

FILED

MAR 29 1983

Terri A. Lorenzon, Adm. Aide  
Environmental Quality Council

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL

STATE OF WYOMING

Docket No. 1046-82

IN THE MATTER OF NOTICES OF )  
VIOLATION ISSUED TO ROBERT C. )  
SCHARP, MINE MANAGER, JACOBS )  
RANCH MINE, KERR MCGEE COAL )  
CORPORATION, CALLER BOX 3013, )  
GILLETTE, WYOMING 82716 )  
PERMIT NO. 271. )

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

PURSUANT TO NOTICE duly given to all parties in interest, this matter came on for hearing on the 30th day of August, 1982, at the hour of 10:00 a.m., in the Hathaway Building Auditorium, Cheyenne, Wyoming, before the Environmental Quality Council, Mr. Glenn A. Goss, council member, presiding.

The operator/permittee appeared and was represented by Mr. Paul B. Godfrey of Godfrey and Sundahl, Cheyenne, Wyoming and Ms. Barbara Hoffman of Kerr McGee Coal Corporation. The Department of Environmental Quality, Land Quality Division was represented by Mr. Weldon S. Caldbeck, Assistant Attorney General.

With all parties and their respective attorneys participating in the hearing, the Environmental Quality Council having taken this matter under advisement and having been fully advised in the premises and having considered all the testimony and all evidence received by the parties, now makes its Findings of Fact, Conclusions of Law and Order.

## FINDINGS OF FACT

1. Kerr McGee Coal Corporation is the permittee and operator of the Jacobs Ranch Mine located in southern Campbell County. The mineral produced is coal under Land Quality Division permit number 271.

2. Mr. Roger Johnson is a mine operation, environmental compliance specialist for the Department of Environmental Quality, Land Quality Division, District 4. He has been appointed by the Director of the Department as an authorized representative of the coal program.

3. On January 27, 1982, Roger Johnson conducted a monthly inspection of the Kerr McGee, Jacobs Ranch Mine. The inspection was conducted at the site of a recently constructed flood dike located in the SW 1/4, of Section 15, Township 43N, Range 70W, Campbell County, Wyoming.

4. The aforementioned dike was constructed for the purpose of preventing any flood waters from the North Prong Little Thunder Creek from entering the adjacent coal pit No. 1.

5. As a consequence of the January 27, 1982 inspection, a Notice of Violation was issued to Kerr McGee for specified violations of the Environmental Quality Act and the rules and regulations promulgated thereunder. The Notice of Violation, designated 100031, contained four separate violations. The fourth violation was vacated as a result of an informal conference held with the Director of the Department of Environmental Quality. The Director determined the remaining three violations did occur. These violations are described as violations one of four, two of four and three of four.

6. Violation designated one of four alleged failure to

strip all topsoil prior to placing overburden to construct the dike in an area of ulm clay loam soil, which is described in the permit documents as being suitable to 60 inches, in violation of Land Quality Rules and Regulations, Chapter IV, Section 2(c)(1)(a).

7. Violation designated two of four alleged failure to remove topsoil from an area of the dike construction resulting in compaction of topsoil and surface degradation of an area approximately 30 feet wide along the south toe of the dike, topsoil brought on to the dike was mixed with overburden material, and overburden from the dike was spread onto and mixed with topsoil along the south toe of the dike, in violation of Land Quality Rules and Regulations, Chapter IV, Section 2(c)(1)(a).

8. Violation designated three of four, alleged failure to remove topsoil from a road along the north toe of the dike which was used to haul in overburden material for dike construction, in violation of Land Quality Rules and Regulations, Chapter IV, Section 2(c)(1)(a) in Chapter IV, Section 3, (j)(2)(xi).

9. Pursuant to the aforementioned Director's informal conference, a twenty-five hundred dollar (\$2,500) penalty was modified downward to one thousand dollars (\$1,000).

10. Laboratory analysis revealed that material which met DEQ criteria guidelines I for topsoil had been left under the dike and in that area north of the dike which was utilized for hauling during dike construction.

11. The area south of the dike, addressed by violation two of four, was unaffected by the dike construction. Therefore, no topsoil violation occurred.



12. Violation one of four and three of four are essentially the same and should be treated as a single violation.

#### CONCLUSIONS OF LAW

1. The Environmental Quality Council has jurisdiction over both the subject matter and the parties to this administrative action.

2. Due and proper notice of the Hearing in this matter was given in all respects as required by law.

3. Land Quality Division Rules and Regulations, Chapter IV, Section 2(c)(1)(a) provides:

All topsoil or approved surface material shall be removed from all areas to be affected in the permit area prior to these areas being affected. The topsoil shall be segregated so as not to become mixed with subsoil and other overburden material, stockpiled in the most advantageous manner and saved for reclamation purposes.

4. Land Quality Division Rules and Regulations, Chapter IV, Section 3(j)(2)(a)(xi) provides:

Prior to construction or reconstruction topsoil shall be removed from all areas where haul or access roads will be placed and shall be stored in accordance with this Chapter.

5. With respect to violation one of four, a preponder-

ance of the evidence does indicate that at station 9+50 and station 9+00 not all suitable topsoil was stripped prior to the area at these two stations being affected by construction of the dike.

6. With respect to violation designated two of four, the evidence fails to show that areas along the south toe of the dike were affected as defined by the Wyoming Environmental Quality Act so as to require that all topsoil be stripped from these areas.

7. With respect to violation designated three of four, a preponderance of the evidence does indicate that at station 15+50 not all suitable topsoil was stripped prior to the area being affected by construction of the dike.

8. Violation one of four and three of four are essentially the same violations and should be treated as one violation.

9. The penalty of one thousand dollars (\$1,000) assessed in this case by the Director is excessive in light of the seriousness of the violation and is vacated. No fine should be assessed.

#### ORDER

WHEREFORE, PURSUANT TO W. S. 35-11-901, IT IS HEREBY ORDERED THAT:

1. The violations described by Notice of Violation No. 100031, one of four and three of four, did occur. These violations are essentially the same and are modified into one violation against the operator, Kerr McGee Coal Corporation, Jacobs Ranch Mine, Permit Number 271.

2. The violation described by Notice of Violation No. 100031, two of four, did not occur and said violation two of four is vacated.

3. The penalty of one thousand dollars is vacated. No penalty is assessed.

DATED this 23<sup>rd</sup> day of March, 1983.

  
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for the  
Environmental Quality  
Council

CERTIFICATE OF SERVICE

I, Walter Perry, III, hereby certify that the foregoing Findings of Fact, Conclusions of Law was served by placing a true and correct copy in the United States Mail this 28<sup>th</sup> day of March, 1983, postage prepaid addressed as follows:

Paul Godfrey  
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Suite 702  
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Weldon S. Caldbeck  
Assistant Attorney General  
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Cheyenne, Wyoming 82002

  
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Walter Perry, III