

**COMMONWEALTH of VIRGINIA**  
*Department of Mines, Minerals and Energy*

P.O. Drawer 900  
3405 Mountain Empire Road  
Big Stone Gap, Virginia 24219-0900  
(276) 523-8100  
[www.dmme.virginia.gov](http://www.dmme.virginia.gov)

May 2, 2019

Mr. J. Mark Campbell  
Clintwood Elkhorn Mining, LLC  
23956 State Highway 194E  
Feds Creek, KY 41524

Certified Mail Return  
Receipt No. 7018 1830 0001 4691 8755

Re: Informal Hearing Decision - Issuance of Cessation Order RSY0009015 (1 Violation) for  
Clintwood Elkhorn Mining LLC, Permit Number 1101995.

Dear Mr. Campbell:

An informal hearing was held on April 29, 2019, to review the issuance of the above captioned enforcement action. Based upon the attached opinion of the Informal Hearing Officer, the following decision is hereby rendered.

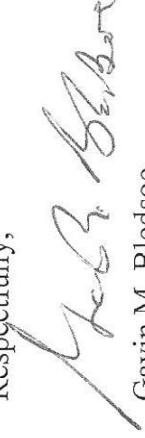
In order to properly address the discharge from Pond H, Cessation Order RSY0009015 (Effluent) is hereby ordered to be vacated, and a Notice of Violation will be issued in its place.

Pursuant to §4VAC25-130-843.16(a) of the Virginia Coal Surface Mining Reclamation Regulations, you (or any person having an interest which is or may be adversely affected by this decision) have the right to request a formal public hearing to review this decision. The request must be submitted in writing within 15 days from service of this decision to the:

Hearings Coordinator  
Division of Mined Land Reclamation  
P. O. Drawer 900  
Big Stone Gap, Virginia 24219

Please be advised that the party requesting formal review shall bear the burden of proof at the formal hearing. Should you have any questions concerning the formal hearing process, please call Darlene Gibson, Hearings Coordinator, at (276) 523-8150.

Respectfully,



Gavin M. Bledsoe  
Reclamation Services Manager

c: Chris Stanley  
Tim Browning, Artemis Consulting  
Robert Yates, Area Inspector  
Thomas Mackey, Area Supervisor  
Harve Mooney, Hearings Officer



Informal Hearing Determination

**Company:** Clintwood Elkhorn Mining, LLC      **Permit No.:** 1101995

**Subject:** Cessation Order #RSY0009015

**Conference:** April 29, 2019 @ 10:00 a.m.      **Location:** Lebanon DMME

**Participants:** Chris Stanley- Apex, Tim Browning, PE –Artemis Consulting, Gary Shifflett-DMME, Robert Yates-DMME

An informal hearing was conducted today at the Lebanon office of the Virginia Department of Mines Minerals and Energy. The hearing was requested by Mr. Chris Stanley on behalf of Clintwood Elkhorn Mining, LLC. Representing the company were Mr. Chris Stanley and Professional Engineer Tim Browning of Artemis Consulting. The DMME was represented by Inspectors Robert Yates and Gary Shifflett. There were no attendees from the general public.

Summary of Informal Hearing

The first segment hearing began with the Cessation Order No. RSY0009015, violation 1 of 1, which was issued to Clintwood Elkhorn Mining LLC permit number 1101995. This cessation order for Environmental Harm was issued due to a discharge from pond H and an additional haul road sump which caused a large amount of iron to be discharged into Race Fork Creek. In addition, the discharges from the permit resulted in significant discoloration of the receiving stream for miles extending into Kentucky.

Company representative Chris Stanley begin by noting the previous temporary relief hearing that was conducted last month when the company was afforded temporary relief concerning the order. Mr. Stanley stated that the company was adamant in their determination that the water was coming out of the Splashdam seam from an area that was not on the permit. He noted that since the previous hearing the Water Quality section of the DMME had been in contact with the company to possibly use this seep discharge as an offset for the TMDL associated with this watershed. The company would divert the water from the seep area around the permit area and would treat the water before it reached the receiving stream. Mr. Stanley noted that the actions of DMME demonstrated that the water was not a result of the company's operation.

Engineer Tim Browning produced a document that he noted was a proposed offset to be used. Mr. Browning noted that he had discussed the document with the Water Quality manager Rodney Baker. He stated that while the document needed some minor adjustments, they were very close to its approval. This would allow the company to get the TMDL credits for treatment of the water coming from the Splashdam seam.

Mr. Stanley noted that the drainage would be directed around the permit in a diversion ditch. The company would treat the seep water in the diversion itself. Diverting the drainage around the pond would result in an improved discharge from the seep without increasing the potential for a non-compliant discharge for the pond.

Area inspector Bobby Yates agreed with the assertion that the seep area was not on the permitted area. He noted that there had been an improvement in the quality of the seep. Inspector Yates has provided a copy of the analysis of the discharge as well as up and down stream of the discharge.

Company representative Chris Stanley noted that the company was addressing the drainage into the haul road sump. They were taking the discharge effluent and they are using it for dust suppression on the site. He stated that this was also a part of the TMDL offset. Mr. Stanley stated that in view of the discussions this day he requested that this cessation order be vacated. This concluded discovery for Cessation Order No. RSY0009015, violation 1 of 1.

### Informal Hearing Recommendation

Cessation Order No. RSY0009015, violation 1 of 1, was issued to the operator on March 26, 2019, as a result of the discharge from Pond H and a haul road sump into the receiving stream Race Fork Creek. The standard for this violation is addressed within the **Code of Virginia** and the **Virginia Coal Surface Mining Reclamation Regulations**, which address environmental protection of areas on or adjacent to an approved permit, as well as the issuance of cessation orders. Specifically, **Section 4VAC25-130-843.11(a) (1)(ii) of the Virginia Coal Surface Mining Reclamation Regulations states,**

- (a)(1) An authorized representative of the Director shall immediately order a cessation of a coal exploration or a surface coal mining and reclamation operation or of the relevant portion thereof, if the representative finds, on the basis of any inspection, any condition or practice, or any violation of the Act, this chapter, or any condition of a permit or an exploration approval imposed under the Act, or this chapter which:
  - (i) Creates an imminent danger to the health or safety of the public; or
  - (ii) Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

Similarly, authorization to issue cessation orders is specified in the **Code of Virginia** under Chapter 19. Specifically, **Section 45.1-245 A states,**

- A. Whenever the Director or his authorized representative determines that any condition or practices exist, or that any permittee is in violation of any requirement of this chapter or of any regulation promulgated hereunder or of any

permit condition, which condition, practice or violation also creates an imminent danger to the health or safety of the public, or is causing, or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources, the Director or his authorized representative shall immediately order a cessation of coal surface mining and reclamation operation or the portion thereof relevant to the condition, practice or violation. Such cessation order shall remain in effect until the Director or his authorized representative determines that the condition, practice or violation has been abated, or until modified, vacated or terminated by the Director or his authorized representative. Whenever the Director or his authorized representative finds that the ordered cessation of coal surface mining and reclamation operations, or any portion thereof, will not completely abate the imminent danger to health or safety of the public or the significant imminent environmental harm to land, air or water resources, the Director shall, in addition to the cessation order, impose affirmative obligations on the operator and require him to take whatever steps the Director or his authorized representative determines necessary to abate the imminent danger or the significant environmental harm.

There is no dispute that the effluent from the seep emanated from the Splashdam Coal seam or that the seep itself did originate off the permit area. Water quality samples were taken from the seep area as well as the discharge pond H and the permit haul road sump and upstream and downstream of the discharge point. The analyses do indicate that based on the qualitative analyses and past samples, the discharge from the seep was the major contributing factor in the discoloration of Race Fork.

It is unfortunate that the seep discharge, while it originated off of the permit, did flow through structures on the permit and as a result became commingled with the discharge from both Pond H as well as the permitted haulroad sump. The result of this commingling drainage was the discharge from Pond H failed to meet effluent limitations. Samples taken on March 21, 2019, and analyzed using a Hach Kit revealed field values of pH (6.5) and Iron (>5 mg/L). Laboratory analysis of the discharge, the seep, the sump, upstream and downstream revealed the following:

Coal Seam (seep)	Total Iron 1969 mg/L	Total Manganese 3.77 mg/L
Haulroad sump	Total Iron 693 mg/L	Total Manganese 22.1 mg/L
Race Fork Upstr. of sump	Total Iron 13.4 mg/L	Total Manganese .598 mg/L
Race Fork Downstr. (Mouth)	Total Iron 34.2 mg/L	Total Manganese 1.80 mg/L
Pond H discharge	Total Iron 286mg/L	Total Manganese 4.09 mg/L
Race Fork Upstream Pond H	Total Iron .215 mg/L	Total Manganese .048 mg/L
Knox Creek Upstream	Total Iron .296 mg/L	Total Manganese 0.04 mg/L
Knox Creek downstream	Total Iron 6.73 mg/L	Total Manganese 0.368 mg/L

It is this hearings officer's opinion that the offsite water pollution and sedimentation were not a result of actions by activity on permit number 1101995. Indeed, the evidence supplied tends to indicate had pond H not been in place the possibility of higher concentrations of metals would

have reached the receiving stream. This position is substantiated by the value of iron existing in the seep as opposed to the amount of iron in the discharge from pond H.

While the discharge from the seep is clearly the source of the bad effluent, the operator is responsible for meeting effluent limitations set forth in his approved NPDES permit, and is subject to enforcement action. For this reason, the permit has failed to meet effluent limitations as required per 4 VAC 25-130-816.42 of the Virginia Coal Surface Mining Reclamation Regulations and his approved NPDES permit.

Therefore, it is my recommendation that Cessation Order No RSY0009015 (1 violation) be vacated as the actions of the permittee do not rise to the level of the definition of "significant imminent environmental harm". However, since the discharge did not meet the effluent limitations for pond H, a notice of violation should be issued to the permittee to reflect this violation.

Informal Hearings Officer: Sam A. Young

Date: 05/02/19