

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

IN THE MATTER OF THE)	
PROPOSED REVISION OF)	STATEMENT OF PRINCIPLE
THE LAND QUALITY)	REASONS FOR ADOPTION
DIVISION RULES RELATED)	
TO THE REGULATION OF)	
SURFACE COAL AND NON-)	
COAL MINING)	

In compliance with the Director's commitment to the Governor's Regulatory Reform Task Force, the Department has completed a thorough reorganization of the LQD Rules and Regulations. Two completely separate sets of rules, one for Coal and one for Non-Coal, have been created out of the old (1989) single set. Although many editorial changes were required to correct references and make transitions, no substantive changes were intended. To show what language has been completely deleted, a "stricken" copy of the 1989 rules has been made part of the administrative record for this rule making, along with an index to the new separate rules in the form of a memorandum to the Assistant Attorney General. It indicates where pertinent language now resides in the reorganized rules. Citations are presented below in **bold** for the new format.

Permit Renewals

For the past several years the Land Quality Division has been experiencing administrative difficulties with a conflict between subsections (e,) (f) and (g) of Section 35-11-405 of the Environmental Quality Act. Subsection (e) grants a coal mine operator the right to renewal of a valid permit. Subsection (g) requires that the operator submit the renewal application 120 days prior to expiration of the 5 year term of the permit. Subsection (f) implies that permit amendments may be submitted in renewal applications. Permit amendments (the addition of new lands to the life-of-mine permit area) require the submission, review, and approval of new environmental baseline information, and often the analysis and approval of a new mining and reclamation plan. Given that 60 of the 120 day renewal review period is devoted to public notice and comment, the remaining 60 days is insufficient time to adequately review the considerable volume of information submitted in support of a request to expand a life-of-mine permit area or make major changes to the mine and reclamation plan.

In 1989 the Division sought and received approval for rules that at least allowed the agency to renew existing permits for another five years when faced with applications that proposed major changes 120 days prior to expiration. Unfortunately, while this process permits a company to continue mining, it results in the approval of a document that is often inaccurate with respect to the actual on-the-ground operation. That is, since the requirement to mine and reclaim contemporaneously is demonstrated in a permit by means of detailed maps and plans showing a yearly progression, these documents become immediately out-of-date when an expired permit is renewed, insofar as they show only the progression of the previous term's mining and reclamation plan. This has led to consistent misinterpretations of the contemporaneous reclamation requirement by the Federal Office of Surface Mining, sometimes leading to notices of violation. A secondary effect has been a last-minute reformatting of application materials to remove all unapproved revisions from the renewal/revision application prior to the public notice period.

The rule proposed for change (Chapter XIII(XIV), Section 6(a)) currently requires that the permit be renewed in order to expand either the active mining operation, or the life-of-mine permit area. This has created the situation described above and has led to the renewal process being used to not only renew the permit but also to seek major revisions of the approved plan - in some cases every 3 years instead of 5. Since both permit revisions and renewals require the extensive public notice process and possible hearing and AVS checks most operators have chosen to combine both actions. This causes serious time shortages when the renewal and/or revisions are submitted at or near the start of the 120 day period.

This rule change will not reduce or eliminate any existing public notice requirements, AVS checks, or hearings for objections. It will assure that the adequacy of each permit is reviewed at 5 year increments as required by P.L. 95-87; that the operator, LQD staff, and the public are all aware of what will occur during a permit renewal; that an operator mining and/or reclaiming faster than projected in the approved plan will use the permit revision chapter to expand beyond the 5 year projection within the approved life-of-mine area; that short term submittals of permits to be reviewed (immediately on or just before the 120-day deadline) will not cause major problems for LQD or the operator; and that the use of the renewal process as a vehicle for change and/or expansion will be substantially reduced and/or eliminated.

PROPOSED RULES

1. Chapter XIII(XIV), Section 6 - Exception

(a) For surface coal mining operations, this Chapter does not apply to extensions ~~to~~ OF the five-year area identified in Chapter II, Section 2.(b)(i)(A) MINE PERMIT BOUNDARY. Any such extension, except incidental boundary revisions, must be made in accordance with the Act and by application for another A permit AMENDMENT with public notice, and hearing only when required thereby. The operator shall notify the Administrator in advance where the

extension is an incidental boundary revision, and possess a copy of the notification at the site of the operation. The operator will not be allowed to utilize this provision for incidental boundary revisions so as to circumvent the policy and purpose of this Chapter and the Wyoming Environmental Quality Act.

Statement of Reasons: Language describing the term-of-permit area has been replaced by "mine permit boundary." This change would allow the operator to continue mining beyond the artificial line known as the term-of-permit boundary (within the mine permit boundary) without having to renew the permit. The "mine permit boundary" is that area defined in Chapter I as the "Permit Area" meaning "the area of land and water within the boundaries of the approved permit or permits during the entire life of the operation and includes all affected lands and water."

The word "amendment" has been inserted after "permit" in the second sentence. This change is suggested in order to clarify that extensions of the mine permit boundary (life-of-mine permit area) do not require either a new permit or a permit renewal. Under Chapter XIII(XII), permit amendments are afforded all of the considerations that new permits are (e.g. public notice, written findings, compliance with W.S. 35-11-406). The change would allow an operator to add new lands to a permit area without renewing the permit. It would also make the administration of the permitting process much less complicated and easier for LQD. The LQD staff would be able to review these proposals for expansion, with their attendant baseline information, without encumbering the renewal process.

2. Chapter I, Section 2 - Definitions

(e) "AMENDMENT" MEANS THE ADDITION OF NEW LANDS TO A PREVIOUSLY APPROVED PERMIT AREA, AS ALLOWED BY W.S. 35-11-406(a)(xii).

Statement of Reasons: Although the word amendment is used extensively in the LQD Rules and Regulations, it has not been defined. Questions regarding the difference between permit area and term-of-permit area arose at the EQC hearing, as well as a concern about the public notice and procedural requirements for amendments. As noted above, permit amendments follow the same procedure and notice provisions of the Act as new permits.

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 30th day of July, 1992.


Harold L. Bergman
Hearing Examiner
Environmental Quality Council