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0003

Scot W. Anderson
Senior Attorney

November 9, 1994

Joseph C. Helfrich
Assessment Officer
State of Utah
Division of Oil, Gas and Mining
355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203

Re: State Violation N94-45-1203

ACT/007/016 #5
Copy Jread
Vickie
(cover letter)

Dear Mr. Helfrich:

Mountain Coal Company requests an Assessment Conference to allow review of the proposed penalty assessment for Violation N94-45-1-1. A copy of the proposed assessment is attached for your review, Mountain Coal.

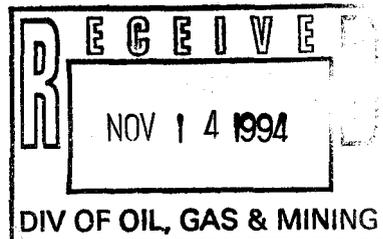
If possible, Mountain Coal Company would like to conduct the Assessment Conference by telephone.

Thank you for your attention to this matter.

Sincerely,

Scot W. Anderson

cc: Paige Beville
Dan Guy
Kathy Welt





State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

Michael O. Leavitt
Governor
Ted Stewart
Executive Director
James W. Carter
Division Director

355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203
801-538-5340
801-359-3940 (Fax)
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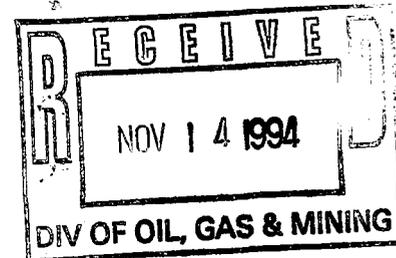
RECEIVED

OCT 17 1994

October 12, 1994

CERTIFIED RETURN RECEIPT
P 074 976 427

Paige B. Beville, Manager
Mountain Coal Company
ARCO Coal Company
555 17th Street
Denver, Colorado 80202



Dear Ms. Beville:

Re: Proposed Assessment for State Violation No. N94-45-1-1, Mountain Coal Company, Gordon Creek #2, #7, & #8 Mines, ACT/007/016, Folder #5, Carbon County, Utah

The undersigned has been appointed by the Board of Oil, Gas and Mining as the Assessment Officer for assessing penalties under R645-401.

Enclosed is the proposed civil penalty assessment for the above-referenced violation. The violation was issued by Division Inspector, Scott Milovich on September 26, 1994. Rule R645-401-600 et. sec. has been utilized to formulate the proposed penalty. By these rules, any written information which was submitted by you or your agent, within fifteen (15) days of receipt of the Notice of Violation, has been considered in determining the facts surrounding the violation and the amount of penalty.

Under R645-401-700, there are two informal appeal options available to you:

1. If you wish to informally appeal the fact of this violation, you should file a written request for an Informal Conference within 30 days of receipt of this letter. This conference will be conducted by the Division Director. This Informal Conference is distinct from the Assessment Conference regarding the proposed penalty.

2. If you wish to review the proposed penalty assessment, you should file a written request for an Assessment Conference within 30 days of receipt of this letter. If you are also requesting a review of the fact of violation, as noted in paragraph 1, the Assessment Conference will be scheduled immediately following that review.

If a timely request for review is not made, the fact of violation will stand, the proposed penalty(ies) will become final, and the penalty(ies) will be due and payable within thirty (30) days of the proposed assessment. Please remit payment to the Division, mail c/o Vicki Bailey.

Sincerely,

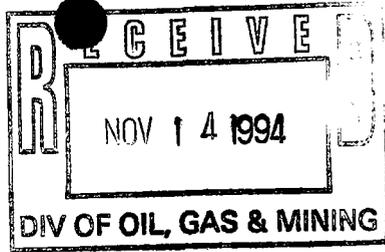


Joseph C. Helfrich
Assessment Officer

jbe

Enclosure

cc: Bernie Freeman, OSM



**WORKSHEET FOR ASSESSMENT OF PENALTIES
UTAH DIVISION OF OIL, GAS AND MINING**

COMPANY/MINE Mountain Coal Company/Gordon Creek #2, #7 & #8 Mines
NOV #N94-45-1-1

PERMIT # ACT/007/016

VIOLATION 1 OF 1

ASSESSMENT DATE 10/6/94

ASSESSMENT OFFICER Joseph C. Helfrich

I. HISTORY MAX 25 PTS

A. Are there previous violations which are not pending or vacated, which fall within 1 year of today's date?

ASSESSMENT DATE 10/6/94

EFFECTIVE ONE YEAR TO DATE 10/6/93

PREVIOUS VIOLATIONS	EFFECTIVE DATE	POINTS
_____	_____	_____

1 point for each past violation, up to one year;
5 points for each past violation in a CO, up to one year;
No pending notices shall be counted.

TOTAL HISTORY POINTS 0

II. SERIOUSNESS (either A or B)

NOTE: For assignment of points in Parts II and III, the following applies. Based on the facts supplied by the inspector, the Assessment Officer will determine within which category, the Assessment Officer will adjust the points up or down, utilizing the inspector's and operator's statements as guiding documents.

Is this an Event (A) or Hindrance (B) violation? Event

A. Event Violations Max 45 PTS

1. What is the event which the violated standard was designed to prevent?
Offsite Sediment Deposition

2. What is the probability of the occurrence of the event which a violated standard was designed to prevent? Likely

... PROBABILITY	RANGE
... None	0
... Unlikely	1-9
... Likely	10-19
... Occurred	20

ASSIGN PROBABILITY OF OCCURRENCE POINTS 15

PROVIDE AN EXPLANATION OF POINTS

A precipitation event would likely cause sediment loading.

3. What is the extent of actual or potential damage?

RANGE 0 - 25*

*In assigning points, consider the duration and extent of said damage or impact, in terms of area and impact on the public or environment.

ASSIGN DAMAGE POINTS 0

PROVIDE AN EXPLANATION OF POINTS

No damage occurred as a result of the violation.

B. Hindrance Violations MAX 25 PTS

1. Is this a potential or actual hindrance to enforcement?

RANGE 0 - 25

Assign points based on the extent to which enforcement is actually or potentially hindered by the violation.

ASSIGN HINDRANCE POINTS

PROVIDE AN EXPLANATION OF POINTS

TOTAL SERIOUSNESS POINTS (A or B) 15

III. NEGLIGENCE MAX 30 PTS

- A. Was this an inadvertent violation which was unavoidable by the exercise of reasonable care? **IF SO - NO NEGLIGENCE;**
 OR Was this a failure of a permittee to prevent the occurrence of a violation due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation due to the same? **IF SO - NEGLIGENCE;**
 OR Was this violation the result of reckless, knowing, or intentional conduct? **IF SO - GREATER DEGREE OF FAULT THAN NEGLIGENCE.**

... No Negligence	0
... Negligence	1-15
... Greater Degree of Fault	16-30

STATE DEGREE OF NEGLIGENCE Ordinary

ASSIGN NEGLIGENCE POINTS 8

PROVIDE AN EXPLANATION OF POINTS

Lack of diligence with respect to providing adequate sediment controls on reclaimed areas.

IV. GOOD FAITH MAX 20 PTS. (EITHER A or B) (Does not apply to violations requiring no abatement measures.)

- A. Did the operator have onsite the resources necessary to achieve compliance of the violated standard within the permit area?
 ... **IF SO - EASY ABATEMENT**
 Easy Abatement Situation
- | | |
|---|-------------|
| ... Immediate Compliance | -11 to -20* |
| ... Immediately following the issuance of the NOV) | |
| ... Rapid Compliance | -1 to -10* |
| ... (Permittee used diligence to abate the violation) | |
| ... Normal Compliance | 0 |
- (Operator complied within the abatement period required)
 (Operator complied with conditions and/or terms of approved Mining and Reclamation Plan)

* Assign in upper or lower half of range depending on occurring in 1st or 2nd half of abatement period.

B. Did the permittee not have the resources at hand to achieve c
OR does the situation require the submission of plans prior
activity to achieve compliance?

... IF SO - DIFFICULT ABATEMENT

Difficult Abatement Situation

- ... Rapid Compliance -11 to -20*
(Permittee used diligence to abate the violation)
- ... Normal Compliance -1 to -10*
(Operator complied within the abatement period requ
- ... Extended Compliance 0
(Permittee took minimal actions for abatement to stay
limits of the NOV or the violated standard, or the plan
for abatement was incomplete)
(Permittee complied with conditions and/or terms c
Mining and Reclamation Plan)

EASY OR DIFFICULT ABATEMENT? ____ ASSIGN GOOD FAITH POI

PROVIDE AN EXPLANATION OF POINTS

To be evaluated upon termination of the violation.

V. ASSESSMENT SUMMARY FOR N94-45-1-1

I.	TOTAL HISTORY POINTS	<u>0</u>
II.	TOTAL SERIOUSNESS POINTS	<u>15</u>
III.	TOTAL NEGLIGENCE POINTS	<u>8</u>
IV.	TOTAL GOOD FAITH POINTS	<u>-0</u>
	TOTAL ASSESSED POINTS	<u>23</u>
	TOTAL ASSESSED FINE	<u>\$ 260.00</u>

jbe