



Assessment Conference Determination

Company:	<u>Baden Reclamation Company, Inc.</u>	Permit No.:	<u>1101953</u>
Penalty of:	<u>Cessation Order No. WAC0009500</u>	Violation No.:	<u>1 of 1 (HR)</u>
Conference:	<u>August 25, 2014 @ 10:30 AM</u>	Location:	<u>DMME Lebanon Office</u>
Participants:	<u>Matthew Hepler (Southern Appalachian Mountain Stewards), Les Vincent (Baden Reclamation Company, Inc. Engineer), Ken Coomer (DMLR Area Supervisor)</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. Mr. Les Vincent had comments concerning the Violation 1 of 1 under Performance Code HR. Mr. Vincent read the CO and required remedial action. He iterated that during the time frame the weather was horrible. Freezing weather was experienced and there was no way to work during the extreme weather conditions. He wants the points reduced due to weather considerations. He ended by stating that the weather during that time was prohibitive to performing the remedial work that was required.

Assessment Conference Recommendation

Cessation Order WAC0009500, Violation 1 of 1, under Performance Code HR was issued to the company on 01/08/14. The CO was issued as a failure to abate NOV WAC0009455, Violation 2 of 4, under Performance Code HR that had an abatement date of 01/03/2014. The remedial action required the operator to grade Haulroad D, clean the ditchlines and open the outlet end of the culvert at the locked gate, and to grade Haulroad E to direct drainage to the ditchline. NOV WAC0009455, Violation 2 of 4 was issued 12-04-13 with an abatement due date of 01-03-14. The operator had more than 30 days to abate the violation from the date of issuance of the Notice of Violation. Prior to issuance of the Notice of Violation, according to information in the inspection reports, there was no one on site and all equipment had been removed from the permit area. There should have been ample time during the time period of the Notice of Violation to perform the required remedial action. Although it was noted in the 01-07-14 inspection report that the ground was snow covered. In addition, I checked the permit plans concerning the transportation facilities plan as outlined in Section 17.1 of the permit application. This section states: The operator proposes to maintain the roads and the associated structures in proper working order as outlined below:

- a) The roads will be periodically resurfaced with crushed stone in order to maintain the required surfacing depth.
- b) The road surface will be graded toward the ditch at ½ inch per foot of road width. At no time will a berm be allowed to accumulate between the road surface and the haulroad ditch.
- c) Ditches, culverts and the sump outlet will be inspected periodically and after storm events to insure that they are functioning properly. Any slides, silt or debris which blocks or substantially reduce the capacity of these structures will be removed.
- d) The sumps will be inspected to insure that it is working properly and that the sediment capacity is below the 60% cleanout level. The sumps will be cleaned when the sediment level approaches the 60% cleanout elevation.
- e) Berms will be maintained as to size and location in order to direct drainage to sediment and drainage control structures. Given the above, it appears that the operator was not following the approved plans concerning the haulroads on the permit. Failure to follow the approved plans resulted in the notice of violation and subsequent failure to abate cessation order being issued.

Due to the above it is my recommendation that the proposed assessment be affirmed.

Section 4 VAC 25-845.15 (b) states “In addition to the civil penalty provided for in Paragraph (a), whenever a violation contained in a notice of violation or cessation order has not been abated with the abatement period set in the notice or order or as subsequently extended pursuant to § 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. The violation was terminated on 03/11/14.

Assessment Conference Determination:

Permit No. 1101953 CO# WAC0009500, 1 violation (HR)

	Proposed Assessment or Reassessment	Assessment Conference Recommendation
I. History of previous violation	\$ 100.00	\$ 40.00
II. Seriousness Points	5	5
III. Negligence Points	2	2
IV. Good Faith Points	0	0
Total Points:	7	7
Base Penalty:	\$ 475.00	\$475.00
History Penalty:	\$ 100.00	\$ 40.00
Total Penalty:	\$ 22,500.00*	\$22,500.00
<p>* 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 CO was served on 01/08/2014. The \$750/day penalty was assessed for 30 days (01/08/2014 through 02/07/2014) = \$22,500.00</p>		

Conference Officer:

Kenneth Coomer

Date: 09/05/14

Kenneth Coomer