

COMMONWEALTH OF VIRGINIA DEPARTMENT OF MINES, MINERALS AND ENERGY DIVISION OF MINED LAND RECLAMATION P. O. DRAWER 900; BIG STONE GAP, VA 24219 TELEPHONE: (276) 523-8157

Assessment Conference Determination

Company:	Wynnly, Inc.	Permit No.:	1102132
Penalty of:	\$225.00	Violation No.:	TMM0009875
Conference date:	03/01/2017 at <u>9:30 AM</u>	Location:	DMME Lebanon
Participants:	Kevin Lowe-Vice President of Operat	• •	•

Summary of Conference

An assessment conference concerning Notice of Violation No. TMM0009875 was held at the DMME Lebanon office at 9:30AM on March 01, 2017. No one from the public participated in this conference. The above referenced violation concerned failure to file a temporary cessation notice or completion letter after the permit was idle for more than 30 days. The history of previous violations, seriousness of the violation, negligence and good faith in complying were considered during this assessment conference.

History of Previous Violations-NA

Seriousness of the Violation

Mr. Kevin Lowe began by stating that the inspector (Tom Mackey at the time of issuance of the violation) arrived on the permit and asked him to meet on the site. He added that the company was trying to get a market for the coal for about a year. The company was keeping up with drainage control on the permit during the whole time. They had a contractor do some testing for air and feasibility of marketing the product. The company had been advised on several occasions about placing the permit in temporary cessation status, beginning operations on the permit or filing a completion letter. Mr. Lowe stated that they had gone a few days beyond the 30 days idle period because they were waiting until the last minute to get the tests performed and results of the testing. They had hope that the tests would prove positive so that they could market the product. The company was hoping all along that things would break loose and they could sell the coal. Mr. Lowe stated that they had monitored the permit and kept drainage up according to the approved plans and had maintained the integrity of the site the whole time.

Negligence

Mr. Lowe stated that they were not trying to be negligent or evading the regulations. Again they were waiting up to the last minute hoping to find a market for the coal. He added that he had always had a good working relationship with DMME and MSHA.

Good Faith In Complying

The violation was issued 09-13-16 with an abatement date of 10-13-16. Mr. Lowe stated that he had attempted to contact Mr. Greg Baker at the Big Stone Gap office for assistance with obtaining a request for temporary cessation notice on E-forms on the date of the violation. However, Mr. Baker was out of

town for a week. He added that he needed help with the E-form since he was not good on computers. Mr. Baker assisted him with the E-form application when he returned to the office. The request for temporary cessation was submitted through E-forms to the DMLR office. The violation was terminated on 09-22-16.

Assessment Conference Recommendation

The permit violation history was checked. No civil penalty should be assessed for violation history. Two (2) points were assigned for seriousness of the violation. I am recommending that the 2 points assigned for seriousness be affirmed. Two (2) points for negligence were assigned. I am recommending that the 2 points assigned for negligence be affirmed. The company made a prompt and diligent effort to abate the violation. Mr. Lowe attempted to obtain assistance for filing the temporary cessation request through the E-form center at the DMLR office on the same day the violation was issued. However, he waited to obtain assistance once Mr. Baker returned to the DMLR office. The request for a notice of temporary cessation was filed through the E-forms prior to the abatement date. The violation was terminated on 09-22-16 prior to the abatement date of 10-13-16. Therefore, I am recommending that one (1) point be assigned for good faith in complying with the notice of violation. One point can be deducted from the total of 4 points assigned for the assessment. It is my recommendation that the civil penalty assessment be waived. This is in accordance with the Division of Mined Land Reclamation Civil Penalty Assessment Manual.

Assessment Conference Determination:

Permit No. 1102132 NOV# TMM0009875, violation 1 of 1 AO							
			Proposed Assessment or Reassessment	_	Assessment Conference Recommendation		
I. History of previous violation		\$0.00		\$ 0.00			
				-			
II. Seriousness Points		2	Γ	2			
III. Negligence Points		2	Γ	2			
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IV.	Good Faith Points		0	Г	-1		
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		Total Points:	4		3		
		Base Penalty:	\$ 250.00		\$175.00		
		History Penalty:	\$ 0.00		\$.00		
		Total Penalty:	\$ 225.00		\$175.00		
			After conference total & if applicable, add –				
			*Includes 10% reduction of base penalty per 4VAC25-130-				
			845.13(e)(1)VCSMRR, or	3000	penuity per //11020 100		
			*Due to low seriousness & i	neolioe	nce points the penalty is		
			waived.	icgiige	nee points, the penalty is		
			110001000.				
Conference Officer: Kenneth Coomer-Reclamation Program Date: 03-03-17				Date: 03-03-17			
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Conference Officer				-			
Conference Officer							