



Assessment Conference Determination

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|----------------------|--|--------------------|--|
| Company: | <u>Barnette Energy, LLC</u> | Permit No.: | <u>1101978</u> |
| Penalty of: | <u>Cessation Order No. HNM0004964</u> | | <u>3 Violations (EP, SD, SS)</u> |
| Conference: | <u>August 27, 2013 @ 10:00 AM</u> | Location: | <u>At the Company office in Clinchco, VA</u> |
| Participants: | <u>Mr. Sunny Guo (Authorized Agent, Power of Attorney, Mrs. Tina Bartley (Secretary), Heather McDonald Taylor (DMLR Reclamation Inspector)</u> | | |

Summary of Conference

The Authorized Agent used the same arguments for CO No. HNM0004964 Violation 1 of 3 (EP), Violation 2 of 3 (SD) and Violation 3 of 3 (SS). Mr. Guo stated that the engineer for the company (Chris Perry) was gone on vacation during the time that the revision (Revision Application No. 1007198) was to be submitted back to DMLR. In the meantime the company was in the process of changing engineers to process the above mentioned revision. There was a delay in changing engineers. It took 3 days just to get the necessary paper work to change engineers. They had contacted 2 or 3 different engineers to address the revision. Mr. Guo stated also that he thought that he had been given more time during a meeting with Gavin, Greg and Harve. He stated that the company had never stopped working to obtain a different engineer. Mr. Guo added that the company had spent a lot of money taking care of reclamation, that the penalty was not necessary. The company had worked diligently to find another engineer to take care of the necessary revision. He wanted a waiver of the penalty. Mr. Guo stated that they were committed to take care of the liability on the permit. The company does not have any production at this time and no money due to economic conditions. However, they are committed to finishing the permit and taking care of everything.

The inspector stated that there was no agreement to allow more time and that the NOV and CO was based on failure to respond to comments on Revision Application 1007198 that addressed the violations.

Assessment Conference Recommendation

It is my recommendation to assess a penalty of \$750.00 a day for a period of 3 days for a total of \$2,250.00 for CO HNM0004964, Violation 1 of 3 (EP). **Note : Section 4 VAC25-130-845-15(b) of the Virginia Coal Surface Mining Reclamation Regulations states, 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 Section 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. NOV HNM0003670 was issued 07-23-10 that directed the operator to submit and gain approval of a revision to add areas disturbed off the permit. The company submitted Revision Application No. 1007198 to address the violation on 11-23-10. A settlement agreement was entered into dated 01-18-12. The agreement required the company to diligently pursue approval of Revision Application No. 1007198 and meet all re-submittal deadlines that were established by DMLR. The company failed to diligently pursue established deadlines as evidenced by ---Application No. 1007198 was returned to the operator with comments due 04-11-12. Those comments were due on 04-23-12. As of 06-11-12 the company still had not responded with comments. The company failed to comply with the terms of the settlement agreement. Ample time was given for the company to comply with the requirements of the NOV.

It is also my recommendation to assess a penalty of \$750.00 per day, for 3 days, for a total of \$2,250.00 for Violation 2 of 3 (SD) and a penalty of \$750.00 per day, for 3 days, for a total of \$2,250.00 for Violation 3 of 3 (SS) for the above stated reasons. Therefore the total penalty is \$6,750.00 for Violation 1 of 3 (EP), Violation 2 of 3 (SD) and Violation 3 of 3 (SS).

Good faith is not being considered.

Assessment Conference Determination:

Permit No. 1101978 CO# HNM0004964, violation 1 of 3 (EP)

| | Proposed Assessment or Reassessment | Assessment Conference Recommendation |
|----------------------------------|--|---|
| I. History of previous violation | \$100.00 | <input type="text"/> |
| II. Seriousness Points | 10 | <input type="text"/> |
| III. Negligence Points | 4 | <input type="text"/> |
| IV. Good Faith Points | 0 | <input type="text"/> |
| Total Points: | 14 | <input type="text"/> |
| Base Penalty: | \$ 2,750.00 | <input type="text"/> |
| History Penalty: | \$ 100.00 | <input type="text"/> |
| Total Penalty: | \$ 750.00/day* | \$2,250.00 |

*** Per 4 VAC 25-130-845.15(b) VCSMRR and 45.1-246H of the Code of Va., a minimum penalty of \$750 is being assessed for each day of the failure to abate the violation, not to exceed 30 days. The daily penalty is assessed for 3 days. The CO was served on 6/11/2012. The \$750/day penalty was assessed for 3 days (6/11/2012 through 6/13/2012) = \$2,250.00.**

Conference Officer:

Kenneth Coomer

Kenneth Coomer, Conference Officer

Date: 09/06/13

Assessment Conference Determination:

Permit No. 1101978 CO# HNM0004964, violation 2 of 3 (SD)

| | Proposed Assessment or Reassessment | Assessment Conference Recommendation |
|----------------------------------|--|--|
| I. History of previous violation | \$100.00 | <input type="text"/> |
| II. Seriousness Points | 4 | <input type="text"/> |
| III. Negligence Points | 3 | <input type="text"/> |
| IV. Good Faith Points | 0 | <input type="text"/> |
| Total Points: | 7 | <input type="text"/> |
| Base Penalty: | \$ 475.00 | <input type="text"/> |
| History Penalty: | \$ 100.00 | <input type="text"/> |
| Total Penalty: | \$ 750.00/day* | \$2,250.00 |

*** Per 4 VAC 25-130-845.15(b) VCSMRR and 45.1-246H of the Code of Va., a minimum penalty of \$750 is being assessed for each day of the failure to abate the violation, not to exceed 30 days. The daily penalty is assessed for 3 days. The CO was served on 6/11/2012. The \$750/day penalty was assessed for 3 days (6/11/2012 through 6/13/2012) = \$2,250.00**

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

Date: 09/06/13

Assessment Conference Determination:

Permit No. 1101978 CO# HNM0004964, violation 3 of 3 (SS)

| | Proposed Assessment or Reassessment | Assessment Conference Recommendation |
|----------------------------------|--|--|
| I. History of previous violation | \$ 100.00 | <input type="text"/> |
| II. Seriousness Points | 4 | <input type="text"/> |
| III. Negligence Points | 3 | <input type="text"/> |
| IV. Good Faith Points | 0 | <input type="text"/> |
| Total Points: | 7 | <input type="text"/> |
| Base Penalty: | \$ 475.00 | <input type="text"/> |
| History Penalty: | \$ 100.00 | <input type="text"/> |

