

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

IN THE MATTER OF OBJECTIONS TO THE)
APPLICATION FOR A PERMIT REVISION)
FOR AMAX COAL WEST, INC.,) DOCKET NO. 2947-98
EAGLE BUTTE MINE, TFN 3 5/183))

AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

This Amended Order replaces the Order issued May 17, 1999. This Amended Order corrects Paragraph 1 of the Findings of Fact of the May 17, 1999 Order, and does not in any way change the substantive Findings and Conclusions of the first Order.

This matter came before the Environmental Quality Council (EQC) for hearing on July 14, 1998 and on December 18, 1998. Members of the EQC conducting the hearing in July were Wendy Hutchinson, Steve Williams, John Morris, and Pat Hand. Members of the EQC conducting the hearing in December were Wendy Hutchinson, Den Costantino, Steve Williams, Pat Hand, John Morris, and Keith Becker. Steven R. Youngbauer, a member of the Council, was recused from the case. Terri A. Lorenzon Esq., Attorney for the EQC assisted on both hearings days. Those members who were not in attendance for a portion of the proceedings reviewed the transcripts of the hearing.

Karla J. Oksanen represented herself at the hearings, and Doug and Carol Roe were represented by Carol Roe at the hearings. The Applicant, AMAX Coal West Inc. was represented by Edward Harris, Esq., of Holland and Hart. The State of Wyoming, Department of Environmental Quality, Land Quality Division was represented by Thomas A. Roan Esq., Senior Assistant Attorney General.

On January 22, 1999, the EQC, having reviewed the evidence and being fully advised, held a public meeting and reached the decision which follows.

FINDINGS OF FACT

1. On December 2 1996, Karla Oksanen, Joe Gilsdorf, Doug Roe, and Carol Roe filed objections to a proposed permit revision for AMAX Coal West's Eagle Butte Mine. This case was docketed as #2802-96. The proposed revision was to the Eagle Butte Mining Permit 428-T3, blasting plan which includes a traffic control plan to protect those traveling on state Highway 14-16 when blasting is taking place at the Eagle Butte Mine.
2. Pursuant to the provisions of the Environmental Quality Act (referred to as the Act or the

EQA), either an informal conference with the Director of the Department of Environmental Quality (DEQ) or a formal hearing before the EQC is required within 20 days of the close of the public comment period for a mine permit (or significant permit revision) when a citizen objects to issuance of the permit. Karla Oksanen and Joe Gilsdorf requested an informal conference along with their objections and Dennis Hemmer, the Director of DEQ held the conference. Appeals from an informal conference decision by the Director are heard de novo. W.S. 35-11-406(k) and Chapter VI, Section 4., DEQ Rules of Practice and Procedure.

3. On February 14, 1997, Dennis Hemmer issued Findings of Fact, Conclusions of Law and a Decision in Docket #2802-96. Mr. Hemmer recommended issuance of the permit revision with a condition attached which would address concerns about emissions and debris from blasting operations at Eagle Butte. A separate docket number was mistakenly assigned to the decision document (Docket #2770-96), and this number was later changed to Docket #2802-96. The condition stated:

“Blasting in Sections 20,21,28 and 29 of Township 51 North, Range 72 West will not occur when the wind is blowing from the direction of the blast site toward either point where traffic is stopped due to the implementation of the traffic control plan associated with this revision. This restriction is in addition to the restriction stated on page 3.8-6 of the permit which provides protection for Rawhide Village. If it can be demonstrated to the satisfaction of the Land Quality Division that sufficient measures have been taken to ensure that significant nitrous oxides will not be generated by coal blasts, this condition may be waived, subject to periodic review, for coal blasts.” (emphasis added)

4. The February 14, 1997 informal conference decision became final when the time for appeal to the EQC lapsed.
5. On May 28, 1997, DEQ issued the permit revision and on the same day AMAX challenged the condition on the permit. The case was docketed as #2847-97 and AMAX requested an informal conference on this new appeal. As no effort was made to bring Karla Oksanen or Doug and Carol Roe into Docket #2847-97, the only parties to the appeal were DEQ and AMAX.
6. The May 28th AMAX petition to the EQC alleged that information presented to DEQ demonstrated that Condition 1 (contained in paragraph 3 above) was unduly restrictive. AMAX submitted both monitoring and modeling data on air emissions from blasting operations at Eagle Butte Mine to support its argument.
7. The Director modified Condition 1 to allow blasting up to 1100 feet from stopping points on the highway regardless of wind direction. The stopping points are established in a traffic control plan developed by the mine with the participation of the Wyoming Department of Transportation. Specifically, Condition 1 was modified to the following:

Overburden blasting in Sections 20, 21, 28 and 29 of Township 51 North, Range 72 West will not occur within 1,100 feet of either point where traffic is stopped due to the implementation of the traffic control plan associated with the revision when the wind is blowing from the direction of the blast site toward either traffic stopping point. This restriction is in addition to the restriction stated on page 3.8-6 of the permit which provides protection for Rawhide Village.

8. On November 12, 1997, AMAX and DEQ filed a Joint Motion to Dismiss in Docket #2847-97 and the EQC dismissed the case on December 9, 1997.
9. At a public meeting held on March 2, 1998, the EQC considered a motion to dismiss Docket #2802-96. Karla Oksanen appeared at the meeting to contest the dismissal and the motion to dismiss was tabled to allow Ms. Oksanen, AMAX, and DEQ an opportunity to respond to her questions about the relationship between Docket #2802-96 and Docket #2847-97.
10. On March 6, 1998, AMAX filed a new application for a permit revision to Permit #428-T3. The revision, if approved, would allow overburden blasting in specified sections of land up to 1100 feet from Rawhide Village regardless of wind direction. Currently this overburden blasting at the mine is limited to times when the wind is not blowing from the direction of the mine site toward Rawhide Village. The revision would apply the distance limitation used in the blasting plan for Highway 14-16 to Rawhide Village. This permit revision is referred to in this document as the pending permit revision.
11. The pending permit revision proposed the following condition:

Blasting of overburden in Sections 20, 21, and the N1/2 of Section 28, T51N, R72W, will not occur when the wind is blowing in the direction from the blast site toward Rawhide Village unless the blast site is more than 1100 feet from Rawhide Village. Appendix 3.8-2 explains this offset distance. The wind restriction is applicable only to occupied dwellings within Rawhide Village. Any resident may waive the restriction at his/her discretion.
12. On April 7, 1998, Karla Oksanen filed a Petition for Review in which she demanded a hearing before the EQC. She complained that the informal conference decision of February 14, 1997 (Docket #2802-96) had been changed without her knowledge in Docket #2847-97, and the failure to include her as a party to Docket #2847-97 violated her right to due process under the State and Federal Constitutions. She argued that she had not been able to voice her health and safety concerns with the change allowing blasting up to 1100 feet of stopping points on Highway 14-16 regardless of wind direction.
13. On May 21, 1998, Karla Oksanen filed an objection to the pending permit revision. Doug and Carol Roe filed an objection to this revision on June 22, 1998. These protestants are residents of Rawhide Village, an area that lies between Highway 14-16 and Eagle Butte Mine.

14. The hearing on the pending permit revision was scheduled for July 14, 1998 and the parties were notified of and were given an opportunity to brief the question whether the April 4, 1998 petition filed by Karla Oksanen and the pending permit revision should be consolidated for hearing under Docket #2947-98.
15. After oral argument on consolidation at the hearing on July 14, 1998, the EQC decided and all parties agreed that expansion of the scope of the hearing to cover blasting issues pertaining to Rawhide Village and Highway 14-16 would resolve Ms. Oksanen's and Ms. Roe's due process issues and afford an opportunity for a comprehensive review of restrictions on blasting at Eagle Butte Mine.
16. The EQC consolidated Karla Oksanen's April 7, 1998 Petition for Review with her May 21, 1998 objections to the pending permit revision in the interests of justice and judicial economy and evidence on the appropriate restrictions to be applied to Highway 14-16 and Rawhide Village was taken.
17. The primary health and safety concerns with blasting are the danger of airborne debris and nitrous oxide emissions. The scientific evidence presented indicated that a high dosage and/or a high concentration of nitrous oxide can be harmful, and even fatal, to humans.
18. The expert witnesses testified to the air quality monitoring and modeling that was done to support the 1100 foot distance limitations. AMAX witnesses presented the data that had been developed to predict emissions from blasts at Eagle Butte Mine, and this data predicted that NO₂ emissions would be at 1 part per million (ppm) at approximately 356 feet from the blasting site if a maximum amount of explosive used at Eagle Butte Mine of 250,000 lbs. is detonated. The U.S. Environmental Protection Agency (EPA) has not set a standard for short term exposure to NO₂. In lieu of a public health standard, the AMAX consultants referenced several standards applicable to confined space exposure in occupational situations. These short term occupational standards range from 1 ppm to 5 ppm.
19. Travelers on Highway 14-16 will be protected by the traffic control plan which is developed by AMAX and the Wyoming Department of Transportation. This is the plan that determines where traffic will be stopped during blasting operations.
20. Travelers on Highway 14-16 could be at risk of exposure to nitrous oxides, flyrock, and perhaps the fright of a sudden explosion, if blasting and traffic control plans were not in place. The evidence demonstrated that it is very unlikely that travelers would be exposed to a dangerous level of nitrous oxides or other hazards with the 1100 foot restriction and any exposure would be transient in nature.
21. Residents of Rawhide Village are at a higher risk of exposure to blasting impacts than the traveler on Highway 14-16 due to the fact that the Village is composed of permanent structures and the residents may be at their homes for extended periods of time.

22. The scientific evidence supports the 1100 foot restriction for Highway 14-16. However, when the wind is blowing toward Rawhide Village, 1100 feet is too short a distance for purposes of considering the more routine exposure for the residents.

CONCLUSIONS OF LAW

1. The Environmental Quality Council has jurisdiction over the subject matter of and the parties to this proceeding.
2. AMAX, the applicant, bears the burden of proof of demonstrating that a major revision to its mine permit meets the statutory and regulatory requirements of the Environmental Quality Act, and AMAX has met this burden in regard to the permit revision for blasting in relation to Highway 14-16. AMAX has not met this burden in regard to the pending permit revision for blasting in relation to Rawhide Village.
3. The consolidation of Karla Oksanen's April 7, 1998 Petition for Hearing and her May 21, 1998 objection to the pending permit revision afforded all parties a full and fair hearing on the appropriate restrictions on blasting at Eagle Butte Mine, including the restrictions attached to the Eagle Butte Permit 428-T3 in Docket #2802-96 and Docket #2847-97.
4. The witnesses who testified as experts had the knowledge, skill, experience, training, and education to qualify them to give their opinions on the impacts of blasting in the area surrounding Eagle Butte Mine.
5. The EQC is not bound to accept the expert opinions as conclusive evidence that the emissions from blasts at Eagle Butte Mine would not affect the Rawhide Village residents if the wind is blowing in the direction of the Village. The EQC must evaluate the expert opinions in light of the unique conditions at each site.
6. It is the EQC's prerogative to assign the appropriate weight to the evidence and the evidence does not support changing the restriction from one where blasting is not done when the wind is blowing in the direction of Rawhide Village to one where blasting can be done up to 1100 feet, or approximately three city blocks, from the Village regardless of wind direction. Maintaining wind direction as the criteria for blasting in relation to Rawhide Village gives an added margin of safety to the residents.
7. The permit revision that limits blasting at Eagle Butte Mine to that done 1100 feet or more from designated points on Highway 14-16 regardless of wind direction protects the public health and safety of those people who travel on Highway 14-16.
8. The permit revision allowing blasting up to 1100 feet of Highway 14-16 regardless of wind

direction should be approved as set forth above in Paragraph 7, and the permit revision allowing blasting within 1100 feet of Rawhide Village regardless of wind direction should be denied.

ORDER

IT IS HEREBY ORDERED THAT:

1. The permit revision to AMAX Coal West Inc.'s permit for Eagle Butte Mine, Permit #428 T3, which allows blasting up to 1100 feet of stopping points on Highway 14-16 regardless of wind direction is approved. It states as follows:

Overburden blasting in Sections 20, 21, 28 and 29 of Township 51 North, Range 72 West will not occur within 1,100 feet of either point where traffic is stopped due to the implementation of the traffic control plan associated with the revision when the wind is blowing from the direction of the blast site toward either traffic stopping point. This restriction is in addition to the restriction stated on page 3.8-6 of the permit which provides protection for Rawhide Village.

2. AMAX Coal West Inc.'s permit revision to allow blasting up to 1100 feet from Rawhide Village regardless of wind direction is denied.
3. DEQ shall amend AMAX Permit #428 T3 in accordance with this order.

IT IS SO ORDERED THIS _____ day of _____, 1999.

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