

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF WYOMING

IN THE MATTER OF A NOTICE OF)
VIOLATION ISSUED TO THE AMAX)
COAL COMPANY, EAGLE BUTTE MINE)
PERMIT NO. 428)
NOTICE OF VIOLATION 100809)

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

This matter came on before the Director of the Department of Environmental Quality pursuant to the request by the Amax Coal Company for an informal conference as provided by W.S. 35-11-901(c) and W.S. 35-11-437(c)(i). At issue was the validity of the Notice of Violation No. 100809 issued to Amax Coal Company on October 25, 1985 by Mr. Richard A. Chancellor, a designated representative of the Department of Environmental Quality. Said Notice of Violation was issued to the operator as a result of an on-site inspection conducted on the date of July 11, 1985. Said informal conference was held on January 14, 1986 at the Department of Environmental Quality, Herschler State Office Building, Cheyenne, Wyoming. Amax Mining Company was represented by Mr. Steven R. Youngbauer, Mr. Jerry Matthews, Ms. Mickey Steward and Mr. Phil Dinsmoor of Gillette, Wyoming. The Land Quality Division was represented by Mr. Roger Shaffer, Dr. Bob Giurgevich, Ms. Beth Goodnough, Mr. Jon Sweet and Mr. John Erdmann, Assistant Attorney General, Wyoming Attorney General's Office. Ms. Ardelle Kissler, Administrative Assistant and Mr. Weldon Caldbeck, Assistant Attorney General, with the Wyoming Attorney General's office were present to assist the Director. Both the Land Quality Division and the Amax Mining Company participated in the conference. After reviewing the record and being fully advised of the premises the Director hereby makes his Findings of Fact, Conclusions of Law, and Decision.

FINDINGS OF FACT

1. This matter was fully heard by the Director at an informal conference held on January 14, 1986 in the offices of the Department of Environmental

Quality, Herschler State Office Building, Cheyenne, Wyoming, in response to a timely request for an informal conference to dispute the validity of Notice of Violation 100809 issued on 25 October 1985 by Mr. Richard A. Chancellor, a designated representative of the Department of Environmental Quality.

2. Permit No. 428 has been issued to the Amax Coal Company for their Eagle Butte Mine located in Campbell County, Wyoming.

3. On July 11, 1985 an inspection of the Amax Coal Company Eagle Butte Mine was conducted by Mr. Jon Sweet, a designated representative of the Department of Environmental Quality, and on August 14, 1985 an inspection was conducted by Ms. Elizabeth Goodnough, a designated representative of the Department of Environmental Quality. As a result of said inspections, a Notice of Violation was issued to the Amax Coal Company for the failure to construct sedimentation control structures in the area of topsoil removal operations. These sedimentation control reservoirs are identified as EB73, EB75 and EB76 in the approved mining plan.

4. The approved mining plan at pages 3.5-39 and 3.5-40 dated 1-16-85 provides the following statement: "Sediment EB73, EB74, EB75, EB76, EB77, and EB78 reservoirs will be constructed adjacent to the channels of Revlon Draw and Little Rawhide Creek. These reservoirs will treat runoff from disturbed areas. A berm will be built along Revlon Draw and Little Rawhide Creek, where necessary, to prevent mixing of disturbed and undisturbed water. After the Oxbow Diversion construction, these reservoirs will be abandoned."

5. The Amax Coal Company alleges that the Oxbow Diversion construction took place prior to the stripping of topsoil in the EB73, EB75 and EB76 areas and thus these sediment control structures were not required and were abandoned prior to being actually constructed in compliance with the approved plan.

6. The Amax Coal Company does not contest the allegation that sediment control structures EB73, EB75 and EB76 were not constructed.

7. Amax Coal Company did not submit for approval by the Land Quality Division a revision to the mining plan to eliminate the requirement for construction of sediment control structures EB73, EB75 and EB76.

8. Chapter XIV, Section 1.a. of the Land Quality Rules and Regulations

provides as follows: "Prior to any change in mining or reclamation operations from those described in the approved permit application, the operator may contact the department for a determination of whether an application for a permit revision shall be required, and, if required, when it shall be filed. An application for a permit revision shall be required whenever the operator proposes to conduct a revised mining or reclamation operation as defined in Chapter I, Section 2, Land Quality Rules and Regulations."

9. Chapter I, Section 2 (uuu) defines a revised mining reclamation operations as "mining and/or reclamation operations conducted during the term of a permit which substantially differ from those operations described in the original mine permit application and approved under the original permit."

10. On June 29, 1985 Amax Coal Company constructed various structures to convey all upstream drainage including that from area 73, 75 and 76 into discharge pond number EBNPDES014. These acts transformed pond number EBNPDES014 into the sediment control structure for all of the upstream areas including areas 73, 75 and 76.

11. On June 29, 1985, Little Rawhide Creek was diverted into the Oxbow Diversion structure.

12. On July 8, 1985 topsoil stripping operations were initiated in areas 73 and 75.

13. On July 22, 1985 the permanent sediment control structure SRL03 was completed and the drainage conveyance into EBNPDES014 was blocked.

14. The permit application at page 3.5-44 specifies that EBNPDES014 reservoir will be used to control drainage from the blocking dyke construction area.

15. Amax Coal Company did not submit for review any analysis of the ability of EBNPDES014 to accommodate any potential drainage for the entire area encompassed by areas number 73, 75 and 76.

16. No penalty was assessed in this matter.

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 the Wyoming Department of Environmental Quality Rules of Practice and Procedure Chapter VI.

2. W.S. 35-11-406(a)(xv) requires every operator in applying for a permit to specify the methods of reclamation for effective control of erosion, siltation and pollution of affected streams, stream channels and stream banks by the mining operations.

3. W.S. 35-11-437(b) requires the Director or his designated authorized representative to issue a Notice of Violation fixing a reasonable time for abatement if on the basis of inspection it is determined that a permittee is in violation of Article IV of the Environmental Quality Act Land Quality Division Regulations or any permit conditions.

4. Permit No. 428 issued to the Amax Coal Company provides for a specified series of sedimentation control structures as required by the Land Quality Rules and Regulations and the Environmental Quality Act.

DECISION

1. Statutory, regulatory and permit requirements obligated Amax Coal Company to construct various sedimentation control structures as required by the permit.

2. Amax Coal Company acted to deviate from the approved sequence of operations based upon an in-field evaluation of the operational problems of the approved mining plan.

3. While it is clear that Amax Coal Company did, through the use of EBNPDES014, provide a sedimentation control structure for area 73, 75 and 76 prior to and during topsoil removal from those areas, Amax did so without providing any analysis to the Land Quality Division of the suitability of this alternative sedimentation control strategy including calculations of the ability of EBNPDES014 to accommodate the runoff from this area in the event of a design precipitation event.

4. The decision to utilize EBNPDES014 as the sedimentation control structure for this extremely large area of the mining operation

represents a significant change from the approved mining plan and thus is a change in mining or reclamation operations which would require that an application for a permit revision be submitted for review and approval by the Division.

5. Had areas 73 and 76 not been stripped of topsoil during the timeframe in which EBNPDES014 was used as a sedimentation control structure for the upstream drainage it is possible that a permit revision would not have been required since the potential for sediment generation would have been significantly less.

6. The weight of the evidence presented supports the validity of Notice of Violation 100809 in that the operator failed to conduct all surface mining and reclamation activities within the area in conformity with his approved plan.


7. Notice of Violation 100809 issued to the Amax Coal Company on October 25, 1985 is hereby affirmed.

8. There is no penalty assessment.

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

ORDERED this 20 day of March, 1986

WYOMING DEPARTMENT OF
ENVIRONMENTAL QUALITY



Randolph Wood, Director