

FILED

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Ardelle M. Kissler, Clerk
Environmental Quality Council

STATE OF WYOMING

ENVIRONMENTAL QUALITY COUNCIL

In re: Energy Development Company;)
Permit Application No. 334A-2 Filed)
by Energy Development Company)

This matter came on for hearing before the Environmental Quality Council on April 7, 1978, upon notice to all parties. Lee Keith acted as Hearing Officer; Glen Goss of the Council was also present.

Energy Development Company of Iowa ("Energy") was represented by its attorney, John A. MacPherson. The Department of Environmental Quality ("Department") was represented by its attorney, E. Michael Weber. Protestants, Ernest A. Dahlke, et al., ("Protestants") were represented by Donald Snow.

FINDINGS OF FACT

1. Energy is an Iowa Corporation doing business in the State of Wyoming.
2. Energy owns and operates a coal mining operation in Carbon County, Wyoming.
3. This matter is limited to Energy's application for Permit Amendment No. 334A-2 submitted to the Land Quality Division of the Department on November 29, 1977.
4. Written objections to the granting of Permit Amendment No. 334A-2 were timely filed with the Department on March 15, 1978, by Protestants on behalf of numerous citizens of the Hanna area.
5. The objections addressed the fugitive dust problem associated with the coal transfer facility already under permit and property damage due to blasting.
6. Protestants alleged that Energy's Amendment Application No. 334A-2 should be denied because Energy's application is incomplete pursuant to W.S. 35-11-406(h)(i).
7. Protestants also alleged that Energy failed to give proper notice of the application to adjacent property owners as is required by W.S. 35-11-406 (a)(v).

8. Further, Protestants alleged that Energy was in violation of W.S. 35-11-406(h)(xv) in that Energy had been operating a loadout facility without an operating permit from the Air Quality Division, Department of Environmental Quality.

9. In addition, Protestants contended that W.S. 35-11-406(h)(vii) prevented the Environmental Quality Council from granting Energy's Amendment Application No. 334A-2 in that the proposed operation would constitute a public nuisance and endanger the public health and safety.

10. Energy objected to the introduction of testimony regarding Air Quality violations associated with the coal mining operation permitted under Permit Amendment 334A-1.

11. Further, Energy contended that the Air Quality requirements for an operating permit would be satisfied by provisions in the Consent Decree entered into on April 6, 1978, between Energy and the Department.

CONCLUSIONS OF LAW

1. The granting or denying of an Amendment is a discretionary act of the Council.

2. The public nuisance problem associated with fugitive coal dust is resolved by the Consent Decree.

3. Sufficient notice of the hearing on the Application was made on the Hanna citizens via announcements in the Rawlins Daily Times. Substantial compliance with the notice provisions in the Act (W.S. 35-11-406) were met and no prejudice was experienced thereby.

4. Defects in Energy's failure to obtain an operating permit are also accommodated in the Consent Decree.

ORDER

BASED ON THE FOREGOING, IT IS HEREBY ORDERED THAT:

The objections of the Protestants requesting that the application for Permit Amendment No. 334A-2 not be granted is hereby denied, and the decision of the Environmental Quality Council on the application is that the permit should be issued.

Entered this 7 day of June, 1978.


ENVIRONMENTAL QUALITY COUNCIL - *chairman*