



DIVISIONS
ENERGY
GAS AND OIL
MINED LAND RECLAMATION
MINERAL MINING
GEOLOGY AND MINERAL RESOURCES
MINES
ADMINISTRATION

COMMONWEALTH of VIRGINIA

Department of Mines, Minerals and Energy

P.O. Drawer 900
3405 Mountain Empire Road
Big Stone Gap, Virginia 24219-0900
(276) 523-8100
www.dmme.virginia.gov

February 5, 2014

Mr. James C. Justice II
Baden Reclamation Company, Inc.
P.O. Box 1010
Wise, VA 24293

Certified Mail Return
Receipt No. 7013 1090 0001 0523 6468

Re: Informal Hearing Decision - Issuance of Notice of Violation WAC0009455 (4 Violations) for Baden Reclamation Company, Inc., Permit Number 1101953.

Dear Mr. Justice:

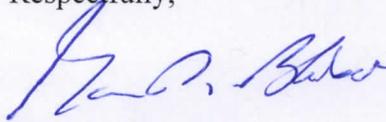
An informal hearing was held on January 22, 2014, to review the issuance of Notice of Violation WAC0009455, violation(s) 1, 2, 3 and 4 of 4. Based upon the attached opinion of the Informal Hearing Officer, I am vacating the issuance of the Notice of Violation WAC0009455, Violation 1 of 4), and I am affirming the issuance of Notice of Violation WAC0009455, Violations 2, 3 and 4 of 4).

Pursuant to §4VAC25-130-843.16(a) of the Virginia Coal Surface Mining Reclamation Regulations, you (or any person having an interest which is or may be adversely affected by this decision) have the right to request a formal public hearing to review this decision. The request must be submitted in writing within 15 days from service of this decision to the:

Hearings Coordinator
Division of Mined Land Reclamation
P. O. Drawer 900
Big Stone Gap, Virginia 24219

Please be advised that the party requesting formal review shall bear the burden of proof at the formal hearing. Should you have any questions concerning the formal hearing process, please call Harve A. Mooney, Hearings Coordinator, at (276) 523-8271.

Respectfully,



Gavin M. Bledsoe
Reclamation Services Manager

c: William A. Cronce, Area Inspector
James D. Meacham, Area Supervisor
Harve A Mooney, Informal Hearing Officer
Leslie S. Vincent, PE.



Informal Hearing Determination

Company: Baden Reclamation Company **Permit No.:** 1101953
Subject: Notice of Violation WAC0009455 (AO, HR, SM, WM)
Conference: January 22, 2014 at 9:30 a.m. **Location:** BSG Office
Participants: Les Vincent, Company Representative, Area Inspector Bill Cronce

Summary of Informal Hearing

On January 22, 2014, an informal hearing was held at the Big Stone Gap office of the Department of Mines Minerals and Energy (Room 116), in reference to the fact of violations for Notice of Violation WAC0009455. Representing A & G Coal Corporation was Mr. Leslie Vincent, PE. Area Inspector Bill Cronce was in attendance. The hearings officer was Harve Mooney. Mr. Vincent was afforded the opportunity to provide comments and/or information during the informal hearing. There were no attendees from the general public at this hearing.

Mr. Leslie Vincent represented the permittee in the informal hearing proceeding. Notice of Violation WAC0009455 was issued with four violations. He addressed each of the four performance standards allegedly in violation separately.

Violation 1 of 4 (AO)

Notice of Violation WAC0009455 (1 of 4) was issued because the permittee has failed to submit anniversary material to the Division by the due date of 11/27/13. Mr. Vincent noted that the date cited was not the anniversary date. He stated that nowhere in the law or regulations did it say you must submit anniversary fees 45 days prior to the anniversary date. He stated that the regulations state you must pay fees on the anniversary date. Therefore the violation did not exist.

Area Inspector Bill Cronce provided a copy of a letter addressing submittal of anniversary materials. The letter noted 11/27/2013 as the date materials should be submitted and specified the anniversary date as 01/11/2014.

Violation 2 of 4 (HR)

Notice of Violation WAC0009455 (2 of 4) was issued because the permittee has failed to maintain Haulroads "D" and "E". Mr. Vincent provided no comment as to the validity of this violation except to note that he would take action to repair the issues associated with the haulroads.

Violation 3 of 4 (SM)

Notice of Violation WAC0009455 (3 of 4) was issued to the permittee to add the correct permittee name to the permit signs and re-install the permit sign off State Route 837. Inspector Bill Crouce stated he had told the company a number of times to correct the sign but nothing was done. Mr. Vincent commented that A & G Coal Corporation was a contractor on the site, and the proper Mine Index number was displayed. All numbers on the sign were correct, but the wrong company name was displayed. The violation has since been terminated.

Violation 4 of 4 (WM)

Notice of Violation WAC0009455 (4 of 4) was issued to the permittee for failure to conduct the required water monitoring. Water monitoring reports for August 2013 had only one of two required NPDES and groundwater samples submitted to the Division and no in-stream samples of the require one sample submitted to the Division. November 2013 NPDES, groundwater, and in-stream sampling has not been conducted according to the permittee.

Mr. Vincent noted that the problem with the water monitoring submittals was discussed with the DMLR staff. The company thought they had an agreement. The third and fourth quarter monitoring would not be complete, and the agreement was to address both quarters of delinquency in the same violation. They understood that there would only be one violation written for the third and fourth quarter, not separate notices of violation. Their concern is that they could receive an additional violation should the December reports be delinquent. Mr. Vincent added that they plan on entering in a settlement agreement to encompass all delinquent water monitoring for the 4th quarter.

The hearing was then closed, and the participants informed that due to the necessity of reviewing the plans the decision would require some additional time.

Informal Hearing Recommendation

Violation 1 of 4 (AO)

Notice of Violation WC0009455 (1 of 4) was issued because the permittee has failed to submit anniversary material to the Division by the due date of 11/27/13. Both **Section 45.1-235 of the Code of Virginia** and **4VAC-25-130-777.17 of the Virginia Coal Surface Mining Reclamation Regulations** govern the submittal of permit fees to the DMLR. Specifically, the regulation (**4VAC25-130-777.17**) states,

An application for a surface coal mining and reclamation permit issued under this chapter shall be accompanied by a permit fee of twenty-six dollars (\$26.00) per acre or any fraction thereof for the total acreage permitted. An anniversary fee of thirteen dollars (\$13.00) per acre or any fraction thereof for areas disturbed under the permit shall be payable annually on each anniversary date of the permit. The fees shall be in the form of cash, cashier's check, certified check or personal check.

There is no provision within the regulation or the law to submit fees or the anniversary materials prior to the anniversary date. The permittee was not in violation at the time of the issuance of violation 1 of 1. **It is the recommendation of this hearings officer that Notice of Violation WAC0009455 (violation 1 of 4) be vacated.**

Violation 2 of 4 (HR)

Notice of Violation WC00099455 (2 of 4) was issued because the permittee has failed to maintain Haulroads "D" and "E". **Section 4VAC-25-130-816.151(f) of the Virginia Coal Surface Mining Reclamation Regulations** governs the maintenance of haulroads. Specifically, the section states,

Routine maintenance for primary roads shall include repairs to the road surface, blading, filling potholes and adding replacement gravel or asphalt. Sediment control structures shall be cleaned regularly and when sediment accumulation may impair their functioning. Maintenance shall also include re-vegetation, brush removal, and minor reconstruction of road segments as necessary.

No evidence was offered at this hearing adverse to the information noted in the notice of violation. **Therefore, it is the recommendation of this hearings officer that Notice of Violation WAC0009455 (violation 2 of 4) be affirmed.**

Violation 3 of 4 (SM)

Notice of Violation WC00099455 (3 of 4) was issued because the permittee has failed to maintain a correct permit sign at the entrance to the permit. **Section 4VAC-25-130-816.11 of the Virginia Coal Surface Mining Reclamation Regulations** governs the construction and maintenance of permit signs and markers. Specifically, Section (c) states,

(1) Identification signs shall be displayed at each point of access to the permit area from public roads.

(2) Signs shall show the name, business address, and telephone number of the permittee and the identification number of the current permit authorizing surface coal mining activities.

(3) Signs shall be retained and maintained until after the release of all bonds for the permit area.

Evidence from both the notice of violation issued and the conference revealed that the company name displayed did not match the name of the permittee that was displayed. Therefore the permittee was in violation of Section 4VAC-25-130-816.11, **and it is the recommendation of this hearings officer that Notice of Violation WAC0009455 (violation 3 of 4) be affirmed.**

Violation 4 of 4 (WM)

Notice of Violation WC0009455 (4 of 4) was issued because the permittee has failed to conduct water monitoring per the approved plans. Water monitoring reports for August 2013 had only one of two required NPDES and groundwater samples submitted to the Division and no in-stream samples of the one required sample. November 2013 NPDES, groundwater, and in-stream sampling has not been conducted according to the permittee. **Section 4VAC-25-130-816.41 of the Virginia Coal Surface Mining Reclamation Regulations** governs the submittal of water monitoring to the DMLR. Specifically, subsections "c" and "e" of this section note,

(c) Ground-water monitoring.

(1) Ground-water monitoring shall be conducted according to the ground-water monitoring plan approved under 4VAC25-130-780.21(i). The division may require additional monitoring when necessary.

(5) Ground-water monitoring data shall be submitted within 30 days after the end of the calendar quarter to the division. More frequent reporting may be prescribed by the division. Monitoring reports shall include analytical results from each sample taken during the reporting period. When the analysis of any ground-water sample indicates noncompliance with the permit conditions, then the permittee shall promptly notify the division and immediately take the actions provided for in 4VAC25-130-773.17(e) and 4VAC25-130-780.21(h).

(6) Ground-water monitoring shall proceed through mining and continue during reclamation until bond release. Consistent with the procedures of 4VAC25-130-774.13, the division may modify the monitoring requirements, including the parameters covered and the sampling frequency, if the permittee demonstrates, using the monitoring data obtained under this Paragraph, that--

(i) The operation has minimized disturbance to the hydrologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance outside the permit area; water quantity and quality are suitable to support approved postmining land uses; and the water rights of other users have been protected or replaced; or

(ii) Monitoring is no longer necessary to achieve the purposes set.

(e) Surface-water monitoring.

(1) Surface water monitoring shall be conducted according to the surface-water monitoring plan approved under 4VAC25-130-780.21(j). The division may require additional monitoring when necessary.

(2) Surface-water monitoring data shall be submitted every three months to the division or more frequently as prescribed by the division. Monitoring reports shall include analytical results from each sample taken during the reporting period. When the analysis of any surface-water sample indicates noncompliance

with the permit conditions, the permittee shall promptly notify the division and immediately take the actions provided for in 4VAC25-130-773.17(e) and 4VAC25-130-780.21(h). Reporting shall be in accordance with the National Pollutant Discharge Elimination System (NPDES) permit requirements.

(3) Surface-water monitoring shall proceed through mining and continue during reclamation until bond release. Consistent with 4VAC25-130-774.13, the division may modify the monitoring requirements in accordance with the NPDES permit, including the parameters covered and sampling frequency, if the permittee demonstrates, using the monitoring data obtained under this Paragraph, that--

(i) The operation has minimized disturbance to the hydrologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance outside the permit area; water quantity and quality are suitable to support approved postmining land uses; and the water rights of other users have been protected or replaced; or

(ii) Monitoring is no longer necessary to achieve the purposes set forth in the monitoring plan approved under 4VAC25-130-780.21(j).

By the permittee's own admission, he failed to submit the water monitoring reports noted in the notice of violation. He is in violation of his approved water monitoring plans. As the December reports were not due at the time of the issuance of Notice of Violation WAC0009455, no violation existed in reference to the December reports. It should be noted that should the reports be found delinquent, further enforcement would be conceivable. Therefore, **it is the recommendation of this hearings officer that Notice of Violation WAC0009455 (violation 4 of 4) be affirmed.**

Informal Hearings Officer:

Harve A. Moorey

Date:

02/05/2014