

BEFORE THE
DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF WYOMING

IN THE MATTER OF A NOTICE)
OF VIOLATION ISSUED TO AMAX) N.O.V. No. 100054
COAL COMPANY PERMIT 214-T1)
BELLE AYR MINE)

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 AMAX Coal Company for an informal conference as provided by W. S. 35-11-901(c). At issue is the occurrence of the violation as described in N.O.V. No. 100054, issued by Mr. Roger Johnson, a designated, authorized representative for the Department of Environmental Quality. Said informal conference was held on January 10, 1984, at the Department of Environmental Quality, Room 3A, Equality State Bank Building, 19th and Pioneer, Cheyenne, Wyoming. AMAX Coal Company was represented by Mr. Steven Youngbauer, Mr. Ken Sinay and Mr. Phil Dinsmoor. The Land Quality Division was represented by Mr. Lyle D. Randen, Mr. Roger Johnson, Mr. Richard Chancellor, Mr. Roger Shaffer and Mr. Weldon S. Caldbeck, Assistant Attorney General, Wyoming Attorney General's Office.

Both AMAX Coal Company and the Land Quality Division participated in the informal conference. After reviewing the record and being fully advised in the premises, the Director hereby makes these Findings of Fact, Conclusions of Law and

Decision.

FINDINGS OF FACT

1. This matter was fully presented at the informal conference before Mr. Robert E. Sundin, Director, Department of Environmental Quality, on January 10, 1983. At issue was the occurrence of the violation specified in N.O.V. No. 100054, to wit: violation of W.S. 35-11-415(b)(iii); Land Quality Rules and Regulations, Chapter IV, Section 2C(1)(a); Land Quality Rules and Regulations, Chapter IV, Section 3J(2)(xi).

2. The Wyoming Department of Environmental Quality, Land Quality Division has issued a permit to mine for the AMAX Coal Company, Belle Ayr Coal Mine, permit number 214-T1.

3. A monthly inspection of the Belle Ayr Mine, permit 214-T1 was conducted by Mr. Roger Johnson, a designated, authorized representative of the Department, on November 18, 1983. As a result of said inspection, Mr. Johnson issued a Notice of Violation, N.O.V. No. 100054 for violation of topsoil requirements. The violation alleged that the operator, AMAX Coal Company, failed to strip topsoil prior to affecting lands; and, that the operator also failed thereby to stockpile, preserve and protect said topsoil. The area alleged to be affected was an access road to proposed sediment reservoir number BA31. It was affected by scrapers using the unstripped area as a route to the reservoir site. Although the area in question was not stripped of topsoil, it was prepared for travel by blading to create a smooth surface. The area affected was approximately 20 feet wide by one-tenth of a mile long.

4. AMAX Coal Company argues that the affected area described by N.O.V. No. 100054 was an exempt road, not an

access road; and, as an exempt road, there can be no violation for failure to strip topsoil.

5. The roadway in question, was utilized for access to the area of the proposed sediment reservoir BA31 for less than two days. Except for smoothing out the surface of the road with a blade, no extensive regrading and resurfacing was needed or performed.

6. The road in question existed as a ranch road since before the existence of the Belle Ayr Mine. As indicated on permit document, map 3.3-6, the road was designated and approved by the Department as an exempt road.

7. Topsoil material was not environmentally damaged or unnecessarily degraded.

CONCLUSIONS OF LAW

1. The Director has jurisdiction over the subject matter of and the parties to this proceeding pursuant to W.S. 35-11-901(c), 35-11-437(c)(i), 35-11-109(a)(i) and Wyoming Department of Environmental Quality Rules of Practice and Procedure, Chapter VI.

2. Land Quality Division rules and regulations, Chapter I, Section 2(73)(d) defines "Exempted roads" as: roads within the pit and those roads maintained by the County, State or Federal Government, or those roads which are existing private roads except:

- (i) When the existing road requires extensive regrading and resurfacing in order to render the road usable; or

(ii) Upgrading of the road requires cuts, fills, and borrow areas.

2. The road utilized by AMAX Coal Company, which is the subject of N.O.V. 100054, was listed and is approved as an exempt road in their permit number 214-T1. Evidence does not reveal that the road was extensively regraded and resurfaced in order to render the road usable; nor was the road upgraded by cuts, fills, and borrow areas.

3. As an exempt road, topsoil stripping requirements found at Land Quality Division Rules and Regulations, Chapter IV, Section 2C(1)(a) and Section 3j(2)(xi) will not apply. Similarly, the requirements of W.S. 35-11-415(b)(iii) will not apply.


DECISION

Notice of Violation No. 100054 issued by the Land Quality Division on November 18, 1983 to the AMAX Coal Company, Belle Ayr Mine, permit number 214-T1 is hereby vacated on the following grounds.

1. The record reveals the said affected area was an exempted road pursuant to Land Quality Division Rules and Regulations, Chapter I, Section 2(73)(d) and permit 214-T1.

DATED this 14th day of February, 1984.

WYOMING DEPARTMENT OF
ENVIRONMENTAL QUALITY


Robert E. Sundin, Director