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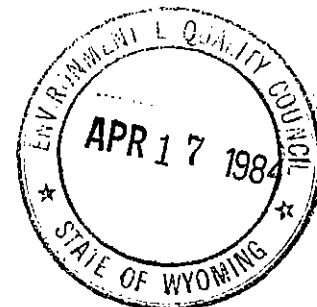
APR 16 1984

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL

Ardelle M. Kissler, Clerk
Environmental Quality Council

IN THE MATTER OF NOTICE OF)
VIOLATION 100059 ISSUED TO)
AMAX COAL COMPANY, EAGLE)
BUTTE MINE, PERMIT 428 FOR)
FAILURE TO STRIP TOPSOIL)

DOCKET NO. 1383-84



PETITION TO REVIEW AND VACATE
NOTICE OF VIOLATION 100059 TO
AMAX COAL COMPANY

On March 16, 1984, AMAX Coal Company, Eagle Butte Mine, Permit 428 received Notice of Violation No. 100059 from Richard Chancellor of the Department of Environmental Quality - Land Quality Division (DEQ-LQD) for "Failure to strip and protect topsoil prior to affecting lands. Scrapers going over the staging area to the area of topsoil stripping operations traveled around undisturbed lands. They also used this access route when returning to the staging area. Approximately twenty five (25) feet east of the route was a designated topsoil haul road which should of been used. (See map 5A of the modification to the Eagle Butte South Pit Revision)." (A copy of the Notice is attached as Exhibit A.)

The route utilized by the empty scrapers during the construction of a sediment control ditch was a nonconstructed light-use road, not an access road. Neither the Environmental Quality Act or the Land Quality Rules and Regulations require topsoil to be stripped from a nonconstructed light-use road which is used for two days and then is stabilized. 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. 100059.

I. FACTS

A. On May 5, 1976, AMAX Coal Company was issued Eagle Butte Mine Permit No. 428 from the Department of Environmental Quality - Land Quality Division.

On December 1, 1983, AMAX Coal company received approval of a permit revision, Permit No. 428-R1, which authorized development of the Eagle Butte Mine South Pit in its revised location. Authorization for a minor change in the South Pit development was approved by the District III Office on February 7, 1984.

On February 14, 1984, a rubber-tired dozer began construction of the topsoil haul road ramp just south of the railroad crossing by removing topsoil and temporarily stockpiling it west of the ramp construction area. To provide sediment control on all areas disturbed including the temporary topsoil pile, the permanent topsoil pile locations, the ramp construction area, and the railroad crossing, two scrapers used a nonconstructed light-use road 25 feet to the west of the ramp for approximately two days to reach the construction site of the sediment control ditch shown on Map 5A. Travel on this nonconstructed light-use road was unavoidable and necessary to provide sediment control as required by the Land Quality Division Rules and Regulations Chapter IV, Subsection 3g and the District III Office. The steep incline south of the railroad track prevented scraper travel over the proposed topsoil haul road ramp that was under construction.

On February 15, 1984, construction on the sediment control ditch and the topsoil haul road ramp continued. A total of eight trips occurred on the nonconstructed light-use road on February 14th and 15th by the empty scrapers. Also, on February 15, 1984, Roger Johnson, Soil Scientist, District III Office of the Department of Environmental Quality - Land Quality Division conducted an inspection at Eagle Butte Mine. During the inspection, Roger expressed concern about the use of the nonconstructed light-use road by the scrapers to reach the sediment control ditch. It was explained to him that this was a temporary route which would be discontinued as soon as the ramp construction was completed. Discussions between the inspector and Terry Powell, AMAX Environmental Engineer, resulted in a resolution of the concern and

the inspector stated no enforcement action was necessary. By February 16, 1984, travel on the topsoil haul road ramp was completed and use of the nonconstructed light-use road was discontinued as discussed with and agreed upon by the inspector. Site preparation and reseeding is scheduled to occur as soon as ground conditions permit.

- B. Based on a February 15, 1984 inspection report, Richard Chancellor, District III Engineer of the Department of Environmental Quality - Land Quality Division issued Notice of Violation No. 100059 to AMAX Coal Company on March 15, 1984. The Notice classifies the nonconstructed light-use road as an access road and stated that failure to strip topsoil prior to its use is as a violation of W.S.35-11-415(b)(iii), W.S.35-11-103(e)(xvi) and Land Quality Division Rules and Regulations Chapter 1, Section 2 (73)(b), Chapter IV, Section 2c(1)(a) and Chapter IV Section 3j(2)(a)(xi) the latter regulation requires topsoil to be removed from all areas where access roads will be placed. These regulations do not apply to nonconstructed light-use roads.

The nonconstructed light-use road was used by the scrapers to comply with the requirements of these regulations, (i.e. build a sediment control ditch) and the natural land surface was not physically altered by construction or grading. Use of this nonconstructed light-use road was discontinued by February 16, 1984 and stabilization activities according to the regulations have been scheduled to occur in the near future. Topsoil material was not damaged or unnecessarily degraded.

- C. On March 28, 1984, 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. 100059 is not vacated or withdrawn an informal conference be held as provided 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 lease.

(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 useable 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, filling 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

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.

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.

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 stockpiled and replaced in accordance with the requirements of this chapter wherever cuts 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 ROUTE UTILIZED BY THE EMPTY SCRAPERS DURING CONSTRUCTION OF THE SEDIMENT CONTROL DITCH WAS A LIGHT-USE ROAD USED FOR LESS THAN SIX (6) MONTHS THAT DOES NOT REQUIRE TOPSOIL TO BE STRIPPED PRIOR TO ITS USE, IT WAS 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 428-R1 and Chapter IV, Section 3g(1) (i.e., build sediment control ditch): 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. The regulations do not require that topsoil be stripped from a nonconstructed light-use road.

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 and do not require cuts 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