

**FILED**

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL

JUL 21 1994

STATE OF WYOMING

Terri A. Lorenzon, Attorney  
Environmental Quality Council

IN THE MATTER OF OBJECTIONS	)	
TO THE MINING PERMIT APPLICATION	)	
OF AMAX COAL WEST, INC.,	)	DOCKET NO. 2573-94
EAGLE BUTTE MINE, PERMIT NO. 428-T2	)	

DEPARTMENT'S RESPONSE TO PROTESTANT'S  
MOTION FOR A HEARING BEFORE FULL COUNCIL  
AND  
MOTION FOR CONTINUANCE

The Department of Environmental Quality, Land Quality Division, by and through the Office of the Attorney General, responds to Roger and Linda Pfeil's Motions for a hearing before the full Environmental Quality Council and for a continuance as follows:

1. W.S. 35-11-406(k) provides that an informal conference or a hearing shall be held within 20 days after the final date for filing objections. That statute also requires that the hearing be conducted pursuant to the Wyoming Administrative Procedures Act. W.S. 16-3-107 includes provisions affording discovery to parties to contested case proceedings, pursuant to the Wyoming Rules of Civil Procedure. The timeframes set forth in the discovery rules appear to be incompatible with the 20 day deadline in W.S. 35-11-406(k).
2. In Grams v. Environmental Quality Council, 730 P.2d 784, (Wyo. 1986), the Supreme Court held that the Council did not abuse its discretion in denying motions for a continuance, since W.S. 35-11-406(k) requires a hearing within 20 days. The Appellants argued that the Council denied their right to discovery. The Court dismissed the argument by stating that the Appellants failed to prove prejudice and failed to make a cogent argument. 730 P.2d at 788.
3. Since the Court did not thoroughly evaluate the apparent conflict between discovery rights and the hearing deadline, it is unclear how these statutes should be reconciled.
4. The Pfeils argue they have not had sufficient time to prepare for a hearing. While there may be some basis to this argument, their dire circumstances should not be entirely attributed to W.S. 35-11-406(k).

5. The Pfeils knew or should have known about AMAX's application for a permit revision since May 20, 1994, which is the date AMAX caused notice to be published in the local newspaper. Further, it appears the Pfeils were personally notified by AMAX on or around the same date. This notice informed the Pfeils that an objection would cause the Council to hold a contested case hearing.
6. Since the Pfeils knew or should have known that they could be involved in a contested case hearing as early as May 20th, they had an opportunity to prepare accordingly. Their apparent failure to do so does not, per se, entitle them to a continuance.
7. The DEQ agrees that the Council should not resolve any contractual dispute between the Pfeils and AMAX. If the Pfeils are breaching any such contract, AMAX has a remedy in a proper forum, regardless of whether the hearing proceeds.
8. The DEQ objects to the Pfeils' alternative continuance motion, to the extent it would require the Council to convene the hearing and then continue it. It is unduly burdensome to require DEQ representatives to travel to Gillette for that purpose.
9. The DEQ has no objection to a hearing before the full Council, provided that can be accomplished without convening the hearing and continuing it, as stated in paragraph no. 8.

DATED July 21, 1994.

  
Thomas A. Roan  
Senior Assistant Attorney General  
123 Capitol Building  
Cheyenne, WY 82002  
(307) 777-7841

CERTIFICATE OF SERVICE

I, Thomas A. Roan, do certify that the foregoing DEPARTMENT'S RESPONSE TO PROTESTANT'S MOTION FOR A HEARING BEFORE FULL COUNCIL AND MOTION FOR CONTINUANCE was served by placing a true and correct copy in the United States mail, postage prepaid, on July 21, 1994, addressed to the following:

Mr. & Mrs. Herbert D. Miller  
198 Crazy Horse Land  
Gillette, Wyoming 82716

Anthony T. Wendtland  
Attorney for Objectors  
Roger D. Pfeil and Linda J. Pfeil  
P.O. Box 728  
Sheridan, Wyoming 82801

Joseph M. Gilsdorf  
Karla J. Oksanen  
205 Battle Cry Lane HCR 84  
Gillette, Wyoming 82716

Steven Youngbauer  
Amax Coal Company  
P.O. Box 3005  
Gillette, Wyoming 82717-3005

Marilyn Kite  
Attorney for Amax Coal West, Inc.  
Holland & Hart  
P.O. Box 68  
Jackson, Wyoming 83001-0068

  
Thomas A. Roan