



Informal Hearing Determination

Company: A & G Coal Corporation **Permit No.:** 1101917
Subject: Notice of Violation RDS0010442
Conference: September 12, 2014 @ 8:30 AM **Location:** BSG Office
Participants: Leslie Vincent, PE

On September 12, 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 RDS0010442. Representing A & G Coal Corporation 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.

Summary of Informal Hearing

Notice of Violation RDS0010442 was issued to the operator on June 24, 2014 for failure to conduct surface water, groundwater monitoring, in-stream monitoring and rainfall monitoring for the 3rd and 4th quarters of 2013 and the 1st quarter of 2014. The violation was a non remedial violation.

Mr. Vincent noted that the company did not wish to contest the 3rd and 4th quarter 2013 portions of the violation. He noted that the company was transitioning at that time to in-house sampling. He did note that many of the missing samples for the 1st quarter of 2014 were “no flows “and that these reports were given to Jon Lawson to submit. The reports weren’t submitted to DMLR until July, 2014.

Informal Hearing Recommendation

Notice of Violation RDS00010442 (violation 1 of 1) was issued to the operator because the operator failed to submit to DMLR the surface water, groundwater monitoring, in-stream monitoring and rainfall monitoring for the 3rd and 4th quarters of 2013 and the 1st quarter of 2014.. The standard for this violation is addressed within the Virginia Coal Surface Mining Reclamation Regulations, which addresses water monitoring and the submission of the analysis. Specifically, **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).

Mr. Vincent presented the same position for Notice of Violation RDS0010442 as with previous violations addressed in this proceeding. The company did not offer sufficient evidence that the water sampling was timely submitted to the DMLR to support its position. Indeed, the 3rd and 4th Quarter 2014 delinquent reports weren't even contested, and at least a portion of the 1st Quarter 2014 reports were significantly late, arriving at DMLR in July, 2014.

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: _____

Date: _____