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

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November 5, 1997

CERTIFIED RETURN RECEIPT  
P 074 977 274

Paige B. Beville, Manager  
Environmental, Health, & Safety  
ARCO Coal Company  
555 17th Street, Room 2170  
Denver, Colorado 80202

Re: Proposed Assessment for State Violation No. N-97-47-2-3, Mountain Coal Company, Gordon Creek #2, #7, & #8, ACT/007/016, Folder #5, Carbon County, Utah

Dear Ms. Beville:

The undersigned has been appointed by the Division 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 Dave Darby on October 22, 1997. Rule R645-401-600 et. seq. 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

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ACT/007/016  
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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,



Pamela Grubaugh-Littig  
Assessment Officer

bfb  
Enclosure  
cc: James Fulton, OSM  
Vicki Bailey, DOGM  
O:\007016.GC2\ASSESMNT\9747-2-3.LTR



WORKSHEET FOR ASSESSMENT OF PENALTIES  
DIVISION OF OIL, GAS, & MINING

COMPANY/MINE Mountain Coal Co./Gordon Creek #2, #7, & #8 NOV# N-97-47-2-3

PERMIT ACT/007/016

VIOLATION 1 OF 3

ASSESSMENT DATE 11/05/97

ASSESSMENT OFFICER Pamela Grubaugh-Littig

I. HISTORY MAX 25 POINTS

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

PREVIOUS VIOLATIONS	EFFECTIVE DATE	POINTS
<u>N-96-47-1-1</u>	<u>01/15/97</u>	<u>1</u>
<u>N-97-47-1-1</u>	<u>10/31/97</u>	<u>1</u>

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** 2

II. SERIOUSNESS (EITHER A OR B)

NOTE: For assignment of points in Parts II and III, the following apply:

- Based on facts supplied by the inspector, the Assessment Officer will determine within each category the violation falls.
- Beginning at the mid-point of the category, the Assessment Officer will adjust the point 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 VIOLATION MAX 45 POINTS

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

Loss of reclamation/revegetation.

2. What is the probability of the occurrence of the event which a violated

standard was designed to prevent?

Occurred

<u>PROBABILITY</u>	<u>RANGE</u>
None	0
Unlikely	1-9
Likely	10-19
Occurred	20

**ASSIGN PROBABILITY OF OCCURRENCE POINTS 20**

**PROVIDE AN EXPLANATION OF POINTS:**

Major sections of riprap washed out four channels whose purpose is to transmit flow across the reclaimed #2 mine pad. Minor downcutting had occurred in the channels as a result of diminished channel protection.

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 13**

**PROVIDE AN EXPLANATION OF POINTS:**

Flows moving through the channel washed out riprap exposing the base of the channel to erosion.

**B. HINDRANCE VIOLATION MAX 25 POINTS**

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 0**

**PROVIDE AN EXPLANATION OF POINTS:**

**TOTAL SERIOUSNESS POINTS (A OR B) 33**

III. NEGLIGENCE MAX 30 POINTS

- 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--GREATER DEGREE OF FAULT THAN NEGLIGENCE.

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

STATE DEGREE OF NEGLIGENCE Negligence

ASSIGN NEGLIGENCE POINTS 5

**PROVIDE AN EXPLANATION OF POINTS:**

The permittee is responsible for constructing properly-sized channel ripraps to transmit the design storm, which is the 100-yr, C-M event for permanent structure.

IV. GOOD FAITH MAX 20 POINTS

(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 abatement occurring the 1st or 2nd half of abatement period.

- B. Did the permittee not have the resources at hand to achieve compliance, or does the situation require the submission of plans prior to physical activity to achieve compliance?

IN 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 required)

Extended Compliance 0

(Permittee took minimal actions for abatement to stay within the limits of the NOV or the violated standard of the plan submitted for abatement was incomplete)

(Permittee complied with conditions and/or terms of approved Mining and Reclamation Plan)

EASY OR DIFFICULT ABATEMENT? Difficult

ASSIGN GOOD FAITH POINTS 0

**PROVIDE AN EXPLANATION OF POINTS:**

The permittee had to obtain a larger size riprap and remobilize the equipment. The abatement date was originally 10/12/97, and was extended to 11/07/97. Equipment was needed on site to rebuild the channels and compact the larger size riprap. Not completed to date.

V. ASSESSMENT SUMMARY

NOTICE OF VIOLATION N-97-47-2-3

I. TOTAL HISTORY POINTS: 2

II. TOTAL SERIOUSNESS POINTS: 33

III. TOTAL NEGLIGENCE POINTS: 5

IV. TOTAL GOOD FAITH POINTS: 0

TOTAL ASSESSED POINTS: 40

**TOTAL ASSESSED FINE: \$600.00**

WORKSHEET FOR ASSESSMENT OF PENALTIES  
DIVISION OF OIL, GAS, & MINING

COMPANY/MINE Mountain Coal Co./Gordon Creek #2, #7, & #8 NOV# N-97-47-2-3

PERMIT ACT/007/016 VIOLATION 2 OF 3

ASSESSMENT DATE 11/05/97 ASSESSMENT OFFICER Pamela Grubaugh-Littig

I. HISTORY MAX 25 POINTS

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

PREVIOUS VIOLATIONS	EFFECTIVE DATE	POINTS
<u>N-96-47-1-1</u>	<u>01/15/97</u>	<u>1</u>
<u>N-97-47-1-1</u>	<u>10/31/97</u>	<u>1</u>

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** 2

II. SERIOUSNESS (EITHER A OR B)

NOTE: For assignment of points in Parts II and III, the following apply:

- Based on facts supplied by the inspector, the Assessment Officer will determine within each category the violation falls.
- Beginning at the mid-point of the category, the Assessment Officer will adjust the point 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 VIOLATION MAX 45 POINTS

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

Environmental harm/ water pollution.

2. What is the probability of the occurrence of the event which a violated

standard was designed to prevent?

Occurred

<u>PROBABILITY</u>	<u>RANGE</u>
None	0
Unlikely	1-9
Likely	10-19
Occurred	20

**ASSIGN PROBABILITY OF OCCURRENCE POINTS 20**

**PROVIDE AN EXPLANATION OF POINTS:**

Form of seven gabion structures were washed out.

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 3**

**PROVIDE AN EXPLANATION OF POINTS:**

No damage was ascertained by the inspector that was directly attributable to the washed-out gabion structures. The potential does increase with each rainstorm and no protection.

**B. HINDRANCE VIOLATION MAX 25 POINTS**

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 0**

**PROVIDE AN EXPLANATION OF POINTS:**

**TOTAL SERIOUSNESS POINTS (A OR B) 23**

III. NEGLIGENCE MAX 30 POINTS

- 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--GREATER DEGREE OF FAULT THAN NEGLIGENCE.

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

STATE DEGREE OF NEGLIGENCE Negligence

ASSIGN NEGLIGENCE POINTS 5

**PROVIDE AN EXPLANATION OF POINTS:**

The gabion structures were installed to replace silt fences which were ineffective in controlling sediment from the area. These temporary control measures require high maintenance and need to be cleaned after every storm.

IV. GOOD FAITH MAX 20 POINTS

(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 abatement occurring the 1st or 2nd half of abatement period.

- B. Did the permittee not have the resources at hand to achieve compliance, or does the situation require the submission of plans prior to physical activity to achieve compliance?

IN 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 required)

Extended Compliance 0

(Permittee took minimal actions for abatement to stay within the limits of the NOV or the violated standard of the plan submitted for abatement was incomplete)

(Permittee complied with conditions and/or terms of approved Mining and Reclamation Plan)

EASY OR DIFFICULT ABATEMENT? Moderate

ASSIGN GOOD FAITH POINTS 0

**PROVIDE AN EXPLANATION OF POINTS:**

The abatement was extended from October 23, 1997, to 11/07/97. Not terminated to date.

V. ASSESSMENT SUMMARY

NOTICE OF VIOLATION	<u>N-97-47-2-3</u>
I. TOTAL HISTORY POINTS:	<u>2</u>
II. TOTAL SERIOUSNESS POINTS:	<u>23</u>
III. TOTAL NEGLIGENCE POINTS:	<u>5</u>
IV. TOTAL GOOD FAITH POINTS:	<u>0</u>
TOTAL ASSESSED POINTS:	<u>30</u>
<b>TOTAL ASSESSED FINE:</b>	<b><u>\$400.00</u></b>

WORKSHEET FOR ASSESSMENT OF PENALTIES  
DIVISION OF OIL, GAS, & MINING

COMPANY/MINE Mountain Coal Co./Gordon Creek #2, #7, & #8 NOV# N-97-47-2-3

PERMIT ACT/007/016 VIOLATION 3 OF 3

ASSESSMENT DATE 11/05/97 ASSESSMENT OFFICER Pamela Grubaugh-Littig

I. HISTORY MAX 25 POINTS

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

PREVIOUS VIOLATIONS	EFFECTIVE DATE	POINTS
<u>N-96-47-1-1</u>	<u>01/15/97</u>	<u>1</u>
<u>N-97-47-1-1</u>	<u>10/31/97</u>	<u>1</u>

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 2**

II. SERIOUSNESS (EITHER A OR B)

NOTE: For assignment of points in Parts II and III, the following apply:

- Based on facts supplied by the inspector, the Assessment Officer will determine within each category the violation falls.
- Beginning at the mid-point of the category, the Assessment Officer will adjust the point 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 VIOLATION MAX 45 POINTS

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

Loss of reclamation potential.

2. What is the probability of the occurrence of the event which a violated

standard was designed to prevent?

Occurred

<u>PROBABILITY</u>	<u>RANGE</u>
None	0
Unlikely	1-9
Likely	10-19
Occurred	20

**ASSIGN PROBABILITY OF OCCURRENCE POINTS 20**

**PROVIDE AN EXPLANATION OF POINTS:**

Three areas on the reclaimed #2 mine pad and one area on the #7 mine pad incurred damage as runoff removed topsoil and cut rills in the minepad.

- 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 5**

**PROVIDE AN EXPLANATION OF POINTS:**

Flows running over the disturbed area created rills and eroded material that must be mitigated to ensure future events do not exacerbate the situation.

**B. HINDRANCE VIOLATION MAX 25 POINTS**

- 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 0**

**PROVIDE AN EXPLANATION OF POINTS:**

**TOTAL SERIOUSNESS POINTS (A OR B) 25**

III. NEGLIGENCE MAX 30 POINTS

- 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--GREATER DEGREE OF FAULT THAN NEGLIGENCE.

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

STATE DEGREE OF NEGLIGENCE Negligence

ASSIGN NEGLIGENCE POINTS 5

**PROVIDE AN EXPLANATION OF POINTS:**

Rilling and soil erosion are indications that perhaps the best technology was not implemented.

IV. GOOD FAITH MAX 20 POINTS

(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 abatement occurring the 1st or 2nd half of abatement period.

- B. Did the permittee not have the resources at hand to achieve compliance, or does the situation require the submission of plans prior to physical activity to achieve compliance?

IN 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 required)

Extended Compliance 0

(Permittee took minimal actions for abatement to stay within the limits of the NOV or the violated standard of the plan submitted for abatement was incomplete)

(Permittee complied with conditions and/or terms of approved Mining and Reclamation Plan)

EASY OR DIFFICULT ABATEMENT? Moderate

ASSIGN GOOD FAITH POINTS 0

**PROVIDE AN EXPLANATION OF POINTS:**

The inspector stated that a delay in correcting this situation occurred due to the fact that extensions were required. Not terminated to date.

V. ASSESSMENT SUMMARY

NOTICE OF VIOLATION N-97-47-2-3

I. TOTAL HISTORY POINTS: 2

II. TOTAL SERIOUSNESS POINTS: 25

III. TOTAL NEGLIGENCE POINTS: 5

IV. TOTAL GOOD FAITH POINTS: 0

TOTAL ASSESSED POINTS: 32

**TOTAL ASSESSED FINE: \$440.00**