



**Informal Hearing Determination**

**Company:** Dominion Coal Corporation **Permit No.:** 1200194  
**Subject:** Notice of Violation JDR0004533  
**Conference:** January 28, 2011 at 9:30 a.m. **Location:** Lebanon Office  
**Participants:** Gregory A. McClanahan (Environmental Coordinator for Dominion Coal Corp.); Jeff Rasnake (DMLR Inspector).

**Summary of Informal Hearing**

Greg McClanahan began by stating that the request for the informal hearing has no reflection on Jeff Rasnake or the way Mr. Rasnake has performed his job. Mr. McClanahan said the he has a good working relationship with Mr. Rasnake.

Mr. McClanahan said that this was his first experience addressing the requirements of a Revision Order Notice (RON). Mr. McClanahan said when he received the RON he observed that the date for abatement was November 15, 2010. Mr. McClanahan said he therefore submitted the required revision on the abatement date. Mr. McClanahan said that he was unaware that the RON required that the revision be submitted and approved within the 60 day abatement period.

Mr. McClanahan said he has been unable to submit and gain approval of any revision within a 60 day period. Mr. McClanahan cited revision Application No. 1006820 which was required under Notice of Violation JDR0004533 as an example that approval of revisions normally takes more than 60 days. Mr. McClanahan stated that Application No. 1006820 was submitted on December 22, 2010, and as of January 28, 2011 (37 days later) he has not received the first comment from the DMLR reviewers. Mr. McClanahan explained that due to the amount of time it is taking the DMLR to review the revision, he had to request and obtained an extension to the Notice of Violation abatement date.

Mr. McClanahan said that he, J. P. Richardson and Jeff Rasnake discussed the requirements of the Notice of Violation. Mr. McClanahan said that Mr. Richardson was concern that if everything in the revision had to be approved upon first submittal, the company could expect to get additional Notices of Violation.

**Informal Hearing Recommendation**

Section 4 VAC 25-130-774.11 (a) (b) of the **Virginia Coal Surface Mining Reclamation Regulations** states “(a) *The division shall review each permit issued and outstanding during the term of the permit. This review shall occur not later than the middle of*

*each permit term... (b) After the review required by Paragraph (a) of this section, or at any time, the division may order reasonable revision of a permit in accordance with 4 VAC 25-130-774.13 to ensure compliance with the Act and the regulatory program.”*

On September 15, 2010, DMLR Inspector Jeff Rasnake conducted a complete inspection on Dominion Coal Corp., Permit Number 1200194. Mr. Rasnake identified the following deficiencies in three areas of the approved permit plan:

1. Items associated with the chemical agent treatment process such as the location of chemical agent tanks, volume stored on site, rate of treatment, spill prevention and secondary containment;
2. Post mining land use (PMLU) must reflect recent construction of gas wells and associated gas pipelines;
3. Permit boundary must reflect discrepancies identified when completion reports were submitted.

In accordance with Section 4 VAC 25-130-774.11 (b) of the **Virginia Coal Surface Mining Reclamation Regulations**, Jeff Rasnake issued RON # JDR0004442 which required the permittee to submit and obtain approval of a revision application to address the three deficiencies identified. Mr. Rasnake documented in the associated inspection report that upon issuance of the RON, he discussed the issuance of the RON with Greg McClanahan and Mark Singleton.

Division of Mined Land Reclamation (DMLR) Procedure No. 3.3.01 issued January 23, 2009 titled, **Permanent Program (Chapter 19) Enforcement & Inspection Procedures** provides guidance for the issuance of a Revision Order Notice. The procedure states *“The RON will set a reasonable abatement date for compliance with the RON. The inspector may extend the RON’s abatement date, if the permittee’s inability to submit the revision was not due to lack of due diligence on the permittee’s part. Should the permittee fail to comply with the RON, the inspector shall issue a Notice of Violation.”* In accordance with DMLR Procedure No. 3.3.01, Mr. Rasnake set an abatement date of (60 days) November 15, 2011.

Mr. McClanahan said that he was unaware that the RON required the revision to be submitted and approved within the 60 day abatement period. RON #JDR0004442 and the associated inspection report dated September 15, 2010 states, *“the permittee is required to submit and obtain approval of a revision application that will revise the plans for this permit to include”* the three deficiencies identified by the inspector. Mr. Rasnake clearly documented the requirements of the RON and discussed the RON with Mr. McClanahan. Therefore, it should have been evident to Mr. McClanahan that the RON required the submittal and DMLR approval of the revision before the RON could be terminated.

Mr. McClanahan raised the question as to whether the 60 day abatement date of RON #JDR0004442 was reasonable. The Division is aware that a very lengthy review is sometimes necessary when approving a revision application required by a Revision Order Notice. For that reason, DMLR Procedure No. 3.3.01 provides for the extension of the RON’s abatement date if the permittee’s inability to submit the revision was not due to lack of due diligence on the permittee’s part. The Division expects a permittee to act with due diligence when preparing and submitting required revision applications. In evaluating whether the 60 day abatement date was

reasonable, one must determine whether the permittee acted with due diligence in the preparation and submittal of the revision.

Mr. McClanahan said he submitted the required revision application on the abatement date of November 15, 2010. The inspection report, dated November 16, 2010 on Dominion Coal Corp., Permit Number 1200194 states that Mr. Rasnake reviewed the required revision application on November 16, 2010. This inspection report also states that Mr. Rasnake found that the revision application had errors and deficiencies and would not be accepted. The permittee did not submit the required revision application until the abatement date, and the revision was not complete enough to begin the technical review. Therefore, the permittee was not diligent in the timely submittal of a complete revision application. A more diligent effort by the permittee would have allowed for approval of the revision during the abatement period or could have potentially justified an extension of the RON abatement date. Therefore, I believe the abatement date of the RON was reasonable.

After evaluating the information submitted by the company, the DMLR reports and the applicable regulations and procedures, I find that the permittee failed to submit and gain approval of the revision by the abatement date established in Revision Order Notice # JDR0004442. At the time the revision was submitted, grounds did not exist to warrant an extension of the RON abatement date. Therefore, Mr. Rasnake issued a Notice of Violation requiring the permittee to submit and gain approval of a revision addressing the deficiencies identified in the RON. In my opinion, Notice of Violation No. JDR0004533, violation 1 of 1, was properly issued for the violation cited and I recommend that it be affirmed.

### **Summary of Assessment Conference**

Greg McClanahan explained that the three seriousness points were assessed for Notice of Violation No. JDR0004533. Mr. McClanahan said when he submitted the revision application on November 15, 2010 he had addressed two out of the three areas of deficiency referenced above. Mr. McClanahan said the only area of deficiency not addressed was the chemical agent treatment process to be used. Mr. McClanahan explained since two of the three deficiencies had been addressed the violation was not as serious. Therefore, Mr. McClanahan requested the seriousness points be decreased.

### **Assessment Conference Recommendation**

NOV# JDR0004533, violation 1 of 1, was issued on November 16, 2010, with an abatement date of January 18, 2011. On December 22, 2010, revision application number 1006820 was uploaded to the Big Stone Gap office for technical review. The abatement date for NOV# JDR0004533, violation 1 of 1, was extended to February 16, 2011, in inspection report dated January 21, 2011. The total time for abatement is currently at 90 days. Due to the extended abatement period granted and the potential for further extensions to allow additional time for technical review, I will make my decision regarding the assessment at this time.

For NOV# JDR0004533, violation 1 of 1, it is my decision to affirm the three seriousness points. The permittee failed to comply with Revision Order Notice # JDR0004442 which required submittal and approval of a revision to address three plan deficiencies. The violation hinders the Division's ability to ensure all requirements are being met. Mr. McClanahan states

that he addressed two of the three deficiencies in the initial submittal of the revision. Even though two of the three deficiencies may have been addressed, the revision was not administratively complete enough to begin the technical review. Since the technical review process could not be initiated, the violation still hindered the Division's ability to ensure compliance and could only be corrected after some delay.

For NOV # JDR0004533, violation 1 of 1, it is my decision to affirm the two negligence points. The permittee demonstrated a lack of diligence in complying with the requirements of the RON. The revision application was not administratively complete when submitted on November 15, 2010.

An abatement date of 60 days was initially granted in the notice of violation. Mr. McClanahan stated that Application No. 1006820 was submitted 36 days after the notice of violation was issued. Currently the notice of violation has been extended to February 16, 2011, to allow for DMLR technical review. 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 of \$292.00.

**Assessment Conference Determination:**

**Permit No. 1200194 NOV# JDR0004533, violation 1 of 1 (OT)**

	<b>Proposed Assessment or Reassessment</b>	<b>Assessment Conference Recommendation</b>
I. History of previous violation	\$ 0.00	<b>\$ 0.00</b>
II. Seriousness Points	3	<b>3</b>
III. Negligence Points	2	<b>2</b>
IV. Good Faith Points	--	--
Total Points:	5	<b>5</b>
Base Penalty:	\$ 325.00	<b>\$ 325.00</b>
History Penalty:	\$ 0.00	<b>\$ 0.00</b>
<b>Total Penalty:</b>	<b>\$ 292.00*</b>	<b>\$ 292.00*</b>
<b>* Includes 10% reduction of base penalty per 4 VAC 25-130-845.13(e)(1) VCSMRR.</b>		

Conference Officer: \_\_\_\_\_  
James D. Meacham, Conference Officer

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