

**FILED**

AUG 27 1987

Terri A. La...  
Environmental Quality Council

AGREEMENT

This Agreement is made this 27 day of August, 1987, by and between the Wyoming Department of Environmental Quality and the Air Quality Division of the Wyoming Department of Environmental Quality (hereinafter collectively referred to as "DEQ"), Mobil Coal Producing, Inc. ("Mobil"), AMAX Coal Company ("AMAX"), The Carter Mining Company ("Carter Mining"), Thunder Basin Coal Company ("Thunder Basin") and Cordero Mining Company ("Cordero").

Recitals

A. Various disputes have arisen between and among the parties regarding the issuance by the DEQ of ambient air quality permits to govern surface coal mining operations in the Powder River Basin. Those disputes are pending before the Wyoming Environmental Quality Council ("EQC").

B. The disputes involve challenges to decisions by the DEQ to issue Wyoming Air Quality Permits No. CT-208A3, MD-51, MD-63, MD-64 and CT-727 (collectively referred to as "the disputed air quality permits"). They also involve challenges to the DEQ's determination of the existence and scope of AMAX's "vested rights" at its Belle Ayr Mine, as set forth in the DEQ's letter of June 20, 1986 (Attachment A) (referred to as "the disputed vested rights determination"). References in this

Agreement to "the dispute proceedings" include those EQC proceedings which involve the disputed air quality permits, the disputed vested rights determination, and any disputes which may be initiated with respect to the proposed air quality permits identified in paragraph 1.

C. The disputes are requiring a disproportionate allocation of the DEQ's resources and are threatening the efficient and orderly administration of Wyoming's air quality program. Governor Sullivan has advised the parties of his view that extended litigation over the disputes is not in the best interests of the State of Wyoming, and he has therefore encouraged the parties to find ways and means to resolve the disputes without extended litigation.

D. Encouraged by Governor Sullivan and based on their own desires to resolve the disputes amicably and thereby avoid the time, expense and uncertainty of further litigation, the parties entered into a stipulation before the EQC on December 17, 1986 to stay all proceedings until June 30, 1987 so that settlement possibilities could be fully explored. By agreement of the parties, that stay was subsequently extended to its current expiration date of September 30, 1987.

E. In pursuit of a possible settlement, the DEQ and industry parties have jointly explored various technical solutions and have concluded that "new permits" recently issued or

to be issued to the industry parties will largely achieve the parties' settlement objectives. Those "new permits" are specifically identified in paragraph 1.

F. The parties recognize that questions will inevitably arise regarding the administration and enforcement of the new permits. Although it is not possible or practicable to resolve all of those questions now, the parties note that it has been the practice of the Air Quality Division, in the administration and enforcement of air quality permits, to identify the causes of problems that arise and to resolve the problems accordingly.

NOW, THEREFORE, in consideration of the foregoing recitals and the following promises, it is agreed as follows:

1. This Agreement assumes and is expressly conditioned on the occurrence of all of the following events:

(a) The continuation or issuance of Wyoming air quality permits for mine plans (including but not limited to the following parameters: annual rates of production, mining area, mining sequence, pit locations, and life-of-mine) as described in the following air quality permits and pending applications:

(i) AMAX for the Belle Ayr Mine, the continuation of permits MD-64 and CT-727; and

- (ii) Carter Mining for the Caballo Mine, in accordance with the application submitted on May 15, 1987; and
- (iii) Mobil for the Caballo Rojo Mine, in accordance with the application submitted on May 29, 1987; and
- (iv) Cordero for the Cordero Mine, in accordance with the application submitted on May 29, 1987; and
- (v) Thunder Basin for the Coal Creek Mine, in accordance with the application submitted on June 1, 1987.

The permits issued and to be issued, as described in this paragraph 1(a), are collectively referred to as the "new permits."

- (b) No new permit shall be conditioned upon the continued validity of any other new permit. Simultaneously with the issuance of the permits described in subparagraphs 1(a)(ii) through (v), the modification of Conditions No. 8 in both AMAX permit MD-64 and AMAX permit CT-727 to state only the analytical basis on which they were issued.
- (c) The survival of the new permits against any administrative and/or judicial challenge that might be made against them.

(d) Withdrawal and rescission by DEQ of the disputed vested rights determination (Attachment A) without prejudice to any future decision by DEQ, to the same or different effect, regarding the subject matter of the disputed vested rights determination and without prejudice to the right of any party to contest any such future decision. Any such withdrawal and rescission as a condition of this Agreement shall occur only after all of the other conditions in this paragraph 1 have been satisfied.

(e) Approval of this Agreement by the Environmental Quality Council.

2. The DEQ shall process the permitting actions described in paragraph 1 as expeditiously as possible, consistent with its obligations under applicable law.

3. The dispute proceedings before the EQC shall be stayed until December 31, 1987, by which time it should be possible to determine whether or not the conditions set forth in paragraph 1 have been satisfied.

4. The parties (other than AMAX) by agreeing to the stay herein or the stay of December 17, 1986 (as subsequently extended to September 30, 1987) do not waive, relinquish or in

any way diminish their contention that permits MD-64 and CT-727 should not have been issued in light of the stay agreement of December 17, 1986. AMAX agrees and recognizes that the agreement of the other parties to the foregoing stays (i) does not operate to validate the issuance of permits MD-64 and CT-727, and (ii) does not estop the other parties from challenging the validity of permits MD-64 and CT-727. Until the stay period before the EQC has finally expired or the conditions set forth in paragraph 1 have been satisfied, therefore, any actions taken by AMAX under permits MD-64 and CT-727 are recognized by AMAX to be taken at the risk of a subsequent decision that those permits should not have been issued in violation of the stay agreement of December 17, 1986.

5. The affected coal mining operations will be constructed and operated solely in accordance with the contents of the approved new permits (including but not limited to the following parameters: annual rates of production, mining area, mining sequence, pit locations, and life-of-mine), and the parties will not assert any claim of grandfathered rights, vested rights or prior permit rights as a basis for expanding the rights authorized or limited by the new permits. Any subsequent changes or modifications to the new permits will be subject to the same Wyoming Air Quality Standards and Regulations ("WAQSR") Section 21 requirements that are generally applicable to air quality permits for coal mining operations.

The new permits will each contain a condition which clearly states that the affected coal mining operations will be constructed and operated solely in accordance with the contents of the approved new permits and that subsequent changes or modifications will be subject to WAQSR Section 21.

6. This settlement does not resolve the pending dispute regarding the existence and scope of any "vested rights" AMAX may have at its Belle Ayr Mine. In view of their agreement that future operations will be governed by the new permits, the parties believe it unnecessary to resolve that dispute. If any "vested rights" (including any grandfathered rights or prior permit rights) are hereafter asserted, however, the parties are free to challenge them as fully as if this settlement had not been reached.

7. If no challenges to the new permits are filed, other than by parties to this Agreement, within the sixty-day period provided for such challenges under Chapter I, Section 16a, of the DEQ's Rules of Practice and Procedure, the DEQ shall promptly notify the industry parties in writing. Within ten days after receipt of such notice, the parties shall promptly execute a joint stipulation withdrawing their challenges in the dispute proceedings and requesting dismissal of those proceedings by the EQC.

8. If any of the new permits are timely challenged before the EQC by a non-party to this Agreement, the DEQ shall promptly so notify the industry parties in writing. If that occurs, the parties shall extend the stay referred to in paragraph 3 for an appropriate period. No industry party shall intervene or otherwise seek to participate in any such proceeding before the EQC for the purpose of opposing the issuance of any new permit(s) under challenge. If and when the issuance of any challenged new permit is sustained by the EQC, and by any other body on appeal from a decision by the EQC, the DEQ shall promptly so notify the industry parties in writing. Within ten days after receipt of such notice respecting the last of any new permit challenges to be so decided, the parties shall promptly execute a joint stipulation withdrawing their challenges in the dispute proceedings and requesting dismissal of those proceedings by the EQC.

9. This Agreement is predicated on the issuance and survival against legal challenge of all of the new permits, as indicated in paragraph 1. If the conditions set forth in that paragraph are not satisfied, this Agreement shall be null, void and of no effect; provided, however, that any failure of the conditions may be waived in writing by any aggrieved party within fifteen days after the occurrence of such failure, in which case this Agreement shall continue in full force and



effect; and provided further, however, that the provisions of paragraph 4 of this Agreement shall survive even if this Agreement should otherwise fail.

10. If this Agreement should fail and that failure not be timely waived under paragraph 9, the parties are free to recommence litigation in the dispute proceedings.

WHEREFORE, this Agreement is executed by the parties in seven originals this 27 day of August, 1987.

WYOMING DEPARTMENT OF  
ENVIRONMENTAL QUALITY

By: Randolph Wood

AIR QUALITY DIVISION, WYOMING  
DEPARTMENT OF ENVIRONMENTAL  
QUALITY

By: ~~Steve J. Z...~~ Charles A. Collins

AMAX COAL COMPANY

By: Steve J. Z...  
By One of Its Attorneys  
THE CARTER MINING COMPANY

By: Bernie R. Henry  
ONE OF ITS ATTORNEYS  
CORDERO MINING COMPANY

By: James L. ...

MOBIL COAL PRODUCING, INC.

By: *R. G. McGinn*

THUNDER BASIN COAL COMPANY

By: *Lydia D. Kanden*

APPROVAL OF WYOMING ENVIRONMENTAL QUALITY COUNCIL

The foregoing Agreement executed by the parties was submitted to the Wyoming Environmental Quality Council at its public meeting on September 15, 1987, by the Director of the Wyoming Department of Environmental Quality. Without prejudice to the rights of any persons who may timely challenge the permits identified in paragraph 1 and without obligating itself to approve such permits(s) if a timely challenge is made, the Wyoming Environmental Quality Council, upon motion duly made, seconded, and affirmatively voted for by the requisite number of its members, approves the foregoing Agreement subject to the conditions contained therein.

Dated this 15 day of September, 1987.

*John C. Schiffer*  
Chairman, Wyoming Environmental  
Quality Council