



Assessment Conference Determination

Company: Cane patch Mining Company, Inc. **Permit No.:** 1101554

Penalty of: Notice of Violation LJJ0001158 **Violation No.:** 1 Violation (WM)

Conference: August 25, 2014 @ 9:30 AM **Location:** DMME Lebanon Office

Participants: Les Vincent (Southern Coal Corp.), Randy Stanley and Eddie Varner (DMLR)

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 he disagreed with the proposed points assigned for the seriousness and negligence of violation # LJJ0001158. He stated that for 1st quarter of 2014, the company had collected the data and a former employee had entered the data on e-forms in May but had not submitted it. Mr. Vincent stated that a former employee had been taking care of the data but failed to submit it to the Division on time. He stated that submitting the water monitoring by e-forms was a three step process. He stated that one must load the data that had been analyzed by EMI as the first step in the process. The second step is that the data must match with the MPID numbers in the DMLR system. The third and final step in the submittal process is that once the data matches, one can then officially submit the data. Mr. Vincent stated that the former employee had actually completed step one (1) and step two (2) of the process but failed to complete the third (3) step by not loading the signature page and hitting the submit button. Mr. Vincent stated that when DMLR's water quality personnel ran the delinquent report on June 2, 2014, it showed that the data had not been submitted on time. He stated that the Division acknowledged that the data was there (saved in the e-form system) and he worked with Division personnel to properly submit the required data. Mr. Vincent stated that the seriousness should be lowered. He stated that it was just the one quarter and he requested that the negligence be lowered a point because the former employee left at the end of May 2014 without telling the company he had not filed the monitoring reports. Mr. Vincent stated that the data had originally been saved toward the middle of May and that Division personnel could confirm the date that the data was submitted. Mr. Vincent stated that he tried to get help in submitting the data sooner, but did not get the needed help right away. It was a couple of weeks later before the data on A & G

permits could be submitted because there were some items that had to be straightened out. However; Mr. Vincent stated that for the other companies (Cane Patch Mining) data was submitted earlier.

Assessment Conference Recommendation

This hearing's officer contacted Mr. Jared Worley of DMLR's Water Quality section to obtain additional information concerning the monitoring data in order to properly assess the seriousness and negligence associated with this violation. Mr. Worley stated that the water monitoring data for the 1st quarter of 2014 was first submitted on a CD (compact disc) that contained water monitoring data for this permit on May 12, 2014. Mr. Worley stated that the data for the 1st quarter of 2014 should have been submitted by April 30, 2014. He also stated that the monitoring data was incomplete for this permit. Mr. Worley did acknowledge that the same data was later submitted on e-forms. He stated that he had rejected the e-forms because the e-forms contained the identical data that had been submitted earlier on the CD and the e-forms also contained incomplete monitoring data.

This violation resulted from not collecting all of the required water monitoring data for the 1st quarter of 2014 and for not submitting this data by the required due date. It is an administrative requirement of the permittee's approved NPDES permit to collect, analyze, and submit all the required water monitoring data to the Division on time. 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 and the data that was submitted was incomplete. 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 was present. Therefore, it is my recommendation to affirm the three (3) points proposed for the seriousness of this violation.

It is my recommendation that the three (3) points proposed for negligence for this violation be affirmed. According to the information presented at this assessment conference, the permittee contends that the information was saved by e-forms on time; it was just not officially submitted because the company employee responsible for submitting the information abruptly left the company. However; the information presented in this assessment conference establishes that a company employee submitted incomplete monitoring data late on a CD in person on May 12, 2014. 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 prevent this type of violation. In fact, the permittee admits that they were not aware that the monitoring data had not been submitted on time. This failure only adds to the permittee's negligence. Clearly, the permittee was not diligent in assuring that NPDES program requirements were being met.

Good faith is not awarded.

Assessment Conference Determination:

Permit No. NOV# LJJ0001158, violation 1 of 1 (WM)

	Proposed Assessment or Reassessment	Assessment Conference Recommendation
I. <u>History of previous violation</u>	\$ 20.00	\$ 20.00
II. Seriousness Points	3	3
III. Negligence Points	3	3
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

Conference Officer: _____
James Lowe

Date: September 5, 2014