

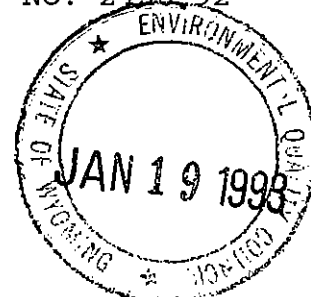
BEFORE THE ENVIRONMENTAL QUALITY COUNCIL

STATE OF WYOMING

IN THE MATTER OF AMAX COAL COMPANY,)
BELLE AYR MINE, PERMIT NO. 214-T3,)
MINOR VIOLATION NOTICE 400235;)

DOCKET No. 2436-92

PETITION FOR REVIEW
AND REQUEST FOR TEMPORARY STAY



I. JURISDICTION

1. COMES NOW the Petitioner, AMAX COAL COMPANY, Belle Ayr Mine, pursuant to the Wyoming Environmental Quality Act, section 35-11-437(c)(ii) and (e), Chapter XVII, Section 2 of the Rules of Practice and Procedure of the Department of Environmental Quality, and Chapter I and II, DEQ Rules of Practice and Procedure, who states and alleges as follows:

II. PARTIES

2. Petitioner, AMAX Coal Company, Belle Ayr Mine, is a wholly owned subsidiary of AMAX Coal West, Inc. (AMAX), a Delaware Corporation. The Land Quality Division is a Division of the State of Wyoming's Department of Environmental Quality.

III. REQUEST FOR TEMPORARY STAY

3. Pursuant to W.S.A. 35-11-437(e), AMAX hereby petitions the Environmental Quality Council (EQC) for a hearing on Minor Violation No. 400235. In conjunction with this petition, Petitioner has requested an informal conference with the Director pursuant to Chapter VI, Section 4(a) of the DEQ Rules of Practice and Procedure. Petitioner hereby requests a temporary stay of the EQC proceedings and the abatement of the above MV until the informal conference is held and a decision thereon is rendered. The reasons for which the EQC should grant the stay are as follows. The State originally set the time for abatement of the subject MV for January 8, 1992. At the request of petitioner, the time for abatement was extended until 12:00 noon February 9th, 1993. Petitioner alleges that even though an extension of abatement time was requested by petitioner and granted by the State, the extension does not provide enough time for the Director to hold an informal conference and render a decision in this matter. Under the informal conference rules, there is no procedure to stay abatement of the MV until a decision is rendered. If petitioner is required to enter into abatement and remediation of the above referenced MV prior to adjudication thereof, such a requirement would be a violation of petitioner's procedural due process of law rights under the Vth Amendment to the United States Constitution and the

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Article 1, Section 6 of the Constitution of the State of Wyoming.

IV. STATEMENT OF FACTS

4. On December 21, 1992, Mr. Mark Taylor, a representative of the State of Wyoming, Department of Environmental Quality, Land Quality Division, issued to AMAX's Belle Ayr Mine Minor Notice of Violation No. 400235 (see Exhibit A) for an alleged violation of Chapter IV, section 3(o) of the Land Quality Rules and Regulations. As alleged by the State, the "Nature of the Violation" was:

"Failure to post stream buffer zone markers along intermittent streams flowing through the permit area."

5. The State alleges that the above referenced MNV applies to:

"all portions of Duck Nest Creek and all permanently reclaimed portions of the reconstructed Caballo Creek occurring within the permit area".

6. The State further alleges that, as remedial action for the alleged MV, AMAX must fulfill all requirements listed in comment 3 of Mark Taylor's letter dated December 1, 1992, addressed to Mr. Vern Stees of AMAX (see Exhibit B).

V. LEGAL ARGUMENT

7. The State has unreasonably interpreted Chapter IV, section 3, (o)(ii) Stream buffer zone regulations to require the posting of buffer zone signs along stream channels on affected lands.

8. In pertinent part, Chapter IV, section 3, (o)(ii) provides that:

(ii) **Stream buffer zone**

(A) No land within 100 feet of a perennial or intermittent stream shall be **affected** unless the Administrator **specifically authorizes** such activities closer to or through a stream upon a finding that:

(I) Surface mining activities will not cause or contribute to the violation of applicable state or federal water quality standards, and will not adversely affect the water quantity and quality or other environmental resources of the stream; and

(II) If there will be a temporary or permanent stream-channel diversion, it will comply with all stream diversion requirements.

(B) The area **not to be affected** shall be designated a buffer zone, marked in the field and on the mine plan

map.

9. The above regulation clearly discusses stream buffer zones in the context of **"affected land"**. Subpart B of the regulation, which the State is apparently referring to in its MV, provides that areas not to be **"affected"** shall be designated a buffer zone and marked in the field. The threshold question in this matter, then, is the definition of **"affected lands"**. Wyoming Statute 35-11-103(e)(xii) supplies this definition as follows:

W.S.A. 35-121-103(e)(xii). **"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 excluding uranium mill tailings, impoundment basins excluding uranium mill tailings impoundments, and all other lands whose natural state has been or will be disturbed as a result of the operations;**

10. As a matter of administrative law, the use of the term **"affected land"** in the regulation should conform to the definition of the term in the above referenced statute. This is especially true in the absence of any expansion of that definition within the regulations. The statutory definition of **"affected lands"** clearly indicates that lands whose natural state has been, or will be, **disturbed** are **"affected"**. Conversely, lands whose natural state has **not been disturbed** are **"not affected"**.

11. AMAX's Mine Permit No. 214-T3, 1.9 Appendix E, section 1.9.4, provides, in pertinent part, that:

". . . The probable limits of all areas previously **disturbed or expected to be disturbed** by AMAX Coal Company by surface mining within or adjacent to the permit area are indicated on Map 1.9-3."

12. Map 1.9-3 shows that Caballo Creek, Duck Nest Creek and the other areas in question are well within the boundaries of areas **expected to be disturbed** during mining and are, therefore, by definition, **affected lands**" as designated by Map 1.9-3, AMAX's Mine Permit No 214-T3.


13. Chapter IV, section 3, (o)(ii)(B) provides that only those lands which are **"not to be affected"** - i.e. those that must remain in their natural state - shall be designated as buffer zones. There is no similar requirement in section 3,(o)(ii) for **"affected lands"**. Thus, a reasonable interpretation of the regulation in question leads to the conclusion that those lands which have been **"affected"** (disturbed) or which are expected to be **"affected"** (disturbed), including stream channels, do not have to be designated as buffer zones.

14. This conclusion is buttressed by the fact that all

actions taken within the above intermittent stream channels have been identified within the current Mine Permit No. 214-T3. These actions have been reviewed and specifically approved by the Administrator through the permit process. To again ask for specific approval of actions already specifically approved clearly indicates that the States interpretation of Chapter IV, section 3, (o) (ii) is unreasonable.

15. In view of the statutory and regulatory requirements, AMAX hereby objects to the Minor Notice of Violation (M.V.No. MV400205) on the grounds that it is contrary to statute and that it is an unreasonable interpretation of the regulation. Petitioner also requests that the Environmental Quality Council stay the above proceeding and any remediation or abatement thereof until such time as an informal conference and decision thereon be rendered.

DATED this 15th day of January, 1993.


STEVEN R. LAIRD
Manager, Legal and
Regulatory Affairs
AMAX Coal Company
P.O. Box 3005
Gillette, WY 82717

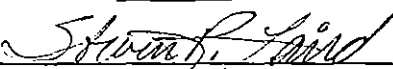
CERTIFICATE OF SERVICE

I, Steven R. Laird, hereby certify that I served a true and correct copy of the above and foregoing instrument to:

Mr. Dennis Hemmer
122 West 25th Street
Herschler Building
Cheyenne, Wyoming 82002

Environmental Quality Council
ATTN: Terri Lorenzon
2301 Central Avenue, Room 401
Cheyenne, WY 82002

by placing a true and correct copy thereof in the United States Overnight mail, postage prepaid, this 15th, day of January, 1993.


Steven R. Laird
ATTORNEY, AMAX COAL COMPANY
P.O. Box 3005
Gillette, Wyoming 82717-3005