



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

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Big Stone Gap, Virginia 24219-0900
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February 5, 2014

Mr. James C. Justice II
Black River Coal, LLC
P.O. Box 1010
Wise, VA 24293

Certified Mail Return
Receipt No. 7013 1090 0001 0523 5850

Re: Informal Hearing Decision - Issuance of Notice of Violation TMM0008620 (1 Violation)
for Black River Coal, LLC. Permit Number 1402094.

Dear Mr. Justice:

An informal hearing was held on January 22, 2014, to review the issuance of Notice of Violation TMM0008620, 1 violation. Based upon the attached opinion of the Informal Hearing Officer, I am affirming the issuance of Notice of Violation TMM0008620.

Pursuant to §4VAC25-130-843.16(a) of the Virginia Coal Surface Mining Reclamation Regulations, you (or any person having an interest which is or may be adversely affected by this decision) have the right to request a formal public hearing to review this decision. The request must be submitted in writing within 15 days from service of this decision to the:

Hearings Coordinator
Division of Mined Land Reclamation
P. O. Drawer 900
Big Stone Gap, Virginia 24219

Please be advised that the party requesting formal review shall bear the burden of proof at the formal hearing. Should you have any questions concerning the formal hearing process, please call Harve A. Mooney, Hearings Coordinator, at (276) 523-8271.

Respectfully,



Gavin M. Bledsoe
Reclamation Services Manager

c: Tom Mackey, Area Inspector
James Lowe, Area Supervisor
Harve A Mooney, Informal Hearing Officer
Leslie S. Vincent, PE.



Informal Hearing Determination

Company: Black River Coal LLC **Permit No.:** 1402094
Subject: Notice of Violation TMM0008620 (WM)
Conference: January 22, 2014 at 10:30 a.m. **Location:** BSG Office
Participants: Les Vincent, Company Representative, Area Inspector Thomas Mackey, Public Information Manager Tarah Kesterson

Summary of Informal Hearing

On January 22, 2014, an informal hearing was held at the Big Stone Gap office of the Department of Mines Minerals and Energy (Room 116), in reference to the fact of violation for Notice of Violation TMM0008620. Representing Black River Coal LLC. was Mr. Leslie Vincent, PE. The hearings officer was Harve Mooney. Mr. Vincent was afforded the opportunity to provide comments and/or information during the informal hearing. There were no attendees from the general public at this hearing.

Violation 1 of 1 (WM)

Notice of Violation TMM0008620 (1 of 1) was issued to the permittee because he has been determined to have a significant noncompliance and a chronic noncompliance on sediment pond number 1. The permittee also has not submitted water monitoring reports for August and September of 2013 on all three sediment ponds, all groundwater monitoring points, and in-stream monitoring points.

Mr. Vincent began by saying that his concern about the violation was the same as before. He re-stated his position that a company representative had spoken with the DMLR Reclamation Services Manager. The company was under the impression that they would only be cited a single violation for the third and fourth quarters of 2013 for the delinquent water monitoring. He asked if they could be combined into one violation. He (Mr. Vincent) did not address the significant or chronic noncompliance.

Area Inspector Tom Mackey stated that there indeed was missing water monitoring data for the third and fourth quarter according to the water monitoring report that inspectors received. He stated he was aware of the situation but he had already issued the enforcement action when he received notice of the conversation.

Mr. Vincent asked that all the violations be modified to include the fourth quarter delinquent water monitoring violations, He stated that the company was planning a settlement agreement

and would request that the monies from the civil penalties be used in the local area. The hearing was then closed, and the participants informed that due to the necessity of reviewing the plans the decision would require some additional time.

Informal Hearing Recommendation

Notice of Violation TMM0008620 (1 of 1) was issued to the permittee because he has been determined to have a significant noncompliance and a chronic noncompliance on sediment pond number 1. This violation also addressed delinquent water monitoring reports for August and September of 2013. The fact that the water reports were delinquent, or that the significant and chronic noncompliance occurred was not contested by the company. Indeed, the only justification given by the company was that the third and fourth quarter violations should have been issued together. However, the water monitoring reports for the fourth quarter of 2103 were not due, and the company was not in violation yet.

Section 4VAC-25-130-816.41 of the Virginia Coal Surface Mining Reclamation Regulations governs the submittal of water monitoring to the DMLR. Specifically, subsections “c” and “e” of this section note,

(c) Ground-water monitoring.

(1) Ground-water monitoring shall be conducted according to the ground-water monitoring plan approved under 4VAC25-130-780.21(i). The division may require additional monitoring when necessary...

(5) Ground-water monitoring data shall be submitted within 30 days after the end of the calendar quarter to the division. More frequent reporting may be prescribed by the division. Monitoring reports shall include analytical results from each sample taken during the reporting period. When the analysis of any ground-water sample indicates noncompliance with the permit conditions, then the permittee shall promptly notify the division and immediately take the actions provided for in 4VAC25-130-773.17(e) and 4VAC25-130-780.21(h).

(6) Ground-water monitoring shall proceed through mining and continue during reclamation until bond release. Consistent with the procedures of 4VAC25-130-774.13, the division may modify the monitoring requirements, including the parameters covered and the sampling frequency, if the permittee demonstrates, using the monitoring data obtained under this Paragraph, that--

(i) The operation has minimized disturbance to the hydrologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance outside the permit area; water quantity and quality are suitable to support approved postmining land uses; and the water rights of other users have been protected or replaced; or

(ii) Monitoring is no longer necessary to achieve the purposes set.

(e) Surface-water monitoring.

(1) Surface water monitoring shall be conducted according to the surface-water monitoring plan approved under 4VAC25-130-780.21(j). The division may require additional monitoring when necessary.

(2) Surface-water monitoring data shall be submitted every three months to the division or more frequently as prescribed by the division. Monitoring reports shall include analytical results from each sample taken during the reporting period. When the analysis of any surface-water sample indicates noncompliance with the permit conditions, the permittee shall promptly notify the division and immediately take the actions provided for in 4VAC25-130-773.17(e) and 4VAC25-130-780.21(h). Reporting shall be in accordance with the National Pollutant Discharge Elimination System (NPDES) permit requirements.

(3) Surface-water monitoring shall proceed through mining and continue during reclamation until bond release. Consistent with 4VAC25-130-774.13, the division may modify the monitoring requirements in accordance with the NPDES permit, including the parameters covered and sampling frequency, if the permittee demonstrates, using the monitoring data obtained under this Paragraph, that--

(i) The operation has minimized disturbance to the hydrologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance outside the permit area; water quantity and quality are suitable to support approved postmining land uses; and the water rights of other users have been protected or replaced; or

(ii) Monitoring is no longer necessary to achieve the purposes set forth in the monitoring plan approved under 4VAC25-130-780.21(j).

Since the permittee failed to submit the appropriate water monitoring reports, he was in violation of Section 4VAC-25-130-816.41 of the VCSMRR. **Based on the findings of this informal hearing, it is the recommendation of this hearings officer that Notice of Violation TMM0008620 (violation 1 of 1) be affirmed.**

Informal Hearings Officer:

Haave A. Money

Date:

02/05/2014