportunity to modify the plan if different measures were appropriate...”*

If, as we have in this case, mining and reclamation operations ceased on part of a permit; the disturbed areas associated with that mining area would not be reclaimed as contemporaneously as practicable as required by Section 4 VAC 25-130-816.100. This could result in adverse environmental effects on and off the permitted area. In order to ensure that the purpose of

Section 101 (e) of PL 95-87 is achieved, a notice of T.C. was required. This notice to the Division will ensure that the permittee evaluates the proposed cessation, and changes his plan where needed, to ensure that adverse environmental effects from each disturbed area will be minimized.

A review of the approved plans for this permit further supports the requirement to file a notice for T.C. on each mining area where mining and reclamation operations have ceased for more than 30 days. A portion of approved Revision # 1004159 states:

*“that as many as four (4) mining areas ... may be worked at the same time, and it would not be possible to have highwalls of 250 feet in all four areas at once. It is estimated that in four separate mining areas, exposed highwall heights could be as much as 250 ft. (Area 1), 245 ft. (Area 3), 235 ft. (Area 2), and 165 ft. (Area 4), respectively. In each of these areas then, rough backfilling and regrading will be completed within 2500 ft., 2450 ft., 2350 ft. and 1650 ft., respectively, from the point of coal removal. This results in maximum exposed highwall lengths of 3100 ft., 3050 ft., 2950 ft., and 2250 ft., respectively, for a total of 11,350 ft.”*

It is obvious from reviewing the approved detailed plans that there exist within this one permit on-going separate mining and reclamation areas. Each separate mining area has its own specific reclamation time and distance limits and each separate mining area has its own potential for adverse environmental effects to occur. Without the submittal of a notice for permits that have areas that have partially ceased mining and reclamation activities, the intent of the regulations has been circumvented and the potential for adverse conditions exists for each of those areas.

Additionally, this permit has been incrementally bonded. This further supports the fact that this permit has been approved with independent mining areas and these increments are eligible for independent bond releases.

Therefore, it is my determination that the permittee was in violation of Section 4 VAC 25-130-816.131(b). It is my recommendation that Notice of Violation # WAC0008321, part 1 of 2 for (AO) was properly issued and should be affirmed.

This informal hearing must also decide if Part 2 of 2 contained in N.O.V. WAC0008321 was properly issued. The inspector issued a Water Monitoring (WM) violation because no water monitoring reports for Monitoring Point Identification Number (MPID) 0007474 (sampling point SW-10) were submitted to DMLR for a part of 2<sup>nd</sup> quarter 2011 and for the entire 3<sup>rd</sup> quarter 2011. Section 4 VAC 25-130-816.41 (e) requires, among other items, that surface water monitoring be conducted on each point in accordance to the permit's approved hydrologic reclamation plan and submit the required data to the DMLR every three (3) months. Complete and accurate data is required so that a proper evaluation can be made concerning the impact from this mining operation on the hydrologic balance of the surrounding area. The permittee argues

that the point was sampled but the information wasn't submitted to DMLR because it was being entered into their data system as a baseline point. There is no disagreement that this was a baseline point until Revision 1006628 was approved in the spring of 2011. There is also no disagreement that once the DMLR delinquent water monitoring report was available in October of 2011, the company changed their records to reflect that SW-10 was a surface water monitoring point. The permittee stated that the company has now submitted all monitoring data for the point which includes the time period covered by the N.O.V.

This case must be decided on the (NPDES) Permit Conditions contained in the permit's approved plans and not on the DMLR delinquent water monitoring report. A review of the reporting requirements for approved NPDES monitoring point SW-10 (as approved in Revision # 1006628) clearly states that monitoring for this point is to occur monthly and be reported to the Division quarterly. Please note that NPDES Permit Conditions require that sample results must be submitted within 30 days after the end of the calendar quarter. The applicable portion of that revision is included here:

**APPLICATION NO. 1006628**

"The applicant is proposing the addition of six (6) in-stream monitoring points (SW-8 through SW-13) and six (6) NPDES monitoring points (017 through 022) due to this revision application. Also, within this application the applicant will be adjusting the coordinates for NPDES monitoring points 004 and 008. NPDES point 004 is being updated to match its actual field location while point 008 is being moved due to the relocating of Basin No.8.

**The In-stream monitoring will be conducted monthly at the added location. A summary of laboratory results will be reported to the Division quarterly on approved forms.** (emphasis added)

Laboratory test parameters will include the following:

- 1) pH
- 2) Dissolved solids or specific conductance corrected to 25°C
- 3) Flow
- 4) Acidity
- 5) Alkalinity
- 6) Total iron
- 7) Total manganese
- 8) Sulfate
- 9) Total suspended solids.....".

This revision was approved on 5/17/2011. With the approval of this revision, SW-10 became a surface water monitoring point. Monthly monitoring of SW-10 should have begun in June of 2011 and quarterly reporting for this point was required for 2<sup>nd</sup> quarter of 2011. Therefore, it is my determination that the permittee was in violation of Section 4 VAC 25-130-816.41 (e) for the

time period noted in the N.O.V. It is my recommendation that Notice of Violation # WAC0008321, part 2 of 2 for (WM) was properly issued and should be affirmed.

Note: A review of this permit's water monitoring information shows that sample results for MPID # 0007474 (SW-10) have now been submitted to the Division for the months July thru December 2011. June's monitoring data is still not included in the DMLR data base.

Reviewed by:

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James Lowe, Informal Hearing Officer

Date: 3/15/12