

Terri A. Lorenzon, Director
Environmental Quality Council

In The Matter of a Request)
For Temporary Stay of)
N.O.V. No. 100368.)
Black Butte Coal Co.)
Sweetwater County, WY)
Docket No. 3839-06)

EQC Doc. No. 06-4201

REQUEST FOR REVIEW AND TEMPORARY STAY

COMES NOW Black Butte Coal Company, by and through its undersigned counsel of record, and pursuant to Wyoming statute section 35-11-437(e), hereby requests the Environmental Quality Council take review jurisdiction of this matter and temporarily stay the remedial action abatement required by Notice of Violation No. 100368 (NOV). (Exhibit 1)

In support of this request, Black Butte Coal Company has timely applied for and diligently pursued its right of a Review by the Director and Informal Conference to dispute the occurrence of the violation under the Department of Environmental Quality Rules of Practice and Procedure, Chapter VI. However, the informal conference has not been scheduled for reasons not within the control of Black Butte Coal Company. Inasmuch as some of the deadlines for correcting the disputed violation will expire before the LQD finally decides how it plans to proceed, or the Director has commenced his proceedings to review the required abatement and penalty, Black Butte Coal Company seeks a temporary stay of the NOV and the abatement and penalty associated with it, pending exhaustion of its administrative remedies.

The following detailed statement further supports the grant of the temporary stay:

1. On January 31, 2006, LQD issued NOV No. 100368 to Black Butte for failure to construct a drainage channel in accordance with the permit. The "Nature of Violation" is described as "No drainage path of any sort was constructed in the planned vicinity of RC-H2." LQD drafted a penalty assessment memo on that same date, which concluded that a penalty of \$8,000 should be assessed against Black Butte. The basis for that assessment was: a) ¶2 - \$4,000 on the seriousness of the violation, based in large part on the belief that "no drainage was constructed." b) ¶3 - \$4,000 attributed on the fault of the operation, based in large part on the author's belief that "This violation is caused completely by lack of knowledge of the mine permit and its commitments." (Black Butte did not see a copy of this memo until after it was mailed to them by DEQ March 2, 2006.)

2. After the January 31 NOV and penalty assessment memo were written, mine personnel demonstrated that in fact a channel had been constructed at RC-H2. They believed as a consequence of that showing that the NOV would be vacated. However, LQD eventually concluded that the channel, although constructed, was not constructed strictly as specified in the permit, and the NOV was neither vacated nor modified to accurately reflect the facts.

3. Black Butte made the decision to comply with the NOV and abatement, and agreed to reconstruct the channel to comply exactly with the permit. Black Butte did this in an effort to move forward, both in the operation of the mine and in its continuing relationship with LQD.

4. Black Butte received the February 24, 2006 letter (Exhibit 2) assessing a penalty of \$8,000 for the violation, and then later (inadvertently not provided by LQD

until it was sent by letter dated March 2) received a copy of the penalty assessment memo. The penalty amount and memo demonstrate that LQD was treating Black Butte as though it had never constructed any channel, even though LQD staff had subsequently learned that in fact the channel had been constructed.

4. This failure to correct the NOV and penalty assessment after the correct facts were known to LQD defeats the purpose of Black Butte's initial compliance, which was to take steps towards an improved working relationship with LQD. It also results in an NOV and penalty that are not supported by the facts or the law.

5. Black Butte filed its Petition for Review by the Director March 9, 2006. To Black Butte's knowledge, no review has yet been scheduled.

6. Black Butte has since learned informally that LQD intends to reduce the penalty to \$3,000. However, it has not received a revised NOV, and Black Butte continues to be uncertain what abatement LQD will conclude is required.

7. A temporary stay pending administrative review will not adversely affect the health or safety of the public or cause environmental harm to land, air, or water resources.

For the above-stated reasons, Black Butte Coal Company requests a temporary stay of the notice of abatement and associated penalty (NOV No. 100368) pending exhaustion of its administrative remedies, and it requests the EQC review the issuance of the NOV, the penalty assessment, and any adverse decision by the Director.

Respectfully submitted this 17th day of March, 2006.

Black Butte Coal Company

Kate M. Fox
Kate M. Fox
Davis & Cannon
422 W. 26th St.
P.O. Box 43
Cheyenne, WY 82003
(307) 634-3210
(307) 778-7118 (telefax)

CERTIFICATE OF SERVICE

I do hereby certify that on this 17th day of March, 2006, I served a true and correct copy of the foregoing Request for Review and Temporary Stay upon the following individuals by hand delivery, addressed as follows:

John Burbridge
Assistant Attorney General
122 W. 25th Street
Cheyenne, WY 82002

Richard Chancellor, Administrator
Land Quality Division
122 W. 25th Street
Cheyenne, WY 82002

John Corra, Director
Department of Environmental Quality
122 W. 25th Street
Cheyenne, WY 82002

Kate M. Fox