



Assessment Conference Determination

Company:	<u>Meg-Lynn Land Company, Inc.</u>	Permit No.:	<u>1101800</u>
Penalty of:	<u>Notice of Violation No. LJJ0001169</u>	Violation No.:	<u>2 Violations (AO, WM)</u>
Conference:	<u>August 25, 2014 @ 9:30 AM</u>	Location:	<u>DMME Lebanon Office</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 explained that at the time Notice of Violation #LJJ0001169 violation 1 of 2 was issued he had been working on twenty-five renewal applications that previous company employees had started. Mr. Vincent explained that the previous employees had problems in preparing the renewal applications and submittals to the Division had been delayed. Mr. Vincent said he developed a schedule to complete the work on the twenty-five outstanding renewal applications. Mr. Vincent said the Division approved the work schedule, and Mr. Vincent said he was performing work in accordance with the schedule. Mr. Vincent said he prioritized the work required in the work schedule, and he realized the renewal application for 1101800 was one of the oldest ones on his work schedule. Mr. Vincent said he wanted to prioritize the schedule based on which renewal applications had been under review the longest and which renewals had the most work remaining. Mr. Vincent explained that due to the extensive workload the company had submitted a request to the Division to extend the deadlines to submit corrections made on the renewal applications. Mr. Vincent explained that the Division denied the company's extension request because according to the Division the company had already had enough time to resubmit the corrections. Mr. Vincent explained that the Division is requiring approximately ten days to two weeks for the company to make corrections and resubmit the renewal applications. Mr. Vincent said the Division is basing this deadline on an internal turn-around time of ten days. Mr. Vincent said this short deadline makes it very difficult for the company to meet the deadline on all renewal applications. Mr. Vincent said the short re-submittal dates are not based on the Virginia Coal Surface Mining Reclamation Regulations (VCSMRR), and the Division does not evaluate the deadline re-submittal dates in relation to the company's workload. Mr. Vincent recommends that all seriousness points be removed because the violation involves submittal of paperwork.

Mr. Vincent believes the company should be awarded good faith because the company was working diligently to obtain approval of the renewal applications.

Mr. Vincent stated that he disagreed with the proposed points assigned for the seriousness and negligence of Notice of Violation # LJJ0001169 violation 2 of 2. Mr. Vincent stated that for the 1st quarter of 2014, the company had collected the water sampling data and a former employee had entered the data into DMME e-forms in May 2014. Mr. Vincent explained that even though the water monitoring data was entered into e-forms at that time the data had not actually been submitted. Mr. Vincent stated that the former employee had been taking care of water monitoring data but failed to submit it to the Division by the due date. Mr. Vincent stated that submitting the water monitoring using e-forms involved a three step process. Mr. Vincent stated the first step was to load the water sampling data analyzed by Environmental Monitoring Inc. (EMI) into e-forms. The second step involves the matching of the data loaded into e-forms with the applicable Monitoring Point Identification Number (MPID) in the DMLR system. The third and final step in the submittal process is to officially submit the water monitoring data once the data matches the applicable MPID numbers. 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 clicking on the submit button. Mr. Vincent stated that when DMLR's water quality personnel ran the delinquent water monitoring report on June 2, 2014, it showed that the water monitoring data had not been submitted on time. Mr. Vincent 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. Mr. Vincent stated that the violation was just for one quarter. Mr. Vincent 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 1st quarter 2014 monitoring reports. Mr. Vincent stated that the data had originally been saved toward the middle of May 2014, and Division personnel could confirm the date that the data was submitted. Mr. Vincent stated that he tried to get help in submitting the 1st quarter 2014 data sooner, but did not get the needed help right away. Mr. Vincent said 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.

Assessment Conference Recommendation

NOV LJJ0001169, Violation 1 of 2 (AO)

For NOV # LJJ0001169, violation 1 of 2, it is my decision to affirm the two seriousness points. The operator failed to respond to the DMLR reviewer comments made on renewal application #1008582 by the deadline of May 29, 2014. Failure to resubmit the permit renewal application is an administrative violation. The violation prevents or impedes the inspector's ability to ensure the operation complies with the requirements of the Act, regulations, and the permit's approved plans. This violation could be promptly corrected by responding to the comments and submitting the renewal by the deadline.

It is my decision to affirm the two negligence points. Renewal application #1008582 was initially returned to the operator for corrections on May 8, 2013 with a resubmittal deadline of July 9, 2013. The Division allowed the operator an additional five months from the July 9th

deadline to resubmit the application, and the operator resubmitted the application on December 6, 2013. Therefore, the Division allowed the operator seven months to address the initial DMLR reviewer's comments and return the application to the Division. The renewal application was then returned to the operator for corrections on December 18, 2013 with a resubmittal deadline of January 14, 2014. The Division allowed the operator an additional three months from the January 14th deadline to resubmit the application, and the operator resubmitted the application on April 29, 2014. The renewal application was then returned to the operator for corrections on May 14, 2014 with a resubmittal deadline of May 29, 2014. On June 4, 2014 the operator submitted a request to extend the resubmittal deadline. The DMLR Permitting Section denied the extension request and sent an e-mail to the inspector stating that the operator had failed to submit the corrections to the renewal application by the deadline of May 29th. Therefore, the inspector issued NOV # LJJ0001169, violation 1 of 2 on June 23, 2014.

Mr. Vincent said that DMLR is basing the deadlines for resubmittal on the Division's internal turn-around time of ten days, and he does not feel that time is based on the VCSMRR. That statement is not completely accurate. The DMLR Permit Section Manager explained that the Division provides a 60 day time limit to resubmit after the first review, a 15 day time limit to resubmit after the second review and a 10 day time limit to resubmit after subsequent reviews. The Permit Section Manager explained that the Division will consider an extension of the resubmittal date provided the operator is diligently pursuing approval of the application and the operator has good cause for an extension. According to the application review record, the Division allowed an additional five months to submit the corrections from the Division's first review of this application. The Division also allowed an additional three months to submit the corrections from the Division's second review. Only after the Division's third review of this application did the Division deny the operator's request for an extension and require the corrections be submitted within the fifteen day deadline.

After evaluating the review record for renewal application #1008582, I believe the Division has given the operator adequate time to submit corrections to the first, second and third reviews of the renewal application. Also, I believe the Division acted appropriately by denying the operator's extension request of June 4, 2014. It was the sole responsibility of the permittee to ensure that the renewal application was submitted by the required due date and that any corrections to the application be submitted by the required resubmittal deadlines. Even though the company had twenty-five pending renewal applications, the company is responsible for meeting resubmittal deadlines. The permittee did not exercise the reasonable care necessary and expected to ensure that the corrections to the renewal applications were submitted in a timely manner to prevent this type of violation. The permittee has demonstrated a lack of diligence in assuring that the requirements of the applicable regulations were being met.

NOV # LJJ0001169, violation 1 of 2 was issued on June 23, 2014 with an abatement date of July 7, 2014. The operator submitted corrections to the renewal application on July 21, 2014 which was two weeks beyond the required abatement date. 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 of \$270.00.

NOV LJJ0001169, Violation 2 of 2 (WM)

The conference 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 NOV #LJJ0001169, violation 2 of 2. Mr. Worley stated that the water monitoring data for the 1st quarter of 2014 was first submitted to the DMLR office on May 12, 2014 in the form of a compact disc (CD). Mr. Worley stated that the data for the 1st quarter of 2014 should have been submitted by April 30, 2014. Mr. Worley also stated that the monitoring data on the CD was incomplete for this permit. Mr. Worley did acknowledge that the same data was submitted after May 12, 2014 on e-forms. Mr. Worley stated that he had rejected the e-forms 1st quarter monitoring data because the e-forms submittal contained the identical data that had been submitted earlier on the CD. Mr. Worley said the e-forms data was incomplete in the same matter as data submitted on the CD. The conference officer also reviewed the water monitoring data and confirmed that the data was incomplete.

This violation resulted from the failure to collect all the required water monitoring data for the 1st quarter 2014 and for failing 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 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 is present. Therefore, it is my recommendation to affirm the three (3) points proposed for the seriousness of this violation.

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. According to the information presented by the company representative, the permittee contends that the information for the 1st quarter 2014 was saved by e-forms on time but was not officially submitted because the company employee responsible for submitting the information abruptly left the company. However; a DMLR Water Quality staff member states that a company employee submitted incomplete monitoring data for the 1st quarter 2014 on a CD in person on May 12, 2014. This was beyond the required due date. The permittee did not exercise the reasonable care necessary and expected to prevent this type of violation. However; according to the DMLR Water Quality Section staff member approximately 75 percent of the required water monitoring data was obtained by the permittee for the 1st quarter of 2014, and it was submitted by the permittee on a CD by May 12, 2014. It has been noted that the majority of the data was submitted to the DMLR within 12 days of the April 30, 2014 due date, and this violation only involved one quarter of water monitoring data. It is my recommendation to affirm two (2) negligence points for this violation.

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 \$345.00.

Assessment Conference Determination:

Permit No. 1101800 NOV LJJ0001169, Violation 1 of 2 (AO)

	Proposed Assessment or Reassessment	Assessment Conference Recommendation
I. History of previous violation	\$ 20.00	\$ 20.00
II. Seriousness Points	2	2
III. Negligence Points	2	2
IV. Good Faith Points	0	0
Total Points:	4	4
Base Penalty:	\$ 250.00	\$ 250.00
History Penalty:	\$ 20.00	\$ 20.00
Total Penalty:	\$ 270.00	\$ 270.00

Permit No. 1101800 NOV LJJ0001169, Violation 2 of 2 (WM)

	Proposed Assessment or Reassessment	Assessment Conference Recommendation
I. History of previous violation	\$ 20.00	\$ 20.00
II. Seriousness Points	3	3
III. Negligence Points	2	2
IV. Good Faith Points	0	0
Total Points:	5	5
Base Penalty:	\$ 325.00	\$ 325.00
History Penalty:	\$ 20.00	\$ 20.00
Total Penalty:	\$ 345.00	\$ 345.00

Conference Officer: James Meacham

Date: 09/23/14