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Environmental Quality



BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

February 2004

IN THE MATTER OF THE)	
PROPOSED REVISION OF)	
THE LAND QUALITY)	STATEMENT OF PRINCIPAL
DIVISION RULES RELATED)	REASONS FOR ADOPTION
TO THE REGULATION OF)	
COAL MINING)	DOCKET NO. 03-4100

Coal - Chapters 1, 4 and 10

Rule Package 1R - Highwall Retention Prohibition and Coal Exploration

Introduction:

In order to maintain Wyoming's approved State Program for the environmental regulation of coal mining, as well as maintain Federal funding for Wyoming's Abandoned Mine Land Program, the State must keep its laws, regulations, and policies consistent with, and as stringent as, the Federal laws and regulations. Through a February 21, 1990, 30 Code of Federal Regulations (CFR) Part 732 letter and three codified program disapprovals dated August 25, 1990, September 13, 1991 and August 6, 1996, the Office of Surface Mining Reclamation and Enforcement (OSM) has notified Wyoming that various portions of its regulations are no longer as effective as the Federal regulations. Authority to request amendments is provided to the OSM under the CFR Title 30, § 732.17.

The proposed rule repeal regarding highwall retention is being proposed by the State as an administrative change because this particular section of the rules were carried over when the coal and noncoal rules were divided into separate rules. In accordance with the Federal Register Volume 59, No. 61, dated March 30, 1994 the State proposed to delete the language regarding highwall retention. The background associated with this proposed rule change is provided in the Statement of Reasons for rule change no. 1 below. Proposed rule revisions no. 2 through no. 6 are intended to address deficiencies identified by the OSM regarding coal exploration. Attachment A, found on page 18, presents Chapter 10 in its entirety with the rules proposed for amendment/adoption presented in strike and underline format

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Chapter 1 - Authorities and Definitions

Chapter 4 - Environmental Protection Performance Standards

Soft Rock Surface Mining

1.A Rule Repeal: Chapter 1, Section 2(cc)

~~(cc) "Soft rock surface mining" means surface mining of materials deposited within or as sedimentary rock formations which include: coal, uranium, sand and gravel, jade, bentonite, hot springs deposit, placer mining, clay, gypsum, oil shale, and scoria.~~

Statement of Reasons for Rule Change 1.A:

The LQD proposed to repeal the above rules to remove the reference to soft rock mining from the Coal rules. The definition and provision for soft rock mining were a part of the LQD rules when the Coal and Noncoal rules were presented as one set of rules. When the rules were separated in 1994, the rules pertaining to soft rock mining should not have been incorporated into the Coal - Only set of rules.

Coal is considered to be a "soft rock." However, because the Coal rules pertain only to coal mining, there is no reason to maintain a definition that also lists other minerals.

The Environmental Quality Council voted to repeal this rule as proposed.

1.B Rule Addition: Chapter 4, Section 2(b)(iv)(A)

- (A) Soil conservation techniques and/or small depressions may be employed ~~if they are needed~~ to retain moisture, minimize erosion, create and enhance wildlife habitat, ~~and~~ or assist revegetation.

[Note: This rule change was added as part of the EQC hearing on February 26, 2004. What was Rule Change 1.B in this version of Rule Package 1-R which was submitted to the EQC in January of 2003 is now divided into Rule Changes 1.C through 1.E.]

Statement of Reasons for Rule Change 1.B:

The LQD did not propose any changes to this rule. The EQC reviewed the comment which Triton Coal Company (TCC) had submitted to the Land Quality Advisory Board, which proposed this rule be changed to "Small depressions may be constructed if they are needed to minimize erosion, conserve soil moisture, promote vegetation diversity, or enhance wildlife habitat".

The LQD felt this change was not necessary, as "small depressions" are being addressed in a future Rule Package (1-S).

The Environmental Quality Council voted to change the language in this rule because they recognized that small depressions, which may hold water occasionally, are useful to wildlife.

1.C Rule Repeal: Chapter 4, Section 2(b)(ix)

(ix) Soft rock surface mining.

(A) If the reclamation plan does not provide for a permanent water impoundment, the final pit area shall be backfilled, graded, compacted and contoured to the extent necessary to return the land to the use specified in the approved plan. In preparation of slope specifications in the plan, the operator shall consider an average of the measured slopes in the immediate area of the proposed mine site. Slopes in the reclaimed area shall approximate the premining slopes. Individual slope measurements, locations of the measurements, and the average measurement shall be submitted with the reclamation plan. In determinations of the approximate premining slope, the Land Quality Division may make an independent slope survey. All backfilling, grading, and contouring will be done in such a manner so as to preserve the original drainage or provide for approved adequate substitutes. No depressions to accumulate water will be permitted unless approved in the reclamation plan as being consistent with the proposed future use of the land.

Statement of Reasons for Rule Change 1.C:

As discussed above in Rule Change 1.A, the LQD had originally proposed to repeal this section of the rules. The Land Quality Advisory Board voted to delete "Soft rock surface mining:" but to include the rest of the language in (A). The Environmental Quality Council voted to repeal this language because they felt the language was redundant to other sections of the Coal rules.

1.D Rule Repeal: Chapter 4, Section 2(b)(ix)(B) and (C):

(B) Terraces or benches may be used only when it can be shown to the Administrator's satisfaction that other methods of contouring will not provide the required result. If terracing is proposed, detailed plans indicating the dimensions and design of the terraces, check dams, any erosion prevention techniques, and slopes of the terraces and their intervals will be required.

(C) If the reclamation plan provides for a permanent water impoundment and this use has been approved according to the requirements outlined in the Act and these regulations, the exposed pit areas must be sloped, graded, and contoured so as to blend in with the topography of the surrounding terrain and provide for access and revegetation. Riprapping where necessary to prevent erosion will be required. Sloping requirements will be as described above. Under certain conditions wherein it can be demonstrated to the Administrator's satisfaction that the pitwall can be stabilized by terracing or other techniques it may be permissible to leave not more than one half of a proposed shoreline composed of the stabilized pitwall. The remaining portion of the shoreline must be graded and contoured so as to provide access and blend in with the topography of the surrounding terrain. In the event that a partial pitwall is proposed as final reclamation,

~~the operator must submit a detailed explanation of the techniques to be used to establish the stability of the pitwalls in his reclamation plan. At the Administrator's discretion, a study of the proposed pitwall stabilization techniques may be required from an independent engineering company for purposes of verifying the effectiveness of the proposed stabilization techniques. The Land Quality Division will determine the acceptability of the proposed stabilization techniques based on this information and an on-site inspection.~~

Statement of Reasons for Rule Change 1.D:

Once again, as discussed above in Rule Change 1.A, the LQD proposed to repeal the above rules to remove the reference to soft rock mining from the Coal rules. The definition and provision for soft rock mining were a part of the LQD rules when the Coal and Noncoal rules were presented as one set of rules. When the rules were separated in 1994, the rules pertaining to soft rock mining should not have been incorporated into the Coal - Only set of rules.

It is with Rule Changes 1.D and 1.E (which affect Chapter 4, Section 2(b)(ix)(B), (C) and (D)) that different views were noted by industry, state and federal agencies.

Prior to the Land Quality Division (LQD) Advisory Board meeting on June 5, 2002, comments from one operator, Triton Coal Company (TCC), were originally submitted and were discussed at that meeting. The LQD Advisory Board chose not to adopt the comments. These comments were not resubmitted prior to the Environmental Quality Council (EQC) hearing on January 16, 2004 but were part of the public record developed for the EQC. At the EQC hearing these comments were discussed by the EQC. Comments were also received from the Wyoming Game and Fish prior to the January EQC hearing and from the United States Fish and Wildlife Service during the hearing, both in support of utilizing highwalls in the reclamation for creation of bluff features. The EQC voted to extend the public comment period for this rule package until February 17, 2004 and reconvene the EQC rule hearing on February 25, 2004 at 9:00 AM in the Herschler Building, Room 1699, 122 West 25th Street, Cheyenne, Wyoming. The LQD was requested to provide the EQC with an Analysis of Comments for TCC's comments that were submitted prior to the Advisory Board meeting. The EQC also requested copies of the rules on highwalls from other western states that have an approved regulatory program from OSM on this issue.

The EQC reconvened the rule hearing on February 25, 2004 and heard information from industry, state, and federal agencies. The Office of Surface Mining (OSM), Guy Padgett, Director of the Casper Field Office provided the EQC with a brief presentation regarding the need for the LQD to correct multiple deficiencies as noted in correspondence dating back well over ten years. Mr. Padgett further explained the need for the State to repeal the language with any reference to 'highwall, terraces, benches, escarpment' as was agreed in prior correspondence between the State and as noted in the conditional approval of Wyoming's Coal program as documented in the Federal Register Volume 59, No. 61, dated March 30, 1994. Scott Benson of TCC submitted information pertaining to use of highwalls as replacement features. Mr. Benson also discussed the language he proposed. Marion Loomis, Wyoming Mining Association,

submitted a letter with attached documents discussing a wide variety of reclamation issues and features.

The Environmental Quality Council voted to repeal this section of the rules as proposed. However, as discussed in the following Rule Change 1.E, the EQC wanted to make a clear statement that the EQC supports the retention of highwalls to enhance and diversify reclamation as allowed by the current coal program.

1.E Rule Change: Chapter 4, Section 2(b)(ix)(D):

(D) Highwall retention may be considered on a case-by-case basis ~~to for~~ enhanced wildlife habitat as replacement for natural features that were eliminated by mining. ~~The Wyoming Game and Fish Department shall be consulted by the applicant for need and design of the land form. Any approval under this paragraph shall be based on a demonstration of safety, stability, environmental protection, and equal or better land use considerations.~~

Statement of Reasons for Rule Change 1.E:

The LQD had proposed to repeal the above rule in its entirety as noted in the Statement of Reasons for Rule Changes 1A through 1D. During the January 2004 EQC hearing, the LQD expressed concern for changing this rule, and the reasons were presented in detail in the Analysis of Comments presented to the EQC between the January 2004 and February 2004 EQC hearings. At the February 2004 hearing, after presentation of additional information from industry, and state and federal agencies, the EQC voted not to repeal this section of the rules but to edit the rule as noted above. The LQD stated that highwalls were currently allowed to be utilized to create bluff features in the reclamation under the approximate original contour section of the rules. Guy Padgett, OSM, was asked by the EQC if this would be approved by OSM. Mr. Padgett stated that he doubted that OSM would approve the language proposed by the EQC but that he was not in a position to make a definitive statement because that decision would be made further up in the bureaucracy of OSM. He went on to say that, in view of approved rules in other states, perhaps the needed clarification could be done with an exchange of letters. OSM may request a more detailed statement as to the requirements for highwalls. A future LQD rule package will continue to address the discrepancies between the state and federal rules and language from the state of New Mexico that was approved by OSM. Language proposed by Mr. Benson is similar to that accepted in New Mexico.

Changes to Chapter 10 begin on the following page....

Chapter 10 - Coal Exploration

Description of the Proposed Exploration Activity for a Notice of Intent

2. Proposed Rule Amendment:

	Proposed Rule	OSM Rule - 30 CFR
2.A	Section 1. General Requirements: Exploration of Less than 250 Tons <u>or Less</u>.	Sec. 772.11 Notice requirements for exploration removing 250 tons of coal or less.
	Ch. 10, Sec. 1(b) The notice shall include:	Sec. 772.11(b) The notice shall include--
2.B	Ch. 10, Sec. 1(b)(iii) A narrative <u>describing the proposed exploration area</u> or and a map <u>which describes the exploration area at a scale of 1:24,000, or greater, showing the proposed area of exploration and the general location of drill holes and trenches, existing and proposed roads, occupied dwellings, topographic features, bodies of surface water, and pipelines.</u> This description shall clearly describe the areas to be disturbed as well as the natural and man-made features in and immediately around the exploration area.	Sec. 772.11(b)(3) A narrative describing the proposed exploration area or a map at a scale or 1:24,000, or greater, showing the proposed area of exploration and the general location of drill holes and trenches, existing and proposed roads, occupied dwellings, topographic features, bodies of surface water, and pipelines;

Statement of Reasons for Rule Change 2:

Amendment 2.A

The amendment to the title of Section 1 is being proposed to ensure that the numerical threshold associated with this section is identical to that provided in the Federal rule - 250 tons or less, rather than simply less than 250 tons.

Amendment 2.B

The Federal Rules regarding coal exploration were revised on December 29, 1988 (53 FR 52942).

The rules were revised to add specific minimum content requirements for maps used to describe the exploration area in a notice of intent to explore for 250 tons or less if such maps are not accompanied by a descriptive narrative. This change was brought to the State's attention in a 732- letter dated February 21, 1990. The letter explained that because Wyoming's approved program allows for the use of a map without a narrative description, the State's rule must be amended to add specific minimum content requirements no less effective than the Federal rule.

The LQD is proposing to add the word "and" in reference to a map and a narrative. Applicants for coal exploration of less than 250 tons have been submitting both types of information and the LQD would like to continue obtaining descriptions in conjunction with a map because it is much easier to visualize where exploration is to be taking place with a map depicting the general locations. Therefore, this rule is proposed to make the submission of both types of information a requirement rather than discretionary. This is more effective than the counterpart Federal rule, but felt to be necessary based on the reasons described above.

The authority to amend/adopt these rules is provided by W.S. §§ 35-11-112(a)(i), 35-11-402(a)(xi) and 35-11-404(j).

Chapter 10 - Coal Exploration

Coal Exploration License Application Requirements

3. Proposed Rule Amendment:

	Proposed Rule	OSM Rule - 30 CFR
	Section 2. General Requirements: Exploration of More than 250 Tons or in an Area Designated as Unsuitable.	Sec. 772.12 Permit requirements for exploration removing more than 250 tons of coal, or occurring on lands designated as unsuitable for surface coal mining operations.
3.A	Ch. 10, Sec 2(b) <u>The application shall include, at a minimum, the following information:</u>	Sec. 772.12(b) Application information. Each application for an exploration permit shall contain, at a minimum, the following information:
3.B	Ch. 10, Sec 2(b)(i) That information required in Section 1(b) above. <u>The applicant's name, address, and telephone number.</u>	Sec. 772.12(b)(1) The name, address, and telephone number of the applicant.
3.C	Ch. 10, Sec 2(b)(ii) <u>The name, address and telephone number of the applicant's representative who will be present at, and responsible for, conducting the exploration activities.</u>	Sec. 772.12(b)(2) The name, address and telephone number of the applicant's representative who will be present at, and responsible for, conducting the exploration activities.
3.D	Ch. 10, Sec 2(b)(iii) <u>A narrative describing the proposed exploration area.</u>	Sec. 772.12(b)(3) A narrative describing the proposed exploration area.
3.E	Ch. 10, Sec 2(b)(ii iv) <u>A narrative description of the methods and equipment to be used to conduct the exploration and reclamation.</u>	Sec. 772.12(b)(4) A narrative description of the methods and equipment to be used to conduct the exploration and reclamation.

	Proposed Rule	OSM Rule - 30 CFR
3.F	Ch. 10, Sec 2(b)(v) <u>An estimated timetable for conducting and completing each phase of the exploration and reclamation.</u>	Sec. 772.12(b)(5) An estimated timetable for conducting and completing each phase of the exploration and reclamation.
3.G	Ch. 10, Sec 2(b)(iii vi) The estimated amount of coal to be removed, a description of the methods to be used to determine the amount,	Sec. 772.12(b)(6) The estimated amount of coal to be removed and a description of the methods to be used to determine the amount.
3.H	Ch. 10, Sec 2(b)(iii vi) continued; and a statement of why extraction of more than 250 tons of coal is necessary for exploration.	Sec. 772.12(b)(7) A statement of why extraction of more than 250 tons of coal is necessary for exploration.
3.I	Ch. 10, Sec 2(b)(iv vii) A description of...	Sec. 772.12(b)(8) A description of--
3.J	Ch. 10, Sec 2(b)(iv vii) continued historic or cultural features or resources listed or known to be eligible for listing on the National Register of Historic Places.	Sec. 772.12(b)(8)(i) Cultural or historical resources listed on the National Register of Historic Places;
	See above	Sec. 772.12(b)(8)(ii) Cultural or historical resources known to be eligible for listing on the National Register of Historic Places; and
3.K	Ch. 10, Sec 2(b)(iv vii) continued This shall include a detailed description of all archeological and historic resources located within the areas to be directly affected by the proposed exploration activities.	Sec. 772.12(b)(8)(iii) Known archeological resources located within the proposed exploration area.
3.L	Ch. 10, Sec 2(b)(iv vii) continued <u>This shall also include any other information which the Administrator may require regarding known or unknown possible historic or archeological resources.</u>	Sec. 772.12(b)(8)(iv) Any other information which the regulatory authority may require regarding known or unknown historic or archeological resources.
3.M	Ch. 10, Sec 2(b)(viii) A description of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) identified within the proposed exploration area.	Sec. 772.12(b)(9) A description of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) identified within the proposed exploration area.
3.N	Ch. 10, Sec 2(b)(ix) <u>A description of the measures to be used to comply with Section 4 of this Chapter.</u>	Sec. 772.12(b)(10) A description of the measures to be used to comply with the applicable requirements of Part 815 of this Chapter.
3.O	Ch. 10, Sec 2(b)(vii x) The name and address of the owner of record of the surface land and of the subsurface mineral estate of the area to be explored.	Sec. 772.12(b)(11) The name and address of the owner of record of the surface land and of the subsurface mineral estate of the area to be explored.

	Proposed Rule	OSM Rule - 30 CFR
3.P	Ch. 10, Sec 2(b)(vi xi) A map(s) at a scale of 1:24,000 or larger, showing the areas of land to be disturbed by the proposed exploration and reclamation. The map shall specifically show existing roads, occupied dwellings, topographic and drainage features, bodies of surface water, and pipelines; proposed locations of trenches, roads, and other access routes and structures to be constructed; the location of proposed land excavations; the location of exploration holes or other drill holes or underground openings; the location of excavated earth or waste material disposal areas; and the location of critical habitats of any endangered or threatened species listed pursuant to the Endangered Species Act.	Sec. 772.12(b)(12) A map or maps at a scale of 1:24,000, or larger, showing the areas of land to be disturbed by the proposed exploration and reclamation. The map shall specifically show existing roads, occupied dwellings, topographic and drainage features, bodies of surface water, and pipelines; proposed locations of trenches, roads, and other access routes and structures to be constructed; the location of proposed land excavations; the location of exploration holes or other drill holes or underground openings; the location of excavated earth or waste-material disposal areas; and the location of critical habitats of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).
3.Q	Ch. 10, Sec 2(b)(viii xii) If the surface is owned by a person other than the applicant, a description of the basis upon which the applicant claims the right to enter the area for the purpose of conducting the exploration and reclamation.	Sec. 772.12(b)(13) If the surface is owned by a person other than the applicant, a description of the basis upon which the applicant claims the right to enter that land for the purpose of conducting exploration and reclamation.

Statement of Reasons for Rule Change 3:

Amendment 3.D

The Federal rules regarding coal exploration were revised on December 29, 1988 (53 FR 52942.) As part of this rulemaking, subsection 30 CFR 772.12(b)(3) was revised to require that an application for a coal exploration permit (removing greater than 250 tons) contain a narrative in addition to the map required by existing 30 CFR 772.12(b)(12). As a result of this Federal rule change, the OSM notified Wyoming in a 732 - letter dated February 21, 1990 that the State's rules required revision.

The current rule presented as 3.B in the table above cross-references to "Section 1(b) above" for a partial list of the requirements for a coal exploration license. However, to ensure that all requirements as specified in the Federal counterpart rules are being presented in the State rules, this cross-reference is proposed for deletion. Instead this Section will list each of the requirements individually rather than relying on cross-referencing to another Section.

Amendments/Adoptions 3.A; 3.B; 3.C; 3.E; 3.F; and 3.N.

In order to appropriately reorganize the rules listed within Section 2, it is necessary to present every rule individually as found in the counterpart Federal rules rather than continue to rely on cross-referencing to Section 1. As shown in the above side-by-side comparison there are current State rules which do not contain language similar to the counterpart Federal rule. The following list, though not required for revision by the OSM, are being proposed for amendment/adoption to clearly provide language similar to the Federal program. These include: 3.A; 3.B; 3.C; 3.E; 3.F; and 3.N.

Amendments/Adoptions 3.G; 3.H; 3.I; 3.J, 3.K; 3.M; 3.O; 3.P and 3.Q.

Changes presented as 3.G; 3.H; 3.I; 3.J, 3.K; 3.M; 3.O; 3.P and 3.Q. are only being amended to renumber each entry to accommodate the insertion of new rules within Section 2.

Adoption 3.L.

Proposed rule adoption 3.L is being presented in response to a program disapproval codified as 30 CFR 950.16(w) as part of the September 13, 1991 Federal Register notice (57 FR 48984). In this disapproval, the OSM required Wyoming to submit revisions to the LQD Rules at Chapter XI, Section 2(b)(iv), (now found in Chapter 10) to amend its rule to include the requirement "any other information which the regulatory authority may require on known and unknown historic or archaeological resources," to be no less effective than the Federal regulation requirements at 30 CFR 772.12(b)(8)(iv). Consequently, the LQD proposed to adopt this rule to satisfy this program disapproval.

The authority to amend/adopt these rules is provided by W.S. §§ 35-11-112(a)(i), 35-11-402(a)(xi) and 35-11-404(j).

The EQC voted to strike the word "unknown" and insert "possible" as a substitute:

Ch. 10, Sec 2(b)(~~iv~~ vii) This shall also include any other information which the Administrator may require regarding known or ~~unknown~~ possible historic or archeological resources.

Chapter 10 - Coal Exploration

Public Comment on Coal Exploration Licenses

4. Proposed Rule Amendment:

Proposed Rule	OSM Rule - 30 CFR
Section 3. Approval of Applications for Exploration of More than 250 Tons or in an Area Designated as Unsuitable for Surface Coal Mining Operations.	<p>Sec. 772.12 Permit requirements for exploration removing more than 250 tons of coal, or occurring on lands designated as unsuitable for surface coal mining operations.</p> <p>Sec. 772.12(e) Notice and hearing.</p>
Ch. 10, Sec 3(a) No later than 40 days after newspaper publication, the Administrator shall notify the applicant, any appropriate government agencies and other commenters, in writing of his intention to approve the application, or if he has denied it. If the application is denied, the notice shall include a statement of the reasons for denial. A copy of the notice shall also be posted at the district office covering the area for the proposed exploration.	Sec. 772.12(e)(1) The regulatory authority shall notify the applicant, the appropriate local government officials, and other commenters on the application, in writing, of its decision on the application. If the application is disapproved, the notice to the applicant shall include a statement of the reason for disapproval. Public notice of the decision on each application shall be posted by the regulatory authority at a public office in the vicinity of the proposed exploration operations.
(b) If the Administrator provides notice that he intends to approve the application, then a Any person having an interest which is or may be adversely affected <u>by the decision of the Administrator</u> shall have the right to file written objections to the application within 30 days after the notification. Such persons shall have the opportunity for administrative and judicial review as outlined in W.S. § 35-11-406(k). The final decision, to issue or deny the license, shall be done in accordance with W.S. § 35-11-406(p). If there are no objections, the Administrator shall promptly approve and issue the license in accordance with (c) immediately below.	Sec. 772.12(e)(2) Any person having an interest which is or may be adversely affected by a decision of the regulatory authority pursuant to Paragraph (e)(1) of this Section shall have the opportunity for administrative and judicial review as set forth in Part 775 of this Chapter.

Statement of Reasons for rule Change 4:

This proposed rule amendment is being presented in response to a program disapproval codified as 30 CFR 950.16(a) as part of the July 25, 1990 Federal Register notice (55 FR 30221). In this disapproval, the OSM required Wyoming to amend its program to give persons adversely affected by a disapproval of a coal exploration license the same opportunity for administrative and judicial review as currently provided to someone who may want to comment on the approval of a coal

exploration license. Therefore, this rule at Chapter 10, Section 3(b) is proposed for amendment to satisfy this codified disapproval.

The authority to amend/adopt these rules is provided by W.S. §§ 35-11-112(a)(i) and 35-11-402(a)(xi).

Chapter 10 - Coal Exploration

Protection of Wildlife Habitat During Exploration

5. Proposed Rule Amendment:

Proposed Rule	OSM Rule - 30 CFR
Section 4. Exploration and Reclamation Performance Standards.	Sec. 815.15 Performance standards for coal exploration.
<u>Ch. 10, Sec 4(e) Critical or crucial habitats of listed threatened or endangered species identified pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) shall not be disturbed during coal exploration. Crucial or important habitat for wildlife shall not be disturbed during coal exploration unless written evidence of consultation with the Wyoming Game and Fish Department and any resulting recommendations are submitted to the Administrator as part of either a coal exploration license or notice of intent to explore application. The Wyoming Game and Fish Department shall be consulted prior to disturbance of important habitat.</u>	Sec. 815.15(a) Habitats of unique or unusually high value for fish, wildlife, and other related environmental values and critical habitats of threatened or endangered species identified pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) shall not be disturbed during coal exploration.

Statement of Reasons for Rule Change 5:

In the August 6, 1996 Federal Register notice (61 FR 40735), the OSM codified at 30 CFR 950.16(l) a requirement that Wyoming amend its rules at Chapter 10, Section 4(e) to prohibit the disturbance of important habitat by coal exploration activities. In a letter to the OSM dated April 8, 1997, the LQD asked the OSM for clarification on whether the word "disturbed" found in the Federal rule at 30 CFR 815.15(a) is being interpreted by the OSM as essentially precluding any level of exploratory activity on lands which would constitute "critical habitat or habitat of unique or unusually high value for fish, wildlife, and other related environmental values." In a follow-up phone conversation (September 16, 1997), the LQD asked the OSM staff whether exploratory drilling is considered to be "substantial disturbance" and will the OSM allow substantial

disturbance on wildlife habitat if consideration is given to the seasonality of the area or if disturbance to the value that is integral to that particular habitat type can be mitigated after exploration?

The response from the OSM dated September 7, 2000 was as follows:

We determined after reviewing all of the relevant information, including the Federal regulations and SMCRA, that exploratory drilling can be "substantial disturbance" and, therefore, would not be allowed under current Federal regulations. However, we would like to suggest an alternative. For coal exploration on "important habitat" the State may wish to consider a proposed amendment that requires the same consultation process with State and Federal agencies responsible for fish and wildlife as those required by permanent regulatory program surface coal mining activities and reclamation plans (30 CFR 780.16, 816.97 and the State counterparts). We would consider this alternative to be consistent and no less effective in meeting the intent of SMCRA.

Consequently, as is currently required prior to approving any coal permit, the Wyoming Game and Fish Department reviews the permit application and their recommendations for minimizing the impacts to wildlife and their habitats are considered and integrated into the Mine and Reclamation plan of that permit. A similar process would be necessary as part of any LQD approval of a Notice of Intent to Explore or a Coal Exploration License. Therefore, this proposed rule amendment is maintaining the current requirement that important habitat can only be disturbed after consultation with the Wyoming Game and Fish Department, but is extending this flexibility to crucial habitats which had previously been off limits to coal exploration.

However, the LQD proposed to maintain the current prohibition on any exploratory activity within any habitat designated as Critical by the U.S. Fish and Wildlife Service as is also required by the counterpart Federal rule at 30 CFR 815.15(a)..

The authority to amend/adopt these rules is provided by W.S. §§ 35-11-112(a)(i) and 35-11-402(a)(xi).

The EQC voted to add the word "listed" to this rule in order to add specificity and to be consistent with the language in the rest of the chapter:

Ch. 10, Sec 4(e) ~~Critical or crucial~~ habitats of listed threatened or endangered species identified pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) shall not be disturbed during coal exploration. Crucial or important habitat for wildlife shall not be disturbed during coal exploration unless written evidence of consultation with the Wyoming Game and Fish Department and any resulting recommendations are submitted to the Administrator as part of either a coal exploration license or notice of intent to explore application. The Wyoming Game and Fish Department shall be consulted prior to disturbance of important habitat.

Chapter 1 - Authority and Definitions
Chapter 10 - Coal Exploration

Commercial Use or Sale of Coal Extracted

6. Proposed Rule Amendments/Adoption:

	Proposed Rule	OSM Rule - 30 CFR
6.A	<p>Ch. 1 Sec 2(l) "Coal exploration" means either:</p> <p>(i) The field gathering of surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical or other techniques necessary to determine the quality and quantity of overburden and coal of an area. If this activity results in the extraction of coal, the coal shall not be offered for commercial sale (except for test burns);</p> <p>or</p> <p>(ii) The gathering of environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations.</p>	<p>701.5 <i>Coal exploration</i> means the field gathering of: (a) surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or (b) the gathering of environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of this Chapter.</p>
6.B	<p>Ch. 10, Section 8. <u>Commercial Use or Sale of Coal Extracted under a Coal Exploration License.</u></p>	<p>Sec. 772.14 Commercial use or sale.</p>

	Proposed Rule	OSM Rule - 30 CFR
6.C	<p>Section 8(a) <u>Except as provided under subparagraph (b) below, any person who intends to commercially use or sell coal extracted during coal exploration operations under an exploration license, shall first obtain a permit to conduct surface coal mining operations for those operations.</u></p>	<p>Sec. 772.14(a) Except as provided under Sections 772.14(b) and 700.11(a)(5), any person who intends to commercially use or sell coal extracted during coal exploration operations under an exploration permit, shall first obtain a permit to conduct surface coal mining operations for those operations from the regulatory authority under Parts 773 through 785 of this chapter.</p>

	Proposed Rule	OSM Rule - 30 CFR
6.D	<p>Ch. 10, Section 8(b) <u>With the prior written approval of the Administrator, no permit to conduct surface coal mining operations is required for the sale or commercial use of coal extracted during exploration operations if such sale or commercial use is for coal testing purposes only. The person conducting the exploration shall file an application for such approval with the Administrator. The application shall demonstrate that the coal testing is necessary for the development of a surface coal mining and reclamation operation for which a surface coal mining operations permit application is to be submitted in the near future, and that the proposed commercial use or sale of coal extracted during exploration operations is solely for the purpose of testing the coal. The application shall contain the following:</u></p>	<p>Sec. 772.14(b) With the prior written approval of the regulatory authority, no permit to conduct surface coal mining operations is required for the sale or commercial use of coal extracted during exploration operations if such sale or commercial use is for coal testing purposes only. The person conducting the exploration shall file an application for such approval with the regulatory authority. The application shall demonstrate that the coal testing is necessary for the development of a surface coal mining and reclamation operation for which a surface coal mining operations permit application is to be submitted in the near future, and that the proposed commercial use or sale of coal extracted during exploration operations is solely for the purpose of testing the coal. The application shall contain the following:</p>
6.E	<p>Ch. 10, Section 8(b)(i) <u>The name of the testing firm and the locations at which the coal will be tested.</u></p>	<p>Sec. 772.14(b)(1) The name of the testing firm and the locations at which the coal will be tested.</p>

	Proposed Rule	OSM Rule - 30 CFR
6.F	<p>Ch. 10, Section 8(b)(ii) <u>If the coal will be sold directly to, or commercially used directly by, the intended end user, a statement from the intended end user, or if the coal is sold indirectly to the intended end user through an agent or broker, a statement from the agent or broker. The statement shall include:</u></p>	<p>Sec. 772.14(b)(2) If the coal will be sold directly to, or commercially used directly by, the intended end user, a statement from the intended end user, or if the coal is sold indirectly to the intended end user through an agent or broker, a statement from the agent or broker. The statement shall include:</p>
6.G	<p>Ch. 10, Section 8(b)(ii)(A) <u>The specific reason for the test, including why the coal may be so different from the intended user's other coal supplies as to require testing;</u></p>	<p>Sec. 772.14(b)(2)(i) The specific reason for the test, including why the coal may be so different from the intended user's other coal supplies as to require testing;</p>
6.H	<p>Ch. 10, Section 8(b)(ii)(B) <u>The amount of coal necessary for the test and why a lesser amount is not sufficient; and</u></p>	<p>Sec. 772.14(b)(2)(ii) The amount of coal necessary for the test and why a lesser amount is not sufficient; and</p>

	Proposed Rule	OSM Rule - 30 CFR
6.I	Ch. 10, Section 8(b)(ii)(C) <u>A description of the specific tests that will be conducted.</u>	Sec. 772.14(b)(2)(iii) A description of the specific tests that will be conducted.
6.J	Ch. 10, Section 8(b)(iii) <u>Evidence that sufficient reserves of coal are available to the person conducting exploration or its principals for future commercial use or sale to the intended end user, or agent or broker of such user identified above, to demonstrate that the amount of coal to be removed is not the total reserve, but is a sampling of a larger reserve.</u>	Sec. 772.14(b)(3) Evidence that sufficient reserves of coal are available to the person conducting exploration or its principals for future commercial use or sale to the intended end user, or agent or broker of such user identified above, to demonstrate that the amount of coal to be removed is not the total reserve, but is a sampling of a larger reserve.
6.K	Ch. 10, Section 8(b)(iv) <u>An explanation as to why other means of exploration, such as core drilling, are not adequate to determine the quality of the coal and/or the feasibility of developing a surface coal mining operation.</u>	Sec. 772.14(b)(4) An explanation as to why other means of exploration, such as core drilling, are not adequate to determine the quality of the coal and/or the feasibility of developing a surface coal mining operation.

Statement of Reasons for Rule Change 6:

The Federal rules regarding coal exploration were revised on December 29, 1988 (53 FR 52942.) As part of this rulemaking, the Federal rules were expanded to apply to both the commercial use and the commercial sale of coal obtained through exploration. In addition, the rules were amended to require that if the sale or use is for testing purposes, the person conducting the exploration shall file an application demonstrating that the testing is necessary for development of a surface coal mining operation for which an application is going to be submitted in the near future. Wyoming's rules currently restrict commercial sale but not commercial use of coal extracted during exploration operations and there are no provisions for documenting the necessity of testing coal being extracted by exploration.

In a 732 letter dated February 21, 1990, the OSM required Wyoming to modify its rule. This two-tiered requirement contained the following explanations:

30 CFR 772.14(a); Any person who intends to commercially use or sell coal extracted under an exploration permit must first obtain a surface coal mining and reclamation operation permit. Since Wyoming's rules restrict commercial sale but not commercial use, the program will need to be revised to include commercial use restrictions no less effective than those of the Federal rule.

30 CFR 772.14(b); This Federal rule has been revised to require that a person conducting the exploration file an application demonstrating that testing is necessary for the development of a surface coal mining operation for which a permit application is to be submitted in the near future. The application also must demonstrate that the proposed commercial use or sale is solely for testing purposes. It must include specific information identifying the test to be used, the testing firm, testing locations, reasons for the tests and the amount of coal necessary for the tests. The applicant must supply evidence that sufficient coal reserves are available to

support a mine and that the coal to be removed for testing purposes does not constitute the total mineable reserves within the exploration area. Also, the applicant must include an explanation of why other means of exploration are not adequate to determine the quality of the coal.

Wyoming's rules lack these application requirements. Therefore, the State must amend its program to add requirements no less effective than those set forth in the revised Federal rule.

Therefore, the above amendments to the Wyoming program are necessary to satisfy this OSM disapproval. The following rule amendments are not completely identical to the counterpart Federal rules and the following explanations are presented to describe these differences.

Rule Amendment 6.A

The removal of language regarding the commercial sale of coal extracted through exploration is proposed within the definition of "exploration" to make this definition more closely mimic the counterpart Federal definition and remove what is currently the only mention of the prohibition on the commercial sale of such coal. Instead, the discussion regarding the prohibition and allowances regarding coal extracted through exploration is more appropriately presented as its own Section within Chapter 10.

Rule Amendment 6.B

Proposed rule adoption 7.b includes the phrase "under a coal exploration license" to make it clear that the rules proposed for adoption apply only to coal extracted under the approved purpose of removing greater than 250 tons. This is in accordance with the OSM interpretation that operations extracting less than 250 tons are exempted from the requirement to obtain written approval before offering coal for commercial use or sale (53 FR 52942, 52946).

Rule Amendment 6.C

The Wyoming program does not contain a counterpart to 30 CFR 700.11(a)(5) which is cross-referenced in the Federal rules at 30 CFR 772.14(a). The Federal rule at 700.11(a)(5) is as follows:

700.11 Applicability.

(a) Except as provided in paragraph (b) of this section, this chapter applies to all coal exploration and surface coal mining and reclamation operations except:

(5) Coal exploration on lands subject to the requirements of 43 CFR parts 3480-3487.

The cross-referenced rules at 43 CFR pertain to requirements for coal exploration on Federal coal. This exception limits the OSM's jurisdiction to only those lands which do not contain Federal coal. However, the Land Quality Division is required by Wyoming statute to oversee coal exploration on all lands within Wyoming regardless of the ownership of the coal. The applicable statutes are as follows:

W.S. § 35-11-404(a) All drill holes sunk in the exploration for locatable or leasable minerals **on all lands within the state of Wyoming** shall be capped, sealed or plugged in the manner described hereinafter by or on behalf of the discoverer, locator or owner who drilled the hole. Prospecting and exploration drill holes shall include all drill holes except those drilled in conjunction with the expansion of an existing mine operation or wells or holes regulated pursuant to W.S. 30-5-101 through 30-5-204.

W.S. § 35-11-404(j) Before drilling **on lands within the state of Wyoming**, any person conducting coal exploration operations shall give notice to the administrator which shall, at a minimum include a legal description of the area, the approximate number of holes to be drilled and a reclamation plan for proper abandonment in accordance with regulations promulgated by the council. This excludes drilling within an existing permit area approved prior to August 3, 1977.

W.S. § 35-11-414(a) Any person desiring to **engage in mineral exploration by dozing** shall apply to the administrator for a special license. The application shall be in accordance with rules and regulations adopted pursuant to the standards set forth in subsection (b) of this section, by the council upon recommendation by the director after consultation with the administrator and advisory board, and shall be accompanied by a fee of twenty-five dollars (\$25.00).

Consequently, the exemption provided in the Federal rule at 30 CFR 772.14(a) can not be adopted by Wyoming.

The authority to amend/adopt these rules is provided by W.S. §§ 35-11-112(a)(i), 35-11-402(a)(xi) and 35-11-402(a)(xiii).

The EQC voted to approve this rule language as proposed.

CHAPTER 10

COAL EXPLORATION

Section 1. **General Requirements: Exploration of ~~Less than~~ 250 Tons or Less.**

(a) Any person who intends to conduct coal exploration outside a permit area during which 250 tons or less of coal will be removed in the area to be explored shall, before conducting the exploration, file with the Administrator a notice of intent to explore.

(b) The notice shall include:

(i) The person's name, address, and telephone number.

(ii) The name, address, and telephone number of the person who will be present at and responsible for the exploration operation.

(iii) A narrative describing the proposed exploration area or and a map which describes the exploration area at a scale of 1:24,000, or greater, showing the proposed area of exploration and the general location of drill holes and trenches, existing and proposed roads, occupied dwellings, topographic features, bodies of surface water, and pipelines. This description shall clearly describe the areas to be disturbed as well as the natural and man-made features in and immediately around the exploration area.

(iv) A statement of the period of the proposed exploration.

(v) A description of the method of exploration to be used and the practices proposed to protect the environment and reclaim the area, including those necessary to comply with Section 4 of this Chapter.

Section 2. **General Requirements: Exploration of More than 250 Tons or in an Area Designated as Unsuitable.**

(a) Any person who intends to conduct coal exploration outside a permit area during which more than 250 tons of coal will be removed in the area to be explored or which will take place on lands designated as unsuitable for surface mining under Chapter 17 shall, before conducting the exploration, file with the Administrator and obtain approval for an application for a coal exploration license.

(b) The application shall include at a minimum, the following information:

~~(i)~~ That information required in Section 1(b) above. The applicant's name, address, and telephone number.

~~(ii)~~ The name, address and telephone number of the applicant's representative who will be present at, and responsible for, conducting the exploration activities.

~~(iii)~~ A narrative describing the proposed exploration area.

~~(ii iv)~~ A narrative description of the methods and equipment to be used to conduct the exploration and reclamation.

~~(v)~~ An estimated timetable for conducting and completing each phase of the exploration and reclamation.

~~(iii vi)~~ The estimated amount of coal to be removed, a description of the methods to be used to determine the amount, and a statement of why extraction of more than 250 tons of coal is necessary for exploration.

~~(iv vii)~~ A description of historic or cultural features or resources listed or known to be eligible for listing on the National Register of Historic Places. This shall include a detailed description of all archeological and historic resources located within the areas to be directly affected by the proposed exploration activities. This shall also include any other information which the Administrator may require regarding known or possible historic or archeological resources.

~~(viii)~~ A description of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) identified within the proposed exploration area.

~~(ix)~~ A description of the measures to be used to comply with Section 4 of this Chapter.

~~(vii x)~~ The name and address of the owner of record of the surface land and of the subsurface mineral estate of the area to be explored.

~~(vi xi)~~ A map(s) at a scale of 1:24,000 or larger, showing the areas of land to be disturbed by the proposed exploration and reclamation. The map shall specifically show existing roads, occupied dwellings, topographic and drainage features, bodies of surface water, and pipelines; proposed locations of trenches, roads, and other access routes and structures to be constructed; the location of proposed land excavations; the location of exploration holes or other

drill holes or underground openings; the location of excavated earth or waste material disposal areas; and the location of critical habitats of any endangered or threatened species listed pursuant to the Endangered Species Act.

(~~viii~~ xii) If the surface is owned by a person other than the applicant, a description of the basis upon which the applicant claims the right to enter the area for the purpose of conducting the exploration and reclamation.

(c) Within 30 days after submittal of an application for a license to explore under this Section, the Administrator will notify the applicant whether the application is complete. Upon a determination that the application is administratively complete, the Administrator shall require the applicant to publish a notice of filing in a newspaper of general circulation in the county of the proposed exploration area. The notice shall state the name and address of the person seeking approval, the filing date of the application, the address where written comments on the application may be submitted, the closing date of the comment period, and a description of the area of exploration. Any person having an interest which is or may be adversely affected shall have the right to file written comments on the application within 30 days from the date of publication.

Section 3. Approval of Applications for Exploration of More than 250 Tons or in an Area Designated as Unsuitable for Surface Coal Mining Operations.

(a) No later than 40 days after newspaper publication, the Administrator shall notify the applicant, any appropriate government agencies and other commenters, in writing of his intention to approve the application, or if he has denied it. If the application is denied, the notice shall include a statement of the reasons for denial. A copy of the notice shall also be posted at the district office covering the area for the proposed exploration.

(b) ~~If the Administrator provides notice that he intends to approve the application, then~~ a Any person having an interest which is or may be adversely affected by the decision of the Administrator shall have the right to file written objections to the application within 30 days after the notification. Such persons shall have the opportunity for administrative and judicial review as outlined in W.S. § 35-11-406(k). The final decision, to issue or deny the license, shall be done in accordance with W.S. § 35-11-406(p). If there are no objections, the Administrator shall promptly approve and issue the license in accordance with (c) immediately below.

(c) The Administrator shall approve a complete application and issue the license only if he finds in writing that the exploration and reclamation:

(i) Will be conducted in accordance with Section 4 of this Chapter;

(ii) Will not jeopardize the continued existence of an endangered or threatened species list pursuant to Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) or result in the destruction or adverse modification of critical habitat of those species; and

(iii) Will not adversely affect any cultural or historical resources listed on the National Register of Historic Places, pursuant to the National Historic Preservation Act, as amended, unless the proposed exploration has been approved by the Administrator and the agency with jurisdiction over such matters.

Section 4. Exploration and Reclamation Performance Standards.

(a) Any person who conducts coal exploration operations which substantially disturb the natural land surface shall minimize environmental damage to the area by complying with the requirements of this Section.

(b) Backfilling, regrading and recontouring shall be conducted as is necessary to promptly return the affected land to its approximate original contour.

(c) Topsoil removal, storage and redistribution practices shall be used, including those measures designed to assure successful revegetation.

(d) Revegetation shall be conducted by seeding or planting to the same seasonal variety native to the areas disturbed, so as to encourage stabilization of the affected land and prompt recovery of a diverse, effective and permanent vegetative cover.

(e) Critical or crucial habitats of listed threatened or endangered species identified pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) shall not be disturbed during coal exploration. Crucial or important habitat for wildlife shall not be disturbed during coal exploration unless written evidence of consultation with the Wyoming Game and Fish Department and any resulting recommendations are submitted to the Administrator as part of either a coal exploration license or notice of intent to explore application. The Wyoming Game and Fish Department shall be consulted prior to disturbance of important habitat.

(f) Diversions shall be made in accordance with Chapter 4, Section 2.

(g) All drill holes shall meet the requirements of Section 3, Chapter 14, Land Quality Rules and Regulations.

(h) Vehicular travel and road construction, maintenance and reclamation shall meet the requirements of Section 2, Chapter 4, Land Quality Rules and Regulations.

(i) Toxic or acid-forming materials shall be handled and disposed of in accordance with Section 2(c), Chapter 4, Land Quality Rules and Regulations.

(j) Activities shall be conducted to minimize disturbance to the prevailing hydrologic balance, including, at a minimum, sediment control measures or sedimentation ponds, which comply with Chapter 4, Section 2(e)(ii)(A) and Chapter 4, Section 2(f).

- (k) Facility removal shall be conducted in accordance with Chapter 4, Section 2(m).

Section 5. **Additional Requirements.** Where the proposed coal exploration activity falls within that activity described as exploration by dozing or exploration by drilling, any requirements imposed by the Act or the regulations which may be additional to the above described requirements, including the bonding requirement, may be applicable to the proposed operation. The Administrator shall make a determination, on a case-by-case basis, as to whether any additional requirements shall be imposed.

Section 6. **Public Availability of Information.**

(a) Except for trade secrets, as defined in Chapter 1, Section 2, Land Quality Rules and Regulations, all information submitted under this Chapter shall be made available for public inspection and copying at the Land Quality Division of the Department of Environmental Quality. For confidentiality, the person submitting the information must request in writing that it be kept confidential and that it meets the requirements for "trade secrets."

(b) Information requested to be held confidential shall not be made publicly available until after notice and opportunity to be heard is afforded persons both seeking and opposing disclosure of the information.

Section 7. **Existing Operations.** The exploration and reclamation performance standards contained in Section 5 shall apply to all coal exploration operations which substantially disturb the natural land surface two months after final approval of a State program pursuant to Section 503 of P.L. 95-87.

Section 8. **Commercial use or sale of coal extracted under a coal exploration license.**

(a) Except as provided under subparagraph (b) below, any person who intends to commercially use or sell coal extracted during coal exploration operations under an exploration license, shall first obtain a permit to conduct surface coal mining operations for those operations.

(b) With the prior written approval of the Administrator, no permit to conduct surface coal mining operations is required for the sale or commercial use of coal extracted during exploration operations if such sale or commercial use is for coal testing purposes only. The person conducting the exploration shall file an application for such approval with the Administrator. The application shall demonstrate that the coal testing is necessary for the development of a surface coal mining and reclamation operation for which a surface coal mining operations permit application is to be submitted in the near future, and that the proposed commercial use or sale of coal extracted during exploration operations is solely for the purpose of testing the coal. The application shall contain the following:

- (i) The name of the testing firm and the locations at which the coal will be

tested.

(ii) If the coal will be sold directly to, or commercially used directly by, the intended end user, a statement from the intended end user, or if the coal is sold indirectly to the intended end user through an agent or broker, a statement from the agent or broker. The statement shall include:

(A) The specific reason for the test, including why the coal may be so different from the intended user's other coal supplies as to require testing;

(B) The amount of coal necessary for the test and why a lesser amount is not sufficient; and

(C) A description of the specific tests that will be conducted.

(iii) Evidence that sufficient reserves of coal are available to the person conducting exploration or its principals for future commercial use or sale to the intended end user, or agent or broker of such user identified above, to demonstrate that the amount of coal to be removed is not the total reserve, but is a sampling of a larger reserve.

(iv) An explanation as to why other means of exploration, such as core drilling, are not adequate to determine the quality of the coal and/or the feasibility of developing a surface coal mining operation.

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 17th day of March, 2004



Environmental Quality Council