

BEFORE THE WYOMING ENVIRONMENTAL QUALITY COUNCIL  
STATE OF WYOMING

**FILED**

IN THE MATTER OF THE WYOMING )  
DEPARTMENT OF ENVIRONMENTAL )  
QUALITY'S DECISION TO ISSUE PERMIT )  
NO. P0026670 TO THE BLACK BUTTE )  
COAL COMPANY )

Docket No. \_\_\_\_\_ **OCT 12 2020**

**Jim Ruby, Executive Secretary**  
Environmental Quality Council

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**SIERRA CLUB PETITION FOR HEARING**

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**I. Introduction**

Pursuant to Chapter 2, Section 4 of the General Rules of Practice and Procedure, Department of Environmental Quality ("DEQ"), Sierra Club respectfully petitions for a hearing before the Wyoming Environmental Quality Council to challenge DEQ's September 11, 2020 issuance of Air Quality Permit No. P0026670 for the Black Butte coal mine in Sweetwater County, Wyoming. In particular, Sierra Club objects to DEQ's failure to require the Black Butte Coal Company ("Black Butte") to control harmful air pollutant emissions from the heavy equipment at the Black Butte Mine through the application of Best Available Control Technology ("BACT").

**II. Statement of Applicable Facts and Law**

As set forth in greater detail in Sierra Club's July 20, 2020 comments to DEQ, the Black Butte permit should be remanded to DEQ to require Black Butte to analyze for BACT its diesel-powered mine equipment.

According to WAQSR Chapter 6, Section 2 regarding Wyoming operating permit requirements for the construction, modification and operation of a source of air pollution:

(a) (i) Any person who plans to construct any new facility or source, modify any existing facility or source, or to engage in the use of which may cause the issuance of or an increase in the issuance of air contaminants into the air of this state shall obtain a construction permit from the State of Wyoming, Department of Environmental Quality before any actual work is begun on the facility.

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(c) No approval to construct or modify shall be granted unless the applicant shows, to the satisfaction of the Administrator of the Division of Air Quality that:

(v) The proposed facility will utilize the Best Available Control

Technology with consideration of the technical practicability and economic reasonableness of reducing or eliminating the emissions resulting from the facility. For large mining operations, specific measures normally required and to be considered include but are not limited to:

- (A) The paving of access roads;
- (B) The treating of major haul roads with a suitable dust suppressant;
- (C) The treatment of temporary haul roads;
- (D) The use of silos, trough barns, or similar enclosed containers for the storage of large volumes of material awaiting load out and shipment;
- (E) The treatment of active work areas; and
- (F) The treatment of temporary ore stockpiles.

WAQSR Chapter 1, Section 3(a) defines the term "facility" as follows:

"Facility" shall mean any property, real or personal, which may incorporate one or more sources of air pollution and shall include but not be limited to processing plants, manufacturing plants, power generator plants, refining plants, mining operations, lumber mills, ore processing plants, construction material processing operations, etc.

WAQSR Chapter 1, Section 3(a) defines the term "source" as follows:

"Source" shall mean any property, real or personal, or person contributing to air pollution.

The BACT analysis in Black Butte's July 22, 2019 permit application fails to mention, much less analyze, BACT for the diesel-powered machinery at the Black Butte facility. DEQ's June 8, 2020 analysis of the application was also silent on the issue of BACT for the facility's diesel equipment. Because diesel exhaust constitutes between 20-25% of the facility's primary particulate matter (PM) emissions, and an even larger percentage of the facility's NO<sub>x</sub> and SO<sub>2</sub> emissions, a comprehensive BACT analysis is required.

Black Butte's permit application at Table 5.2 provides a description of the diesel equipment to be used at the mine, and each unit's applicable EPA tier rating. No modern Tier 3 or 4 equipment is identified. The application also states old equipment will be burning virtually unregulated diesel containing 2,000 ppm of sulfur. Page 21.

Black Butte's permit application makes no effort to analyze: (a) what best controlled equipment, including Tier 4 equipment, could be used instead of Black Butte's much older and higher polluting non-tier, Tier 1 and Tier 2 equipment; (b) the extent to which such better controlled equipment would reduce emissions; or (c) the cost of the lower emitting equipment. In other words, the application makes no effort to determine BACT for any of the diesel equipment, and the proposed permit fails to require the use of any BACT equipment such as equipment in compliance with Tier 4 emission standards.

Tier 4 standards for non-road heavy equipment were promulgated 16 years ago, and were phased in between 2008 and 2015. 69 Fed.Reg. 38958 (June 29, 2004); 40 C.F.R. Parts 9, 69, 80, 86, 89, 94, 1039, 1048, 1051, 1065, and 1068. Tier 4 heavy equipment is now available from several manufacturers.

For example, Caterpillar's 794 Tier 4 mine haul truck is available for purchase now, has a payload of 320 tons, and has been shown to emit 90% less NOx and PM pollution than that discharged by its lower tier counterparts. See, [https://www.cat.com/en\\_US/news/machine-press-releases/cat-794-ac-mining-truck-meets-strictest-us-emissions-standards-while-maintaining-high-performance-and-reducing-operating-costs.html](https://www.cat.com/en_US/news/machine-press-releases/cat-794-ac-mining-truck-meets-strictest-us-emissions-standards-while-maintaining-high-performance-and-reducing-operating-costs.html)

Plainly Tier 4 heavy equipment is far less polluting, is available now, and should have been evaluated by Black Butte as BACT. Because it wasn't, the permit application is defective and should be returned by DEQ to the applicant for further analysis prior to the issuance of any permit.<sup>1</sup>

On September 11, 2020, DEQ's Air Quality Division rejected Sierra Club's comments for two reasons:

**Air Quality Division's Response:** As noted in Sierra Club's comments, the Division can require BACT on new and modified activities at the mine that fall under Chapter 6, Section 2(c)(v). However, this section does not authorize the Division to require BACT for mobile mining equipment. The Division has the ability to require the implementation of BACT on stationary sources as defined by the Clean Air Act (CAA). Per the CAA, the term "stationary source" means generally any source of an air pollutant except those emissions resulting directly from an internal combustion engine for transportation purposes. The units in question by Sierra Club are classified as mobile engines or vehicles under the Clean Air Act, and are exempt from the permitting requirements as written in Chapter 6, Section 2(k) of the WAQSR.

To DEQ's first contention that the definition of "stationary source" in the federal Clean Air Act ("CAA")<sup>2</sup> precludes an examination of BACT for heavy mine equipment at the Black Butte Facility, Sierra Club replies that the question of whether Black Butte's mining equipment is subject to BACT pursuant to WAQSR Chapter 6, Section 2(c) is a matter of state law, not federal. Therefore, DEQ's reliance on the definition of "stationary source" in the CAA is inapplicable. Rather, to the extent the definition of "stationary source" is

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<sup>1</sup> The permit should also be returned to Black Butte to consider the use of low and ultra-low sulfur diesel fuel. The application also failed to consider, and the permit fails to require Black Butte to use, low sulfur (<500 ppm) or ultra-low sulfur (<15 ppm) diesel fuel, the latter is in common use throughout Wyoming.

<sup>2</sup> See 42 U.S.C. § 7602(z).

relevant to this matter, it is the definition found in the Environmental Quality Act at W.S. 35-11-103(b)(vi):

"Stationary source" means any building, structure, facility or installation which emits or may emit any air contaminant.

Plainly the Black Butte Mine is a facility which emits air contaminants, some of which emissions come from heavy equipment. There is no suggestion in this WAQSR definition, or in the WAQSR definition of facility, that emissions from such equipment are to be excluded.

Further, even if the definition of "stationary source" in the CAA applies, it only excludes from regulation the direct emissions from mobile sources themselves, not requirements that mobile heavy equipment with pre-established emission limits be used as BACT to control that source of emissions as part of the larger Black Butte facility.

DEQ's second contention is that BACT does not apply to Black Butte's heavy equipment because that equipment is "exempt from the permitting requirements as written in Chapter 6, Section 2(k) of the WAQSR." DEQ is mistaken on this point as well.

WAQSR Chapter 6, Section 2(k) states:

(k) Approval to construct or modify shall not be required for:

(i) The installation or alteration of an air pollutant detector, air pollutants recorder, combustion controller, or combustion shutoff.

(ii) Air conditioning or ventilating systems not designed to remove air pollutants generated by or released from equipment.

(iii) Fuel burning equipment other than a smokehouse generator which has a heat input of not more than 25 million BTU per hour (6.25 billion gm-cal/hr) and burns only gaseous fuel containing not more than 20 grains total sulfur per 100 std. ft<sup>3</sup>; has a heat input of not more than 10 million BTU/hr (2.5 billion gm-cal/hr) and burns any other fuel.

(iv) Mobile internal combustion engines. (v) Laboratory equipment used exclusively for chemical or physical analyses.

(vi) The installation of air pollution control equipment which is not a part of a project which requires a construction or modification permit under Chapter 6, Section 2 or 4 of these regulations.

(vii) Gasoline storage tanks at retail establishments.

(viii) Such other minor sources which the Administrator determines

to be insignificant in both emission rate and ambient air quality impact.

Simply because a haul truck or bulldozer is not required to obtain a separate permit to construct does not mean emissions from that equipment are exempted from a BACT requirement. Just as haul roads are not required to obtain a separate permit, but are required to employ BACT, heavy equipment is not required to obtain a separate permit but is subject to BACT.

### **III. Statement of Adverse Effects**

One or more members of Sierra Club are adversely affected by emissions from heavy equipment at the Black Butte facility in Sweetwater County. These adverse impacts include but are not limited to viewing dirty plumes of pollution coming from the mine, viewing haze downwind of the mine, and being concerned over the health impacts related to such pollution. One or more Sierra Club members' enjoyment of the area near the mine is negatively impacted by seeing and/or being exposed to such pollution and being concerned about its effects. Sierra Club's injuries would be redressed, at least in part, by the imposition of pollution-reducing BACT for the heavy equipment at the Black Butte facility.

### **IV. Conclusion**

Wyoming law requires the use of BACT at the Black Butte Mine. Because DEQ's permit for the Black Butte facility neither analyzed nor required BACT for some of the largest sources of pollution at the mine, the heavy equipment, the permit should be remanded to the agency and to the applicant to ensure the implementation of BACT.

Respectfully submitted on behalf of Sierra Club:



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Certificate of Service

I certify that on this 9<sup>th</sup> day of October, 2020, I caused to be served by U.S. Registered Mail, return receipt requested, the foregoing SIERRA CLUB PETITION FOR HEARING, to the following:

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