

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

AUG 30 2001

IN THE MATTER OF)
THE ORDER ISSUED TO) EQC Docket No. 01-4202
PETE LIEN & SONS, INC.,)
PERMIT NO 567(s))
Terri A. Lorenzon, Director
Environmental Quality Council

PETITION FOR REVIEW

Pete Lien & Sons, Inc., ("Lien") petitions the Wyoming Environmental Quality Council ("EQC") to review the decision of the Department of Environmental Quality ("DEQ") Land Quality Division ("LQD") to issue its Order in DEQ Docket No. 3297-01, requiring Lien to submit a new drainage control plan, to revise the mining sequence and post-mining topography, and to cease reclamation and mining until the revision is approved. A copy of this Order is attached as Exhibit 1. Pursuant to Chapter I, Section 3(c), Department of Environmental Quality Rules of Practice and Procedure, Lien sets forth the following in support of its petition for review:

1. The name and address of the person making the request is Pete Lien & Sons, Inc., P.O. Box 440, Rapid City, South Dakota 57709. Legal counsel for Lien are Craig D. Grotenhouse, counsel for Lien, and Edward W. Harris, of Holland & Hart, LLP, 2515 Warren Avenue, Suite 415, Cheyenne, WY 82001.

2. As recited in its Order, LQD inspected Lien's mine and "found the mining operation was being conducted in conformance to the approved permit issued by the Land Quality Division." Because the mine was operating in compliance with its permit, there is neither a factual basis nor any legal authority for the LQD to order revisions to the drainage control plan or mining sequence. In particular, LQD has no factual basis and no legal authority to order a cessation of mining and reclamation.

3. In its Order, LQD cites Wyo. Stat. § 35-11-109(a)(i) as authority for its action. This statute provides:

(a) In addition to any other powers and duties imposed by law, the director of the department shall: (i) Perform any and all acts necessary to promulgate, administer, and enforce the provisions of this act and any rules, regulations, orders, limitations, standards, requirements or permits

adopted, established, or issued thereunder, and to exercise all incidental powers as necessary to carry out the purposes of this act.”

While the powers granted in this statutory provision are broad, they do not include the authority to order cessation of mining or revisions to the plans when a mine is operating in compliance with its permit.

4. LQD also cites Wyo. Stat. § 35-11-109(a)(xii) as authority for its Order. This statute provides the director the power to “Exercise all the powers granted to administrators by W.S. § 35-11-110.” However, Wyo. Stat. § 35-11-110 does not give the LQD administrator authority to order a cessation of mining and reclamation or revisions to the drainage and mine plans. Because the administrator lacks this authority, this state provides no basis for the director to assume such powers.

5. LQD’s Order also cites its Non-Coal Rules and Regulations, Chapter 7, Section 5(a), as authority. This regulation provides:

The Administrator, with the concurrence of the Director, may require the operator to submit an application for permit revision and comply with all the 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.”

There have been no such written findings, and there is no evidence that Lien intends to conduct a revised operation. This regulation also gives LQD no legal authority to sustain its Order.

6. Finally on its list of citations, LQD relies on Wyo. Stat. § 35-11-406(b)(v) and (xiii). These statutory sections indicate what LQD may require as part of an operator’s application for a mining permit. They do not give LQD authority to require a mine that already has a mining permit to revise its plans, and plainly does not give LQD authority to issue a cessation order to a mine that is complying with its permit.

7. LQD might have authority under Wyo. Stat. § 35-11-437 to order a cessation of mining and revisions to the mining plan if Lien’s operation were a surface coal mine and if:

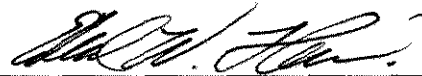
On the basis of an inspection, it is determined that condition or practice exists, or violation is occurring, which creates an imminent danger to the public or which is causing or may reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.”

However, LQD made no findings of violations or imminent danger or harm. To the contrary, it specifically found that Lien is operating in conformance with its mining permit. Moreover, this statute applies only to surface coal mines. Lien's mine is not a surface coal mine, and the statutes and regulations do not give LQD comparable authority to shut down non-coal mines or order revisions to their plans. Most significant, a cessation order issued without the procedural safeguards provide by Wyo. Stat. § 35-11-437 would violate Lien's rights to due process and protections against takings without just compensation.

8. Because LQD's Order lacks factual support and legal basis, it should be vacated and reversed immediately in order to avoid irreparable harm and damage to Lien. Lien requests a hearing before the Environmental Council, and asks that LQD's Order be vacated, reversed, and declared beyond the authority of LQD.

DATED this 30th day of August, 2001.

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