

FILED

JAN 24 1980

Ardelle M. Kissler, Clerk
Environmental Quality Council

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING
Docket No. 515-79

IN THE MATTER OF THE NOTICE)
OF VIOLATION AND CEASE AND)
DESIST ORDER ISSUED TO THE)
KEMMERER COAL CO., ROY)
COULSON, PRESIDENT, FRONTIER,)
WYOMING 83121, PERMIT TO)
MINE NO. 379C, AND TO MORRISON-)
KNUDSEN CO., INC., D. L. FINGER,)
P. O. BOX 7808, BOISE, IDAHO)
83729)
LICENSE TO MINE NO. 379C-L2)

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

The Environmental Quality Council considered this matter at its regular meeting on January 23, 1979. The Council, having reviewed the pleadings, the arguments of counsel, and all of the evidence adduced at hearing, hereby issues its findings of fact and conclusions of law as follows:

FINDINGS OF FACT

1. This matter came on for hearing before the Environmental Quality Council on August 13, 1979, upon notice by certified mail, return receipt requested, to all parties, Hearing Officer Ronald C. Surdam presiding.

2. Contestant Kemmerer Coal Company was represented by its attorney, V. Anthony Vehar, and the Contestee Land Quality Division of the Department of Environmental Quality was represented by its attorney, Frederick D. Lewis, Jr., Assistant Attorney General.

3. Contestant is a Wyoming Corporation doing business in Wyoming.

4. Morrison-Knudsen is a Wyoming Corporation doing business in Wyoming.

5. Contestant owns a coal mining operation in Lincoln County, Wyoming.

6. Morrison-Knudsen is the operator of said coal mining operation.

7. This matter concerns objections raised by the Contestant to the issuance by the Contestee of a certain Notice of Violation and Cease and Desist Order dated May 1, 1979.

8. Contestant timely filed with the Council a written Request for Hearing, dated May 8, 1979.

9. Contestant contends that the extension of the "D" dump of the 1-U-D dump as identified in the Notice and Order did not, as alleged therein, constitute a violation of Chapter II, Section 4(a)1 of the Wyoming Land Quality Rules and Regulations, and that the evidence presented by the Contestee was insufficient to establish such violation.

10. Contestant contends that the evidence presented by the Contestee was not sufficient to establish a similar violation with respect to activities at the site of the workpad as identified in the Notice and Order.

11. Contestee contends that the evidence was sufficient to establish the violations as alleged, and particularly, that the evidence showed that Contestant had in fact deposited overburden, debris and other materials at these sites over topsoil, and that Contestant had failed to remove such topsoil before conducting such activities.

12. The evidence shows that an inspection was con-

ducted on March 14, 1979, by Dr. Jim Mitchell, inspector for the Contestee, who was accompanied by representatives of the Contestant.

13. During the course of the inspection, Dr. Mitchell noted the "D" dump of the 1-U-D Pit and expressed concern about growth on an area where topsoil had been previously removed to an average depth of 15 inches in 1974.

14. At that time, the "D" dump had been last used some seven months prior to the inspection of Dr. Mitchell.

15. On March 14, 1979, Dr. Mitchell noted to representatives of the Contestant that industrial trash had been carried over the edge of the M-K Shop area, a workpad built up from spoil and surfaced in places with scoria.

16. Some trash and scoria were deposited on the edges of the workpad, but the trash was subsequently removed by the Contestant.

CONCLUSIONS OF LAW

1. The Environmental Quality Council has jurisdiction of the parties to and the subject matter of these proceedings pursuant to W.S. 35-11-112 and 701.

2. Contestant bears the burden of proof that the Notice of Violation and Cease and Desist Order was not properly issued.

3. The Contestant sustained its burden of proof.

4. The Notice of Violation and Cease and Desist Order as to the extension of the "D" dump is not supported by sufficient evidence.

5. The Notice of Violation and Cease and Desist Order as to the site near the Morrison-Knudsen shop workpad is not supported by sufficient evidence.

ORDER

WHEREFORE, IT IS HEREBY ORDERED THAT the Notice of Violation and Cease and Desist Order issued to the Contestant by the Contestee on May 1, 1979, be and the same hereby is revoked.

DATED this 23rd day of January, 1980.

ENVIRONMENTAL QUALITY COUNCIL

By: _____

David B. Park
David B. Park
Council Chairman

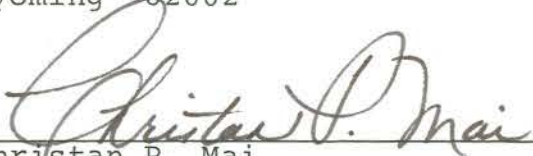
CERTIFICATE

I, Christan P. Mai, certify that the foregoing Findings of Fact, Conclusions of Law and Order was served by placing a true and correct copy thereof in the United States mail, postage prepaid, this 24th day of January, 1980, addressed as follows:

V. Anthony (Tony) Vehar
Vehar & Jacobson
821 Sage Avenue
Kemmerer, Wyoming 83101

and I further certify that a copy of same was hand delivered to the individual at the following address:

Frederick D. Lewis
Assistant Attorney General
State of Wyoming
123 Capitol Building
Cheyenne, Wyoming 82002



Christan P. Mai
Assistant Attorney General