

**BEFORE THE ENVIRONMENTAL QUALITY COUNCIL  
STATE OF WYOMING**

**In re Brook Mining Co., LLC coal mine  
permit – PT0841**

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**EQC Docket No. 20-4802**

**ORDER DENYING BROOK MINING CO., LLC’S MOTION  
FOR SUMMARY JUDGMENT FOR LACK OF STANDING**

On October 8, 2020, Brook Mining Co., LLC filed a motion for summary judgment for lack of standing. Brook Mine contended that Powder River Basin Resource Council’s (“PRBRC”) petition filed with the Council should be dismissed because PRBRC did not have the necessary standing to file the petition and proceed with its appeal.

PRBRC responded to the motion and filed a cross-motion for summary judgment on the standing issue. Following the issue being fully briefed by Brook Mine and PRBRC, the Council held a hearing on the motions on December 16, 2020 via Zoom video conference.

After hearing and considering Brook Mine’s and PRBRC’s motions and arguments and otherwise being fully advised, the Council voted 6 to 0 (with one member absent) against granting Brook Mine’s motion for summary judgment for lack of standing. Accordingly, the Council denied Brook Mine’s motion. Although there are no genuine issues as to any material fact, Brook Mine is not entitled to judgment as a matter of law as to this issue.

Wyoming Statute § 35-11-406(p)(i), within the Environmental Quality Act, provides that any “interested person” has the right to file written objections to a permit application with the director of the Department of Environmental Quality (“DEQ”). “Interested person” is not defined in the Act but “person” is defined in the Act and includes individuals,

associations, and public or private corporations. Wyo. Stat. Ann. § 35-11-103(a)(vi). Under the Act, “interested persons” that file objections are also referred to as “objectors.” Wyo. Stat. Ann. § 35-11-406(p)(ii).

If an informal conference is requested by the applicant or objector, the director shall hold an informal conference. *Id.* The applicant and objector may participate in the informal conference with the director. “If the director holds an informal conference, all parties [applicant and objectors] to the conference shall be furnished with a copy of the final decision of the director issuing or denying the permit within sixty (60) days of the conference.” *Id.* at § 406(p)(iii). “The applicant or objector may appeal the director’s written decision after an informal conference to the council.” *Id.*

In this case, PRBRC was entitled to appeal the DEQ director’s decision to the Council by filing its petition. PRBRC filed written objections with the director as an “interested person” or “objector” and participated in the informal conference with the director. As a result, under § Wyo. Stat. Ann. § 35-11-406(p)(iii), PRBRC was entitled to appeal the director’s decision to the Council.

Further, PRBRC and its members listed in the petition are “interested persons” in this matter because those members either live near the Brook Mine permit area or use and/or recreate on lands within the permit boundary itself or adjacent areas.

**IT IS HEREBY ORDERED** that Brook Mining Co., LLC's motion for summary judgment for lack of standing is denied.

**IT IS FURTHER ORDERED** that PRBRC has standing to proceed with its petition for hearing before this Council.

**DATED** this 12<sup>TH</sup> day of February, 2021

  
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John Corra, Chairman  
Environmental Quality Council