

FILED

DEC 19 1983

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL

Terri A. Lorenzon, Adm. Aide
Environmental Quality Council

IN THE MATTER OF NOTICE OF)
VIOLATION 100054 ISSUED TO)
AMAX COAL COMPANY, BELLE)
AYR MINE, PERMIT 214-T1 FOR)
FAILURE TO STRIP TOPSOIL)

DOCKET NO. _____

PETITION TO REVIEW AND VACATE
NOTICE OF VIOLATION 100054 TO
AMAX COAL COMPANY

On November 18, 1983, AMAX Coal Company, Belle Ayr Mine, Permit 214-T1, received Notice of Violation No. 100054 from Roger Johnson of the Department of Environmental Quality-Land Quality Division (DEQ-LQD) for "Failure to strip topsoil prior to affecting lands, and to stockpile said material so as to preserve and protect it. Roadway bladed to smooth across surface of vegetated previously undisturbed lands." The portion of the operation to which Notice applies, "Access road to Sediment Reservoir No. 31." (A copy of the Notice is attached as Exhibit A.)

The road utilized by the empty scrapers during the construction of Sediment Reservoir BA31 was an exempt road, not an access road. Neither the Environmental Quality Act or the Land Quality Rules and Regulations require topsoil to be stripped from an exempt road prior to its use. As such, there was no violation as specified in W.S. 35-11-437b(i).

NOW, THEREFORE, pursuant to W.S. 35-11-112(c), W.S. 35-11-437c(ii), and Chapter I, Section 3, Department of Environmental Quality Rules of Practice and Procedure, AMAX Coal Company (AMAX) petitions the Environmental Quality Council to review and vacate Notice of Violation No. 100054.

I. FACTS

A. On January 7, 1983, AMAX Coal Company was issued Belle Ayr Mine Permit 214-T1 under the Wyoming State Program. As indicated by Map No. 3.3-6 of this permit, a preexisting ranch road in

Sections 33 and 34 was classified and approved as an exempt road.

On September 15, 1983, AMAX received approval of Permit 214-T1-R1 which authorized development of the Belle Ayr Mine South Pit. As required by Chapter IV, Section 3g of the Land Quality Rules and Regulations, Sediment Reservoir BA31 was scheduled to be built prior to stripping topsoil in its respective drainage.

On November 17, 1983, AMAX began construction of Sediment Reservoir BA31. Rather than have scrapers utilize a nonconstructed, light-use road over the natural land surface for the approximate two days required to construct the sediment reservoir, AMAX decided to utilize the exempt road. A motor grader performed some light blading on the portion of the road which was later utilized by the empty scrapers as part of their operating cycle. After construction of Sediment Reservoir BA31, topsoil in the drainage area, including the portion of the exempt road, was scheduled to be stripped.

B. On November 18, 1983, Roger Johnson, a representative of the Department of Environmental Quality-Land Quality Division issued Notice of Violation No. 100054 to AMAX Coal Company. He classified the portion of the exempt road used by the empty scrapers in the construction of Sediment Reservoir BA31 as an access road and stated that failure to strip topsoil prior to its use was a violation of W.S. 35-11-415(b)(iii), W.S. 35-11-103(e)(xvi), and Land Quality Rules and Regulations, Chapter I, Section 2(73)(b), Chapter IV, Section 2c(1)(a), and Chapter IV, Section 3j(2)(xi). As remedial action, AMAX was told to discontinue scraper travel to Sediment Reservoir BA31 and to strip topsoil from the road within twenty-four working hours.

AMAX immediately discontinued use of the road and stripped topsoil from the road within twenty-four working hours.

C. On December 1, 1983, AMAX submitted additional information within 15 days of service as provided by W.S. 35-11-901(c). AMAX requested that if Notice of Violation No. 100054 is not vacated or withdrawn that an informal conference be held as provided for in W.S. 35-11-901(c). (See attached Exhibit B.)

II. RELEVANT STATUTES AND RULES AND REGULATIONS

A. WYOMING STATUTES

1. Section 35-11-103. Definitions.

(e) Specific definitions for land quality:

(xvi) "Affected land" means the area of land from which overburden is removed, or upon which overburden, development waste rock or refuse is deposited, or both, access roads, haul roads, mineral stockpiles, mill tailings, impoundment basins and all other lands whose natural state has been or will be disturbed as a result of the operations;

2. Section 35-11-415. Duties of operator.

(a) Every operator to whom any permit or license is issued shall comply with all requirements of this act, the rules and regulations promulgated hereunder, and reclamation plans and other terms and conditions of any permit or license.

(b) The operator, pursuant to an approved surface mining permit and mining plan and reclamation plan, or any approved revisions thereto, shall:

(iii) Protect the removed and segregated topsoil from wind and water erosion, and from acid or toxic materials, and preserve such in a usable condition for sustaining vegetation when restored in reclamation, or if topsoil is virtually nonexistent or is not capable of sustaining vegetation, then subsoil, which is available and suitable, shall be removed, segregated, and preserved in a like manner as may be required in the approved reclamation plan;

3. Section 35-11-437. Enforcement for surface coal mining operations.

(b) The director or his designated authorized representative shall issue a notice fixing a reasonable time for abatement and impose any necessary affirmative obligations if:

(i) On the basis of an inspection, it is determined that a permittee is in violation of this article, Land Quality Division regulations or any permit conditions; and

(ii) A cessation order is not required under subsection (a) of this section.

(c) Any notice or order issued pursuant to this section may be affirmed, modified, vacated or terminated by:

(i) The director or his authorized representative; or

(ii) The council, if the operator or any person having an interest which is or may be adversely affected files a petition for review within thirty (30) days of the receipt of the notice or order. The council shall order any necessary investigation and provide a public hearing, if requested. Any public hearing shall be conducted as a contested case proceeding in accordance with the Wyoming Administrative Procedure Act. (Section 9-4-101 through 9-4-115.)

B. LAND QUALITY DIVISION RULES AND REGULATIONS

1. Chapter I, Section 2.

(73) "Road(s)" means a surface right-of-way for purposes of travel by land vehicles including the roadbed, shoulders, parking areas, structures, and drainage features. Roads shall be classified to include:

(a) Haul roads: all roads utilized for the transport of the extracted mineral, overburden, or other earthen materials.

(b) Access roads: all roads, exclusive of haul and light-use roads, utilized for the transportation of personnel, equipment, and small payloads of material within the permit area.

(c) Light-use roads: those roads established and utilized for exploration, for occasional inspection of monitoring equipment, weather station, test plots, or for other purposes necessary to comply with the requirements of these regulations. Light-use roads shall be limited to:

(i) Roads or portions thereof which exist for less than six months and where the road is constructed by grading, cutting, tilling or other methods whereby the natural land surface is disturbed; or

(ii) Nonconstructed roads where the natural land surface is not physically altered by construction or grading, however a two-tracked road occurs due to vehicle travel over the same course. Nonconstructed roads may

include pioneer construction roads or roads used for transport of spoil and topsoil to stockpile sites which exist for not greater than two weeks and are then stabilized or replaced in accordance with these requirements.

(d) Exempted roads: roads within the pit and those roads maintained by the county, State or Federal government, or those roads which are existing private roads except:

(i) When the existing road requires extensive regrading and resurfacing in order to render the road usable; or

(ii) Upgrading of the road requires cuts, fills, and borrow areas.

2. Chapter IV, Section 2c(1)(a)

1. Topsoil

(a) All topsoil or approved surface material shall be removed from all areas to be affected in the permit area prior to these areas being affected. The topsoil shall be segregated so as not to become mixed with subsoil and other overburden material, stockpiled in the most advantageous manner and saved for reclamation purposes.

3. Chapter IV, Section 3

a. j(1)(c)

(1) General performance standards for all roads:

(c) To the extent possible using the best technology currently available, roads shall not cause damage to fish, wildlife, and related environmental values and shall not cause additional contributions of suspended solids to streamflow or to runoff outside the affected land or permit area. Any such contribution shall not be in excess of limitations of state or federal law or degrade the quality of receiving water.

b. j(2)(c)

(2) Performance standards for haul roads, access roads or constructed light-use roads which are used for six (6) months or longer.

(xi) Prior to construction or reconstruction topsoil shall be removed from all areas where haul or access roads will be placed, and shall be stored in accordance with this chapter.

c. j(3)(a)

(3) Light-use Roads: Light-use roads shall be designed, constructed or reconstructed, utilized and restored in compliance with the following standards to control or minimize erosion, siltation, air and water

pollution, and damage to public or private property. The administrator may require the operator to exceed the following standards when local conditions or circumstances require higher standards. Light-use roads shall be completely removed and restored once they are no longer needed. All light-use roads shall be restored by the termination of reclamation activities.

(a) Design and construction for constructed light-use roads:

(i) Field design methods shall be utilized for light-use roads.

(ii) The overall grade shall not exceed 1v:10h, and the pitch grade shall not exceed 1v:5h. There shall be no more than 1000 consecutive feet of maximum pitch grade.

(iii) Sidecast construction may be used.

(iv) Compaction on embankments shall be required only to the extent necessary to control erosion and maintain the road.

(v) Topsoil shall be removed and stock-piled and replaced in accordance with the requirements of this chapter wherever cut and fills are necessary.

C. 1980 Office of Surface Mining Rules and Regulations

1. 30 CFR 816.21(a) Topsoil: General Requirements.

(a) Before disturbance of an area, topsoil and subsoils to be saved under Section 816.22 shall be separately removed and segregated from other material.

III. DISCUSSION

A. THE ROAD UTILIZED BY THE EMPTY SCRAPERS DURING CONSTRUCTION OF SEDIMENT RESERVOIR BA31 WAS AN EXEMPT ROAD THAT WAS EXEMPTED FROM THE REQUIREMENT THAT TOPSOIL BE STRIPPED PRIOR TO ITS USE.

As indicated by Permit 214-T1 and Chapter I, Section 2(73)(d) of the Land Quality Division Rules and Regulations, the road utilized by the empty scrapers during the construction of Sediment Reservoir BA31 is an exempt road not an access road. Chapter IV, Section 3j(2)(xi), which requires that prior to construction or reconstruction topsoil shall be removed from all areas where access roads will be placed, and Chapter IV, Section 2c(1)(a) do not apply to exempt roads.

Chapter 1, Section 2(73)(d) defines an exempt road as:

"...those roads which are existing private roads except:

(i) when the existing road requires extensive regrading and resurfacing in order to render the road usable; or

(ii) upgrading of the road requires cuts, fills and borrow areas."

Use of the exempt road did not require extensive regrading in order to render the road usable. Only light grading occurred on the exempt road. Upgrading of the road did not require cuts, fills and borrow areas. The activity which occurred on the road did not change its status.

- B. EVEN IF THE ROAD WOULD NOT HAVE BEEN CLASSIFIED AS AN EXEMPT ROAD, IT WOULD BE A LIGHT-USE ROAD FOR LESS THAN SIX (6) MONTHS THAT DOES NOT REQUIRE TOPSOIL TO BE STRIPPED PRIOR TO ITS USE, NOT AN ACCESS ROAD.

1. Chapter I, Section 2(73)(c) defines light-use roads as: Those roads established and utilized for other purposes necessary to comply with the requirements of these regulations. The road in question was to be utilized for approximately two days to comply with permit 214-T1-R1 and Chapter IV, Section 3g(1) (i.e., build Sediment Reservoir BA31). Chapter I, Section 2(73)(b) specifically excludes light-use roads from access roads. The requirement to strip topsoil under Chapter IV, Section 3j(2)(xi) does not apply to light-use roads which are used less than six (6) months. Light-use roads used for less than six (6) months are required to remove topsoil only where cut and fills are necessary.

Topsoil was not required to be removed from the road utilized by the empty scrapers because cut and fills were not necessary.

2. The general requirement to remove topsoil from all areas to be affected in the permit area prior to these areas being affected does not apply to light-use roads which are used for less than six (6) months which do not require cut and fills. Docket No. 671-80, In the Matter of the Proposed Adoption of Rules and Regulations to Implement a Wyoming State Program for the Regulation of Surface Coal Mining Operations states that the performance standards contained in Chapter IV of the Wyoming Land Quality Rules and Regulations are based on the Office of Surface Mining's (OSM) Rules and Regulations, Subchapter K of the Permanent Program Performance Standards. The corresponding OSM requirement of Chapter IV, Section 2c(i) is contained in 30 CFR 816.21, Topsoil: General Requirements. Comments by OSM on 30 CFR 816.21 make clear that light-use roads used less than six (6) months are specifically exempted from the general requirements of topsoil removal.


3. W.S. 35-11-415(b)(iii) applies only to topsoil after it is removed not before it is removed.

IV. THEREFORE, AMAX RESPECTFULLY REQUESTS THE FOLLOWING:

A. AMAX requests that the Council conduct a contested case hearing on this matter. That the Environmental Quality Council review and vacate Notice of Violation No. 100054 issued to AMAX Coal Company, Belle Ayr Mine, Permit 214-T1 for failure to strip topsoil because no violation as specified in W.S. 35-11-437c(ii) occurred.

B. Such hearing should only be held if the Director of Environmental Quality or the Land Quality Division fails to withdraw Notice of Violation No. 100054 as requested in Exhibit A and/or the dispute is not resolved in the informal conference as requested by AMAX with the Director or such informal conference is not held as requested.

Respectfully submitted,


Steven R. Youngbauer
Public Affairs Counsel
AMAX Coal Company
P. O. Box 3005
Gillette, WY 82716
(307) 682-8857

Attachments (Exhibits A and B to Environmental Quality Council)