



*

Informal Hearing Determination

Company: A & G Coal Corporation **Permit No.:** 1502053

Subject: Cessation Order # LJJ0002219

Conference: April 13, 2016 @ 1:30 PM **Location:** DMME BSG Office

Participants: _____

On April 12, 2016, 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 Cessation Order LJJ0002219. Representing A & G Coal Corporation was Mr. Mark Wooten, PE. The presiding officer was Harve Mooney. Mr. Wooten was afforded the opportunity to provide comments and/or information during the informal hearing. Representing the Southern Appalachian Mountains Stewards was Mr. Matt Hepler. There were no other attendees from the general public at this hearing.

Summary of Informal Hearing

Cessation Order LJJ0002219 was issued to the operator because the operator had not performed the necessary measures to comply with NOVLJJ0002176, violation 1 of 1 under performance code AO. This NOV instructed the operator to submit the fees as requested in the approved Cost Bond Application #1009545. The additional bond amount requested totaled \$350,000. As a result, a Failure to Abate Cessation Order (FTA/CO) #LJJ0002219 was issued for failure to comply with the remedial measures stipulated in Notice of Violation #LJJ0002176 violation 1 of 1 by the original abatement date.

Mr. Mark Wooten spoke on behalf of A & G Coal Corporation (a subsidiary of Southern) in reference to the cessation order. He began by stating why the violation should not have been issued. He noted that the permit is an associated facility with a cleaning plant and a coarse refuse disposal area. It is not an actively producing mine. It does not generate spoil nor move overburden. It is Mr. Wooten's assertion that the permit would only be active if the plant was running coal or coarse refuse was being placed.

Mr. Wooten also stated that there are no set criteria to determine what constitutes a permit being active. He stated on the day that violation was cited the site was doing general maintenance work. There was no spoil being moved or coal being mined. The day that the cessation order was issued, equipment was however working. Mr. Wooten noted that the division had determined that there was no activity due to the fact that there was only one piece of equipment working. He said that DMME cannot make the determination that the site is in active status. It is the company's position that additional cost bond would not have had to be put in place if the site was not in active status.

Area inspector Landon Jenkins noted that the site was indeed in temporary cessation. Mr. Jenkins stated that a violation was issued for backfilling and grading. The violation was terminated when the company submitted a cost bond revision. The cost bond revision was approved and required the operator to submit additional bond. The bond was not submitted so the notice of violation LJJ0002176 was issued. The subsequent Cessation Order LJJ0002219 was issued for failure to abate the notice of violation. That is the subject of this hearing.

Mr. Wooten noted that all activity of these violations fall under the regulations of the pool bond and not the performance standards. He also noted that there was no deadline for the bond to be placed on the permit. He felt that the violation should be vacated due to the fact that the company had equipment on the site working at the time the violation was issued. He stated that there should have been no violation issued as the company was working and could've been given more time.

Informal Hearing Recommendation

Cessation Order LJJ0002219 (1 of 1) was issued to the operator because it had not performed the necessary measures to comply with NOV LJJ0002176. **Section 4VAC-25-130-843.11(b) of the Virginia Coal Surface Mining Reclamation Regulations** governs the issuance of Cessation Orders for failure to abate a violation. Specifically, the section “b” states,

When a notice of violation has been issued under 4VAC25-130-843.12(a) and the permittee fails to abate the violation within the abatement period fixed or subsequently extended by the authorized representative, the authorized representative of the Director shall immediately order a cessation of coal exploration or surface coal mining and reclamation operations, or of the portion relevant to the violation.

Notice of Violation LJJ0002176 was issued on February 16, 2016, and it was given an abatement date of March 3, 2016. The permittee did not contest the notice of violation when it became final after 30 days. The operator takes the position that the violation and the subsequent cessation order were complied since he (the operator) returned equipment to the minesite and initiated maintenance operations.

The operator’s representative also notes that since neither coal preparation nor refuse generation was taking place, the site must be considered inactive since only the operator can activate his operations. This position has no merit. He cannot assert that the site is active (since he returned equipment) and in the same instance say that the site is inactive because he is not processing coal or hauling refuse.

The most compelling evidence in this issue concerns the violation itself. Notice of Violation LJJ0002176 was issued to the operator to submit bond as a result of the approval of Cost Bond Application #1009545, and not a result of the temporary cessation violation (NOV LJJ0001949) . That is the violation that prompted the cost bond revision. Notice of Violation LJJ0002176 could

only be abated by the submittal of the additional bond required in Cost Bond Application #1009545, which the operator failed to submit.

In accordance with **Section 4VAC-25-130-843.11(b) of the Virginia Coal Surface Mining Reclamation Regulations**, DMLR shall issue a cessation order once the abatement date has passed, and the violation is unabated. Since the violation (NOV LJJ0002176) was unabated by its abatement date, Cessation Order LJJ0002219 was issued.

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:

Harve A Mooney

Date: *April 18, 2016*
