

FILED

OCT 07 2011

**BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING**Jim Ruby, Executive Secretary
Environmental Quality Council

In the matter of the Appeal and Petition for
Review of:

Docket No. 11-4601

the Notice of Violation issued to Thunder
Basin Coal Company for operations at its
Coal Creek Mine

**APPEAL AND PETITION FOR
REVIEW OF DIRECTOR DECISION**

Pursuant to the Wyoming Department of Environmental Quality Rules of Practice and Procedure, Chapter 1, Section 3, Thunder Basin Coal Company hereby files this Appeal and Petition for Review of the September 19, 2011 decision of the Director of the Department of Environmental Quality regarding Notice of Violation ("NOV") No. 100566, DEQ Docket No. 4866-11, issued by the Land Quality Division ("LQD") of the Department of Environmental Quality on July 22, 2011.

**A. NAME AND ADDRESS OF PETITIONER AND PETITIONER'S
COUNSEL**

1. The name of Petitioner is Thunder Basin Coal Company ("Thunder Basin"). Its address is P.O. Box 460, Wright, WY 82732. Legal counsel for Petitioner is William B. Prince, Dorsey & Whitney LLP, Salt Lake City, Utah.

B. DECISION SUBJECT TO APPEAL

2. As noted above, the purpose of this Petition is to appeal the decision of the Director of the Department of Environmental Quality issued on September 19, 2011 and received by Thunder Basin on September 23, 2011. The decision upheld an NOV that was issued by the LQD on July 22, 2011. The NOV alleged Thunder Basin had violated

LQD Rules and Regulations Chapter 6, Section 4(a)(i) and Environmental Quality Act § 35-11-415(b)(xi)(C)(I) on May 18, 2011.

C. BASIS FOR PETITION

3. On May 18, 2011, Mrs. Edwards, a resident near Thunder Basin's Coal Creek Mine, called the LQD to complain that a "brown-orange cloud," which sometimes can result from cast-blasting at coal mines, had passed over her house. The same day, Thunder Basin shot a cast-blast at its Coal Creek Mine. The LQD decided that the Coal Creek Mine shot could have contributed to the brown-orange cloud and issued an NOV to Thunder Basin.

4. As Thunder Basin is prepared to demonstrate, it was not possible for the brown-orange cloud that passed over Mrs. Edwards' house to have originated at the Coal Creek Mine.

5. Mrs. Edwards called the DEQ's Doug Emme at an undetermined time on the day of the blast to report the brown-orange cloud. When Mr. Emme called back at 5:00 p.m., Mrs. Edwards reported that the cloud had been at her house at approximately 3:30 p.m. According to cell phone records, Mrs. Edwards also received a call from her husband at 4:19 p.m., during which her husband warned her that the cloud was on their house. At 4:40 p.m., Mrs. Edwards called Mr. Edwards, and he reported to her that the cloud had passed.

6. Thunder Basin fired its shot at 4:09 p.m. If Mrs. Edwards was correct, and the cloud reached her house at 3:30 p.m., the cloud could not have resulted from Thunder Basin's shot.

7. If Mrs. Edwards was not correct, and the cloud in fact arrived at her house at 4:19 p.m., when Mr. Edwards called Mrs. Edwards, it still could not have originated at the Coal Creek Mine. The Edwards' house is located 3.5 miles to the south-southwest of the blast area. At the time of the blast, Coal Creek Mine's equipment recorded that the wind was blowing out of the northwest at 3 miles per hour. The wind therefore blew the cloud to the southeast, not in the direction of the Edwards' house. Moreover, at 3 miles per hour, the cloud could not have reached the Edwards' house until after 5:00 p.m., well after Mr. Edwards' call.

8. Even if one looks to the average wind conditions over the hour following the blast, rather than the conditions at the time of the blast, it was impossible for the cloud that affected the Edwards' house to have originated at the Coal Creek Mine. As recorded at the Coal Creek station, the average wind speed and direction over the hour between 4:00 p.m. and 5:00 was 10.3 miles per hour out of the north. With the wind blowing out of the north, the cloud would have passed well to the east of the Edwards' house, which was located to the south-southwest of the blast. Moreover, at 10.3 miles per hour, the cloud would only have moved 1.7 miles between the time of the shot and Mr. Edwards' 4:19 p.m. call, when he warned his wife that the cloud was on their house.

9. In addition to showing that that Coal Creek Mine was not the source of the brown-orange cloud, Thunder Basin is prepared to demonstrate that its employees and contractors followed well-designed procedures intended to ensure compliance with all applicable rules and regulations. This includes assessing and accounting for weather conditions when cast-blasting in order to minimize potential impacts from blasting

emissions. In fact, Coal Creek Mine's procedures parallel the procedures of Thunder Basin's Black Thunder Mine, which were the product of negotiations with the surrounding community and were reviewed and approved by the DEQ at the conclusion of those negotiations.

10. Pursuant to these procedures, Thunder Basin employees and contractors paid close attention to potential variability in the weather on the afternoon of the shot at issue and took updated readings immediately before the shot. These readings showed any cloud resulting from the shot would travel away from nearby residences on private property.

11. As a result, the NOV lacks factual support, making the DEQ's decision to issue it and impose penalties arbitrary and capricious. Thunder Basin therefore respectfully requests that the Environmental Quality Council overturn the agency's decision.

12. Thunder Basin requests a hearing in this matter.

Dated: October 7, 2011

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By



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