



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

December 20, 2013

Mr. James C. Justice II  
P.O. Box 1010  
5957 Windswept Boulevard  
Wise, VA 24293

Certified Mail Return  
Receipt No. 7013 1090 0001 0523 6079

**Re: Assessment Conference Request – Civil Penalty of Notice of Violation LJJ0000597, Violation 1 of 1 (RT) issued to A & G Coal Corporation, PN 1102058**

Dear Mr. Justice:

An assessment conference (4 VAC 25-130-845.18(a) VaCSMRR) was held on November 7, 2013, to review the civil penalty determination of Notice of Violation LJJ0000597, 1 violation (RT). Based upon the attached opinion of Conference Officer James Meacham, the **civil penalty determination has been affirmed.**

Please be advised that you may request a formal public hearing under 4 VAC 25-130-845.19(a) of the regulations to contest the penalty determination(s) of **NOV LJJ0000597**. Your written request must be submitted with payment of the civil penalty to this office within 30 days from your receipt of this decision. The penalty payment would be placed in escrow pending final administrative/judicial review.

Regardless of whether you wish to contest the civil penalty determination or fact of issuance of the notice or order, the penalty amount will be due and payable within 30 days from your receipt of this decision. Should a timely appeal result in the vacation or reduction of the penalty, the Division would refund the applicable amount with accrued interest (calculated from date of payment).

Please submit payment of the penalty in the form of cash, money order, or check. A money order or check (company, cashier's, or certified) must be made payable to the "Treasurer of Virginia". To expedite our receipting of the penalty payment, please note the violation and permit numbers with your payment.

Should you have any questions concerning the formal hearing or payment processes, please call me at (276) 523-8271.

Respectfully,

*Harve A. Money*

Legal Services Officer

c: Landon Jenkins, Inspector  
Kenneth Coomer, Area Supervisor  
James D Meacham, Conference Officer



**Assessment Conference Determination**

|                      |  |                       |                                    |
|----------------------|--|-----------------------|------------------------------------|
| <b>Company:</b>      | <u>A &amp; G Coal Corporation</u>  | <b>Permit No.:</b>    | <u>1102058</u>                     |
| <b>Penalty of:</b>   | <u>Notice of Violation No. LLJ0000597</u>                                  | <b>Violation No.:</b> | <u>1 of 1 (RT)</u>                 |
| <b>Conference:</b>   | <u>November 7, 2013 @ 10:00 A.M.</u>                                       | <b>Location:</b>      | <u>DMLR's Big Stone Gap Office</u> |
| <b>Participants:</b> | <u>Les Vincent (Company Engineer, PE); Landon Jenkins (DMLR Inspector)</u> |                       |                                    |

**Summary of Conference**

Les Vincent contacted Harve Mooney on November 4, 2013 and asked if the assessment conference could be changed to another date. The assessment conference had already been scheduled for November 7<sup>th</sup>, participants had been notified and the public notice had been provided. Therefore, the conference was held on November 7, 2013. Les Vincent contacted Harve Mooney just prior to 10:00 a.m. on November 7<sup>th</sup> and told Mr. Mooney that due to unforeseen circumstances the company could not have a representative at the conference. Mr. Vincent asked Mr. Mooney if the company could submit written comments by e-mail. Mr. Mooney told Mr. Vincent that the Division of Mined Land Reclamation (DMLR) would allow the company to submit written comments regarding the assessment of Notice of Violation LLJ0000597 violation 1 of 1.

On November 14, 2013 Les Vincent submitted a letter by e-mail with written comments regarding the referenced notice of violation. The letter contained the following comments. Mr. Vincent stated that three points was assessed for seriousness. Mr. Vincent pointed out that no environmental harm was incurred as a result of this violation. Mr. Vincent stated it is inappropriate to assign more than one point for this violation as no harm of any kind occurred. Mr. Vincent requested that the points assigned to seriousness be reduced from three to one and recalculate the assessment accordingly.

**Assessment Conference Recommendation**

For Notice of Violation LLJ0000597 violation 1 of 1, it is my decision to affirm the three seriousness points. Mr. Vincent stated the three seriousness points are inappropriate because the violation did not cause any onsite or offsite environmental harm. In the civil penalty determination dated September 20, 2013, the assessments officer stated that Notice of Violation LLJ0000597 was an administrative violation. In this document the DMLR assessments officer concurs with Mr. Vincent by stating that the violation did not result in offsite adverse environmental impact. As stated in the Virginia Coal Surface Mining and Reclamation Civil Penalty Assessment Manual a violation does not have to cause or have the potential to cause environment harm or danger to the health and safety of the public to receive three seriousness points. As stated in this manual a violation of an administrative requirement that is correctable

after some delay and tends to hamper or obstruct enforcement can be assigned three seriousness points.

The permittee failed to submit the Coal Surface Mining Reclamation Fund Tax Fee no later than the 15<sup>th</sup> day of the month after the end of the 2<sup>nd</sup> quarter of 2013, and Notice of Violation LLJ0000597 was issued on September 4, 2013. Therefore, at the time the notice of violation was issued the Reclamation Fund Tax Fee was 51 days late. This violation impeded the inspector's ability to ensure the operation complies with the requirements of the Act, regulations and the permittee's approved plans. There was a considerable delay in correcting this administrative violation. Therefore, I believe the three seriousness points were justified and appropriately assigned.

It is my decision to affirm the one negligence point. The permittee failed to ensure the appropriate taxes are paid in a timely manner in accordance with the applicable regulations. As previously stated the Reclamation Fund Tax Fee was 51 days late at the time the notice of violation was issued. The permittee failed to exercise the degree of care expected of a careful and reasonable operator.

Notice of Violation LLJ0000597 was issued on September 4, 2013 with an abatement date of September 19, 2013. Upon submittal of the Reclamation Fund Tax Fee the notice of violation was terminated on October 21, 2013. Information received at this conference does not demonstrate that prompt and diligent efforts were taken to abate the violation prior to the set abatement date. Therefore good faith points were not recommended and are not awarded. It is my decision to affirm the civil penalty assessment of \$310.00.

**Assessment Conference Determination:**

**Permit No. 1102058 NOV# LJJ0000597 1 violation (RT)**

|                                  | <b>Proposed Assessment or Reassessment</b> | <b>Assessment Conference Recommendation</b> |
|----------------------------------|--|---|
| I. History of previous violation | \$ 60.00                                   | \$ 60.00                                    |
| II. Seriousness Points           | 3  | 3   |
| III. Negligence Points           | 1  | 1   |
| IV. Good Faith Points            | 0  | 0   |
| <b>Total Points:</b>             | <b>4</b>                                   | <b>4</b>                                    |
| <b>Base Penalty:</b>             | <b>\$ 250.00</b>                           | <b>\$ 250.00</b>                            |
| <b>History Penalty:</b>          | <b>\$ 60.00</b>                            | <b>\$ 60.00</b>                             |
| <b>Total Penalty:</b>            | <b>\$ 310.00</b>                           | <b>\$ 310.00</b>                            |

Conference Officer: James D. Mearns

Date: 12/18/13