



June 9, 2003

Tom Dunn
Chair, Environmental Quality Council
122 West 25th Street
Cheyenne, WY 82002

FILED
JUN 11 2003
Terri A. Lorenzon, Director
Environmental Quality Council

RE: Black Thunder Mine 233-T6, NOV #100172, DEQ Docket No. 3480-03

Dear Mr. Dunn:

I am in receipt of a notice of violation (NOV) Don Crecelius issued on May 7, 2003. The NOV was written concerning construction of a diversion at Black Thunder Mine (BTM). I am writing to request a stay of the remedial actions required by the NOV. In addition, please consider this letter to be a petition for review and request for public hearing. We have requested an informal conference with John Corra and hope that our differences of opinion can be worked out; however, I am filing this request in order to preserve our right to a hearing, if necessary.

Per 35-11-437(e), the EQC can issue a stay of this notice, provided that detailed reasons are given for granting this stay. TBCC is requesting this stay because resolution of the extent of the NOV will determine what actions are taken in the field to remediate (or not) the potential violation. TBCC should not be required to put remedial actions in place prior to there being a determination from the Director or from the EQC on whether or not a violation that needs to be remediated actually exists. The following is provided to give you a background on this enforcement action and to provide the information you need in order to grant a stay of the required remediation:

Here are the facts and background that I think all parties would agree on:

- BTM built a flood control diversion to divert an ephemeral drainage.
- A portion of the diversion in question was constructed using a dragline.
- The unconsolidated materials from the diversion were placed along its edge, on topsoil-stripped native ground between the diversion and the active mining pit.
- The cut slopes are 3:1. The side slopes of the material in question at the time of the inspection were 1½:1.
- The material has been regraded on top and a dragline used the length of this material as its road to exit the area.
- The material ranges in height from the required 6-foot road berm to approximately 20 feet, and has a length of approximately 11,000 feet.
- The dragline road on top of the material will be used as an in-pit overburden haulage road.

Part 1 of the violation is for "Failure to provide sediment control for lands affected by mining." In the area of "The approximately 11,000 linear feet of spoils above the north side of the Thundercloud diversion structure."

The material laid along side the diversion is not spoil by definition. Chapter 1, Section 2(cj) states, "'Spoil' means overburden removed during the mining operation to expose the mineral and does not include the marketable mineral, subsoil or topsoil." These materials were relocated for the sole purpose of constructing the diversion. They were not removed to "expose the mineral". The material was placed between the diversion and the active mining pit to provide additional flood control protection and a base for the haulage road. Our contention is that this material is part of the diversion structure. This material has been constructed in accordance with the requirements in Chapter 4, Section 2(e), "Diversion systems and drainage control". In addition, the typical cross-section shown in BTM's

permit for Thundercloud Diversion No. 3 does show that there will be material placed above the native ground surface as part of the diversion structure.

Chapter 4, Section 2(f)(i) which is the provision of the rules that we allegedly violated states, "All surface drainage from affected lands *excluding sedimentation ponds, diversion ditches, and road disturbances*, shall pass through a sedimentation pond(s) before leaving the permit area. Sedimentation control devices shall be constructed prior to disturbance. The Administrator may grant exemptions to the use of sedimentation ponds where, by the use of alternative sediment control measures, the drainage will meet effluent limitation standards or will not degrade receiving waters." As part of the diversion structure, the drainage from this material is not required to pass through a sedimentation structure before leaving the permit area.

BTM took control measures to ensure minimization of sedimentation during the construction process. BTM used a dragline to construct a portion of the diversion. This process took approximately 30 days to complete. Had we used scrapers to construct this portion of the diversion, it would have taken approximately 90 days to complete construction. Utilization of the dragline allowed BTM to seed the diversion 60 days earlier. Given the predicted drought situation, a 60-day delay in seeding at this time of year may make vegetation success implausible. In addition, the newly constructed diversion connects to an existing diversion downstream, which is 2 miles in length prior to leaving the permit boundary. This existing diversion has an extremely shallow bed slope, most of which has been in place over 22 years and is extensively vegetated with cattails. These physical conditions provide for filtering of any potential sediment, not only from the construction activities, but also from native waters being diverted through the channel.

Part 2 of the violation is for "Failure to follow approved mine plan." The approved mine plan shows a series of diversion structures in the Thundercloud lease area. Each diversion extends the length of the existing diversion that runs just north and parallel to the railroad tracks and Highway 450. In addition, each diversion contains an east-west oriented portion that parallels the northern advance of the current pit. The east-west segment of the new diversion runs along the same latitude as was shown in the permit for Thundercloud Diversion No. 3; however, this east-west portion of the new diversion does extend approximately $\frac{3}{4}$ mile further to the west. The segment of the diversion that runs parallel to the railroad is shown in the mine plan as portions of Thundercloud Diversion No. 3 and Thundercloud Diversion No. 4. Although the exact alignment of the new diversion was not included in the current permit, the conceptual plan for flood control did accurately describe the progression of the diversion systems, which this new diversion represents.

We have scheduled an informal conference with the Director on June 30. The heart of the issue is the whether or not sediment control needs to be provided for the material that the dragline excavated. The NOV requires sediment control plans to be submitted 15 days after receipt of the NOV and as-built drawings supplied 30 days after receipt. We did supply information at the 15-day time clock in order to explain what changes we had made in the field. It is my understanding that the District Supervisor is kindly extending the deadline for submittal of the as-builts; however, we will not have a decision from the Director or EQC prior to the extended deadline. We do not intend to supply as-built drawings for a project that is not completed. Nor will the project be absolutely completed until we have a decision from the Director or the EQC on the status of the dragline materials. Because of the construction of the well-vegetated channel downstream from this location, no sediment from these materials is leaving the permit boundary; therefore, no environmental harm will occur as a result of issuing this stay.

Please review these facts and give them your fullest consideration. If you have any questions, please call me at (307) 464-2113. I look forward to your call to determine the most expeditious way to receive a stay of this notice.

Sincerely,



Wendy S. Hutchinson
Regulatory Affairs Manager

.cc
John Corra
Director, Wyoming Department of Environmental Quality
122 West 25th Street
Cheyenne, WY 82002

Don McKenzie
WDEQ\Land Quality Division
1043 Coffeen Avenue, Suite D
Sheridan, WY 82801