

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY

STATE OF WYOMING

IN THE MATTER OF A NOTICE OF VIOLATION)	
100550 ISSUED TO ANTELOPE COAL COMPANY)	
CALLER BOX 3008, GILLETTE, WY 82327)	DOCKET NO. 3370-02
PERMIT NO. 525-T6)	

DIRECTOR'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

This matter came before the Director of the Department of Environmental Quality pursuant to a request by Antelope Coal Company for an Informal Conference as provided in W.S. 35-11-901(c), W.S. 35-11-437(c)(i) and Chapter VI of the Wyoming Department of Environmental Quality Rules of Practice and Procedure.

At issue is whether Notice of Violation 100550 is appropriate or should be vacated. Notice of Violation 100550 was issued for affecting an area within 100 feet of the outside right of way of a public road without specific authorization of the Administrator. Notice of Violation 100550 was issued on June 4, 2002 by Lowell Spackman, designated representative of the Department of Environmental Quality based on an inspection of May 14, 2002. The Informal Conference was conducted on July 31, 2002 in the office of the Director of the Department of Environmental Quality.

Antelope Coal Company was represented by Patrick Bauman and Gary Rivenes. The Land Quality Division of the Department of Environmental Quality was represented by Richard Chancellor and Lowell Spackman. Both the Land Quality Division and Antelope Coal Company participated in the conference. After reviewing the record and being fully advised of the premises, the Director hereby makes his Findings of Fact, Conclusions of Law, and Decision.

FINDINGS OF FACT

1. The matter was fully heard by the Director at an Informal Conference held July 31, 2002 in response to a timely request for an Informal Conference as to the appropriateness of Notice of Violation 100550. The Notice of Violation was issued June 4, 2002. The Notice of Assessment was issued on July 1, 2002. The request for Informal Conference was dated June 18, 2002 and

received by the agency on June 19, 2002. Permit No. 525-T6 was issued on November 3, 1998. On June 4, 2002, Lowell Spackman, a designated representative of the Wyoming Department of Environmental Quality, issued a Notice of Violation 100550 for affecting an area within 100 feet of the outside right of way of a public road without specific authorization of the Administrator.

2. The Letter of Assessment from Dennis Hemmer, dated July 1, 2002 assessed no penalty for Notice of Violation 100550.

3. The Land Quality Division stated that Antelope Coal didn't get specific authorization from the administrator to disturb within 100 feet of the county road 37, nor did they do a public notice or have the opportunity for a public hearing for the public. This specific disturbance was the construction of a pipeline for de-watering of Horse Creek Flood Control Reservoir which was constructed in May, June and July of 2002.. The Division stated that the rules lay out specific approval.

4. The Division stated that the issue was very minor and therefore no penalty was assessed.

5. Antelope Coal Company argued that through the permit approval process and the state decision process, they had received specific authorization and satisfied the requirement for the right to a public hearing.

CONCLUSIONS OF LAW

1. The Director has jurisdiction over the subject matter and of the parties to this proceeding pursuant to W.S. 35-11-901(c) and W.S. 35-11-437(c)(i) of the Wyoming Environmental Quality Act and the Rules of Practice and Procedure, Chapter VI of the Wyoming Department of Environmental Quality.

DECISION

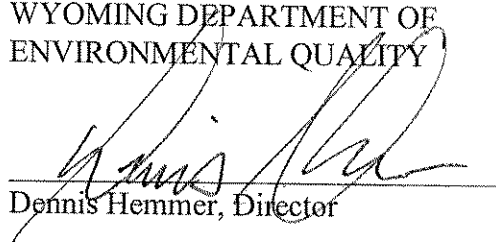
1. Antelope's argument that the public notice that notified the public that the mine application was complete satisfied the specific requirement under Chapter 12, Section 1 (a)(v)(D) is not a logical reading of the rules. Had the rules anticipated this approval being a normal part of permit notification and approval, they would not have set them out separately.

2. Antelope's argument that the written findings for the permit constitute the Administrator's approval likewise do not pass muster. If you read the specifics of the finding you will not find reference to the offending pipeline. While it does discuss activities within 100 feet of the road in question they are primarily related to relocation of the road and blasting. The discussion does not give Antelope carte blanche to proceed with activities within 100 feet.

3. While a violation of the rules, this activity is clearly a violation with little or no impact. A violation without a penalty was appropriate. I uphold the Land Quality Division's action in issuing Notice of Violation 100550.

ORDERED THIS 20 day of September, 2002.

WYOMING DEPARTMENT OF
ENVIRONMENTAL QUALITY


Dennis Hemmer, Director

This decision may be appealed to the Environmental Quality Council for a period of 15 days after the date the parties receive the decision. Appeals shall be directed to:

Chairman
Environmental Quality Council
Room 1714
Herschler Building
122 West 25th Street
Cheyenne, Wyoming 82002