

0004



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

1594 West North Temple, Suite 1210
Box 145801
Salt Lake City, Utah 84114-5801
801-538-5340
801-359-3940 (Fax)
801-538-7223 (TDD)

Mine Site

September 30, 1997

CERTIFIED RETURN RECEIPT REQUESTED
No. P 074 976 880

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

Re: Finalized Assessment for State Notice of Violation, (NOV) N97-47-1-1, Gordon Creek #2, #7 and #8 Mine, Mountain Coal Company, ACT/007/016, Folder No. 5, Carbon County, Utah

Paige
Dear: Ms. Beville:

On September 17, 1997, a telephone Assessment Conference was held to review the proposed assessment for state violation N97-47-1-1 (the NOV), Gordon Creek 2, 7, and 8 Mine, Mountain Coal Company. Dan Guy and Paige Beville represented Mountain Coal Company, Dave Darby, Joe Helfrich and Mary Ann Wright represented the Division.

The NOV was issued because the lower and middle cells of the sedimentation pond were short circuiting. "After water leaves the middle pond either from overflow or short circuiting, the total flow drops into a sink hole at the bottom of the lower pond where it follows the channel alluvium (underground) for approximately 200 ft. before it resurfaces in the channel."

Provisions of the Act, regulations or permit violated: R614 (645)-301-742-221.35

Remedial action required: "Plans will be submitted to the Division to reconstruct the pond to ensure short circuiting does not occur. A) The embankments containing unconsolidated coal fines will be removed, so that the uncompactable material is removed by over excavation. Compactable material will be backfilled and compacted, the (then?) covered and compacted with a sufficient layer of bentonite (??) stays on the slopes when it becomes wet. B) the sink hole will be over excavated removing some of the larger boulders in the channel into the toe of the embankment. The hole will be back filled with a compactable material. Bentonite will be used to seal over the bottom and sides of the pond using the slope shaping designed and techniques as stated above."

Page 2
Paige B. Beville
ARCO Coal Company
September 30, 1997

The date of mailing of the NOV: July 3, 1997, (inspection was June 11).
Abatement terms: Submit designs by July 15, 1997. Complete construction by July 30, 1997.

Assessment Conference

The fact of the violation was not questioned, Mountain Coal Company (the Permittee) requested an Assessment Conference only. Mountain Coal represented that the proposed assessment may have been flawed since no good faith points were awarded. The Permittee further suggested that they had discovered the problem 2 days prior to the Division, and had wanted to ensure a collaborative solution (one involving the Division) was reached. Dan Guy presented a verbal chronology of events surrounding the NOV from first discovery of the short-circuiting on May 22 through completion of abatement activities in late July. The permittee also stated that samples of the short circuited water (taken on May 22) met UPDES permit requirements. Flow from the pond dried up in mid to late June. The Permittee indicated that approval of designs and field remediation of the problem were achieved within two weeks of Mountain Coal's receipt of the NOV.

Dave Darby described the first issuance of the NOV on July 3, subsequent problems with delivery that resulted in faxing a copy of the NOV to Mr. Guy July 15, modification of the NOV (to change abatement dates) on July 22, and termination of the NOV August 19. He indicated some of the delays attendant to issuance of the NOV resulted from his desire to discuss potential abatement mechanisms with Division engineers. No water samples related to the NOV were discussed by the Division.

Finalized Assessment

As a result of a review of all pertinent data and facts, including those presented in the Assessment Conference, the following shall constitute the finalized assessment.

In assessing the EVENT VIOLATION POINTS, the proposed assessment found that water pollution was the event that the violated standard was designed to prevent, further found that water pollution had occurred, and awarded the maximum probability of occurrence points (20). The regulation cited in the violation, R645-301-742.221.35 reads "Sedimentation Ponds will...minimize to the extent possible short circuiting." While the fact that short circuiting occurred is not disputed, the permittee stated in the assessment conference that water samples collected on May 22 (the day short circuiting was discovered) met UPDES discharge parameters, and the Division provided no evidence to the contrary. The inspector's statement indicated that "at the time of the inspection the water leaving the site appeared clear." Therefore, the fact that water pollution resulted from the short circuiting was not established by the Division. On this basis, the PROBABILITY OF OCCURRENCE points are reduced to 15.

Page 3
Paige B. Beville
ARCO Coal Company
September 30, 1997

In considering the Permittee's contention that achievement of rapid compliance after the NOV was served (approximately 2 weeks) deserved an assessment of GOOD FAITH points, the Assessment Officer has also considered the time involved from the first discovery of the problem by the Permittee to the abatement of the NOV (approximately 2 months), and declines to award GOOD FAITH points.

The assessment of NOV N97-46-5-1 is finalized as follows:

TOTAL HISTORY POINTS	1
TOTAL SERIOUSNESS POINTS	20
TOTAL NEGLIGENCE POINTS	8
TOTAL GOOD FAITH POINTS	<u>0</u>
TOTAL ASSESSED POINTS	29

TOTAL ASSESSED FINE: \$380.00

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 of Oil, Gas and Mining, mail c/o Vicki Bailey at the address listed above.

Sincerely,



Lowell P. Braxton
Assessment Conference Officer

vb
cc: D. Guy, BlackHawk Engineering
M. Wright
P:\GROUPS\MINES\WP\GC278AC.

UNITED STATES POSTAL SERVICE

OFFICIAL BUSINESS



SENDER INSTRUCTIONS
 Print your name, address and ZIP Code in the space below.
 • Complete items 1, 2, 3, and 4 on the reverse.
 • Attach to front of article if space permits, otherwise affix to back of article.
 • Endorse article "Return Receipt Requested" adjacent to number.



PENALTY FOR PRIVATE USE, \$300

RETURN TO

Print Sender's name, address, and ZIP Code in the space below.

DIVISION
OF
OIL GAS & MINING
 1594 W NORTH TEMPLE STE 1210
 BOX 145801
 SALT LAKE CITY UT 84114-5801

DOC# VP ACT/007/016 107-47-1-1 ITDR #5

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. Show to whom delivered, date, and addressee's address. 2. Restricted Delivery (Extra charge)

<p>3. Article Addressed to:</p> <p>PAIGE B BEVILLE MGR ARCO COAL CO 555 17TH ST RM 2170 DENVER CO 80202</p>	<p>4. Article Number</p> <p>P 074 976 880</p> <p>Type of Service:</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Insured <input checked="" type="checkbox"/> Certified <input type="checkbox"/> COD <input type="checkbox"/> Express Mail <input checked="" type="checkbox"/> Return Receipt for Merchandise</p> <p>Always obtain signature of addressee or agent and DATE DELIVERED.</p>
<p>5. Signature - Address</p> <p>X</p>	<p>8. Addressee's Address (ONLY if requested and fee paid)</p>
<p>6. Signature - Agent</p> <p>X <i>A. Hair</i></p>	
<p>7. Date of Delivery</p> <p><i>10-3-87</i></p>	

212-865 DOMESTIC RETURN RECEIPT