

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL

KERR-McGEE COAL CORPORATION,)
)
 Petitioner,)
)
 v.)
)
 DEPARTMENT OF ENVIRONMENTAL)
 QUALITY, AIR QUALITY)
 DIVISION,)
)
 Respondent.)

No.

FILED

MAY 17 1985

Terri A. Lorenson, Adm. Aide
Environmental Quality Council

PETITION FOR HEARING

1. Petitioner is Kerr-McGee Coal Corporation, a Delaware corporation, P. O. Box 25861, Oklahoma City, Oklahoma 73125. Petitioner's attorney is John A. Sundahl, Godfrey & Sundahl, 403 Rocky Mountain Plaza, P. O. Box 328, Cheyenne, Wyoming 82003.

2. This petition for hearing is predicated on Petitioner's objection to the Air Quality Division (AQD) Administrator's denial of Petitioner's request to extend the expiration date of Wyoming AQD Permit CT-178/PSD Permit 8AH-A. The Council has jurisdiction to hear this matter pursuant to W.S. § 35-11-112(a)(iii) and (iv), and W.S. § 35-11-801.

3. Petitioner obtained an AQD permit to construct a coal mine in Campbell County. The name for the proposed mine is "East Gillette Federal".

4. As provided in Section 21.h. of AQD's Standards and Regulations, a permit to construct becomes invalid if

construction is not commenced within twenty-four (24) months after receipt thereof, unless the Administrator extends the permit's expiration date. The Administrator may extend such time period(s) upon a satisfactory showing that an extension is justified.

5. The East Gillette Federal permit to construct was due to expire on November 2, 1984. Petitioner requested an extension of time for reasons explained in its letter of October 15, 1984, attached as Exhibit "A".

6. The primary reason why construction has not commenced is that a mine permit has not been issued by the Department of Environmental Quality, Land Quality Division (LQD). By memorandum dated May 6, 1983, Petitioner was informed by LQD that it intended to delay its review of Petitioner's mine permit application until applications for existing mines could be processed. Petitioner's objections, attached as Exhibit "B", did not change LQD's position.

7. On October 15, 1984, LQD had still not completed its review of the mine permit application, so Petitioner was still unable to begin construction of its mine.

8. By letter dated April 4, 1985 (attached as Exhibit "C"), the Administrator informed Petitioner that its request for a two-year extension of Permit CT-178 was denied. (Since the State of Wyoming has the authority to issue PSD permits, and since the Administrator's decision

on Permit CT-178 effectively nullifies PSD Permit 8AH-A, Petitioner assumes that its request for an extension of the latter permit has also been denied by the Administrator.)

9. The Administrator listed five (5) "concerns" he had with Petitioner's request in his April 4 letter. The first "concern" was that the permit is "stale" and no longer "realistic". In fact, Petitioner's mining plan has not changed in any significant respect since it applied for the AQD and PSD permits to construct. The mining sequence is the same; the only difference is that mining did not begin in the year projected by Petitioner because a mine permit was not issued by LQD when Petitioner thought it would be. Furthermore, the active pits of nearby mines have moved away from the East Gillette Federal permit area so that, if anything, Petitioner's permit now overestimates what the cumulative consumption of the clean air resource will be when Petitioner begins mining.

10. The Administrator's second "concern" is that a "significant change in emission patterns caused by the substantial delay in mining would render" permit decisions he has made for other operations in the area "questionable". If that is so, then those other decisions are already questionable and a 1 1/2 year delay would not make them more so. However, a delay in mining means that no emissions are resulting from Petitioner's operations. It is difficult to see how fewer emissions would make his

other permit decisions, made in reliance on more emissions, "questionable".

11. The Administrator's third "concern" relates back to his first, and he states that "it would seem reasonable, where circumstances have changed considerably, for a permittee with a stale application to be required to make the same showing as would be required of a new applicant." Petitioner's circumstances have not changed "considerably" and the permit is not "stale". The only change is that Petitioner was not able to begin mining when it planned because LQD had not issued a mine permit. Furthermore, Petitioner has proposed to the Administrator that an application for a permit revision would be submitted during the period of the requested permit extension. This application would update the mining schedule and incorporate any other modifications to the plans for development which may be necessitated by the delay in the LQD's issuance of the mine permit. Considering the current coal market conditions, this application for revision would propose a reduced rate of production and air resource use. Petitioner's proposal differs from the Administrator's requirement to submit a new permit application in that it offers a measure of protection of the prior investment of the Petitioner in this project. Therefore, the requested two-year extension with the condition that an application for a permit revision be submitted meets the stated needs

of both the Administrator and the Petitioner and is warranted by the delay in the issuance of the mine permit by the LQD.

12. The Administrator's fourth "concern" seems to be that if he granted an extension, he could not review or revise the Best Available Control Technology (BACT) requirements for the permit. This argument is specious for two reasons: 1) BACT has not changed for surface coal mines in the last seven years; and 2) Petitioner has two permits which apparently were combined when the AQD was approved by the U. S. Environmental Protection Agency (EPA) to administer its Prevention of Significant Deterioration (PSD) program. One of the two permits is a PSD permit, thereby allowing the Administrator to review PSD requirements, including those for BACT, in deciding whether to grant an extension of that permit's expiration date.

13. The Administrator's final "concern" is that AQD "cannot rely upon the 'hope' of Kerr-McGee that changes which might be reflected in future permit amendments would reduce emissions and improve the quality of the ambient air". The Administrator can, however, rely upon the current permit which is legally enforceable and protects the ambient air quality. Thus, the Administrator can extend this permit without relying on any "hope" of Kerr-McGee's.

14. If the Administrator's denial of Petitioner's request to extend its air quality permits to construct is

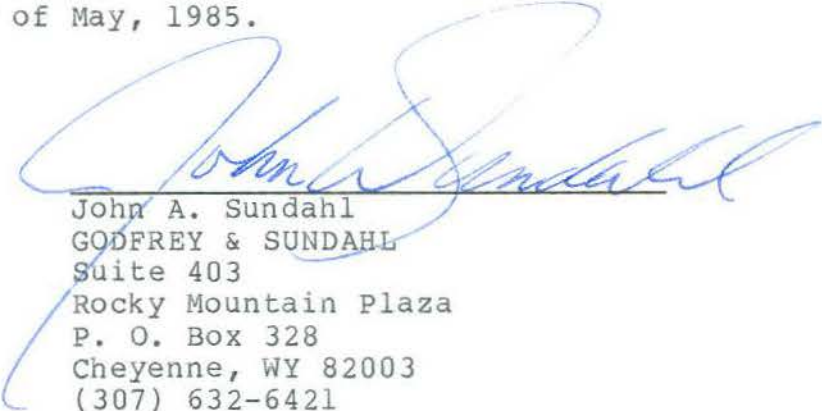
affirmed, Petitioner would need to apply for a new permit to construct. In the event that coal supply contracts can be executed shortly after the mine permit is issued by LQD, any delay in issuance of the new air permit would seriously damage the development of the mine. While there does not appear to be any significant air quality resource competition between the East Gillette Federal mine and other proposed new mines in the area, it is possible that some of the available air resource previously allocated to East Gillette Federal could be allocated to the other proposed mines, thus preventing the issuance of a new permit for East Gillette Federal. Any such reallocation would be manifestly unfair considering the time and resources invested by Petitioner in the permitting of East Gillette Federal and the comparatively recent filing of permit applications for the other proposed new mines in the area.

15. Wherefore, Petitioner requests the Council to reverse the Administrator's denial of Petitioner's October 15, 1984, request for an extension of two years of the expiration dates of Wyoming AQD Permit CT-178 and PSD Permit 8AH-A.

16. Petitioner further requests the Council to find that a two-year extension of the permits to construct is justified and to order the Administrator to grant the Petitioner's October 15, 1984, request for this extension in consonance with that finding.

17. Petitioner finally requests the Council to hold a hearing on this matter. Petitioner filed a Petition for Review with the Director of the Department of Environmental Quality on May 17, 1985, asking the Director for an informal conference to review this same issue. Petitioner therefore requests that this proceeding before the Environmental Quality Council be stayed until the Director has made his determination, in accordance with Chapter VI, Section 4 of the Department of Environmental Quality Rules of Practice and Procedure.

DATED this 17 day of May, 1985.



John A. Sundahl
GODFREY & SUNDAHL
Suite 403
Rocky Mountain Plaza
P. O. Box 328
Cheyenne, WY 82003
(307) 632-6421

ATTORNEY FOR PETITIONER

CERTIFICATE OF SERVICE

I, John A. Sundahl, do hereby certify that I served a true and accurate copy of the foregoing upon Mr. Randolph Wood, Administrator, Air Quality Division, Department of Environmental Quality, Herschler Building - 4th Floor, 122 West 25th Street, Cheyenne, Wyoming 82002, by placing the same in the United States Mail, postage prepaid on the 17th day of May, 1985.



John A. Sundahl