

FILED

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BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL

Ardelle M. Kissler, Clerk
Environmental Quality Council

PETITION TO REOPEN APPLICATION
FOR PERMIT NO. 233

I. INTRODUCTION.

Belle Fourche Pipeline Company, a Wyoming corporation, (Belle Fourche) hereby requests that the hearing on the application for a mining permit filed by Atlantic Richfield Company in June, 1974, granted as Permit No. 233 in December, 1974, now assigned to its wholly-owned subsidiary, Thunder Basin Coal Company, hereinafter collectively referred to as Arco, be reopened and set for hearing and Belle Fourche be permitted to participate in such hearing.

II. RELEVANT FACTS.

Belle Fourche is a Wyoming corporation authorized by the Wyoming Public Service Commission to operate as an intrastate common carrier by pipeline, and by the Federal Energy Regulatory Commission (successor to the Interstate Commerce Commission) to operate as an interstate common carrier by pipeline. It began its operations in 1957.

As pertinent here, it built a 12 inch pipeline across Sections 16, 17, 21, 27, 28, 34 and 35 of Township 43 North, Range 70 West, 6th P.M., and Sections 1 and 12 of Township 42 North, Range 70 West, 6th P.M., Campbell County, Wyoming, in 1971. Some of these lands were "fee" lands for which Belle Fourche had to, and did, obtain right-of-way contracts granting easements. Copies of these contracts are attached as an appendix hereto. These were

filed with the County Clerk of Campbell County in August and December of 1970 and the line was then built, becoming operational in the latter part of 1971. This line has been in continuous use, over 60 million barrels of oil having been transported through it. Nor is this line even near the end of its useful life: Current flow is about 300,000 barrels each month (an annual rate of 3.6 million barrels). The line has at least another 30 years of estimated productive life, since it is high grade steel, wrapped, and cathodically protected.

When Arco filed its application for a strip mining permit in June, 1974, the permit area covered Sections 16, 17, 20, 21, 22, 23, 26, 27, 28, 29, 33, 34, 35 and 35 of Township 43 North, Range 70 West. The law then in force forbade any mining operations from being commenced unless in compliance with the requirements of §35-487.20, et seq. (Session Laws of Wyoming, 1973) and further specifically barred any mining from being begun or conducted without a valid mining permit (ibid, subsections 23 and 27).

The subsequent subsection (§35-487.24) enumerated the mandatory contents of a permit application. Among the requirements are the following: The identification of the land proposed to be within the permit area by legal description (§35-487.24(a) (vi) (A); and proof of publication in a newspaper of general circulation, and proof of the mailing of "a copy of the notice immediately after first publication to all owners of surface rights of the land within the permit area, to owners of the surface and

mineral rights of immediately adjacent lands and to any other person having a valid legal estate which might be affected by the proposed operations." (§35-487.24(e))

Arco's original application was introduced into evidence at the hearing in Board of Land Commissioners Docket No. 80-1, "Thunder Basin Coal Company v. Belle Fourche Pipeline Company" and the application was examined by Engineering Supervisor Roger Shaffer of the Department of Environmental Quality, Land Quality Division. His testimony, under oath, after examining the application, was that the application did not contain proof of notice to Belle Fourche of the application and that there was no affidavit of a publisher confirming the publication of the notice and the dates thereof. (TR. pp. 343-4, 348) Yet the application also shows that Arco knew there were pipelines within the permit area. (TR. p. 348)

The mandatory nature of the notice-mailing requirement of §35-487.24(e) is buttressed by §35-487.33. Protection of the surface owner. This section reads:

"(a) In those instances in which the surface owner is not the owner of the mineral estate proposed to be mined by mining operations a permit shall not be issued without one of the following:

"(i) The written consent of, or a waiver by, the owner or owners of the surface lands involved to enter and commence the mining operations on such land"

* * *

Although there have been some changes to the above-quoted statutes, the cited requirements have been carried over and still apply. The numbering system was changed in 1977 and §35-487.24(a) (vi) (A) now appears at §35-11-406(a) (vi) (A), while §35-487.24(e)

is at §35-11-406(f), and §35-487.33 is encompassed within §35-11-416.

Belle Fourche, having been granted rights in the surface of Sections 7, 17, 21, 27 and 34 (underscored areas are within the permit area) of Township 43 North, Range 70 West in Campbell County, which it caused to be duly recorded in the Campbell County Clerk's office in 1970, was patently an owner "of surface rights of the land within the permit area." (§35-487.24(e)) Moreover, Belle Fourche was granted rights in the surface of Sections 1 and 12 of Township 42 North, Range 70 West in that county (which were also recorded in 1970) and thereby qualified as an owner "of surface rights of immediately adjacent lands" (idem.)).

Nonetheless, sworn testimony with Arco's original application being examined at first hand proves that the mandatory notice was not sent to Belle Fourche or, for that matter, to the owner of the other pipeline within the permit area. Thus, under two separate provisions of the statute, Arco was required to give Belle Fourche individual notice of its application, but failed in its statutory duty.

In view of the destruction of the surface necessarily entailed in strip mining, it is undeniable that Belle Fourche's pipeline is in imminent danger and that its interest extends far beyond the protection of a mere technical right. Belle Fourche is patently within the class for whose protection the statute was enacted, but it has been deprived of its rights by Arco's failure to comply with the statute.

III. REQUEST FOR REOPENING.

The Environmental Quality Council had, at the time of

Arco's original application in 1974, the power to hear, according to the terms of the Wyoming Administrative Procedure Act, contests including those of the nature described herein (§35-487.12) and it still has such power (§35-11-112).

Belle Fourche affirms that it will adduce evidence to prove the existence of each fact alleged herein, including the fact of the existence of the cited statutes, and requests that the application proceeding which led to the erroneous and unlawful issuance of Permit No. 233 be reopened to accord Belle Fourche the opportunity to adduce such evidence.

Respectfully submitted,



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