



Assessment Conference Determination

Company:	<u>Virginia Fuel Corporation</u>	Permit No.:	<u>1702073</u>
Penalty of:	<u>Notice of Violation No. JRJ0001491</u>	Violation No.:	<u>2 Violations (EF, WM)</u>
Conference:	<u>August 25, 2014 @ 9:30 AM</u>	Location:	<u>DMME Lebanon</u>
Participants:	<u>Les Vincent (Southern Coal Corp.)</u>		

Summary of Conference

One person from the public attended this assessment conference. Mr. Matthew Hepler associated with Southern Appalachian Mountain Stewards attended, but made no comments. However; Mr. Hepler did later submit internet links to newspaper articles regarding water monitoring issues that Justice permits had in other states in an e-mail to this hearings officer.

Mr. Vincent said the company was issued Notice of Violation #JRJ0001491, 2 of 2 (WM) for failure to submit water monitoring for the 3rd and 4th quarter 2013. Mr. Vincent stated that Notice of Violation #JRJ0001491, 1 of 2 (EF) was also issued to the company, and this violation contained a large number of self-reported effluent violations for the 3rd and 4th quarter 2013. Mr. Vincent said the seriousness points assessed on Notice of Violation #JRJ0001491, 1 of 2 hinges a great deal on the information contained in the self-reported effluent violations. Mr. Vincent also stated there were several significant non-compliances and chronic non-compliances identified in this violation which were based on the information contained in self-reported effluent violations. Mr. Vincent said there could not have been as many self-reported violations identified unless a substantial amount of the water monitoring data for this time period had been sampled and analyzed. Mr. Vincent therefore requested the seriousness and negligence points on Notice of Violation #JRJ0001491, 2 of 2 (WM) be cut in half since this violation was mostly based on the company's self-reported effluent violations.

Mr. Vincent stated that he disagreed with the proposed points assigned for the negligence of Notice of Violation # JRJ0001491, 2 of 2. Mr. Vincent stated that for the time period covered by the violation (3rd and 4th quarter of 2013), the company had changed from having their water samples collected by Environmental Monitoring, Inc. (EMI) to hiring their own contractor to collect water samples. Mr. Vincent stated that this didn't work so well due to contract payment issues so the company transitioned into having company employees do all the water monitoring. He stated that there were oversights in this process. Mr. Vincent stated that the company didn't ensure that all the monitoring points being sampled by EMI were shown to the new samplers. Mr. Vincent stated that the company had tried to correctly monitor all the sites, and even though they had missed some monitoring points, the company had tried. He stated that the violation had occurred but that he did not feel that it was due to negligence.

Assessment Conference Recommendation

Notice of Violation #JRJ0001491, violation 1 of 2 (EF)

For Notice of Violation #JRJ0001491, violation 1 of 2, it is my decision to affirm the four (4) seriousness points. The notice of violation was issued to the operator because Laboratory analysis of the grab samples taken during the March 17-18, 2014 complete inspection, show that the Fe concentration (9.69 mg/l) in the Pond 1A discharge exceeded the maximum allowable daily limit of 6.0 mg/l, and the Mn concentration in the same discharge (5.5 mg/l) exceeded the maximum allowable daily limit of 4.0 mg/l. The results also show that the Mn concentration (4.63 mg/l) in the Pond 14 discharge exceeded the maximum allowable daily limit of 4.0 mg/l. The operator has submitted Significant and/or Chronic effluent non-compliances for multiple discharges. This violation involves several sediment pond discharge points (Pond 1A, Pond 9, Pond 10, Pond 13, and Pond 14) and involves violations for both Fe and Mn effluent limits. Since the violation does involve several discharge points and both Fe and Mn effluent limits there is a moderately significant potential that the violation could result in degradation of water quality.

It is my decision to affirm the two (2) negligence points. The company failed to ensure the discharge points referenced above were all in compliance with the NPDES permit standards. By allowing discharges to exceed effluent limitations at several ponds for both Fe and Mn and by allowing the discharges to become a significant and/or a chronic effluent non-compliance, the permittee has failed to exercise the degree of care expected of a careful and reasonable operator.

Notice of Violation #JRJ0001491, violation 1 of 2 was issued on April 2, 2014 with an abatement date of April 16, 2014. The operator failed to comply with the notice of violation and was issued Failure to Abate Cessation Order #JRJ0001521 on April 24, 2014 for failure to comply with Notice of Violation #JRJ0001491, violation 1 of 2. Failure to remediate the notice of violation and failure to abate cessation order resulted in the issuance of a Permit Suspension Order on June 11, 2014. Water samples taken on June 13, 2014 show the operator had complied with the notice of violation and the permit suspension was lifted on June 16, 2014. Therefore, good faith points were not recommended for the compliance of this Notice of Violation. It is my decision to affirm the civil penalty assessment of \$560.00.

Notice of Violation #JRJ0001491, violation 2 of 2 (WM)

This violation resulted from not collecting all of the required water monitoring data for the 3rd and 4th quarters of 2013 and for failure to submit this data by the required due date. It is an administrative requirement of the permittee's approved National Pollution Discharge Elimination System (NPDES) permit to collect, analyze, and submit all the required water monitoring data to the Division by the designated submittal date. This regulatory requirement ensures that the data collected can be properly evaluated regarding any potential adverse impacts that may occur to the hydrologic balance of the area. In this case, the data was not submitted on time. Also, according to the DMLR Water Quality Section staff the data that was submitted was incomplete. Mr. Vincent said there could not have been as many self-reported violations identified in Notice of Violation #JRJ0001491, violation 1 of 2 (EF) unless a substantial amount of the water monitoring data for this time period had been sampled and analyzed. Although Mr.

Vincent's conclusion may be accurate this does not eliminate the seriousness of the violation. Since the water samples taken did identify effluent violations the need to evaluate any potential adverse impacts to the hydrologic balance is all the more important. Therefore, the violation could result in degradation of water quality and a certain degree of seriousness does exist. Furthermore, this violation existed for an extended period of time. The time period for the incomplete data covered the 3rd & 4th quarters of 2013. During the time period of the missing information, any adverse impacts to water quality could not be determined. Without complete data, the Division's ability to determine the impacts from this disturbed mine site was impeded and the potential for environmental harm is present. Therefore, it is my recommendation to affirm the four (4) points proposed for the seriousness of this violation.

The company representative also contends that the negligence points be reduced because the company was making efforts to collect and submit the 3rd and 4th quarters 2013 water monitoring data during the required timeframe. It is acknowledged that the permittee did put forth effort to collect and submit the data. However; according to the DMLR Water Quality staff member the data was incomplete for the 3rd and 4th quarters of 2013. It is the sole responsibility of the permittee to ensure that all the required monitoring be completed and submitted on time in accordance with the permit's approved NPDES permit. The permittee did not exercise the reasonable care necessary and expected to ensure that all required monitoring was completed and all data was submitted in a timely manner to prevent this type of violation. Clearly, the permittee demonstrated a lack of diligence in assuring that the requirements of the NPDES program were being met. Therefore, it is my recommendation that the two (2) points proposed for negligence for this violation be affirmed.

There was no remedial action or abatement date associated with this Notice of Violation. Therefore, good faith points were not recommended for the compliance of this Notice of Violation and are not awarded. It is my decision to affirm the civil penalty assessment \$560.00

Assessment Conference Determination:

Permit No. 1702073 NOV# JRJ0001491, violation 1 of 2 (EF)

	Proposed Assessment or Reassessment	Assessment Conference Recommendation
I. History of previous violation	\$ 160.00	\$ 160.00
II. Seriousness Points	4	4
III. Negligence Points	2	2
IV. Good Faith Points	0	0
Total Points:	6	6
Base Penalty:	\$ 400.00	\$ 400.00
History Penalty:	\$ 160.00	\$ 160.00
Total Penalty:	\$ 560.00	\$ 560.00

Permit No. 1702073 NOV# JRJ0001491, violation 2 of 2 (WM)

	Proposed Assessment or Reassessment	Assessment Conference Recommendation
I. History of previous violation	\$ 160.00	\$ 160.00
II. Seriousness Points	4	4
III. Negligence Points	2	2
IV. Good Faith Points	0	0
Total Points:	6	6
Base Penalty:	\$ 400.00	\$ 400.00
History Penalty:	\$ 160.00	\$ 160.00
Total Penalty:	\$ 560.00	\$ 560.00

Conference Officer: James Meacham

Date: 09/29/14