

APR 2 1982

Terri A. Lorenzon, Adm. Aide  
Environmental Quality Council

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL  
OF THE STATE OF WYOMING

IN THE MATTER OF THE NOTICES OF )  
VIOLATION ISSUED TO ROBERT C. )  
SCHARP, MINE MANAGER, JACOBS )  
RANCH MINE, KERR-McGEE COAL )  
CORPORATION, CALLER BOX 3013, )  
GILLETTE, WYOMING 82716, )  
PERMIT NO. 271. )

Docket No. 1046-82

AMENDED PETITION FOR HEARING

COMES NOW Kerr-McGee Coal Corporation, by and through its attorneys, Godfrey & Sundahl, and submits its Amended Petition for Hearing before the Wyoming Environmental Quality Council. In support of this Amended Petition for Hearing and Petition for Review, Kerr-McGee Coal Corporation respectfully shows as follows:

1. This action is filed pursuant to the provisions of W.S. 35-11-437(c). This Petition is also filed pursuant to the provisions of Chapter I and II of the Rules of Practice and Procedure of the Environmental Quality Council.

2. This Petition is filed in duplicate and is hand delivered to the Chairman of Council at the Cheyenne Office of the Environmental Quality Council and to Robert Sundin, Director, Department of Environmental Quality.

3. The name and address of the person making this request is:

Jacobs Ranch Mine, Kerr-McGee Coal Corporation,  
Caller Box 3013, Gillette, Wyoming 82716, and

Kerr-McGee Coal Corporation, Kerr-McGee Center,  
P.O. Box 25861, Oklahoma City, Oklahoma 73125

4. The name and address of the attorneys for Kerr-McGee Coal Corporation are as follows:

Godfrey & Sundahl  
P.O. Box 328  
Cheyenne, Wyoming 82001

Barbara Hoffman, Attorney  
Law Department  
Kerr-McGee Corporation  
P.O. Box 25861  
Oklahoma City, OK 73125

5. The action upon which the Hearing is requested is four alleged Notices of Violation dated February 5, 1982, together with a proposed assessment issued by the Director of the Department of Environmental Quality, Robert Sundin, dated March 4, 1982, in the amount of \$2,500.00.

c: IQD (W. Ackerman) 5-4-82.ak.

6. This Amended Petition for Hearing and Review supplements the Petition for Hearing and the request for temporary relief previously filed by Kerr-McGee Coal Corporation herein.

7. Your Petitioner incorporates herein by this reference each and every fact, cited statute, regulation and position of the Petitioner previously set forth in its Request for Temporary Relief and Petition for Hearing as if more particularly set forth in full at length herein.

8. In addition, your Petitioner also objects to the proposed assessment of \$2,500.00 and the bases which are alleged to support such assessment. In so doing so, Kerr-McGee Coal Corporation does not admit, and in fact specifically denies, that the alleged Notices of Violation dated February 5, 1982 are appropriate or supported in law or in fact.

9. In addition to the facts, statutes, regulations and positions previously asserted by Kerr-McGee Coal Corporation in connection with its original Petition, Kerr-McGee objects to the assertion in the March 4, 1982 letter of assessment from Robert E. Sundin that there have been problems noted in past inspections. The alleged problems and dates of inspection set forth in the March 4, 1982 letter are erroneous. The "standards" employed by the Director for determining the amount of the proposed penalty are not supported by statute. In addition, they are not supported by any regulations. Chapter XVII, Section 3, provides that in determining the amount of the penalty, if any, to be assessed, consideration shall be given to, among other things, the "operator's history of previous violations at the particular surface coal mining operation, regardless of whether any led to a civil penalty assessment." There is no history of any previous violations at the Jacobs Ranch Mine, and perceived "problems" may not lawfully form the basis for an assessment. In addition, Kerr-McGee denies that any "problems" existed in connection with past inspections.

10. By letter dated March 4, 1982, Robert E. Sundin stated as follows:

"You should take special notice that you have only fifteen days from the date of this letter to request a conference with me for an informal resolution of any dispute over either the amount of the penalty or the occurrence of the violation. If you do not request this conference, within thirty days from the date of this letter, you must either pay the proposed penalty in full or petition to the Environmental Quality Council for formal review of the penalty amount of the fact of the violation. If you decide to petition the Council, you must submit with your Petition for Review, cash or a bond equal to the proposed amount of the penalty. I will stress that, if you miss both period for informal review, you

must pay the penalty in full with no opportunity for review either by myself, the council or the Courts. If you fail to pay the penalty, it will be recovered in a civil action brought against you by the Attorney General's Office."

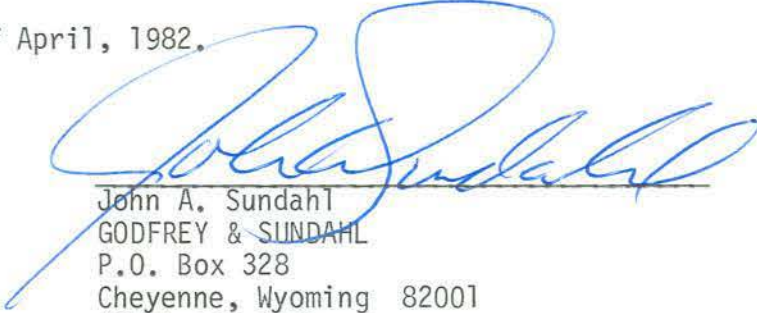
Pursuant to the March 4, 1982 letter, as well as the provisions of W.S. 35-11-901(c) and Chapter XVII, Section 3, an informal conference was formally requested in writing on March 18, 1982. A true and accurate copy of said request is attached hereto and incorporated by this reference. Said request was hand delivered on the date of the letter. As of this Petition, the informal conference has not yet been held.

11. Under W.S. 35-11-901(d), if the director holds a conference and determines that the violation did occur and the amount of the penalty which is warranted, Kerr-McGee Coal Corporation would have fifteen days from such a determination to either pay the proposed penalty in full or Petition the Council for review of either the amount of the penalty or the fact of the violation. The Statute further provides that when such a review is instituted, the Petitioner must submit a "bond equal to the proposed amount of the penalty at the time of filing the Petition. The bond shall be conditioned for the satisfaction of the penalty in full, or as modified by the Council, if the director's determination as to the occurrence of the violation and the assessment of a penalty are affirmed". In order to avoid any confusion as to when the appeal time commences, Kerr-McGee Coal Corporation tenders herewith a bond in the amount of \$2,500.00, which is the proposed amount of the penalty. Said tendered bond is attached hereto and incorporated by this reference. Kerr-McGee Coal Corporation respectfully requests that the bond be approved by the Council, so that the Petition may become effective. In filing this bond, Kerr-McGee Coal Corporation is attempting to comply with all statutory and regulatory requirements so that when the Petition is heard on its merits, all procedural aspects of the case will be properly before the Council. However, in tendering the bond, Kerr-McGee does not admit that the violations did occur or, if they did occur, that the amount of the penalty determined by the director is appropriate.

WHEREFORE, Petitioner, Kerr-McGee Coal Corporation, respectfully requests that the Environmental Quality Council reverse and vacate the four Notices of Violation dated February 5, 1982, and that the Environmental Quality Council reverse

and vacate the proposed assessment of \$2,500.00. Kerr-McGee Coal Corporation also respectfully requests that the bond be discharged.

DATED this 2 day of April, 1982.

  
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John A. Sundahl  
GODFREY & SUNDAHL  
P.O. Box 328  
Cheyenne, Wyoming 82001  
(307) 632-6421  
Attorneys for Kerr-McGee Coal Corporation

CERTIFICATE OF SERVICE

I, John A. Sundahl, do hereby certify that I served a true and accurate copy of the foregoing by depositing the same in the United States Mail, postage prepaid, on April 2, 1982, to Mr. Weldon Caldbek, Assistant Attorney General, State Capitol Building, Cheyenne, Wyoming 82002.

  
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John A. Sundahl