



Assessment Conference Determination

Company:	<u>Red River Coal Company, Inc.</u>	Permit No.:	<u>1601576</u>
Penalty of:	<u>Notice of Violation DLH0008775</u>	Violation No.:	<u>Violation 1 of 1</u>
Conference:	<u>May 22, 2013 @ 10:00 AM</u>	Location:	<u>Red River Coal Company Office</u>
Participants:	<u>Roger Jones (Engineer, Red River Coal Co.); Dewey Hope (DMLR Area Inspector); Adam Cumpston (DMLR Area Inspector)</u>		

Summary of Conference

Roger Jones stated that Notice of Violation DLH0008775, violation 1 of 1 was issued for allowing rock to be displaced off the permit. Mr. Jones explained that the violation was issued as a result of a citizen complaint. Mr. Jones said the citizen would have to trespass on coal company property to observe the rock material. Dewey Hope said the citizen thought the rock material was from blasting operations. Mr. Jones said the violation resulted from a few small rocks rolling away from a dozer during some benching operations conducted in the area. Mr. Jones said that the rock displaced off of the permit was located so close to the permit that it had to be surveyed to determine whether the rock material was off the permitted area. Mr. Jones said the survey determined the rock material to be approximately ten feet off the permit. Mr. Jones also explained that the size and quantity of rock material off the permit was very small. Mr. Jones also said there was approximately 300 yards of forested and vegetated slope between the location of the violation and the complainant’s house. Mr. Hope said based on the topography and vegetation in the area between the complainant’s house and the violation, he did not believe the rock material could have rolled to the house.

Mr. Jones said as soon as this situation was brought to the attention of the operator the company took prompt action to remove the rock material that was off the permit. Mr. Jones said the company brought a small dozer off another permit in order to effectively perform the remedial work required. Mr. Jones said the notice of violation was abated two days after issuance. Mr. Jones said the company called Dewey Hope on the day the violation was issued and asked him to review the remedial work performed. Mr. Jones said Mr. Hope inspected the remedial work the day after the violation was issued and determined that additional remedial work was necessary. Mr. Jones said the additional work was performed and Mr. Hope terminated the notice of violation two days after the notice was served.

Mr. Jones said since the size and quantity of the rock material was minimal and it was very close to the edge of the permit boundary, the civil penalty should be vacated. Mr. Jones said if the civil penalty could not be vacated the company should be awarded good faith.

Assessment Conference Recommendation

For Notice of Violation DLH0008775, violation 1 of 1, it is my decision to affirm the four seriousness points. The operator allowed rock material to be displaced off the permitted area. Mr. Jones stated that the location of the rock material was surveyed and determined to be approximately ten feet off the permit. Mr. Jones and Mr. Hope indicated that the material consisted of one rock of substantial size and several other smaller rocks. Mr. Jones said there was approximately 300 yards between the rock material and a citizen's house. Mr. Jones said the rock material rolled away from a dozer during benching operations. Rocks rolling to the perimeter of a permit and coming to rest beyond the permit boundary create a potentially serious situation to the safety of the public that might be in the area. The fact that the rocks were not very large and the closest citizen's home was approximately 300 yards away does not eliminate the potential danger. Operations which allow rocks to roll beyond the perimeter of the permit do create a certain degree of potential danger

For Notice of Violation DLH0008775, violation 1 of 1, it is my decision to affirm the two negligence points. As previously stated the rock material rolled away from a dozer during a benching operation. The permittee is required to conduct surface coal mining and reclamation operations only on those lands that are specifically designated as the permit area. The operator failed to exercise the degree of care expected of a careful and reasonable operator by allowing rock material to be displaced off the permit. The operator must take reasonable measures to ensure that when material is excavated or move, it will remain within the designated and approved permit area.

As documented in Mr. Hope's inspection report of February 14, 2013 Notice of Violation DLH0008775, violation 1 of 1 was issued on February 19, 2013 with an abatement date of March 19, 2013. Mr. Jones said as soon as this situation was brought to the attention of the operator the company took immediate action to remove the rock material that was off the permit. Mr. Jones also said the operator moved a small dozer from another permit in order to perform the remedial work. Mr. Jones said Dewey Hope inspected the remedial work performed on February 20th & 21st. Mr. Hope's inspection report of February 21, 2013 documented that the required remedial work was completed on February 21st and the notice of violation was terminated. The remedial work was completed 26 days prior to the designated abatement date. This conference officer finds that the operator took prompt and diligent efforts to abate the violation. Therefore, it is my decision to award two good faith points. After awarding two points for good faith, it is my decision to reduce the civil penalty assessment from \$360.00 to \$225.00.

Assessment Conference Determination:

Permit No. NOV# DLH0008775, violation 1 of 1

	Proposed Assessment or Reassessment	Assessment Conference Recommendation
I. History of previous violation	\$ 0.00	\$ 0.00
II. Seriousness Points	4	4
III. Negligence Points	2	2
IV. Good Faith Points	0	-2
Total Points:	6	4
Base Penalty:	\$ 400.00	\$250.00
History Penalty:	\$ 0.00	\$ 0.00
Total Penalty:	\$ 360.00 *	\$225.00

*** Includes 10% reduction of base penalty per 4 VAC 25-130-845.13(e) (1) VCSMRR.**

Conference Officer: _____

Date: _____