

STATE OF COLORADO

Bill Ritter, Jr., Governor
James B. Martin, Executive Director

Dedicated to protecting and improving the health and environment of the people of Colorado

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Colorado Department
of Public Health
and Environment

December 15, 2009

Doug Nolte, Manager of Engineering and Environmental Affairs
Mountain Coal Company, L.L.C.
PO Box 591
5174 Highway 133
Somerset, Colorado 81434

RE: Compliance Order on Consent, Number: IC-091201-1

Dear Mr. Nolte:

Enclosed for Mountain Coal Company, L.L.C.'s records you will find your copy, with original signatures, of the recently executed Compliance Order on Consent.

Please remember that this agreement is subject to a thirty-day public comment period (paragraph 48). Upon initiation, if the Division receives any comments during this period we will contact your office to discuss. Also, please be advised that the first page of the Order was changed in order to place the assigned Order Number on the final document.

If you have any questions, please don't hesitate to contact Kelly Morgan at (303) 692-3634 or by electronic mail at kelly.morgan@state.co.us.

Sincerely,

Kelly Morgan
Compliance Assurance Section
Enforcement Unit
WATER QUALITY CONTROL DIVISION

cc: Gunnison County Public Health Department
MS-3 File

ec: Annette Quill, Assistant to the Attorney General
Aaron Urdiales, EPA Region VIII
Jocelyn Mullen, DE, Engineering Section, CDPHE
Dick Parachini, Watershed Program, CDPHE
Gary Beers, Permits Unit, CDPHE
Carolyn Schachterle, OPA
Jim Spaanstra, Faegre and Benson

Enclosure(s)



**COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
WATER QUALITY CONTROL DIVISION**

COMPLIANCE ORDER ON CONSENT

NUMBER: IC-091201-1

**IN THE MATTER OF: MOUNTAIN COAL COMPANY, L.L.C.
CDPS PERMIT NO. CO-0038776
GUNNISON COUNTY, COLORADO**

The Colorado Department of Public Health and Environment ("Department"), through the Water Quality Control Division ("Division"), issues this Compliance Order on Consent ("Consent Order"), pursuant to the Division's authority under §25-8-605, C.R.S. of the Colorado Water Quality Control Act (the "Act") §§ 25-8-101 to 703, C.R.S., and its implementing regulations, with the express consent of Mountain Coal Company, L.L.C. ("MCC"). The Division and MCC may be referred to collectively as "the Parties."

STATEMENT OF PURPOSE

1. The mutual objectives of the Parties in entering into this Consent Order are to resolve, without litigation, the alleged violations cited herein by the Division, their associated civil penalties (as applicable), and the violations reported or disclosed as a result of MCC's voluntary self-evaluation.

DIVISION'S FINDINGS OF FACT AND DETERMINATION OF VIOLATIONS

2. Based upon the Division's investigation into and review of the compliance issues identified herein, and in accordance with §§ 25-8-602 and -605, C.R.S., the Division has made the following determinations regarding MCC, the Facility and MCC's compliance with the Act and its implementing permit regulations.
3. At all times relevant to the violations cited herein, MCC was a Delaware limited liability company in good standing and registered to conduct business in the State of Colorado.
4. MCC is a "person" as defined by § 25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, § 61.2(73).
5. MCC owns and operates the West Elk Mine, an underground coal mining operation producing bituminous coal in the NE ¼, Section 16, T13S, R90W; approximately one mile east of the Town of Somerset on Highway 133, Gunnison County, Colorado (the "Facility").
6. The Facility is the subject of Colorado Discharge Permit System, Permit Number CO-0038776 (the "Permit") which became effective June 1, 2004 and was modified and became effective May 1, 2009 prior to being administratively extended until a renewal permit is issued.

7. Wastewater from the Facility is authorized to discharge into Sylvester Gulch, Dry Fork of Minnesota Creek, Lone Pine Gulch, West Fork of Sylvester Gulch, and the North Fork of the Gunnison River from several ponds through outfalls 004, 005, 007, 008, 009, 011, 012, 013, 014, 015, 016, 017, 018, and 019. Sylvester Gulch, Dry Fork of Minnesota Creek, Lone Pine Gulch, West Fork of Sylvester Gulch, and the North Fork of the Gunnison River are all "state waters" as defined by § 25-8-103(19), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, § 61.2 (102).
8. Pursuant to 5 CCR 1002-61, § 61.8, MCC must comply with all the terms and conditions of the Permit, and violations of such terms and conditions as specified in the Permit may be subject to civil and criminal liability pursuant to §§ 25-8-601 through 25-8-612, C.R.S.

Failure to Submit DMRs by Required Date

9. Pursuant to Part I.E.1. of the Permit, MCC is required to report monthly monitoring results on Discharge Monitoring Reports ("DMRs"). The Division must receive these DMRs no later than the 28th day of the month following the specified reporting period.
10. Division records, as provided by MCC and supplemented by the DMRs, establish that MCC failed to submit DMRs on time for the following monitoring periods:

MCC		
EFFLUENT SELF-MONITORING DATA		
DISCHARGE MONITORING REPORT DATE	DISCHARGE MONITORING REPORT DUE	DISCHARGE MONITORING REPORT RECEIVED
2 nd Quarter 2004	July 28, 2004	August 2, 2004
1 st Quarter 2005	April 28, 2005	May 10, 2005
2 nd Quarter 2005	July 28, 2005	August 2, 2005
3 rd Quarter 2005	October 28, 2005	December 19, 2005
4 th Quarter 2005	January 28, 2006	February 3, 2006
1 st Quarter 2006	April 28, 2006	May 2, 2006
2 nd Quarter 2006	July 28, 2006	August 3, 2006
3 rd Quarter 2006	October 28, 2006	November 3, 2006
4 th Quarter 2006	January 28, 2007	February 6, 2007
1 st Quarter 2007	April 28, 2007	May 2, 2007
2 nd Quarter 2007	July 28, 2007	August 2, 2007
3 rd Quarter 2007	October 28, 2007	December 4, 2007
4 th Quarter 2007	January 28, 2008	February 7, 2008
1 st Quarter 2008	April 28, 2008	May 6, 2008

11. MCC's failure to submit DMRs by the appropriate due date, as identified above in paragraph 10, constitutes violations of Part I.E.1. of the Permit.

Failure to Submit Complete and/or Accurate DMRs

12. Pursuant to Part I.E.1. of the Permit, MCC is required to summarize and report all monthly monitoring results on the DMRs.
13. Division records, as provided by MCC and supplemented by the DMRs, establish that MCC failed to submit complete and/or accurate DMRs for the following monitoring periods and parameters:

MCC EFFLUENT SELF-MONITORING DATA		
OUTFALL	PARAMETER	DISCHARGE MONITORING REPORT DATE
007A	BOD5 % Removal, TSS % Removal	2 nd Quarter 2006
007A	BOD5 % Removal, TSS % Removal	3 rd Quarter 2006
007A	BOD5 % Removal, TSS % Removal, Fecal Coliform (Geometric Avg.) BOD 5 (7 day maximum)	4 th Quarter 2006
007A	BOD5 % Removal, TSS % Removal	1 st Quarter 2007
007A	BOD5 % Removal, TSS % Removal	2 nd Quarter 2007
007A	BOD5 % Removal, TSS % Removal	3 rd Quarter 2007
007A	BOD5 % Removal, TSS % Removal	4 th Quarter 2007
007A	BOD5 % Removal, TSS % Removal	1 st Quarter 2008
007A	BOD5 % Removal, TSS % Removal	2 nd Quarter 2008
008A	Settleable Solids (Daily Maximum)	4 th Quarter 2006
008A	Settleable Solids (Daily Maximum)	1 st Quarter 2007
008A	Settleable Solids (Daily Maximum)	3 rd Quarter 2007
008A	Settleable Solids (Daily Maximum)	1 st Quarter 2008
014A	Settleable Solids (Daily Maximum)	2 nd Quarter 2008
014A	Flow (30 day avg. and daily max)	2 nd Quarter 2005
014A	Flow (30 day avg. and daily max)	2 nd Quarter 2006
016A	Total Dissolved Solids (Quarterly avg. and daily max)	4 th Quarter 2007
017A	Iron, Potentially Dissolved (30 day avg. and daily max)	2 nd Quarter 2004
017A	Iron, Potentially Dissolved (30 day avg. and daily max)	3 rd Quarter 2004
017A	Iron, Potentially Dissolved (30 day avg. and daily max)	4 th Quarter 2004
017A	Iron, Potentially Dissolved (30 day avg. and daily max)	1 st Quarter 2005
017A	Iron, Potentially Dissolved (30 day avg. and daily max)	2 nd Quarter 2005
017A	Iron, Potentially Dissolved (30 day avg. and daily max)	3 rd Quarter 2005
017A	Iron, Potentially Dissolved (30 day avg. and daily max)	4 th Quarter 2005
017A	Iron, Potentially Dissolved (30 day avg. and daily max)	1 st Quarter 2006
017A	Iron, Potentially Dissolved (30 day avg. and daily max)	2 nd Quarter 2006
017A	Iron, Potentially Dissolved (30 day avg. and daily max)	3 rd Quarter 2006
017A	Iron, Potentially Dissolved (30 day avg. and daily max)	4 th Quarter 2006

017A	Iron, Potentially Dissolved (30 day avg. and daily max) Iron, Total Recoverable (30 day avg. and daily max)	1 st Quarter 2007
017A	Iron, Potentially Dissolved (30 day avg. and daily max) Iron, Total Recoverable (30 day avg. and daily max)	3 rd Quarter 2007
017A	Iron, Potentially Dissolved (30 day avg. and daily max) Iron, Total Recoverable (30 day avg. and daily max)	4 th Quarter 2007

14. MCC's failure to report all monthly monitoring results on the DMRs, as identified above in paragraph 13, constitutes violations of Part I.E.1. of the Permit.

Failure to Comply with Effluent Limitations

15. Pursuant to Part I.A.1. of the Permit, MCC's permitted discharge shall not contain effluent parameter concentrations which exceed the specified permit discharge limitations.

16. Division records as provided by MCC and supplemented by the DMRs, establish that MCC's discharge exceeded the Permit discharge limitations for the parameters and time periods as specified below:

MCC EFFLUENT SELF-MONITORING DATA			
DISCHARGE MONITORING REPORTING PERIOD	OUTFALL NUMBER	SAMPLE MEASUREMENT	SAMPLE MEASUREMENT
TOTAL SUSPENDED SOLIDS		7 DAY MAX AVG. LIMIT = 45 mg/l	30- DAY AVG. LIMIT = 30 mg/l
3 rd Quarter 2006	007A	52 mg/l	--
4 th Quarter 2008	007A	--	33 mg/l
TOTAL SUSPENDED SOLIDS		DAILY MAX LIMIT = 70 mg/l	30- DAY AVG. LIMIT = 35 mg/l
2 nd Quarter 2008	004A	--	40 mg/l
2 nd Quarter 2005	014A	--	51 mg/l
2 nd Quarter 2008	014A	--	40 mg/l
2 nd Quarter 2008	017A	85 mg/l	58.7 mg/l
BOD, 5- DAY, % REMOVAL		--	MONTHLY AVG. MINIMUM = 85%
3 rd Quarter 2008	007A	--	63.5%
4 th Quarter 2008	007A	--	75.0%
TOTAL SUSPENDED SOLIDS, % REMOVAL		--	MONTHLY AVG. MINIMUM = 85%
3 rd Quarter 2008	007A	--	73.6%
4 th Quarter 2008	007A	--	58.8%
IRON, POTENTIALLY DISSOLVED		--	30- DAY AVG. LIMIT = 300 µg/l

MCC			
EFFLUENT SELF-MONITORING DATA			
DISCHARGE MONITORING REPORTING PERIOD	OUTFALL NUMBER	SAMPLE MEASUREMENT	SAMPLE MEASUREMENT
1 st Quarter 2008	017A	–	448 µg/l
2 nd Quarter 2008	017A	–	1,185 µg/l
3 rd Quarter 2008	017A	–	410 µg/l
IRON, TOTAL RECOVERABLE		--	30- DAY AVG. LIMIT = 1,000 µg/l
2 nd Quarter 2008	017A	–	1,080 µg/l
3 rd Quarter 2008	017A	–	1,040 µg/l

17. MCC's failure to comply with the Permit effluent limitations, as identified above in paragraph 16, constitutes violations of Part I.A.1 of the Permit.

Failure to Comply with Whole Effluent Toxicity Requirements

18. Pursuant to Part I.A.5(a) of the Permit, MCC is required to perform routine whole effluent toxicity testing ("WET") on a quarterly basis. The WET testing shall consist of an acute 48-hour WET test using *Daphnia magna* and an acute 96-hour WET test using fathead minnows. The results of the WET test are to be reported by MCC on the DMRs.
19. Pursuant to Part I.A.5(c) of the Permit when a routine WET test is failed, MCC must: 1) conduct a Preliminary Toxicity Incident ("PTI")/Toxicity Identification Evaluation ("TIE") investigation; or, 2) conduct accelerated WET testing using the single species found to be more sensitive.
20. Pursuant to Part I.A.5(b) of the Permit, upon receiving a routine WET test failure result, MCC must notify the Division within fourteen (14) calendar days of the routine WET test failure and provide a statement as to whether the PTI/TIE investigation or accelerated testing is being performed.
21. Pursuant to Part I.A.5(c) of the Permit, accelerated WET testing shall be performed at least once every two weeks for up to five tests until two consecutive tests fail or three of five tests fail, in which case a pattern of toxicity has been demonstrated. If a pattern of toxicity is found, a PTI/TIE investigation is to be performed.
22. Division records establish that MCC failed routine WET testing during the following monitoring periods and MCC failed to perform either a PTI/TIE investigation or conduct proper accelerated WET testing using the single species found to be more sensitive.

MCC			
WHOLE EFFLUENT TOXICITY MONITORING			
Monitoring Period	Sample Date	Outfall	D. magna Results
2 nd Q 2004	4/7/04	017W	Fail
3 rd Q 2004	8/25/04	017W	Fail
4 th Q 2004	10/27/04	017W	Fail
1 st Q 2005	1/13/05	017W	Fail
2 nd Q 2005	5/11/05	017W	Fail
3 rd Q 2005	8/30/05	017W	Fail
1 st Q 2006	1/19/06	017W	Fail

23. Division records establish that MCC did not provide Division notification of the routine WET test failures listed above in paragraph 22 within fourteen (14) calendar days nor did MCC provide a statement as to whether the PTI/TIE investigation or accelerated testing was to be performed.
24. MCC's failure to notify the Division within fourteen (14) calendar days of receiving routine WET test failure results and provide a statement as to whether the PTI/TIE investigation or accelerated testing was to be performed constitutes violations of Part I.A.5(b) of the Permit.
25. MCC's failure conduct a PTI/TIE investigation or conduct proper accelerated WET testing following a routine WET testing failure constitutes violations of Part I.A.5(c) of the Permit.

Failure to Comply with Permit Compliance Schedules

26. Pursuant to Part I.A.4(a) of the Permit, MCC shall achieve compliance with the final effluent limitations for Outfall 017 for total recoverable iron of Part I.A.1.d. of the Permit, effective January 1, 2007, in accordance with the following compliance schedule:
 - a. By December 31, 2004, MCC shall submit a plan for approval that identifies operational changes, modification of the existing treatment system, or construction of a new treatment system such that compliance with the final total recoverable iron limitations for Outfall 017 may be attained.
 - b. By December 31, 2005, MCC shall submit a progress report summarizing the progress in implementing the plan such that compliance with the final total recoverable limitations for Outfall 017 may be attained.
 - c. By December 31, 2006, MCC shall submit study results that show compliance has been attained with the final total recoverable iron limitations for Outfall 017.
27. Division records establish that MCC did not submit the plans, progress report, or study results identified in paragraph 26 (a) through (c) above.
28. MCC's failure to submit the plans, progress report and study results identified in paragraph 26 (a) through (c) constitutes violations of Part I.A.4(a) of the Permit.

Failure to Comply with Materials Containment Plan Requirements

29. Pursuant to Part I.D.1 of the Permit, MCC shall submit to the Division an update to and implement the Facility's Materials Containment Plan within ninety (90) days of the effective date of the Permit.
30. Division records establish that MCC did not submit a copy of the Facility's updated Materials Containment Plan to the Division.
31. MCC's failure to submit to the Division a copy of the Facility's updated Materials Containment Plan constitutes a violation of Part I.D.1 of the Permit.

Failure to Comply with Stormwater Management Plan - Annual Report Requirements

32. Pursuant to Part I.2.g. of the Permit, MCC must submit to the Division an annual report summarizing MCC's overall compliance with the Stormwater Management Plan.
33. Division records establish that MCC did not submit to the Division the Stormwater Management Plan Annual Report for calendar years 2005, 2006, and 2007.
34. MCC's failure to submit the Stormwater Management Plan Annual Report for calendar years 2005, 2006, and 2007 constitutes violations of Part I.2.g. of the Permit.

MCC's SELF-AUDIT DISCLOSURE

35. Starting in mid-2007, through its parent company Arch Coal, Inc., MCC conducted a voluntary self-evaluation of the Facility under the Colorado Environmental Audit Privilege and Immunity Law to examine MCC's compliance with the Act and the Permit.
36. Division records establish that MCC disclosed information regarding MCC's voluntary self-evaluation on July 30, 2008, August 21, 2008, September 30, 2008, October 10, 2008, November 17, 2008, and July 31, 2009. These disclosures were intended to include omissions and exceedances on the discharge monitoring reports (DMRs) and any other potential issues of non-compliance for the period June 1, 2004 to July 31, 2009. As a result of the voluntary self-evaluation, the Permit violations reported to the Division by MCC are as follows:
 - a. The DMR for the 1st Quarter 2006 for outfall 004A was not submitted;
 - b. The DMR for the 2nd Quarter 2007 for Outfall 018A was not submitted;
 - c. The DMR for the 3rd Quarter 2006 for Outfall 007A indicated a TSS exceedance;
 - d. The DMRs from the 2nd Quarter 2004 through the 2nd Quarter 2008 for Outfall 007A were deficient for BOD percent removal and TSS percent removal;
 - e. The DMR for the 4th Quarter 2006 for Outfall 007A was deficient for Fecal Coliform;
 - f. The DMRs for the 4th Quarter 2006 and the 1st Quarter 2008 for Outfall 008A were deficient for Settleable Solids;
 - g. The DMRs for the 2nd Quarter 2005 and the 2nd Quarter 2006 for Outfall 014A were deficient for Flow;
 - h. The DMR for the 4th Quarter 2007 for Outfall 016A was deficient for Total Dissolved

Solids;

- i. The DMRs from the 2nd Quarter 2004 through the 4th Quarter 2005 for Outfall 017W did not include the properly attached WET testing laboratory results;
- j. The DMRs for the 4th Quarter 2004, 1st Quarter 2005, 1st Quarter 2006 through the 3rd Quarter 2007 did not properly report Potentially Dissolved Iron exceedances;
- k. Individual Potentially Dissolved Iron exceedances in August 2005, October 2005, November 2007, January 2008, and February 2008 were not properly reported;
- l. The DMRs for the 1st Quarter 2007 through the 1st Quarter 2008 for Outfall 017A were delinquent for Total Recoverable Iron;
- m. The DMR for the 2nd Quarter 2007 for Outfall 017A did not report a Total Recoverable Iron violation;
- n. Compliance Schedule events for the 4th Quarter 2004, 4th Quarter 2005, 4th Quarter 2006, and the 4th Quarter 2007 were not submitted;
- o. The DMRs from the 2nd Quarter 2004 through the 3rd Quarter 2008 were not submitted by the required date;
- p. MCC did not update and submit to the Department the Materials Containment Plan within ninety (90) days of the effective date of the Permit;
- q. MCC conducts and documents storm water inspections and reports the results of the inspections to DRMS on a quarterly basis, but did not submit annual storm water reports to the Division for 2004, 2005, 2006, and 2007.

37. In response to the reported violations, MCC has fully cooperated and provided the following to the Division:

- a. MCC provided the Division the necessary amended DMRs on August 21, September 30, and November 17, 2008;
- b. MCC investigated data anomalies and potential interferences associated with the results reported for iron species by the commercial laboratory used to analyze water samples collected at Outfall 017A in connection with the Permit. MCC completed this evaluation and has implemented measures to minimize any laboratory anomalies in the future;
- c. MCC has instituted measures to minimize the potential for the late submittal of DMRs;
- d. MCC submitted the updated Materials Containment Plan on August 21, 2008;
- e. MCC submitted the 2007 Storm Water Annual Reports to the Division on August 21, 2008 and subsequently submitted annual reports for 2004, 2005, and 2006;
- f. MCC did not provide the Division with a description of each exceedance reported on the DMRs. MCC verbally reported the deficiencies to the Division during an August 21, 2008 meeting. MCC has developed procedures for DMR completion and submittal and has developed a DMR cover letter template to minimize the potential for future inadvertent omissions of information;
- g. The laboratory reported certain settleable solids data for Outfall 008 in units not consistent with the Permit, which was overlooked by MCC and showed an exceedance where an exceedance did not occur. MCC used the appropriate conversion factors to convert the results into the proper units in making this determination;
- h. On October 10, 2008, MCC provided the Division with a review of WET test procedures and results conducted from 2004 through 2008 for Outfall 017W. During

this review, MCC determined that certain originally reported WET failures were a result of improper WET testing protocols for the following reporting periods:

MCC WHOLE EFFLUENT TOXICITY		
Test Date or Monitoring Period	Originally reported D. magna Results	Follow Up Investigation Revised D. magna Results
2 nd Q 2004	Fail	Fail
	Fail (acc)	Pass
	Fail (acc)	Pass
	Fail (acc)	Pass
3 rd Q 2004	Fail	Pass
	Fail	
	Fail (acc)	
	Fail (acc)	
3 rd Q 2005	Fail	Pass
4 th Q 2005	Fail	Pass
1 st Q 2006	Fail	Pass

PERMIT MODIFICATION

38. During the course of the MCC voluntary self-evaluation process, MCC submitted a permit modification request to the Division on October 30, 2008 justifying the modification or removal of certain effluent limits from the Permit because of the resegmentation of the receiving waters. The Division issued a modified Permit that became effective on May 1, 2009. As stated in the May 1, 2009 Permit Rationale, the following modifications were justified and approved by the Division:

- a. Removal of the requirement to monitor and report potentially dissolved iron (Fe, PD) for Outfall 017;
- b. Modification of the total suspended solids (TSS) limits for Outfall 007;
- c. Modification of the percent removal requirement for five day, biochemical oxygen demand (BOD₅) and TSS for Outfall 007;
- d. Authorization of an outfall from a storm water sedimentation pond that was not authorized; and
- e. Correction of several administrative matters.

ORDER AND AGREEMENT

39. Based on the foregoing factual and legal determinations, pursuant to its authority under §25-8-602 and 605 C.R.S., and in satisfaction of the alleged violations cited herein, and their associated civil penalties, the Division orders MCC to comply with all provisions of this Consent Order, including all requirements set forth below.

40. MCC agrees to the terms and conditions of this Consent Order. MCC agrees that this Consent Order constitutes a notice of alleged violation and an order issued pursuant to §§ 25-8-602 and -605, C.R.S., and is an enforceable requirement of the Act. MCC also agrees not to challenge directly or collaterally,

in any future judicial or administrative proceeding brought by the Division or by MCC against the Division:

- a. The issuance of this Consent Order;
- b. The factual and legal determinations made by the Division herein; and
- c. The Division's authority to bring, or the court's jurisdiction to hear, any action to enforce the terms of this Consent Order under the Act.

41. For violations disclosed by MCC, in which the Division has not acknowledged or accepted MCC's claims for penalty immunity under the Colorado Environmental Audit Privilege and Immunity Law (§ 25-1-114.5 C.R.S.), MCC further agrees to waive its claims of penalty immunity for such violations through appeals to the Water Quality Control Commission or through any other legal action filed in any other venue.
42. Notwithstanding the above, MCC does not admit to any of the factual or legal determinations made by the Division herein, and any action undertaken by MCC pursuant to this Consent Order shall not constitute evidence of fault by MCC with respect to the conditions of the Facility.

Compliance Requirements

43. Within thirty (30) calendar days of receipt of this Order, MCC shall submit to the Division a detailed written statement outlining the standard procedures MCC has and will undertake to ensure that adequate treatment, management, and reporting systems that comply with the terms and conditions of the Permit are fully implemented at the Facility and appropriate staff is trained accordingly. The statement should also specifically include certification that MCC has reviewed and understands the Reduction, Loss, or Failure of Treatment Facility provision of section Part II.A.14 of the Permit.

CIVIL PENALTY

44. Based upon the application of the Colorado Environmental Audit Privilege and Immunity Law (25-1-114.5 C.R.S.) and as a result of MCC's voluntary self-evaluation and subsequent disclosure, the Division has determined that the specific violations identified in paragraphs 28, 31 and 34 were voluntarily disclosed and therefore immune from the assessment of any administrative or civil penalties.
45. In accordance with 25-1-114.5(3) C.R.S., the Division has determined that the disclosure was not voluntary as it relates to a subset of the violations identified in paragraphs 11, 14, 17, 24, and 25 that were part of MCC's self-evaluation disclosure. Consequently these violations are not immune from the assessment of administrative or civil penalties. Furthermore, based upon information available to the Division and pursuant to the reporting requirements of the Permit, the Division was aware of the specific violations identified in paragraphs 11, 14, 17, 24, and 25 prior to the conclusion of MCC's voluntary self-evaluation and subsequent disclosure.
46. Based upon the application of the Division's Civil Penalty Policy (May 1, 1993), and consistent with Departmental policies for violations of the Act, MCC shall pay Sixteen Thousand Eight Hundred and Five Dollars (\$16,805.00) in civil penalties. The Division intends to petition the Executive Director, or his designee, to impose the Sixteen Thousand Eight Hundred and Five Dollar (\$16,805.00) civil penalty

for the above violation(s) and MCC agrees to make the payment within thirty (30) calendar days of the issuance of a Penalty Order by the Executive Director or his designee. Method of payment shall be by certified or cashier's check drawn to the order of the "Colorado Department of Public Health and Environment," and delivered to:

Ms. Kelly Morgan
Colorado Department of Public Health and Environment
Water Quality Control Division
Mail Code: WQCD-CADM-B2
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

SCOPE AND EFFECT OF CONSENT ORDER

47. The Parties agree and acknowledge that this Consent Order constitutes a full and final settlement of the violations cited herein, including those disclosed pursuant to MCC's voluntary self-evaluation.
48. This Consent Order is subject to the Division's "Public Notification of Administrative Enforcement Actions Policy," which includes a thirty-day public comment period. The Division and MCC each reserve the right to withdraw consent to this Consent Order if comments received during the thirty-day period result in any proposed modification to the Consent Order.
49. This Consent Order constitutes a final agency order or action upon the date when the Executive Director or his designee imposes the civil penalty following the public comment period. Any violation of the provisions of this Consent Order by MCC, including any false certifications, shall be a violation of a final order or action of the Division for the purpose of §25-8-608, C.R.S., and may result in the assessment of civil penalties of up to ten thousand dollars per day for each day during which such violation occurs.
50. Notwithstanding paragraph 47 above, the violations described in this Consent Order will constitute part of MCC's compliance history for purposes where such history is relevant. This includes considering the violations described above in assessing a penalty for any subsequent violations against MCC. MCC agrees not to challenge the use of the cited violations for any such purpose.

LIMITATIONS, RELEASES AND RESERVATION OF RIGHTS AND LIABILITY

51. Upon the effective date of this Consent Order, and during its term, this Consent Order shall stand in lieu of any other enforcement action by the Division with respect to the specific instances of violations cited herein, including those disclosed pursuant to MCC's voluntary self-evaluation. The Division reserves the right to bring any action to enforce this Consent Order, including actions for penalties or the collection thereof, and/or injunctive relief.
52. This Consent Order does not grant any release of liability for any violations not specifically noted herein.
53. Nothing in this Consent Order shall preclude the Division from imposing additional requirements in the

event that new information is discovered that establishes such requirements are necessary to protect human health or the environment.

54. Upon the effective date of this Consent Order, MCC releases and covenants not to sue the State of Colorado or its employees, agents or representatives as to all common law or statutory claims or counterclaims arising from, or relating to, the violations of the Act specifically addressed herein.
55. Nothing in this Consent Order shall constitute an express or implied waiver of immunity otherwise applicable to the State of Colorado, its employees, agents or representatives.

NOTICES

56. Unless otherwise specified, any report, notice or other communication required under the Consent Order shall be sent to:

For the Division:

Colorado Department of Public Health and Environment
Water Quality Control Division / WQCD-CADM-B2
Attention: Kelly Morgan
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Telephone: 303.692.3634
E-mail: kelly.morgan@state.co.us

For Mountain Coal Company, L.L.C.:

Mountain Coal Company
Attention: Doug Nolte, Manager of Engineering and Environmental Affairs
P.O. Box 591
Somerset, Colorado 81434
Telephone: 970.929.2223
E-mail: dnolte@archcoal.com

MODIFICATIONS

57. This Consent Order may be modified only upon mutual written agreement of the Parties.

COMPLETION OF REQUIRED ACTIONS

58. MCC shall submit a Notice of Completion to the Division upon satisfactory completion of all requirements of this Consent Order. The Division shall either accept or reject MCC's Notice of Completion in writing within thirty (30) calendar days of receipt. If the Division rejects MCC's Notice of Completion, it shall include in its notice a statement identifying the requirements that the Division considers incomplete or not satisfactorily performed and a schedule for completion. MCC shall, within fifteen (15) calendar days of receipt of the Division's rejection, either:

- a. Submit a notice of acceptance of the determination; or

- b. Submit a notice of dispute.

If MCC fails to submit either of the above notices within the specified time, it will be deemed to have accepted the Division's determination.

59. If MCC files any notice of dispute pursuant to paragraph 57 the notice shall specify the particular matters in the Division's determination that MCC seeks to dispute, and the basis for the dispute. Matters not identified in the notice of dispute shall be deemed accepted by MCC. The Division and MCC shall have thirty (30) calendar days from the receipt by the Division of the notification of dispute to reach an agreement. If agreement cannot be reached on all issues within this thirty (30) calendar day period, the Division shall confirm or modify its decision within an additional fourteen (14) calendar days, and the confirmed or modified decision shall be deemed effective and subject to appeal in accordance with the Act and the Colorado State Administrative Procedures Act, §§ 24-4-101 through 108, C.R.S.

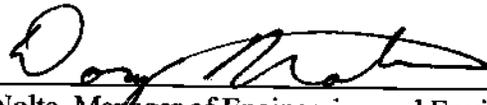
NOTICE OF EFFECTIVE DATE

60. This Consent Order shall be fully effective, enforceable and constitute a final agency action upon the date when the Executive Director or his designee imposes the civil penalty. If the penalty as described in this Consent Order is not imposed, or an alternate penalty is imposed, this Consent Order becomes null and void.

BINDING EFFECT AND AUTHORIZATION TO SIGN

61. This Consent Order is binding upon MCC and its corporate subsidiaries or parents, their officers, directors, employees, successors in interest, and assigns. The undersigned warrant that they are authorized to legally bind their respective principals to this Consent Order. In the event that a party does not sign this Consent Order within thirty (30) calendar days of the other party's signature, this Consent Order becomes null and void. This Consent Order may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Consent Order.

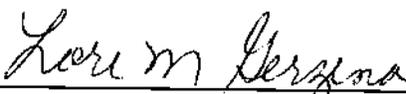
FOR MOUNTAIN COAL COMPANY, L.L.C.:



Doug Nolte, Manager of Engineering and Environmental Affairs

Date: 11-20-09

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT,
WATER QUALITY CONTROL DIVISION:



Lori M. Gerzina, Section Manager
Compliance Assurance Section
WATER QUALITY CONTROL DIVISION

Date: 12/1/09