

**BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING**

In the matter of the Appeal and Petition for)
Review of: The Notice of Violation Issued)
to Thunder Basin Coal Company for)
Operations at its Coal Creek Mine)

Docket No. 11-4601

**UNOPPOSED MOTION
FOR STAY OF ABATEMENT
REQUIREMENT PENDING
APPEAL**

Pursuant to Wyoming Statutes Section 35-11-437(e) and Wyoming Department of Environmental Quality Rules of Practice and Procedure, Chapter 2, Section 3, Thunder Basin Coal Company (“Thunder Basin”) hereby files this unopposed motion for a stay of the abatement required in Notice of Violation (“NOV”) No. 100566, Docket No. 4866-11, issued by the Land Quality Division (“LQD”) of the Department of Environmental Quality, pending the outcome of this appeal. Specifically, the NOV sets forth the following two requirements for which Thunder Basin seeks a stay:

- (1) “Coal Creek Mine must submit a plan that will be used in the future to prevent NOx from blasts impacting people both on the permit and off the permit.
- (2) “Coal Creek Mine must submit a permit revision that incorporates the operational controls used for preventing NOx fumes from blasts impacting people into the permit blasting plan. LQD will need to review and approve the operational control plans before they are submitted as a permit revision.”

Thunder Basin believes the stay is justified because, as indicated in Thunder Basin’s Appeal and Petition for Review, a principal basis for Thunder Basin’s appeal is the company’s belief that the Coal Creek Mine already has an effective plan in place to prevent NOx from blasts from impacting people. Thunder Basin does not believe it was

the source of the NOx cloud that gave rise to the NOV. Even if Thunder Basin is held to be the cause, this would be the first such incident since the plan was developed and implemented. And should Thunder Basin's appeal prove successful, the remedial action required in the NOV would be unnecessary.

Counsel for the Department of Environmental Quality has indicated the Department would not oppose this motion. Accordingly, Thunder Basin respectfully requests that the Council place a stay on the abatement requirements of the NOV, pending the outcome of this appeal.

Dated: October 27, 2011

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By



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