



**Informal Hearing Determination**

**Company:** A & G Coal Corporation **Permit No.:** 1102042  
**Subject:** Cessation Order No STJ0008746 (RV)  
**Conference:** December 4, 2013 @ 10:30 AM **Location:** DMME BSG  
**Participants:** Jon Lawson( Southern Coal Corporation), Steven Jaynes (DMME)

**Summary of Informal Hearing**

An informal hearing was conducted on December 4, 2013 at the Department of Mines Minerals and Energy. This informal hearing was to address the issuance of Cessation Order STJ0008746 (one violation). Present at the hearing was DMME personnel Area Inspector Steven Jaynes. Representing the company at the hearing was Jon Lawson. No other members of the public attended this hearing.

Cessation Order STJ0008746 (violation 1 of 1) was issued to the permittee because he failed to abate NOV STJ 0008546 for backfilling and grading. Notice of Violation STJ0008546 was issued on May 31, 2013, because the operator failed to bring the area designated in temporary cessation to a current status by submitting cost estimate bond within the applicable time limit for the affected area or resume active operations in a manner to bring operations to a current operations status.

The company representative Jon Lawson began by acknowledging that the permit in question did have un-reclaimed highwalls. Mr. Lawson noted that there was a pending revision for permit 1102042. Revision application 1006579 would add additional area to be mined, and the company is diligently working to get that revision approved. Additional spoil generated by the additional mining would result in material to eliminate the highwall areas addressed by the notice of violation STJ0008546.

Mr. Lawson continued noting that company officials had spoken with DMLR officials. He stated that it was the companies understanding that if revision application 1006579 was submitted, the agency (DMME) would extend the abatement date for the notice of violation (STJ0008546), and no cessation order would be issued. He re-iterated that the company needed to mine the amended area to generate spoil to eliminate the highwall. Mr. Lawson stressed that this had been a priority since May, 2013.

Inspector Steve Jaynes confirmed that the cessation order STJ0008746 was issued for failure to comply Notice of Violation STJ0008546. He also noted that lease agreements on the area to be amended had expired. Before the revision application could be approved, the company would have to demonstrate the right to enter and conduct coal surface mining operations on the area of

the proposed amendment. The company re-submitted the revision the day the cessation order was issued. Mr. Lawson stated that the company's position is that they are caught in a predicament. In order to comply the violation, th

e revision needs to be approved. The company cannot put the site in temporary cessation. The site must be re-activated to comply. While there is some material available, there isn't enough to fix the problem.

Inspector Jaynes noted that the site is a pool bonded permit. He stated that the cessation order could have been avoided. The company could have simply posted the cost estimate and the temporary cessation approved. Mr. Lawson stated that the site had exceeded the six month limit for temporary cessation. He stated the company thought that the revision would stave off the cessation order. Had the company known the outcome, they could have gone a different route.

### **Informal Hearing Recommendation**

This informal hearing was conducted to determine the fact of issuance for the Cessation Order STJ0008746. Cessation Order STJ0008746 (violation 1 of 1) was issued to the permittee because he failed to abate Notice of Violation STJ0008546 for backfilling and grading. Issuance of a cessation order for failure to abate is governed under 4VAC25-130-843.11 of the Virginia Coal Surface Mining Reclamation Regulations. Specifically, section (b) (1) states,

*(b)(1) When a notice of violation has been issued under 4VAC25-130-843.12(a) and the permittee fails to abate the violation within the abatement period fixed or subsequently extended by the authorized representative, the authorized representative of the Director shall immediately order a cessation of coal exploration or surface coal mining and reclamation operations, or of the portion relevant to the violation.*

Notice of Violation STJ0008546 was not contested within the confines of this informal hearing. That violation is no longer subject to review as the right of the permittee to contest that violation expired on November 13, 2013, and therefore the violation must be considered final.

The permittee's position that there could be no additional enforcement action is not supported by the regulations. The only exception for not issuing the subsequent Cessation Order STJ0008746 would be compliance by the permittee for NOV STJ0008546, or an extension of its abatement date. Extension of the abatement date is governed by 4VAC25-130-843.12. Section (c) specifies,

*(c) An authorized representative of the Director may extend the time set for abatement or for accomplishment of an interim step, if the failure to meet the time previously set was not caused by the permittee's lack of diligence.*

Neither of these conditions was met on October 3, 2013, the date of the issuance of Cessation Order STJ0008746. The permittee's claim of diligence of pursuit of the revision application 1006579 is not supported by the fact that the revision was not re-submitted until the issuance of the order of cessation.

The operator is required to comply with all applicable regulations to ensure that all his reclamation obligations have been fully met. These include, but are not limited to, contemporaneous reclamation of the site, or at a minimum notification of the regulatory agency of his intention to temporarily cease operations under 4 VAC 25-130-816.131. Enforcement actions taken by the DMLR were necessary under the Virginia Coal Surface Mining Control and Reclamation Act of 1979 and the regulations promulgated there under. In summary, it is my decision that the item cited by Cessation Order STJ0008746 was in violation of the cited regulations and should be affirmed as written.

Informal Hearings Officer: \_\_\_\_\_

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