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62/025
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March 6, 2015

Department of Environmental Quality
Land Quality Division
Attn: Mr. Alan Edwards, Deputy Director and Acting Administrator
122 West 25th Street
Herschler Building
Cheyenne, WY 82002



Re: Concerns Regarding Brook Mining Mine Permit Application and Exploratory
Drilling Activity within Big Horn Coal Co. Mine Permit Area:
Permit No. 213-T8

Dear Mr. Edwards:

As you are aware, Brook Mining Company, LLC ("Brook Mining")¹ submitted an application for a permit to mine, TFN # 62/025, to the Land Quality Division of the Wyoming Department of Environmental Quality ("DEQ/LQD") on October 31, 2014 ("Brook Mining Application"). My client, Big Horn Coal Company ("BHC")², did not consent to the mine plan and reclamation plan that Brook Mining provided to BHC for review because the proposed activities will unreasonably interfere with BHC's extensive surface infrastructure improvements and its existing use and development plans for the area, including but not limited to the exercise of BHC's rights and obligations under its *existing* Mine Permit No. 213-T8. As you are also aware, Brook Mining, through its agents, representatives and/or contractors, has recently undertaken drilling activity pursuant to a Coal Notification on surface lands owned by BHC in the N1/2N1/2, Section 21, Township 57 North, Range 84 West. BHC was never notified of, did not consent, and, due to its regulatory obligations under Mine Permit No. 213-T8, strenuously objects to any and all such activity without at least having been provided notice and a plan of operations. This letter serves to document BHC's legal

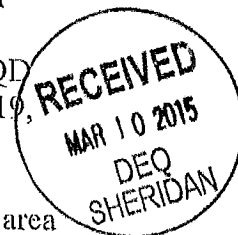
¹ Brook Mining is the developer and operator of coal and coal mining interests owned by Ramaco Wyoming Coal Co., LLC ("Ramaco").

² BHC is wholly owned by AE Coal, LLC and AE Coal LLC is wholly owned by Ambre Energy North America, Inc.

and operational concerns with the Brook Mining mine plan, reclamation plan, permit application adjudication and exploratory drilling activity.

Background

Prior to submission of the Brook Mining Application, AE Coal, LLC, was party to an exploration agreement with Ramaco. That exploration agreement, together with all associated permissions for Ramaco to conduct pilot hole and core drilling and other related mineral exploratory and coal prospecting activities on BHC surface lands, expired by its own terms on July 19, 2014. Also prior to submission of the Brook Mining Application, on March 13, 2013, BHC consented to Ramaco conducting baseline environmental studies and surveys on certain BHC surface lands. Notwithstanding the March 2013 Landowner's Consent Agreement, on April 9, 2013, Ramaco sent a letter to BHC declaring that a 1954 deed between its predecessors and BHC provides Ramaco "the legal right to access the surface land for core drilling, pre-permit monitoring or any other pre mining activities" without any additional approval or consent from BHC. This position starkly differed from Ramaco's course of conduct when submitting its Notice of Intent to Explore for Coal By Drilling to DEQ/LQD (Mr. Mark Taylor) on September 21, 2012, in which it referenced the now-expired July 19, 2012 exploration agreement between AE Coal, LLC and Ramaco.



BHC has expressed in writing to Brook Mining its general support of coal mining in the area and, specifically, its support for Brook Mining's proposed mining beneath BHC's surface lands located north of the Tongue River. However, on October 9, 2014, BHC sent a letter to Ramaco confirming that Ramaco's proposed activities on BHC lands south of the Tongue River do not conform to BHC's development plans, that BHC "does not consent to the mining and reclamation plan that is being proposed by the Brook Mine," and that BHC does not agree with Ramaco's assertion that it has the right under the 1954 deed to make reasonable use of BHC's surface lands for mine planning, mining and mine related facilities and activities without surface owner's consent. The extent of Brook Mining's right to use BHC surface lands under the 1954 deed currently is being litigated pursuant to a Declaratory Judgment Complaint filed by Brook Mining in *Brook Mining Company, LLC v. Big Horn Coal Company*, Civil Action No. CV 2014-372, and will be determined by the Fourth Judicial District Court for Sheridan County, Wyoming.³

³ In its district court complaint, Brook Mining also reserved the right to condemn BHC's property, including its surface rail and bridge infrastructure. Brook Mining's apparent intent to condemn BHC's existing surface infrastructure is curiously inconsistent with the Brook Permit Application, which proposes to mine under the existing surface infrastructure, thereby rendering that valuable infrastructure useless.

BHC's Surface Owner Rights under W.S. 35-11-406(b)(xii)

DEQ/LQD has no authority to adjudicate property rights disputes. Conversely, the District Court's determination of Brook Mining's rights under the 1954 deed has no bearing on BHC's rights as a non-resident, non-agricultural landowner under W.S. § 35-11-406(b)(xii). Ramaco admitted this point in its letter to Ambre Energy dated April 9, 2013, wherein Randall W. Atkins, Ramaco CEO, asserted Ramaco's rights under the 1954 deed and further stated,

Ambre, as a surface owner, has the right at the appropriate time to review our plans and consent, or not consent. If Ambre refuses to offer its consent to a compliant mine and reclamation plan, Ramaco can, and will, petition the Wyoming Environmental Quality Council (EQC) for an order in lieu of consent.



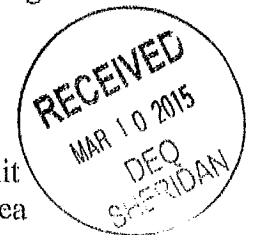
Despite acknowledging BHC's statutory rights, following BHC's refusal to consent to the mine plan and reclamation plan Brook Mining provided BHC to review (which as noted below was different from the mine plan and reclamation plan Brook Mining submitted to DEQ/LQD with its mine permit application), Brook Mining apparently provided the 1954 deed to DEQ/LQD in lieu of BHC's statutory right of consent. See Adjudication, Appendix A Index, Brook Mining Application. BHC admits that it does not possess the right of consent to entry by definition under W.S. 35-11-406(b)(xi), and by virtue of the surface use reservation in 1954 deed, Nevertheless, *nothing* in the Wyoming surface coal mining statutes permits a mine permit applicant to utilize a deed, with a general reservation of surface rights, to strip a surface owner under W.S. 35-11-406(b)(xii) of its rights to *review* a compliant mine and reclamation plan and to *refuse to consent* to such plan, or to *exempt* a mine permit applicant from its obligation to petition the EQC and provide sufficient evidence upon which the EQC can make the findings necessary under W.S. 35-11-406(b)(xii)(A)-(E) to support an order in lieu of consent.

According to W.S. 35-11-406(b)(xii), the EQC shall issue an order in lieu of consent if it finds that (A) the mining plan and the reclamation plan have been submitted to the surface owner for approval; (B) the mining plan and reclamation plan are detailed so as to illustrate the full proposed surface use, including proposed routes of egress and ingress; (C) the use does not substantially prohibit the operations of the surface owner; (D) the proposed plan reclaims the surface to its approved future use, in segments if circumstances permit, as soon as feasibly possible; and (E) for surface coal mining operations, that the applicant has the legal authority to extract coal by surface mining methods. Absent a specific exception in the statute, it is not reasonable to infer that the Wyoming Legislature intended that a deed executed and recorded long before enactment of Wyoming's surface coal mining statutes, by parties who no longer own the minerals or the surface, should negate the EQC's statutory obligation to consider, among other things, whether a mine plan proposed in 2014 would substantially prohibit the present surface owner's operations.

Federal surface coal mining statutes allow a mine permit applicant to submit a conveyance that *expressly grants or reserves the right to extract the coal by surface mining methods* in lieu of written consent from the surface owner. See 30 U.S.C.A. § 1260 (b)(6) ("SMCRA"). Wyoming's surface coal mining statutes, which preceded SMCRA, contain no such provision, and despite adopting other post-SMCRA amendments, the Wyoming legislature has never seen fit to adopt a similar conveyance in lieu of a consent provision. In *Belle Fourche Pipeline Co. v. Wyoming*, 766 P.2d 537, 548 (Wyo. 1988), the Wyoming Supreme Court noted that "[e]ven though this provision is included in the SMCRA, surface owner consent was not one of the provisions specifically required to be included in a state program." *Id.* According to the court, "Wyoming went even further than the SMCRA in its effort to provide more specific protection of the surface owner" by imposing a qualified requirement that a non-resident, non-agricultural surface owner be "granted the right to a hearing if they object to the proposed mining activities, after which the EQC still could issue an order in lieu of consent." *Id.* at 547-48. The requirement set forth in W.S. 35-11-406(b)(xii) is clear and unambiguous. Brook Mining cannot avoid this requirement by providing DEQ/LQD reservation language in a 1954 deed.

Overlapping Permits

As expressly stated in LQD's Coal Standard Operating Procedure No. 2.1 – Coal Permit Content and Review Procedures Relating to Abutting and Overlapping Coal Permit Area Boundaries, "overlapping permit boundaries create unusual permitting, field inspection, annual reporting, and reclamation performance bonding challenges." According to SOP No. 2.1 both permittees have joint responsibility and control over shared lands and *"there must be cooperation and agreement between the two permittees. Both permits must have mutually compatible Mine and Reclamation Plans that outline the respective operations within the overlapping permit area."* SOP 2.1, Section II.D. Brook Mining has been uncooperative. There is no agreement between Brook Mining and BHC; and the mine and reclamation plans provided by Brook Mining to BHC failed entirely to outline the respective operations of Brook Mining and BHC within the overlapping permit area. Indeed, the mine plan Brook Mining provided to BHC for review differs from that presented in the Brook Mine Permit Application.⁴ These varied representations of Brook Mining's plans stand in direct contrast to the cooperation and agreement contemplated by SOP 2.1.



⁴ Similarly, the map Brook Mining attached to its written offer to purchase 452 acres of BHC's land is not the same as a supplemental map Brook mining filed in the lawsuit – the map Brook Mining filed with the court shows an area of high wall mining in the north half of Section 22, while the map enclosed with the offer letter does not show any mining in Section 22, but shows the Phase I rail spur being built over the high wall mining area. The map submitted to the DEQ with the Brook Mining permit application shows high wall mining in the north half of Section 22 as well.

SOP 2.1, Section III.B.1.b., Permit Adjudication Section, further provides that a new permit application "must contain a written statement from Permittee 2 that all application elements addressing shared land are acceptable to Permittee 2." It appears that the Brook Mine Permit Application Adjudication Section contains no such written statement from BHC.

SOP 2.1, Section III.B.1.c., Mine Plan, further provides that the Mine Plan for each permit containing an overlapping permit area must include a separate section for each permit area boundary configuration that includes a brief discussion of how the mining operations coincide for the joint use areas. The Brook Mine Permit Application Mine Plan provided to BHC for review contained no such discussion.⁵

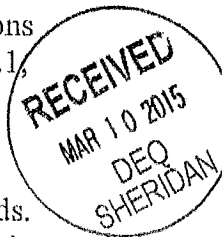
SOP 2.1, Section III.B.1.d., Reclamation Plan, further provides that the Reclamation Plan for each permit containing an overlapping permit area must include a separate section for each permit area boundary configuration that includes a map specifying the reclamation responsibility of each permittee. The Brook Mine Permit Application Reclamation Plan provided to BHC for review contained no such map. Nor did the Brook Mine Permit Application provided to BHC for review address the respective performance bond obligations of BHC and Brook Mining within the overlapping permit boundaries as required by SOP 2.1, Section III.B.1.e.

SOP 2.1, Section II.B., Definitions, states that where overlapping permit areas occur, the LQD's position is that both permittees have joint responsibility and control over shared lands. BHC's Mine Permit No. 213-T8 expressly provides that BHC shall conduct their operation in a manner which prevents violation of any applicable State or Federal law. If a violation is found to exist in the overlapping permit area, it is uncertain what effect this will have on BHC, BHC's mining permit, and BHC's insurance coverage, especially if the violation cannot be

⁵ The proposed "joint use" of greatest concern to BHC is that area south of the Tongue River and adjacent to BHC's existing shop facilities. The area was mined in the early to late 1970's and has since been backfilled with unconsolidated, saturated spoil materials with a direct connection to the Alluvial Valley Floor (AVF) of the Tongue River. Mining the Carney and Masters coal seams in this area would require a significant amount of de-watering and discharges into the Tongue River, causing catastrophic damage to the hydrologic balance. Additional monitoring wells in the immediate vicinity of the proposed coffin pit trench cut would be necessary to quantify the amount of water that would be intercepted.

In addition, Brook Mining has proposed stockpiling material on BHC lands in the immediate vicinity of wetlands and an AVF, without consulting with BHC regarding alternate locations that would be more environmentally friendly and would also accommodate BHC business development strategies.

Finally, Brook Mining's proposed mine plan would render reclamation of the historic Placheck Pit (AML Project No. 171 – Northeast Wyoming Coal) on BHC surface lands impossible.

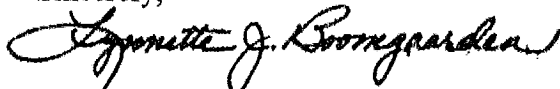


directly associated with one permittee's actions. BHC has many concerns surrounding its potential liability for Brook Mining's activities performed in the overlapping permit area. Additionally, although SOP 2.1 does not specifically address LQD-authorized activities conducted pursuant to a Coal Notification within an existing mine permit boundary, BHC asserts that cooperation between the parties is equally important under those circumstances as the same concerns regarding liability arise for activities performed by Brook Mining pursuant to their Coal Notification in BHC's mine permit area.

Requested Action

BHC sincerely appreciates LQD's responsiveness to BHC's inquiries to date. For the reasons stated above, BHC respectfully requests that DEQ/LQD (1) expressly acknowledge BHC's right, pursuant to W.S. 35-11-406(b)(xii), to review and consent to the mine plan and reclamation plan Brook Mining submitted to DEQ/LQD; (2) absent BHC's consent to a compliant mining plan and reclamation plan, require Brook Mining to petition to the EQC for an order in lieu of consent; and, (3) require that Brook Mining provide BHC (i) a list of wells and plan of operations, and (ii) prior notice of entry, under any existing or future Coal Notification that permits activities within the boundaries of BHC Mine Permit No. 213-T8.

Sincerely,



Lynne Boomgaarden
Crowley Fleck, PLLP

cc: Andrew Kuhlmann
Mark Rogaczewski

