

# AMAX COAL COMPANY

A DIVISION OF AMAX INC.

WESTERN REGION OFFICE  
ENERGY TECHNICAL CENTER

1901 ENERGY COURT

P.O. BOX 3005  
(307) 682-8857

GILLETTE, WY 82716



November 20, 1985

Mr. Randolph Wood  
Department of Environmental Quality  
Land Quality Division  
Herschler Building  
122 W. 25th Street  
Cheyenne, Wyoming 82001

CERTIFIED NO. P 402 687 204

Dear Mr. Wood:

Enclosed is a copy of the AMAX Coal Company Petition to Review and Vacate Notice of Violation 100809. A copy is also being sent to Terri Lorenzon for the Chairman of the Environmental Quality Council. To protect AMAX's right of appeal, this petition requests a contested case hearing if the notice is not vacated or the dispute not resolved at the informal conference.

If you have any questions, please feel free to contact me.

Sincerely,

Steven R. Youngbauer  
Regulatory Affairs Counsel  
(307) 687-3240

SRY/ja  
WOH/706

Attachments

cc: Roger Shaffer  
Terri Lorenzon (Environmental Quality Council)

## FILED

NOV 21 1985

Ardelle M. Kissler, Clerk  
Environmental Quality Council

NOV 21 1985

Ardelle M. Kissler, Clerk  
Environmental Quality Council

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL

IN THE MATTER OF NOTICE OF )  
VIOLATION 100809 ISSUED TO )  
AMAX COAL COMPANY, EAGLE )  
BUTTE MINE, PERMIT 428-R1 )  
FOR FAILURE TO FOLLOW )  
APPROVED MINE PLAN )

DOCKET NO. 1681-85

AMAX COAL COMPANY  
PETITION TO REVIEW AND VACATE  
NOTICE OF VIOLATION 100809

On October 25, 1985, AMAX Coal Company, a Division of AMAX Inc., ("AMAX") Eagle Butte Mine, Permit 428-R1 received Notice of Violation No. 100809 from the Department of Environmental Quality - Land Quality Division ("DEQ-LQD") for failure to follow the approved mine plan by not constructing Sediment EB73, 75, and 76 Reservoirs. (A copy of Notice No. 100809 is attached as Exhibit A.)

The abandoned construction of Sediment EB73, 75, and 76 Reservoirs was in conformity with the approved mine plan in permit no. 428-R1. No violation as specified in W.S. 35-11-437(b)(i) occurred.

NOW, THEREFORE, pursuant to W.S. 35-11-112(c), W.S. 35-11-437(c)(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 No. 100809.

I. FACTS

- A. On November 29, 1984, AMAX received approval of Eagle Butte Mine Permit Revision 428-R1. This permit changed the location and development of the south pit specified in Permit 428.
- B. In April, 1985, AMAX received approval for additional construction projects in the Eagle Butte Mine south pit. These projects included construction of the Oxbow Diversion, sediment reservoirs, and topsoil removal. Prior to the construction of the Oxbow Diversion, Sediment EB73, 75, and 76 Reservoirs were included for sediment control during topsoil removal. This approval plan stated, "After the Oxbow Diversion construction, these reservoirs will be abandoned."

- C. On June 29, 1985, AMAX diverted the Little Rawhide Creek through the Oxbow Diversion. After that date, sediment control for the area draining to the now abandoned Little Rawhide Creek was provided by a temporary blocking dike, which routed disturbed water to EBNPDES 014B Reservoir.
- D. On July 2, 1985, construction of the downstream embankment (Blocking Dike) of Sediment EB103 Reservoir began.
- E. Topsoil removal in the Little Rawhide Creek drainage began on July 8, 1985, after the construction of the Oxbow Diversion, diverting of Little Rawhide Creek, and the routing of disturbed water via the temporary blocking dike to EBNPDES 014B Reservoir.
- F. On July 11, 1985, Jon Sweet, of the Department of Environmental Quality - Land Quality Division conducted an inspection of the Eagle Butte Mine. His inspection included the activities along the abandoned Little Rawhide Creek. In his inspection report Mr. Sweet stated, "No violations were observed. With the myriad of projects on going at the site, it is certainly heartening to find all things under control."
- G. On October 25, 1985, AMAX was issued Notice of Violation No. 100809 which states, "As noted during the July 11, 1985, inspection the operator failed to follow the approved mine plan by not constructing Sediment Reservoirs EB73, EB 75, and EB 76."
- H. On November 8, 1985, AMAX submitted additional information within 15 days of service as provided by W.S. 35-11-901(c). AMAX requested if Notice of Violation No. 100809 is not vacated or withdrawn, an informal conference be held as provided in W.S. 35-11-901(c). (See attached Exhibit B.)

## 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) (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.

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:

(i) Conduct all surface mining and reclamation activities within the permit in conformity with the approved plan;

(vii) 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.

B. LAND QUALITY DIVISION RULES AND REGULATIONS

1. 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.

2. Chapter IV, Section 3g(1)

All surface drainage from affected land 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 of receiving water.

3. 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.

4. 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.

### III. DISCUSSION

- A. AMAX's decision not to construct Sediment EB73, 75, and 76 Reservoirs was in conformity with the approved plan.

The approved plan indicated that prior to construction of the Oxbow Diversion topsoil removal in the Little Rawhide Creek drainage would require the construction of several reservoirs to protect the creek. This included Sediment EB73, 75, and 76 Reservoirs. The plan specifically stated, "After the Oxbow Diversion construction, these reservoirs will be abandoned."

AMAX diverted Little Rawhide Creek through the Oxbow Diversion on June 29, 1985. Because topsoil removal did not begin until after construction of the Oxbow Diversion, the diverting of Little Rawhide Creek and routing of disturbed water via the temporary blocking dike to EBNPDES 014B Reservoir, Sediment EB73, 75, and 76 Reservoirs were no longer required. AMAX abandoned construction of Sediment EB73, 75, and 76 Reservoirs in conformity with the approved plan.

- B. Chapter XIV

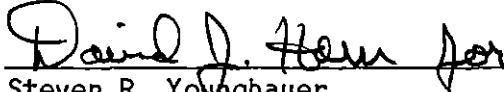
Chapter XIV of the Land Quality Division Rules and Regulations specifies when an operator is required to obtain a permit revision. Chapter XIV, Section 1.a., states that prior to any change in the mining or reclamation operations from those described in the approved permit application, the operator may contact the department for a determination of whether an application for a permit revision shall be required. A permit revision shall be required whenever the operator proposes to conduct a revised mining or reclamation operation, as defined in Chapter I, Section 2, Land Quality Rules and Regulations. Chapter I, Section 2, (70) defines revised mining or reclamation operations as 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.

Even if the approved plan had not expressly provided AMAX with the right to abandon construction of Sediment EB73, 75, and 76 Reservoirs, according to Wyoming law AMAX's decision not to construct the reservoirs would not have required a permit revision. AMAX cannot be in violation of W.S. 35-11-415 (b)(i) when Chapter XIV does not require the approved plan be changed.

IV. THEREFORE, AMAX RESPECTFULLY REQUESTS THE FOLLOWING:

- A. The Council should conduct a contested case hearing on this matter. Because no violation as specified in W.S. 35-11-437(c) (i) occurred, the Environmental Quality Council should review and vacate Notice of Violation 100809 issued to AMAX Coal Company, Eagle Butte Mine, Permit 428-R1 for failure to follow approved mine plan.
- B. The hearing should only be held if the Director of the Department of Environmental Quality or the Land Quality Division fails to withdraw Notice of Violation 100809 as requested in Exhibit B or the dispute is not resolved in the informal conference with the Director.

Respectfully submitted,



Steven R. Youngbauer  
Regulatory Affairs Counsel  
AMAX Coal Company  
P.O. Box 3005  
Gillette, WY 82716  
(307) 687-3240

Attachments (Exhibits A and B)

**FILED**

NOV 21 1985

Ardelle M. Kissler, Clerk  
Environmental Quality Council