

FILED

AUG 16 1983

Ardelle M. Kissler, Clerk
Environmental Quality Council

BEFORE THE ENVIRONMENTAL
QUALITY COUNCIL

IN THE MATTER OF NOTICE OF)	
VIOLATION 100020 ISSUED TO)	
AMAX COAL COMPANY, EAGLE)	DOCKET NO. <u>1260-83</u>
BUTTE MINE, PERMIT 428 FOR)	
FAILURE TO FOLLOW APPROVED)	
PERMIT)	

PETITION TO REVIEW AND VACATE
NOTICE OF VIOLATION 100020 TO
AMAX COAL COMPANY

On July 18, 1983, AMAX Coal Company, Eagle Butte Mine, Permit 428 received Notice of Violation No. 100020 from the Department of Environmental Quality-Land Quality Division (DEQ-LQD) for "Failure to follow approved mine plan. Sediment ponds 68, 70 and 71 were constructed prior to submitting designs and details of the changes to the Division. The 1982 annual report stated that the ponds would be built during the coming year. Xxx". (A copy of the Notice is attached as Exhibit A).

AMAX Coal Company (AMAX) agrees that the 1982 annual report stated that sediment ponds 68, 70 and 71 would be built during the coming year and that the ponds were built. However, the construction of sediment ponds as a mitigation measure was specifically outlined and approved in Eagle Butte Mine, Permit 428. As such, the construction of sediment ponds 68, 70 and 71 was not a change in our approved mine plan. AMAX did follow it's approved mine plan.

NOW, THEREFORE, pursuant to W.S. 35-11-112(c), W.S. 35-11-437c(ii), and Chapter I, Section 3, Department of Environmental Quality Rules of Practice and Procedure, AMAX petitions the Environmental Quality Council to review and vacate Notice of Violation 100020.

I. FACTS

A. On May 5, 1976, AMAX received approval of it's permit application from the State of Wyoming, DEQ-LQD, to conduct surface coal mining operations at

Eagle Butte Mine, (Permit 428). The construction of sediment ponds as a mitigation measure was specifically outlined and approved in this permit. This permit was administratively extended by DEQ-LQD and the Office of Surface Mining on August 11, 1980, contingent on AMAX meeting the performance standards in the Act.

On May 10, 1982, AMAX submitted the 1982 Annual Report for Eagle Butte Mine (Permit 428) to DEQ-LQD. In that report AMAX stated that sediment ponds 68, 70 and 71 were planned for completion during the report period. The 1981-1982 Annual Inspection Report dated June 7, 1982 from DEQ-LQD stated on page 2 under Future Activities,

Besides the normal pit advance, sediment ponds 68, 70 and 71 and NPDES ponds 010 and 011 are planned. Other activities include construction of a wash bay for the trucks, a track scale drain system and a silo water system. All changes and construction activities not outlined in the approved permit must be submitted and approved before construction. (emphasis added)

On May 5, 1983, AMAX submitted the 1983 Annual Report for Eagle Butte Mine to Land Quality Division which stated;

Sediment ponds, containment ponds (see Map 10). Sediment 68, 70 and 71 Reservoirs were constructed during the report period. These sedimentation reservoirs drain disturbed areas and are designed to retain the runoff from a 10-year -- 24-hour event and a one-year sediment accumulation.

B. On July 13, 1983, the DEQ-LQD issued Notice of Violation No. 100020 to AMAX Coal Company, Eagle Butte Mine, Permit 428. AMAX received service on July 18, 1983. The notice states; "Failure to follow approved mine plan. Sediment ponds 68, 70 and 71 were constructed prior to submitting designs and details of the changes to the Division. The 1982 Annual Report submitted May 10, 1982, stated that the ponds would be built during the coming year. The 1982 Annual Inspection Report dated June 7, 1982, specifically stated that such changes had to be submitted and approved prior to construction. (emphasis added) Rich Ruyle, DEQ/WQD, inspected the above ponds on May 18, 1983, and found them to be constructed". The Notice stated the violation was of Chapter XIV, Section I.a., Land Quality Division Rules and Regulations."

C. On July 27, 1983, AMAX submitted as-built designs and specifications of the above mentioned sediment ponds to the Department of Environmental Quality and the Land Quality Division. These drawings along with an on-site inspection of the sediment ponds disclosed that they were constructed in compliance with the performance standards of the Act. As noted in the Notice of Violation, AMAX had obtained a permit to construct from Water Quality Division as required by the Environmental Quality Act. AMAX also requested in this letter that Notice of Violation No. 100020 be vacated and withdrawn because there was no violation as specified in W.S. 35-11-437(b). (See Exhibit B) The letter informed DEQ that construction of sediment ponds was outlined and approved in the permit as a mitigation measure and that construction was neither a change nor resulted in a revised mining or reclamation plan which substantially differs from the approved permit as specified in Chapter XIV Section I.a., of Land Quality Division regulations. AMAX requested an informal conference with the Director if the order was not withdrawn or vacated.

On July 29, 1983, AMAX received a modification of Notice 100020 which deleted Chapter XIV, Section I.a., Land Quality Division Rules and Regulations as the provision violated section and added W.S. 35-11-411(b). (See attached Exhibit C)

II. RELEVANT STATUTES AND LAND QUALITY RULES AND REGULATIONS

A. STATUTES

1. Section 35-11-411. Annual report.

(a) An operator shall file an annual report with the administrator on or within thirty (30) days prior to the anniversary date of each permit. The report shall include:

(i) The name and address of the operator and the permit number;

(ii) A report in such detail as the administrator shall require supplemented with maps, cross sections, aerial photographs, photographs, or other material indicating:

(A) The extent to which the mining operations have been carried out;

(B) The progress of all reclamation work

(C) The extent to which expectations and predictions made in the original or any previous reports have been fulfilled, and any deviation therefrom, including but not limited to the quantity of overburden removed, the quantity of minerals removed, and the number of acres affected.

(iii) A revised schedule or timetable of operations and reclamation and an estimate of the number of acres to be affected during the next one (1) year period.

(b) Upon receipt of the annual report the administrator shall make such further inquiry as shall be deemed necessary after consultation with the advisory board. If the administrator objects to any part of the report or requires further information he shall notify the permittee as soon as possible and shall allow a reasonable opportunity to provide the required information, or take such action as shall be necessary to remove the objection.

(c) As soon as possible after the receipt of the annual report the administrator shall conduct an inspection of the site of the operation. A report of this inspection shall be made a part of the permittee's annual report and a copy shall be delivered to the operator.

2. Section 35-11-415. Duties of operator.

(a) Every operator to whom any permit or license is issued shall comply with all requirements of this act, the rules and regulations promulgated hereunder, and reclamation plans and other terms and conditions of any permit or license.

(b) The operator, pursuant to an approved surface mining permit and mining plan and reclamation plan, or any approved revisions thereto, shall:

(viii) Prevent, throughout the mining and reclamation operation, and for a period of five (5) years after the operation has been terminated, pollution of surface and subsurface waters on the land affected by the institution of plantings and revegetation, the construction of drainage systems and treatment facilities including settling ponds and the casing, sealing of boreholes, shafts, and wells so that no pollution is allowed to drain untreated into surface or subsurface water in accordance with state or federal water quality standards, whichever are higher, as may be required in the approved reclamation plan;

3. Section 35-11-437. Enforcement for surface coal mining operations.

(b) The director or his designated authorized representative shall issue a notice fixing a reasonable time for abatement and impose any necessary affirmative obligations if:

(i) On the basis of an inspection, it is determined that a permittee is in violation of this article, land quality division regulations or any permit conditions; and

(ii) A cessation order is not required under subsection (a) of this section.

(c) Any notice or order issued pursuant to this section may be affirmed, modified, vacated or terminated by:

(i) The director or his authorized representative; or

(ii) The council, if the operator or any person having an interest which is or may be adversely affected files a petition for review within thirty (30) days of the receipt of the notice or order. The council shall order any necessary investigation and provide a public hearing, if requested. Any public hearing shall be conducted as a contested case proceeding in accordance with the Wyoming Administrative procedure Act. (Section 9-4-101 through

9-4-115).

B. LAND QUALITY DIVISION RULES AND REGULATIONS

1. Chapter XIV, Section I.a.,
 Prior to any change in mining or reclamation operations from those described in the approved permit application, the operator may contact the department for a determination of whether an application for a permit revision shall be required and, if required, when it shall be filed. An application for a permit revision shall be required whenever the operator proposes to conduct a revised mining or reclamation operation, as defined in Chapter 1, Section 2, Land Quality Rules and Regulations.
2. Chapter XIV, Section 5.a.,
 The administrator, with the concurrence of the director, may require the operator to submit an application for permit revision and comply with all requirements of this chapter. Any such requirement shall be based on written findings that, upon review of the operator's annual report or inspection of the existing operation, there is or is intended to be conducted a revised mining or reclamation operation. Such review or inspection shall be conducted at least each year upon receipt of the operator's annual report. Right of review shall be afforded as provided in the Wyoming Administrative Procedure Act.
3. Chapter 1, Section 2(71)
 "Revised mining or reclamation operations" means mining and/or reclamation operations conducted during the term of a permit which substantially differ from those operations described in the original mine permit application and approved under the original permit.
4. Chapter IV, Section 3g(1)
 All surface drainage from affected lands excluding sedimentation ponds, diversion ditches and road disturbances shall pass through a sedimentation pond(s) before leaving the permit area. Sedimentation control devices shall be constructed prior to disturbance and shall be retained until the affected lands have been restored, and the untreated drainage from such lands will not degrade the quality or receiving water.

III. AMAX FOLLOWED THE APPROVED PERMIT WHEN IT CONSTRUCTED SEDIMENT PONDS 68, 70 AND 71. NO VIOLATION OF THE ENVIRONMENTAL QUALITY ACT, LAND QUALITY DIVISION REGULATIONS OR THE PERMIT OCCURRED.

A. The construction of Sediment Ponds as a mitigation measure was outlined and approved in Eagle Butte Mine permit 428. The approved permit contains no stipulation which requires specific design drawings be submitted prior to construction. As can be noted from the design drawings and the on-site inspection, the construction of the sediment ponds complied with the performance standards required by the Environmental Quality Act

and Chapter IV of Land Quality Divisions Rules and Regulations. In fact, failure by AMAX to construct sediment ponds 68, 70 and 71 would have been a violation of W.S. 35-11-415(a) and (b)(viii), Chapter IV Section 3g(i) of the Land Quality Divisions Rules and Regulations and approved Permit 428.

B. AMAX obtained a permit to construct sediment ponds 68, 70 and 71 from the Department of Environmental Quality-Water Quality Division (DEQ-WQD). The Environmental Quality Council promulgated new Chapter III; Regulations for Permit to Construct, Install or Modify Public Water Supplies, Wastewater Facilities and other Facilities Capable of Causing or Contributing to Pollution on June 23, 1983. One of the comments to the proposed regulations was that Chapter III was duplicative and unnecessary especially with DEQ-LQD. The Staff Analysis of this comment accepted by the Environmental Quality Council in their promulgation of Chapter III states; the Environmental Quality Act under W.S. 35-11-30(a)(ii) and (v) stipulates that unless a person had a permit issued pursuant to this Act, it is a violation to construct the referenced facilities. There is no language in Article 4 of the Act which allows Land Quality Division the same authority as the Water Quality Division. The Land Quality Division does not have authority to develop standards for water quality protection or to develop construction, installation or modification standards for sewage systems, treatment works or disposal systems. Since AMAX had obtained a permit to construct from DEQ-WQD, AMAX complied with the Environmental Quality Act and failure to submit design drawings to Land Quality Division prior to construction is not a violation of the Act.

C. Prior to receipt of Notice of Violation 100020 Land Quality Division had not specifically requested design drawings of sediment ponds 68, 70 and 71 prior to construction. As indicated by the 1981-1982 Annual Inspection Report dated August 3, 1982, Land Quality Division stated; "All changes and construction activities not outlined in the approved permit must be submitted and approved before construction". Contrary to Notice of Violation 100020 the 1981-1982 Annual Inspection Report dated June 7, 1982 did not specifically state that such changes had to be submitted nor did

they make a finding that construction of the sediment ponds was a change or that it was not outlined in the permit. It is AMAX's position that construction of the ponds was not a change of the approved permit.

D. Notice of Violation 100020 stated under the Provision(s) of the Regulations, Act, or Permit Violated Section; "Chapter XIV, Section I.a., Land Quality Division Rules and Regulations". As indicated by Exhibit B this section of the Statute was not appropriate. The modification of Notice 100020 deleted Chapter XIV, Section I.a., and added W.S. 35-11-411(b). W.S. 35-11-411(a) states that an operator shall file an annual report and lists what the report shall include. The 1982 Annual Report for Eagle Butte mine (Permit 428) included all information required by W.S. 35-11-411(a). W.S.35-11-411(b) states the responsibility and the limit of the authority of the Land Quality Division. AMAX submits that there was no violation of W.S. 35-11-411(b):

1. No inquiry for further information as specified in W.S. 35-11-411(b) was ever made as to the design drawings of sediment ponds 68, 70 and 71 prior to their construction.

2. If the language in the 1981-1982 Annual Inspection Report is determined to be additional inquiry then DEQ-LQD failed to consult with the advisory board prior to such inquiry as required by W.S. 35-11-411(b). Such inquiry was also unnecessary since an on-site inspection by the DEQ-LQD would determine whether the sediment ponds were constructed in accordance with the performance standards of the Act.

3. Since W.S. 35-11-411(a) specifically states what is required in an operators annual report such further inquiry in W.S. 35-11-411(b) is limited by those items in W.S. 35-11-411(a).

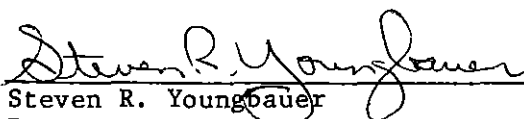
4. AMAX cannot violate W.S. 35-11-411(b) because this is the DEQ-LQD statutory responsibility - not an operators.

IV. THEREFORE, AMAX RESPECTFULLY REQUESTS THE FOLLOWING:

A. AMAX further requests that the Council conduct a contested case hearing on this matter. That the Environmental Quality Council review and vacate Notice of Violation 100020 issued to AMAX Coal Company, Eagle Butte Mine, Permit 428 for failure to follow approved mine plan.

B. Such hearing should only be held if the Director of Environmental Quality or the Land Quality Division fails to withdraw Notice of Violation 100020 as requested in Exhibit B and/or the dispute is not resolved in the informal conference as requested by AMAX with the Director or such informal conference is not held as requested.

Respectfully submitted,



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Attachments (Exhibits A, B and C to Environmental Quality Council)