



Assessment Conference Determination

Company:	<u>Red River Coal Company, Inc</u>	Permit No.:	<u>1100717</u>
Penalty of:	<u>Notice of Violation DLH0008703</u>	Violation No.:	<u>1 of 1 (DS)</u>
Conference:	<u>February 13, 2013 @10:30 AM</u>	Location:	<u>Laboratory Office on 1100084</u>

Participants:

Kara Dodson(Southern Appalachian Mountain Stewards), Roger Jones (Red River Coal Company, Inc., Engineer), (Eddie Clapp, Red River Coal Company, Inc., Compliance Manager), John Clevinger (DMLR Inspector), James Meacham (DMLR Area Supervisor)

Summary of Conference

Eddie Clapp started out by saying that he wanted to give a little history of the site. He stated this was a small underground mine that stored scalp rock on the solid bench area. This permit has gone through numerous inspections over the years (both state and OSM stats) and gone through several inspectors without anything being written concerning certification of the scalp rock area. He added that this violation was issued as non-remedial and that this was a paperwork violation. Mr. Clapp stated that the 4 points for seriousness of the violation was too high since there was no environmental harm involved that the situation just slipped through the cracks over the years. He thought that it was hard to say that the company was negligent and to assign a seriousness of 4 points was way too high. Again he added that this permit had been inspected by more than 1 inspector and 2 points for negligence was high. He ended by stating that the scalp rock area was stable, on the solid portion of bench and there was no environmental harm involved. No comments were received from any of the other participants.

Assessment Conference Recommendation

NOVDLH0008703, Violation 1 of 1, under Performance Code DS was issued to the company on 12-11-12. The referenced NOV stated that the company failed to submit required fill certifications for a scalp rock/bench fill. I researched the permit files for 1100717. According to the information in the permit files, Revision Application 9105806 was approved 08-31-93. This revision approved a scalp rock disposal area on the permit adjacent to a small underground mine in the Upper Standiford coal seam. In the application, on Page 3 it states “A Registered Professional Engineer, or other qualified specialist, will inspect the fill at least quarterly during construction. A certified report will be submitted to DMLR within two weeks after each

inspection.” The operations map included with the application shows the scalp rock area on a previously mined area and is in an area that is now in temporary cessation.

I also researched the inspection information for the permit. The permit, since the scalp rock area was added, has undergone three OSM stat inspections, 07-07-98, 04-23-99 and 02-06-06. In addition, the permit has received all quarterly DMLR inspections since that time as required. During the OSM stat inspections the scalp rock fill was never mentioned nor cited for failure to submit quarterly certifications. Also during the quarterly complete DMLR inspections, the scalp rock fill was never mentioned nor cited for failure to submit quarterly certifications. The quarterly DMLR inspections were performed by more than one inspector.

Considering the above it is my recommendation to lower the proposed seriousness points assigned to this violation to two (2) points. This violation has not resulted in any adverse environmental harm. This violation appears to be an oversight by the company as well as DMLR and OSM inspectors. I feel that the scalp rock area was considered by inspectors as backfill material. The scalp rock fill area never received any construction certification since approval. This violation was issued as non-remedial. The company has since submitted a quarterly fill certification.

Concerning the negligence points assigned to this violation, it is my recommendation that two (2) points assigned for negligence be lowered to one (1) point. It was not brought to the attention of the company that the scalp rock fill needed to be certified during construction for a number of years by inspectors. The original design engineer that developed the revision application retired from the company and the need to certify the scalp rock fill was not conveyed to the present engineer until December of this year by Inspector Hope. All along I believe that the scalp rock fill area was considered to be backfill material by the company and various inspectors. The company immediately submitted a quarterly fill certification.

This NOV was issued non-remedial. Good faith was not considered.

Assessment Conference Determination:

Permit No. NOV# DLH0008703 , violation 1 of 1 (DS)

	Proposed Assessment or Reassessment	Assessment Conference Recommendation
I. <u>History of previous violation</u>	\$20.00	\$20.00
II. Seriousness Points	4	2
III. Negligence Points	2	1
IV. Good Faith Points	0	0
Total Points:	6	3
Base Penalty:	\$ 400.00	\$175.00
History Penalty:	\$ 20.00	\$20.00
Total Penalty:	\$ 420.00	\$195.00

Conference Officer: *Kenneth Coomer*
 Ken Coomer, Conference Officer

Date: 02-21-13