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# COMMONWEALTH of VIRGINIA

*Department of Mines, Minerals and Energy*

P.O. Drawer 900  
3405 Mountain Empire Road  
Big Stone Gap, Virginia 24219-0900  
(276) 523-8100  
[www.dmme.virginia.gov](http://www.dmme.virginia.gov)

February 5, 2014

Mr. James C. Justice II  
Baden Reclamation Company, Inc.  
P.O. Box 1010  
Wise, VA 24293

Certified Mail Return  
Receipt No. 7013 1090 0001 0523 5584

Re: Informal Hearing Decision - Issuance of Notice of Violation WAC0009499 (1 Violation)  
for Baden Reclamation Company, Inc., Permit Number 1101953.

Dear Mr. Justice:

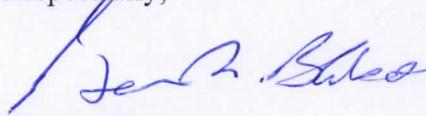
An informal hearing was held on January 22, 2014, to review the issuance of Notice of Violation WAC0009455, 1 violation. Based upon the attached opinion of the Informal Hearing Officer, I am affirming the issuance of Notice of Violation WAC0009499.

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: William A. Cronce, Area Inspector  
James D. Meacham, Area Supervisor  
Harve A Mooney, Informal Hearing Officer  
Leslie S. Vincent, PE.



**Informal Hearing Determination**

**Company:** Baden Reclamation Company **Permit No.:** 1101953  
**Subject:** Notice of Violation WAC0009499 (BR)  
**Conference:** January 22, 2014 at 9:00 a.m. **Location:** BSG Office  
**Participants:** Les Vincent, Company Representative, Area Inspector Bill Cronce

**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 WAC0009499. Representing Baden Reclamation Company, Inc. 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.

Mr. Vincent began by noting that there were multiple violations written for the performance standard "BR". He stated that they had been cited with these violations in a relatively short span of time. His opinion was that all the areas not in compliance could have been addressed in the same violation.

Inspector Bill Cronce noted that the Area 4 was cited in September 2013. At that time the other areas were in temporary cessation. Inspector Cronce stated that he could not have cited those areas as they were in temporary cessation.

Mr. Vincent stated that part of the problem was that the permit had been "Balkanized". He stated that the mining areas had been separated by various revisions. Mr. Vincent stated that temporary cessation for those areas had exceeded the six month period, but the operator did not request an extension as they were working on a settlement agreement to remedy the problem. Mr. Vincent noted they were working on revisions to address the problems on the site.

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 WC0009499 was issued to the operator because the operator has failed to backfill and regrade all high walls, spoil piles, and depressions in Areas 2 and 3. There has been no activity in the area for more than 30 days, and the permittee has not submitted and obtained approval of a revision to cost bond the areas. The standard for this violation is addressed within the Virginia Coal Surface Mining Reclamation Regulations, which address both timing of

backfilling and grading as well as requirements upon cessation of operations for a period greater than 30 days. Specifically, **4VAC25-130-816.100(a)** states,

*Reclamation efforts, including but not limited to backfilling, grading, topsoil replacement, and re-vegetation, on all land that is disturbed by surface mining activities shall occur as contemporaneously as practicable with mining operations, except when such mining operations are conducted in accordance with a variance for concurrent surface and underground mining activities issued under 4VAC25-130-785.18.*

In addition, **4VAC25-130-816.131** of the Virginia Coal Surface Mining Reclamation Regulations sets forth criterion for temporary cessation of operations. Sections a and b note,

*(a) The permittee shall effectively secure surface facilities in areas in which there are no current operations, but in which operations are to be resumed under an approved permit. Temporary abandonment shall not relieve a permittee of his obligation to comply with any provisions of the approved permit.*

*(b) Before temporary cessation of mining and reclamation operations for a period of 30 days or more, or as soon as it is known that a temporary cessation will extend beyond 30 days, the permittee shall submit to the division a notice of intention to cease or abandon mining and reclamation operations. This notice shall include a statement of the exact number of acres which will have been affected in the permit area, prior to such temporary cessation, the extent and kind of reclamation of those areas which will have been accomplished, identification of the backfilling, regrading, re-vegetation, environmental monitoring, and water treatment activities that will continue during the temporary cessation, and the anticipated time period for which the temporary cessation of mining and reclamation operations will be in effect.*

While the operator did provide an initial notice of temporary cessation, he did not take the additional action to address the extension beyond the expiration date of the notice (12/25/13). The expiration of the notice required the operator to resume operations on the areas in question, or submit the extension of the notice. Since neither was done, the operator is in violation of 4VAC25-130-816.100(a) of the VA Coal Surface Mining Reclamation Regulations. The resultant action by the inspector was the issuance of Notice of Violation WAC0009499. It is noted that since backfilling and grading was not done concurrently in all areas, the inspector could not have issued all the violations at the same time.

Based on the findings of this hearing, it is this hearings officer opinion that this violation was properly issued, and it is recommended that the violation be affirmed.

Informal Hearings Officer: Harve A. Money Date: 02/05/2014