



**Informal Hearing Determination**

<b>Company:</b>	<u>Norton Coal Company, LLC</u>	<b>Permit No.:</b>	<u>1101823</u>
<b>Subject:</b>	<u>Notice of Violation No. JDR0006264</u>		<u>Violation 1 of 1 (BL)</u>
<b>Conference:</b>	<u>April 22, 2014, 10:00 a.m.</u>	<b>Location:</b>	<u>Permit site</u>
<b>Participants:</b>	<u>Robert Brendlinger (Wellmore Energy), David Styers (Wellmore Energy), Jeffrey Rasnake (DMLR)</u>		

**Summary of Informal Hearing**

On April 22, 2014, an informal hearing was held at the Grundy office of Wellmore Energy Company, in reference to the fact of violation for Notice of Violation No JDR0006264. Representing Norton Coal Company was Mr. Robert Brendlinger, PE, and Mr. David Styers of United Coal Company. The hearings officer was Harve Mooney. Mr. and Mr. Styers were afforded the opportunity to provide comments and/or information during the informal hearing. There were no attendees from the general public at this hearing.

Mr. Robert Brendlinger began by noting that they had received a number of complaints from a citizen concerning blasting. In an effort to assure compliance they had begun monitoring at the citizen’s home. The company employed GeoScan, Inc to perform the seismic monitoring at the complainant’s home. Mr. Brendlinger identified the complainant’s home as being 1179 feet from the blast that resulted in the notice of violation that is the subject of this informal hearing.

Mr. Jeffery Rasnake, the area inspector also noted that he had received a complaint concerning blasting from the mining operation of Norton Coal Company LLC. As a result the Department of Mines Minerals and Energy (DMME) conducted a review of the blasting log and also conducted monitoring at the same citizen’s home. He noted both the private company GeoScan, Inc and the DMME conducted monitoring on August 28, 2013. Inspector Rasnake noted both seismographs recorded an air blast of 134 decibels. This blast exceeded the air blast limit of 133 decibels set forth in the Va Coal Surface Mining Reclamation Regulations.

Mr. Brendlinger stated that the company had concerns about the readings of the seismographs that were used. He stated he had spoken with personnel from GeoScan, Inc, and that most seismographs have a variance of  $\pm 2$  to 3 decibels. The fact that the notice of violation was written for being one decibel over the allowable limit was questionable. The value for which the violation was written was within the tolerance level of the machine.

Mr. Brendlinger also noted that there were a number of factors that he felt would affect the reading of the seismographs. He felt that these factors include overcast skies and temperature

inversion as well as barometric pressure. He also noted that the type of material at the blast site was a factor in the air blast reading. Mr. Brendlinger submitted climatological data, blasting log data and mapping to illustrate these factors.

Mr. David Styers noted that overcast days would affect the air blast levels. He stated that overcast skies would result in an increased air as the air pressure from a blast would be re-directed down due to the cloud ceiling. Mr. Styers noted that this was a factor in the August 28<sup>th</sup> blast that the violation addressed.

Mr. Brendlinger noted that the type of material noted on the blasting log entry was sandstone. He stated while there indeed was sandstone present, there were other materials that could affect the air blast. He noted that the many factors coupled with the margin of error brought a violation of the air blast level by 1 decibel into question. Mr. Brendlinger noted that the alleged exceedence was discovered in a review of the records and there was no complaint on August 28, 2014. Mr. Brendlinger stated the company's position that the Notice of Violation JDR0006264 should be vacated in view of these facts.

### **Informal Hearing Recommendation**

This hearings officer has reviewed Notice of Violation # NOV# JDR0006264 violation 1 of 1 (BL). I have also examined the associated complaint reports; seismic monitoring conducted by the DMME on permit 1101823, and the Virginia Coal Surface Mining Reclamation Regulations. Additional time was required for this decision to allow for comment from personnel from GeoScan, Inc as well as Technical specialists from the Office of Surface Mining and the Department of Mines Minerals and Energy. I completed this review on April 28, 2014.

Notice of Violation JDR0006264 (one violation) was issued to the operator because the operator initiated a blast on August 28, 2014 in which the air blast limit of 133 was exceeded with a value of 134 decibels. The standard for this violation is addressed within the Virginia Coal Surface Mining Reclamation Regulations, which addresses use of explosives in mining and the control of adverse effects. Specifically, Section 4VAC25-130-816.67 (b) states,

***(b) Air blast.***

***(1) Limits.***

*(i) Air blast shall not exceed the maximum limits listed below at the location of any dwelling, public building, school, church, or community or institutional building outside the permit area, except as provided in Paragraph (e) of this section.*

Lower frequency limit of measuring system, in Hz ( $\pm$ 3 dB)	Maximum level, in dB
0.1 Hz or lower - flat response <sup>1</sup>	134 peak
2 Hz or lower - flat response	133 peak
6 Hz or lower - flat response	129 peak
C-weighted-slow response <sup>1</sup>	105 peak dB

<sup>1</sup> Only when approved by the division

There is no question that the company did blast on the time and date in question. Both the seismograph of the private company and the DMME confirm the blast on August 28, 2013. The blasting log documents the blast as well. The only point of contention appears to be the validity of the air blast reading.

As part of the review in this hearing, the specifications of the state seismograph used in the monitoring were reviewed. In addition technical staff members of both the DMME technical staff as well as the Office of Surface Mining's technical services in Pittsburgh, PA were consulted as to the accuracy of these devices. It was noted that the White Micro-Seis<sup>tm</sup> seismograph that was used in monitoring by the DMME has a tolerance of less than 1 decibel. The unit's calibration is checked periodically. With an air blast at a frequency of 6 hertz or more, the tolerance of the DMME unit is less than .1 decibels. The frequency of the air blast on August 28, 2013 was 18.9 Hertz. The DMME must accept the recorded reading for air blast noted by both seismographs as accurate and true.

It is acknowledged that all of the factors noted by the company would affect the air blast reading of a blast. However, these are factors that should be taken in consideration when developing a particular plan for the blast. The limits of air blast under Section 4VAC25-130-816.67 (b) of the VaCSMRR do not specify any allowance for exceeding the air blast limits due to field or atmospheric conditions.

Therefore; it is my decision that company blast on August 28, 2013 failed to meet the air blast limits as noted on two separate seismographs exceeding the limit with an air blast value of 134 db contrary to Section 4VAC25-130-816.67 (b) of the VaCSMRR. It is my determination that Notice of Violation JDR0006264 be affirmed as written.

Conference Officer: \_\_\_\_\_  
Harve A. Mooney

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