

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL

STATE OF WYOMING

IN THE MATTER OF AMAX COAL COMPANY,)
BELLE AYR MINE, FORM 11 REVISION FOR)
AN INTERIM POSTMINING TOPOGRAPHY)
CHANGE AT BELLE AYR MINE (PERMIT NO.)
214-T3; TFN 2 1/239).)

FILED

JAN 09 1992

Terri A. Lorenzon, Adm. Ass.
Environmental Quality Council

PETITION FOR ORDER IN LIEU OF CONSENT
AND
APPEAL FROM ADMINISTRATIVE DECISION

Docket # 2342-92

JURISDICTION

1. COMES NOW the Petitioner, AMAX COAL COMPANY, whose address is P.O. Box 3005, Gillette, WY 82717-3005, by and through its undersigned attorney, and pursuant to the Wyoming Environmental Quality Act, sections 35-11-112, and Chapter I, Section 3 of the Wyoming Department of Environmental Quality Rules of Practice and Procedure, to state and allege as follows:

PARTIES

2. Petitioner, Amax Coal Company, and Meadowlark Farms, Inc., are wholly owned subsidiaries of AMAX Coal Industries, Inc., a Delaware Corporation. Mobil Coal Producing Inc., is a subsidiary of Mobil Oil Corporation, a New York Corporation. The Land Quality Division of the State of Wyoming is a division of the State of Wyoming's Department of Environmental Quality.

I

PETITION

3. This is a Petition for an Order in lieu of surface owner consent as provided by Wyoming Statute 35-11-406(b)(xii).

STATEMENT OF COMMON FACTS

4. On or about April 16, 1979, Consolidation Coal Company, Mobil Oil Corporation and Meadowlark Farms, Inc., entered into an Easement and Encroachment Agreement (hereinafter Agreement) whereby each party granted to the other the right to encroach upon parcels of land along which they shared a common boundary for the purpose of conducting mining operations as well as reclamation and other operations related to mining. Mobil Coal Producing Inc.,

(hereinafter Mobil) is the successor in interest to Consolidation Coal Company and Mobil Oil Corporation.

5. The above referenced Agreement was incorporated into AMAX's Belle Ayr Mine Permit (Permit No. 214-T3) and Mobil's Caballo Rojo Mine Permit serving as an "instrument of consent from the surface land owner", as required for all applications for a mining permit by Wyoming Statute 35-11-406(b)(xii).

6. Under Petitioner's reclamation plan contained in Permit 214-T3, the affected lands along the common boundary between Petitioner and Mobil are not fully reclaimable, and, thus, Petitioner's reclamation bond is not fully releasable, until Mobil mines their coal from the area.

7. Chapter IV, Section 3(a)(i) of the Wyoming Department of Environmental Quality - Land Quality Division, Rules and Regulations provides that backfilling and grading of an affected area " . . . shall follow coal removal as contemporaneously as possible . . .".

8. Petitioner desires to comply with the above cited regulation by backfilling and grading the lands to their approximate original contour, and by fully reclaiming the affected land and attaining bond release as expeditiously as possible.

9. To effectuate final reclamation and ultimate bond release, on or about September 19, 1991, Petitioner submitted to the Department of Environmental Quality, Land Quality Division a proposed Form 11 Revision for an Interim Postmining Topography Change at the Belle Ayr Mine (Permit No. 214-T3; TFN 2 1/239). Petitioner's Form 11 Revision would provide for final reclamation and ultimate bond release. Petitioner's Form 11 Revision is detailed so as to illustrate the full proposed surface use including proposed routes of egress and ingress.

10. The ultimate use of the affected lands is livestock grazing and wildlife habitat. As submitted, Petitioner's Form 11 revision provides that the affected lands will be reclaimed to standards applicable to livestock grazing and wildlife habitat.

11. On the 24th day of September, 1991, a copy of the Revision for an Interim Postmining Topography Change at the Belle Ayr Mine was submitted to Mobil, as surface owner, for review and approval in accordance with Wyoming Statute 35-11-406(b)(xii)(A).

12. By letter dated October 17, 1991, addressed to Mark Taylor, Wyoming DEQ-LQD, the mine manager for Mobil, B.D. Hanson, filed a "response" to the Form 11 Revision stating that Mobil had concerns with the "minor revision" submitted by AMAX.

13. The Wyoming DEQ-LQD has interpreted Mobil's "response" as

a denial of "consent" by the surface owner; thusly, by letter dated November 12, 1991, Petitioner's proposed revision was disapproved by the Department of Environmental Quality, Land Quality Division, due to "lack of surface owner consent from Mobil Coal Producing, Inc."

THEREFORE, Petitioner avers, states and alleges as follows:

14. That on the 24th day of September, 1991, the Form 11 Revision for Interim Postmining Topography Change at the Belle Ayr Mine was submitted to the surface owner of the affected land for approval as required by Wyoming Statute 35-11-406(b)(xii)(A).

15. That the submitted Form 11 Revision included a reclamation plan map sufficiently detailed so as to illustrate the full proposed surface use including proposed routes of egress and ingress as required by Wyoming Statute 35-11-406(b)(xii)(B)

16. That the use contemplated in the Form 11 Revision does not substantially prohibit the operations of the surface owner as provided by Wyoming Statute 35-11-406(b)(xii)(C).

17. That the proposed revision reclaims the surface to its approved future use, as soon as feasibly possible as provided by Wyoming Statute 35-11-406(b)(xii)(D).

18. That Petitioner operates a surface coal mine and has legal authority to extract coal by surface mining methods as provided in Wyoming Statute 35-11-406(b)(xii)(E).

WHEREFORE, Petitioner requests that the Environmental Quality Council convene a hearing on this matter, that the Council grant Petitioner's request for an Order in Lieu of Consent, and that the Council grant such other and further relief as the Council finds just and equitable.

II

APPEAL FROM ADMINISTRATIVE DECISION

19. Part II of this Petition is an Appeal from a decision by the Administrator of the DEQ-LQD disapproving a Form 11 Revision of an Interim Postmining Topography Change at Petitioner's Belle Ayr Mine (Permit No. 214-T3; TFN 2 1/239) due to lack of surface owner consent from Mobil Coal Producing, Inc.

SUPPLEMENTAL FACTS

20. Petitioner incorporates all those facts and allegations contained in paragraphs 1 through 17 of this Petition as fully as if set forth hereafter.

21. An original application for mining permit is conditioned upon the applicant securing an "instrument of consent from the surface landowner", as set out in Wyoming Statute 35-11-406(b)(xii). This requirement is applied to permit revisions by virtue of the provisions set out in Chapter XIV, Section 4(a) of the DEQ Rules of Practice and Procedure.

22. The Easement and Encroachment Agreement between Mobil and Petitioner, dated April 16, 1979, which Agreement is incorporated into the Belle Ayr Permit 214-T3, Volume 1, Adjudication File, Section 1.4.2, is a bona fide "instrument of consent" for Petitioner's original application for a mining permit, and the provisions of this instrument provided the necessary statutory "consent" for the original application.

II-A

The April 16, 1979, Easement and Encroachment Agreement between Mobil and Petitioner is a bona fide "instrument of consent" for Petitioner's proposed Form 11 Revision.

23. The Easement and Encroachment Agreement between Mobil and Petitioner provides for such events as the revision of reclamation plans. Section 3(f) of this Agreement expressly states that:

". . . Should any unforeseen circumstances require a change in operations from any such (mining or reclamation) plan, the Party submitting such plan shall notify the other Party at least 60 days prior to commencing such changed operation."

24. And, while Section 4 of the Agreement provides that both parties should concur in such a revision, as set out below:

". . . all activities to be conducted by either Party on the Premises shall have the prior concurrence of representatives of both the Parties (the "Representatives"), provided such concurrence shall not be unreasonably withheld. The . . ."

25. Section 4 of the Agreement also provides that failure to object to the revision on a timely basis in a procedurally correct manner is concurrence:

". . . The Parties further agree that the failure to object to any proposed activity within 60 days after receiving notification thereof pursuant to Section 13 hereof shall be deemed to be concurrence therewith by such nonobjecting Party."

26. And, Section 13(b) of the Agreement provides that:

"(b) Any notices or other communications to be given under Section 4 hereof shall be in writing and shall be sent by first class certified mail, return receipt requested, postage prepaid, to the Parties at their respective mailing addresses . . ."

27. Petitioner complied with Section 13(b) by notifying Mobil on October 1, 1991, of the change in operations (proposed Form 11 revision) by first class certified mail, return receipt requested, postage prepaid at the appropriate address.

28. Mobil failed to communicate to Petitioner an objection to the proposed revision, pursuant to the procedure set out in Section 13(b) of the Agreement, within 60 days of their notification of the Form 11 Revision. Thus, by their failure to object and by the express terms of the Agreement, Mobil has consented to the proposed revision.

WHEREFORE, Petitioner requests that the Environmental Quality Council convene a hearing on this matter, that the Council find consent of the surface owner has been given; that the Council direct the Wyoming Department of Environmental Quality - Land Quality Division to approve Petitioner's Form 11 Revision; and that the Council grant such further relief as is deemed just and equitable.

II-B

Petitioner's Form 11 Revision requires no additional surface owner consent because Petitioner's Belle Ayr Permit (214-T3) expressly provides that where interim topography can be matched to existing topography, and where re-mining of the area by the neighboring company is not anticipated for at least ten years, reclamation may be finalized in the area so that bond release can be obtained.

29. Petitioner incorporates all those facts and allegations contained in paragraphs 1 through 22 of this Petition as fully as if set forth hereafter.

30. Petitioner's Belle Ayr Permit, 214-T3, Volume 4, pages 4.8-8 and 9, provides as follows:

"AMAX will initially create interim topography in the overstrip corridors. This interim topography will provide temporary reclamation and environmental protection while facilitating long-term economical mining and ultimate reclamation. Where the interim topography can be successfully matched to the existing topography, and where re-mining of the area by a neighboring company

is not anticipated for at least ten years, reclamation may be finalized in these areas so that bond release can be obtained. In the event that bond release is desired before adjacent mines re-affect common corridors, a revised final reclamation plan for those areas will be submitted to WDEQ-LQD."


31. Petitioner avers that the interim topography in the affected area can be successfully matched to the existing topography.

32. Petitioner further avers that Mobil's current approved mine plan shows that they will not mine the affected area for at least ten (10) years.

33. Petitioner desires to finalize reclamation in the affected area so that bond release can be obtained.

WHEREFORE, Petitioner requests that the Environmental Quality Council convene a hearing on this matter, that the Council find no additional consent of the surface owner need be given; that the Council direct the Wyoming Department of Environmental Quality - Land Quality Division to approve Petitioner's Form 11 Revision as submitted; and that the Council grant such further relief as is deemed just and equitable.

DATED this 8th day of January, 1992.



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Regulatory Affairs
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CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the foregoing document by registered mail, return receipt requested, on the 8th day of January, 1992, to the following named persons:

Chairman - Environmental Quality Council
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