

**FILED**

JUL 22 1994

Terri A. Lorenzon, Attorney  
Environmental Quality Council

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL  
STATE OF WYOMING

IN THE MATTER OF OBJECTIONS TO )  
THE PERMIT APPLICATION OF AMAX ) No. 428-T2  
COAL COMPANY, EAGLE BUTTE MINE ) Docket No. 2573-94

MOTION FOR CONTINUANCE OF HEARING

Roger D. and Linda J. Pfeil ("Pfeils"), on behalf of themselves individually and their children, interested parties who are adversely affected by the proposed revision to the permit application for a mine permit for AMAX Coal Company ("AMAX") for the Eagle Butte Mine, Campbell County, Wyoming, hereby request a continuance of the hearing currently set for July 26, 1994 in Gillette, Wyoming for the following reasons:

1.

The Pfeils have only recently been able to obtain counsel, Anthony T. Wendtland, Esq., of the firm of Davis and Cannon of Sheridan, Wyoming. A copy of Mr. Wendtland's entry of appearance in this matter is attached. He was retained on July 18, 1994 and his first meaningful opportunity to review the matter and prepare for a July 26, 1994 hearing occurred beginning the afternoon of July 18, 1994.

2.

The current hearing setting of July 26, 1994 does not allow Pfeils sufficient notice or reasonable opportunity to prepare and present their case in this matter. This matter involves the review of numerous pages of materials associated with AMAX's most recent application to amend its mine plan for the Eagle Butte Mine.

This application includes but is not limited to the proposed mine plan, data, reports and correspondence associated with the proposed mine plan, technical data gathered by the DEQ and others, information and materials gathered by Pfeils, and proposed revision and information associated with the proposed revision of the mine plan. This information involves the review of literally thousands of pages of materials. See, e.g., Grams v. Environmental Quality Council, 730 P.2d 784, 790 (Wyo. 1986)(in reviewing a previous administrative decision on the Eagle Butte Mine Plan the Wyoming Supreme Court noted that the record contained literally thousands of pages of highly technical information). Most of this information requires the assistance of expert witnesses to interpret it and prepare it for hearing.

3.

The Pfeils made their initial objection to AMAX's application to amend their mine plan on July 6, 1994. The Pfeils were notified on July 11, 1994 that their objection had been received and that the hearing would be set in the future. On July 14, 1994, the Pfeils received a certified mail letter from the Environmental Quality Council indicating that their objection was set for hearing on July 26, 1994. The dates of July 16 and 17 were a weekend. They received the Scheduling Order in the case on June 18, 1994.

4.

The Pfeils sought out counsel and secured counsel promptly on July 18, 1994. Under this schedule, the Pfeils and

their counsel were left with approximately eight days (if weekend days are included) to review the mine plan and the proposed mine plan revision, to secure expert testimony, to conduct discovery, to prepare for the hearing and to otherwise marshal a case in support of their objections.

5.

Because of this schedule, the Pfeils had no time to serve, let alone conduct, adequate discovery that they are legally entitled to in a contested case hearing under W.S. 16-3-107 and other relevant provisions of the Wyoming Administrative Procedures Act (Wyoming Statute 16-3-101 through -115 (July 1990 Repl.)). Department and Council Rules granting objecting parties the rights to conduct discovery and otherwise granting them a reasonable time to prepare for a hearing on meaningless if made available in a space of less than ten days prior to a scheduled hearing. Had they been allowed to conduct discovery the Pfeils would have served written interrogatories, requests for production and noticed depositions of AMAX employees and State of Wyoming personnel designed to expose AMAX's knowledge and intent to mine adjacent to the Rawhide Village at the time they sought their most recent mine permit renewal and to establish that AMAX had represented in the past, as early as February 1990, that they had no intentions of mining adjacent to Rawhide Village until at least 2007. These facts might also reveal a conscious and knowing plan on the part of AMAX to use the revision process to circumvent public notice,

comment and objection to a renewal plan seeking to mine next to Rawhide Village in 1994.

6.

This scenario also denies the Pfeils their state and federal constitutional rights to a fair and meaningful hearing on their objections by denying them any reasonable time to prepare for the hearing. Simply holding a hearing will not erase the way the Pfeils have been hamstrung by the unreasonably short time they were given to prepare for the July 26, 1994 hearing.

7.

For reasons similar to those set out above, the Pfeils also object to the application to them of Wyoming Statute 35-11-406(k) in that said statute, on its face and as applied, works an unconstitutional denial of due process to every person who chooses to object to the approval of a mine permit application or a revision application in order to protect their fundamental right to private property. Twenty days is an unreasonably short period of time to prepare for a hearing on this type of matter under any circumstances. Scheduling a contested case hearing under W.S. 35-11-406(k) within twenty days or less of an objection and forcing that hearing to a conclusion by refusing a continuance to permit discovery effectively denies the objectors all fair and meaningful rights of discovery and prehearing preparation which are expressly guaranteed under W.S. 35-11-406(k) and W.S. 16-3-101 through -115 and the United States and Wyoming Constitutions.

8.

AMAX has informed counsel for the Pfeils that it intends to raise legal issues concerning the effect or non-effect of certain contracts between the parties on the Pfeils' ability to participate in the hearing. The Council does not have statutory or subject matter jurisdiction to determine these issues on July 26, 1994 or otherwise. It would be in the interests of justice, expediency and otherwise to continue this matter to allow the Pfeils and AMAX to review these issues and to deal with them in the proper forum if necessary before any hearing takes place.

9.

Despite reasonable requests made to counsel for the State and AMAX (Marilyn Kite), AMAX has refused to stipulate to a continuance of the July 26, 1994 hearing in this matter thereby forcing the Pfeils to file this Motion for Continuance.

WHEREFORE, Objectors Roger D. and Linda J. Pfeil respectfully request a continuance of the hearing concerning their objection to AMAX's proposed Form 11 Revision of their Eagle Butte Mine Plan for a period of at least sixty (60) days to allow them sufficient time to conduct discovery and to prepare for their contested case hearing in this matter.

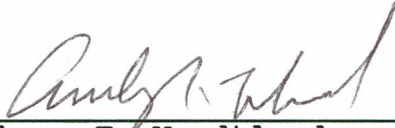
ALTERNATIVELY, in the event the Council determines that a hearing must be commenced within twenty (20) days pursuant to W.S. 35-11-406(k), the Pfeils respectfully request that the Council commence the hearing on July 26, 1994 and then continue it for at

least sixty (60) days to allow the Pfeils additional time to prepare their case further.

RESPECTFULLY SUBMITTED this 20th day of July, 1994.

DAVIS and CANNON

By:

  
Anthony T. Wendtland  
Attorney for Objectors Roger  
D. Pfeil and Linda J. Pfeil  
P. O. Box 728  
Sheridan, Wyoming 82801  
(307) 672-7491

CERTIFICATE OF SERVICE

I, Anthony T. Wendtland, attorney for Objectors Roger D. Pfeil and Linda J. Pfeil in the above-entitled and numbered cause, do hereby certify that on the 20th day of July, 1994, I caused a true and correct copy of the foregoing Motion for Continuance of Hearing to be served by placing the same in the United States mail, postage prepaid at Sheridan, Wyoming, to:

AMAX Coal West, Inc.  
c/o Marilyn Kite  
Holland & Hart  
P. O. Box 68  
Jackson, Wyoming 83001

VIA FACSIMILE

State of Wyoming  
Department of Environmental Quality  
c/o Thomas A. Roan  
Attorney General's Office  
123 Capitol Building  
Cheyenne, Wyoming 82002

VIA FACSIMILE

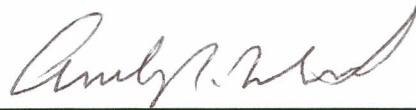
Terri A. Lorenzon  
Environmental Quality Council  
2301 Central Avenue, Room 407  
Cheyenne, Wyoming 82002

VIA FACSIMILE

Roger and Linda Pfeil  
209 Battle Cry Lane  
Gillette, Wyoming 82716

Douglas Miller  
198 Crazy Horse Lane  
Gillette, Wyoming 82716

Joe Gilsdorf  
Carla Okasanen  
205 Battle Cry Lane  
Gillette, Wyoming 82716



---

Anthony T. Wendtland