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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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**RESPONSE TO PETITION FOR HEARING BEFORE THE ENVIRONMENTAL  
QUALITY COUNCIL OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
DIRECTOR’S APPROVAL OF THE COAL MINE PERMIT APPLICATION  
SUBMITTED BY BROOK MINING COMPANY, LLC (PT0841)**

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COMES NOW, Brook Mining Co., LLC, by and through its attorneys Patrick J. Crank, Abbigail C. Forwood, and Jim D. Seward of the firm Crank Legal Group, P.C., and hereby submits its Response to Petition for Hearing Before the Environmental Quality Council of the Department of Environmental Quality Director’s Approval of the Coal Mine Permit Application Submitted by Brook Mining Company, LLC (PT0841).

**INTRODUCTION**

1. Brooke Mining Company, LLC (“Brook”) respectfully submits this Response to the Petition of the Powder River Basin Resource Council (“Resource Council”) appeal of the

approval of the Brook Mine Permit to Mine Coal TFN 6 2/025 granted as coal mine permit PT0841 (“Permit”) on July 7, 2020.

2. The Resource Council filed its appeal on the 6<sup>th</sup> day of August 2020.
3. Brook filed their State Coal Mine Permit application with the Land Quality Division (“LQD”) of the Wyoming Department of Environmental Quality (“WDEQ”) on October 30, 2014 and, after full review and six rounds of deficiency responses, it was declared technically adequate and suitable for publication on December 1, 2016, per W. S. § 35-11-406(h). State Decision Document (“SDD”) Brook Mining Company, LLC, Brook Mine, Permit to Mine Coal, TFN 6 2/2025 (“Temporary File Number”), 7 July 2020.
4. Brook published notice of its application beginning December 1, 2016 and the public comment period ran through January 27, 2017. *Id.*
5. Several parties objected and requested an informal conference. WDEQ Director Todd Parfitt denied the informal conference requests on January 30, 2017, and, at the same time, referred the objections to the Environmental Quality Council (“EQC”). *Id.*
6. The EQC held a contested case hearing on Brook’s permit application from May 22 through 26, 2017, with the hearing concluding on June 7 and 8, 2017. *Id.*
7. The EQC issued findings of fact conclusions of law, and decision on Brook’s permit application on September 27, 2017. The EQC ordered that Brook’s application could not be approved and outlined a process for Brook to supplement their application to WDEQ for further review. *Id.*
8. Director Parfitt denied the Brook’s permit application on October 11, 2017, without prejudice to Brook’s ability to supplement the application in accordance with the EQC’s findings of fact. *Id.*
9. On October 25, 2018, Brook submitted its revised application to WDEQ. Brook and LQD processed six additional rounds of deficiency declarations and responses on the

revised application (Rounds 7 to 12), taking place from October 2018 through February 2020. *Id.*

10. The First Judicial District Court entered an Order Reversing the Decisions of the Environmental Quality Council and the Department of Environmental Quality on October 25, 2019. In this Order, the Court remanded Brook's initial permit application to WDEQ for a new determination. With a revised application pending before WDEQ, Brook did not seek a determination on the initial permit application. *Id.*
11. WDEQ found Brook's revised permit application technically complete and suitable for publication on February 26, 2020. *Id.*
12. Brook published notice of its revised permit application, beginning on March 3, 2020. The public comment period ended on April 23, 2020. WDEQ received objections to Brook's application and Director Parfitt scheduled an informal conference on May 13, 2020. WDEQ held this informal conference remotely, using GoToWebinar. A video recording of the Informal Conference is available on YouTube at [https://www.youtube.com/watch?v=vTHzRakH-JE&feature=emb\\_title](https://www.youtube.com/watch?v=vTHzRakH-JE&feature=emb_title).
13. Brook has demonstrated that the Brook Mine surface coal mine permit application complies with Article 4 of the Wyoming Environmental Quality Act and all other applicable State and Federal law and regulations. SDD at 21.
14. Twelve (12), Form 1 Conditions were included in the Permit in response to the written objections raised in the proceedings or in response to DEQ expert or other analysis submitted to WDEQ. *Id.*
15. On July 7, 2020, the acting Administrator of DEQ, LQD, Alan Edwards, recommended the issuance of the coal mining permits to Brook and DEQ Director, Todd Parfitt approved the same with the Conditions mentioned above. *Id.*

## STATEMENT OF INTEREST

16. Brook hereby denies Plaintiff's paragraphs 5 and 6 of the Petition for Hearing filed in this matter.

### ISSUES TO BE DETERMINED BY THE EQC

#### ISSUE ONE

**Petitioner incorrectly claims the mine plan is deficient because the subsidence control plan does not provide a complete subsidence control design for the entire area of the mine that will eventually have highwall mining.**

17. Brook hereby admits the following paragraphs: 7-11.

18. Brook admits in part and denies in part paragraph 12. The Mine Plan commits Brook to update the Subsidence Plan in the Mine Plan via application revision and the law and Permit mandate compliance with the Form 1, Conditions, and the state and federal law and regulations surrounding the mining of coal. All future highwall mining will be controlled and directed by WDEQ as provided in the extensive permit conditions. Under DEQ/LQD Rules of Practice and Procedure, Ch. 5 §6(d) Brook Mine is providing subsidence control as required by Ch. 7 §2. Ch. 7 §1 does not apply.

19. Brook hereby denies the following paragraphs: 13, 18, 19.

20. Brook hereby admits part and denies in part paragraphs 14, 15, and 17. Dan Overton, the subsidence consulting engineer hired by WDEQ, upon his initial review of the subsidence plan in the application, identified objections which he reported to WDEQ. Dan Overton subsequently worked extensively with WDEQ to remedy identified objections in the Brook subsidence plan after the informal hearing held by WDEQ. Mr. Overton and Mr. Marino were instrumental in the additional permit conditions included in the Permit. Based on information and belief, Mr. Overton's earlier statements concerning objections in the subsidence plan have been remedied in the final Permit and Mr. Overton will testify the subsidence plan is proper and sufficient.

21. Brook admits in part and denies in part paragraph 16. Brook went above and beyond the standard set forth in the law in the Mine Plan by providing the design for TR-1 which will likely not be mined in the first five years of the Permit. Further, the Mine Plan sets forth the general plan for all other locations and the law and conditions under the permit require complete analysis and design at or before term renewal when mining will be contemplated in a new area.

**The DEQ, with the considered advice of all comments and advice of its subsidence expert Dan Overton fashioned Permit Conditions in direct response to public comment and the subsidence plan in the Mining Plan is more than adequate to comply with applicable laws and regulations.**

## **ISSUE TWO**

**Petitioner incorrectly claims DEQ cannot remedy “deficiencies” through conditions and pre-determine that an application revision is non-significant.**

22. Brook hereby denies paragraph 20.

23. Brook hereby admits in part and denies in part paragraph 21. Brook admits that WDEQ imposed numerous conditions on the Permit. Brook denies that the Permit had “known and patently evident permit deficiencies.”

24. Brook hereby admits the following paragraphs 22

25. Brook admits paragraph 23 but notes that the paragraph identifies the wrong form. Form 1, condition 10 contains the quoted language.

26. Brook has insufficient information to admit or deny paragraphs 24 through 34 and accordingly denies the same.

**The WDEQ correctly determined the matters raised by Petitioner were not deficiencies and set forth a process for the submission of additional information in future years of the Permit. A mining permit is a living document directing future actions of the**

**operator and the WDEQ over the time periods set in the permit. 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. The permit issued here is consistent with historical practice of WDEQ and all federal and state rules, regulation, and statutes.**

### **ISSUE THREE**

**Petitioner incorrectly claims 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 the haul roads.**

27. Brook hereby denies the following paragraphs: 35-45. Petitioner does not understand the operation of the Brook Mine as conditioned by the Permit and Mine Plan nor appreciate the distinction of separate legal entities. All facilities and haul roads are properly identified, described and defined in the Mine Plan. Commercial haulage to separate legal entities, after a retail sale at the Mine, does not equate to coal mine haul road haulage as alleged by Petitioner.

**The Transportation Network Plan and associated maps, of haul roads and facility locations, submitted by Brook and found to be complete by DEQ complies with all state and federal rules, regulations, and statutes.**

### **ISSUE FOUR**

**Petitioner incorrectly claims the application is “deficient” because it does not accurately estimate the amount of coal that will be mined**

28. Brook hereby admits the following paragraphs: 46, 50.

29. Brook hereby denies the following paragraphs: 47, 49, 51.

30. Brook admits in part and denies in part paragraph 48. This paragraph is not relevant to the current Mine Permit. Market conditions change constantly and have changed

drastically during the extended duration of the application period for this Permit. The current Mine Plan includes an accurate estimate of coal anticipated to be mined.

**The DEQ correctly determined that the information provided regarding coal mining tonnage was sufficient and such decision complies with all state and federal rules, regulation, and statutes. All coal mines, including this mine, are authorized by law to revise mining plans to adjust for market conditions via revisions to the Permit and Mining Plan to recognize existing market conditions.**

#### **ISSUE FIVE**

**Petitioner incorrectly alleges the permit application is “deficient” because it does not identify a separate coal mine operator.**

31. Brook hereby admits the following paragraphs: 52, 53. There is no coal under contract and no separate operator has been named. There is no coal being mined by an operator. Brook will supplement the application as per the required regulatory framework at the appropriate time.
32. Brook hereby denies paragraph 54. Furthermore, Petitioner failed to incorporate this paragraph in its Request for Relief.

**The DEQ correctly determined that the information provided regarding the coal mining operator was sufficient and such decision complies with all state and federal rules, regulations, and statutes.**

#### **REQUEST FOR RELIEF**

33. Paragraphs 1-32 are hereby incorporated.
34. This matter should be dismissed for failure to state a claim which can be granted under the law.
35. Brook hereby requests a hearing on dispositive motions.
36. Brook hereby requests an evidentiary hearing

37. Brook hereby requests attorney fees and costs as contemplated pursuant to W.S. §35-11-437(f).

38. Brook respectfully requests that the EQC conclude that the Director of DEQ acted within his authority in granting the Permit.

Respectfully submitted this 31<sup>st</sup> day of August 2020.



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**CERTIFICATE OF SERVICE**

This is to certify that on the 31<sup>ST</sup> day of August, 2020, a true and correct copy of the foregoing *RESPONSE TO PETITION FOR HEARING BEFORE THE ENVIRONMENTAL QUALITY COUNCIL OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY DIRECTOR'S APPROVAL OF THE COAL MINE PERMIT APPLICATION SUBMITTED BY BROOK MINING COMPANY, LLC (PT0841)* was served upon the following:

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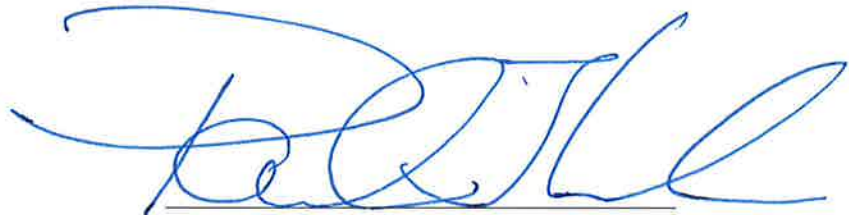
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