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

VS.

PETITION FOR REVIEW

ENERGY AND ENVIRONMENT CABINET

* * * * * * * * * *

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
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.
CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the Petition for Review was duly e-mailed this the 22nd 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

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