

COMMONWEALTH OF VIRGINIA
BEFORE THE DEPARTMENT OF MINES, MINERALS AND ENERGY

SECOND AGREED MODIFICATION
of the COMPLIANCE AGREEMENT

Purpose:

This is a second modification to the Compliance AGREEMENT and subsequent amendments and modification that were last agreed upon as of March 31, 2016, between the Department of Mines, Minerals and Energy (DMME)/Division of Mined Land Reclamation (DMLR) and Southern Coal Corporation (Southern Coal). Southern Coal includes those companies and permits referenced as the "Justice Companies", in the Compliance Agreement executed on January 2014.

This modification is being executed in accordance with Paragraph "M" of the AGREEMENT. Except as specifically addressed herein, all other conditions, schedules, and requirements of the AGREEMENT, amendments, and modification thereof shall continue to apply.

Facts:

In addition to facts 1-19 of the AGREEMENT, facts 20-40 of the AMENDMENT, and facts 41-62 of the SECOND AMENDMENT, Southern Coal and DMME agree to the accuracy of the following additional facts:

63. Backfilling, regrading, and seeding have been conducted on A & G Coal Corporation Permit No. 1102028 and Virginia Fuel Corporation Permit Nos. 1602071 and 1602078.
64. Backfilling and regrading have been completed on A & G Coal Corporation Permit No. 1102003.
65. Southern Coal per the executed March 31, 2016 Agreed Modification was required to utilize the Reclamation Unit, as defined in the modification, to –
 - a. Initiate the remaining reclamation operations on Virginia Fuel Corporation Permit No. 1102059 by March 7, 2018 and complete work by June 30, 2018. Southern Coal has commenced the required reclamation in accordance with the timeframes set forth in this Agreement.
 - b. Perform the reclamation of A & G Coal Corporation Permit No. 1102058 and complete such by April 30, 2019.

- c. Perform the reclamation of A & G Coal Corporation Permit No. 1502057 and complete such by April 30, 2020.
66. DMME has assessed non-compliance penalties of \$1,000 per day for each Southern Coal failure to comply with the "Timeline for Reclamation Unit" under the Agreed Modification. Southern Coal has paid all the assessed non-compliance penalties through the notice of July 5, 2018.
67. Permit No. 1101800, Meg-Lynn Land Co., Inc. –
- a. Notice of Violation No. JKC0002407, violation 1 of 1, was issued September 14, 2017, requiring the company to backfill all remaining highwalls, regrade and seed all disturbed areas.
 - b. Cessation Order No. JBC0000225, violation 1 of 1, was issued on April 26, 2018, for the company's failure to comply with NOV# JKC0002407, violation 1 of 1.
 - c. Southern Coal did not file formal administrative review for the enforcement actions.
68. Permit No. 1101824, Meg-Lynn Land Co. Inc. – Determination of Bond Forfeiture was issued July 31, 2017 for failure to comply with NOV# JRJ0001143, violation 1 of 1; CO# JRJ0001307, violation 1 of 1, and the AGREEMENT and amendments.
69. Permit No. 1101905, A & G Coal Corporation – Determination of Bond Forfeiture was issued July 31, 2017 for failure to comply NOV# JRJ0001187, violation 1 of 1, CO# JRJ0001352, violation 1 of 1, and the AGREEMENT and amendments
70. Permit No. 1101914, A & G Coal Corporation –
- a. Determination of Bond Forfeiture was issued July 31, 2017 for failure to comply NOV# CEV0008858, violation 1 of 2; CO# CEV0009198, violation 1 of 1; NOV# CEV0008882, violation 1 of 1; CO# CEV0008995, violation 1 of 1; NOV# CEV0009498, violation 1 of 1; CO# CEV0009697, violation 1 of 1; NOV# CEV0009903, violation 1 of 1; CO# CEV0010288, violation 1 of 1; NOV# CEV0010323, violation 1 of 1; CO# CEV0010345, violation 1 of 1; NOV# CEV0010408, violation 1 of 1; and CO# CEV0010443, violation 1 of 1.
 - b. Notice of Violation No. CEV0010545, violation 1 of 1, was issued October 2, 2017, requiring the maintenance of Pond C2. Formal administrative review was not requested.
 - c. Notice of Violation No. CEV0010710, violation 1 of 1, was issued February 13, 2018, requiring the submittal of the cost bond under Revision 1009100.
 - d. Notice of Violation No. CEV0010750, violation 1 of 1, was issued March 20, 2018, requiring maintenance of HR-B, HR-C1, and HR-C2. Formal administrative review was not requested.
 - e. Cessation Order No. CEV0010751, violation 1 of 1, was issued March 20, 2018 for the failure to comply with NOV# CEV0010710, violation 1 of 1.

- f. Cessation Order No. CEV0010890, violation 1 of 1, was issued June 19, 2018 for the failure to comply with NOV# CEV0010545, violation 1 of 1.
71. Permit No. 1102052, A & G Coal Corporation – Determination of Bond Forfeiture was issued July 31, 2017 for failure to comply NOV# CEV009784, violation 1 of 1; CO# CEV0009879, violation 1 of 1, and AGREEMENT and amendments. Formal administrative review was not requested.
72. Southern Coal committed by letter of August 16, 2017, –
- a. Regarding Permit No. 1101914, to complete work required by (i) NOV# CEV0009903, violation 1 of 1 and CO# CEV0010288 (ponds cleanout) by November 30, 2017; and (ii) NOV# CEV0008858, violation 1 of 2, and CO# CEV0009198, violation 1 of 1, by May 31, 2018. The company has performed the required work to address NOV# CEV0009903 and CO# CEV0010288.
 - b. Regarding Permit Nos. 1101824 and 1101905 (Looney Ridge), to complete reclamation within 18 months. The company initiated backfilling and regrading, but significant is required.
 - c. Regarding Permit No. 1102052 (Kelly Branch), to complete reclamation by May 31, 2018. No work has been initiated to reclaim the highwall. The company submitted Revision # 1010267, acreage revision, for DMME review and approval.
73. Permit No. 1101918, A & G Coal Corporation –
- a. NOV# LJJ0003114, violation 1 of 1, was issued September 18, 2017 to backfill and regrade disturbed areas. Formal administrative review was not requested.
 - b. CO# LJJ0003267, violation 1 of 1, was issued December 12, 2017 for failure to abate NOV# LJJ0003114. Formal administrative review was not requested.
 - c. Show cause order was issued February 13, 2018 for failure to comply NOV# LJJ0003114 and CO# LJJ0003267. Administrative review was requested on February 13, 2018.
74. Permit No. 1101953, Baden Reclamation Co., Inc. –
- a. Show Cause Order and Determination of Bond Forfeiture issued December 7, 2017 for failure to comply with NOV# WAC0009176, violation 1 of 1; CO# WAC0009342, violation 1 of 1; NOV# WAC0009303, violation 2 of 2; CO# WAC0009454, violation 1 of 1, and the AGREEMENT and amendments. The formal hearing was scheduled for July 24, 2018.
 - b. NOV# ADC0002869, violations 1, 2, and 3 of 3, issued February 13, 2018. Formal administrative review was not requested.

- c. CO# JBC0000272, violations 1, 2, and 3 of 3 issued May 23, 2018, for failure to comply with NOV# ADC0002869, violations 1, 2, and 3 of 3. Formal administrative review was requested on May 23, 2018.
75. Permit No. 1102003, A & G Coal Corporation – Determination of Bond Forfeiture issued March 19, 2018 for the failure to comply with NOV# RDS0011157, violation 1 of 1; CO# RDS0011216, violation 1 of 1, and the Second Amendment to the AGREEMENT and Agreed Modification. Formal administrative review was requested on April 4, 2018. After reclamation was conducted on the permit, the determination of bond forfeiture was rescinded on July 17, 2018.
76. Permit No. 1102042, A & G Coal Corporation –
- a. CO# JRJ0003578, violation 1 of 1, issued February 15, 2018 to address slide. Formal administrative review was not requested after the informal hearing decision.
 - b. Determination of Bond Forfeiture issued March 14, 2018, for failure to comply with CO# JRJ0003578. Formal administrative review was requested on April 4, 2018.
 - c. Work on the slide by a contractor commenced on August 8, 2018.
77. Southern Coal has failed to submit payment of final civil penalties accumulated as of June 21, 2018, in the amount of \$597,370.00 (Attachment A). As provided under §§4VAC25-130-843.13 (a)(1) and 4VAC25-130-845.20(e) VCSMRR, the failure to submit payment of a final civil penalty warrants the issuance of a show cause order for the respective permit(s). However, Southern Coal submitted a payment of \$100,000 to DMME on July 26, 2018, and agreed to submit weekly payments of \$100,000 until the balance is paid in full.
78. Southern Coal is attempting to negotiate with the land/mineral owner and another company to mine the remaining coal reserves on Meg-Lynn Land Company, Inc. Permit No. 1101800, A & G Coal Corporation Permit Nos. 1101918 and 1101975, (Jobs 21 and 20); A & G Coal Corporation Permit No. 1102058 (Job 26); and, A & G Coal Corporation Permit No. 1101914 (Job 2).

AGREEMENT

DMME and the Southern Coal by their signatures agree to modify the AGREEMENT as follows.

- A. Southern Coal Corporation will have sufficient equipment spreads and personnel dedicated to the projects set forth below and such equipment shall be sufficient and utilized to complete said projects within the time frames set forth in Paragraph C. For illustration purposes only, Southern Coal contemplates utilizing Two (2) equipment spreads dedicated to reclamation, Reclamation #1 and Reclamation #2. Reclamation #1 will consist of (1) D11 dozer, (1) 335

Excavator, (2) articulated trucks, and (1) drill unit. Reclamation #2 will consist of (2) D9 dozers, (1) D10 dozer, (1) 336 excavator, (1) drill unit, and (2) articulated trucks. A separate Maintenance Unit shall be used on the Lee, Wise, and Dickenson Counties permits to maintain haulage roads and drainage and sediment control structures. The Maintenance Unit will consist of (2) articulated trucks, (1) long boom excavator, and (2) 320 excavators. With DMME's prior notification, Southern Coal may elect to amend the reclamation and maintenance equipment spreads periodically to add or delete machines as necessary to accomplish work more efficiently. Southern Coal shall have the option to double shift a single machine versus running two machines a single shift to accomplish similar output if necessary.

- B. The timeline for reclamation set forth on page 2 of 6 of the Agreed Modification executed August 29, 2016, is being modified for Permits 1102059, 1102058, and 1502057 to reflect the respective dates set forth in Paragraph C .
- C. Southern Coal shall utilize the reclamation equipment under Paragraph A to reclaim by this--

Reclamation Schedule			
Permit No.	Job	Begin	Complete by
1101953	Baden Reclamation	August 1, 2018	March 31, 2019
1102059	Lambert	August 16, 2018	November 30, 2018
1102058	26	December 1, 2018	August 1, 2019
1102052	14 – Kelly Branch	April 1, 2019	August 31, 2019
1101905 and 1101824	23 – Looney Ridge	September 1, 2019	February 28, 2020
1101914	2	March 1, 2020	August 31, 2020
1101975	20	September 1, 2020	November 30, 2020
1602074	Taggart Marker	December 1, 2020	April 30, 2021
1101800 and 1101918	21	May 1, 2021	October 31, 2021
1602068	Western Surface	November 1, 2021	March 1, 2021


- D. This modification shall not be accepted and executed by DMME until Southern Coal has mobilized equipment and personnel onto and in operation on Permit 1101953, and submits weekly payments of at least \$100,000 commencing July 26, 2018, until the balance of the outstanding civil penalties identified in *Fact 77* and *Attachment A* are paid in full.
- E. If Southern Coal is unable to negotiate with the land/mineral owner to mine the mineable coal on A & G Coal Corporation Permit No. 1102058 by September 15, 2018, reclamation of the permit shall be conducted as set forth in Paragraph C.
- F. Both of Southern Coal's reclamation units and the maintenance unit shall be repaired and maintained as required by Paragraph E of the Compliance Agreement¹. Fuel will be available in order for the equipment to continuously run and operate. Maintenance on the equipment will be performed to ensure the availability. There may be legitimate and documented compliance delays in excess of a week or two due to bad weather, the immediate availability of parts for repairs, holidays, or miner vacations. These delays shall be immediately reported to the Division's Reclamation Services Manager, orally and in writing (email will be acceptable). If DMME concurs with the delay notice, the appropriate timelines may be extended to accommodate the delay.
- G. Seeding and tree planting will be ongoing during the appropriate seasons as these projects are being done.
- H. While these reclamation projects are being worked on, the Maintenance Unit will be used to ensure maintenance is conducted on the Southern Coal permits, such as cleaning ditches, ponds, fixing drainage/stability problems that arise due to weather related events.
- I. If the completion deadlines under *Paragraph C* are not met and DMME has not agreed to extend the established deadline for due cause, DMME will declare the forfeiture of the respective permit's performance bond and take action to effect the reclamation of such permit pursuant to §§4VAC25-130-800.50 and 4VAC25-130-801.19 of the VCSMRR. As it relates solely to any of the projects not being completed prior to the deadlines set forth in Paragraph C, Southern Coal will waive any administrative hearing relating to the bond forfeiture as a result thereof. Southern Coal does not waive its rights to administrative review related to any other contestable issue(s).

¹ In the event equipment malfunction occurs, the Justice Companies shall cause the prompt repair of said equipment necessary for compliance with this AGREEMENT or replacement of such with equivalent functioning equipment within five (5) working days.


- J. DMME agrees to review and act upon, in accordance with the applicable permitting regulations, any revision application Southern Coal may submit to facilitate the reclamation efforts set forth in this Agreement. This may include a revision on Permit No. 1101914 for a design change of the valley fills to increase and improve stability and drainage control. Until such time that Southern Coal submits and obtains approval of a revision under this paragraph, it shall continue to perform work to address the outstanding enforcement actions issued to Permit No. 1101914.
- K. Southern Coal is in negotiation with third parties to transfer some of the permits covered by this Agreement. In the event those permits are transferred in accordance with the VCSMR, then Southern Coal's obligations under this Agreement as it relates to those permits will be deemed fulfilled and complete. Southern Coal will be requested to submit a revised Reclamation Schedule for the remaining permits to be reclaimed, as the reclamation schedule can be advanced to a more expeditious schedule.
- L. Paragraphs A, D, E, F, G, H, K, M, N, and O of the AGREEMENT shall continue to apply.
- M. Nothing herein shall waive any administrative review proceeding that has been scheduled or may be in the process of being scheduled by DMME. However, as long as this Agreement is in effect and no bond forfeiture proceedings have been initiated under Paragraph I, all administrative review proceedings relating to bond forfeiture shall be stayed.
- N. Southern Coal agrees by its authorized representative's signature hereto that it has received full and fair process in this matter including all due process rights guaranteed under the constitutions of the United States and the Commonwealth of Virginia, as well as those rights extended by Virginia's Administrative Process Act, §2.2-4000A and the sections following it, as well as the VCSMCRA, as currently amended. Nothing, however, in this AGREEMENT shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by DMME to enforce this AGREEMENT.

Signatory Page

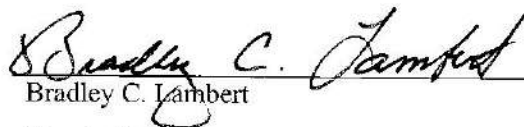
By signature below, Southern Coal Corporation voluntarily accepts this Second Agreed Modification to the Compliance AGREEMENT.

By:  _____ 8/26/2018
Print _____ Date
Name: James C. Justice, III
Title: Executive Vice President
For: Southern Coal Corporation, Inc.

By signature below, the Director for the Division of Mined Land Reclamation acknowledges receipt of the signed Second Agreed Modification to the Compliance AGREEMENT from Southern Coal.

By:  _____ 9/5/18
Randy Casey _____ Date
Title: Director,
For: Division of Mined Land Reclamation

By signature below, I hereby approve and accept this Second Agreed Modification to the Compliance AGREEMENT, effective this date.

By:  _____ 9/4/18
Title: Bradley C. Lambert _____ Date
Deputy Director
For: Department of Mines, Minerals and Energy

Agreed Modification to the Second Amendment
 Southern Coal Corporation
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Attachment A – Outstanding Final Civil Penalties

As of June 21, 2018

Permittee	Permit No.	NOV/CO	Penalty	Final
Matt Mining Co. Inc.	1100877	JRJ0003471 AO	\$ 345	5/8/18
Cane Patch Mining Co., Inc.	1101554	LJJ0003023 OT	\$22,500	10/19/17
Meg-Lynn Land Co. Inc.	1101800	JKC0002407 BR	\$ 293	3/1/4/18
	1101800	LJJ0002921 HR	\$ 293	4/26/18
	1101800	JKC0002495 AO	\$ 410	3/15/18
	1101800	JKC0002311 HR	\$22,500	9/27/17
	1101800	JKC0002348 OT	\$22,500	10/19/17
	1101800	JKC0002553 AO	\$22,500	5/10/18
Meg-Lynn Land Co. Inc.	1101824	JRJ0003706 AO	\$ 270	11/20/17
A & G Coal Corp.	1101905	JRR0003468-AO	\$ 365	4/26/18
	1101905	JRJ0003515 AO	\$22,500	3/28/18
A & G Coal Corp.	1101914	CEV0010545 SS	\$ 345	4/24/18
	1101914	CEV0010288 SS	\$22,500	4/25/18
	1101914	CEV0010710 AO	\$ 410	5/8/18
	1101914	CEV0010443 AO	\$22,500	3/14/18
	1101914	CEV0010751 OT	\$22,500	5/31/18
	1101914	CEV0010643 AO	\$22,500	4/10/18
A & G Coal Corp.	1101916	RDS0012166 SS	\$22,500	2/22/18
A & G Coal Corp.	1101918	LJJ0003267 BR	\$22,500	4/4/18
	1101918	LJJ0003114 AO	\$ 225	3/26/18
	1101918	LJJ0003114 BR	\$ 360	3/26/18
Baden Reclamation Co., Inc.	1101953	ADC0002520 HR	\$ 365	5/8/18
	1101953	ADC0002520 SS	\$ 365	5/8/18
	1101953	ADC0002869 HR	\$ 345	5/3/18
	1101953	ADC0002869 SS	\$ 345	5/3/18
	1101953	ADC0002869 AO	\$ 345	5/3/18
A & G Coal Corp.	1101954	JRJ0003624 OT	\$22,500	5/3/18
	1101954	JRJ0003576 OT	\$ 225	5/1/18
A & G Coal Corp.	1101975	LJJ0003020 OT	\$22,500	10/19/17
	1101975	LJJ0003281 AO	\$22,500	4/10/18
	1101975	LJJ0003235 AO	\$ 405	3/15/18
A & G Coal Corp.	1101991	JBC0000144 AO	\$ 293	5/3/18
	1101991	JBC0000172 AO	\$22,500	5/10/18
A & G Coal Corp.	1301992	JRJ0003562 AO	\$ 225	4/24/18
	1301992	JRJ0003593 OT	\$22,500	5/8/18

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Permittee	Permit No.	NOV/CO	Penalty	Final
A & G Coal Corp.	1102028	JRJ0003564 AO	\$ 270	4/24/18
A & G Coal Corp.	1102042	JRJ0003578 OT	\$ 2,520	4/26/18
	1102042	KXC0009838 OT	\$ 770	4/4/18
A & G Coal Corp.	1302048	DXB0010804 AO	\$ 293	4/26/18
A & G Coal Corp.	1102051	JBC0000132 AO	\$ 293	5/8/18
	1102051	JBC0000186 AO	\$22,500	5/10/18
A & G Coal Corp.	1502053	JBC0000127 AO	\$ 270	5/1/18
A & G Coal Corp.	1102054	JBC0000141 AO	\$ 345	5/3/18
	1102054	LJJ0002878 OT	\$22,500	4/4/18
	1102054	JBC0000163 AO	\$22,500	5/10/18
A & G Coal Corp.	1502057	JBC0000153 AO	\$ 345	6/6/18
	1502057	JBC0000181 AO	\$22,500	5/10/18
A & G Coal Corp.	1102058	LJJ0002570 SS	\$ 290	6/6/17
Va. Fuel Corp.	1102059	HGC0012199 AO	\$ 225	4/24/18
	1102059	DXB0010916 AO	\$22,500	5/10/18
Chestnut Land Holdings LLC	1302066	RYH0011312 AO	\$22,500	3/28/18
	1302066	JAK0002093 AO	\$ 270	5/1/18
	1302066	RYH0011446 AO	\$22,500	5/10/18
Va. Fuel Corp.	1602068	JRJ0003298 AO	\$22,500	2/26/18
Va. Fuel Corp.	1302069	JRJ0003252 AO	\$22,500	10/19/17
Black River Coal LLC	1402094	RSY0008430 OT	\$ 250	3/20/18
	1402094	RSY0008475 OT	\$22,500	4/10/18
		TOTAL:	\$597,370	