

FILED

JUL 22 1994

*Tami A. Lorenzon, Attorney
Environmental Quality Council*

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

IN THE MATTER OF OBJECTIONS)
TO THE MINING PERMIT APPLICATION) DOCKET NO. 2573-94
OF AMAX COAL WEST, INC., EAGLE)
BUTTE MINE, PERMIT NO. 428-T2)

O R D E R

The Protestants Roger O. and Linda J. Pfeil having filed a Motion for an Informal Conference Before the DEQ with the Environmental Quality Council (Council) on July 21, 1994, and the Council having considered the Motion finds as follows:

1. The Wyoming Environmental Quality Act, §§35-11-101-35-11-1428, W.S. 1977, As Amended provides that the "director may hold an informal conference if requested and take action on the application in accordance with the department's rules of practice and procedure, with the right of appeal to the council which shall be heard and tried de novo. A conference shall be held if the director determines that the nature of the complaint or the position of the complainants indicates that an attempt to informally resolve the disputes is preferable to a contested case proceeding." §35-11-406(k)
2. Section 406(k) places the decision to grant an informal conference within the discretion of the director of the Department of Environmental Quality (DEQ).
3. The Council and the DEQ are separate agencies and the Council, therefore, does not have authority to decide whether an informal conference should be granted.

CONCLUSION

As the decision to grant or deny the Motion is within the discretion of the director of the DEQ, the Council has no authority to grant the relief sought in this Motion, the Motion should be referred to the DEQ for a decision.

ORDER

The Motion for an Informal Conference Before the DEQ is hereby referred to the Director of the DEQ for a decision in accordance with the DEQ rules of practice and procedure, and insofar as the Motion seeks a decision on the appropriateness of an informal conference from the Council, the Motion is denied.

DATED THIS 22nd day of July, 1994

Harold L. Bergman
HAROLD L. BERGMAN, Hearing Examiner

CERTIFICATE OF SERVICE

I, Terri A. Lorenzon, certify that at Cheyenne, Wyoming, on the 22nd day of July, 1994, I served a copy of the foregoing ORDER by depositing copies of the same in the United States mail, postage prepaid, duly enveloped and addressed to:

Steve Youngbauer
Amax Coal West, Inc.
P. O. Box 3005
Gillette, WY 82717

Marilyn S. Kite (by FAX)
P. O. Box 68
Jackson, WY 83001

Anthony R. Wendtland (by FAX)
P. O. Box 728
Sheridan, wY 82801

Mr. & Mrs. Herbert Miller
198 Crazy Horse Lane
Gillette, WY 82716

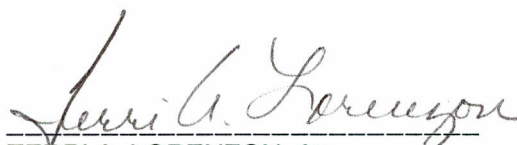
Joseph M. Gilsdorf & Carla Oksanen
205 Battle Cry Lane HCR 84
Gillette, WY 82716

and also to the following persons via interoffice mail:

Dennis Hemmer, Director
Department of Environmental Quality
122 W. 25th Street, Herschler Building
Cheyenne, WY 82002

Richard Chancellor, Acting Administrator (by FAX)
Land Quality Division
Department of Environmental Quality
122 W. 25th Street, Herschler Bldg.
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