



Assessment Conference Determination

Company:	<u>A & G Coal Corporation</u>	Permit No.:	<u>1101914</u>
Penalty of:	<u>Order of Cessation No. CEV0008858</u>	Violation No.:	<u>2 Violations (DS,SS)</u>
Conference:	<u>August 25, 2014 at 9:30 a.m.</u>	Location:	<u>DMME Lebanon Office</u>
Participants:	<u>Les Vincent (Southern Coal Corp.), Randy Stanley and Eddie Varner (DMLR)</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. Also, DMLR inspector Randy Stanley and DMLR inspector Eddie Varner attended this proceeding.

Mr. Vincent stated that Inspector Varner notified the company that the embankment of Pond C4 and the slope immediately below the embankment was unstable and was in need of repair. He stated that the company recognized that personnel had to be quickly put on site. Mr. Vincent stated that company personnel were contacted the same day or the next. He stated that the pond was temporarily repaired by pumping down the water in the impoundment and the embankment was reworked to stabilize the slope. Mr. Vincent stated that an A & G manager is continuing to monitor the pond's embankment while they decide on a permanent solution. He stated that he thought that good faith should be given because of the company's actions to address the situation and that they complied the violation prior to the due date of the N.O.V. He stated that water is affecting the stability of the embankment but it is difficult to determine the source of the water. He stated that the source of the water might be coming from some old mine works and they may have to remove the pond and relocate pond 4C.

Assessment Conference Recommendation

The permittee did not submit any comments concerning violation #CEV0008858 (part1 of 2) for DS. The permittee failed to properly construct and maintain all the diversions listed in the N.O.V. in accordance to the approved plan. This violation posed a slight potential for fill instability. The permittee was negligent in not ensuring that these diversions were properly constructed, stable, and in good working order. I recommend that the four (4) seriousness points

be affirmed. Additionally, it is my recommendation to affirm the two (2) negligence points assigned to violation # CEV0008858 (part 1 of 2).

Good faith is not given for this violation.

The permittee did not submit any comments concerning the seriousness or negligence of violation #CEV0008858 (part2 of 2) for SS. The pond embankment was unstable and the potential for damage to the environment and the health and safety of the public is deemed to be moderately significant. I recommend that the four (4) seriousness points proposed for violation # CEV0008858 (part 2 of 2) be affirmed.

Additionally, the permittee did not closely monitor pond C4 and was not aware of the pond's instability until the DMLR inspector informed them of the slope movement. The permittee failed to exercise the degree of care expected in order to maintain the basin in accordance with approved plans. I recommend that the two (2) points proposed for the negligence of violation #CEV0008858 (part 2 of 2) be affirmed.

The permittee requested that good faith be given for correcting part 2 of 2 of violation # CEV0008858. In order for good faith to be given, diligent efforts must have been taken by the permittee to abate the violation prior to the set abatement date and a detailed description of the efforts to abate the violation must be a part of the record. The inspection report dated December 3, 2013 states in part:

“ The operator has been working diligently on stabilizing this structure since the issuance of the NOV. A haul truck, dozer, and excavator have been working on this pond. The NOV was subsequently extended until 12/2/13 to allow additional time to fully complete all remedial work on this pond. The operator has completed work on the pond. On 11/25/13 RPE Leslie S. Vincent #020453 submitted another pond certification for Pond 4C describing the work completed on this structure. The certification noted the pond was repaired to original design criteria by performing remedial measures outlined in the NOV. A small dozer was used to repair and stabilize the slope and slide area on the embankment. The slope was worked with an excavator to stabilize the slope and restore settled material. The dozer tracked the material in place for compaction. The certification stated the pond is now in a stable condition. As a result, NOV #CEV0008858 is hereby terminated this date.”

According to the permittee, the work on Pond C4 is temporary and not a permanent solution. However; the record does show that the permittee did diligently and continuously work on the pond embankment and completed the work as of November 25, 2013 to temporarily stabilize the pond embankment. This was prior to the set abatement date of December 2, 2013. Therefore; I recommend that one (1) good faith point be given for their prompt and diligent efforts.

Assessment Conference Determination:

Permit No. 1101914 NOV# CEV0008858, violation 1 of 2 (DS)

	Proposed Assessment or Reassessment	Assessment Conference Recommendation
I. History of previous violation	\$20.00	\$20.00
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:	\$ 20.00	\$20.00
Total Penalty:	\$ 420.00	\$ 420.00

Permit No. 1101914 NOV# CEV0008858, violation 2 of 2 (SS)

	Proposed Assessment or Reassessment	Assessment Conference Recommendation
I. History of previous violation	\$20.00	\$ 20.00
II. Seriousness Points	4	4
III. Negligence Points	2	2
IV. Good Faith Points	0	-1
Total Points:	6	5
Base Penalty:	\$ 400.00	\$ 325.00
History Penalty:	\$ 20.00	\$ 20.00
Total Penalty:	\$ 420.00	\$ 345.00

Conference Officer: _____
James Lowe, Conference Officer

Date: 9/5/14