



**Informal Hearing Determination**

**Company:** A & G Coal Corporation **Permit No.:** 1102003  
**Subject:** Cessation Order for Failure to Abate  
RDS0011216  
**Conference:** February 9, 2016 **Location:** DMME Lebanon  
**Participants:** Mark Wooten, Chief Engineer; Matthew Hepler, SAMS; Randy Stanley, Inspector

**Summary of Informal Hearing**

This informal hearing was attended by Mr. Hepler. He is a member of Southern Appalachian Mountain Stewards (SAMS). Mr. Hepler did not provide any comments.

Mr. Wooten stated that this particular permit had previously obtained approval for temporary cessation (T.C.) of mining operations for the Wilson seam deep mine site. He stated that the approved temporary cessation had now expired. He stated that when the T.C. expired, the Division issued a violation to reclaim the area because they had not obtained an extension for T.C. He stated no additional bond for this permit was posted. Mr. Wooten stated that the regulations, as well as his approved permit, contain a performance standard for time and distance concerning mine site reclamation. Mr. Wooten stated that since the cost bond was not submitted when the T.C. expired, the permit should have been considered to be in an active status. He stated that instead of issuing a violation, the Division should have given the permittee the time allowed by the regulations and the permit's approved plans to backfill and regrade the mine site. He stated that the Division could have then issued a Notice of Violation (N.O.V.) to require reclamation if the mine site had not been reclaimed according to the approved time limits. Mr. Wooten stated that it should also be noted that the regulations allow for N.O.V.'s to be extended up to 90 days. Mr. Wooten stated that the company was not given this additional time as allowed by the regulations. Instead, Notice of Violation #RDS0011157 was issued upon expiration of the T.C. He stated that the N.O.V. was not complied by the initial due date and the Division subsequently issued Cessation Order(C.O.) # RDS0011216. He stated that the C.O. had still not been complied.

Inspector Stanley stated that the revision to extend the T.C. has now been approved, but the additional bond that was required for this mine site has still not been submitted. Inspector Stanley also stated that the permittee began to reclaim the site, but soon stopped. He stated that the C.O. was issued because the reclamation was not completed and the additional bond was not submitted. In addition to his statements, Inspector Stanley provided the following fact sheet concerning this violation.

## A & G Coal Corporation PN 1102003

### Cessation Order RDS0011216

- On November 26, 2013, this site was placed in 6 month temporary cessation status which expired on April 29, 2014.
- At my May 27, 2014 inspection it was noted that the site was still inactive and the operator had failed to submit the required cost estimate revision.
- Therefore, Notice of Violation RDS0010401, part 1 of 1, was issued at my May 27, 2014 inspection and expired June 27, 2014 instructing the operator to backfill and regrade the Wilson seam deep mine face up so as to eliminate highwalls up to the Taggart mine bench. The operator was advised that if additional mining was anticipated then the operator could elect to place the site in Temporary Cessation status which would require approval of a cost estimate of reclamation revision and the posting of additional bond.
- No attempt was made to initiate reclamation nor was a revision for cost estimate temporary cessation submitted by the NOV expiration date.
- FTA Cessation Order #RDS0010465, part 1 of 1 was issued at my June 30, 2014 inspection for failure to abate NOV #RDS0010402. The operator was instructed to take all necessary measures to comply with above cited NOV.
- A cost estimate of reclamation revision was submitted for review at DMME. This revision was returned to the operator for comments and on 06/16/15 DMME received a letter from Robert Burton requesting that the resubmittal deadline be extended until 06/30/15. This extension was granted.
- After going through 8 reviews, the TC revision was approved and bond requested on August 26, 2015 with a deadline of September 10, 2015. The company elected to begin reclamation on the site rather than submit the additional bond and indicated that a D-8 dozer would be moved to the site on September 3, 2015.
- At my September 21, 2015 inspection, it was observed that a dozer had been on the permit and a small amount of grading had been done. However, reclamation should have been continuous until the site was reclaimed. The amount of work at that point was not sufficient to delay further enforcement action.
- Therefore, Notice of Violation RDS0011157, part 1 of 1 was issued on my September 9, 2015 inspection with an expiration date of October 23, 2015 instructing the operator to backfill and re-grade this site.
- As of my October 27, 2015 inspection no additional work had been performed on the site. Therefore, FTA Cessation Order RDS0011216, part 1 of 1, was issued for failure to abate Notice of Violation RDS0011157. The operator was instructed to take all necessary measures to comply with the above cited NOV.
- The CO ran 30 days and work is still not completed.
- Inspection on 11/30/15-no equipment on site.
- Inspection on 12/16/15-no equipment on site.
- Inspection on 01/26/16-no equipment on site.
- Visit to site on 02/04/16-no equipment on site.

### **Informal Hearing Recommendation**

This hearing was closed on February 18, 2016 after completing a review of the history of the operation status for this permit that is contained in DMLR's database, application # 1009256, the associated DMLR inspection records and enforcement actions, the applicable Virginia Coal Surface Mining Control and Reclamation Laws (VCSMCRL), and the applicable Virginia Coal Surface Mining Reclamation Regulations (VCSMRR). Please note that the permittee agreed with the information that was provided by Inspector Stanley during the hearing.

The information provided by Inspector Stanley provides a history of when the Wilson seam deep mine site was placed into T.C., the enforcement actions that the Division took, and the current site conditions. However; the scope of this informal hearing is limited to the issues that surround the issuance of C.O. # RDS0011216. Previous enforcement actions will not be considered. This informal hearing must decide whether or not the Division was correct in issuing Failure to Abate Cessation Order (FTACO) # RDS0011216.

There can be no disagreement by the permittee that a cost bond equal to the cost of reclamation for the Wilson seam deep mine area must be in place after six (6) months for this "pool bonded" permit. This requirement is contained in The Virginia Coal Surface Mining Control and Reclamation Laws at Section 45.1-270.3, as amended. Specifically Section 45.1-270.3 reads in part (emphasis added):

*"E. Any mining operation participating in the Fund that has been in temporary cessation for more than six months as of July 1, 1991, shall within 90 days of that date post bond equal to the total estimated cost of reclamation for all portions of the permitted site which are in temporary cessation. Any mining operation participating in the Fund that has been in temporary cessation six months or less as of July 1, 1991, shall within 90 days after the date on which the operation has been in temporary cessation for more than six months post bond equal to the total estimated cost of reclamation for all portions of the permitted site which are in temporary cessation. Any mining operation participating in the Fund that enters temporary cessation on or after July 1, 1991, shall, prior to the date on which the operation has been in temporary cessation for more than six months, post bond equal to the total estimated cost of reclamation for all portions of the permitted site which are in temporary cessation. Such bond shall remain in effect throughout the remainder of the period during which the site is in temporary cessation. At such time as the site returns to active status, the bond posted under this subsection may be released, provided the permittee has posted bond pursuant to subsection B of this section."*

The permit's record shows that application # 1009256 had been under review by the Division since September 15, 2014 to determine the necessary cost of reclamation for the Wilson seam deep mine site and to extend the T.C. time period. This revision (application # 1009256) was returned to the permittee a total of eight times for corrections/additional information before the

appropriate cost bond amount was determined. Once the necessary corrections were made, a due date of September 15, 2015 was set to submit the cost bond as required by VCSMCRL. It is clear from the information presented by the permittee that the previous T.C. had expired and no cost bond was ever posted for the Wilson deep mine site. Inspection report # RDS0011154 dated September 21, 2014 provides additional insight.

*“The TC revision was approved and bond requested on August 26, 2015 with a deadline of September 10, 2015. The company elected to begin reclamation on the site rather than submit the additional bond and indicated that a D-8 dozer would be moved to the site on September 3, 2015. At today’s inspection it was observed that a dozer had been on the permit and a small amount of grading had been done. However, at this point reclamation should be continuous until the site is reclaimed. The amount of work done to date is not sufficient to delay further enforcement action.*

*Therefore, Notice of Violation RDS0011157, part 1 of 1 was issued today with an expiration date of October 23, 2015 instructing the operator to backfill and re-grade this site.”*

The permittee contends that no violation existed at the time N.O.V. # RDS0011157 was issued and therefore there was no basis to issue the C.O # RDS0011216. For the C.O. to be vacated, the permittee has the burden to show they did not violate Section 4 VAC 25-130-817.100(b)(1) or Section 4 VAC 25-130-817.102. These sections sets forth time and distance limits and outlines the requirements that must be achieved to properly backfill and regrade disturbed areas. The permittee’s position is that they should be given the time allowed in their approved backfilling and grading plan upon expiration of the T.C. Section 13.1 of their approved plan sets forth the following time and distance requirements concerning backfilling and grading.

***“ ... The distance limitation for rough backfilling and grading operations from the point of coal removal is 3,100 Linear Feet. Because area contour mining operations are proposed, a time limitation of 180 days is proposed....”***

The permittee is correct in stating that they could have 180 days to reclaim the mine site. However; the permittee’s argument that they were not in violation of the cited sections cannot be supported. There are two (2) major problems with the permittee’s reasoning. First, the T.C. expired on April 29, 2014. The N.O.V. to require the mine site to be reclaimed was not issued until September 15, 2015. The permittee had well over a year before N.O.V. # RDS0011157 was issued. Section 4 VAC 25-130-817.100 of the VCSMRR requires that disturbed mining areas be reclaimed as contemporaneously as practicable to prevent adverse environmental effects. In this case, that did not occur. The second problem with the permittee’s reasoning is the fact that no reclamation work was occurring on the day the N.O.V. was issued. In fact, the record shows that only a minor amount of work has been done on this site to date. On that fact, the record is clear. If reclamation of the Wilson seam mine site had been occurring in earnest, the area would certainly have been completed and this case would probably have never existed. The Division was correct in issuing N.O.V. #RDS0011157.

However; this case specifically concerns the issuance of FTACO #RDS0011216. The record shows that the Division took this additional enforcement action in an attempt to have the Wilson seam deep mine site reclaimed. Inspection report # RDS0011215 provides the following information:

*“As of today’s inspection no additional work has been performed on the site. Therefore, FTA Cessation Order RDS0011216, part 1 of 1, was issued for failure to abate Notice of Violation RDS0011157. The operator was instructed to take all necessary measures to comply with the above cited NOV.”*

The same permit and field conditions existed on October 27, 2015 that existed on September 21, 2015. The permittee had not posted the required cost bond and no additional reclamation work had occurred since issuance of N.O.V. # RDS0011157. The regulations contained at Section 4 VAC 25-130-843.11(b)(1) and (b)(2) authorizes the Director to immediately issue a FTACO to require the permittee to take all necessary steps to abate the violation *“in the most expeditious manner physically possible.”* Currently, the record shows that no cost bond has been posted to cover the T.C. area and the Wilson seam deep mine site is still disturbed and not reclaimed on this permit.

The regulations and statutes referenced above clearly support the issuance of N.O.V. #RDS0011157 and the FTACO #RDS0011216. It is my decision that the Division’s actions were in accordance with applicable statutes and regulations and the issuance of FTACO #RDS0011216 was appropriate.

Informal Hearings Officer: James Lowe

Date: 2/19/2016