



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

March 3, 2016

Mr. Randall Atkins
c/o WWC Engineering
1849 Terra Ave.
Sheridan, WY 82801

RE: Round 5 Technical Review, Brook Mine Coal Mine Permit Application, Adjudication Volume, TFN 6 2/025

Dear : Mr. Atkins

The Land Quality Division received your Round 4 Adjudication comment responses from Holland and Hart on February 3, 2016. The statutory requirement for LQD to respond to the second round responses is 30 days from date of receipt, which is March 4, 2016. The responses from your attorneys have been reviewed in their entirety and comments, questions, noteworthy deficiencies, and requests for additional information were generated for Round 5. These have been gathered by the permit coordinator and are presented as an attachment to this letter.

Please review the Fifth Round Adjudication comments and prepare your replies accordingly. Contact Bj Kristiansen or Mark Rogaczewski with questions or requests for clarification of the Round 5 materials. We will be happy to assist you in this process.

Sincerely,

Bjarne Kristiansen, PG
Natural Resources Program Principal
WDEQ-LQD District III

Cc: Cheyenne LQD files w/attachment

Brook 26



March 3, 2016

Land Quality Division Round 5 Comments
Brook Mine Permit Application, TFN 6 2/025
Adjudication Section, Surface Owner Consent and Approval

The Department of Environmental Quality, Land Quality Division (“Division”) provides the following comments after examining the Applicant’s responses to the Division’s fourth round of comments on the adjudication section of the Brook Mine Permit Application, TFN 6 2/025. These comments relate to the permit application requirements under Wyoming Statutes § 35-11-406(b)(xi) and (xii) for certain written consents from the surface landowners whose lands are located inside the proposed mine permit boundary.

In its responses, the Applicant provided additional documents that it believes support a conclusion that the Division should deem the application technically adequate and suitable for publication. The Applicant described its position that the landowner consent requirements in Wyoming Statute § 35-11-406(b)(xi) and (xii) do not apply to lands conveyed in the 1954 Deed between Sheridan-Wyoming Coal Company and the Big Horn Coal Company. The Applicant also provided excerpts from files for existing mine permits that the Applicant believes support the Department deeming this application technically adequate.

After examining the response materials, the Division has determined that the permit application is still deficient at this time.

Despite the Applicant’s arguments regarding the 1954 Deed, the landowner consent requirements under Wyoming Statute § 35-11-406(b)(xi) and (xii) continue to apply to lands within the proposed permit boundary. For the surface landowners and lands affected by it, the 1954 Deed appears to grant the Applicant the right to enter and commence operations on so much of the surface as may be necessary or convenient for the purposes identified in the deed. This likely would satisfy that particular requirement under Wyoming Statute § 35-11-406(b)(xi) to the extent that the Applicant’s access and occupation of particular lands is necessary or convenient in accordance with the deed. However, even in light of the additional documents and legal arguments provided by the Applicant, the 1954 Deed does not constitute an instrument of consent from the surface landowners to the mining and reclamation plans, as required by both subsections(b)(xi) and (xii). While the 1954 Deed appears to grant the Applicant some rights to use the surface of lands under the deed, it does not grant unfettered permission regarding how the Applicant may use those lands.

Based on these determinations, the Division finds that the adjudication section of the permit application does not contain all necessary surface landowner consents and is therefore deficient. The Applicant must obtain written approval of the mine and reclamation plans from the surface landowners within the proposed permit boundary, or obtain appropriate orders in lieu of consent in accordance with Wyoming Statute § 35-11-406(b)(xii), before the Division may declare the application technically complete and suitable for publication.