

IN THE DISTRICT COURT IN AND FOR CAMPBELL COUNTY, WYOMING

ROGER D. PFEIL and LINDA JO
PFEIL, husband and wife, for
themselves and for their minor
children, and JOSEPH M.
GILSDORF and KARLA J. OKSANEN,

Petitioners,

vs.

AMAX COAL WEST, INC., a
subsidiary of Cyprus AMAX Coal
Company, and ENVIRONMENTAL
QUALITY COUNCIL of the STATE
OF WYOMING,

Respondents.

FILED

NOV 17 1994

Terri A. Lorenzon, Attorney
Environmental Quality Council

Civil Action No. _____

**MOTION FOR INTERIM STAY OF NOVEMBER 7, 1994 ORDER OF
ENVIRONMENTAL QUALITY COUNCIL APPROVING FORM 11
REVISION TO 428-T2 MINE PERMIT**

Petitioners, Roger D. Pfeil and Linda Jo Pfeil, husband and wife, on behalf of themselves and their minor children ("Pfeils") and Joseph M. Gilsdorf ("Gilsdorf") and Karla J. Oksanen ("Oksanen"), by and through their undersigned attorneys, hereby petition the Court for a stay of the November 7, 1994 Order of the State of Wyoming, Environmental Quality Council ("EQC" or "Council") pending a full hearing on this Motion for a stay and for a permanent stay of the Order pending resolution of Gilsdorf and Oksanen's pending Motion For Remand To Supplement The Record Pursuant To W.R.A.P. 12.08 and the Protestants' pending Petition For Review. Copies of these pleadings and associated attachments are in the Court file.

In support of this Motion for a stay, Petitioners state the following:

A. Facts.

Pertinent facts are explained in detail in the Petition For Review and in the Motion To Supplement The Record Under W.R.A.P. 12.08. Those statements of fact are hereby adopted and reincorporated herein by reference. Petitioners contend that the proceedings below and the EQC November 7, 1994 Order are seriously and facially flawed under W.S. 35-11-406(j) and (k) and that they blatantly violate the Petitioners' due process rights.

B. Applicable Law.

The Wyoming Environmental Quality Act provides that this Court has the power to grant a stay in a case like this one:

In a proceeding to review any order or decision of the department providing for regulation of surface coal mining and reclamation operations in accordance with P.L. 95-87, the court may under conditions it prescribes grant temporary relief pending final determination of the review proceedings if:

(i) All parties to the proceedings were notified and given opportunity for hearing on the request for temporary relief;

(ii) The party requesting relief shows there is substantial likelihood he will prevail on the final determination of the proceeding; and,

(iii) The relief will not adversely affect the public health and safety or cause significant environmental harm to land, air or water resources.

W.S. 35-11-1001. See also W.R.A.P. 12.05.

Pursuant to this authority, a stay of the November 7, 1994 Amax revision Order is clearly appropriate.

1. Notice To Parties Of Request For Stay.

By mailing of this Motion and accompanying pleadings all parties have notice that a stay is being requested.

2. Petitioners Likelihood Of Success.

a. Gilsdorf and Oksanen.

Gilsdorf and Oksanen were completely deprived of notice of Amax's revision. It is highly likely they will succeed in their W.R.A.P. 12.08 Motion. Once the EQC takes evidence to show that Amax failed to even check the address it sent their notice to the entire matter will have to be remanded for new notice and another trial. As set forth in the Motion To Supplement the Record Pursuant to W.R.A.P. 12.08, clearly Gilsdorf and Oksanen have been adversely affected by an EQC Order which allows Amax to mine coal using stripping and blasting techniques within roughly 1600 feet of their home. Gilsdorf and Oksanen were denied any proper statutory or due process notice of Amax's proposed Form 11 Revision. Even more glaring, Amax's unsupported assertions that it made a good faith effort to mail notice to Gilsdorf and Oksanen at their address of record with Campbell County in May 1994 is simply not true. Gilsdorf and Oksanen also benefit from numerous strong appellate arguments advanced by the Pfeils.

b. Pfeils.

The Pfeils similarly have several appellate issues which present a high likelihood that the November 7, 1994 Order should be reversed and remanded for new notice and another trial. Pfeils have established that the EQC decision making process is arbitrary

on its face. Quotes from the Council public meetings on October 5 and 24, 1994 illustrate that three members of the Council were steadfast in their conclusion that the notice given to Pfeils was blatantly defective under Wyoming law. Council member Lee's unexplained last minute decision to switch his vote and his after-the-fact promise not to change his vote "next time" despite his having made two attempts to have the entire matter remanded to the DEQ for new notice is clearly arbitrary. Pfeils also have a strong case to show that the notice they received was illegal and inadequate, that they were denied any proper ability to conduct discovery or prepare expert testimony for the hearing. The DEQ is on the record below admitting that the notice sent to the Pfeils did not comply with DEQ regulations. The entire proceeding is flawed, statutorily and in a due process sense, from start to finish.

The Pfeils also have a strong case to show the EQC decision is not supported by substantial evidence. For example, the EQC concludes that there will be no harm to the hydrologic balance under Rawhide Village under the proposed radical change in order and sequence of mining on the sole basis of testimony from Doyl Fritz, Amax's hydrologist. However, Mr. Fritz admits his opinion in that regard is "speculation".

The Pfeils also have a strong case to show that Amax knowingly chose to renew its 428-T2 mining permit in 1990 by representing to DEQ that it would mine away from Rawhide Village for at least ten

years and that the Pfeils relied on that representation in choosing to stay in their property.

3. Potential For Environmental Harm.

Staying the effect of the November 7, 1994 Order will simply maintain the status quo. Amax has an existing permit allowing them to mine coal in their pit south and east away from Rawhide Village. That mining will not be affected by an order from this Court staying the November 7, 1994 Order allowing them to mine adjacent (within 1600 feet) of Rawhide Village.

Conversely, if Amax is allowed to begin dewatering overburden, stripping overburden and blasting coal, any potential negative effects of that mining at this time will be immediately experienced by the Pfeils, Gilsdorf and Oksanen. Those effects could cause obvious irreparable "injury, loss and damage" to all persons adjacent to the mine. The issues before the Court at this time are also of great public import and interest because some of them go to the constitutionality of the mandatory twenty day procedure used to set hearings on objections to applications for revisions to surface coal mines under W.S. 35-11-406.

C. Conclusion.

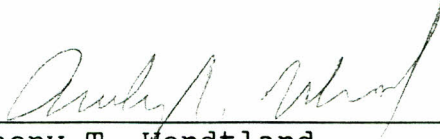
Petitioners, Pfeils, Gilsdorf and Oksanen, respectfully request that the Court enter a temporary stay preventing Amax from acting pursuant to the EQC's November 7, 1994 Order. Petitioners further request that the Court schedule a hearing and a briefing schedule on this matter at which it can take evidence and render a

final decision staying Amax from acting under the Order pending the outcome of other motions pending in this case.

DATED this 15th day of November, 1994.

DAVIS and CANNON

By:



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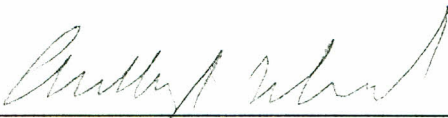
REQUEST FOR HEARING

Petitioners, by and through their undersigned attorneys, hereby request that the Court set an immediate hearing on the Motion of Petitioners at the Court's earliest convenience.

DATED this 15th day of November, 1994.

DAVIS and CANNON

By:



Anthony T. Wendtland
Attorney for Petitioners
P. O. Box 728
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(307) 672-7491

CERTIFICATE OF SERVICE

I, Anthony T. Wendtland, attorney for the Petitioners in the above-entitled and numbered cause do hereby certify that on the 25th day of November, 1994, I caused a true and correct copy of the Motion for Interim Stay on November 7, 1994 Order of Environmental Quality Council Approving Form 11 Revision to 428-T2 Mine Permit and Request for Hearing to be served by placing the same in the United States mail, postage prepaid at Sheridan, Wyoming, to:

Marilyn S. Kite
Holland & Hart
P. O. Box 68
Jackson, Wyoming 83001

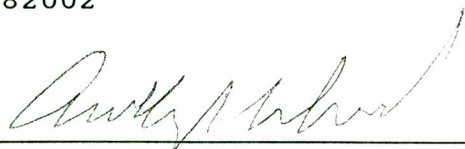
Mr. Steven R. Youngbauer
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