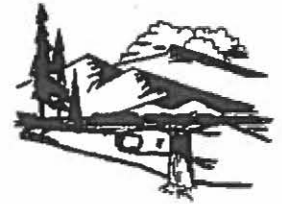




# Department of Environmental Quality

*To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.*



Matthew H. Mead, Governor

Todd Parfitt, Director

July 11, 2016

Chairman David Bagley  
 Hearing Officer Aaron Clark  
 Wyoming Environmental Quality Council  
 112 W 25th Street  
 Herschler Bldg. 1W, Room 1714  
 Cheyenne, WY 82002

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 Jim Ruby, Executive Secretary  
 Wyoming Environmental Quality Council  
 Environment

**Re: June 20, 2016 Request for Advice Pursuant to Wyoming Statute § 35-11-109(a)(x)**

Dear Chairman Bagley, Hearing Officer Clark, and Council Members,

This letter is in response to your letter, dated June 20, 2016, requesting my advice on five specific questions regarding the current permit application submitted by Brook Mining Company, LLC, and your pending proceedings on a request for an order in lieu of landowner consent, EQC Docket No. 16-1601. My advice regarding those questions is as follows:

- 1. What is the status of DEQ's Brook Mine permit review and what steps need to occur to finalize DEQ approval?**

Brook Mining Company, LLC, (Brook Mining) submitted its application to the Department's Land Quality Division (LQD) on October 30, 2014. LQD deemed the application complete on November 4, 2014. Since that time, LQD has performed five rounds of technical review. As a result of those rounds of review, there is only one remaining deficiency regarding the application's technical adequacy: the lack of surface owner consent to the mine and reclamation plans as required by Wyoming Statute § 35-11-406(b)(xi) and (xii).

The next step in the application review process is for Brook Mining to either provide LQD with proof of landowner consent sufficient to correct the deficiency or an order issued by the Council in lieu of landowner consent. The LQD Administrator could then evaluate that submission and make a decision on whether the application, as a whole, is technically adequate. If the Administrator determines that the application is technically adequate, the application will then proceed to public notice under Wyoming Statute § 35-11-406(j), followed by public comment under Wyoming Statute § 35-11-406(k). The public comment period includes the opportunity for interested persons to ask for a contested hearing before the Council or an informal conference before the Director regarding the persons' objections to the application. Those proceedings can affect whether a permit is issued or denied, and either proceeding would affect the timing of a final decision on permit issuance.

Final approval of the surface coal mining application also requires completion of steps that are in addition to, but separate from, the technical adequacy review and the procedures under Wyoming Statute § 35-11-406. These include LQD's approval of a cumulative hydrologic impact assessment (CHIA) for the mine, and the operator passing a review of the federal Office of Surface Mining Reclamation and Enforcement's (OSMRE) applicant violator system (AVS). Both of these steps are required for OSMRE concurrence with the Department's approval of a surface coal mining permit. The operator must also post required bonds prior to final permit issuance.

Chairman Bagley

July 11, 2016

Page 2

2. **Are there any parts of the mine plan which DEQ has determined to be incomplete or inadequate?**

The LQD has no outstanding review comments for Brook Mining to address related to the proposed mine and reclamation plans.

3. **Is consent from the landowners the only deficiency DEQ has identified with the current reclamation plan or have other parts/requirements been determined to be incomplete or inadequate?**

Currently, surface owner consent to the mine and reclamation plans is the only deficiency with the mine and reclamation plans that Brook Mining must satisfy before LQD can complete its review of the application for technical adequacy.

4. **Can future public comments received by DEQ result in material changes to either the current mine plan or the current reclamation plan?**

Public comments or objections may affect my final decision on a permit application or what conditions the Department places on an issued permit. Those things could possibly include changes to the mine or reclamation plans.

5. **When will DEQ determine the reclamation bond and surface owner protection bond requirements for this application and when is the applicant required to submit the bonds?**

Following the public comment period and any informal conference or Council hearing under Wyoming Statute § 35-11-406(k), the LQD Administrator will know whether the permit application may move forward and what its final scope and content will be. Following those processes, the LQD Administrator will set the required amount of reclamation bonding under Wyoming Statute § 35-11-417(c)(i) and bonding for surface damage under Wyoming Statute § 35-11-416(a). Both bonds must be posted to the LQD prior to issuance of the permit. However, under Wyoming Statute § 35-11-416(a), the LQD Administrator will not require a bond for surface damage when an "agreement negotiated between the surface owner and the mineral owner or developer waives any requirement" for the bond. If such an agreement exists in this case, there will not be a surface owner protection bond for this permit.

Sincerely,



Todd Parfitt  
Director

cc: Brook Mining Company, c/o Isaac Sutphin, Holland & Hart LLP (via electronic filing)  
Big Horn Coal Company, c/o Lynne Boomgaarden, Crowley Fleck PLLP (via electronic filing)  
Padlock Ranch Company, c/o Mistee Elliott and Hal Corbett, Lonabaugh and Riggs, LLP (via electronic filing)