

FILED

BEFORE THE DIRECTOR

JAN 10 2003

DEPARTMENT OF ENVIRONMENTAL QUALITY

Terri A. Lorenzon, Director
Environmental Quality Council

IN THE MATTER OF the petition for review)
By Black Butte Coal Company of the Notice)
Of Violation, Permit No. 467-T4,)
NOV No. 100358)

Doc. No. 02-4601

PETITION FOR HEARING BY BLACK BUTTE COAL COMPANY

Pursuant to Wyoming statute section 35-11-112(a)(iii) and Chapter I, General Rules of Practice and Procedure, Black Butte Coal Company ("Black Butte"), a Wyoming corporation in good standing, by and through its undersigned counsel, hereby petitions the Environmental Quality Council for a hearing in this case contesting the administration or enforcement of the law, rules, and regulations as represented by the attached Findings of Fact, Conclusions of Law and Decision (Exhibit 1), dated December 24, 2002. In support of this petition, Black Butte provides the following:

1. Name and address of petitioner and attorney, if any:

Black Butte Coal Company
Attn: Bill Hill, Mine Manager
Black Butte Coal Company
Box 98
Point of Rocks, WY 82942

Kate M. Fox
Davis & Cannon
2710 Thomes Ave.
Box 43
Cheyenne, WY 82003-0043

2. The action, decision, order or permit upon which a hearing is requested or an objection is made:

Attached Director's Findings of Fact, Conclusions of Law and Decision (Director's Order) dated December 24, 2002

3. A concise statement of the facts on which the request or protest is based:

Black Butte sought review by the Director of the DEQ's issuance of an NOV and associated fine arising from Black Butte's alleged failure to seed and crimp on the contour. The Director found that Black Butte had not violated its permit and he rescinded the NOV and penalty. The Director then ordered that the permit be revised to include the following;

¶3. All seeding, discing and mulch crimping will be done on the contour.

(Director's Order p. 4)

Black Butte recognizes that seeding, discing, and mulch crimping is generally best done on the contour. However, this absolute requirement conflicts with the Rules and Regulations, and would place Black Butte in a position that it could not avoid a permit violation.

Chapter 4, Environmental Protection Performance Standards for Surface Coal Mining Operations, Section 2 (d) (v) states:

Seeding which is accomplished by mechanical drilling shall be on the topographic contour, unless for safety reasons it is not practicable, or perpendicular to the prevailing wind on flat areas.

This language, unlike the proposed permit term, recognizes that it is not always feasible to seed, disc and mulch on the contour. Further, when the area to be seeded, disced and mulched adjoins native or previously reseeded areas, a strict requirement for

contour seeding, discing and mulching would require driving a tractor and drill over the existing vegetation, thus damaging that area and risking other permit violation and penalties.

4. Relief requested.

This issue could be simply resolved by a minor modification to the permit language in the Director's Order, so that Paragraph 3 would read:

3. All seedings, discing, and mulch crimping will be done on the contour, except in those areas bordering existing and native areas or where for safety reasons it is not practicable. Haulroads and narrow disturbance areas will be seeded parallel to the disturbance boundaries to minimize additional disturbance.

Dated this 13th day of January, 2003.

Kate M. Fox

Kate M. Fox
DAVIS & CANNON
P.O. Box 43
Cheyenne, WY 82003
(307) 634-3210 (phone)
(307) 778-7118 (telefax)