

COMMONWEALTH of VIRGINIA
Department of Mines, Minerals and Energy

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Big Stone Gap, Virginia 24219-0900
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April 30, 2019

Mr. Jeffrey Alan Hoops
Blackjewel LLC
1051 Main Street
Milton, West Virginia 25541

Certified Mail Return
Receipt No. 7018 1830 0001 4691 0605

Re: Informal Hearing Decision - Issuance of Cessation Order JLB000769 (1 Violation)
Notice of Violation JLB0000770 and Notice of Violation JLB0000771 for Blackjewel LLC,
Permit Number 1202258.

Dear Mr. Hoops:

An informal hearing was held on April 16, 2019, to review the issuance of the above captioned enforcement actions. Based upon the attached opinion of the Informal Hearing Officer, the following decision is hereby rendered.

Cessation Order JLB0000769 (black water) was properly issued and therefore is hereby affirmed. Notice of Violation JLB0000771 (haulroad maintenance) is hereby affirmed.

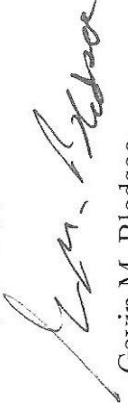
Notice of Violation JLB0000770 (in reference to sediment structure maintenance) is affirmed with the following modification. It is recommended that the regulation currently cited be deleted and replaced with 4 VAC 25 130-817.46 of the Virginia Coal Surface Mining Reclamation Regulations.

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: John Boyd, Area Inspector
Thomas Mackey, Area Supervisor
James D. Meacham, Informal Hearing Officer
Mr. Richard Matda



Informal Hearing Determination

Company: Blackjewel LLC **Permit No.:** 1202258

Subject: Cessation Order #JLB0000769, Notices of
Violation #JLB0000770 and #JLB0000771

Conference: April 16, 2019 @ 10:00 a.m. **Location:** Lebanon DMME

Participants: Richard Matda (Blackjewel, LLC); Daniel Smith (Blackjewel, LLC); Elsey Harris
(Blackjewel); John Boyd (DMLR Inspector)

On April 16, 2019, an informal hearing was held at the Lebanon office of the Department of Mines, Minerals and Energy (DMME), in reference to the fact of violation for Cessation Order #JLB0000769, violation 1 of 1, Notice of Violation #JLB0000770, violation 1 of 1, and Notice of Violation #JLB0000771, violation 1 of 1. Representing Blackjewel, LLC were Richard Matda, Daniel Smith and Elsey Harris. The hearings officer was James Meacham.

Summary of Informal Hearing

Mr. Elsey Harris began by stating that he submitted a letter, dated March 26, 2019, to the DMME Legal Service Officer Harve Mooney, which summarized the facts in this matter. Mr. Harris proceeded by providing comments and information included in this letter. Mr. Harris stated that John Boyd received a report of blackwater and came to Blackjewel, LLC, Permit #1202258 on March 13, 2019 to investigate. Mr. Harris stated that Mr. Boyd issued a Cessation Order #JLB0000769 to address the blackwater.

Mr. Harris said the company was not disputing the fact that a blackwater discharge occurred from Blackjewel, LLC, Permit #1202258. Mr. Harris said the blackwater discharged occurred, John Boyd noted it and the company added flocculants and took other measures to quickly address the discharge.

Mr. Harris explained that the company's concern with the cessation order was the exact timing of the issuance and at what time did the cessation order begin and at what time was it terminated. Mr. Harris stated that although the cessation order was dated March 13, 2019, the cessation order was not served in person to anyone. Mr. Harris explained that the cessation order was served by E-mail on March 15, 2019 at 6:58 p.m. John Boyd explained that the inspection was conducted on March 13, 2019 and the cessation order was issued on that date. John Boyd stated that the cessation order was sent to his supervisor for review and then a copy of the cessation order was E-mailed to the company representatives at 6:58 p.m. on March 15, 2019. Richard Matda said he did not hear about the cessation order until he received the E-mail on the evening of March 15th. Mr. Harris stated that the issuance date of the cessation order has a significant bearing on the amount of the civil penalty assessed, and it is important to establish the time of service. Mr. Harris said the company contends that Cessation Order #JLB0000769, violation 1 of 1 was not

properly served until 6:58 p.m. on March 15th. Mr. Harris contends that the cessation order should not begin for assessment until they received it in the E-mail.

Mr. Harris stated that during Mr. Boyd's inspection of March 13th the company representatives were told by Mr. Boyd that he would not issue a cessation order if the company got the blackwater discharge under control within one hour. Mr. Harris explained that the company did control the blackwater discharge within one hour. Mr. Harris stated that Mr. Boyd had another meeting with the company representatives onsite on March 14, 2019 where Mr. Boyd found some additional maintenance issues with the cattle guard and the sediment ponds needed to be cleaned and maintained. Mr. Harris said Mr. Boyd did not state that he was issuing a cessation order at that time and the company representatives were under the impression at that time that no cessation order was being issued. Mr. Harris said Mr. Boyd did call company representatives after the onsite meeting on March 14th and stated that he would be issuing a cessation order, but because the blackwater had been cleared up the cessation order would be issued and terminated simultaneously. Mr. Harris said the company did not find out about the other requirements in the cessation order until they received the E-mail on March 15th.

Mr. Harris explained since the E-mail was not received until late Friday, March 15th there were no personnel to begin the remedial work until early Monday, March 18th. Mr. Harris explained that the company began addressing the other remedial measure required in the cessation order and the remedial measures required under Notice of Violation #JLB0000770 and Notice of Violation #JLB0000771 early on Monday, March 18th. Mr. Harris explained that those remedial measures were basically corrected by Tuesday, March 19th. Mr. Harris said Mr. Boyd inspected the remedial work on Wednesday, March 20th and terminated Cessation Order #JLB0000769, Notice of Violation #JLB0000770 and Notice of Violation #JLB0000771 on that date. John Boyd said he received a call from the company on Tuesday evening, March 19th noting that the work had been completed, and he inspected the remedial work on March 20th. Mr. Harris stated that the company acted expeditiously and in good faith to correct these remedial measures.

Mr. Matda stated that John Boyd had called him on the evening of March 13th. Mr. Matda said Mr. Boyd told him that although he said earlier if the blackwater discharge was cleaned up he would not issue a cessation order, after talking with his supervisor the decision was to issue a cessation order. Mr. Matda explained that Mr. Boyd said the cessation order would be issued and terminated simultaneously. Mr. Matda said on March 14th he met with Mr. Boyd, they looked over the site, and the issues associated with the blackwater discharge. Mr. Boyd explained that during that meeting they actually found the source of the blackwater discharge, which led to the remedial measures of the cessation order issued. Mr. Matda said after looking over the site on March 14th he understood that pending the completion of the water sample analysis the company was subject to the issuance of a notice of violation for cleaning the sediment pond. Mr. Matda said he did not remember any conversations on March 14th regarding the issue of a cessation order. Mr. Matda said on this date his understanding was that the cessation order had been issued on March 13th and terminated simultaneously. Mr. Matda said his impression was that the company had received a cessation order but that it was terminated. Mr. Matda said he did not understand that the cessation order was still unabated or that the order contained other remedial measures until he received it in the E-mail on the evening of March 15th. Mr. Harris explained that by receiving the cessation order during the evening of March 15th it was too late to respond more quickly that Monday, March 18th because all personnel who address these type of situations

had gone home for the weekend. Mr. Boyd said the cessation order was issued to the permittee and the permittee was responsible for addressing violations around the clock, if necessary.

John Boyd stated when he met onsite with Mr. Matda on March 14 he told Mr. Matda that Cessation Order #JLB0000769, violation 1 of 1 was issued for the blackwater discharge and notices of violation would be issued for failure to maintain the cattle guard and to clean the sediment ponds. Mr. Boyd said when he arrived at the site on March 13th he met with company representative David Church. Mr. Boyd stated that at the time he met Mr. Church he notified Mr. Church that due to the blackwater discharge he was requiring the company to cease the discharge and bring it into compliance. Mr. Boyd explained that by informing the company representative to cease the discharge he was therefore issuing a “verbal cessation order”. Mr. Boyd said the “verbal cessation order” was issued to David Church because there was nobody else to issue it too. Mr. Boyd explained that Mr. Church told him he did not know where the mine superintendent (Daniel Smith) was but that he would add flocculent to the pond. Mr. Boyd stated that he then collected water samples and he took pictures to document site conditions. Mr. Boyd said he then traveled to the DMME office and talked to his supervisor, Tom Mackey. Mr. Boyd said Tom Mackey instructed him to immediately issue a cessation order for the blackwater discharge. Mr. Boyd said Daniel Smith talked to him and asked him if there was any way he could hold off on the issuance of the cessation order to see if the company could get the blackwater discharge cleared up. Mr. Boyd said the company added flocculent and straw bales but was not able to get the blackwater cleared up. Mr. Boyd said after the additional work the discharge was still gray in color, and he proceeded to issue the cessation order.

Mr. Boyd said he explained DMME’s procedure for issuing a cessation order to Richard Matda. Mr. Boyd said he told Mr. Matda that when an inspector issues an action of this nature it has to be sent to the supervisor to be reviewed. Mr. Boyd said he sent the cessation order to his supervisor during the evening of March 13th and on March 15th his supervisor approved the cessation order and he uploaded it into the DMLR enforcement system. Mr. Harris stated that since the inspector did not actually E-mail the cessation order until the evening of March 15th the company should not be assessed a civil penalty for March 13th and March 14th.

Mr. Harris concluded by stating that the company had no comments regarding the issuance of the notices of violation other than the company acted expeditiously and in good faith to correct these remedial measures. Mr. Harris stated that good faith should be considered in the assessment of these notices.

Informal Hearing Recommendation

I conducted a review of the pertinent inspection reports associated with the issuance and termination of Cessation Order #JLB0000769, violation 1 of 1, Notice of Violation #JLB0000770, violation 1 of 1 and Notice of Violation #JLB0000771, violation 1 of 1. I also conducted a review of the applicable sections of the Virginia Coal Surface Mining Control and Reclamation Act of 1979 and the applicable sections of the Virginia Coal Surface Mining Reclamation Regulations (VCSMRR). After completing this review, the hearing was closed on April 18, 2019.

Cessation Order #JLB0000769, Violation 1 of 1

The company representatives are not disputing the fact that a blackwater discharge occurred from Blackjewel, LLC, Permit #1202258. In addition, the company representatives acknowledged that a blackwater discharge occurred and affected the receiving stream on March 13, 2019. The company representatives explained that their concern with the cessation order was, on what date and time was the cessation order issued. They also had a concern as to the exact time that the cessation order went into effect and the time the order was terminated. This is a concern of the company representatives because the duration of the cessation order is one factor, which affects the total amount of civil penalty assessed for the blackwater discharge.

It should be noted that this informal hearing was granted and is being conducted in accordance with Section 4VAC25-130-843.15 of the **Virginia Coal Surface Mining Reclamation Regulations**. The purpose of the informal hearing is to review the facts of the violation regarding the issuance of cessation order #JLB0000769, violation 1 of 1. Upon receiving any comments from individuals present at the hearing and reviewing all pertinent information, the informal hearing officer will recommend the order be affirmed, modified or vacated. The informal hearing officer will not make any decision as to the appropriateness of the civil penalty assessed for this order. The assessment of a civil penalty for this order is determined by the DMLR Assessment Officer in accordance with Section 4VAC25-130-843.11 of the **Virginia Coal Surface Mining Reclamation Regulations**. The DMLR Assessment Officer will also determine how long the cessation order was in effect. If the company wishes to question the assessment of a civil penalty, the company would need to request an assessment conference in accordance with Section 4VAC25-130-845.18 of the **Virginia Coal Surface Mining Reclamation Regulations**. Therefore, this hearing officer will not conduct a review of the appropriateness and amount of the civil penalty assessment.

Testimony provided by company representatives Richard Matda and Daniel Smith is conflicting with the testimony given by the DMLR inspector John Boyd. There seems to be confusion as to when the cessation order was issued, the remedial requirements of the order and when the order was terminated. Therefore, I researched the inspector's documentation within Cessation Order #JLB0000769, violation 1 of 1 and the associated inspection report dated March 13, 2019 to determine if the order was properly issued.

According to the inspection report of March 13th Mr. Boyd arrived on permit 1202258 at approximately 8:30 a.m. According to the documentation in Cessation Order #JLB0000769 and the inspection report Mr. Boyd documented that the discharge from SB-02 was discharging at approximately 100 gpm. Mr. Boyd documented that this discharge was significantly discoloring the receiving stream immediately below SB-02 and Linn Camp Br. to its junction with Dismal Creek. Section 4VAC25-130-843.11 (a)(1)(ii) of the **Virginia Coal Surface Mining Reclamation Regulations** states:

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:

(ii) Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

Mr. Boyd's testimony and the documentation in the inspection report of March 13th indicates that in accordance with the referenced section of the VCSMR, Mr. Boyd immediately issued a verbal cessation order to the company representatives onsite. According to the March 13th inspection report, Mr. Boyd verbally instructed David Church to immediately stop the blackwater discharge. The report states that after talking with David Church Mr. Boyd called Tom Mackey to advise him of the situation. The report further states that Mr. Mackey instructed Mr. Boyd to immediately issue a cessation order. The report also states that the Mine Superintendent Danny Smith was onsite at this time, and he asked Mr. Boyd if he would delay issuing the cessation order to see if the company could stop the blackwater discharge. According to the inspection report, Mr. Boyd responded to Mr. Smith's request with a verbal cessation order instructing the company to stop the discharge immediately until the discharge could be brought into compliance. The report documents that the company immediately took action to attempt to cease the discharge. The report documents that by 11:00 a.m. the discharge had cleared significantly, but nowhere in the inspection report does it state that Mr. Boyd was going to follow up his verbal cessation order with a written order to be issued and terminated on the same day. In fact, during the hearing Mr. Boyd testified that after the company's additional work the discharge was still gray in color and he proceeded to issue the written cessation order. In addition, the March 13th report documents that "as a result of the blackwater discharge environmental harm Cessation Order #JLB0000769 was issued for blackwater discharge."

During the hearing, all participants concurred that Mr. Boyd and Mr. Matda met at the permit on March 14th to evaluate the issues associated with the blackwater discharge. During the hearing, Mr. Boyd explained that during that meeting, they actually found the source of the blackwater discharge, and that is what led to the additional remedial measures of the cessation order. Mr. Matda testified that he was under the impression that the cessation order was to be issued and terminated simultaneously for the discharge on March 13th and no other remedial measures would be added. As previously mentioned, there is conflicting testimony regarding the issuance of the cessation order and the remedial measures included in the order. Therefore, I have reviewed the language included in Cessation Order #JLB0000769.

The language in the cessation order states that the date of the violation is March 13, 2019. The order requires the discharge from SB-02 (MPID#0001029) to be ceased. The order also includes the following remedial action: "Permittee is hereby directed to remove all accumulations of black mud from around the belt structures upstream from SB-01 to prevent mixing with overflow from storage tank and take all additional steps to prevent any additional accumulations that could lead to re-occurrence." John Boyd testified that after obtaining his supervisor's (Tom Mackey) review, he sent the order to the company representatives by E-mail at 6:58 p.m. on March 15, 2019.

It should be noted that Section 4VAC25-130-843.11 (a)(1)(ii) of the **Virginia Coal Surface Mining Reclamation Regulations** provided the inspector with the authority to immediately order cessation of the blackwater discharge. As previously discussed, Mr. Boyd ordered the cessation of the discharge in the quickest way possible, by issuing a verbal order on the inspection of March 13, 2019 followed by the issuance of a written cessation order. The permittee was required to comply with these actions.

In conclusion, I find that inspector John Boyd observed blackwater discharging from BlackJewel, permit 1201158 on March 13, 2019. Mr. Boyd determined that this discharge was causing or could reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources. In accordance with Section 4VAC25-130-843.11 (a)(1)(ii) of the **Virginia Coal Surface Mining Reclamation Regulations**, Mr. Boyd took the following actions:

- On March 13, 2019, Mr. Boyd immediately issued a verbal cessation order to the company representatives onsite to immediately cease and bring into compliance a blackwater discharge which was causing or could reasonably be expected to cause significant, imminent environmental harm
- After consulting with his supervisor, Mr. Boyd prepared the written cessation order documenting that the date of violation was March 13, 2019. The order required the company to cease the discharge and remove all accumulations of black mud from around the belt structures
- On March 15, 2019 at 6:58 p.m, Mr. Boyd E-mailed the written cessation order to the company representatives
- On March 21, 2019, Mr. Boyd terminated the cessation order.

After concluding my review of the relevant inspection records and considering all information received at the hearing, I find that a blackwater discharge did occur from permit #1202258 and the inspector did take appropriate enforcement action to address the violation. It is unfortunate that the company representatives experienced some misunderstanding as to the issuance of the cessation order and that the order would remain outstanding until the blackwater discharge was ceased and all other remedial measures of the order were complied. In my opinion Cessation Order #JLB0000769, violation 1 of 1 was properly issued for the violation cited, and I recommend that it be affirmed. As previously stated, the assessment of a civil penalty for this order will be determined by the DMLR Assessment Officer, and the DMLR Assessment Officer will determine the number of days for which the violation will be assessed. In addition, if the company wishes to contest the civil penalty assessment it must be done through the request of an assessment conference.

Notice of Violation #JLB0000770, Violation 1 of 1

The company had no comments regarding the issuance of this notice of violation. Therefore, I reviewed Notice of Violation #JLB0000770, Violation 1 of 1 and the associated inspection report. John Boyd documented in the notice that SB-01 and SB-02 were not being maintained. He further documented that sediment had accumulated to a point to which these structures were not functioning properly. Mr. Boyd also documented that the flow curtains in the pond were not properly maintained. This is in violation of Section 4VAC25-130-817.46 (c) of the **Virginia Coal Surface Mining Reclamation Regulations**, which requires maintenance of sediment ponds and removal of sediment when its accumulation reaches the cleanout level or when the operation of the structure is impaired. Mr. Boyd cited Sections 4VAC25-130-817.42 and 4VAC25-130-817.41 (e)(4) of the **Virginia Coal Surface Mining Reclamation Regulations**. These sections require that pond discharges meet applicable effluent limitations and equipment,

structures, and other devices used in conjunction with monitoring the quality and quantity of surface water be maintained.

It is my opinion the regulations cited by Mr. Boyd for this violation do not accurately reflect the violation, which has been documented. Therefore, I recommend that Notice of Violation #JLB0000770, Violation 1 of 1 be modified by deleting the regulations currently cited and replacing them with Section 4VAC25-130-817.46 (c) of the **Virginia Coal Surface Mining Reclamation Regulations**. With the recommended modification, I therefore affirm Notice of Violation #JLB0000770, Violation 1 of 1 as issued properly and in accordance with the **Virginia Coal Surface Mining Reclamation Regulations**.

Notice of Violation #JLB0000771, Violation 1 of 1

The company had no comments regarding the issuance of this notice of violation. Therefore, I reviewed Notice of Violation #JLB0000771, Violation 1 of 1 and the associated inspection report. John Boyd documented in the notice that the permittee has allowed the cattle guard located on haulroad #2 to become plugged with coal, allowing surface runoff to enter the stream without first passing through SB-02. This is in violation of Section 4VAC25-130-817.150(b)(e) of the **Virginia Coal Surface Mining Reclamation Regulations**, which requires roads to be maintained to control or prevent additional contributions of suspended solids to stream flow and neither cause or contribute to the violation of State or Federal water quality standards. Therefore, in my opinion Notice of Violation #JLB0000771, Violation 1 of 1 for failure to maintain the cattle guard located on haulroad #2 was properly issued. I recommend the referenced notice of violation be affirmed.

Informal Hearings Officer: _____

James D. Menden

Date: 4/25/19