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

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Mine file  
ACT/007/016  
Folder # 5

February 5, 1999

CERTIFIED RETURN RECEIPT REQUESTED  
No. P 074 976 906

Chris D. Hansen, Environmental Manager  
Canyon Fuel Company, LLC  
HC 35 Box 380  
Helper, Utah 84526

Re: Findings of Fact, Conclusions of Law, Order, and Finalized Assessment for State Notice of Violation N98-47-1-1, ACT/007/016, Mountain Coal Company, Gordon Creek #2, #7 and #8 Mines, Folder No. 5, Carbon County, Utah

Dear Mr. Hansen:

On January 12, 1999, an Assessment Conference was held to review the proposed assessment for state notice of violation (NOV) N98-47-1-1, Gordon Creek #2, #7 and #8 Mines, Mountain Coal Company.

The permittee was represented by Phil Schmidt, 5174 Highway 133, Somerset, Colorado 81434, and Mr. Chris Hansen, address indicated above. The Division of Oil, Gas and Mining was represented by Mary Ann Wright, Associate Director of Mining, Joe Helfrich, Permit Supervisor, Dave Darby, Senior Reclamation Specialist and the inspector who issued the NOV, and Pamela Grubaugh-Littig, Permit Supervisor and Assessment Officer. Sherm Hoskins, Deputy, Utah Department of Natural Resources observed the proceedings. Lowell Braxton, served as Assessment Conference Officer.

As a result of a review of all pertinent data and facts, including those presented in the Assessment Conference, the following shall constitute the findings of fact, conclusions of law, Order, and Finalized Assessment:

**Fact of Violation**

The fact of the violation was not contested by Mountain Coal Company, when the Assessment Conference was requested, but the basis for the violation was reviewed prior to hearing the Division and permittee positions on the proposed fine.

The NOV was issued for: "failure to conduct coal mining and reclamation operations as in the approved application," and alleged that R645-300-142 had been violated. This regulation reads: "The permittee will conduct all coal mining and reclamation operations only as described in the approved application, except to the extent that the Division otherwise directs in the permit."

Mr. Darby reviewed a chronology of events that eventually culminated in issuance of the NOV. The

chronology began with an onsite meeting, August 3, 1998, between the permittee, Mr. Darby, and the landowner, who objected to the depth of surface gouging that had been done in 1997 by the permittee in (partial) fulfillment of final reclamation obligations. When the Division inspected the reclamation activity in 1997, it had found the nature of the surface gouging acceptable. As noted in the chronology, the Division refused the landowner's verbal request on August 3 to reduce the depth of the gouging.

On August 10, 1998, Mr. Darby called Dan Guy, permittee's field representative, and authorized permittee to allow Mr. Jacobs (landowner) to modify gouges at landowner's expense.

On September 30, 1998, Mr. Darby inspected the site and found that the landowner had conducted earth moving operations in excess of those that had been imagined by Mr. Darby when discussing such activity with Mr. Guy. On October 14 the NOV was mailed to the permittee.

The portions of the operation to which the notice applied are:

- a. The surface on the #2 mine pad and access road, (landowner modifications to Mountain Coal's reclamation).
- b. Undisturbed channels across #2 mine pad, (landowner modifications, plus remediation of natural erosion effects).
- c. Jacob's pond embankment, (remediation of natural erosion effects).
- d. Exposed coal (in) the embankment along main channel, (remediation of natural erosion effects).

The inspector's statement was reviewed, and a discussion of the Explanation Section revealed that construction activities undertaken by the landowner were the mechanism that drove issuance of the NOV, and that remediation of erosional effects noted at b, c, and d, in the preceding paragraph were necessary to ultimately release Mountain Coal from reclamation liability, but had not been discussed in the context of a violation prior to issuance of the NOV.

Representatives of the permittee substantiated the sequence of events in Mr. Darby's chronology, and discussed construction/abatement activities conducted on the site that culminated in termination of the NOV on December 8, 1998. The permittee confirmed the landowner's desire was to be able to drive over the reclaimed land prior to Phase III bond release, and the permittee admitted to feeling some pressure from the landowner to achieve this end.

#### Assessment Conference

The Assessment Officer briefly discussed her understanding of the inspector's statement and how the proposed assessment for the NOV considered the effects to reclamation done in 1997 by the activity conducted by the landowner in 1998. The Assessment Officer had inferred from the inspector statement that items b, c, and d (see: "portion of operation to which notice applies," above) were entirely caused by the landowner's activities. No good faith was awarded, because at the time the proposed assessment was mailed, the NOV had not been terminated.

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The permittee acknowledged responsibility to maintain the property in the condition contemplated in the reclamation plan, stated a belief that deterioration of the reclaimed site conditions at items c and d was not the result of negligence on the part of Mountain Coal Company, and suggested that prompt remediation of the impacts deserved an award of good faith points.

### Findings

1. Mountain Coal Company has an approved Mining and Reclamation Plan for the Gordon Creek #2, #7, and #8 Mines.
2. Mountain Coal Company conducted reclamation activities at Gordon Creek #2, #7 and #8 Mines in the fourth quarter of 1997.
3. The Division of Oil, Gas and Mining inspected Mountain Coal Company's reclamation activities in the fall of 1997, and after issuance of an NOV (N97-47-2-3) and subsequent abatement of this NOV did not order the operator to conduct additional reclamation activity as a prerequisite to compliance with the general terms and conditions of the demolition, backfilling and grading portions of the approved reclamation plan, including the surface roughening/gouging that was the subject of the landowner's concern in 1998.
4. Changes to 1997 surface roughening would constitute a modification of the Mining and Reclamation Plan.
5. The permittee did not submit a reclamation plan modification for the work conducted by landowner.
6. Conversations between the permittee and the Division pertaining to modifying a reclamation plan are not an application to modify the plan.
7. Landowner does not have the authority to unilaterally modify reclamation conducted under SMCRA or to modify mining and reclamation plans falling under that authority.
8. Division of Oil, Gas and Mining rule R645-300-142 reads: "The permittee will conduct all coal mining and reclamation operations only as described in the approved application, except to the extent that the Division otherwise directs in the permit."
9. The Division of Oil, Gas and Mining did not approve a modification of the approved application for Gordon Creek #2, #7 and #8 as required by R645-300-142.
10. The Division's inspector did not have the authority to authorize a modification of the permittee's reclamation configuration by either the permittee or a third party without processing and approving a modification to the Gordon Creek #2, #7 and #8 Mining and Reclamation Plan.

### Order

NOW THEREFORE, it is ordered that: Notice of violation N98-47-1-1 is vacated.

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### Remarks

While it is likely that actions by the permittee and Mr. Darby were designed to accommodate the landowner, the ultimate accountable party for disturbances created under SMCRA, the Utah Coal Mining and Reclamation Act ( Title 40-10, UCA), and the underlying regulations, is the permittee. The ramifications of the subject NOV's unpermitted activity to long term reclamation success have not been fully evaluated, but given Mr. Darby's role in allowing the unpermitted activity, little will be gained from sustaining a notice of violation for the activity in this instance. The permittee is cautioned that future unpermitted activity by a landowner on reclaimed land at the Gordon Creek #2, #7, and #8 mine site could result in a protraction of the bond release period and/or enforcement action by the Division.

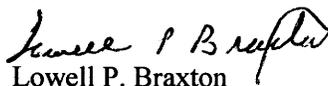
With respect to those items cited in the NOV not related to landowner's mechanized activity, (applicable portions of items b, c, and d in the "portion of operations to which notice applies" in the NOV), the Assessment Conference Officer supports the Division's position that remediation of the degraded reclaimed land was necessary to ensure long term reclamation success. The Assessment Conference Officer also supports issuance of an NOV to assure timely and appropriate remediation when, after discussion with the permittee, the permittee has not in a timely manner completed work necessary to return the reclaimed land to a configuration prescribed in the approved reclamation plan. In the case of items b, c and d, above, the dialogue prior to issuance of the NOV had evidently not taken place. Accordingly, the Assessment Conference Officer vacated the NOV in entirety.

### Finalized Assessment

Vacation of the NOV removes the necessity of a penalty.

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. Failure to comply with this requirement will result in a waiver of your right of further recourse.

Sincerely,



Lowell P. Braxton  
Assessment Conference Officer

vb

cc: M. Wright  
J. Helfrich  
D. Darby  
PFO

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