



DIVISIONS
ENERGY
GAS AND OIL
MINED LAND RECLAMATION
MINERAL MINING
GEOLOGY AND MINERAL RESOURCES
MINES
ADMINISTRATION

COMMONWEALTH of VIRGINIA

Department of Mines, Minerals and Energy

P.O. Drawer 900
3405 Mountain Empire Road
Big Stone Gap, Virginia 24219-0900
(276) 523-8100
www.dmme.virginia.gov

March 5, 2014

Mr. James C. Justice II
P.O. Box 1010
5957 Windswept Boulevard
Wise, VA 24293

Certified Mail Return
Receipt No. 7013 1090 0001 0523 5812

Re: Assessment Conference Decision – Civil Penalty of Cessation Order JRJ0001135, Violation 1 of 1 (EF) issued to Virginia Fuel Corporation, PN 1702073

Dear Mr. Justice:

An assessment conference (4 VAC 25-130-845.18(a) VaCSMRR) was held on February 19, 2014, to review the civil penalty determination of Cessation Order JRJ0001135, 1 violation (EF). Based upon the attached opinion of Conference Officer James Lowe, the **civil penalty determination has been affirmed at \$ 6,750.00 for violation 1.**

Please be advised that you may request a formal public hearing under 4 VAC 25-130-845.19(a) of the regulations to contest the penalty determination(s) of **CO JRJ0001135**. Your written request must be submitted with payment of the civil penalty to this office within 30 days from your receipt of this decision. The penalty payment would be placed in escrow pending final administrative/judicial review.

Regardless of whether you wish to contest the civil penalty determination or fact of issuance of the notice or order, the penalty amount will be due and payable within 30 days from your receipt of this decision. Should a timely appeal result in the vacation or reduction of the penalty, the Division would refund the applicable amount with accrued interest (calculated from date of payment).

Please submit payment of the penalty in the form of cash, money order, or check. A money order or check (company, cashier's, or certified) must be made payable to the "Treasurer of

Virginia". To expedite our receipting of the penalty payment, please note the violation and permit numbers with your payment.

Should you have any questions concerning the formal hearing or payment processes, please call me at (276) 523-8271.

Respectfully,

A handwritten signature in black ink that reads "Haue A. Money". The signature is written in a cursive style with a large, stylized initial 'H'.

Legal Services Officer

c: John Jones, Inspector
Kenneth Coomer, Area Supervisor
James Lowe, Conference Officer



FEB 28 2014

Customer Assistance Center

Assessment Conference Determination

Company:	<u>Virginia Fuel Corporation</u>	Permit No.:	<u>1702073</u>
Penalty of:	<u>Cessation Order No. JRJ0001135 (cofta)</u>	Violation No.:	<u>1of 1 (EF)</u>
Conference:	<u>February 19, 2014 @ 10:00AM</u>	Location:	<u>DMLR's Big Stone Gap Office</u>
Participants:	<u>John Jones (DMLR Inspector)</u>		

Summary of Conference

No one from the general public or the permittee attended this assessment conference. However; the hearings officer and the DMLR Inspector was present at the place, date, and time listed above for this informal conference. Inspector Jones and the hearings officer contacted the permittee by phone to see if they were going to attend this conference. Mr. Les Vincent (Engineer for the permittee) stated that they would not be attending the conference but would submit written information concerning the proposed assessment on this date (February 19, 2014). The permittee did submit written information on February 19, 2014 (see below for a copy of the letter with invoice) from Mr. Jon Lawson, Compliance Director as to why the permittee wanted a reduction in the proposed civil penalty amount.

SOUTHERN COAL CORPORATION

February 19, 2014

James Lowe
Division of Mined Land Reclamation
P.O. Drawer 900
Big Stone Gap, VA 24219

Re: Informal Assessment Conference
Virginia Fuel Corporation, Permit 1702073
NOV # JRJ0001135

Dear Mr. Lowe:

Virginia Fuel Corporation (VFC) is requesting that the Civil Penalty Assessment for to FTACO # JRJ0001135 on P.N. 1702073 assessed by Mr. Mooney on October 21, 2013 be reduced. VFC had not contested the fact of violation. However, VFC continued treatment on the pond during the inspection timeframe and purchased chemical treatment that led to the eventual abatement. Outfall 001A has been a contentious area with AML influenced water being routed to the outfall. Although, the treatment was in place, it took time and money to correct the situation. The efforts to abate were made prior to September 20th, this fact should be reflected in the assessment.

Please see the attached payment/delivery information from Freedom Industries AMDTreat chemical that resolved the issue.

Sincerely;

Jon Lawson

Jon Lawson, Compliance Director

P.O. BOX 1010, WISE, VIRGINIA 24293

**Freedom
INDUSTRIES**
P.O. Box 713 Charleston, WV 25323

INVOICE
Invoice Number: DF51101
Invoice Date: Sep 10, 2013
Page: 1

BILL To:
A & G Coal Corporation
302 S Jefferson Street
Suite 600
Roanoke, VA 24011

Ship to:
Ramsey Plant *For Signy Plant*
8942 Matthews Road
Norton, VA 24273

Customer ID	Customer PO	Payment Terms	
A & G Coal Corporati		Prepaid	
Sales Rep ID	Shipping Method	Ship Date	Due Date
TBNE	Fed Ex Freight	9/10/13	9/10/13
Quantity	Item	Description	Customer #
3.00	AM200-TS-PBL	AMD Treatment Tote(s) - 2800 lbs each	
Unit Price	Amount		
980.0000	2,940.00		

Voice: 304-720-8065
Fax: 304-343-0028
Web: www.Freedom-industries.com
Check/Credit Memo No: 1251

Subtotal	2,940.00
Total Invoice Amount	2,940.00
Payment/Credit Applied	2,940.00
TOTAL	0.00

Assessment Conference Recommendation

This assessment conference was closed on February 27, 2014 after obtaining and evaluating the information contained in the associated inspection reports, DMLR enforcement actions, DMLR's Civil Penalty Assessment Manual, and after reviewing the applicable Virginia Coal Surface Mining Reclamation Regulations (VCSMRR). The written information submitted on February 19, 2014 was considered in making a determination as to the appropriateness of the proposed civil penalty.

This proceeding was held to review the proposed civil penalty for FTACO # JRJ0001135. As such, the Conference Officer may not rule on the validity of the violation. Therefore; facts not in dispute are (1) the permittee was in violation of failing to meet effluent limits from Pond 1A and NOV JRJ0001032, violation 1 of 1 was issued on July 10, 2013; (2) this N.O.V. required the permittee to take all measures necessary by August 26, 2013 to ensure discharges were in compliance; (3) On August 27, 2013, Mr. Jon Lawson of Justice Corporation was actively performing treatment on Pond 1A; (4) grab samples for laboratory analysis were obtained on August 27, 2013 and N.O.V. # JRJ0001032 was extended to September 6, 2013 to allow time to obtain laboratory results; (5) on September 10, 2013, laboratory results were obtained for the August 27, 2013 grab samples that showed Pond 1A discharges to be out of compliance; (6) the permittee did not provide any information between August 27, 2013 and September 10, 2013 to show that the discharge from Pond 1A was in compliance with water quality standards; (7) N.O.V. # JRJ0001032 had not been complied and FTACO # JRJ0001135 was issued on September 11, 2013; (8) the FTACO required the operator to perform any measures necessary to ensure compliance of the Pond 1A discharges; (9) laboratory analysis of the grab samples taken on September 20, 2013 of the discharge from Pond 1A showed that the discharges were within the maximum daily allowable limits; (10) FTACO # JRJ0001135 was abated on September 20, 2013.

Given these facts, it is clear from the record that the violation listed in N.O.V. # JRJ0001032 had not complied by the due date and a FTACO #JRJ0001135 was issued.

It is also clear that the violation contained in FTACO #JRJ0001135 existed for nine (9) days (September 11,2013 to September 19, 2013) before being abated. Section 4 VAC 25-130-845.15 sets forth the regulatory requirements concerning the assessment of a FTACO:

4VAC25-130-845.15. Assessment of separate violations for each day.

“ (a) The division may assess separately a civil penalty for each day from the date of issuance of the notice of violation or cessation order to the date set for abatement of the violation. In determining whether to make such an assessment, the division shall consider the factors listed in 4VAC25-130-845.13 and may consider the extent to which the person to whom the notice or order was issued gained any economic benefit as a result of a failure to comply. For any violation which continues for two or more days and which has been assigned a penalty of \$5,000 or more under 4VAC25-130-845.13, the division shall assess a penalty for a minimum of two separate days.

(b) In addition to the civil penalty provided for in subsection (a) of this section, whenever a violation contained in a notice of violation or cessation order has not been abated within the abatement period set in the notice or order or as subsequently extended pursuant to §45.1-245B of the Act, a civil penalty of not less than \$750 shall be assessed for each day during which such failure to abate continues (emphasis added), except that:

(1)(i) If suspension of the abatement requirements of the notice or order is ordered in a temporary relief proceeding under §45.1-249C of the Act, after a determination that the person to whom the notice or order was issued will suffer irreparable loss or damage from the application of the requirements, the period permitted for abatement shall not end until the date on which the Director or his authorized representative issues a final order with respect to the violation in question; and

(ii) If the person to whom the notice or order was issued initiates review proceedings under §45.1-251B of the Act with respect to the violation, in which the obligations to abate are suspended by the court pursuant to §45.1-251B of the Act, the daily

assessment of a penalty shall not be made for any period before entry of a final order by the court;

(2) Such penalty for the failure to abate the violation shall not be assessed for more than 30 days for each such violation . If the permittee has not abated the violation within the 30 day period, the division shall take appropriate action pursuant to §§45.1-245 and 45.1-246 of the Act within 30 days to ensure that abatement occurs or to ensure that there will not be a reoccurrence of the failure to abate.”

In accordance with the regulatory requirements, a minimum penalty of \$750.00 was assessed for each of the nine (9) days for a total proposed civil penalty amount of \$6,750.00.

However; the permittee contends that the proposed civil penalty assessed for the FTACO should be reduced. The permittee based their argument that on the fact that they continued treatment of the pond from September 10, 2013 to September 20, 2013 and it took time and money to correct the effluent. It is acknowledged that chemical treatment for the old Sigmon Plant was ordered on September 10, 2013 and that chemical treatment of a pond does require time to adjust the water so that discharges are in compliance with water quality standards. However; the time it takes to chemically treat a pond to bring discharges into compliance does not justify a reduction in the proposed number of days that the violation existed nor does it justify a reduction in the civil assessment. The regulations set forth in Section 4VAC25-130-845.15(b)(1)(i) and 4VAC25-130-845.15(b)(1)(ii) (listed above) contain the only exceptions to the amount of penalties that are assessed for FTACO' s. None of those exceptions listed in those sections are present in this case.

Therefore; it is my decision that the proposed civil penalty was properly assessed in accordance with the requirements contained in the regulations. NOTE: The proposed assessment also evaluates and sets forth points assigned for the seriousness and negligence of the violation in order to determine if the civil penalty should be increased above the minimum amount for each day that the violation existed. The proposed evaluation shows that the penalty per day should not be increased. I agree with that