

CERTIFIED
NO. 74064
(to S. Youngbauer)

BEFORE THE
DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF WYOMING

IN THE MATTER OF A NOTICE)	
OF VIOLATION ISSUED TO)	
AMAX COAL COMPANY)	Docket No. 1383-84
EAGLE BUTTE MINE)	N.O.V. No. 100059
Permit No. 428)	

DIRECTOR'S
FINDINGS OF FACT, CONCLUSIONS OF LAW,
POLICY STATEMENT AND DECISION

THIS MATTER came before the Director of the Department of Environmental Quality pursuant to a request by Amax Coal Company for an informal conference as provided by W.S. 35-11-901((c)). At issue was a dispute over the validity of Notice of Violation No. 100059 issued to Amax Coal Company's Eagle Butte Mine on March 15, 1984 after an on site inspection by Mr. Roger Johnson, a designated representative for the Department. Said informal conference was held on April 12, 1984, at the Department of Environmental Quality, Room 3A, Equality State Bank Building, Cheyenne, Wyoming. Amax Coal Company was represented by Mr. Steven R. Youngbauer, Mr. Phil Dinsmoor, Mr. Terry Powell, and Ms. Mickey Steward. The Land Quality Division was represented by Mr. Lyle Randen, Mr. Roger Shaffer, Mr. Richard Chancellor, and Mr. Weldon Caldbeck, Assistant Attorney General. Ms. Ardelle Kissler, Administrative Assistant, was also present to assist the Director in conducting the conference.

Both the Land Quality Division and Amax Coal Company participated in the hearing and, after reviewing the record and being fully advised in the premises, the Director hereby makes his Findings of Fact, Conclusions of Law, Policy Statement and Decision.

FINDINGS OF FACT

1. This matter was heard by the Director at an informal conference held on April 12, 1984, in Room 3A, Equality State Bank Building, Cheyenne, WY in response to a timely request by Steven R. Youngbauer, State Affairs Counsel for Amax Coal Company disputing the validity of N.O.V. No. 100059, issued on March 15, 1984.

2. Permit No. 428 has been issued to Amax Coal Company for their Eagle Butte Mine, which includes operations in T51N, R72W in Campbell County, Wyoming.

3. Notice of Violation No. 100059 alleged that Amax failed to strip topsoil before affecting lands by scrapers traveling from a staging area to an area where topsoil stripping operations were in progress. It was also stated in the NOV that a designated haul road located approximately 25 feet east of the chosen route could have been utilized for such travel.

4. Page 2 of the February 1984 monthly inspection report by Mr. Roger Johnson, dated February 15, 1984 contains the following statement in paragraph four:

"Since it was near the end of the work day for the contractor's employees doing this dirt work, Mr. Powell stated that the first thing the next morning all topsoil would be removed from the ramp construction area and south to the ditch, the ramp would be built up as needed, and then scraper travel to and from the stripping area would be limited to this area, instead of over the "shortcut" across unstripped lands. This was agreed to as being reasonable corrective action and the matter was considered resolved; no enforcement action was taken nor was it considered necessary."

5. Page three of the February 15, 1984 report contains the following statement in its concluding summary:

"One area of concern was what appeared to me to be unnecessary and avoidable travel by scrapers over unstripped lands. An alternative to this travel was agreed upon and the matter was considered resolved."

6. The March 27, 1984 letter to Richard Chancellor from Steven

R. Youngbauer contains the following statement:

"To provide sediment control on all areas disturbed, including the temporary topsoil pile, permanent topsoil pile locations, the ramp construction area, and the railroad crossing, two scrapers used a non-constructed light-use road 25 feet to the west of ramp for approximately two days to reach the construction site of the sediment control ditch shown on May 5A. ----The steep incline south of the railroad track prevented scraper travel over the proposed and unconstructed topsoil haul road ramp."

7. The February 2, 1984 notification of additional changes to Permit No. 428 included two topsoil haul roads, a sediment control ditch, other changes in sediment control and topsoil pile relocations. A subsequent reply from the Land Quality Division dated March 5, 1984 stated that this change did not materially differ from the approved plan.

8. Chapter I, Section 2(73) of the Land Quality Division Rules and Regulations states in part:

"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: ---
- (b) Access roads: ---
- (c) Light use roads: ---
- (d) Exempted roads: ---

CONCLUSIONS OF LAW

1. The Director has jurisdiction over the subject matter of and the parties to this proceeding pursuant to W.S. 35-11-901(c), 35-11-437(c)(i) and Wyoming Department of Environmental Quality Rules of Practice and Procedure Chapter VI.

POLICY STATEMENT

1. W.S. 35-11-102 provides that it is the policy and purpose of the Environmental Quality Act "to plan the development, use, reclamation, preservation and enhancement of the air, land and water resources of the state; ---"

DECISION

The Notice of Violation issued by the Land Quality Division on March 15, 1984 is hereby vacated for the following reasons:

1. Provisions of the Land Quality Rules and Regulations regarding roads can only be applied after a classification as outlined in Chapter I, Section 2(73). Absent such a classification, the justification of this area for vehicle traffic becomes subject to and dependent on interpretations of the use after such use has occurred. In this case, the user chooses to apply the light use category and the Division describes the disturbed area as an access route, neither classification being mentioned anywhere in any map, drawing, photograph or narrative in Permit No. 428.

2. If we assume the affected area is a non-constructed light use road as defined in the Land Quality Regulations, then Chapter IV, Section 3, j (3)(d) would require periodic inspections to determine proper usage by the operator. If the term access route means access road as defined in the Regulations, then construction must be in compliance with Chapter IV, Section 3 j.


3. The utilization of this property and subsequent surface disturbance is contrary to W.S. 35-11-102 and cannot properly be identified as preservation of the land resource of the state; however it is recognized that Amax did respond cooperatively and promptly to restore these disturbed lands after being advised by Mr. Roger Johnson that this was a reasonable corrective action.

4. While there appears to be little, if any permanent and continuing environmental harm from this incident, it is strongly recommended that any undisturbed areas under consideration for vehicular traffic within the permit area be properly classified and noted in permit documents so that applicable construction, use and reclamation procedures can be understood by all parties.

5. This decision is appealable to the Environmental Quality Council by filing a petition for review with the Council as provided by W.S. 35-11-901(d).

ORDERED this 8th day of May, 1984.

WYOMING DEPARTMENT OF
ENVIRONMENTAL QUALITY


Robert E. Sundin
Robert E. Sundin, Director

CERTIFICATE OF SERVICE

I, Robert E. Sundin, Director of the Department of Environmental Quality, do hereby certify that the foregoing Director's Findings of Fact, Conclusions of Law, Policy Statement and Decision was served by placing in the United States mail this 8th day of May, 1984, addressed as follows:

Steven R. Youngbauer
State Affairs Counsel
Amox Coal Company
1901 Energy Court
Gillette, WY 82716

Mike Shackelford
Amox Coal Company
P.O. Box 3005
Gillette, WY 82716

Richard A. Chancellor
District III Engineer
DEQ Land Quality Division
30 East Grinnell Street
Sheridan, WY 82801

and by interoffice mail this same date to:

Lyle D. Randen, Administ
DEQ Land Quality Divisio
401 West 19th Street
Cheyenne, WY 82002

Weldon S. Caldbeck
Assistant Attorney Gener
Attorney General's Office
123 Capitol Building
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Robert E. Sundin

Department of Environmental Quality

PS Form 3811, July 1982

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 Steven R. Youngbauer, State Affairs Counsel, Amox Coal Co., 1901 Energy Court, Gillette, WY 82716

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