

FILED

MAY 29 1986

Ardelle M. Kissler, Clerk
Environmental Quality Council

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

IN THE MATTER OF: AMAX COAL)
COMPANY'S PROTEST OF THE)
DEPARTMENT OF ENVIRONMENTAL)
QUALITY, AIR QUALITY DIVISION'S)
DECISION TO ISSUE MOBIL COAL)
PRODUCING, INC. A PERMIT TO)
MODIFY ITS OPERATION AT THE)
CABALLO ROJO MINE IN)
CAMPBELL COUNTY, WYOMING.)
AMAX COAL COMPANY,)
Protestant,)
v.)
DEPARTMENT OF ENVIRONMENTAL)
QUALITY, AIR QUALITY DIVISION;)
MOBIL COAL PRODUCING, INC.)

DOCKET NO. 1656-85

FILED

JUN 02 1986

Terri A. Lorenzon, Adm. Aide
Environmental Quality Council

AIR QUALITY DIVISION'S RESPONSE TO AMAX COAL COMPANY'S
PETITION TO CONTEST THE DIVISION'S AUGUST 30, 1985
DECISION TO GRANT A CONSTRUCTION PERMIT
TO MOBIL COAL PRODUCING, INC. FOR THE CABALLO ROJO MINE
IN CAMPBELL COUNTY, WYOMING

COMES NOW, the Air Quality Division of the Wyoming Department of Environmental Quality, by the Office of the Attorney General of the State of Wyoming, through Mike Barrash, Assistant Attorney General, and hereby responds to Amax Coal Company's petition to contest the Air Quality Division's August 30, 1985 decision to issue a construction permit to Mobil Coal Producing, Inc. for the Caballo Rojo Mine in Campbell County, Wyoming.

A(1). As early as March 19, 1976, the Air Quality Division (AQD) advised Amax that the grandfathered operation at its Belle Ayr South Mine (BAS) would be limited to those aspects which could be documented as existing prior to the effective date of the permit requirements in § 21 of the Wyoming Air Quality Standards and Regulations.

Then, by letter dated October 6, 1977, AQD Administrator Randolph Wood informed Amax that no air quality permit was required for BAS to the extent that a mining operation was in existence there prior to the May 29, 1974 effective date of Section 21, but any subsequent construction or operational change capable of increasing air pollutant emissions would require a permit. By letter dated January 25, 1978, Mr. Wood indicated the type of information needed to determine the scope of the grandfathered operation at BAS for which no permit was required. Mr. Wood explained that he was attempting to identify Amax's activities and firm, established plans at BAS which predated May 29, 1974. Furthermore, by permit dated September 13, 1976, the Division had informed Amax that a permit to construct/modify permitted only the facilities "as described in the application."

From the foregoing correspondence it was apparent that:

1. The specific, established grandfathered BAS mine plan in existence prior to May 29, 1974 did not require an air quality permit;

BAS. Permit CT-61 need not expressly "incorporate" information from the 1974 BAS mine plan in order to be limited by that plan. Permit CT-61 was issued to enable Amax to modify the original, grandfathered operation at BAS. The permit was issued only for the modification "as described in the application," (i.e., construction of a coal processing plant to process 10 million tons of coal/year). To the extent this modification did not alter the original, grandfathered mine plan, the operation at BAS is still limited by that grandfathered plan.

Item 20 on the 1976 air quality permit application form, which Amax was required to use under Section 21(b) of the 1976 Regulations, specifically asks for a "site map" indicating "the layout of facility" at the site, including roads and pits. Section 2(a)(16) of the 1976 Regulations defines "facility" to include "mining operations." In response to item 20 on its 1976 application for Permit CT-61, Amax provided "site map" No. BAS 7606-03-1/1, which does not indicate either an expansion of the area to be mined or an extension of the mining sequence beyond 1997.

Map No. BAS 7607-01-1/1, to which Amax refers in its petition (at page 6) was evidently submitted in response to item 21, which asks for a "location drawing" indicating location of the facility with respect to other developments. On this map, the area designated as

representing the location of the BAS facility provides no description of any mining pit progression or sequence to indicate that Amax had modified its grandfathered plan so as to extend the operation at BAS beyond the year 1997.

B. Based on correspondence with the AQD, including the letter from Mr. Wood dated February 17, 1978, Amax had notice that the 1974 mine plan defined the limits of the grandfathered operation at BAS. The life of the mine is one such limit. By letter dated October 26, 1977, Mr. Wood explained to Amax that the BAS grandfather right did not include any subsequent changes in the method of operation capable of causing an increase in facility emissions. Extending the life of the mine would obviously cause an increase in facility emissions after 1997, when the grandfathered plan indicated the operation at BAS would end. Therefore, Amax was on notice that the 1974 mine plan established the grandfathered life of the BAS mine.

While Amax observes that "current" law requires that Land Quality Division permits be renewed every 5 years, this requirement has been in effect only since 1980. The law in effect when Amax submitted its 1974 BAS mine plan, (and still in effect in 1978 when that plan was used to determine the extent of the grandfathered operation at BAS), did not require periodic mine permit renewals, and thus did not call for phased permitting.

of causing or increasing air pollution in excess of standards. This section in effect requires the establishment of an air quality permit system. Section 35-11-110(a)(v) empowers the AQD Administrator to administer any permit system established under the act, and (x) to possess such further powers as shall be reasonably necessary to the proper performance of the duties imposed upon the division under the act. These statutory provisions authorize and obligate the AQD to limit the scope of a permit to the operational plan described in the application and to strictly construe the scope of any grandfathered mining operation.

The AQD did not attempt to establish a rule that Land Quality Division (LQD) mine plans control the area to be mined and the duration of air quality permits. Rather, the AQD used the 1974 BAS mine plan submitted by Amax to the LQD to determine the scope of Amax's grandfathered operation at BAS because Amax itself specifically directed the Division to use that plan for that purpose. (See Wood letter to Porterfield dated January 25, 1978, Ebzery letter to Wood dated February 14, 1978, and Wood letter to Ebzery dated February 17, 1978). Neither did the AQD suspend or revoke Amax's permit to emit at BAS after 1997, because BAS was never permitted to emit after 1997 in the first place. For these same reasons, the AQD's August 30, 1985 decision is not contrary to the Wyoming Administrative Procedure Act or the

Wyoming or United States Constitutions. Amax has had the opportunity to modify its mine plan and extend the life of the mine by applying for a permit to modify.

The Air Quality Division respectfully requests that the Environmental Quality Council affirm the Division's August 30, 1985 decision that inclusion of emissions from Amax's Belle Ayr South mine in air quality modeling for the year 2010 was not necessary to demonstrate that Mobil's proposed modification at Caballo Rojo mine would not prevent the attainment or maintenance of ambient air quality standards, as required by Section 21(c)(ii) of the Wyoming Air Quality Standards and Regulations.

Dated this 30th day of May, 1986.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Michael Barrash, hereby certify that true and correct copies of the foregoing DEPARTMENT OF ENVIRONMENTAL QUALITY, AIR QUALITY DIVISION'S RESPONSE TO AMAX COAL COMPANY'S PETITION FOR A HEARING BEFORE THE ENVIRONMENTAL QUALITY COUNCIL and DEPARTMENT OF ENVIRONMENTAL QUALITY EXHIBIT LIST were served this 30th day of May, 1986 as follows:

By depositing copies of the same in the United States Mail, postage prepaid to:

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