



COMMONWEALTH OF VIRGINIA  
 DEPARTMENT OF MINES, MINERALS AND ENERGY  
 DIVISION OF MINED LAND RECLAMATION  
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DMLR  
 ADMINISTRATION

**Assessment Conference Determination**

**Company:** A & G Coal Corporation **Permit No.:** 1102052  
**Penalty of:** Notice of Violation No. LJJ0000603 **Violation No.:** 1 of 1 (BR)  
**Conference:** November 6, 2013 @ 11:00A.M. **Location:** Big Stone Gap Office  
**Participants:** Jon Lawson (Biologist & Permit Specialist), Landon Jenkins and Eddie Varner (DMLR)

**Summary of Conference**

Mr. Lawson stated that he did not agree with the 7 proposed points assigned to the seriousness of the violation. He stated that the environmental impact from this violation should not be deemed as having a significant impact. He stated that the original report written by DMLR on 9/4/13 did not describe this violation as having a significant impact to the environment. Mr. Lawson stated that no off-site impacts occurred because all drainage from the area goes thru sedimentation structures. He stated that the facts and field conditions show that seven (7) points are too high for this violation.

Inspector Varner stated that all the drainage from the area of the violation did pass thru sediment structures prior to leaving the permitted area.

Inspector Jenkins stated that this area was not stable and severe erosion had occurred. He stated that he had issued this violation because Inspector Varner was not available on the day of the oversight inspection with the Office of Surface Mining (OSM). He also stated that he did note that runoff from this area was passing thru drainage structures. He stated that because drainage was going into drainage structures, he put that no off-site impact was occurring from this violation on the impact form.

Mr. Lawson stated that he had no comments concerning the operator's negligence.

Mr. Lawson stated that good faith should be considered in complying the violation. He stated that this was an idled operation and that the company placed two (2) additional men on the crew and assigned a qualified dozer operator to help terminate this violation. Mr. Lawson stated that the company did this in order to get the violation terminated on time while working on ten (10) other sites that had Cessation orders in effect. He also stated that the company put in additional water bars to redirect drainage to prevent further problems from occurring.

Inspector Varner stated that it took a while for them to put a crew on this site, but work was completed in one day once work began. He stated that he terminated the N.O.V. as of 10/28/13.

Inspector Jenkins stated that he had also reviewed this site and the work completed looked very good.

### **Assessment Conference Recommendation**

The permittee requests that the proposed points for seriousness be reduced because drainage from the area drains into sediment structures. In determining the number of points that is assigned to the seriousness of the violation, one must evaluate the violation that was written and assess the seriousness in accordance to the requirements set forth at Section 4 VAC 25-130-845.13 of the Virginia Coal Surface Mining Reclamation Regulations (VCSMRR). The permittee was written for failing to properly stabilize the gullies that formed from an access road. This violation was causing severe erosion in a specific area to occur and placing sediment on previously reclaimed lands. The regulations require access roads, as well as all disturbed areas within the permit, to be properly reclaimed so as to achieve stability of the road and minimize erosion. This violation was only corrected by using dozers to regrade the area and placing additional berms, diversions, and water bars to prevent future problems. Clearly, the access road had not been properly reclaimed and stabilized. This violation caused actual moderately significant damage to the environment on a specific area of the permit. It is noted that the violation was corrected quickly and drainage from the area passed thru drainage structures. The damage was contained within the permit. Therefore; it is my recommendation that the proposed seriousness points for this violation be reduced because substantial damage to the environment did not occur. It is my decision to reduce the proposed seven (7) seriousness points to three (3) points based on actual events and field conditions.

It is my decision to affirm the proposed two (2) negligence points. The permittee failed to grade the access road in such a way as to stabilize it and to prevent drainage from eroding the area. The permittee failed to exercise the care expected of a careful operator to prevent this violation from occurring.

Good Faith is not given for correcting this violation. The permittee achieved normal compliance by abating the violation within the given time frame. Directing a reclamation crew to return to an idled site to correct a violation is considered a necessary act to abate this violation. The enforcement record shows that this violation was written on September 4, 2013. The permittee did not take any corrective actions to abate the violation until 10/28/13. The permittee did not take any extraordinary measures to abate the violation in the shortest possible time frame.