

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

IN THE MATTER OF THE PROPOSED)
REVISION OF CHAPTER V OF THE)
DEPARTMENT OF ENVIRONMENTAL) STATEMENT OF PRINCIPAL
QUALITY RULES OF PRACTICE AND) REASONS FOR ADOPTION
PROCEDURE)

The Wyoming State Program for the regulation of coal mining under the Federal Surface Mine Control and Reclamation Act (P.L.95-87) was conditionally approved by the Secretary of the Interior on November 26, 1980.

The Department of Environmental Quality has determined that Department of Environmental Quality Rules of Practice and Procedure, Chapter V, Section 2.a.(2)(b) should be removed to conform to federal regulations. The federal rules do not contain this language. Also, this language creates an unreasonable burden on potential petitioners, which may deter public participation in enforcement actions.

The rule presently reads as follows, including the language proposed for removal, denoted by overstrike:

a. Appropriate costs and expense including attorneys' fees may be awarded:

(2) To a permittee from any person, but only if the Council finds that:

(a) the person initiated or participated in enforcement action in bad faith for the purpose of harassing or embarrassing the permittee; or

~~(b) the person knew or should have known that no violation or imminent hazard occurred or existed to support the enforcement action.~~

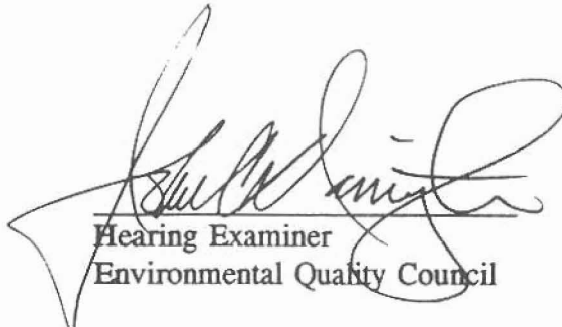
This rule was originally approved as an emergency rule by the Council on October 22, 1992, as provided by W.S. 16-3-103(b). The purpose of this approval is to make the emergency rule a permanent rule.

Conclusion

The Environmental Quality Council, in accordance with the authority granted to it by W.S. 35-11-112 As Amended, and having complied with the provisions of the Wyoming Administrative Procedures Act, finds as follows:

1. These rules provide for the regulation of surface coal mining and reclamation operations in accordance with the requirements of P.L. 95-87.
2. These rules and regulations are as effective as those promulgated by the Secretary of the Interior pursuant to P.L. 95-87.
3. These regulations are necessary and appropriate to preserve and exercise the primary responsibilities and rights of the State of Wyoming; to retain for the State the control over its air, land, and water resources and secure cooperation between agencies of the State and Federal Government in carrying out the policy and purposes of the Environmental Quality Act.
4. These regulations are reasonable and necessary for the effectuation of W.S. 35-11-101 through W.S. 35-11-1304, As Amended.
5. These rules and regulations are necessary and appropriate to protect the public health, safety, welfare, and environment of the State of Wyoming.

Dated this 17 day of December, 1992.



Hearing Examiner
Environmental Quality Council