

ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

FILED

OCT 30 1985

Terri A. Lorenzon, Adm. Aide
Environmental Quality Council

In the Matter of:)
A Permit Issued to)
Mobil Coal Producing, Inc.,)
for Caballo Rojo Mine by)
the Air Quality Division of)
the Department of Environmental)
Quality)

Docket No. 1656-85

PETITION FOR REVIEW TO THE ENVIRONMENTAL QUALITY
COUNCIL TO SUSTAIN ISSUANCE OF PERMIT NO. CT-208A3
TO MOBIL COAL PRODUCING, INC., AND TO CLARIFY
SEPTEMBER 10, 1985, SUPPORT DOCUMENT

COMES NOW, Mobil Coal Producing, Inc., (hereinafter referred to as "MCPI"), by and through its attorneys, Hathaway, Speight and Kunz, and hereby petitions the Environmental Quality Council (EQC) to affirm and sustain the decision of the Director of the Department of Environmental Quality and the Administrator of the Air Quality Division (AQD) dated August 30, 1985, which approved an air quality permit to MCPI (Permit No. CT-208A3) for the Caballo Rojo Mine (CRM) in Campbell County, Wyoming. Said permit should remain in full force and effect during any review thereof by the EQC. MCPI further requests review and clarification of the AQD September 10, 1985, Support Document (Support Document), particularly as to the issues relating to Amax and the Belle Ayr Mine.

MCPI respectfully requests that the Environmental Quality Council consolidate review of this petition with the appeal filed by Amax on October 28, 1985, protesting issuance of MCPI's permit. In any event, MCPI requests leave to participate in the Amax proceeding and to raise any and all defenses relevant and in support of the AQD permit granted to MCPI.

MCPI respectfully requests that the Environmental Quality Council hold a hearing to affirm the decision and review the Support Document of the Administrator of the AQD and Director of the Department of Environmental Quality.

In support of these requests, MCPI asserts that:

1. Issuance of the MCPI air quality permit for the Caballo Rojo Mine is in full compliance with the Wyoming Air Quality Standards and Regulations, notably Section 21.

2. The EQC should find that no "grandfather" exemptions, other than those expressly provided by the Wyoming legislature, are permissible under the Environmental Quality Act: Accordingly, the EQC should find that the Wyoming Legislature did not provide a "grandfather" exemption from the air quality permit requirements of the Wyoming Environmental Quality Act.

3. The EQC should rule that the AQD erred in 1978 when it carved out an exception to the Wyoming Environmental Quality Act for the benefit of Amax's Belle Ayr Mine. Continuing reliance on the AQD's erroneous 1978 decision is resulting in ongoing confusion and inequities in administration of the air quality program.

4. The EQC should find that the "grandfather" right asserted by Amax at the August 20, 1985, hearing on the MCPI air quality permit is contrary to law, frustrates the objectives of the Environmental Quality Act, and impairs the effective, equitable administration of the AQD permit program.

5. Issues arising in connection with the rights asserted by Amax at the August 20 1985, hearing are appropriate for EQC review in accordance with W.S.A. 35-11-112(a). The legality and scope of Amax's asserted "grandfather"

right are properly reviewed in connection with the AQD permit to MCPI because such asserted rights affect accurate air quality modeling, affect MCPI's ability to comply with permit requirements and the AQD's ability to execute its statutory obligations.

6. A reversal of AQD's interpretation of Amax's rights for the Belle Ayr Mine can have retroactive effect in this instance.

7. The detrimental reliance asserted by Amax at the August 20, 1985, hearing on the MCPI permit is not dispositive. The EQC is not estopped from reversing the AQD's interpretation that a grandfather right was proper.

For all these reasons, MCPI respectfully requests the Environmental Quality Council to affirm the Decision of the AQD to issue a permit to MCPI and requests the EQC to issue an order reversing the AQD decision which granted Amax a grandfather exemption from the Wyoming Air Quality Regulations & Standards. MCPI further requests that the EQC grant such other and further relief as it deems proper.

WHEREFORE, MCPI requests that a Hearing Officer be appointed and that a Pre-hearing Conference be held prior to the contested case hearing.

DATED this 30th day of October, 1985.

Respectfully submitted,

P. B. Walker
Mobil Coal Producing, Inc.

Hathaway, Speight and Kunz
One Pioneer Center, Suite 402
2424 Pioneer Avenue
Cheyenne, Wyoming 82001

By Brent R. Kunz by Rick A. Thompson
Brent R. Kunz

Attorneys for Mobil Coal Producing, Inc.

CERTIFICATE OF SERVICE

This is to certify that on this 30th day of October, 1985, true and correct copies of the foregoing PETITION FOR REVIEW TO THE ENVIRONMENTAL QUALITY COUNCIL TO SUSTAIN ISSUANCE OF PERMIT NO. CT-208A8 TO MOBIL COAL PRODUCING, INC., AND TO CLARIFY SEPTEMBER 10, 1985, SUPPORT DOCUMENT were placed in the United States mail, postage prepaid and addressed to:

Harold L. Bergman
Chairman
Environmental Quality Council
Emerson Building
Cheyenne, WY 82002

David D. Freudenthal
Freudenthal, Salzburg and Bonds
314 East 21st Street
Cheyenne, WY 82001

Steven Shanahan
Attorney General's Office
Capitol Building, Room 123
Cheyenne, WY 82002

Mike Barrish
Attorney General's Office
Capitol Building, Room 123
Cheyenne, WY 82002

Denise P. Padilla