



April 23, 2020

Alan Edwards, Deputy Director
Wyoming Department of Environmental Quality
200 W. 17th St.
Cheyenne, WY 82002
Submitted online via: <http://lq.wyomingdeq.commentinput.com>

Re: Objections to Brook Mining Co., LLC Coal Mining Permit Application & Comments on the Department of Environmental Quality Draft Cumulative Hydrologic Impact Assessment

Dear Mr. Edwards,

On behalf of the members of the Powder River Basin Resource Council (“Resource Council”), our organization hereby submits these objections to the proposed coal mining permit for Brook Mining Co., LLC (“Brook” “company” or “applicant”) in Sheridan County. We also submit the following comments on the Department of Environmental Quality’s (“DEQ”) draft Cumulative Hydrologic Impact Assessment (“CHIA”).

Pursuant to W.S. § 35-11-406(k), the Resource Council requests an informal conference with the Director to discuss our objections and comments. We request that such an informal conference be held in Sheridan, the location of the proposed mining operation. Given the complexity of the issues presented, and the current difficulties in scheduling such a public hearing during the COVID-19 pandemic, we will stipulate to hold the informal conference at a period beyond the 20 days provided for under subsection 406(k) of the Environmental Quality Act. In fact, as discussed below, if DEQ holds the informal conference during the pandemic, public participation rights will be violated.

Organizational Interest in the Coal Mining Permit

The Resource Council is a grassroots, member-based organization that has worked to address the impacts of coal mining on people and the environment since our inception in 1973.

Many of our members work, live, and recreate in Sheridan County adjacent to and on the site of the proposed Brook Mine permit. We have members who live next to the proposed Brook Mine permit boundary that will experience aesthetic impacts, impacts to their property, and impacts to their livelihoods as a result of the mine’s proposed operations. We also have members that regularly travel the public roads within the mine permit boundary and members that frequently occupy public access and recreational areas within and in close proximity to the mine permit boundary. We are therefore an “interested person” within the meaning of W.S. § 35-11-406(k).

Given their proximity to the mine’s proposed location, some of our members received personal notice of the opportunity to submit objections and will be submitting their own

objections. Other members with recreational and aesthetic interests in the area will also be submitting objections. Our organizational objections are intended to supplement, not supplant, the individual objections of our members. However, their own stated objections and interests further support our organizational interest in the proceeding.

Objections and Concerns

1. Public Participation Violations During the COVID-19 Pandemic

At the outset, it is important for us to comment on the time we find ourselves in as we submit these comments. Wyoming, and most of the world, is grappling with the consequences of a global public health pandemic. Governor Gordon has issued orders to limit public access to government buildings, prohibit meetings of greater than ten people, and has otherwise encouraged and directed Wyomingites to stay home and refrain from unnecessary travel to limit infection to themselves and others.

a. Need to extend public comment period

We wrote to DEQ on March 23, 2020 requesting the agency to extend the comment deadline because locations where the permit application must be made available for review by the public (Sheridan County's courthouse and the Sheridan DEQ offices) were closed to regular public access. DEQ replied that a comment period extension was not needed because the permit application is available for download on the agency's website, and that the offices with hard copies remained accessible by appointment. While we appreciate the agency putting the application online, the size of the file has prevented easy downloading by some members of the public. Additionally, we remain concerned that there is a possible violation of federal and state laws and regulations that require public access to the permit application during all times of the comment period at the County Clerk's Office in the county in which the mine is located. *See* Wyo. Stat. § 35-11-406(d); 30 C.F.R. § 773.6(a)(2). We renew our request for DEQ to extend the public comment deadline until such a time as Wyoming, and Sheridan County, are not under any public health restrictions.

b. Requests for an informal conference & mine site visit must be placed on hold

We do not believe DEQ can lawfully hold an informal conference or other public hearing on the permit application so long as the public health orders are in place. DEQ regulations require an informal conference to "be held in the locality of the operation or at the state capitol, at the option of the requester." DEQ Rules of Practice and Procedure Ch. 3 § 3(a). Additionally, DEQ (and federal) rules provide that an objecting party may also request access to the proposed permit area through a site visit tour. Such a tour is open to any objecting party, and of course representatives of the agency and the permit applicant, who must be present if private lands must be accessed.

While the Resource Council hereby requests an informal conference in Sheridan County and a visit to the proposed permit area, we request that DEQ hold off on scheduling such public participation activities until the public health orders have been lifted. We do not believe there

will be a way to meet the Environmental Quality Act's and SMCRA's mandates for public participation while public health restrictions are in place.¹

If DEQ wishes to risk non-compliance and proceed with scheduling an informal conference and site visit, we welcome the opportunity to discuss the logistics surrounding the public participation opportunities, but our discussion or negotiations should in no way be viewed as waiving any objections we may have to the process itself.

2. DEQ violated the Environmental Quality Act by Not Requiring Brook to “Resubmit” its Permit Application Under Section 406(f)

Section 406(p) of the Environmental Quality Act dictates that once a hearing is held and the EQC issues its order, the mining permit should be issued or denied fifteen days after the order. Following, the EQC's decision the original Brook Mine permit application was denied. The EQC's Order and DEQ's denial of the application was not a “deficiency notice” under subsection 406(h) – it was a denial under subsection 406(p).

The Environmental Quality Act speaks directly to the case at hand in subsection 406(f) when a company “resubmits” an application. This is exactly what the EQC Order told the company to do – “revise” and “resubmit.” Therefore, DEQ should have followed the process under subsection 406(f), which requires a sixty-day completeness review period of the resubmitted application, similar to subsection 406(e) for new permits. After the completeness review, the process is the same as new applications, with the requirements of subsections 406(g)-(p).

DEQ did not follow this process. Instead, it treated the EQC Order as “Round 7” of technical review under subsection 406(h).

Unfortunately, this led to real negative consequences for DEQ's ability to fully and fairly review the substantial changes to the company's permit application that were submitted in October 2018. Under the DEQ's process, staff members had a mere thirty days to review the new information submitted by the company under subsection 406(h) versus the time for completeness review under subsection 406(f) and the 150-day review period under subsection 406(h) for resubmitted applications. Given the public controversy and attention and important natural resources in the Tongue River Valley, it is not harmless error for DEQ to illegally restrict the time afforded to them under the Environmental Quality Act to fully review the resubmitted application.

¹ For instance, please see the recent letter sent by Sweetwater County Commissioners to the BLM. We echo their concerns and comments: “Open public dialog cannot be replaced by Zoom and computerized meeting formats. Sweetwater County has participated in these types of meetings and have found them to be ineffective leaving many participants feeling frustrated and wondering if their comments were understood or would even be addressed.” <https://www.sweetwaternow.com/sweetwater-county-commissioners-request-rock-springs-rmp-be-postponed/>

Additionally, because of this error, DEQ's process circumvented the public notice required in Section 406(g) for a resubmitted application.

We put DEQ on notice of these process violations by letter in February 2018, giving the agency ample opportunity to correct any violations before the October 2018 revised permit application submission. Unfortunately, DEQ proceeded with a process that is outside the scope of the Environmental Quality Act, therefore rendering any subsequent permit decisions illegal. To remedy this, DEQ must start over – by requiring Brook to resubmit a revised permit application under subsection 406(f), and subsequently following the process in subsections 406(g)-(p) for review of the resubmitted permit application.

3. Failure to Disclose Coal Mine Operators

As early as March 2015, our organization wrote to DEQ to express concern that the mine permit application did not contain “complete identification” of “[t]he names, addresses and telephone numbers of any operators, if different from the applicant” as required by the DEQ's rules. Land Quality Rules & Regulations (hereafter “LQRR”) Ch. 2 § 2(a)(i). Upon our review of the application, Brook has not identified who the operator of the coal mine will be. The permit application refers to contractors or consultants but these parties are left unnamed. Additionally, it is our understanding that while Brook has a local “office,” the company does not actually have staff that would be able to carry out mining activities should the company receive a permit. If any party other than Brook will be operating the mine, that party must be identified in the permit application. As you know, such identification is necessary for a complete applicant violator system (“AVS”) check, but it is also required as part of the permit application for public notice and review.

4. The Permit Application Is Not Complete Because It Fails to Include All Coal Hauling, Processing, and Upgrading Facilities

For the purposes of delineating a permit boundary, the Environmental Quality Act defines “Surface coal mining operation” to mean surface lands where surface coal mining activities take place and/or surface lands “incident” to underground coal mining activities. The operation shall also “include any adjacent land the use of which is incidental to any of these activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of these activities and for haulage . . . processing areas, shipping areas and other areas upon which are sited structures, facilities or other property or materials on the surface, resulting from or incident to these activities.” W.S. § 35-11-103(e)(xx).

Here, the permit application fails to include associated facilities necessary to get coal to a point of sale, including necessary roads and facilities, and does not include the coal “processing areas” associated with the proposed industrial park and manufacturing facilities, which are incidental to the mine. The company's only stated source of coal for the proposed research park (iCam) and manufacturing center (iPark) is the Brook Mine.² Meaning, but for the Brook Mine, these facilities would not exist.

² See <https://ramacocarbon.com/facilities/>

These SMCRA requirements have been interpreted by various courts, and judicial opinions provide instruction for including the facilities here. For instance, in 1992, the Alaska Supreme Court found that an eleven-mile access/haul road and adjacent conveyor from the mine site to a port, port facilities, a solid waste disposal facility, gravel pits, and a housing facility with an air strip and access road should have been considered as “incident” to coal mining activities. *Trustees for Alaska, Alaska Center for Environment v. Gorsuch*, 835 P.2d 1239 (1992).

Brook’s permit is no different. If there are roads or facilities being used for mining operations and/or part of the process to get the coal from the mine to a point of use, those roads and facilities are “incident” to coal mining activities and require a SMCRA permit. The permit application is incomplete by not including these facilities.

5. The Permit Application is Not Complete and Accurate – It Is Too Vague and Unrealistic

The core of any coal mine permit is the mine plan. The mine plan establishes how much coal will be mined in what time period, and it describes the impacts to land, air, and water resources. It establishes the basis for the DEQ or impacted members of the public to enforce the terms of the permit, and the associated reclamation plan as the timing and measures needed in the reclamation plan are based on the mine plan, and if the mine plan is too vague or unrealistic, enforcement will prove problematic in the future.

DEQ regulations require information in a permit application to be “current” . . . “accurate and complete.” DEQ Land Quality Division Rules and Regulations, Ch. 2 § 1. The mine plan must include “[a] complete operations plan proposed to be conducted during the life of the mine” with an accurate estimate of “the number of acres that will be affected annually” and the “anticipated annual and total production by tonnage.” *Id.* at § 5(a)(i).

In the case of the Brook Mine, the mine plan is based on a plan that will never occur. The mine plan estimates annual production at a level that is in direct conflict with statements of the company’s representatives explaining the company’s plans for the area. And in fact, the company’s own statements have contradicted each other.

Early statements by the company estimated 6-8 million tons a year of production over 20 years. Originally aimed at export markets, Ramaco then shifted its proposal to selling its coal locally for stoves or marketing it as “thermal coal” for power plants (arguing that private reserves and corresponding lack of federal royalties, along with “low cost” highwall mining, would make their coal marketable even in a down market). In 2014, Ramaco stated “Negotiations are currently underway with domestic utilities to purchase the majority of the of Brook Mine production.”

But now, the company has shifted to using the coal for its proposed research and industrial facilities – a demand of which also contradicts the mine plan and show that its estimated production overestimates the amount of production. Ramaco executives are now stating that production will be on a “very limited basis” with “no more than a couple hundred

thousand tons a year just to get started” and employment of “under 20 people.”³ Finally, company representatives have further represented that only *very* small amounts of coal would be needed for the research and processing facilities at the iPark and iCam. Atlas Carbon in Gillette, which produces carbon products for air and water treatment systems from coal currently uses around 30,000 tons of coal per year.⁴

Additionally, Ramaco’s facilities are highly dependent on government funding, technology breakthroughs, and other unknowns that make them speculative. The company has not provided any justification for its thirty-nine year proposed mine life and/or the amount of coal it proposes to mine.

It is clear that the company’s plans are in flux and the permit application is merely a placeholder for things yet to come. Our coal mining regulations require more; they require accurate, complete, and current information detailing anticipated production levels and an accurate, complete, and current estimate of the life of the mine. At the very least, the permit application should have fully disclosed that the company’s plans are not finalized and the permit application should have presented a range of anticipated production, a range of operating years, or even production level alternatives based on different options of company investment, to allow DEQ to assess the completeness and technical adequacy of the permit application, along with any impacts to land, air, and water resources.

Consistent with Dr. Marino’s recommendation discussed below, at the very least the permit application should be amended to limit mining to the first five years of surface mining. Even that portion of the mine is speculative, but it is less speculative than the remaining years for which Ramaco has not shown any proposed buyers or opportunities to use the coal.

6. The Permit Application Remains Deficient Regarding Baseline Water Testing and Hydrology Analysis

As the attached report from our hydrogeology expert Mike Wireman explains, the mining and reclamation plan does not include “a plan to minimize the disturbances to the prevailing hydrologic balance at the minesite and in associated offsite areas and to the quality and quantity of water in surface and ground water systems both during and after mining operations and during reclamation” as required by the Environmental Quality Act and corresponding DEQ regulations. W.S. § 35-11-406(b)(xvii). DEQ must deny the permit application *unless* it is sufficiently demonstrated that the proposed operations will not materially damage the hydrologic balance outside the permit area and will minimize disturbances to the prevailing hydrologic balance at the minesite.

Also as explained in the attached report, the permit application fails to protect the numerous AVFs in the permit area and adjacent areas as required by the Environmental Quality Act, SMCRA, and corresponding state and federal regulations.

³ See http://trib.com/business/energy/energy-journal-q-a-randall-atkins-ramaco/article_7834a593-c06d-5785-aeaa-8f3b5637a337.html

⁴ See <http://www.energycapital.com/wp-content/uploads/2016/10/Presentation-6-Atlas-Carbon-Jim-Dye.pdf>

7. The Permit Application Remains Deficient Regarding Subsidence Prevention

As discussed in the attached expert report from Dr. Jerry Marino, the subsidence control plan does not achieve its required objective: to control and prevent subsidence at the mine site. The expert report concludes that the subsidence remediation plan is inadequate.

Dr. Marino further concludes:

As noted above, the permit application only addresses the highwall mining of the 68 acres of Carney Seam. With application approval, this may provide an administrative mechanism for DEQ to approve remaining underground mining of other mineable seam areas without proper public oversight via a non-significant revision to the permit. This would involve the entire 1,960 acres of proposed highwall mining.

At a minimum, it is recommended that any highwall mining be removed from the permit until it is reasonably investigated in order not to setup such a precedent of unacceptable protocols. HWM areas should be applied for increments as Significant Revisions as proper subsidence engineering investigation is accomplished. Moreover, in the first 5 years on operation the Brook Mine intends on only surface mining with no highwall mining. This is also consistent with Ramaco's statement in the application that the permit will be renewed every 5 years (Mine Plan prepared by WWC Engineering dated 12/19). Another reason why the HWM application should be delayed and become a Significant Revision is the statement by Ramaco ... "AAI agrees that reevaluation should be considered if the ultimate plan involves a greater cutting width, height, or penetration or a lesser production rate than assumed" (Ramaco Response to Round 8 DEQ Memo of Deficiencies dated January 9, 2018).

The company has an obligation to prevent subsidence. DEQ Land Quality Regulations require a coal mining permit application with underground components, such as this permit application, to include "[e]xcept for areas where planned subsidence is projected to be used, measures to be taken in the mine to prevent or minimize subsidence, including backfilling of voids and leaving areas in which no coal is removed." Ch. 7 § 1(a)(v)(C). Additionally, "[u]nderground mining activities shall be planned and conducted so as to prevent subsidence from causing material damage to structure, the land surface, and groundwater resources." Ch. 2 § 2(b)(iii).

The company is proposing to mine under at least one county road and will be mining in close proximity to numerous home and business structures, including cell towers, agricultural lands and associated structures, water wells, and public rights of way. Subsidence also has implications for whether the "reclamation plan can accomplish reclamation as required." *Id.* at § 406(n)(ii). And it has implications for creating damage to the hydrologic balance both within the permit area and in outside areas. *Id.* at §§ 406(b)(xvii), 406(n)(iii).

For the reasons stated in Dr. Marino's report and for the regulatory requirements discussed above, the permit application should be rejected. At the very least, as Dr. Marino concludes, the permit application should remove all highwall mine portions and limit the permit to the first five years of surface mining.

8. The Permit Application Does Not Adequately Disclose Impacts to Traffic & Road Use and It Does Not Contain the Required Traffic Plan

The mine plan does not estimate truck traffic, disclose any impacts to public or private roads used by the public, and does not include a traffic plan or any agreements with Sheridan County and/or the Wyoming Department of Transportation on road use, repair, and compensation. Additionally, the mine will directly impact Slater Creek Road, a county road that is the only access point for the property of Resource Council member Phil Klebba and his family at the Klebba Ranch. The mine plan does not provide the required buffer around Slater Creek Road or alternatively it does not provide a plan, approved by the Sheridan County Board of County Commissioners, to move the road.

Additionally, as discussed above, any roads used for mining operations or "incident" to mining operations require a SMCRA permit. Even if the company will be using state or county roads that are already in place, the use of those roads must be considered within the scope of the SMCRA permit.

9. The Permit Application Does Not Adequately Disclose Impacts to Conservation Easements and Recreation Access

While the permit application discloses that two walk-in areas for hunting and recreation are within the permit boundary (D1-7), it does not discuss how the use of these areas will be impacted by mining operations nor does it establish a plan to mitigate any impacts.

Additionally, the proposed mine and associated "industrial park" is located within eyesight of the Kleenburn Recreation Area, an area frequently used for recreation activities, including fishing, picnicking, and hiking. Again, the permit application fails to mitigate any impacts to recreation use in the area.

10. The Permit Application Continues to Fail to Include Necessary Controls and Restrictions on Blasting Intensity and Timing

While we appreciate the modifications made to the blasting plan, the plan remains deficient. The plan continues to fail to ensure that the requirements of Chapter 6 of the Land Quality Regulations will be met during mining and that offsite impacts resulting from pollution and seismicity will be prevented. Blasting is of particular concern to members of the public who recreate in the area given pollution and other impacts and to nearby homeowners and landowners whose structures could be impacted from blasting activities.

In particular, we ask that the DEQ restrict blasting operations to the weekdays only given the frequent use of the area for recreation during the weekends.

11. Failure to Include Information on an Important MSHA Requirement

The subsidence control plan references a “ground control plan” that is approved by MSHA and is commonly included for DEQ review in a subsidence control plan. However, no such plan exists. DEQ regulations require “[a] list identifying the Mine Safety and Health Administration identification number for all mine facilities that require MSHA approval and licenses, permits or approvals needed by the application to conduct the proposed operation, whether and when they have been issued, the issuing authority, and the steps to be taken to comply with the requirements” as part of the permit application. Ch. 2 § 2(a)(v). This information is not included in the permit application.

12. Water Rights & Use of the Tongue River

The mine proposes to use surface water rights to provide the majority of the mine’s water supply. According to DEQ’s analysis in the draft CHIA, any new surface water rights needed for water supply would be subject to approval by the Wyoming State Engineer under evaluation of the Yellowstone River Compact, which will require that bypass or make-up water be made available. However, the permit application is lacking in specific detail about the water rights that will be acquired and how the “bypass or make-up water” will be made available by Ramaco. If the mine is unable to acquire surface water rights, which may be very likely, it will be forced to use more groundwater, putting additional stress on the aquifer systems and potentially impacting nearby water wells.

13. Impacts from Flooding

Given that the area is in the Tongue River Valley with numerous tributaries and small streams, there are a variety of waterways that could be impacted by mining activities. Additionally, the area is prone to flooding, especially in high snowmelt runoff years. We are concerned that the sedimentation and runoff control structures identified in the mine plan will not protect impacts from flooding, especially when adding the water from mine dewatering activities. The analyses presented in the application regarding estimation of flood magnitudes and frequencies and volumes of water that will need to be managed (run-off / run-on) during mining operations did not consider extreme precipitation events. Given the occurrence of extreme events in the Tongue River Valley in recent years, it is important to model extreme events.

14. The Reclamation Bond Does Not Include Monitoring Costs

As discussed in Mr. Wireman’s report, the water monitoring plan for the mine is deficient. The amount bonded for monitoring should be increased to reflect a revised and much more robust monitoring plan. Monitoring should include the costs for personnel and analysis, maintaining monitoring locations/sites/equipment, and developing new monitoring sites as appropriate. Any “additional cost to the state of bringing in personnel and equipment” should also be included.

15. The Reclamation Bond Does Not Include Costs to Restore Hydrologic Conditions

The bond fails to include sufficient funds to carry out all operations needed to restore to pre-mine hydrologic conditions within the permit area – and in any offsite areas that are impacted. At a minimum, there must be a thorough analysis of aquifer recharge capacity, what engineering techniques would be used to restore the aquifer to pre-mining capacity and water quality conditions, and what timetable and costs would be involved with such reclamation. The same must be done for surface water, and all associated costs must be included in the reclamation bond.

16. The Land Use Section of the Permit Application Must Be Updated

Ramaco incorrectly states in Appendix D1 that lands within the permit area have been used extensively for industrial purposes and that heavy industrial use is compliant with Sheridan County's land use plan. These incorrect statements must be revised. The proposed mining area is zoned for agricultural use and the only "light" industrial zoned land is where the proposed iCam and iPark facilities are located. These lands are not permitted for heavy industrial uses, and all mining lands must be returned to pre-mining land uses, including agriculture and recreation. An assumption of industrial use minimizes the reclamation expense to the mine operator, and limits the potential land use for future users.

Conclusion

Thank you for your time and consideration of these objections. We look forward to your scheduling of an informal conference to discuss these objections.

Sincerely,

A handwritten signature in black ink, appearing to read "Shannon Anderson", with a long horizontal line extending to the right.

Shannon Anderson
Staff Attorney