

APR 04 1985

BEFORE THE WYOMING ENVIRONMENTAL QUALITY COUNCIL
Herschler Building
122 West 25th Street
Cheyenne, Wyoming 82002

Ardelle M. Kissler, Clerk
Environmental Quality Council

APPEAL OF CUMBERLAND COAL COMPANY))
South Haystack Mine) State Program Permit
Evanston, Wyoming) No. 570-T1

NOTICE OF APPEAL AND REQUEST FOR HEARING

Cumberland Coal Company ("Petitioner") pursuant to the Wyoming State Department of Environmental Quality ("DEQ") Rules of Practice and Procedure, Chapter 1, Section 3, and other applicable statutes and regulations, hereby appeals from and requests a hearing on the reasons for the decision of the Wyoming State Department of Environmental Quality of the Land Quality Division dated March 11, 1985. The DEQ granted Petitioner a state program permit No. 570-T1 (the "Permit") to conduct coal mining activities at the South Haystack Coal Mine near Evanston, Wyoming. This appeal and request relates to Special Conditions 8 and 9 which were appended to the permit.

I.

As grounds for its appeal and request for hearing, Petitioner objects to Condition 8 of the permit which requires, in part, that "The operator shall not dispose of toxic or acid-forming material within twelve feet of the surface, within the 100-year floodplain of all reclaimed stream channels." Petitioner con-

tends that the DEQ acted beyond the scope of its authority under Wyoming Statute 35-11-801(1977) by imposing upon the Petitioner a channel burial depth requirement of twelve feet. Pursuant to Section 35-11-801, the Director of the DEQ may impose such conditions as may be necessary to accomplish the purpose of the Wyoming Environmental Quality Act (the "Act"). DEQ/LQD Rules and Regulations Chapter IV. 3.C.(3)(b) provides that:

All exposed coal seams remaining after mining and any acid-forming toxic and combustible materials or any waste materials that are exposed, used or produced during mining shall be covered with a minimum of four feet of nontoxic and noncombustible material or treated. . . . The administrator may require a greater depth of coverage or special compaction and isolation from groundwater contacts where necessary to prevent upward movement of salts, acid conditions, exposure by erosion or to provide an adequate plant growth medium.

The channel burial depth requirement of twelve feet is not necessary to accomplish the purpose of the Act and it is not consistent with the above-stated regulation. The Petitioner has provided calculations and designs that demonstrate the erosional stability of the reclaimed channels. The DEQ has provided no evidence whatsoever that the reclaimed channels will be unstable, and that the twelve-foot burial depth is necessary to prevent upward movement of salts, acid conditions, exposure by erosion or to provide an adequate plant growth medium. Furthermore, the DEQ has not demonstrated that the twelve-foot burial depth is in any way necessary to accomplish the purpose of the Act. Consequently, the Petitioner contends that a twelve-foot burial depth

requirement is arbitrary, capricious and unreasonable and places an onerous burden upon the Petitioner that is unwarranted by the facts and contrary to the available evidence.

II.

Condition 9 requires that:

A new vegetation study is required on the South Haystack Mine permit area. This study must be completed no later than the end of 1985 field season. The study must meet all requirements of Chapter II.2.a.(1)(b) and Chapter II.3.a.6(d)(ii), follow recommended procedures found in Guideline No. 2 dated January 1981 and include all areas within the permit area. The operator shall provide density values for all shrub and tree species occurring throughout the affected area. This vegetation baseline study must be approved by WDEQ/LQD prior to implementation. Upon approval and completion of the vegetation study, the operator shall provide a plan within ninety days of permit approval to evaluate revegetation success as outlined in Chapter II.2.d.6 and Chapter IV.3.d.(b)(a).


The Petitioner maintains that it has provided sufficient vegetation baseline data in the permit application to define, describe and characterize the permit area as to comply with Chapter II.2.a.(1)(b) and Chapter II.3.a.6(d)(ii) of the Wyoming Rules and Regulations. The cost of an additional vegetation study would be in excess of \$100,000. Because of the information already provided to the DEQ, the Petitioner contends that this is an unnecessary expense. However, if it is deemed by the Council that a new vegetation study is necessary, the Petitioner will agree and commit to the State of Wyoming to conduct such a study one year prior to disturbance of the permit area. At the present

time, however, there are no immediate plans to disturb the area. Therefore, Petitioner requests that the vegetation baseline study completion requirement, if it is found that such a study is required, be one year prior to disturbance of the permit area.

III.

Petitioner prays that these requests be granted.

CUMBERLAND COAL COMPANY


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CERTIFICATE OF SERVICE

On this 3rd day of April, 1985, copies of Petitioner's Notice of Appeal and Request for Hearing were mailed Federal Express, postage prepaid, addressed to Harold Bergman, Chairman, Environmental Quality Council, Room 304, Emerson Building, 2001 Capitol Avenue, Cheyenne, Wyoming 82002, and to Robert E. Sundin, Director, Department of Environmental Quality, Herschler Building, 122 West 25th, Cheyenne, Wyoming 82002.


John S. McCaffrey