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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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**STATEMENT OF UNDISPUTED FACTS MATERIAL TO THE ISSUES PRESENTED  
IN THE RESOURCE COUNCIL’S MOTION FOR SUMMARY JUDGMENT**

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By and through its undersigned counsel, and pursuant to W.R.C.P. 56.1, the Powder River Basin Resource Council (“Resource Council”), hereby provides its Statement of Undisputed Facts Material to the Issues Presented in the Resource Council’s Motion for Summary Judgment (on issues other than standing).

**Issue 1: Brook’s mine permit application is patently deficient because it does not contain a subsidence control plan that covers the entire area of the permit that will have highwall mining**

1. A core component of any permit application that proposes underground mining is an evaluation of subsidence risk and potential, and measures to prevent and control that risk and potential, called a subsidence control plan
2. In the September 2017 Order finding the subsidence analysis contained within the 2016 version of the permit application deficient, this Council issued a dozen findings of fact. *In re Brook Mine Application*, EQC Docket 17-4802, Findings of Fact, Conclusions of Law, and Order, attached as Exhibit A.

3. Based on expert testimony provided at the 2017 hearing, this Council determined that “There have been inadequate studies and testing done to draw any scientific conclusions as to the long-term risk of subsidence at the permit area” and that “[t]he permit application does not provide sufficient information to provide a meaningful review with respect to subsidence potential.” 2017 Order at 16. This Council further found that “There is insufficient information or data in the permit application and very limited analysis of subsidence risk in the documents such that the subsidence potential cannot be assessed.”
4. These findings led this Council to conclude that “[t]he mine plan is not complete due to a lack of proper testing and analysis to determine the risk of subsidence due to mining activities.”
5. In the 2017 Order, this Council rejected Brook’s argument that the admittedly necessary testing and analysis could be done at a later date, post-permit issuance, to accommodate “permitting efficiency purposes.” 2017 Order at 17. Instead, this Council determined that without the data and analysis to evaluate subsidence risk and control **prior to permit issuance**, the permit application was deficient because “[t]he risk of subsidence and subsidence control have not yet been properly studied or assessed.”
6. This Council then concluded that Brook’s permit application could not be approved because “Brook’s subsidence plan is incomplete” and therefore “Brook has failed to affirmatively demonstrate that its application is complete and accurate under subsection 406(n)(i).” 2017 Order at 28. This Council further found the application deficient under subsection 406(b) and Chapter 7 of the DEQ’s Land Quality – Coal Rules for the same reasons. *Id.*
7. Following the September 2017 Order from this Council, Brook submitted a revision to its permit application in October 2018.

8. The permit application then underwent five additional rounds of technical review from DEQ. With the six rounds of review prior to the 2017 hearing, and the 2017 Order treated as round seven of review, this amounted to *twelve* rounds of technical review of this permit application.
9. Like it did in 2017, Brook acknowledges that a subsidence control plan is a necessary component of the mine plan portion of the permit application. DEQ Ex. 5-080 (Sec. MP.13, Subsidence Control).
10. However, Brook only included a subsidence control plan for the first area of highwall mining, designated TR-1 in the mine plan. *Id.* The subsidence control plan does not cover *any* other areas proposed for highwall mining within the permit area. *Id.*; DEQ Ex. 5-348, Addendum MP-6.
11. Both the Resource Council's expert Dr. Jerry Marino and DEQ's expert consultant Dan Overton concluded two main undisputed facts following their review of the permit application: (1) the subsidence control plan contained within the permit application is limited to the TR-1 area; and (2) additional geotechnical analysis is needed to adequately determine subsidence risk and prevention even for the TR-1 area.
12. Overton determined that "In our opinion, the single core hole (2017-4) does not adequately characterize the stratigraphy or the geotechnical properties of the rock in the immediate area of the proposed TR-1 highway mining area." Memorandum from Daniel Overton to DEQ, June 9, 2020, at 2, attached as Exhibit B.
13. Dr. Marino found: "The one geotechnical boring which was done in the TR-1 area, which is the proposed first area to be highwall mined, indicated the roof and floor contains anomalous rock conditions compared to all the other boring drilled in the application area. Therefore,

applying these rock conditions and associated test data to the mine design for even TR-1, seems inappropriate.” Affidavit of Jerry Marino, at ¶ 6, attached as Exhibit C.

14. Dr. Marino further found “This *single* geotechnical boring insufficiently covers the design for only about 68 acres (in the TR-1 area) of the total 1,960 acres planned for highwall mining (HWM).” Ex. C at ¶ 5.
15. The Overton memo likewise concluded that “In our opinion, the Subsidence Control Plan should be revised to apply only to the open pit and TR-1 area that is being permitted at this time.” Ex. B at 5.
16. In contrast to what DEQ’s own expert recommended, the agency approved a coal mine permit for the **entire** proposed permit area – while knowing that the analyses and information contained within the subsidence control plan did not justify such an action.
17. DEQ’s approval of the permit was based on this finding within the State Decision Document: “The highwall mining component is designed to not create any areas of subsidence, given the rock mechanics of the overburden materials, as defined in Section MP.13, and Addendum MP-6 of the Mine Plan.” DEQ Ex. 11-003. However, as discussed above, this statement is without technical support, and is in opposition to the findings of DEQ’s own expert.

**Issue 2: The DEQ cannot remedy the deficiencies in the subsidence control plan through *future* revision, pre-determined to be “non-significant”**

18. DEQ imposed two conditions to the permit. DEQ Exhibit 9 at 4-5. Form 1, Condition 9 requires geotechnical analysis “Before commencing mining in the TR-1 area or any subsequent highwall mining panel . . .” *Id.* at 4. Form 1, Condition 10 provides that “Brook Mine shall submit all data and analysis from the geotechnical testing required in Condition No. 9 to WDEQ/LQD in the form of non-significant revisions to the Mine Plan and Subsidence Control Plan.” *Id.* at 5.

**Issue 3: The permit application is deficient because the mine plan does not include all facilities and haul roads incident to mining and does not include a traffic plan for these haul roads**

19. Ramaco Carbon is the common owner of the Brook Mine and the iCam research facility that will process coal mined at the Brook Mine.
20. In its application for funding to the Department of Energy, the company stated “Ramaco is the supplier of coal or coal-based feedstock to the process, owner operator of the **process facility** and marketer of the products generated.” Ramaco Carbon, DE-FOA-0001992 Narrative submitted to the Department of Energy, at 13, attached as Exhibit D (emphasis added).
21. The iCam is a coal processing facility because it is the location where coal from the Brook Mine will be processed, cleaned, or prepared for use to convert to carbon products.
22. The iCam is a facility incidental to the Brook Mine. The company’s only stated source of coal for iCam facility is the Brook Mine. Meaning, but for the Brook Mine, the facility would not exist.
23. Brook plans to use the frontage road state highway, highway 345, for hauling coal from the mine pit to the iCam coal processing facility.
24. The mine plan states, “Wyoming State Highway 345 provides general access to the Brook Mine entrance.” DEQ Ex. 5 at 023. But the mine plan does not otherwise include the state highway in its traffic plan for the mine.
25. The mine plan does not include any measures to mitigate any impacts to public safety of other users of the state highway or the road quality of the state highway.
26. Portions of the South Ash Creek Road and Slater Creek Road are within the permit boundary.
27. The mine plan does not include these county roads in its traffic plan for the mine.

28. The mine plan fails to demonstrate that the required 100 foot buffer between coal mining activities and the public county roads is in place.

**Issue 4: The permit application is deficient because it does not accurately estimate the amount of coal that will be mined**

29. Only small amounts of coal would be needed for the research and processing facilities at the iPark and iCam. This amount, based on an estimate at a similar facility, Atlas Carbon, is less than the amount of coal estimated to be produced in the mine plan.

**Issue 5: The permit application is deficient because it does not identify the coal mine operator**

30. The permit application refers to contractors or consultants but these parties are left unnamed.

The Resource Council also disputes the claims and unsupported allegations contained in Brook's Rule 56.1 statement of material facts that conflict with any of the above facts.

Respectfully submitted this 27th day of October, 2020.

/s/ Shannon Anderson

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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 27th day of October, 2020, the foregoing **STATEMENT OF UNDISPUTED FACTS MATERIAL TO THE ISSUES PRESENTED IN THE RESOURCE COUNCIL'S MOTION FOR SUMMARY JUDGMENT** was served on the following parties via the Environmental Quality Council's electronic docket system.

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