

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL

STATE OF WYOMING

September, 1995

IN THE MATTER OF THE)
 PROPOSED REVISION OF)
 THE LAND QUALITY)
 DIVISION RULES RELATED)
 TO THE REGULATION OF)
 COAL MINING)

STATEMENT OF PRINCIPAL
REASONS FOR ADOPTION

COAL - Chapters XI and XIII

1. *Proposed Rule Amendment:* Chapter XI, Section 5.(a)

Section 5. Substitution of the Operator's Self-bond.

(a) The Administrator may require the operator to substitute a good and sufficient corporate surety licensed to do business in the State if the Administrator determines in writing that the self-bond of the operator fails to provide the protection consistent with the objectives and purposes of this Act. The Administrator shall require this substitution if the financial information submitted or requested under Section 3 4.(a)(ii) indicates that the operator no longer qualifies under the self-bonding program. Substitution of an alternate bond shall be made within 90 days. The operator may also request substitution. This request is contingent upon the operator meeting all the requirements of the bond provisions (W.S. 35-11-417 to 424 (1977)) of the Act. If these requirements are met, the Administrator shall accept substitution.

Statement of Reasons:

Rule Currently Being Referenced	Revised Rule Reference
<p>Chapter XI, Section 3. <u>Approval or Denial of Operator's Self-bond Application</u></p> <p>(a) The Administrator, within 60 days of operator's submission of all materials necessary to base a decision on the application shall:</p> <p>(ii) If a rejection is based on inadequate information or failure of the operator to supply all necessary material, the Administrator shall allow the operator 30 days to remedy the deficiencies. Such corrections must be made to the satisfaction of the Administrator. The Administrator shall have an additional 60 days to approve or reject the corrected application.</p>	<p>Chapter XI, Section 4. <u>Renewal Bonds.</u></p> <p>(a) Information for the renewal bond under the self-bonding program which shall accompany the annual report shall include:</p> <p>(ii) Financial information in sufficient detail to show that the guarantor still meets one of the criteria in Section 2.(a)(vii), and the limitation in Section 2.(a)(xi). The Administrator may request financial statements for the most recently completed fiscal year together with an independent certified public accountant's audit opinion or review opinion of the financial statements with no adverse opinion. Additional unaudited information may be requested by the Administrator.</p>

The Office of Surface Mining (OSM) reviewed the Reorganized Coal Rules and submitted their findings to the state in an October 28, 1993 letter. In this letter, OSM identified this improperly cited cross-reference which made this rule less effective than the Federal counterpart regulations.

This improper cross-reference resulted from the order of the topics listed as Section 3. and Section 4. (as listed in all prior versions of the LQD Rules and Regulations) being reversed in the 1989 set. Revising this reference to Section 4. will make the state rules as effective as the counterpart Federal Rules and reference the rule originally intended.

The authority to amend this rule is provided by W.S. § 35-11-417(d).

2. *Proposed Rule Amendment:* Chapter XIII, Section 3.(a)

Section 3. Notice and Opportunity for Public Hearing.

(a) When required under Section 2., the operator shall cause notice of the application for permit revision to be published in a newspaper of general circulation in the locality of the mining site once a week for four consecutive weeks commencing within 15 days after notification that publication is required. The notice shall contain that information required BY W.S. 35-11-406(j) ~~in Section 1.(b)(i), (ii), (iii), THE PERMIT NUMBER AND DATE APPROVED, and a general description of the proposed revision AND WHY THE CHANGE IS BEING SOUGHT. the location at which information about the application for permit revision may be obtained, and the location and final date for filing objections to the application.~~ The operator shall also MAIL A COPY OF THE APPLICATION MINE PLAN MAP TO THE WYOMING OIL AND GAS COMMISSION ~~notify owners of record~~ in accordance with W.S. 35-11-406(j).

Statement of Reasons:

Section 1.(b), shown in overstrike in the above proposed rule, is an incorrect cross-reference and should reference Section 1.(d). The current Sections 1.(b) and (c) were adopted during the 1A rulemaking which was filed with the Secretary of State on March 9, 1989. During the 1A rulemaking, Section 3.(a) was not properly revised to refer the reader to the newly recodified Section 1.(d) [formerly 1.(b)]. Section 1.(b) and (d) currently require the following information:

Chapter XIII, Section 1.(b)	Chapter XIII, Section 1.(d)
<p>1. (b) Nonsignificant revisions shall be submitted in a format approved by the Administrator. If promptly filed, and unless notified by the Administrator to delay, the operator may initiate the proposed change within 72 hours of filing. all nonsignificant revisions shall include:</p>	<p>1. (d) Each application shall contain:</p>

Chapter XIII, Section 1.(b)	Chapter XIII, Section 1.(d)
<p>(b)(i) A brief description of the change and why the change is being sought.</p> <p>(b)(ii) An outline or index indicating what pages, maps, tables, or other parts of the approved permit are affected by the revision.</p> <p>(b)(iii) Additional information necessary to support or justify the change.</p>	<p>(d)(i) The name and address of the operator;</p> <p>(d)(ii) The permit number and date approved;</p> <p>(d)(iii) The following information, if different from that submitted in the original permit application:</p> <p>(A) The precise location of the permit area by legal subdivision, section, township, range, county, and municipal corporation, if any;</p> <p>(B) The names and last known addresses of the owners of record of the surface and mineral rights of the land covered by the permit;</p> <p>(C) The names and last known addresses of the owners of record of the surface rights of the lands immediately adjacent to the permit area;</p>

The information required by 1.(d)(i) and (iii)(A) are essentially identical to that information already required by W.S. § 35-11-406(j). Therefore, a statement which references the requirements of W.S. § 35-11-406(j) is being proposed as a substitute to language which references a rule with similar requirements. In addition, the language "the location at which information about the application for permit revision may be obtained, and the location and final date for filing objections to the application" is proposed for deletion because these provisions are also required by W.S. § 35-11-406(j).

The requirement in Section 1.(d)(ii), as originally referenced in Section 3.(a), which asks for the applicant's permit number and date the permit was approved has been incorporated into the proposed rule because this is not specifically required by statute. W.S. § 35-11-406(j) was written to instruct an applicant of a "proposed mining site" on what information must be contained in a public notice announcing the pending approval of this permit application. Therefore, information such as permit number and date of original issuance of the permit were not incorporated into this statute because this information was not applicable to the approval of a new permit. However, this information is instructive in identifying to an interested public exactly how an operator's permit is referenced by the Land Quality Division and how long that mine has been operating in the state.

The additional proposed language "AND WHY THE CHANGE IS BEING SOUGHT" has been added to incorporate the information required by Section 1.(b)(i). Although this requirement is part of an improperly cross-referenced rule, it was identified by the Environmental Quality Council (EQC) at a meeting held on October 24, 1994 as being lacking in a public notice regarding the pending approval of a major change to a permitted mining operation. Consequently, this particular provision is being proposed for inclusion in future public notices.

The proposal to ask for this additional information generated a considerable amount of discussion among members of the audience representing the mining industry at the March 28, 1995 meeting of the Land Quality Advisory Board (LQAB). The general opinion expressed was that changing a mine plan was usually a reflection of economic necessity and would that explanation suffice in a public notice? Additionally, several members of the audience felt that having to describe in the newspaper why a change was being sought would entail a very lengthy explanation that would prove to be cumbersome and expensive. Two LQAB members responded that the intent of this requirement is to provide the public with a short, concise statement describing the primary impetus for making a major revision to a permit. This would need to be more informative than simply stating that the Mine Plan is being changed to maintain economic viability of an operation. Instead, the public deserved to be informed as to what exactly is being proposed in the major revision application. Of the three LQAB members present, two voted to leave this requirement in the proposed rule to be forwarded to the EQC and one member voted against this motion.

The additional requirements of subsections (b)(ii) and (b)(iii) have not been specifically requested because all of this information is made part of the application package which is available for public viewing.

The last change being proposed to this rule is the result of the 1995 Wyoming Legislature passing Enrolled Act No. 51 which modified W.S. § 35-11-406(j). Enrolled Act No. 51 became effective on July 1, 1995. This subsection no longer requires that an operator applying for a major revision mail a copy of the public notice to all surface owners. Mailing a copy of the notice is required for new applications and amendments to existing applications only. However, a copy of the application mining plan map must be mailed to the Wyoming Oil and Gas Commission for any application requiring public notice.

Although Section 1.(d)(iii)(B) and (C) require the names of owners of record, if different from the owners of record submitted with the original permit, this information is no longer required by statute for a major revision. Therefore, to require by rule that an operator include a list of names and addresses of owners of record in the public notice is now considered to be going beyond the intent of statute and consequently is not justified. Therefore, the last sentence in the proposed rule is reiterating only that a copy of the mine plan map must be mailed to the Wyoming Oil and Gas Commission as required by statute.

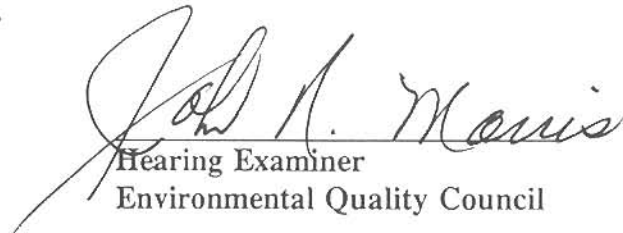
The authority to amend this rule is provided by W.S. § 35-11-402(a)(x).

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 21st day of September, 1995.


Hearing Examiner
Environmental Quality Council