

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL

STATE OF WYOMING

IN THE MATTER OF)
KENNECOTT URANIUM COMPANY'S)
APPLICATION FOR)
THIRD TERM INTERIM MINE) DOCKET NO. 3068-99
STABILIZATION, TFN 3 5/190,)
PERMIT 481.)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

This matter came before the Environmental Quality Council (EQC) for hearing on June 9, 1999, in Rock Springs, Wyoming. EQC members Den Constantino and Robert Rawlings conducted the hearing, with Mr. Constantino serving as hearing examiner. Terri A. Lorenzon, attorney for the EQC, assisted with the hearing. Kennecott Uranium Company (Kennecott) was represented by Edward W. Harris of Holland & Hart. The State of Wyoming, Department of Environmental Quality, Land Quality Division (LQD) was represented by Thomas A. Roan, Senior Assistant Attorney General.

On September 13, 1999, the EQC, having reviewed the evidence and being fully advised, held a public meeting and reached the following decision.

FINDINGS OF FACT

1. LQD issued a permit to mine, Permit No. 481, to the Sweetwater Uranium Project in 1978. Construction of the facilities began in 1979, and production began in 1981. Production ceased in 1983 for economic reasons.

2. The Sweetwater Uranium Project was acquired by the Green Mountain Mining Venture (GMMV) in 1992. GMMV is a joint venture among Kennecott Uranium Company, U.S. Energy Corporation, and Crested Corporation, with Kennecott Uranium Company serving as operator. Kennecott Uranium Company is a subsidiary of Kennecott Energy Company, which provides certain operating services to the GMMV.

3. LQD first granted interim stabilization status for the Sweetwater Uranium

Project in April, 1988, for a five year period. The second term was granted in April 1993. Kennecott first submitted the pending application for the third five-year term of interim stabilization in April, 1998, and then submitted an amended application in September, 1998.

4. Interim stabilization status is being sought for the mine and related facilities under LQD Permit No. 481. The mill and related areas are subject to regulation by the Nuclear Regulatory Commission, and are not at issue in this matter.

5. The United States government is the surface owner of certain lands which are included within the mine permit area, and for which interim stabilization status is sought. These lands are administered by the federal Bureau of Land Management (BLM). The BLM denied Kennecott's request for surface owner consent to the third term of interim stabilization.

CONCLUSIONS OF LAW

1. LQD regulations generally require that reclamation "must begin as soon as possible after mining commences and must continue concurrently until such time that the mining operation is terminated and all of the affected land is reclaimed." LQD Regs. Chapter III, Section 2(k)(i). Where reclamation cannot feasibly be done concurrently with mining, the approved reclamation schedule "shall provide for the earliest possible reclamation consistent with the orderly and economic development of the property. LQD Regs. Chapter III, Section 2(k)(i)(D). These requirements for prompt reclamation may be delayed only if the mining operation is granted interim stabilization status. LQD Regs. Chapter III, Section 2(k)(ii).

2. Because Kennecott is seeking a third five-year term of interim stabilization, a public hearing is required. The hearing is to be conducted by the EQC. Chapter III, Section 2(k)(ii)(E)(III), Land Quality Division Non-Coal Rules and Regulations (LQD Regs.). The Environmental Quality Council therefore has authority to conduct this hearing, and jurisdiction over the subject matter of this proceeding. The EQC also has jurisdiction over the parties to the proceeding.

3. LQD regulations state that "All interim mine stabilization requests and renewals must be accompanied by written consent from the surface landowners to the proposed plan." LQD Regs. Chapter III, Section 2(k)(ii)(B). The EQC therefore concludes that surface landowner consent is required as one of the conditions of approval of interim stabilization status.

4. Because the BLM, one of the surface landowners, denied its consent to interim stabilization, Kennecott's application for interim stabilization cannot legally be approved.

5. This conclusion makes it unnecessary for the EQC to consider or decide any other issues raised in this proceeding, and the EQC will refrain from doing so.

ORDER

BASED ON THE PRECEEDING FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT IS HEREBY ORDERED:

1. Kennecott's application for a third term of interim stabilization status for the Sweetwater Uranium Project is denied.

2. Kennecott shall promptly begin reclamation of the Sweetwater Uranium Project in accordance with LQD regulations and the reclamation plan approved as part of Permit No. 481; provided, however, that Kennecott may seek LQD approval to amend the currently approved reclamation plan as necessary for the orderly and effective reclamation of the affected area.

IT IS SO ORDERED THIS 19th DAY OF OCTOBER, 1999.

Den Constantino, Hearing Examiner
Environmental Quality Council