



COMMONWEALTH OF VIRGINIA  
 DEPARTMENT OF MINES, MINERALS AND ENERGY  
 DIVISION OF MINED LAND RECLAMATION  
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DMLR  
 ADMINISTRATION

**Assessment Conference Determination**

**Company:** Red River Coal Company, Inc. **Permit No.:** 1101272  
**Penalty of:** Notice of Violation No. ADC0000691 **Violation No.:** 1 Violation (BR)  
**Conference:** November 12, 2013 @ 1:00PM **Location:** Company Office in Norton VA  
**Participants:** Roger Jones (Engineer), Ken Coomer (DMLR)

**Summary of Conference**

Mr. Jones stated that for a violation to have seven (7) seriousness points assigned to it, the violation is considered to have had substantial or actual damage to the environment. He stated that the violation is also considered to have had an actual substantial hazard to the health and safety to the public or have a substantial potential to be a hazard to the public. He stated that the violation could even be considered to be an extremely dangerous violation. He stated that this violation was not that serious. He stated that the highwall areas listed in the Notice of Violation (N.O.V.) was located high on the hill and that all the unreclaimed highwalls were relatively small sections of highwalls that had not been completely reclaimed. Mr. Jones stated that all the drainage was controlled and that areas located below the violation had been vegetated. He stated that it was true that this violation was correctable only after a substantial amount of time and effort. He stated that they hoped to have the violation corrected by the due date. Mr. Jones stated that in accordance with the Seriousness Point Determination Chart, this violation should be assigned no more than five (5) points.

Mr. Jones stated that on his copy of the proposed assessment the Division had assessed two (2) proposed points for haulroad negligence. He stated that he did not understand why the company had been assessed points for haulroad negligence. He stated that the company should not be assessed any points for haulroad negligence. Mr. Jones further stated he did not agree with two (2) points proposed for negligence if it was the Division's intention to say that they were negligent in backfilling the highwalls. He stated that the company was in the process of reclaiming the highwalls when the N.O.V. was issued. He stated that the company had two (2) dozers working on reclaiming the last sections of highwall. He stated that this was a multi-seam mining operation and that the plans required the lowest coal seam being mined to be reclaimed within the approved time and distance limits. He stated that this took time in order to reclaim the last highwall sections because the bottom seam had to be reclaimed first. He stated that they were not negligent and there should be no points assigned for operator negligence.

Supervisor Coomer stated that this violation was written during an Office of Surface Mining (OSM) oversight inspection. He stated that the company was working on it at the time the N.O.V. was written.

### **Assessment Conference Recommendation**

The permittee requests that the proposed points for seriousness be reduced because the violation had not caused substantial or actual damage to the environment, did not create an actual or potential hazard to the health and safety to the public, and was not a dangerous violation. However; the permittee did not submit any evidence to support his statements other than to establish that the areas were relatively small and had drainage control. In determining the number of points that is assigned to the seriousness of the violation, one must evaluate the violation that was written and assess the seriousness in accordance to the requirements set forth at Section 4 VAC 25-130-845.13 of the Virginia Coal Surface Mining Reclamation Regulations (VCSMRR). The permittee was written for failing to properly backfill and regrade within appropriate time limits. In fact according to enforcement records, the areas listed in the N.O.V. had not been mined since approximately 2007. The regulations require that disturbed areas be properly reclaimed in a timely manner so as to achieve stability of the area, minimize erosion, and to prevent leaching of toxic and/or acid forming materials. The partially backfilled highwalls were very unstable as noted in the Notice of Violation (N.O.V.). This violation was causing erosion to occur (noted in the pictures) and degradation of surface waters and groundwater is a real potential the longer this violation goes unabated. (It should be noted that the Division of Mined Land Reclamation (DMLR) records do show where this permit has had water violations in the past.) It is my decision that this violation, although not extremely serious and dangerous, it did cause moderately significant damage to the environment and has the potential to be a moderately significant hazard to the health and safety of the public until the violation is abated. This violation can only be corrected after much time and effort. Given all the facts, a slight reduction in the proposed seriousness points is warranted. Therefore it is my recommendation to reduce the proposed seriousness points from seven (7) points to six (6) points.

The proposed assessment that had been mailed to the permittee had incorrectly shown that two (2) negligence points were being proposed for haulroad negligence. This assessment officer confirmed with the DMLR Hearing coordinator that no points are being assessed for haulroad negligence. However 2 points are being proposed for operator negligence due to failing to timely backfill and grade on this permit. It is my decision to affirm the proposed two (2) negligence points. This area was last mined in 2007. The permittee has worked on regrading this site but did not put forth the effort necessary to grade the area in a contemporaneous manner. The permittee did not exercise the degree of diligence needed to avoid this violation.

Good Faith is not given for correcting this violation.