

COMMONWEALTH OF KENTUCKY  
ENERGY AND ENVIRONMENT CABINET  
OFFICE OF ADMINISTRATIVE HEARINGS  
FILE NO. VCP-19-1-0620  
PERMIT NO. 898-4596  
NON-COMPLIANCE NO. 536169  
FAILURE TO ABATE CESSATION ORDER NO. 532674  
CRI NO. 15050084

LEXINGTON COAL COMPANY, LLC

PETITIONER

VS.

**PETITION FOR REVIEW**

ENERGY AND ENVIRONMENT CABINET

RESPONDENT

\*\*\*\*\*

Comes the Petitioner, Lexington Coal Company LLC, by and through Counsel, and for its Petition for Review herein, states as follows:

1. On or about August 21, 2018, a representative of the Energy and Environment Cabinet (the "Cabinet") issued to the Petitioner, Non-Compliance No. 53-6169, alleging a violation of 405 KAR 8:010.
2. The above-referenced non-compliance required the Petitioner to complete certain remedial measures, which without admitting liability for the violation; the Petitioner has been denied access to the permit to complete the remedial measures.
3. On or about October 31, 2019, a representative of the Cabinet issued to the Petitioner, Cessation Order No. 53-2674, alleging that the Petitioner failed to abate the violations set out in the above-referenced non-compliance.
4. On or about December 31, 2019, the Cabinet proposed a total civil penalty in the

amount of \$30,000.00 for the violation cited in Non-Compliance No. 53-6169 and Cessation Order No. 53-2674.

5. On or about June 27, 2022, the Assessment Conference Officer affirmed the Cabinet's civil penalty assessment in the amount of \$30,000.00. A true and accurate copy of the Conference Officer's Report and Recommendation is attached hereto as **Exhibit A**.

6. The Petitioner states that it is entitled to administrative relief, pursuant to 400 KAR 1:110 and the reasons for such relief are as follows:

- a. The issuance of Non-Compliance No. 53-6169 and Cessation Order No. 53-2674 is arbitrary, capricious and represents an abuse of discretion, and is contrary to law and the facts which will be introduced at a formal hearing in this matter.
- b. The issuance of Non-Compliance No. 53-6169 is improper, since the Petitioner did not violate the regulations set out in Non-Compliance No. 53-6169.
- c. The issuance of Cessation Order No. 53-2674 is improper because the Petitioner did not have access to abate the violation set out in the non-compliance.
- d. Additionally, the Petitioner had begun to take appropriate measures to complete the remedial measures requested by the Cabinet in the non-compliance and, therefore, the issuance of the cessation order was improper. The Cabinet should have extended the remedial deadline date for the non-compliance, instead of issuing a failure to abate cessation order, due to the Petitioner's attempts to comply with the Cabinet's requested remedial

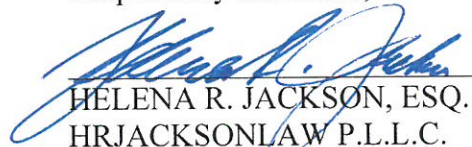
measures.

- e. The Cabinet's issuance of Cessation Order No. 53-2674 is contrary to law in that the non-compliance did not provide for a reasonable period of abatement as required by 405 KAR Chapter 12.
- f. In the event that the Hearing Officer upholds the General Provisions violation, the Petitioner would propose that the proper assessment for said violation is 9 points for probability, 2 points for damage and 12 points for degree of fault for a total of 23 points. Pursuant to the Cabinet's Penalty Assessment Manual, the civil penalty for this violation must be reduced to \$0.00.

WHEREFORE, the Petitioner prays as follows:

1. That this matter be referred to a Hearing Officer and that a hearing be held in Pikeville, Kentucky which is a location convenient to the Petitioner, the Respondent, and all respective potential witnesses.
2. That the Hearing Officer enter a recommendation to the Secretary, vacating Non-Compliance No. 53-6169 and Cessation Order No. 53-2674.
3. In the alternative, that the Hearing Officer assess a civil penalty in the amount of \$0.00 for the non-compliance.
4. For its costs herein expended, including a reasonable attorney's fee.
5. For all other proper relief.

Respectfully submitted,



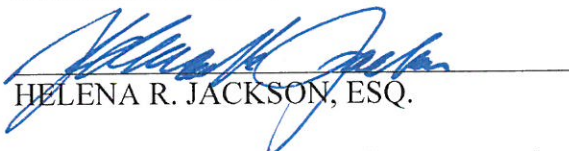
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the Petition for Review was duly e-mailed this the 22<sup>nd</sup> day of July, 2022 to the following:

Docket Coordinator  
EEC - Office of Administrative Hearings  
211 Sower Boulevard  
Frankfort, KY 40601

General Counsel  
EEC - Office of Legal Services  
300 Sower Boulevard – Third Floor  
Frankfort, KY 40601



HELENA R. JACKSON, ESQ.

Delivered by electronic mail, return receipt requested to:

Return Receipt  
Received by \_\_\_\_\_  
Date: \_\_\_\_\_

DOCKET COORDINATOR

Distribution:

DMRE-email; Tara Lewis-email; Pikeville Regional Office-email  
Penalty Assessment Conference Officer