

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF)
THE DIRECTOR'S DECISION ON THE)
CITIZEN COMPLAINT AGAINST AMAX,) DOCKET NO. 3057-99
COAL WEST, INC., EAGLE BUTTE MINE,)
PERMIT NO. 428-T3)

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Environmental Quality Council (EQC), having heard arguments on a Motion to Dismiss in the above entitled contested case at a public meeting on December 6, 1999, having reviewed the file and being fully informed in the premises, finds and concludes as follows.

FINDINGS OF FACT:

1. The Powder River Basin Resource Council (PRBRC) filed an appeal to a decision on their citizen complaint against AMAX, Coal West, Inc.(now RAG Coal West, Inc.), Eagle Butte Mine issued by the Director of the Department of Environmental Quality (DEQ) on February 11, 1999.
2. As grounds for reversing the DEQ decision, PRBRC alleged:
 1. The Eagle Butte permit was unlawfully revised by the Director.
 2. The blasting activities at the Eagle Butte mine violate the approved state program as well as AMAX's lawfully approved permit.
3. The EQC received a Joint Motion To Stay Proceedings on March 23, 1999, stating that the Department and the PRBRC had begun settlement discussions.
4. On April 22, 1999 the EQC granted the motion to stay until July 19, 1999 when the parties were to submit status reports or a proposed hearing schedule.
5. The EQC received DEQ's status report on July 23, 1999 but did not receive any correspondence from the PRBRC.

6. At the EQC's November 5, 1999 meeting, the EQC determined that it should consider the case on its own motion to dismiss. The EQC based its decision on the fact that the issues presented by the PRBRC appeared to have been decided in a separate EQC case, AMAX Coal West Inc., Eagle Butte Mine, Docket 2947-98, and on the lack of activity by the PRBRC in their appeal.
7. The PRBRC submitted an objection to the EQC's motion stating that the Federal Office of Surface Mining had issued a Notice of Violation to AMAX for its Eagle Butte Mine and the parties were in negotiation with the Office of Surface Mining.
8. PRBRC stated that negotiations concerned the approval process for mine permits and mechanisms for resolving health and safety problems associated with blasting where noxious gases may be released as a result of blasting. PRBRC said that the procedural issues had been resolved but that there is "continued uncertainty regarding the federal response to the problem."
9. On December 6, 1999, at the EQC's meeting, PRBRC was given the opportunity to present its reasons for continuing with this appeal. The PRBRC did not argue that the issues raised concerning the Eagle Butte permit and violations of that permit remained viable. PRBRC did not distinguish these issues from those decided in Docket 2947-98.
10. The PRBRC informed the EQC that the negotiations with the Office of Surface Mining had ended with OSM's withdrawal of its 10 day Notice of Violation and with AMAX agreeing to modify its permit..
11. The PRBRC was not persuasive that the issues with which it is now concerned are the issues raised in this appeal. Discussions pertaining to the emission of nitrous oxide gases in the Powder River Basin, an issue affecting all coal mines in the area, may continue regardless of the pendency of this appeal.

CONCLUSIONS OF LAW

1. The PRBRC properly filed their objection of the DEQ decision to the EQC.
2. The EQC has jurisdiction over the parties to and the subject matter of this appeal. §35-11-701, W.S. 1999.
3. The PRBRC failed to respond to the EQC's Order of April 22, 1999 and did not diligently prosecute this appeal before the EQC.
4. Issues forming the basis of this appeal have been resolved in a related case before the EQC and through negotiations among the parties.

ORDER

THEREFORE, IT IS ORDERED that the above-entitled complaint should be and is hereby dismissed.

DATED this 24th day of January, 2000.
FILED January 24, 2000.

Den Costantino, Chairman
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