

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL

AMAX COAL COMPANY'S APPLICATION )  
FOR MINING PERMIT, )

DOCKET NO. 161-76

FINDINGS OF FACT

1. The Applicant, Amax Coal Company, began its application as required by W.S. 35-502.24(q) after receiving a letter from the Land Quality Division on November 17, 1975, certifying that the application was physically complete.

2. On January 7, 1976, objections to the application were filed by Michael Elmore, Rita Elmore and Mary Elmore Clark and Davis Oil Company.

3. Pursuant to W.S. 35-502.24(f), the Environmental Quality Council ordered that a hearing be held January 26, 1976 at 10:30 A.M. in Cheyenne, Wyoming, and a prehearing conference be held January 20, 1976. The hearing and prehearing conference were properly noticed to all parties. The hearing was conducted within the 20 day time period required by W.S. 35-502.24(f). A quorum of five council members was present at the hearing. Twenty days were available for discovery by the parties. Protestors first filed motions for discovery and continuances January 20, 1976. Discovery was filed January 23, 1976.

4. The record in this matter consists of the transcript of the hearing and prehearing conferences, all exhibits received, the mining permit application in question, and all matters in the agency files on this matter. The findings, conclusions, and

order herein are based solely on this record.

5. Publication of Notice of the hearing occurred on January 19, 23, and 26, 1976, in the Gillette News Record. The notice was also published January 25, 1976, in the Casper Star-Tribune which is distributed in the Gillette, Wyoming area.

6. Notice of the application was not sent to Mary Elmore Clark. There was no evidence presented that Mary Elmore Clark had a valid legal estate, which would be affected by the proposed operation.

7. The application contained detailed maps required by 35-502.24(b) showing the mining and reclamation process. These maps described the processes explicitly for the first few years of operation. Further, both the maps and the testimony of Applicant Witness indicated this detailed process would be repeated each ensuing mining year. (R. 34, 41, 42, 50, 73, 76, 91)

8. The application contained detailed plans for the diversion of surface water around the mined area, the control of erosion and siltation from the runoff of surface water. These methods include rerouting Little Rawhide Creek with complete hydrologic design, a headwall at the west boundary and settling ponds. (R. (R.108-114) Testimony of Applicant Witness, Richard, was that these plans were adequate to avoid erosion, siltation. (R. 131, 132, 148) There is very little surface water in the permit area. (R. 147, 149)

9. In the application and testimony at the hearing the Applicant stated that approximately 100,000 - 150,000 gallons per day would be produced in the mining operation. (R. 118) The estimated amounts of water was based upon previous experience at the Amax Belle Ayr Mine southeast of Gillette, Wyoming where similar conditions existed. (R. 140)

10. The application contained a description of procedures that the Applicant planned to use for the protection of oil and gas wells within the permit area. (R. 85, 101) The Protestant, Davis Oil Company, has one existing well, Fuller No.1, within the permit area presently located in Section 35 T. 51 N. R. 720. (R.347) The primary producing life of that well was estimated to be five years. (R. 389) According to the mining plan, that portion of the permit area would not be mined until 2000, approximately 19 years after exhaustion of the one existing well. There was no indication that waste of oil and gas or pollution of the groundwater would occur with reference to the existing well as a result of Applicant's operation.

11. The application and testimony indicated specific procedures for stabilizing highwalls during the mining process and after completion of the mine. (R. 229) These procedures include soil studies to determine length of terracing and width of buff zone. (R. 229, 236)

There was no evidence that problems of lateral or subjacent support would occur. Previous experience at the Belle Ayr Mine with similar conditions has not indicated a problem. (R. 235) The applicant is conducting additional studies of the stability of the soils and will update its procedures according to the latest data. (R. 233, 234)

12. Land Quality Rules and Regulations, Ch. II Section 2 require that highwalls in the final pit area be reduced to the average inclination of the natural slopes in the immediate mine area. The application states that the natural slopes in the area of the proposed mine rarely exceed a 5 to 1 slope. (R. Appendix D p. 1,2) reclamation map, provided in the application, shows proposed slopes of approximately 3 to 1 ratio. (R. 92) The applicant did not establish on the record that returning the mined

area to a slope equal to or less than the average natural slopes would create an unwarranted increase in the amount of affected lands.

13. The record indicated that there are numerous additional permits and approvals that the Applicant may be required to obtain prior to the operation of various aspects of the proposed mine. At the present time the evidence did not indicate that the operation was in violation of federal or state law or policy.

14. The Applicant's proposed mining operation will not significantly affect the groundwater supply on the Protestant's property. The well on Protestant's property described as a trench, would in fact be enhanced by the construction of the headwall. (R. 115) The Protestant's additional well located, in Section 29 known as the Hladky Well may experience some slight drawdown. (R. 167.8) Experience at the Belle Ayr Mine indicates the drawdown will be minimal. (R. 169)

15. There are two residences on the Protestant's property adjacent to the permit area. (R. 335)

The Protestants have proposed a subdivision in close proximity to the permit area. At this time the subdivision plat has not been approved. (R. 323)

16. The application states that the mine area will be fenced. All fugitive dust created by the operation will have to be controlled pursuant to state air quality standards.

17. The Land Quality Division requested additional information from the Applicant relating mainly to water division, siltative and erosion control in November, 1975. The application was amended and updated pursuant to these requests of the Land Quality Division Staff witness, Roger Shaeffer, testified that

this information had been requested, and that the additions corrected possible problems with surface water. (R. 261) Protestants had ample opportunity to cross examine Mr. Shaeffer as to his communications with the applicant. Any communications were between the Applicant and the staff and under no circumstances involved the Council.

#### CONCLUSIONS OF LAW

1. Applicant properly published notice of its application for a mining permit within 15 days of the receipt of the Land Quality Division letter certifying that the application was physically complete, as required by Ch. VIII, Section 2 of the Land Quality Division Rules and Regulations and W.S. 35-502.24(e).

2. There was no evidence on the record to show that Mary Elmore Clark in fact had a valid legal estate which might be affected by the proposed operation. Therefore, the applicant's notice was not defective because Mary Elmore Clark was not personally served.

3. The Casper Star-Tribune is a newspaper of general circulation in the Gillette, Wyoming area. Publication once the week of January 19, 1976, and once the week of January 25, 1976, both immediately prior to the day of the hearing, complies with the requirements of W.S. 35-502.24(f) and gave sufficient public notice of the time and purpose of the hearing.

4. In the absence of any statutory requirement to the contrary, it is within the discretion of the Council to select the location for conducting a contested case hearing on mining permit.

5. The twenty day period from the date the Protestors filed their objections until the date of the hearing was ample

time to conduct or at least initiate discovery.

By initiating discovery on Friday, January 23, 1976, three days before the hearing on Monday, January 26, 1976, the Protestants failed to exercise due diligence by the timely undertaking of discovery. The Council affirms the hearing officer's decision to deny a continuance for the purposes of discovery.

6. The supplemental material added to the application and the communications with the staff in most cases improved the application and those conditions to which the objectors objected. There is no evidence that a substantial right of the protestors was prejudice or that the supplementation impeded the ability of the protestors to contest the application. At no time was there any ex parte communication with the Council, the decision-making body.

7. The application was complete and complied with the requirements of the Environmental Quality Act. Specifically, those items objected to were in compliance as follows:

a. The mining and reclamation plans provide sufficient detail to meet the statutory requirements by giving explicit details of mining and reclamation activities for the first year and further establishing that these procedures will be repeated year by year on specific acreage within the permit area. The Council further concludes that any permit issued shall be conditioned upon the continual updating of the mining and reclamation plans in the annual report required by W.S. 35-502.28 which shall include detail equivalent to that provided for the initial years.

8. The Applicant's plans for diversion of surface water and control of erosion and siltation fulfill the requirements of W.S. 35-502.24(b)(xv). Further, the Applicant provided a statement as to the source, quality and quantity of water to be used

in the operation pursuant to W.S. 35-502.24(b)(xvi).

9. The record does not indicate that waste of oil and gas or pollution of groundwater will occur as a result of mining operation. The existing well will not be disturbed during its producing life and the development of future wells is speculative. This conclusion is made without prejudice to Protestant Davis Oil Company's assertion regarding its property rights in its oil and gas interests in any other forum. Further, Davis Oil Company may approach this Council in the future should additional wells be developed.

10. The Applicant's proposed mine will not threaten the lateral or subjacent support of the surrounding property in violation of any state or federal law. As a precaution, the Applicant is continuing planning to avoid any support problems.

11. The final highwalls and final pit areas of the proposed operation shall be reduced to a slope of 5 to 1 to comport with the average natural inclination in the area and to comply with the Environmental Quality Act and Land Quality Rules and Regulations.

12. The Environmental Quality Act does not require the Applicant to comply with all other state and federal laws at the time of application for a mining permit. However, the mining permit when issued shall be issued on the condition that a portion of the operation attain compliance with all applicable state and federal law before that respective portion of the operation is commenced.

13. The evidence indicates that the Protestant's groundwater supply will not be substantially affected by the proposed operation. Although some effects may occur, some positive and some negative, it does not appear to violate existing state

or federal law or policy.

14. The proposed operation will not constitute a threat to the public health or safety nor does it constitute a public nuisance. Only two residences were located on Protestant's property and, therefore, the operation will not affect a substantial number of people, if any, to an adverse degree.

ORDER

Based on the foregoing findings and conclusions

IT IS HEREBY ORDERED THAT:

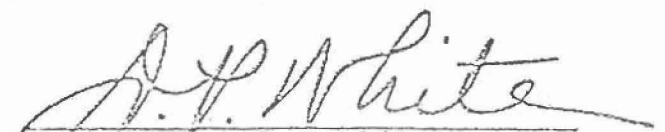
The Applicant Amax Coal Company's application for a permit to mine be granted subject to the following conditions:

(1) The annual report shall contain detailed information equivalent to that provided in the application for the initial years;

(2) All final highwalls and pit areas shall be reduced to a 5 to 1 slope;

All portions of the mining operation shall comply with all applicable state and federal law prior to the commencement of that portion of the operation.

So ordered this 16 day of April, 1976.

  
Environmental Quality  
Council *Vice Chairman*



CERTIFICATE OF SERVICE


I, Robert S. Sundin hereby certify that on the 19<sup>th</sup> day of April, 1976, I served a true and correct copy of the Findings of Fact and Conclusion of Law by placing the same in the United States mail, postage prepaid at Cheyenne, Wyoming 82001 and correctly addressed to:

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