

A&G Coal Corporation
James C. Justice, III, President
302 South Jefferson Street
Roanoke, Virginia 24011
(540) 776-7890

May 10, 2022

By Certified Mail – Return Receipt Requested

**Re: 60-Day Notice of Intent to File Citizen Suit under SMCRA for Violations at
A&G Coal Corporation’s Permits 1101905, 1101914, and 1101918**

Dear Mr. Justice,

Southern Appalachian Mountain Stewards, Appalachian Voices, and Sierra Club, (collectively, “the Citizen Groups”), hereby notify you, in accordance with section 520 of the federal Surface Mining Control and Reclamation Act (“SMCRA”), 30 U.S.C. § 1270, and 30 C.F.R. § 700.13, that A&G Coal Corporation (“A&G”) is in ongoing and continuing violation of certain federal and state regulations promulgated under SMCRA and the Virginia Coal Surface Mining Control and Reclamation Act (“VCSMCRA”) at surface coal mining operations authorized under Permits 1101905, 1101914, and 1101918.¹

Permit 1101905 authorizes A&G to conduct surface coal mining operations at the Looney Ridge Surface Mine #1, Permit 1101914 authorizes A&G to conduct surface coal mining operations at the Sawmill Hollow #3 Mine, and Permit 1101918 authorizes A&G to conduct surface coal mining operations at the Canepatch Surface Mine. All three mines are located in Wise County, Virginia.

¹ Each VCSMCRA rule, regulation, order or permit cited in this letter was issued pursuant to SMCRA within the meaning of 30 U.S.C. § 1270(a)(1). *See Molinary v. Powell Mountain Coal Co., Inc.*, 125 F.3d 231, 235-237 (4th Cir. 1997).

As described in more detail below, A&G is in violation of the requirements imposed by 4 VAC 25-130-816.100(a) and 4 VAC 25-130-816.132(a) at each of the three permits. Each of those provisions is a “performance standard” within the VCSMCRA regulations. 4 VAC 25-130-816.100(a) requires that “[r]eclamation efforts, including but not limited to backfilling, grading, topsoil replacement, and revegetation, on all land that is disturbed by surface mining activities shall occur as contemporaneously as practicable with mining operations, except when such mining operations are conducted in accordance with a variance for concurrent surface and underground mining activities issued under 4 VAC 25-130-785.18.” 4 VAC 25-130-816.132(a) requires that “[p]ersons who cease surface mining activities permanently shall close or backfill or otherwise permanently reclaim all affected areas, in accordance with this chapter and the permit approved by the division.”

The VCSMCRA regulations make it a condition of every permit that “[t]he permittee shall comply with the terms and conditions of the permit, all applicable performance standards of the Act, and the requirements of this chapter.” 4 VAC 25-130-773.17(c). The VCSMCRA regulations also make it a condition of every permit that “[t]he permittee shall take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from noncompliance with any term or condition of the permit, including, but not limited to-- . . . [i]mmediate implementation of measures necessary to comply.” *Id.* at 773.17(e).

A&G is in violation of these provisions at Permits 1101905, 1101914, and 1101918 because it has failed to conduct reclamation contemporaneously with mining operations, and has failed to close or backfill or otherwise permanently reclaim affected areas at these sites in the years since coal removal stopped. In addition to its violation of these provisions of Virginia’s VCSMCRA regulations, A&G is also in direct and ongoing violation of abatement deadlines in

notices of violation and cessation orders issued by the Virginia Department of Energy, and of the terms of a Compliance Agreement and its subsequent amendments entered into with the Virginia Department of Energy that imposes deadlines for reclamation and that mandates the deployment and use of certain equipment on these permit sites. VCSMCRA provides a maximum period of 90 days for a permittee to abate a violation cited in a notice of violation. Va. Code § 45.1-245(B) (“the Director or his authorized representative shall issue a notice of violation to the permittee or his agent setting a reasonable time but not more than ninety days for the abatement of the violation”); *see also* 4 VAC 25-130-843.12.

Citizen enforcement of these violations is allowed notwithstanding the Compliance Agreement entered into by the Virginia Department of Energy (then operating as the Department of Mines, Minerals, and Energy, and hereinafter referred to as VDOE) and A&G in January 2014, as amended. Under SMCRA’s citizen suit provisions, a citizen enforcement suit may only be precluded “if the Secretary or the State has commenced and is diligently prosecuting a civil action in a court of the United States or a State to require compliance.” 30 U.S.C. § 1270(b)(1)(B). VDOE has not commenced and is not diligently prosecuting any action related to these violations in any court. Even assuming for the sake of argument that the Compliance Agreement could have satisfied A&G’s obligations at the time it was first entered into in January 2014 or as subsequently amended, the failure of A&G to conduct meaningful reclamation on the permits in the more than eight years since the original agreement, and A&G’s current and ongoing violation of deadlines established in the most recent amendment and addendum, prevent the Compliance Agreement from imposing any preclusive effect.

The Citizen Groups and their Members Are Adversely Affected by Your Ongoing Failure to Comply with Reclamation Requirements at these Permits.

The Citizen Groups sending this letter have members who have a profound and longstanding interest in seeing these three permit areas fully reclaimed and who are adversely affected by your ongoing failure to complete the reclamation required by law.

Southern Appalachian Mountain Stewards (“SAMS”) is a Virginia non-stock membership corporation based in Appalachia, Virginia. It is an organization of concerned community members and their allies who are working to stop the destruction of Appalachian communities by surface coal mining, to improve the quality of life in the region, and to help rebuild sustainable communities.

Appalachian Voices is a nonprofit North Carolina corporation committed to protecting the land, air, and water of the central and southern Appalachian region. It has offices in Charlottesville and Norton, Virginia. Appalachian Voices has more than 1,000 members, including 353 members in Virginia, seven of whom live in Wise County where the sites in question are located. The organization focuses on reducing coal’s impact on the region. Its concerns include the protection and restoration of Virginia’s waters.

Sierra Club is a national nonprofit corporation with more than 800,000 members nationwide and more than 20,000 members who reside in Virginia and belong to its Virginia Chapter. Sierra Club is dedicated to exploring, enjoying, and protecting the wild places of the Earth; to practicing and promoting the responsible use of the Earth’s resources and ecosystems; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. Sierra Club’s concerns encompass the exploration, enjoyment and protection of mountains, forests and streams in Virginia.

Each of these groups has members who live, work, and recreate in the areas impacted by the permits. The groups and their members regularly take part in water monitoring throughout the region, including at waterways that receive discharge from the permits discussed in this letter. The groups and their members have also endeavored for many years to promote timely reclamation of the sites. One of the permits discussed in this letter—Permit 1101905—is readily visible from a public overlook. The groups regularly observe that permit, both to check reclamation progress, and to show their members and other interested people an example of the impacts of large-scale surface mining and failed reclamation.

Violations at Permit 1101905

On October 8, 2013, VDOE issued Notice of Violation (NOV) No. JRJ0001187 to A&G. That NOV cited violations of 4 VAC 25-130-816.100(a) and 4 VAC 25-130-816.132(a). It further stated that

There has been no mining activity within this permit since 4/08/13 and the Temporary Cessation ended on 10/05/13. Therefore NOV JRJ0001187, violation 1 of 1, under Performance Code BR, is being issued.” It also directed A&G “to backfill all existing highwall required to be eliminated, regrade, and seed all disturbed areas on the permit.

The NOV set an abatement deadline of January 8, 2014. When A&G failed to meet the abatement deadline, VDOE issued Cessation Order No. JRJ0001352 on January 13, 2014.

A&G then entered into a Compliance Agreement with VDOE to address unabated reclamation-related violations at multiple permits, including Permit 1101905 (“January 2014 CA”). The January 2014 CA provided a deadline for reclamation of Permit 1101905 of July 30, 2014. The most recent amendment to the Compliance Agreement, dated July 30, 2019, required A&G to commence reclamation by September 1, 2019, and to complete reclamation by February

28, 2020. An addendum dated December 29, 2020, purported to extend that deadline by more than a year, to July 31, 2021.

A comparison of VDOE’s reporting of acreage disturbed, regraded, and reclaimed/revegetated between April 2013 and March 2022² shows that A&G only regraded 0.92 acres, an increase of only 0.3%, during the almost nine years since mining operations ceased. And even that very minimal effort is offset by the fact that A&G disturbed additional acreage during that time period.

	April 2013	March 2022
Acres disturbed	589.77	590.09
Acres regraded	274.24	275.16
Acres reclaimed/revegetated	269.44	275.16

Despite the deadlines in the Compliance Agreement and its amendments, more than 300 acres—half of the disturbed area on site—has still not been regraded or revegetated.

Violations at Permit 1101914

On October 16, 2013, VDOE issued NOV No. CEV0008882 to A&G. That NOV cited violations of the contemporaneous reclamation requirements at 4 VAC 25-130-816.100. The NOV stated that

On 4/8/13, this permit was placed in Temporary Cessation for a period of six months until 10/5/13. The temporary cessation consisted of three main areas as designated by the Temporary Cessation map. The temporary cessation has expired for all three areas. There are not any spreads of mining equipment on this permit to resume mining/reclamation operations. In addition, the operator did not submit and obtain approval of a permit revision (within the six month time frame) which addressed the estimated cost of reclamation and post the required bond equal to the total estimated cost of reclamation with the DMLR Office. As a result, contemporaneous reclamation is not current on this permit.

² As listed in the VDOE inspection report describing the results of the March 22, 2022 inspection.

The NOV required A&G “to take all necessary measures so as to bring backfilling and regrading to a current status in accordance with the approved detailed plans and all applicable regulations.” The NOV listed a deadline for abatement of January 14, 2014. When A&G failed to satisfy the abatement deadline, VDOE issued Cessation Order No. CEV0008995 on January 15, 2014.

The January 2014 Compliance Agreement required A&G to begin reclamation at Permit 1101914 “no later than the week of January 13, 2014,” and set a June 30, 2015 deadline for A&G to complete reclamation. In July 2019, the Compliance Agreement was amended to require A&G to commence reclamation by March 1, 2020, and to complete reclamation by August 31, 2020. The December 2020 addendum required reclamation work to begin January 1, 2021, with a completion deadline of December 31, 2022.

A comparison of VDOE’s reporting of acreage disturbed, regraded, and reclaimed/revegetated between January 2013 and April 2022³ shows that no additional acres have been regraded during the nine years since mining operations ceased or since VDOE issued its initial NOV citing violations of the contemporaneous reclamation regulatory requirements at 4 VAC 25-130-816.100(a).

	January 2013	April 2022
Acres disturbed	2,031.99	2,031.50
Acres regraded	995.17	994.78
Acres reclaimed/revegetated	409.28	571.99

In notes from a December 2021 VDOE inspection, the inspector noted that

There is no work ongoing on this permit at this time. The D9 Dozer is still parked at the fuel tank located across from the old office trailers. The operator is reminded that the below noted compliance agreement requires work to be ongoing at this time. This is the second inspection with no work being performed at this site.

³ As listed in the VDOE inspection report describing the results of the April 6, 2022 inspection.

The April 2022 VDOE inspection report similarly noted that “[t]here is no work ongoing on this permit at this time. There is 1 D9 Dozer parked on site at this time. No personnel on site during this inspection.” In other words, equipment is on site, but continues to sit idle, with no measurable progress made despite the deadlines imposed by the Compliance Agreement and amendments. Over 1,000 acres—more than half of the disturbed area on site—has still not been regraded or revegetated.

Violations at Permit 1101918

On September 18, 2017, VDOE issued Notice of Violation No. No. LJJ0003114 to A&G. That NOV cited violations of 4 VAC 25-130-816.100(a) and 4 VAC 25-130-816.132(a). When A&G failed to conduct the required backfilling and reclamation, VDOE issued Cessation Order No. LJJ0003267 on December 12, 2017. That Cessation Order stated that

The entire permit had been placed in a 6 month Temporary Cessation which began on 2/8/17 and expired on 8/8/17. No activity had been noted since the 6 month Temporary Cessation expired. Therefore, NOV LJJ0003114 violation 2 of 3 under performance code BR was issued on 9/12/17. This violation was issued with an abatement date of 12/12/17. The operator has failed to comply with the above mentioned NOV. Therefore, Failure to Abate Cessation Order (FTACO) LJJ0003267 is being issued.

The January 2014 CA did not impose specific reclamation deadlines at Permit 1101918. The July 2019 amendment to the Compliance Agreement required A&G to complete reclamation on permit 1101918 by October 31, 2021. The December 2020 addendum requires reclamation to begin July 31, 2021, and to be complete by December 31, 2023.

A comparison of VDOE’s reporting of acreage disturbed, regraded, and reclaimed/ revegetated between October 2015 and March 2022⁴ shows that no additional acres have been regraded or revegetated during the more than six years since mining operations ceased.

	October 2015	March 2022
Acres disturbed	699.50	699.50
Acres regraded	343.11	343.11
Acres reclaimed/revegetated	93.59	93.59

The March 2022 VDOE inspection report noted that “[t]here were no personnel or equipment on site during this inspection.” A&G has still not begun reclamation work at the site, and over 300 acres—more than half of the disturbed area on site—has still not been regraded or revegetated.

Conclusion

If A&G has in fact corrected the violations described above, or if A&G believes that anything in this letter is inaccurate, please let us know. Additionally, we would be happy to meet with A&G or its representatives to attempt to resolve these issues within the 60-day notice period. However, if A&G does not advise us that the violations have been corrected during the 60-day period, we will assume that the violations are ongoing. In that case, the Citizen Groups intend to commence an action in the United States District Court for the Western District of Virginia to compel A&G to come into compliance with all applicable regulations and the terms and conditions of its permits.

Contact Information for the Citizen Groups Providing Notice

⁴ As listed in the VDOE inspection report describing the results of the March 30, 2022 inspection.

The names, addresses, and telephone numbers of the Citizen Groups providing this notice are as follows:

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Big Stone Gap, VA 24219
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Sierra Club
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The names, addresses, and telephone numbers of the Citizen Groups legal counsel are provided below. The Citizen Groups request that any person receiving this notice direct all inquiries to the undersigned legal counsel.

Sincerely,



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On behalf of
SOUTHERN APPALACHIAN MOUNTAIN STEWARDS
APPALACHIAN VOICES
SIERRA CLUB

Cc:

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