

BEFORE THE  
WYOMING ENVIRONMENTAL QUALITY COUNCIL

**FILED**

JUN 27 2003

IN THE MATTER OF THUNDER )  
BASIN COAL COMPANY, BLACK )  
THUNDER MINE'S, APPEAL OF )  
NOTICE OF VIOLATION # 100172, )  
DOCKET # 3480-03, PERMIT 233-T6 )

Terri A. Lorenzon, Direc  
Environmental Quality Col

DOCKET NUMBER 03-4200

---

DEPARTMENT OF ENVIRONMENTAL QUALITY'S OBJECTION TO BLACK  
THUNDER COAL COMPANY'S REQUEST FOR STAY

---

COMES NOW the Department of Environmental Quality, Land Quality Division (Division), through the Office of the Attorney General, pursuant to Department Rules of Practice and Procedure, Chapter II, Section 3, and hereby moves the Environmental Quality Council to deny BLACK THUNDER COAL COMPANY'S REQUEST FOR STAY. As grounds for the Division's OBJECTION, it is affirmatively averred and alleged as follows:

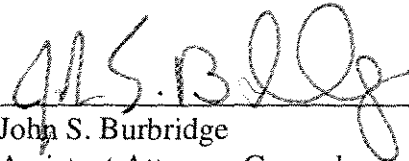
1. The policy and purpose of the Wyoming Environmental Quality Act (Act) is to prevent, reduce and eliminate pollution of the air, water and land of Wyoming to protect the public health and welfare, prevent public or private nuisances caused by pollution, and prevent pollution that impairs the beneficial use of domestic, agricultural, and other beneficial use of land within the state pursuant to W.S. § 35-11-102.
2. The Division is authorized to enforce the policy and purpose of the Act pursuant to W.S. § 35-11-401 et. seq. and W.S. § 35-11-110.

3. W.S. § 35-11-415(b)(viii) requires the operator of a mine to “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.”
4. On May 7, 2003, Black Thunder was issued NOV # 100172 based on an inspection that occurred on April 29, 2003. The NOV alleges that Black Thunder failed to provide sediment control for lands affected by mining and failed to follow its approved mining plan. In addition, the NOV required remedial action by Black Thunder to “submit a plan and design for providing sediment control for the affected lands” within 15 days of receipt of the NOV and required “as built drawings to supersede” the mine’s existing mine plan within 30 days of receipt of the NOV.
5. An inspection by the division on June 19, 2003, revealed that during a recent rain event, post NOV interim sediment control measure initiated by the mine had failed to provide adequate pollution control as required under Wyoming law.
6. If a stay is granted in the above captioned matter, further pollution to the state’s waters will occur downstream of Black Thunder mine in violation of W.S. § 35-11-415(b)(viii).

WHEREFORE the Department of Environmental Quality, Land Quality Division, through

the Office of the Attorney General respectfully request that the Council enter an ORDER denying Black Thunder Coal Company's request for stay for the aforementioned reasons.

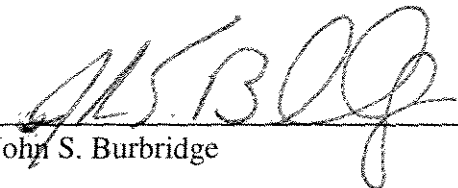
DATED this 27<sup>th</sup> day of June, 2003.

  
\_\_\_\_\_  
John S. Burbridge  
Assistant Attorney General  
123 Capitol Building  
Cheyenne, Wyoming 82002  
307-777-7841

**CERTIFICATE OF SERVICE**

I, John Burbridge, certify that the foregoing DEPARTMENT OF ENVIRONMENTAL QUALITY'S OBJECTION TO BLACK THUNDER COAL COMPANY'S REQUEST FOR STAY was served by facsimile on this 27<sup>th</sup> day of June, 2003 to the following:

Wendy S. Hutchinson  
Regulatory Affairs Manager  
Black Thunder Coal Company  
Fax # 307-464-2313

  
\_\_\_\_\_  
John S. Burbridge