DIRECTOR'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

This matter came before the Director of the Department of Environmental Quality pursuant to a request by Thunder Basin Coal Company, Coal Creek Mine for an Informal Conference as provided in W.S. 35-11-901(c), W.S. 35-11-437(c)(i) and Chapter VI of the Wyoming Department of Environmental Quality Rules of Practice and Procedure.

At issue are Notice of Violation (NOV) No. 100566, Docket No. 4866-11, and the associated civil penalties associated with a blasting incident that occurred on May 18, 2011. This NOV was issued on July 22, 2011 by Doug Emme, designated representative of the Department of Environmental Quality, based on a citizen's complaint and his review of the circumstances. The informal conference was conducted on August 29, 2011 in the Cheyenne offices of the Director of the Department of Environmental Quality.

Thunder Basin was represented by Wendy Hutchinson, Monica Williams and James Opfer. The Land Quality Division of the Department of Environmental Quality was represented by Nancy Nuttbrock and Doug Emme. All of the above named individuals participated in the conference. After reviewing the record and being fully advised of the premises, the Director hereby makes his Findings of Fact, Conclusions of Law, and Decision.

FINDINGS OF FACT

1. One cast blast was shot at 4:09 PM at Thunder Basin Coal Company's Coal Creek Mine.
2. This shot was the largest they had ever conducted.
3. A resident (Mrs. Edwards) called Doug Emme at approximately 5 PM on May 18, 2011 to complain of a NO_x cloud passing over and near her house.
4. Cell phone records show that the resident's husband called her at 4:19 PM to warn her of an orange-brown cloud moving towards their residence.
5. Shortly afterwards, the resident took photos of the clouds from her house. The photos indicate that the cloud was both higher in altitude and more dilute to the West and lower in altitude and denser to the East.

6. At 4:40 PM, the resident called her husband to report that the clouds had passed their house.
7. Brown-orange clouds contain high concentrations of NO_x that is hazardous to human health.
8. The Coal Creek Mine is located 3.5 miles north-northeast of the residence.
9. The blast at Coal Creek produced fumes as reported in their Informal Conference.
10. Weather conditions were unsettled for most of the day as indicated by the ceiling chart in Gillette, Wyoming and the report at the Informal Conference of rain around the time of the shot.
11. Two "cast-blast" shots were fired on May 18, 2011 at Cordero Rojo. One at 2:13 PM and another at 2:19 PM.
12. The Cordero mine is located approximately 11.5 miles north-northwest of the residence.
13. Wind speeds and direction are important facts in this matter, and the data from DEQ files for the date of the incident are shown below.

Wind Speed and Direction at Cordero-Rojo and Coal Creek

Time of Day	Cordero-Rojo		Coal Creek	
	Speed	**Direction**	**Speed**	**Direction**
2 PM MDT	14.6 mph	Out of the North, 339°	18.5 mph	Out of the North, 350°
3 PM MDT	13.3 mph	Out of the North, 354°	11.2 mph	Out of the North, 344°
4 PM MDT	4.7 mph	Out of the Southeast, 146°	11.9 mph	Out of the North, 358°
5 PM MDT	11.8 mph	Out of the Northeast, 19°	14.8 mph	Out of the Northeast, 23°

CONCLUSIONS OF LAW

The Director has jurisdiction over the subject matter and of the parties to this proceeding pursuant to W.S.§ 35-11-902(c) and W.S.§ 35-11-437(b)(i) of the Wyoming Environmental Quality Act and the Rules of Practice and Procedure, Chapter VI of the Wyoming Department of Environmental Quality.

DECISION

A NOx cloud was produced by the shot at Coal Creek mine.

At the time of the shot, weather conditions at the mine were not favorable.

There is an incident where the results of blasting had affected a resident who is located downwind and off the permit boundary.

The location of the shot at Coal Creek was approximately 3.5 miles north and slightly east of the Edwards residence. Wind speed as recorded at the Coal Creek station for the hour between 4 PM and 5 PM averaged 14.8 mph and the direction was from the Northeast at an azimuth of 23°. With the shot being fired at 4:09 PM, and the photos taken between 4:19 and 4:40 PM, I conclude that the cloud from that shot was passing over, and just east of the residence at the time of the photos.

At the Informal Conference it was noted that mine personnel attempted to fire the shot earlier in the day, but had some problems that delayed the shot, thus impacting their ability to comply. I reduce the penalty calculated for this factor to zero.

I uphold the NOV, and the penalty is $7,500.

I also find that the remedial action as described in the NOV to be appropriate, and set a deadline for submittal of plans to LQD by November 1, 2011.

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ORDERED THIS 19TH DAY OF SEPTEMBER, 2011

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY

John V. Corra, Director

This decision may be appealed to the Environmental Council for a period of 15 days after the date the parties receive the decision. Appeals shall be directed to:

Chairman
Environmental Quality Council
122 W. 25th Street, Room 1714
Cheyenne, WY 82002