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BEFORE THE ENVIRONMENTAL QUALITY COUNCIL  
STATE OF WYOMING

In re Brook Mining Co., LLC coal mine )  
Permit – PT0841 ) EQC Docket No. 20-4802  
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**RULE 56.1 STATEMENT IN SUPPORT OF RESPONDENT BROOK MINING, LLC’S  
BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

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COMES NOW, Brook Mining Co., LLC, (Brook) by and through its attorneys Patrick J. Crank, Abbigail C. Forwood, and Jim D. Seward of the firm Crank Legal Group, P.C., and files its *Rule 56.1 Statement in Support of Respondent Brook Mining, LLC’s Brief in Support of Motion for Summary Judgment*. Brook hereby asserts that there are no genuine issues to be tried with regard to the following material facts:

1. WDEQ found Brook’s revised permit application technically complete and suitable for publication on February 26, 2020. *See*, State Decision Document (“SDD”) Brook

Mining Company, LLC, Brook Mine, Permit to Mine Coal, TFN 6 2/2020 (“Temporary File Number”), July 7, 2020. Brook published notice of its revised permit application, beginning on March 3, 2020. *Id.* The public comment period ended on April 23, 2020. *Id.* WDEQ received objections to Brook’s application and Director Parfitt scheduled an informal conference on May 13, 2020. *Id.* WDEQ held this informal conference remotely. *Id.* Brook demonstrated that the Brook Mine surface coal mine permit application complied with Article 4 of the Wyoming Environmental Quality Act (“WEQA”) and all other applicable State and Federal law and regulations. SDD at 21. *Id.*

2. Wyoming law is structured to allow mine plans and permits to permit mining to be economically feasible. W.S. § 35-11-405(c). It is the public policy of the State of Wyoming that coal mines shall be permitted in a manner that makes them economically feasible. *Id.*

3. After the application was deemed complete and accurate by WDEQ/LQD, PRBRC was given another opportunity for notice and hearing. *See*, Petition at ¶ 3. The PRBRC hired its own expert, Gennaro G. Marino, President of Marino Engineering Associates, who provided his comments in a report dated April 15, 2020. *See*, Marino Report Appendix A to Petition. WDEQ hired Daniel D. Overton, President of Engineering Analytics, Inc., in 2018 to begin performing expert review of subsidence matters for WDEQ/LQD in this application. Overton provided many reports throughout this process for WDEQ/LQD. *See*, Daniel D. Overton Affidavit attached as Exhibit D to Respondent Brook Mining Co., LLC, Brief in Support of Motion for Summary Judgment ¶ 9. Following the completion of the public comment period and the Informal Conference, Overton also provided his comments on June 9, 2020. *See*, Daniel D. Overton Affidavit attached as Exhibit D to Respondent Brook Mining Co., LLC, Brief in Support of Motion for Summary Judgment ¶ 14. Overton had the benefit of the Marino report and all other public comments and the oral testimony and exhibits and testimony from the

Informal Conference at the time of his review. *See*, Daniel D. Overton Affidavit attached as Exhibit D to Respondent Brook Mining Co., LLC, Brief in Support of Motion for Summary Judgment at ¶ 15-22. Following the completion of the June 9, 2020 report by Overton, WDEQ/LQD had the benefit of all expert reports as well as their own internal staff expertise in crafting conditions on the permit regarding the issue of subsidence control. *See*, Alan Edwards Affidavit attached as Exhibit B to Respondent Brook Mining Co., LLC, Brief in Support of Motion for Summary Judgment at ¶ 11-15. Prior to the informal conference, WDEQ/LQD completed a full secondary review of the entire application using another LQD supervisor in a different WDEQ regional office as an independent third party. *See*, Affidavit of Alan Edwards attached as Exhibit B to Respondent Brook Mining Co., LLC, Brief in Support of Motion for Summary Judgment ¶11.

4. Before the permit was finalized, WDEQ/LQD worked with Mr. Overton, and WDEQ staff, to ensure the comments raised by the experts, the public, the internal reviewers, and in the Informal Conference, were addressed in permit conditions. *See*, Daniel D. Overton Affidavit attached as Exhibit D to Respondent Brook Mining Co., LLC, Brief in Support of Motion for Summary Judgment at, ¶10-16; Alan Edwards Affidavit attached as Exhibit B to Respondent Brook Mining Co., LLC, Brief in Support of Motion for Summary Judgment; Todd Parfitt Affidavit attached as Exhibit C to Respondent Brook Mining Co., LLC, Brief in Support of Motion for Summary Judgment; Timothy A. Ross Affidavit attached as Exhibit E to Respondent Brook Mining Co., LLC, Brief in Support of Motion for Summary Judgment. At all times, PRBRC had full notice and opportunity to be heard and the information it provided in comments, testimony, documents, and its own expert report, were ultimately used in part to craft the final permit issued on July 7, 2020. *Id.*

5. Brook's application provides a very detailed sequence of mining operations (*See*, Exhibit MP.4-1.) and the Permit specifically and clearly restricts all highwall mining as described in the Conditions within the sequence. *See*, Conditions 9 and 10, WDEQ Permit No. PT0841, TFN 6 21025, July 7, 2020.

6. Pursuant to Conditions in the Permit, Brook is not allowed to commence any mining operations in the second five-year term, TR-1 (years 6-10) "or any subsequent highwall mining panel" [years 6-39] without providing further testing, data, analysis, and without receiving the eventual written approval of WDEQ/LQD. *See*, SDD; Alan Edwards Affidavit attached ad Exhibit B to Respondent Brook Mining Co., LLC, Brief in Support of Motion for Summary Judgment at ¶16. The subsidence control plan, as permitted, includes all areas that can be mined pursuant to the permit, and is complete for the entire term of the mine, all highwall mining operations, and all highwall mining that can occur in the entire permit area. *See*, Permit and SDD.

7. WDEQ determined the application to be accurate and complete in accordance with Wyoming law. SDD, ¶2; W.S. § 35-11-406(n)(i).

8. The PRBRC is not challenging the subsidence plan as required and controlled by conditions 9 to 11 of the Mining permit. *See*, email chain of October 2, 2020 between Shannon Anderson, Brook, and Wyoming Attorney General, attached as Exhibit F to Respondent Brook Mining Co., LLC, Brief in Support of Motion for Summary Judgment. The sole challenge raised by the PRBRC in this Petition is the legal issue of whether the WDEQ could address the subsidence plan via permit conditions as the WDEQ did in adding conditions 9, 10, and 11 to the Permit. *Id.*

9. The PRBRC has informed the WDEQ and Brook that they will offer no testimony on the sufficiency of the subsidence plan as it exists in the issued Permit. *Id.*

10. The PRBRC has decided to not have Dr. Marino evaluate the Conditions 9 to 11 of the mine permit. *Id.* Further, the PRBRC has decided to not have Dr. Marino prepare an expert report outlining the PRBRC objections to the stated conditions or the permit. *Id.* The PRBRC is merely challenging the timing of the conditions. *Id.*

11. All existing coal mines in Wyoming operate in a manner as mandated by this permit and requests for modification of permits and mining plans for both non-significant revisions and significant revisions throughout the lifetime of the mining permit occur frequently. *See*, Todd Parfitt Affidavit attached as Exhibit C to Respondent Brook Mining Co., LLC, Brief in Support of Motion for Summary Judgment at ¶29.

12. The permit issued here is consistent with historical practice of WDEQ/LQD in permitting and monitoring coal mines in Wyoming, and all federal and state rules, regulations, and statutes. *See*, Todd Parfitt Affidavit attached as Exhibit C to Respondent Brook Mining Co., LLC, Brief in Support of Motion for Summary Judgment at ¶30.

13. The information required to be submitted is not by definition in the rules a significant revision (“SR”). *See*, Alan Edwards Affidavit attached as Exhibit B at ¶24 and 25 to Respondent Brook Mining Co., LLC, Brief in Support of Motion for Summary Judgment. The WDEQ/LQD must judge every revision at the time it is submitted to determine if it is an SR or an NSR. *Id.* Because WDEQ/LQD has absolute discretion to decide if any modification to a mine plan constitutes an NSR or SR, there is absolutely no prejudice to any interested person in saying this additional testing information shall be submitted as an NSR. *See*, Alan Edwards Affidavit attached as Exhibit B to Respondent Brook Mining Co., LLC, Brief in Support of Motion for Summary Judgment ¶ 25.

14. WDEQ/LQD has the authority to set conditions for additional information and study and require that information be filed as a revision. *See*, Alan Edwards Affidavit attached as

Exhibit B to Respondent Brook Mining Co., LLC, Brief in Support of Motion for Summary Judgment ¶ 24.

15. The Administrator labeled items in Condition 10 to be filed as NSR because they do not meet the definition of a SR in the Rules. *See*, Alan Edwards Affidavit attached as Exhibit B to Respondent Brook Mining Co., LLC, Brief in Support of Motion for Summary Judgment at ¶ 24 and 25. If upon receipt the WDEQ/LQD determines that the information submitted is a “significant deviation” from what was contemplated in the approved plan, then the Administrator has absolute discretion to trigger the due process requirements. *Id.*

16. A mining permit is a living document directing future actions of the operator and the WDEQ over the time periods set in the permit. *See*, Alan Edwards Affidavit attached as Exhibit B to Respondent Brook Mining Co., LLC, Brief in Support of Motion for Summary Judgment at ¶30. All coal mines in the state of Wyoming operate in a manner as required by this permit and requests for modification of permits and mining plans for both non-significant revisions and significant revisions throughout the lifetime of the mining permit occur frequently. *See*, Alan Edwards Affidavit attached as Exhibit B to Respondent Brook Mining Co., LLC, Brief in Support of Motion for Summary Judgment at ¶31.

17. WDEQ/LQD “determined the revised permit application technically complete and suitable for publication on February 26, 2020. SDD, 1. The Mine Plan includes complete sections on “Mine Facilities,” *See*, MP.2, and “Roads, Railroads and Transport Systems,” *See*, MP.3. In addition, corresponding Exhibit, MP.2-1. and MP.3-1., respectively outline in detail the plans of Brook. MP.2-1. was updated in technical revisions Round 11: Response 8, Response 12. *See*, Alan Edwards Affidavit attached as Exhibit B to Respondent Brook Mining Co., LLC, Brief in Support of Motion for Summary Judgment at ¶11.

18. All facilities and haul roads in the Permit area are properly identified, described, and defined in the plan. *See*, Jeff Barron Affidavit attached as Exhibit A to Respondent Brook Mining Co. LLC, Brief in Support of Motion for Summary Judgment at ¶ 9.

19. The additional facilities (iCam and iPark) mentioned by Petitioner are not contemplated in the Mine Plan, are not contained within the permit area, the Permit Application, nor the granted Mine Permit. *See*, Jeff Barron Affidavit attached as Exhibit A to Respondent Brook Mining Co. LLC, Brief in Support of Motion for Summary Judgment at ¶14-15.

20. iCam and iPark are separate legal entities that are not located within the boundaries of the Mine Permit. iCam and iPark are located on lands outside the Permit boundary on lands legally zoned for Industrial Development by the Sheridan County Commission. *See*, Jeff Barron Affidavit attached as Exhibit A to Respondent Brook Mining Co., LLC, Brief in Support of Motion for Summary Judgment at ¶11-15, 18. These facilities are owned by Brook's parent corporation, Ramaco Carbon. *Id.*, ¶ 11 and 12.

21. These separate facilities are mere end users of any coal produced at the mine. *See*, Jeff Barron Affidavit attached as Exhibit A to Respondent Brook Mining Co., LLC, Brief in Support of Motion for Summary Judgment at ¶16.

22. In the Brook Mine, the point of sale is the Mine. *See*, Jeff Barron Affidavit attached as Exhibit A to Respondent Brook Mining Co., LLC, Brief in Support of Motion for Summary Judgment at ¶20-26.

23. The Application has accurate estimates of the anticipated coal tonnage to be mined. Table MP.1-2.

24. Brook outlined its operations and intentions regarding the amount of coal that will be mined pursuant to the Permit in the application and in the many rounds of technical revisions, all of which are part of the application and bind Brook to the statements and commitments

therein. *See*, Application attached as DEQ Ex. 10-001 – 10-002 to the Stipulation to Admit Exhibits filed on October 6, 2020; Permit attached as DEQ Ex. 9-004 - 9-006, to Stipulation to Admit Exhibits filed on October 6, 2020; Alan Edwards Affidavit attached as Exhibit B at ¶26-33 to Respondent Brook Mining Co., LLC, Brief in Support of Motion for Summary Judgment.

Respectfully submitted this 14<sup>th</sup> day of October, 2020.



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**CERTIFICATE OF SERVICE**

This is to certify that on the 14<sup>TH</sup> day of October, 2020, a true and correct copy of the foregoing ***BROOK MINING CO. LLC'S MOTION FOR SUMMARY JUDGMENT*** was served upon the following:

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