



**Informal Hearing Determination**

**Company:** Barnette Energy, LLC **Permit No.:** 1101978  
**Subject:** Notice of Violation HNM0003900  
**Conference:** November 9, 2010 2:00 p.m. **Location:** Lebanon Office  
**Participants:** Mr. Austin Barnette, Barnette Energy, LLC; Mr. Sunny Guo, Metamining, Inc. Mr. Gary Slone, Summit Engineering; Heather McDonald-Taylor, Bill Cronce, DMLR.

An informal conference was conducted on this date to review the issuance of Notice of Violation No. HNM0003900 violation 1 of 1 issued to permit No. 1101978. This NOV states:

The company is instructed to immediately cease all coal removal on the permit until such time that:

1. A revision to address the ownership and control of Barnette Energy, LLC permit 1101978 is approved by the DMLR. That revision should be submitted to the DMLR by November 10, 2010.
2. The parent or controlling company, Metamining Inc., submits proof to the division that it is a valid registered corporation/entity with the VA State Corporation Commission and approved to conduct business in the Commonwealth of Virginia.
3. A revision to address cost bonding on the permit as required by 4 VAC 25-130-800 is approved by the division to replace the current bond under 4 VAC 25-130-801. The permittee is instructed to submit the cost bond application by November 10, 2010 and replace the existing bond within five days of approval of the bond application.

The abatement date for the violation is December 3, 2010. The interim abatement date for submittal of the ownership and control revision and submittal of the cost bonding revision is November 10, 2010.

**Summary of Informal Hearing**

Mr. Anthony Collins, an attorney, contacted the conference officer on Monday November 8, the day prior to the hearing. He advised that he'd been retained to represent Barnette Energy LLC in this matter and that he would be unable to attend the informal conference due to other commitments. Mr. Collins asked if he could give me his comments over the phone. I advised Mr. Collins the conference was a public forum and all comments should be made at the conference. I advised he could call in and participate via conference call and he said this would be O.K. Mr. Collins did not call in at the conference. I received a phone call from Tina? at his office advising that Mr. Collins son had an accident, he was at the hospital and unable to participate in the conference. I advised Tina that given the circumstances I would hold the

conference open and allow Mr. Collins comments with regard to this matter the following day. As of Monday November 15<sup>th</sup>, I had not heard any word from Mr. Collins.

At the informal conference, Mr. Austin Barnette stated that his father, Mr. David Barnette, sold Barnette Energy, LLC to Metamining, Inc. on August 26<sup>th</sup>, 2010. He had a gentleman's agreement with the president of Metamining, Inc., Mr. Larry Li that he would retain all permits, bonds and other ownership and control of the company until the permit could be transferred from Barnette Energy to Metamining, Inc. He said that all machinery and personnel on site were the same. Mr. Barnette said this was a paperwork violation and there were other alternatives to shutting down the operation. Mr. Barnette stated they'd contacted Steve Walz, the DMME Director in Richmond who stated there were other alternative to shutting down the job and that the first priority should be to get the men back to work.

Gary Slone stated these types of sales were typical in the coal business and there were alternatives to shutting down the job. The sale was made on August 25, 2010 so Barnette Energy would have been in violation since that time. These types of transactions do not happen over night and time needs to be allowed to transfer, assign or sale the permit rights.

### **Informal Hearing Recommendation**

The following is a chronology of the key dates associated with this violation.

8/25/10- A sales agreement between Barnette Energy, LLC and Metamining, Inc. The following assets were transferred from Barnette Energy, LLC to Metamining, Inc. in this sales agreement along with various pieces of quarry equipment and the mine office trailer on permit 1101978.

1. Barnette Energy, LLC MSHA #44-07169
2. Tarpon Stone Quarry
3. Barnette Energy, LLC mining permit #1101978
4. Barnette Energy, LLC Mill Creek #1 Surface Mine License #14850AA
5. Barnette Energy, LLC Mill Creek #1A, Surface Mine License #13441AB
6. Tarpon Stone Quarry Permit #90494AA
7. The Barnette Energy, LLC/Raising Kane, LLC leases

8/26/10-Barnette Energy, LLC MSHA license #44-07169 was modified to remove William D. Barnette and Arlene Barnette as individuals with ownership interest in the business or corporate officers/directors and principal organization officials or members. Larry Li and Songqiang Chen were added to the MSHA permit on August 26, 2010 as individuals with ownership interest in the business or corporate officers/directors and principal organization officials or members.

9/9/10-the company removed W. David Barnette and Arlene Barnette as company officials and company owners on mine license numbers 14850AA and 13441AB. Larry Li and Songqiang Chen were added as company officials and company owners. Both licenses are associated with permit 1101978.

9/27/10-an annual progress report and a renewal application for the Tarpon Stone Quarry, quarry permit 90494AA, were received by the Division of Mineral Mining. That report documented a change in ownership and control on the quarry. That application documented Larry Li and

Songqiang Chen as the principle officials. That document listed DMLR permit 1101978 as held by the applicant.

10/29/10-The 8/25/10 sales agreement between Barnette Energy, LLC and Metamining, Inc. was provided to the DMME Big Stone Gap office by a citizen.

11/3/10-NOVHNM0003900 was issued for continuing to remove coal from the operation despite failure to submit and obtain approval of a revision documenting the new ownership and/or control information for the permittee, Barnette Energy, LLC. The company was instructed to immediately cease all coal removal on the permit until such time that:

1. A revision to address the ownership and control of Barnette Energy, LLC permit 1101978 is approved by the DMLR. That revision should be submitted to the DMLR by November 10, 2010.
2. The parent or controlling company, Metamining Inc., submits proof to the division that it is a valid registered corporation/entity with the VA State Corporation Commission and approved to conduct business in the Commonwealth of Virginia.
3. A revision to address cost bonding on the permit as required by 4 VAC 25-130-800 is approved by the division to replace the current bond under 4 VAC 25-130-801. The permittee is instructed to submit the cost bond application by November 10, 2010 and replace the existing bond within five days of approval of the bond application

11/9/10-A revision was submitted to the DMLR by Barnette Energy, LLC to address the updated ownership and control of permit #1101978,

4 VAC 25-130-774.17 states that no transfer, assignment, or sale of rights granted by the permit shall be made without the written approval of the division. Based on the available information it appears that the rights to Barnette Energy, LLC permit 1101978 have been transferred to another entity. A search of the Office of Surface Mining Applicant Violator system indicates that Metamining, Inc. and company officials Songqiang Chen and Larry Li have insufficient mining experience to participate in the pool bond fund as required by 45.1-270.2(A). In addition Metamining, Inc. does not appear to be licensed with the VA State Corporation Committee to conduct business in the Commonwealth of Virginia.

Based on the information presented at this informal conference and review of the documentation of changes that occurred in the ownership/control of Barnette Energy LLC permit #1101978 without any updates to the permit, it is my opinion NOVHNM0003900 was properly issued and I recommend that it be affirmed.

Conference Officer: \_\_\_\_\_  
Michael A. Giles , Conference Officer

Date: \_\_\_\_\_