

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL

STATE OF WYOMING

FILED

APR 03 2001

IN THE MATTER OF )  
TRITON COAL COMPANY, LLC, )  
BUCKSKIN MINE, )  
PERMIT NO. 500-T5, TFN 3 5/322 )

Terri A. Lorenzon, Director  
Environmental Quality Council  
Docket No. 01-4602

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MOTION TO DISMISS

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COMES NOW the Department of Environmental Quality, Land Quality Division (Division), through the Office of the Attorney General, pursuant to Department Rules of Practice and Procedure, Chapter II, Section 3, and hereby moves the Council to Dismiss this Petition for lack of jurisdiction in the Council; premature filing of Petition for Review; and Triton Coal Company, LLC, Buckskin Mine's (Buckskin) failure to exhaust administrative procedures, and as grounds therefor, offers the following:

1. During April of 2000 (Revised July 2000), Buckskin filed a **Pre-Application Alluvial Valley Floor Assessment** report with the Division requesting a determination as to whether or not the permit area contained an Alluvial Valley Floor (AVF).
2. By letter dated January 17, 2000 (should be 2001), in response to a letter dated December 8, 2000, from Buckskin, the Division informed Buckskin that the summary information presented in the assessment request supported the determination that an AVF was present within the permit area. The same letter informed Buckskin that the pre-application determination was not a final agency decision for appeal, stating specifically: "The


determination concerns pre-application material only and a final decision cannot be made until the actual permit application is processed. This position is supported by Chapter 3, Section 2(a) which explicitly states public notice and opportunity comment (sic) shall be provided during the permit approval process.”

3. The pre-application determination is not a “final agency action” nor is it other “agency action” ripe for review by the Environmental Quality Council (EQC) as contemplated by WYO. STAT. § 16-3-114(a).
4. No final decision has been made on Buckskin’s permit application as it is not yet complete. WYO. STAT. § 35-11-802 requires that the director must refuse to grant a permit prior to Buckskin being able to file a Petition for Review with the EQC. As such, the EQC is without jurisdiction to consider Buckskin’s Petition.
5. Because Buckskin has not completed the application process with DEQ prior to filing its Petition for Review there has been a failure to exhaust administrative remedies pursuant to WYO. STAT. § 16-3-114(a) which requires that administrative remedies be exhausted before filing its petition.

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WHEREFORE the Department of Environmental Quality, Land Quality Division, through the Office of the Attorney General respectfully request that the Council enter an ORDER dismissing Triton Coal Company, LLC, Buckskin Mine's, Petition for Review for the above reasons.


DATED this 3<sup>rd</sup> day of April, 2001.

  
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John S. Burbridge  
Assistant Attorney General  
123 Capitol Building  
Cheyenne, Wyoming 82002  
307-777-7841

CERTIFICATE OF SERVICE

I, John Burbridge, certify that the foregoing MOTION TO DISMISS was served by placing a copy in the United States mail, postage prepaid, on this 3<sup>rd</sup> day of April, 2001 addressed to the following:

Edward W. Harris  
HOLLAND & HART  
2515 Warren Avenue, Suite 450  
Cheyenne, Wyoming 82001  
Attorney for Triton Coal Company, LLC

  
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John S. Burbridge