



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

Michael O. Leavitt
Governor
Ted Stewart
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December 24, 1996

TO: Paige Beville, Mountain Coal Company

FROM: ^{UB} Lowell P. Braxton, Assessment Conference Officer

RE: Assessment Conference** 12-18-96 for NOV # N96-47-1-1, Mountain Coal Company, Gordon Creek 2, 7, & 8 Mine, ACT/007/016, Folder #2, Carbon County, Utah

The Assessment Conference was requested by Mountain Coal Company, and, by mutual consent was conducted by telephone. Representing Mountain Coal (the permittee) were Paige Beville and Dan Guy. The Division was represented by Dave Darby, the issuing inspector; Pam Grubaugh-Littig, Assessment Officer; and Joe Helfrich, Permit Supervisor.

Notice of Violation N-96-47-1-1 ("the NOV") was issued "for failure to prevent to the extent possible contributions of sediment outside of the permit area". The portion of the operation to which the NOV applies is the access road leaving the permit area: "no runoff control on access road which allows flow to leave permit area from roadway". The remedial action for the NOV was: "clean ditches along access road and construct a water bar of adequate size to transmit flow from road to sedimentation ponds, in accordance with R645-301-743.1". "Abatement was within 2 days after receipt of the NOV."

The Assessment Conference

The NOV was terminated by the Division 11-20-96.

The permittee requested a review of the negligence points citing extenuating circumstances:

- a. One water bar, (not two as stated in the proposed penalty assessment document) was removed.
- b. Permanent removal of the water bar was justified since reclamation operations had removed the inlet structure conveying water to the sediment pond .
- c. The water bar was not required in the MRP, and



- d. the Division inspector was not available to discuss replacing the unpermitted water bar and other surface water conveyances within the abatement time of the NOV.

The permittee requested a review of the good faith assessment citing:

- a. Dan Guy was reluctant to initiate reconstruction of the water bar and structures conveying water to the sediment pond since there was no formal approval to construct these in the MRP.
- b. Dan had not been part of the inspection, and Dave Darby was not available for consultation during the 2 day abatement period stipulated in the NOV.
- c. The permittee's contractor did not have a road grader on hand to clean the snow and dirt "berms" that prevented runoff from the road from entering the ditches. (A grader was the preferred choice for cleaning the berm).
- d. The NOV was received during a weekend, and mobilization within the 2 day abatement time frame was difficult.
- e. The NOV was abated during the week of November- a good faith effort given circumstances outlined at a-d, above.

The Division cited discussions with Dan Guy prior to issuance of the NOV substantiating the need to establish the water bar (the subject of the NOV). Dave Darby also stated that it was his belief that appropriate equipment was available at the time of issuance to effect removal of the "snow berms".

During the conference both parties agreed that initial grading of the snow berms had been completed during the week following issuance of the NOV, and that a snow storm had occurred following this action.

The Division presented no sampling evidence to support sedimentation outside the permit area.

The Division offered photographic evidence to support blockage of roadside ditches by "snow berms".

The Division stated that the snow berms prevented function of the road drainage ditches and that in this configuration, sediment laden snow melt or rain water would run down the road and off the permit area.

Final Assessment

Seriousness

Probability of Occurrence.....10
Damage.....5
(No change from proposed assessment)

Negligence

Ordinary.....12
(See explanation, below)

Good Faith

Rapid compliance.....-05
NOV was received by mail on a weekend,
compliance was achieved during the following
week.

As evidenced by the Division's photographic record, a degree of negligence was exhibited by the permittee by virtue of grading practices that hindered function of the roadside ditches and by the questionable functional ability of silt fences installed in the ditches.

The permittee's reluctance to construct (or reconstruct) a water bar that was not a part of an approved MRP is understandable, given the Division's long established position that construction or reclamation activities must comport with previously approved plans. The Division may wish to consider institution of a field amendment system to provide a written record of reclamation plan changes that are required when unanticipated field conditions are encountered.

**A fact of violation informal conference was held (by telephone) on the subject violation on 12-18-96. The fact of the violation was upheld; (see findings document for this violation).



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December 24, 1996

CERTIFIED RETURN RECEIPT REQUESTED
P 074 977 733

Paige Beville
Mountain Coal Company
ARCO Coal Company
555 17th Street, Room 2170
Denver, Colorado 80202

Re: Finalized Assessment for State Violation #N-69-47-1-1, Mountain Coal Company,
Gordon Creek 2, 7 & 8 Mine, ACT/007/016, Folder #5, County, Utah

Dear Ms. ^{Paige}Beville:

The civil penalty for the above-referenced violation has been finalized. This assessment has been finalized as a result of a review of all pertinent data and facts including those presented in the assessment conference by you or your representative and the Division of Oil, Gas and Mining inspector.

Within fifteen (15) days of your receipt of this letter, you or your agent may make a written appeal to the Board of Oil, Gas and Mining. To do so, you must escrow the assessed civil penalties with the Division within a maximum of thirty (30) days of receipt of this letter, but in all cases prior to the Board Hearing. Failure to comply with this requirement will result in a waiver of your right of further recourse.

If no timely appeal is made, this assessed civil penalty must be tendered within thirty (30) days of your receipt of this letter. Please remit payment to the Division, mail c/o Vicki Bailey at the address listed above.

Thank you for your cooperation.

Sincerely,


Lowell P. Braxton
Assessment Conference Officer

blb
Enclosure

cc: James Fulton, OSM
Dan Guy

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

COMPANY/MINE Mountain Coal/Gordon Crk 2, 7, & 8

NOV # N96-47-1-1

PERMIT# ACT/007/016

VIOLATION 1 OF 1

Assessment Date 12/20/96

Assessment Officer James W. Carter

Nature of Violation: Failure to prevent to the extent possible contribution of sediment control outside of the permit area.

Date of Termination: 11/20/96

		<u>Proposed Assessment</u>	<u>Final Assessment</u>
(1)	History/Previous Violations	<u>0</u>	<u>0</u>
(2)	Seriousness		
	(a) Probability of Occurrence	<u>10</u>	<u>10</u>
	Extent of Damage	<u>5</u>	<u>5</u>
	(b) Hindrance to Enforcement	<u>0</u>	<u>0</u>
(3)	Negligence	<u>12</u>	<u>12</u>
(4)	Good Faith	<u>- 0</u>	<u>- 5</u>
	Total Points	<u>27</u>	<u>22</u>
	TOTAL ASSESSED FINE		<u>\$220.00</u>

NARRATIVE:

(Brief explanation for any changes made in assignment of points and any additional information that was available after the proposed assessment.)