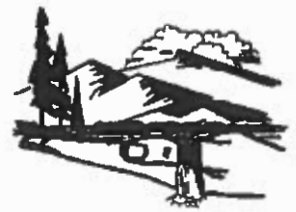




Department of Environmental Quality

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

October 25, 2016

Environmental Quality Council
 122 West 25th Street
 Herschler I West, Room 1714
 Cheyenne, WY 82002

October 24, 2016

Dear Chairman Bagley, Hearing Officer Clark and Council Members,

I am writing to update you on an issue that was raised at your recent September 28, 2016 hearing on Brook Mining, LLC's request for an order in lieu of consent. Near the end of the hearing, Brook Mining mentioned that the Department needs to have legal access to conduct inspections on the surface of the proposed permit area, including the lands owned by Big Horn Coal Company, LLC. Brook Mining also included in its proposed orders provisions related to inspection access for the Department.

The issue that Brook Mining identified is an important one, but it is unrelated to the order in lieu of consent under Wyoming Statute § 35-11-406(b)(xii). In order to conduct inspections of a mine, Department employees need to have legal access over the surface of the permit area. The Land Quality Division's "Form 8" is the document that mine operators and the Department normally use to demonstrate the consents required by Wyoming Statute § 35-11-406(b)(xi) and (xii). But Form 8 also contains language addressing the separate requirement of granting access for inspections. This allows a surface landowner to sign a single document covering both issues.

In a situation such as this where an order in lieu of surface owner consent will be issued related to the mine and reclamation plans, the Department still needs to have access for its employees to conduct inspections. The Department has successfully worked with Big Horn Coal and Brook Mining to draft a document that grants the Department this necessary access. The Department received the signed document last week. This document will not substitute for or address the issues related to an order in lieu of consent, but it will satisfy the inspection access requirement.

Because the Department, the operator, and the landowner have cooperatively resolved this issue, it is my advice that the Environmental Quality Council issue its order in lieu of consent without including the provisions Brook Mining proposed relating to inspection access. For the record, the Department did not request that Brook Mining include that language in its proposed order. But regardless, the issue has been resolved to everyone's benefit. The Department greatly appreciates the effort that counsel for Big Horn Coal and Brook Mining made to make that happen.

Sincerely,

Todd Parfitt
 Director

Cc: Alan Edwards
 Andrew Kuhlmann

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OCT 25 2016

Jim Ruby, Executive Secretary
 Environmental Quality Council