



Assessment Conference Determination

Company:	<u>Sigmon Coal Company, Inc.</u>	Permit No.:	<u>1501065</u>
Penalty of:	<u>Notice of Violation No. CDB0008874</u>	Violation No.:	<u>2 Violations DS,EF)</u>
Conference:	<u>October 21, 2010 at 10:00 a.m.</u>	Location:	<u>DMME BSG office</u>
Participants:	<u>Fred Robinson (Engineer for Sigmon Coal Co., Inc. ("Virginia Fuel")); Dan Barney (DMLR Inspector)</u>		

Summary of Conference

Notice of Violation No. CDB0008874 violation 1 of 2

Fred Robinson began by explaining that there were actually two contractors preparing the fill certifications at one time on Sigmon Coal Co., Inc., Permit No. 1501065. Mr. Robinson explained that although two contractors were conducting and preparing the fill certifications, neither company was submitting the fill certifications to the Division of Mined Land Reclamation (DMLR). Mr. Robinson said he should have monitored the fill certification process to see that the fill certifications were being submitted to the DMLR. Mr. Robinson explained that at this time one contractor prepares the fill certifications and submits the forms to the DMLR.

Mr. Robinson said he could not understand why this violation was given four seriousness points, and he believes the seriousness points should be much lower. Mr. Robinson explained that the violation only involved a failure to submit paperwork. Mr. Robinson explained that the fills addressed in the violation are stable and the violation did not involve any fill stability issues. Mr. Robinson said the fill certifications document that the fill is stable. Mr. Robinson said the fill inspections were performed and the certifications were prepared, and the company only failed to submit the fill certification forms.

Mr. Robinson continued by addressing the negligence points for the referenced violation. Mr. Robinson said it was his fault for not monitoring the contractors preparing the fill certifications to ensure that the quarterly certifications were submitted to the DMLR.

Mr. Robinson said the company was operating in good faith by having two contractors perform the fill certifications. Mr. Robinson said the company was making a good faith effort to have the fill certifications prepared in an appropriate manner.

Notice of Violation No. CDB0008874 violation 2 of 2

Mr. Robinson explained that the company has been experiencing a problem with their water sampling results in the field not matching the field water sampling results of the DMLR inspector. Mr. Robinson explained that the company could check a discharge for total Fe and get 1 mg/l or below, and the DMLR inspector could check the exact same discharge and get a total Fe of 17 mg/l. Mr. Robinson said the company and the DMLR field inspector have incurred a significant difference in the results of the field checks. Mr. Robinson said both the company and the DMLR inspector are using fresh supplies, and they are both following the approved sampling and testing procedures. Mr. Robinson explained that field checks are used to determine when to treat the ponds. Mr. Robinson said often the company's field check indicates that no treatment is necessary while the DMLR inspector's field check indicates that treatment should have already been initiated.

Mr. Robinson explained that the company and the DMLR inspector took a water sample together and split the sample, taking part to the company's lab and part to the lab conducting analysis for the DMLR. Mr. Robinson explained that both samples were properly preserved and both labs are Virginia certified labs. Mr. Robinson explained that there was a significant difference between the results of the analysis of these two samples. Mr. Robinson said the company sample was below 1 ppm and the DMLR sample was 12-14 ppm. Mr. Robinson said he has discussed this with the water testing lab but has not determined why there is a difference in the results.

Mr. Robinson said it has been very difficult to maintain compliance when there is a significant difference between the analysis of the company sample and the analysis of the DMLR inspector's sample. Mr. Robinson said he has substantial experience in water sampling and maintaining effluent compliance. Mr. Robinson said he has worked diligently to resolve this issue. Mr. Robinson explained that the company has also tried different methods of treating the pond. Mr. Robinson would like to see the DMLR work with the company to resolve the problem instead of issuing violations for failure to meet effluent limitations.

Mr. Robinson believes the negligence is shared because the disparity in water sampling results is contributing to the issuance of a violation. Mr. Robinson said the company is showing good faith in diligently trying to resolve the water sampling issues and working hard to maintain compliance.

Assessment Conference Recommendation

Notice of Violation No. CDB0008874 violation 1 of 2

For NOV # CDB0008874, violation 1 of 2, it is my decision to affirm the four seriousness points. Mr. Robinson explained that the violation only involved a failure to submit paperwork. He said the fill inspections were performed and the certifications were prepared, and the company only failed to submit the fill certification forms. He said that the certification inspections performed document that the fills were stable. Although that may be true, the operator failed to submit to the DMLR 4th quarter 2008, 1st, 2nd, 3rd, 4th, quarter 2009 and 1st

quarter 2010 fill certifications for fill VF #1. The DMLR utilizes the quarterly fill certifications to insure that the fill construction is in accordance with the approved design. It is important that the DMLR have a complete record documenting fill construction. The DMLR had no fill certifications for VF #1 for a period of 18 months. Therefore, this violation hinders the DMLR's ability to ensure the stability and safety of the fill, and the potential for environmental harm is deemed to be slight to significant.

For NOV # CDB0008874, violation 1 of 2, it is my decision to affirm the three negligence points. The company failed to ensure fill certifications for VF #1 were submitted from a licensed professional engineer in accordance with the approved plans. Mr. Robinson explained that two contractors had concurrently prepared the fill certifications for the company but had not submitted the certification reports to the DMLR. Mr. Robinson said he should have monitored the fill certification process to see that the fill certifications were being submitted to the DMLR. The company exhibited a degree of negligence by failing to ensure the submittal of the fill certifications for VF #1 for six calendar quarters. The company should have monitored the fill certification process and promptly addressed the submittal of fill certifications.

There was no remedial action or abatement date associated with this Notice of Violation. Therefore, good faith points were not recommended for the compliance of this Notice of Violation and are not awarded. It is my decision to affirm the civil penalty assessment \$535.00.

Notice of Violation No. CDB0008874 violation 2 of 2

For NOV # CDB0008874, violation 2 of 2, it is my decision to affirm the four seriousness points. The operator allowed a discharge from Basin 1A (MPID #1270029) to exceed the maximum effluent limitation for Iron (Fe). The lab analysis showed the discharge to be 16 mg/l while the maximum allowable discharge for Iron (Fe) is 6.0 mg/l. Also, the operator allowed a discharge from Basin 10 (MPID #1285873) to exceed the maximum effluent limitation for Manganese (Mn). The lab analysis showed the discharge to be 7.01 mg/l while the maximum allowable discharge for Manganese (Mn) is 4.0 mg/l.

The discharge from Basin 1A exceeded the total iron effluent limitation by almost 3 times the allowable limits and the discharge from Basin 10 exceeded the total manganese effluent limitation by almost two times the allowable limits. The potential for environmental harm would be slight to significant for discharges exceeding the required effluent limitations at the levels documented in this violation.

For NOV# CDB0008874, violation 2 of 2, it is my decision to affirm the three negligence points. The company failed to ensure that the discharges referenced above met the total iron and total manganese effluent limitations prior to leaving the permit. Mr. Robinson explained that the company has been experiencing a problem with their water sampling results in the field and lab not matching the DMLR inspector's water sampling result in the field and lab. Mr. Robinson stated that the company has compared identical water samples taken by the company and the DMLR inspector and have still noted a significant disparity in the analysis. Mr. Robinson explained that this disparity in water samples makes it very difficult to know when to initiate treatment of the discharge. Mr. Robinson said the company has worked diligently to resolve this issue.

The operator is required to meet all applicable effluent limitations for approved discharge points. It is the responsibility of the operator to implement appropriate methods of monitoring and treatment of discharge points to ensure that compliance is maintained for all applicable effluent limitations. It is the operator's responsibility to resolve any issues of disparity between the analysis of company water samples and the analysis of water samples taken by the DMLR inspector. Disparity in water samples does not relieve the operator of the requirement to meet all applicable effluent limitations. Also, as noted in the "Civil Penalty Determination" for the referenced notice of violation, this was the fifth time in a year that the discharge from Basin 1A has exceeded total iron. Therefore, there has been sufficient time to resolve this issue.

There was no remedial action or abatement date associated with this Notice of Violation. Therefore, good faith points were not recommended for the compliance of this Notice of Violation and are not awarded. It is my decision to affirm the civil penalty assessment \$535.00.

Assessment Conference Determination:

Permit No. 1501065 NOV# CDB0008874, violation 1 of 2 (DS)

	Proposed Assessment or Reassessment	Assessment Conference Recommendation
I. History of previous violation	\$60.00	\$60.00
II. Seriousness Points	4	4
III. Negligence Points	3	3
IV. Good Faith Points	0	0
Total Points:	7	7
Total Penalty:	\$ 535.00	\$ 535.00

Assessment Conference Determination:

Permit No. 1501065 NOV# CDB0008874, violation 2 of 2 (EF)

	Proposed Assessment or Reassessment	Assessment Conference Recommendation
I. History of previous violation	\$60.00	\$60.00
II. Seriousness Points	4	4
III. Negligence Points	3	3
IV. Good Faith Points	0	0
Total Points:	7	7
Total Penalty:	\$ 535.00	\$ 535.00

Conference Officer: _____

James D. Meacham

Date: _____