



Assessment Conference Determination

Company:	<u>Virginia Fuel Corporation</u>	Permit No.:	<u>1102059</u>
Penalty of:	<u>Notice of Violation HGC0010009</u>	Violation No.:	<u>1 of 1 (MN)</u>
Conference:	<u>September 10, 2013 @ 10:00 AM</u>	Location:	<u>Mine site</u>
Participants:	<u>Jon Lawson, Company Representative-Biologist, Glen Comer, DMLR Reclamation Inspector, Kenneth Coomer, DMLR Conference Officer</u>		

Summary of Conference

The company representative started out by saying that he had an easy reduction. He noted that 1 point had been assigned for History of Previous Violations---1 X \$20.00 but at the bottom of the page the History Penalty was \$60.00. Mr. Lawson stated that this was probably a typo. Regarding Seriousness of the Violation---The company representative stated that he thought that assigning 5 points for this was too high. He pointed out that in the regulations that assigned points of 5-6 as stated “Moderately significant actual damage or potential damage to the environment which can be corrected only after a substantial effort or period of time; also actual or potential moderately significant hazard to the public health and safety”. He went on to say that the company had placed boulders along the edge of the highwall to prevent the public or anyone from going over the highwall. He wanted an assigned value for seriousness of 3-4 based on the fact that no mining was conducted within 100 feet of the cemetery. He added that one of the men on the reclamation crew was related to the caretakers of the cemetery and he was asked to clean up around the cemetery, all grading was completed and all that was lacking was seeding when the violation was issued.

Inspector Comer stated that a 150 boundary line from the edge of the cemetery had been flagged but the markers were removed. He added that the company had crowded over during backfilling of the highwall

Regarding negligence—The company representative stated that they had been given fair warning but they were trying to wrap up backfilling of the highwall in the area. They should have gotten a letter from the cemetery owner to do additional work around the cemetery (brush and tree removal).

Assessment Conference Recommendation

- I. **History of Previous Violations:** In the proposed assessment, the penalty assigned should be \$20.00.
- II. **Seriousness of the Violation:** It is my recommendation to lower the proposed seriousness points assigned to this violation to four (4) points. No mining was conducted within 100 feet of the cemetery. Disturbance within 100 feet of the cemetery was related to grading /crowding over during backfilling of the highwall

and general cleanup around the cemetery. According to the company representative, the caretakers of the cemetery had asked a relative on the reclamation crew to remove brush and debris plus general cleanup around the cemetery during reclamation of the highwall area. Grading around the cemetery did not present a hazard to public safety. The company had placed boulders around the edge of the highwall to prevent the public and company workers from going over the highwall in the area. Environmental harm was minor.

III. Negligence: It is my recommendation that the three (3) points assigned for negligence for this violation be affirmed. The company had been given fair warning concerning mining activity within 100 feet of the cemetery. A 150 feet boundary around the cemetery had been marked with flagging according to the inspector. The company should have obtained a letter from the owner/caretaker of the cemetery requesting brush and tree removal/general cleanup near the cemetery prior to conducting grade work around the cemetery.

IV. Good Faith in Complying: No good faith points are awarded since the violation was non-remedial.

Assessment Conference Determination:

Permit No. NOV# HGC0010009, violation 1 of 1 (MN)

	Proposed Assessment or Reassessment	Assessment Conference Recommendation
I. <u>History of previous violation</u>	\$20.00	\$20.00
II. Seriousness Points	5	4
III. Negligence Points	3	3
IV. Good Faith Points	0	0
Total Points:	8	7
Base Penalty:	\$ 750.00	\$ 475.00
History Penalty:	\$ 60.00	\$ 20.00
Total Penalty:	\$ 810.00	\$ 495.00

Conference Officer:

Kenneth Coomer

Kenneth Coomer, Conference Officer

Date: 09-10-13