

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
721 19th St. Suite 443
Denver, CO 80202-2500
TELEPHONE: 303-844-5266 / FAX: 303-844-5268

October 30, 2017

SECRETARY OF LABOR
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
Petitioner,

v.

A&G COAL CORPORATION,
Respondent.

CIVIL PENALTY PROCEEDINGS

Docket No. VA 2014-243
A.C. No. 44-04534-346270

Docket No. VA 2014-244
A.C. No. 44-04534-346286

Docket No. VA 2014-364
A.C. No. 44-04534-352768

Docket No. VA 2014-365
A.C. No. 44-04534-353549

Docket No. VA 2014-383
A.C. No. 44-04534-353996

Mine: Prep Plant #2

ORDER IN RESPONSE TO REMAND

These consolidated cases are before me on remand from the Commission. *See A&G Coal Corp.*, 39 FMSHRC ___, slip op. No. VA 2014-243 *et al.* (Oct. 2017). On August 16, 2017, I issued an Order to Show Cause to A&G Coal Corporation (“A&G” or “Respondent”) because its representative failed to appear for a scheduled conference call to discuss lifting a stay and setting these dockets for hearing. Unpublished Order dated August 16, 2017. The Order gave A&G until August 28, 2017 to show good cause. A&G did not respond to the order and as a result I issued an Order of Default on August 30, 2017. On September 29, A&G filed a petition for discretionary review requesting relief from the default order, in which it argued it did not receive the show cause order and only discovered its issuance when A&G received the order of default. *See A&G Coal Corporation Petition for Discretionary Review (“PDR”)* at 3-4.

On review, the Commission noted a lack of clarity regarding the communication issues in the record and remanded the case “to determine whether relief from the default is warranted and for further proceedings as appropriate pursuant to the Mine Act and the Commission’s Procedural Rules, 29 C.F.R. Part 2700.” 39 FMSHRC ___, slip op. at 3 (Oct. 2017).

Default is a harsh remedy, and relief may be granted and the case reopened on the basis of mistake, inadvertence, excusable neglect, or another reason justifying relief. *See* 29 C.F.R. § 2700.1(b); *Coal Prep. Servs., Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995); *Jim Walter Res., Inc.*, 15 FMSHRC 782, 787 (May 1993). Issuance of such an order by the court is never done lightly

without much thought and deliberation and certainly never with the intent of abusing discretion. In fact, this is the first time in my five year tenure with the agency and fifteen year career as a judge that I recall ever finding it necessary to issue a default order. I do, however, agree that certain aspects of A&G's communicative deficiencies in these cases remain unclear and will take this opportunity to address some of the ambiguities within the record noted by the Commission. In addition, I will set the dockets for a hearing on the merits as well as on the issue of default, and order A&G to remedy its communicative deficiencies as specified below.

I first address the perceived ambiguity regarding who represented A&G throughout the procedural history of these matters. The cases had been stayed since 2015 pending a 110(c) investigation, and until early 2017, Mr. James Bowman served as A&G's representative. On January 27, 2017, Mr. Bowman filed a notice of withdrawal and substitution of counsel that identified Mr. Billy Shelton as the Respondent's new representative and provided his contact information. Notice of Withdrawal and Substitution of Counsel, filed January 27, 2017. Mr. Shelton did not file a formal entry of appearance as required by my prehearing order and 29 C.F.R. § 2700.3(c). *See* 39 FMSHRC ___, slip op. at 5 (Althen, Comm'r, concurring).

The court was aware of the withdrawal notice at the time of its filing and initially assumed that Mr. Shelton was representing A&G in these matters. The court copied Mr. Shelton along with representatives for the Solicitor on at least one email requesting a status update on the cases. *See* Court Email to A&G and Solicitor, sent March 20, 2017. On March 20, 2017, the representatives for the Solicitor notified the court that they had instead been working with Mr. Patrick Graham, who, according to the email, was currently representing A&G in these matters. Solicitor's Email to A&G and Court, dated March 24, 2017. In step with their explanation, the Solicitor copied Mr. Graham's email address to the correspondence instead of Mr. Shelton's. *Id.* Mr. Graham did not object or redirect the court to Mr. Shelton at that time, and Mr. Shelton never responded to the court's initial email. Given that no A&G representative had filed a formal entry of appearance or responded to the status emails, the court believed, consistent with the Solicitor's email, that Mr. Graham was now acting as A&G's representative at that time.

What followed were several months of intermittent emails regarding the status of these dockets and the accompanying 110(c) investigation. Correspondences on March 27, June 30, and August 4 were all sent to the Solicitor and Graham. Mr. Graham did not respond to those emails, nor did either party indicate that Mr. Shelton was involved in the cases. On August 7, the Solicitor requested a conference call with the court and Graham to discuss whether the stay should be lifted and a hearing date should be selected. Solicitor's Email to Court and A&G, dated August 7. The court's clerk scheduled the conference call for August 14, 2017 and explicitly instructed Mr. Graham to contact the court within the week prior to the call if he wished to reschedule. Court Email to A&G and Solicitor, dated Aug. 7, 2017. Mr. Graham did not respond, and so the court concluded that the appointment time was acceptable to the parties.

The court decided that a show cause order was necessary when A&G did not appear for the August 14 conference call. Mr. Graham later stated that he was underground at the time of the conference call, which accounts for why he did not answer the attempts by the court and Solicitor to contact him while on the line for the conference call. *See* Aff. of Patrick Graham at 2. Mr. Graham admitted that he was aware of the scheduled conference call and failed to appear

or to notify Mr. Shelton to attend. *Id.* Graham therefore had the opportunity to contact the court on a number of occasions. He could have notified the court prior to the conference call that he would be unable to appear and requested to reschedule. He could have directed the court to contact Mr. Shelton at this point or any point over the past three months during which he was copied on the status emails, or he could have contacted Mr. Shelton himself to ask him to appear for the call or otherwise contact the court. He also could have contacted the court after missing the call to explain the situation. He did none of these things.

In the court's view, A&G had multiple opportunities to adequately maintain communications with the court and continually failed to do so. Pursuant to the court's prehearing order, it is the parties' responsibility to maintain communications with the court, including properly filing entries of appearances, ensuring the court has the proper contact information and following up on any missed calls or emails. The failure to answer emails or follow up in any way on the missed conference call thus prompted the court to issue the Order to Show Cause.¹

I next address the service of the Order to Show Cause. A&G asserted in its Petition for Discretionary Review that Graham was unaware of the show cause order until the response deadline had lapsed and he received the default order. *See* PDR at 2. Mr. Graham's unawareness remains unexplained.

The Court maintains that it used the proper mailing address on record to serve the show cause order to A&G. Graham stated that A&G has an office in Roanoke, and the address used, 302 South Jefferson Street, Roanoke, VA 24011, is listed on the Virginia Secretary of State's website as A&G's principal office. *See* Aff. of Patrick Graham at 3; 2017 Commonwealth of Virginia State Corporation Commission, *Business Entity Details*, <https://sccfile.scc.virginia.gov/Business/0364069> (last visited Oct. 20, 2017). Graham also stated that he received the default order at that same address in early September. Aff. of Patrick Graham at 2. The proof of service shows that both Orders were signed for by Ms. Leslie Wells. *See* Proof of Service – OSC, dated August 16, 2017; Proof of Service – Default Order, dated August 30, 2017.²

A&G has not been able to explain why it only received the default Order when both

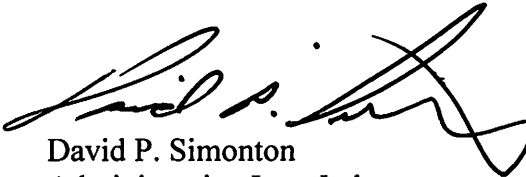
¹ The Commission's concurrence suggests that the court could have lifted the stay and set the cases for hearing as a lesser alternative sanction. *See* 39 FMSHRC ___, slip op. at 6 (Althen, Comm'r, concurring). However, the court did not consider that option a sanction in that lifting the stay and setting the dockets for hearing were in fact, the objectives of the conference call nor, in my view, would it have adequately addressed A&G's repeated failures to communicate with the court.

² The court acknowledges that the show cause order bounced back via email, consistent with Graham's assertion that he switched email addresses at some point in August. *See* Aff. of Patrick Graham at 2. As noted above, however, Mr. Graham knew of the conference call and failed to follow up with the court, at which time he could have also informed the court that he was changing email addresses or was unable to access his email. *Id.*

documents were served to the same address and signed for by the same employee. Regardless of the reasons, the discrepancy stresses the importance for the operator to ensure it will timely receive and respond to all correspondence from the court. The court orders the Respondent to address these communicative deficiencies as specified below, whether they represent a systemic problem within the A&G office that resulted in misplacement of the show cause order, or indicate that the provided address is no longer appropriate for correspondence from the court.

It is lamentable that a simple email or phone call from the operator could have prevented this sequence of events. Nonetheless, I agree with the Commission that in all circumstances default is a harsh remedy and that the record is not yet entirely clear as to A&G's repeated failures to communicate with the court and receive the show cause order. I therefore reserve the issue of default to be addressed at hearing, which will also encompass a hearing on the merits of the citations at issue, and will be scheduled per a separate hearing order. At the hearing, the court expects A&G to fully address for the record good cause explanations for (1) its failure to enter an appearance or in any way communicate with the court after it's representative, Mr. Bowman, withdrew from the proceedings, (2) its failure to participate in the conference call and follow up with the court, and (3) the reasons behind its failure to receive and respond to the show cause order. I expect Mr. Graham, Ms. Leslie Wells, and any other witness that A&G deems necessary to testify under oath to these issues. If a subpoena for Mr. Graham or Ms. Wells is required, A&G must notify the court no later than November 30, 2017.

Accordingly, legal counsel for A&G in these matters, be it Mr. Shelton or another, is **ORDERED** to file a formal Entry of Appearance within 5 days of the issuance of this Order as required by 29 C.F.R. § 2700.3(c) and my prehearing order. Furthermore, A&G or its legal counsel is **ORDERED** to provide written confirmation of A&G's principal mailing address and whether there is an additional address at which A&G will timely and efficiently receive the court's Orders.



David P. Simonton
Administrative Law Judge

Distribution: (U.S. First Class Mail)

Karen M. Barefield, Attorney, U.S. Department of Labor, 211 7th Avenue North, Suite 420,
Nashville, TN 37219

Hagel Campbell, Conference & Litigation Representative, U.S. Department of Labor, MSHA,
P.O. Box 560, Norton, VA 24273

Robert S. Wilson, Regional Counsel, U.S. Department of Labor, 201 12th Street South,
Arlington, VA 22202

Patrick Graham, Southern Coal Corporation, 302 South Jefferson Street, Roanoke, VA 24011

Billy Shelton, Attorney, Shelton, Branham & Halbert PLLC, 2452 Sir Barton Way, Suite 101,
Lexington, KY 40509

Jonathan Anderson

From: David P. Simonton
Sent: Monday, August 14, 2017 2:06 PM
To: Elias Thomas; Wilson, Robert S - MSHA; Barefield, Karen M - MSHA; Campbell, Hagel - MSHA; Patrick Graham (patrick.graham@southerncoalcorp.com)
Cc: Jonathan Anderson
Subject: RE: A&G Coal VA 2014-243, -244, -364, -365, -383 Status Update

Mr. Graham we are waiting on you for our conference call. 866-867-4769 pass code 673877.

Judge Simonton

From: Elias Thomas
Sent: Monday, August 07, 2017 3:27 PM
To: Wilson, Robert S - MSHA; Barefield, Karen M - MSHA; Campbell, Hagel - MSHA; Patrick Graham (patrick.graham@southerncoalcorp.com)
Cc: Jonathan Anderson; David P. Simonton
Subject: RE: A&G Coal VA 2014-243, -244, -364, -365, -383 Status Update

Good Afternoon,

Thank you for the responses. At this time I will schedule the conference call for Monday, August 14 at 2:00pm MT. Mr. Graham may email me if that time does not work, and we will reschedule. Please use call-in number 866-867-4769 and new passcode 673877.

Sincerely,

Elias Thomas
Attorney-Advisor for Judge David P. Simonton
Federal Mine Safety and Health Review Commission
721 19th St., STE 443
Denver, CO 80202-2536
ethomas@fmshrc.gov
P: (303) 844-1680

From: Wilson, Robert S - MSHA [<mailto:Wilson.Robert.S@DOL.GOV>]
Sent: Monday, August 07, 2017 2:13 PM
To: Elias Thomas; Barefield, Karen M - MSHA; Campbell, Hagel - MSHA; Patrick Graham (patrick.graham@southerncoalcorp.com)
Cc: Jonathan Anderson; David P. Simonton
Subject: RE: A&G Coal VA 2014-243, -244, -364, -365, -383 Status Update

I am available at either time.

Robert S. Wilson
Regional Counsel
Arlington Regional Solicitor's Office
U.S. Department of Labor
201 12TH Street South
Arlington, VA 22202-5450

Phone: (202) 693-9389
FAX: (202) 693-9392
Wilson.robert.s@dol.gov

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From: Elias Thomas [<mailto:ethomas@fmshrc.gov>]
Sent: Monday, August 07, 2017 4:04 PM
To: Wilson, Robert S - MSHA; Barefield, Karen M - MSHA; Campbell, Hagel - MSHA; Patrick Graham (patrick.graham@southerncoalcorp.com)
Cc: Jonathan Anderson; David P. Simonton
Subject: RE: A&G Coal VA 2014-243, -244, -364, -365, -383 Status Update

Good Afternoon,

Are the parties available for a conference call on Monday, August 14, 2017 at 2:00pm MT, or on Wednesday, August 16 at 10:30am or 2:00pm MT? Please let me know and I will schedule the conference call accordingly. Thank you.

Sincerely,

Elias Thomas
Attorney-Advisor for Judge David P. Simonton
Federal Mine Safety and Health Review Commission
721 19th St., STE 443
Denver, CO 80202-2536
ethomas@fmshrc.gov
P: (303) 844-1680

From: Wilson, Robert S - MSHA [<mailto:Wilson.Robert.S@DOL.GOV>]
Sent: Friday, August 04, 2017 9:09 AM
To: Elias Thomas; Barefield, Karen M - MSHA; Campbell, Hagel - MSHA; Patrick Graham (patrick.graham@southerncoalcorp.com)
Cc: Jonathan Anderson; David P. Simonton
Subject: RE: A&G Coal VA 2014-243, -244, -364, -365, -383 Status Update

Mr. Thomas,

Ms. Barefield has been out of the office yesterday and today and will be back next week. We have completed our review of the 110 cases. We have also had some discussions with Mr. Graham about a possible global settlement involving these and other A&G cases. I suggest that we schedule a conference call with Judge Simonton for the week of August 14 to set a hearing date for these dockets. That will give us time to confer with Mr. Graham about whether a settlement is likely. If we are able to reach an agreement, we will inform your office that a call is not necessary. If we are not able to reach an agreement, we can schedule a hearing date and proceed with the 110 cases and discovery in those and the related company cases.

Thank you.

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From: Elias Thomas [<mailto:ethomas@fmshrc.gov>]
Sent: Friday, August 04, 2017 10:58 AM
To: Barefield, Karen M - MSHA; Campbell, Hagel - MSHA; Wilson, Robert S - MSHA; Patrick Graham (patrick.graham@southerncoalcop.com)
Cc: Jonathan Anderson; David P. Simonton
Subject: A&G Coal VA 2014-243, -244, -364, -365, -383 Status Update

Good Morning,

Judge Simonton requests a status update on these dockets and the related special investigation. Thank you for your time and have a great weekend.

Sincerely,

Elias Thomas
Attorney-Advisor for Judge David P. Simonton
Federal Mine Safety and Health Review Commission
721 19th St., STE 443
Denver, CO 80202-2536
ethomas@fmshrc.gov
P: (303) 844-1680

Jonathan Anderson

From: Elias Thomas
Sent: Monday, July 03, 2017 7:40 AM
To: Barefield, Karen M - MSHA; Campbell, Hagel - MSHA; Wilson, Robert S - MSHA; Patrick Graham (patrick.graham@southerncoalcorp.com)
Cc: Jonathan Anderson; David P. Simonton
Subject: RE: A&G Coal VA 2014-243, 244, 364, 365, and 383 and related Special Investigation Status

Categories: Red Category

Good Morning,

Thank you for the status update. Judge Simonton will grant an extension for the purposes of making a final report and possibly beginning settlement discussions. Please provide another update on these dockets no later than August 3, 2017. Have a great holiday.

Sincerely,

Elias Thomas
Attorney-Advisor for Judge David P. Simonton
Federal Mine Safety and Health Review Commission
721 19th St., STE 443
Denver, CO 80202-2536
ethomas@fmshrc.gov
P: (303) 844-1680

From: Barefield, Karen M - MSHA [<mailto:Barefield.Karen@DOL.GOV>]
Sent: Friday, June 30, 2017 1:16 PM
To: David P. Simonton; Campbell, Hagel - MSHA; Wilson, Robert S - MSHA; Patrick Graham (patrick.graham@southerncoalcorp.com)
Cc: Elias Thomas; Jonathan Anderson
Subject: A&G Coal VA 2014-243, 244, 364, 365, and 383 and related Special Investigation Status

Judge Simonton:

Review of the special investigation in this matter, which involved more than 50 violations, is nearly complete. We anticipate that we will be able to make a final report on the results of the special investigation and the underlying civil penalty dockets by July 31, 2017.

Please contact me with any other questions.

Thank you.

Karen Barefield
USDOL- Office of the Solicitor
Regional Solicitor Office

201 12th Street South
Arlington, Virginia 22202-5450
202-693-9371 (direct)
202-693-9392 (fax)

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Jonathan Anderson

From: Barefield, Karen M - MSHA <Barefield.Karen@DOL.GOV>
Sent: Monday, March 27, 2017 12:41 PM
To: David P. Simonton; Jonathan Anderson; Campbell, Hagel - MSHA; Wilson, Robert S - MSHA; Patrick Graham (patrick.graham@southerncoalcorp.com)
Cc: Elias Thomas; Jonathan Anderson
Subject: RE: A&G Coal VA 2014-243, 244, 364, 365, and 383 Investigation Status

Thank you, Judge Simonton.

Karen Barefield
USDOL- Office of the Solicitor
Regional Solicitor Office
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From: David P. Simonton [mailto:dsimonton@fmshrc.gov]
Sent: Monday, March 27, 2017 1:08 PM
To: Barefield, Karen M - MSHA; Jonathan Anderson; Campbell, Hagel - MSHA; Wilson, Robert S - MSHA; Patrick Graham (patrick.graham@southerncoalcorp.com)
Cc: Elias Thomas; Jonathan Anderson
Subject: RE: A&G Coal VA 2014-243, 244, 364, 365, and 383 Investigation Status

Good Morning All,

Thank you for your email update. My records indicate I placed these dockets on stay April 6, 2015 just shy of 2 years ago and are the oldest group of dockets currently assigned to me. I typically lift the stay in 110(c) investigation cases if the investigation has not been completed within 2 years out of concern that the cases will be extremely stale in the event a hearing is necessary. However given the number of citations at issue in this group of dockets and the number of agents under investigation I will allow more latitude than normal. Please continue to keep in mind my concerns for timely processing and provide another email report no later than June 30.

Judge Simonton

From: Barefield, Karen M - MSHA [<mailto:Barefield.Karen@DOL.GOV>]
Sent: Friday, March 24, 2017 4:20 PM
To: Jonathan Anderson; Campbell, Hagel - MSHA; Wilson, Robert S - MSHA; Patrick Graham (patrick.graham@southerncoalcorp.com)
Cc: David P. Simonton; Elias Thomas
Subject: RE: A&G Coal VA 2014-243, 244, 364, 365, and 383 Investigation Status

Jonathan-

I apologize for the delay in my response. The underlying dockets in this matter have been returned to company representative Pat Graham, who is currently representing A&G in these matters. Mr. Graham and I have been discussing the dockets and the associated special investigation in this matter, which remains pending. We will report to the Court as soon as practicable regarding these cases.

Thank you.

Karen Barefield
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Regional Solicitor Office
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From: Jonathan Anderson [<mailto:janderson@fmshrc.gov>]
Sent: Monday, March 20, 2017 5:46 PM
To: Barefield, Karen M - MSHA; Campbell, Hagel - MSHA; Wilson, Robert S - MSHA; Billy Shelton
Cc: David P. Simonton; Elias Thomas
Subject: RE: A&G Coal VA 2014-243, 244, 364, 365, and 383 Investigation Status

Greetings,

Judge Simonton requests an update on the status of the 110(c) investigation in these dockets. Thanks.

Best regards,

Jonathan Anderson

Federal Mine Safety and Health Review Commission
Legal Assistant for Judge David P. Simonton

P: (303) 844-1614
F: (303) 844-5268
janderson@fmshrc.gov

FMSHRC
721 19th Street, Suite 443
Denver, CO 80202-2500

From: Barefield, Karen M - MSHA [<mailto:Barefield.Karen@DOL.GOV>]
Sent: Thursday, February 02, 2017 2:48 PM
To: Jonathan Anderson; Campbell, Hagel - MSHA; jimbowman61@hotmail.com; Wilson, Robert S - MSHA; Billy Shelton
Cc: David P. Simonton; Elias Thomas
Subject: RE: A&G Coal VA 2014-243, 244, 364, 365, and 383 Investigation Status

Jonathan:

I apologize for the delay in my response. The special investigation in this matter is not complete; however we anticipate that it will be completed by the end of this month. The Secretary will notify the Court of the status of the special investigation in this matter by March 3, 2017.

Karen Barefield
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From: Jonathan Anderson [<mailto:janderson@fmshrc.gov>]
Sent: Tuesday, January 24, 2017 5:24 PM
To: Barefield, Karen M - MSHA; Campbell, Hagel - MSHA; jimbowman61@hotmail.com; Friary, Elizabeth - SOL; Wilson, Robert S - MSHA
Cc: David P. Simonton; Elias Thomas
Subject: RE: A&G Coal VA 2014-243, 244, 364, 365, and 383 Investigation Status

Greetings,

Judge Simonton requests an update on the status of the 110(c) in the above dockets. Thank you for your attention to this matter.

Best regards,

Jonathan Anderson
Federal Mine Safety and Health Review Commission
Legal Assistant for Judge David P. Simonton

P: (303) 844-1614
F: (303) 844-5268
janderson@fmshrc.gov

FMSHRC
721 19th Street, Suite 443
Denver, CO 80202-2500

From: Barefield, Karen M - MSHA [<mailto:Barefield.Karen@DOL.GOV>]
Sent: Tuesday, November 01, 2016 4:03 PM
To: Jonathan Anderson
Subject: RE: A&G Coal VA 2014-243, 244, 364, 365, and 383 Investigation Status

Jonathan-

The investigation is still pending, but I expect that it should be completed by year's end. At that point, we will request that that any agent penalties that are recommended will be fast tracked.

I will report again on December 1, 2016.

Karen Barefield
USDOL- Office of the Solicitor
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From: Jonathan Anderson [<mailto:janderson@fmshrc.gov>]

Sent: Thursday, October 27, 2016 1:37 PM

To: Barefield, Karen M - MSHA; Campbell, Hagel - MSHA; jimbowman61@hotmail.com; Friary, Elizabeth - SOL; Wilson, Robert S - MSHA

Cc: David P. Simonton; Elias Thomas

Subject: RE: A&G Coal VA 2014-243, 244, 364, 365, and 383 Investigation Status

Greetings,

Judge Simonton requests an update on the status of the 110(c) investigation in these dockets. Thank you for your attention to this matter.

Best regards,

Jonathan Anderson
Federal Mine Safety and Health Review Commission
Legal Assistant for Judge David P. Simonton

P: (303) 844-1614

F: (303) 844-5268

janderson@fmshrc.gov

FMSHRC
721 19th Street, Suite 443
Denver, CO 80202-2500

From: Barefield, Karen M - MSHA [<mailto:Barefield.Karen@DOL.GOV>]

Sent: Monday, May 18, 2015 5:29 AM

To: Caleb Grinter; David P. Simonton

Cc: Campbell, Hagel - MSHA; jimbowman61@hotmail.com; Friary, Elizabeth - SOL; Jonathan Anderson; Wilson, Robert S - MSHA

Subject: RE: A&G Coal VA 2014-243, 244, 364, 365, and 383 Investigation Status

Caleb:

All of the dockets are affected by the special investigation.

Karen Barefield
Office of the Associate Regional Solicitor
1100 Wilson Boulevard, 22nd Floor West
Arlington, Virginia 22201
202-693-9371 (direct)
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From: Caleb Grinter [<mailto:cgrinter@fmshrc.gov>]
Sent: Friday, May 15, 2015 1:38 PM
To: David P. Simonton; Barefield, Karen M - MSHA
Cc: Campbell, Hagel - MSHA; jimbowman61@hotmail.com; Friary, Elizabeth - SOL; Jonathan Anderson
Subject: A&G Coal VA 2014-243, 244, 364, 365, and 383 Investigation Status

Ms. Barefield, Ms. Hagel and Ms. Friary,

To the extent possible, please clarify which dockets are directly affected by current 110(c) special investigations. In previous submissions, A&G VA 2014-243 and 244 were the only dockets listed with ongoing section 110 (c) investigations. I am assuming that the A&G VA 2014-365, with 47 citations, is likely affected by the 110(c) investigation, but please confirm.

Sincerely,

Caleb Grinter
Attorney- Advisor
Federal Mine Safety and Health Review Commission
(303) 844-1680

From: David P. Simonton
Sent: Wednesday, May 13, 2015 1:22 PM
To: Barefield, Karen M - MSHA
Cc: Campbell, Hagel - MSHA; jimbowman61@hotmail.com; Friary, Elizabeth - SOL; Caleb Grinter; Jonathan Anderson
Subject: RE: A&G Coal

Ms. Barefield,

Thank you for your update. Your request for an extension is granted. As noted please provide another email update no later than June 26.

Judge Simonton

From: Barefield, Karen M - MSHA [<mailto:Barefield.Karen@DOL.GOV>]
Sent: Wednesday, May 13, 2015 1:05 PM
To: David P. Simonton
Cc: Campbell, Hagel - MSHA; jimbowman61@hotmail.com; Friary, Elizabeth - SOL
Subject: A&G Coal
Importance: High

Judge Simonton:

The special investigation related to these dockets has not been completed. There are three agents facing assessment of individual civil penalties on approximately fifty different unwarrantable citations and orders. It appears that there may be evidence to support assessment of individual penalties for some of these violations, but due to the scope of the investigation a final determination has not been reached.

I have contacted Mr. Bowman regarding settlement and narrowing the scope of these dockets into something more manageable, but we have not yet entered into substantive negotiations.

I am requesting an additional extension to report to you until June 26, 2015 regarding our settlement discussions and the completion of the special investigation. I am out of the office all next week (5/ 18) and the Arlington ARSOL, along with MSHA, will be moving from our current location to another office building the week of June 8. We will primarily occupied with the move and unable to do a lot of substantive work until June 15th.

Please let me know if you have any other questions which are not answered in this email.

Thank you.

Karen Barefield
Office of the Associate Regional Solicitor
1100 Wilson Boulevard, 22nd Floor West
Arlington, Virginia 22201
202-693-9371 (direct)
202-693-9392 (fax)

This message may contain information that is privileged or otherwise exempt from disclosure under applicable law. Do not disclose without consulting the Office of the Solicitor. If you think you have received this email in error, please notify the sender immediately by email or phone.

UNITED STATES OF AMERICA
FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
WASHINGTON, D. C.

SECRETARY OF LABOR)	CIVIL PENALTY PROCEEDING
UNITED STATES DEPARTMENT)	
OF LABOR)	Docket No. VA 2014-243
)	
Petitioner)	Assessment Control No.
)	000346270
)	
A & G COAL CORPORATION)	ID No. 44-4534
)	Mine: Prep Plant #2
)	
Respondent)	

NOTICE OF WITHDRAWAL AND SUBSTITUTION OF COUNSEL

Please note that James F Bowman who has entered an appearance as the representative of the Respondent in the above captioned matter will no longer be representing A & G Coal Corporation.

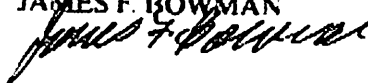
James F. Bowman's has resigned his position with A & G Coal Corporation, to pursue other interest.

As of January 17, 2017 the above matter will be handled by Billy Shelton:

Billy Shelton, Esquire
Sir Barton Way, Suite 101
Lexington, KY 40509
billysl@jwtslaw.com
859-294-6868

All documents related to the docket should be served on Mr. Billy Shelton.

JAMES F. BOWMAN



CERTIFICATE OF SERVICE

I, James F. Bowman, hereby certify that service of the foregoing **NOTICE OF WITHDRAW** was made upon the following by forwarding a true and exact copy of the Notice of Withdrawal via e-file and email on January 17, 2017.

E- File, E-mail and U.S. Mail –
Executive Director
Federal Mine Safety and
Health Review Commission
1331 Pennsylvania Avenue, NW
Washington, DC 20004-1710

e-filed

Judge David P. Simonton

Karen M. Barefield, Esquire

Billy Shelton

Pat Graham


JAMES F. BOWMAN

Alert to corporations regarding unsolicited mailings from VIRGINIA COUNCIL FOR CORPORATIONS is available from the Bulletin Archive link of the Clerk's Office website.

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SCC eFile > Entity Search > Entity Details

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SCC eFile Business Entity Details

Help

A & G Coal Corporation

SCC eFile

- SCC eFile Home Page
- Check Name
- Distinguishability
- Business Entity Search
- Certificate Verification
- FAQs
- Contact Us
- Give Us Feedback

Business Entities

UCC or Tax Liens

Court Services

Additional Services

General

SCC ID: 03640695
 Entity Type: Corporation
 Jurisdiction of Formation: VA
 Date of Formation/Registration: 9/6/1990
 Status: Active
 Shares Authorized: 5000

Select an action

- [File a registered agent change](#)
- [File a registered office address change](#)
- [Resign as registered agent](#)
- [File an annual report](#)
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- [View eFile transaction history](#)
- [Manage email notifications](#)

Principal Office

302 S. JEFFERSON STREET
 ROANAKE VA24011

[Print Record](#) [Refresh](#)

Registered Agent/Registered Office

C T CORPORATION SYSTEM
 4701 COX ROAD, SUITE 285
 GLEN ALLEN VA 23060
 HENRICO COUNTY 143
 Status: Active
 Effective Date: 10/4/2013

Screen ID: e1000

Need additional information? Contact sccinfo@scc.virginia.gov Website questions? Contact: webmaster@scc.virginia.gov
 We provide external links throughout our site.

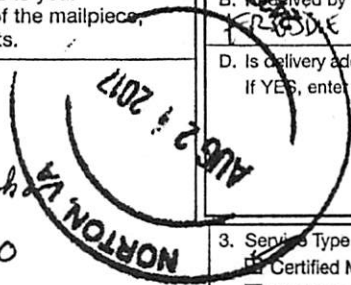
PDF(.pdf) Reader Excel (.xls) Viewer PowerPoint (.ppt) Viewer Word (.doc) Viewer
 Build #: 1.0.0.23229

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Hazel Campbell
 U.S. Dept. of Labor
 P.O. Box 560
 Norton VA 24273

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature
 X *Jessie Bradley* Agent Addressee

B. Received by (Printed Name)
 JESSIE BRADLEY

C. Date of Delivery
 8/21/2017

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type
 Certified Mail® Priority Mail Express™
 Registered Return Receipt for Merchandise
 Insured Mail Collect on Delivery

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number
(Transfer from service label)

PS Form 3811, July 2013 Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Karen Bearfield
 U.S. Dept. of Labor
 211 7th Ave. North, Ste. 420
 Nashville TN 37219

COMPLETE THIS SECTION ON DELIVERY

A. Signature
 X *J Adams* Agent Addressee

B. Received by (Printed Name)

C. Date of Delivery
 8/21/17

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type
 Certified Mail® Priority Mail Express™
 Registered Return Receipt for Merchandise
 Insured Mail Collect on Delivery

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number
(Transfer from service label)

PS Form 3811, July 2013 Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Patrick Graham
 Southern Cow Corp.
 302 South Jefferson St.
 Roanoke VA 24011

2. Article Number

(Transfer from service label)

PS Form 3811, July 2013

Domestic Return Receipt

COMPLETE THIS SECTION ON DELIVERY

A. Signature

Leslie Wells Agent
 Addressee

B. Received by (Printed Name)

Leslie Wells

C. Date of Delivery

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type

Certified Mail® Priority Mail Express™
 Registered Return Receipt for Merchandise
 Insured Mail Collect on Delivery

4. Restricted Delivery? (Extra Fee)

 Yes**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Robert S. Wilson
 U.S. Dept. of Labor
 201 12th St. South
 Arlington VA 22202

2. Article Number

(Transfer from service label)

PS Form 3811, July 2013

Domestic Return Receipt

COMPLETE THIS SECTION ON DELIVERY

A. Signature

Lemmie Conner Agent
 Addressee

B. Received by (Printed Name)

Lemmie Conner

C. Date of Delivery

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type

Certified Mail® Priority Mail Express™
 Registered Return Receipt for Merchandise
 Insured Mail Collect on Delivery

4. Restricted Delivery? (Extra Fee)

 Yes

**U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)**

7000 0520 0022 6001 3064

Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Recipient's Name (Please Print Clearly) (To be completed by mailer)
Karen Benfield A+G OTSC
 Street, Apt. No.; or PO Box No.
 City, State, ZIP+ 4

PS Form 3800, February 2000 See Reverse for Instructions

**U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)**

7000 0520 0022 6001 3065

Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Recipient's Name (Please Print Clearly) (To be completed by mailer)
Haye Campbell A+G OTSC
 Street, Apt. No.; or PO Box No.
 City, State, ZIP+ 4

PS Form 3800, February 2000 See Reverse for Instructions

**U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)**

7000 0520 0022 6001 3071

Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Recipient's Name (Please Print Clearly) (To be completed by mailer)
Robert Oshon A+G OTSC
 Street, Apt. No.; or PO Box No.
 City, State, ZIP+ 4

PS Form 3800, February 2000 See Reverse for Instructions

**U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)**

7000 0520 0022 6001 3082

Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Recipient's Name (Please Print Clearly) (To be completed by mailer)
Robert Wilson A+G OTSC
 Street, Apt. No.; or PO Box No.
 City, State, ZIP+ 4

PS Form 3800, February 2000 See Reverse for Instructions

default order
proof of service

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Robert S. Wilson
U.S. Dept. of Labor
201 12th St. South
Arlington VA 22202

2. Article Number
(Transfer from service label)

PS Form 3811, July 2013

Domestic Return Receipt

COMPLETE THIS SECTION ON DELIVERY

A. Signature
Shalita Young Agent
 Addressee

B. Received by (Printed Name) *Shalita Young* C. Date of Delivery *9-5-19*

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type
 Certified Mail® Priority Mail Express™
 Registered Return Receipt for Merchandise
 Insured Mail Collect on Delivery

4. Restricted Delivery? (Extra Fee) Yes

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Raeen Bonfield
U.S. Dept. of Labor
211 7th Ave. North Ste. 820
Washville TN 37219

2. Article Number
(Transfer from service label)

PS Form 3811, July 2013

Domestic Return Receipt

COMPLETE THIS SECTION ON DELIVERY

A. Signature
Shalita Young Agent
 Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type
 Certified Mail® Priority Mail Express™
 Registered Return Receipt for Merchandise
 Insured Mail Collect on Delivery

4. Restricted Delivery? (Extra Fee) Yes

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Petree Graham
 Southern Cow Corp.
 302 South Jefferson St.
 Roanoke VA 24011

2. Article Number
 (Transfer from service label)

PS Form 3811, July 2013

Domestic Return Receipt

COMPLETE THIS SECTION ON DELIVERY

A. Signature
 X *Leslie Welles* Agent Addressee

B. Received by (Printed Name)
Leslie Welles C. Date of Delivery

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type
 Certified Mail® Priority Mail Express™
 Registered Return Receipt for Merchandise
 Insured Mail Collect on Delivery

4. Restricted Delivery? (Extra Fee) Yes

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Hazel Campbell
 U.S. Dept. of Labor
 P.O. Box 560
 Norton VA 24273

2. Article Number
 (Transfer from service label)

PS Form 3811, July 2013

Domestic Return Receipt

COMPLETE THIS SECTION ON DELIVERY

A. Signature
 X *By W Dotts* Agent Addressee

B. Received by (Printed Name)
By W Dotts C. Date of Delivery

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type
 Certified Mail® Priority Mail Express™
 Registered Return Receipt for Merchandise
 Insured Mail Collect on Delivery

4. Restricted Delivery? (Extra Fee) Yes



**U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)**

Article Sent To:

Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Name (Please Print Clearly) (To be completed by mailer)
Hazel Campbell DeSaut
 Street, Apt. No.; or PO Box No.
 City, State, ZIP+ 4

PS Form 3800, July 1999 See Reverse for Instructions

**U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)**

Article Sent To:

Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Name (Please Print Clearly) (To be completed by mailer)
Robert Wilson DeSaut
 Street, Apt. No.; or PO Box No.
 City, State, ZIP+ 4

PS Form 3800, July 1999 See Reverse for Instructions

**U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)**

Article Sent To:

Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Name (Please Print Clearly) (To be completed by mailer)
Robert Graham DeSaut order
 Street, Apt. No.; or PO Box No.
 City, State, ZIP+ 4

PS Form 3800, July 1999 See Reverse for Instructions

**U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)**

Article Sent To:

Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Name (Please Print Clearly) (To be completed by mailer)
Russ Barfield DeSaut
 Street, Apt. No.; or PO Box No.
 City, State, ZIP+ 4

PS Form 3800, July 1999 See Reverse for Instructions

7099 3220 0005 1569 8897

7099 3220 0005 1569 8903

7099 3220 0005 1569 8910

7099 3220 0005 1569 8927

Jonathan Anderson

From: Jonathan Anderson
Sent: Wednesday, August 16, 2017 5:03 PM
To: Wilson, Robert S - MSHA; Barefield, Karen M - MSHA; Campbell, Hagel - MSHA; Patrick Graham (patrick.graham@southerncoalcorp.com)
Cc: David P. Simonton; Elias Thomas
Subject: A&G Coal VA 2014-243, 244, 364, 365, 383 - Order to Show Cause
Attachments: A&G VA 2014-243 et al OTSC.pdf

Tracking:	Recipient	Delivery	Read
	Wilson, Robert S - MSHA		
	Barefield, Karen M - MSHA		
	Campbell, Hagel - MSHA		
	Patrick Graham (patrick.graham@southerncoalcorp.		
	David P. Simonton	Delivered: 8/16/2017 5:03 PM	Read: 8/16/2017 5:03 PM
	Elias Thomas	Delivered: 8/16/2017 5:03 PM	Read: 8/17/2017 7:25 AM

Greetings,

Please find attached an Order to Show Cause for the above dockets. This will also be distributed via First Class Mail today. Thanks.

Best regards,

Jonathan Anderson
Federal Mine Safety and Health Review Commission
Legal Assistant for Judge David P. Simonton

P: (303) 844-1614
F: (303) 844-5268
janderson@fmshrc.gov

FMSHRC
721 19th Street, Suite 443
Denver, CO 80202-2500

Jonathan Anderson

From: Jonathan Anderson
Sent: Wednesday, August 30, 2017 4:59 PM
To: 'Barefield.Karen@DOL.GOV'; 'Campbell.Hagel@DOL.GOV'; 'Wilson.Robert.S@DOL.GOV'; 'patrick.graham@southerncoalcorp.com'
Cc: David P. Simonton; Elias Thomas
Subject: A&G Coal VA 2014-243 et al - Order Lifting Stay, Order of Default, Order to Pay
Attachments: A&G VA 2014-243 et al Order of Default.pdf

Tracking:	Recipient	Delivery	Read
	'Barefield.Karen@DOL.GOV'		
	'Campbell.Hagel@DOL.GOV'		
	'Wilson.Robert.S@DOL.GOV'		
	'patrick.graham@southerncoalcorp.'		
	David P. Simonton	Delivered: 8/30/2017 4:59 PM	Read: 8/30/2017 5:09 PM
	Elias Thomas	Delivered: 8/30/2017 4:59 PM	Read: 8/31/2017 7:31 AM

Greetings,

Please find attached an Order for the above dockets. This will also be distributed via First Class Certified Mail from our office today.

Best regards,

Jonathan Anderson
Federal Mine Safety and Health Review Commission
Legal Assistant for Judge David P. Simonton

P: (303) 844-1614
F: (303) 844-5268
janderson@fmshrc.gov

FMSHRC
721 19th Street, Suite 443
Denver, CO 80202-2500

Jonathan Anderson

From: Microsoft Outlook
To: patrick.graham@southerncoalcorp.com
Sent: Wednesday, August 30, 2017 4:59 PM
Subject: Relayed: A&G Coal VA 2014-243 et al - Order Lifting Stay, Order of Default, Order to Pay

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

patrick.graham@southerncoalcorp.com (patrick.graham@southerncoalcorp.com)

Subject: A&G Coal VA 2014-243 et al - Order Lifting Stay, Order of Default, Order to Pay