



Informal Hearing Determination

Company: Virginia Fuel Corporation **Permit No.:** 1102059
Subject: Notice of Violation HGC0010769 (OT)
Conference: November 21, 2014 at 10:30 a.m. **Location:** Lebanon Office
Participants: Leslie Vincent, PE (Virginia Fuel Corp), Marley Green, (SAMS)

Summary of Informal Hearing

On September 12, 2014, an informal hearing was held at the Lebanon office of the Department of Mines Minerals and Energy, in reference to the fact of violation for Notice of Violation HGC0010769. Representing Virginia Fuel Corporation was Mr. Leslie Vincent, PE. The hearings officer was Harve Mooney. Mr. Vincent was afforded the opportunity to provide comments and/or information during the informal hearing. Mr. Marley Green was present for Southern Appalachian Mountain Stewards at this hearing. There were no other attendees from the general public at this hearing.

Mr. Les Vincent began by noting that Notice of Violation HGC0010769 concerned a renewal application comment. He noted that the company had been issued a notice for failure to submit biological monitoring by a date (10/15/14) written in the comments by DMLR in the renewal application. Mr. Vincent noted that the problem was that while the company could do the monitoring they could not complete the analysis by that date. He stated that the violation as issued is not based in law, statute or regulation.

Mr. Vincent noted that there were times you could not legally sample the benthic community. He noted that the sampling locations must be accurate, or you cannot make a good determination of the effects on the community. He stated that the agency requested additional information and the violation was premature since the data requested was not a requirement.

Mr. Marley Green (representing SAMS) noted that the biological monitoring was important and should have been submitted. The violation therefore should not be vacated.

Informal Hearing Recommendation

Notice of Violation HGC0010769 was issued to the permittee for failure to submit biological monitoring by a date (10/15/14). The company was correct in that the deadline date to submit the biological data was specified in the comment letter dated October 3, 2014. Section 4 VAC 25-

130-774.15(b) governs the minimum information required for submittal of renewal materials for a permit. Subsection (b) (2) (5) states,

(b) Application requirements and procedures.

(1) An application for renewal of a permit shall be filed with the division at least 120 days before expiration of the existing permit term.

(2) An application for renewal of a permit shall be in the form required by the division and shall include at a minimum--

(i) The name and address of the permittee, the term of the renewal requested, and the permit number or other identifier;

(ii) Evidence that a liability insurance policy or adequate self insurance under 4VAC25-130-800.60 will be provided by the applicant for the proposed period of renewal;

(iii) Evidence that the performance bond in effect for the operation will continue in full force and effect for any renewal requested, as well as any additional bond required by the division pursuant to Subchapter VJ;

(iv) A copy of the proposed newspaper notice and proof of publication of same, as required by 4VAC25-130-778.21; and

(v) Additional revised or updated information required by the division.

This regulation specifically notes the DMME's prerogative to request additional data to assure the protection of resources. The operator failed to meet the requirements of subsection (b) (2) (5) in not submitting the requested biological data by the October 15, 2014 date. It was noted that the DMME has directed all biological data to be submitted by December 30, 2014 to allow ample time for sampling and data analysis. Based on the findings of this hearing, it is this hearing officer's opinion that this violation was properly issued, and it is recommended that the violation be affirmed.

Informal Hearings Officer: Harve A Mooney

12/04/14
Date: _____