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

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Mine Site

March 20, 1998

CERTIFIED RETURN RECEIPT REQUESTED
No. P 540 714 038

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

Re: Findings of Fact, Conclusions of Law and Order and Finalized Assessment for State Notice of Violation N97-47-2-3, ACT/007/016, Mountain Coal Company, Gordon Creek 2, 7, and 8 Mine, Folder No. 5, Carbon County, Utah

Paige
Dear Ms. Beville:

On February 24, 1998, an Informal Hearing and Assessment Conference was held to review the fact of violation and proposed assessment for state violation N97-47-2-3 ("the NOV"), Gordon Creek 2, 7 and 8 Mine, Mountain Coal Company. As a result of a review of all pertinent data and facts, including those presented in the Informal Hearing and Assessment Conference, the following shall constitute the Findings of Fact, Conclusions of Law and Order and Finalized Assessment:

Fact of Violation

The NOV is a three part notice of violation.

Number 1 of 3 was written for: "Failure design locate, constructed and maintained diversion channels."

Provisions of act, regulations and permit violated: R645-301-742.312-312.1.

Portions of the operation to which notice applies: Right Fork Channel, Channel SD-4, Channel SD-5 and Channel SD-6.

Remedial action required: Reconstruct channels to ensure stability, remove displaced riprap, replace filter bed, reline channels with graded angular riprap having a D-50 of 6" or larger.

The inspector statement: Major sections of riprap had washed out of four channels whose purpose is to transmit flows across the reclaimed number 2 mine pad. Minor down cutting had occurred

in the channels as a result of diminished channel protection. Under 'explanation' the inspector (Senior Reclamation Specialist Dave Darby) stated, "regulations require permanent diversion structures to be stable (R645-301-742-32.1) (sic) provide protection against flooding and be designed to transmit the 100-year 6-hour runoff . . . and (explanations following the degree of fault portion of the statement). "The operator is responsible to construct a channel with a properly sized riprap to transmit the design storm which is the 100-year 6-hour event for permanent structures. " . . . and without information showing the design event had been exceeded, the operator was in violation of R645-301-742-323."

Number two of three was written for: "Failure to design, construct and maintain sediment control structure."

Provision of act, regulations or permit violated: R645-301-742.213 (siltation structures).

Portion of operation to which notice applies: Gabion rock weirs below access gate on sides of access road.

Remedial action required: Remove and reconstruct gabion rock weirs. Ensure that ends of weirs are keyed into the banks, develop pools behind weirs to trap sediment.

The inspector statement: (Regarding occurrence of the event.) "Four of seven gabions structures were washed out. Their purpose is to contain and filter runoff." Explanation: "The operator did not supply the information necessary to show that a 10-year 24-hour precipitation event fell over the area which the regulations require for temporary structures."

Number three of three was written for: "Design, construct and maintain control measures to minimize erosion."

Provisions of act, regulations or permit violated: R645-301-742.113 (minimization of erosion to the extent possible).

Portion of operation to which notice applies: Gully on #2 Mine pad below cut slope. Part of the ripped slope on the #2 Mine pad east of channel SD-4. Slope on south side of main channel reach 4 on Plate 3-7A. Deep rill on #7 Mine pad.

The inspector statement: "The areas on the reclaimed number 2 Mine pad had incurred damage as runoff removed topsoil and cut deep rills into the mine pad." (Explanation at Seriousness section.) "Regulations require the operator to minimize erosion to the extent possible . . ." (Explanation at Degree of Fault section.) "The damage occurred as a result of several rainstorms hitting the area. Riling and soil erosion are prima facia indications that best technology applications were not instituted."

Discussion on the fact of the violation for the Division was carried by Senior Reclamation Specialist Dave Darby. Mr. Darby indicated that he was aware of wet field conditions beginning in early August 1997, and that inspections were conducted on August 13 and 27, that on these occasions he had observed dirt-covered riprap, some riling and had voiced concerns about the appropriateness of riprap placement. No NOVs were written over these concerns. Mr. Darby became aware of wet field conditions on September 5 and 6, September 18 thru 20 and September 22, and decided to inspect on

September 25. At the September 25 inspection, serious degradation to reclaimed surfaces and to the structures that became the subject of the three part NOV was noted.

The NOV was issued on October 1. After issuance, discussions with the operator regarding availability of equipment to complete remedial action began, as did discussions on availability of suitable riprap to rebuild degraded diversions. Other discussions included what plans were required prior to initiation of construction activities to satisfy part 3 of the NOV, and what data could be submitted to demonstrate exceedence of the design storm (in this case the 100-year 6-hour event). Mr. Darby provided a chronology of activity relevant to the NOV, and used photos from previous inspections and sketch maps to support his contention that violations to the Coal Regulatory Program had occurred. No data were presented to substantiate that inadequate designs or construction activities contributed to the reclamation failures constituting the NOV. Mr. Darby suggested the three part NOV be upheld because the operator had not notified the Division of adverse conditions, did not have rain gages on site, and did not have as-builts to demonstrate reclamation had been conducted in accordance with the approved mining and reclamation plan (MRP).

Paige Beville represented ARCO Coal at the Informal Hearing. She acknowledged the operator's obligation to maintain the site in the configuration dictated by the reclamation plan, and in a manner that conformed with the performance standards of the Utah Coal Regulatory Program. A chronology was presented showing the operator's representative had been visiting the site during September, the period that sustained wet weather. Ms. Beville stated that the inspections conducted by ARCO prior to a major storm on or about September 22 indicated that the site had successfully withstood the precipitation events that preceded the September 22 storm. Minor riprap movement was noted in an inspection on the 9th, and heavy damage was observed in an inspection on September 23. This chronology noted that ARCO's representative, Dan Guy, discussed the rain damage with Dave Darby by telephone on September 24. The inspection that ultimately resulted in the NOV occurred on September 25, the violation was issued on October 1.

Ms. Beville indicated that early abatement of the three-part violation was prevented by wet field conditions, but stated that equipment was mobilized to the site about ½ day before ground conditions allowed initiation of construction. She also indicated reluctance on the part of the operator to begin the remedial activities mandated at number 2 of 2 until the Division had approved the requisite designs.

Ms. Beville stated that ARCO had provided the Division with calculations that demonstrated the site had sustained a storm in excess of the 100-year 6-hour precipitation event.

Mr. Darby indicated his review of ARCO's storm calculations substantiated an exceedence of the 100-year 6-hour precipitation event had occurred, but not of the magnitude calculated by ARCO.

Permit Supervisor Joe Helfrich provided information from similar instances that occurred in other states. One state asserted that a violation of their program had not occurred because data supported an exceedence of the design storm event, and because the operator had advised the state regulatory authority (RA) of the problem that was eventually found to have been caused by the design storm exceedence. Another state discussed an inspection that followed a design storm exceedence, and discussed mechanisms that resulted in rehabilitation of the site following this exceedence. Discussions between Division employees prior to the Informal Hearing had focused on an understanding that an

operator has a requirement to advise the Division of deteriorating site conditions.

Findings

1. The Informal Hearing and Assessment Conference was requested in a timely manner and was appropriately noticed.
2. The Notice of violation was abated on December 8, 1997.
3. Permanent diversion channels discussed in violation number 1 of 3 must be designed and constructed to pass the peak runoff from a 100-year 6-hour precipitation event.
4. An approved permit including designed channels exists for this site.
5. The Division presented no evidence at the hearing that the cited diversions had been improperly constructed or maintained.
6. The operator presented data to substantiate an exceedence of the 100-year 6-hour precipitation event, and calculations by Senior Reclamation Specialist Dave Darby confirmed the exceedence.
7. Violation number 2 of 3 alleged a violation of R645-301-742-213 (pertaining to siltation structures) and asserted damage had occurred to gabion rock weirs.
8. Gabion rock weirs are not siltation structures, they are categorized as alternative sediment control measures.
9. The maximum design storm for siltation structures is the 100-year 6-hour storm.
10. Siltation structures perform higher order sediment control than alternative sediment control measures.
11. Alternative sediment control are not designed to out perform the design storm of a siltation structure.
12. The operator presented data to substantiate an exceedence of the 100-year 6-hour precipitation event, and calculations by Senior Reclamation Specialist Dave Darby confirmed the exceedence.
13. Sediment control measures for the areas cited in violation number 3 of 3 were part of an approved MRP.
14. The Division presented evidence suggesting certain "contour ripping sediment control measures" had not been performed on the contour.

15. The general failures cited in number 3 of 3 are not all attributable to failure to rip on contour.
16. Performance failures in sediment control measures followed a storm that has been demonstrated to exceed a 100-year 6-hour precipitation event.
17. Alternative sediment control measures do not have to perform in excess of a 100- year 6-hour precipitation event.
18. The operator evaluated site conditions following heavy rains on September 10, and September 19, and determined some riprap movement had occurred. Site conditions had deteriorated after heavy rains that followed the September 19 operator inspection as revealed by a September 23 inspection.
19. The operator and the Division discussed site conditions on September 24.
20. The Utah R645 regulations mandate when an operator must notify the RA following the occurrence of certain events.
21. The R645 regulations are silent regarding an operator's requirement to notify the RA of the occurrence of erosion, although such a practice should be encouraged on a case-by-case basis.
22. The Utah Coal Regulatory Program does not have a requirement to have precipitation data collecting on site.

Order

Violation N97-47-2-3 consisting of parts 1, 2 and 3 is vacated. The vacation is based on evidence submitted by the operator and substantiated by the Division that demonstrates impacted portions of the Gordon Creek number 2, 7 and 8 Mine site had sustained runoff in excess of the 100-year 6-hour precipitation event.

Assessment Conference

An Assessment Conference followed the fact of violation hearing. Paige Beville represented ARCO, and Mary Ann Wright represented the Division in the absence of Pam Grubaugh-Littig, the Assessment Officer. The Division's rationale for the proposed assessment was presented, using the assessment form with support from the inspector statement. Ms. Beville stated that aggregate penalties resulting from a three-part violation all based on an inspection following what had been demonstrated to be a design storm exceedence placed the operator in a position of multiple jeopardy. The Assessment Conference Officer agreed to review the proposed assessments following his review of the fact of the violations.

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Finalized Assessment

Vacation of parts 1, 2 and 3 of N97-47-2-3 precludes the need to finalize the proposed penalties.

Remarks

Given evidence for out of compliance site conditions at the time of the inspection, the Division's decision to take enforcement action was prudent. In an identical future situation, and again lacking evidence that the failures were directly related to improper design or construction, the Division might wish to reconsider issuance on the basis of "failure to design or construct." Lacking evidence to the contrary, an approved MRP is in itself an approved design. No evidence beyond local ripping off the contour was presented supporting a failure to construct according to plans. No photographic evidence of site conditions at the time of the inspection was presented at the Informal Hearing. (Photos of site conditions prior to the inspection were offered.)

With appropriate photographic or other evidence, and lacking a demonstration of a design storm exceedence, a "failure to maintain" NOV would likely have gone uncontested.

While it is clear that damage was sustained at three portions of the reclaimed site, the similarity of the damage noted at each part of the NOV (erosive failure) makes the issuance of a three-part NOV questionable.

Given the need to mobilize equipment, the field conditions following the September 25 inspection, and weather conditions following the inspection, the operator's efforts to re-establish appropriate site conditions are appreciated.

Sincerely,



Lowell P. Braxton
Assessment Conference Officer

vb
cc: D. Guy, Blackhawk Engineering
M. Wright
P:\GROUPS\MINES\WP\GC278.WPD

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P 540 714 038

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DOG M V9 ACT/007/016 N97-47-2-3 #5

DOG M V9 ACT/007/016 N97-47-2-3 FEB 5

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