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FILED

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DIANE SANCHEZ
CLERK OF THE DISTRICT COURT

ATTORNEYS FOR BROOK MINING COMPANY, LLC

STATE OF WYOMING)
) ss
COUNTY OF LARAMIE)

IN THE DISTRICT COURT

FIRST JUDICIAL DISTRICT

IN THE MATTER OF THE WYOMING)
ENVIRONMENTAL QUALITY COUNCIL'S)
FINDINGS OF FACT, CONCLUSIONS OF)
LAW AND ORDER (EQC Docket No. 17-4802,)
In Re Brook Mine Application) AND THE)
WYOMING DEPARTMENT OF)
ENVIRONMENTAL QUALITY'S DECISION)
ON BROOK MINING COMPANY, LLC'S)
PERMIT APPLICATION (TFN 6 2/025))

Civil Action No. 188-771

**PETITION FOR JUDICIAL REVIEW OF THE WYOMING ENVIRONMENTAL QUALITY COUNCIL'S
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER ON BROOK MINE'S PERMIT
APPLICATION AND THE DEPARTMENT OF ENVIRONMENTAL QUALITY DIRECTOR'S DECISION
TO DENY BROOK MINE'S PERMIT APPLICATION WITHOUT PREJUDICE**

Pursuant to W. R. App. P. 12.01, Brook Mine, LLC (Brook) Petitions for Review of an Order of the Environmental Quality Council (Council) finding that Brook's application for a permit to mine coal was deficient and should not be approved, causing the Director of the Department of Environmental Quality (DEQ) to deny Brook's permit application for the reasons found by the Council, without prejudice. A copy of the Council's Order is attached as Appendix

A. A copy of the Director's Decision is attached as Appendix B. Both are incorporated in this Petition by reference.

As grounds for this Petition, Brook states as follows:

Jurisdiction and Venue

Subject to exhausting administrative remedies, "any person aggrieved or adversely affected" by final agency action in a contested case is "entitled to judicial review in the district court for the county" in which the agency action occurred. Wyo. Stat. Ann. § 16-3-114(a); Wyo. Stat. Ann. § 35-11-1001(a). Here, the Council's final decision at the hearing on Brook's permit application occurred in Laramie County, Wyoming and adversely affected Brook's interests. Ex. A. Brook is a person (as defined in Wyo. Stat. Ann. § 16-3-101(b)(vii)) with no further administrative remedies because the Council is the administrative hearing body for issues arising under the Act. *See* Wyo. Stat. Ann. § 35-11-406(k). Therefore, this Court has jurisdiction and venue is proper. *See also* Wyo. R. App. P. 12.01, 12.02.

Parties

Brook, DEQ, Big Horn Coal Company, David Fisher and Mary Brezik-Fisher, and Powder River Basin Resource Council.

Related Petitions

In the Matter of the Decision of the Wyoming Environmental Quality Council, Granting the Petition of Brook Mining Company for an Order in Lieu of Consent as to its Mining Plan and Reclamation Plan as Against Big Horn Coal (EQC Docket No. 16-1601, In Re Brook Mine Application), Civil Action No. 187-120, District Court for the First Judicial District.

Statement of Relevant Facts

On October 31, 2014, Brook applied for a permit to mine coal in an area north of Sheridan, WY. Brook's application included: 1) a mine plan that described Brook's proposed operations; 2) a reclamation plan that described Brook's proposed methods of reclamation; 3) studies and data about wildlife, ground water, surface water, climate, soil, and other environmental conditions; and 4) information on Brook's corporate structure and ownership of the minerals and surface.

DEQ conducted a two-stage review of Brook's application. *See* Wyo. Stat. Ann. § 35-11-406(e)-(h). DEQ first reviewed Brook's application for completeness as the Act defines it, certifying it complete within a few days. *See* § 35-11-103(e)(xxii) (defining "complete application.") DEQ then reviewed the substance of the application for any deficiencies as the Act defines it. *See* § 35-11-103(e)(xxiv) (defining "deficiency.") After more than a year analyzing Brook's application and additional information Brook provided, DEQ found Brook's application had no deficiencies. DEQ then directed Brook to publish its permit application for public comment. *See* Wyo. Stat. Ann. § 35-11-406(j).

During the public comment period, DEQ received several objections and requests for an informal conference with the Director of DEQ. The Director exercised his discretion and did not hold an informal conference. As a result, the Council was required to hold a public hearing "within twenty (20) days after the final date for filing objections...." Wyo. Stat. Ann. § 35-11-406(k). The Council scheduled a hearing that would occur within 20 days but vacated that hearing because it "may only exercise jurisdiction over the Brook Mine permit application after an interested person has filed a petition for a contested case with the Council...." (See Order

attached as Appendix C.) Following this ruling, three objectors requested a contested case, which occurred over 4 months after the final date for filing objections.

At the hearing, DEQ's experts testified that Brook's permit met all the applicable statutes and regulations. DEQ's and Brook's witnesses also rebutted the specific objections to the application. The objectors' witnesses testified otherwise; but rarely identified any statute or regulation that supported their claims.

Four months later, the Council issued its decision. The Council declared Brook's application deficient, ordering Brook to obtain more information on hydrology and subsidence. The Council also found that Brook's blasting plan did not contain reasonable limits on the blasting schedule. Finally, the Council concluded as a matter of law that DEQ must make the findings described in Wyo. Stat. Ann. § 35-11-406(n) before DEQ can find an application is suitable for publication and before the Council could approve an application. (See Order attached as Appendix A). Ultimately, the Council ordered Brook to resubmit its application and return to the permit application process.

Two weeks after the Council's decision, the DEQ Director did not approve Brook's permit application "in its current form, but without prejudice to Brook's ability to supplement the application under the process described in the [Council's] Order." (See Decision Letter attached as Appendix B.)

Specific Issues to be Addressed for Review

1. The Council erred as a matter of law when it held a public hearing four months after the final date for filing objections to Brook's permit application instead of holding the public hearing within 20 days of the final date for filing objections to Brook's permit application as required by Wyo. Stat. Ann. § 35-11-406(k).

2. The Council erred when it found as a matter of law that the DEQ administrator must make the written findings required by Wyo. Stat. Ann. § 35-11-406(n) at the time he

determines whether a permit application is suitable for publication under Wyo. Stat. Ann. § 35-11-406(h), instead of permitting the administrator to make the findings under Wyo. Stat. Ann. § 35-11-406(n) at the time the DEQ Director decides to issue or deny a permit application.

3. The Council erred when it concluded as a matter of law that the DEQ administrator must make the written findings required by Wyo. Stat. Ann. § 35-11-406(n) as a condition precedent to the Council considering whether Brook's permit application can be approved, because the Council does not have the authority to approve or deny a mine permit under Wyo. Stat. Ann. § 35-11-406. The permit decision is made, as a matter of law, by the DEQ Director, not the Council.

4. The Council erred as a matter of law when it determined that Brook's application was deficient in the areas of blasting, subsidence, and hydrology because it failed to apply the correct definition of "deficiency" set forth in § 35-11-103(e)(xxiv).

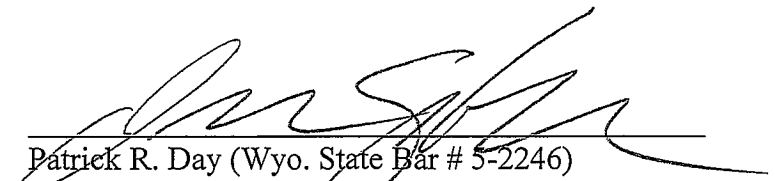
5. The Council erred as a matter of law when it found Brook must prove as part of its permit application that there will no material damage to the hydrologic balance at the mine site and outside the permit area and to alluvial valley floors because: 1) it applied Wyo. Stat. Ann. § 35-11-406(n) rather than the correct standards in Wyo. Stat. Ann. § 35-11-406(b)(xviii) and LQD Coal Reg. Ch. 2, §§ 5, 6; and 2) even in applying the standards in Wyo. Stat. Ann. § 35-11-406(n), it did not apply the correct statutory language.

6. The Council erred as a matter of law in finding that Brook's permit application was deficient because it misconstrued and misapplied its authority under the Act, the proper procedure and timeline for a permit application under the Act, and the requirements for a permit application under the Act.

7. The DEQ Director erred when he denied Brook's permit application without prejudice to Brook's ability to supplement its application because he based his decision on the Council's Order that both misinterpreted the Act and misapplied the Council's authority and role regarding review of requirements for a permit under the Act.

WHEREFORE, Petitioner requests that that this Court reverse and remand the Orders and Decisions on Brook's Mine Permit application.

DATED: October 27, 2017.



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ATTORNEYS FOR PETITIONER
BROOK MINING COMPANY, LLC

CERTIFICATE OF SERVICE

I hereby certify that on October 27, 2017, I served the foregoing by placing a true and correct copy thereof in the United States mail, postage prepaid and properly addressed to the following:

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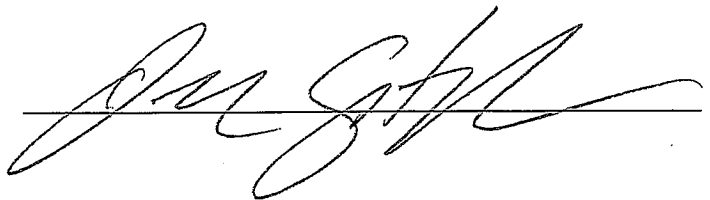
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A handwritten signature in black ink, appearing to read "Jay Gilbertz", is written over a horizontal line.