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Why Mine Permitting in Wyoming Just Got Harder

Insight — 11/14/2017

On September 27, 2017, the Wyoming Environmental Quality Council (Council) issued an Order in a case contesting the adequacy of Brook Mining Company, LLC's permit application to open a new coal mine. Several members of the public objected to the permit application, in part, because the Wyoming Department of Environmental Quality (DEQ) had not issued the written findings required by Wyo. Stat. Ann. § 35-11-406(n) before DEQ allowed Brook to publish its permit application for public comment. The Council found DEQ's decision not to issue those written findings precluded a favorable finding on Brook's application. The Council directed DEQ to issue the written findings before the public comment period begins. DEQ announced it will follow the Council's decision for all mine permitting actions.

Specifically, the Council stated, "[u]nder subsection [35-11-406](n), the administrator is required to make his written findings at the time he determines whether the application is 'suitable for publication' under Wyo. Stat. Ann. § 35-11-406(h). These findings must be completed prior to the Council considering whether the permit application should be approved." The Council then stated that the "[cumulative hydrologic impact assessment] CHIA is necessary for the administrator to make his findings under subsections 406(n)(iii) and (v)."

At a recent coal working group meeting, DEQ representatives announced that DEQ will treat the Council's statements as binding for existing and future permit applications and amendments. To implement the statements, DEQ announced it would conduct the cumulative hydrologic impact assessment (CHIA) for all permitting actions before allowing applicants to publish a new application or amendment for public comment under Wyo. Stat. Ann. § 35-11-406(h). This change will affect all types of mines in Wyoming.

DEQ, however, revealed that the CHIA will take about 70 days to complete—55 days longer than the law allows between the technical review period and the public comment period. To remedy this issue, DEQ stated it will ask that applicants grant DEQ an extension of time to complete the CHIA.

DEQ's announcement raises at least two issues for all mines in Wyoming. First, the time to get a new permit or amendment to public comment has increased. Second, all CHIAs will become subject to public comment, giving the public the chance to view data about the applicant's operations and the operations of all mines included in the CHIA. Both will make the permit application process more difficult and add potential avenues to

attack permitting actions.

For more information, questions, or help concerning DEQ's announcement, the Council's decision, or the fallout from both, please contact Jeff Pope.

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