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Environmental Quality Council

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL

STATE OF WYOMING

May, 2000

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

STATEMENT OF PRINCIPAL
REASONS FOR ADOPTION

Chapters 1, 2, 3, 7, 8, 9, 10 and 13

Rule Package 1M - Noncoal Miscellaneous

Department of Environmental Quality, Land Quality Division

Wyoming's proposed rule revisions contained in this Noncoal Miscellaneous package have been divided into the following categories:

- General Housekeeping, items 1-11;
- Avoidance of Public Nuisance, item 12; **(Withdrawn)**
- Tailings and Heap Leaching, item 13
- Limited Mining Operations, items 14-18;
- Fish and Wildlife Habitat, items 19-20;
- Professional Geologists, item 21; **(Withdrawn)**
- Bentonite Mining, item 22.

In order for the State of Wyoming to maintain an effective program for the regulation of noncoal mining operations, it is necessary to periodically review and update the noncoal regulations. These proposed regulations will correct improper statute citations caused by changes to the Wyoming Environmental Quality Act (EQA) and typographic errors. More importantly, numerous technical changes are suggested with the intent of improving the effectiveness of the noncoal regulatory program.

General Housekeeping

1. *Proposed rule amendment:* Chapter 1, Section 1.

Section 1. **Authority.** These rules and regulations are adopted by the Environmental Quality Council and the Administrator of the Land Quality Division pursuant to the authority granted the Council and the Administrator by the Wyoming Environmental Quality Act, Sections 35-11-101 through 35-11-1104~~6~~, Wyoming Statutes, 1977, as amended. These rules and regulations are effective upon filing with the Secretary of State.

Statement of Reasons:

This change in citation is made necessary by addition of Sections 35-11-1105 and 35-11-1106 which are the "Environmental Audit" portions of the EQA which became effective in 1995. This amendment has no substantive effect on the regulations.

Authority to amend this rule is provided by W.S. § 35-11-112(a)(i).

2. *Proposed rule amendment:* Chapter 1, Section 2(ac)

(ac) "Highwall" means the face of exposed overburden or ~~coal~~ minerals in an open cut of a surface mine or entry to an underground mine.

Statement of Reasons:

The reference to "coal" in the noncoal rules is a remnant of the time prior to separation of the rules into "coal" and "noncoal." Since these are noncoal rules it is appropriate to refer to "minerals" (defined in W.S. § 35-11-103(e)(ii)) rather than "coal." Other than this change, this definition mirrors the definition of "highwall" used in the coal rules.

Authority to amend this rule is provided by W.S. § 35-11-112(a)(i).

3. *Proposed rule amendment:* Chapter 1, Section 2(ba)

(ba) "Small operator" means any mining operation, ~~except a surface coal mining operation;~~ for which not more than ten thousand ~~tons~~ cubic yards of overburden are removed in any one year and the affected land does not exceed ten acres in any one year.

Statement of Reasons:

The reference to a surface coal mining operation in the noncoal rules is a remnant of the time prior to separation of the rules into "coal" and "noncoal" and is not appropriate for these noncoal rules. The word "tons" requires changing to "yards" to match the language in § 35-11-401(j) of the EQA.

The term "cubic" has also been added to modify yards. Although this term is not included in W.S. § 35-11-401(j), the Environmental Quality Council members present at the February 3, 2000 rules hearing suggested that this term be added for clarity.

The additional "in any one year" is suggested to clarify that to be considered "small," an operation must not remove more than 10,000 cubic yards of overburden in any one year **and** it must not affect more than ten acres in any one year.

Authority to amend this rule is provided by W.S. §§ 35-11-112(a)(i), and 35-11-401(j).

4. *Proposed Rule Amendment:* Chapter 1, Section 3(b)(i)

(i) For the purpose of extraction of minerals ~~other than coal~~ pursuant to W.S. § 35-11-401(e)(ii), cooperative agreements between the individual counties and the Division may be entered into by the County Commissioners, the Director and the Administrator in order to facilitate the reclamation activities of those areas affected by the county.

Statement of reasons.

The reference to coal in the noncoal rules is a remnant of the time prior to separation of the rules into "coal" and "noncoal" and is not appropriate for these noncoal rules.

Authority to amend this rule is provided by W.S. §§ 35-11-112(a)(i), and 35-11-401(e)(ii).

5. *Proposed Rule Repeal:* Chapter 1, Section 3(d)

~~(d) — If any provision of these regulations or the applicability thereof to any person or circumstances related to surface coal mining operations is held invalid, the provision or its applicability to other mining operations or circumstances shall not be affected thereby.~~

Statement of Reasons:

The reference to "coal" in the noncoal rules is a remnant of the time prior to separation of the rules into "coal" and "noncoal." The intent of this subsection is to ensure that invalidation of a provision of the rules by the Office of Surface Mining for coal does not also invalidate the rule for mining of other minerals. With separation of the rules into "coal" and "noncoal," such a situation could not occur and this subsection is no longer necessary.

Authority to repeal this rule is provided by W.S. § 35-11-112(a)(i).

6a. *Proposed Rule Amendment: Chapter 2, Section 1(e)*

(e) The applicant may consult with the local conservation district during preparation of the reclamation plan for conformance with technical standards and specifications which may have been adopted by the State Conservation Commission local conservation district for mined land reclamation.

Statement of Reasons.

The State Conservation Commission is no longer in existence and the State Board of Agriculture now has the Commission's responsibilities. This Board does not have any recommendations for standards and specifications for mine reclamation. In addition, the Wyoming Department of Agriculture no longer maintains such recommendations. Therefore, it is proposed that all references to the State Conservation Commission be removed from the noncoal rules.

The provision which allows involvement in reclamation by local conservation districts is provided in W.S. § 35-11-406(c).

Authority to amend this rule is provided by W.S. §§ 35-11-112(a)(i) and 35-11-406(c)

7. *Proposed Rule Amendment: Chapter 2, Section 2(a)(i)*

(i) A description of the lands to be affected within the permit area, how these lands will be affected, for what purpose these areas will be used during the course of the mining operation, and a time schedule for affecting these lands. This description shall include ~~a description of:~~

Statement of Reasons.

The purpose of the proposed change is to correct a grammatical error.

Authority to amend this rule is provided by W.S. § 35-11-112(a)(i).

8. *Proposed Rule Amendment: Chapter 2, Section 2(a)(i)(B)(I)*

(I) Grasses, forbs, trees and shrubs - the description shall include the common and/or scientific names of the predominating species and their estimated abundance within the proposed permit area. If trees are present within the proposed permit area, then the description shall include an estimate of the range of their heights and diameters.

Statement of Reasons.

Due to potential confusion if only common names for vegetation are provided, the proposed amendment requires that both the scientific and common names be supplied.

Authority to amend this rule is provided by W.S. § 35-11-112(a)(i).

9. *Proposed Rule Amendment:* Chapter 3, Section 2(d)(ii)

(ii) Land which did not support vegetation prior to becoming affected land ~~because of natural soil conditions~~ need not be revegetated unless subsoil or overburden from such affected land will support vegetation. The operator shall demonstrate to the Administrator's satisfaction that revegetation or reforestation is not possible if he seeks to proceed under the provisions of ~~the~~ this subsection.

Statement of Reasons:

The first change is being proposed in response to comments received at the December 2, 1998 Land Quality Advisory Board meeting held in Lander. At this meeting it was decided that to avoid confusion, the rule should simply refer to the situation where the land did not support vegetation prior to mining rather than trying to acknowledge all of the reasons why it is not supporting vegetation. At this same meeting, it was agreed upon that both subsoil and overburden should be included as possible plant growth mediums.

However, when this rule was presented at the Land Quality Advisory meeting on March 24th, 1999 this rule was not proposed as had been agreed upon at the previous Land Quality Advisory Board meeting. This was an inadvertent oversight. The rule proposed at the March meeting simply deleted the word "soil" in the second line and replaced it with the word "surface." However, these changes did not reflect the discussion and agreements made at the December 2nd meeting and the rule is now being proposed for amendment as instructed by the Land Quality Advisory Board.

The second proposed change which replaces "the" with "this" corrects a grammatical error.

Authority to amend this rule is provided by W.S. § 35-11-112(a)(i).

10. *Proposed Rule Amendment:* Chapter 8, Section 2(a)(ii)

(ii) To prevent adverse changes in water quality or quantity, drill holes shall be sealed in the manner described in W.S. § 35-11-4014(c)(ii) which shall include but not be limited to:

Statement of Reasons:

The proposed change corrects a typographical error.

Authority to amend this rule is provided by W.S. § 35-11-112(a)(i).

11a. *Proposed Rule Amendment: Chapter 9, Section 2*

Section 2. Conversion of Small Mine Permit to Standard Mine.

If an operator, holding a valid mining permit under W.S. § 35-11-401(hj) for a small mining operation, intends to expand his operation to remove more than 10,000 cubic yards of overburden per year or affect more than ten acres of land per year, the operator shall submit revised mining and reclamation plans, revised maps and an appropriate reclamation bond to the Land Quality Division, and obtain approval for the expansion prior to the time when he intends to exceed the established limits. The provisions of W.S. § 35-11-406(d), (fj) and (gk) will be required. Any public hearing shall apply only to the request of the operator to expand his operation, and the valid mining permit already held by the operator will not be affected.

Statement of Reasons:

The proposed changes correct citation errors caused by changes to the Environmental Quality Act in 1977 and 1980 which occurred after this Chapter of the rules was filed with the Secretary of State. This rule now appropriately directs the reader to the sections of the EQA which discuss a small mining operation, require four weeks of publication and the right for an interested person to file written objections to the application, respectively.

The term "cubic" has been added to modify yards. Although this term is not included in W.S. § 35-11-401(j), the Environmental Quality Council members present at the February 3, 2000 rules hearing suggested that this term be added for clarity.

The added language "per year" is needed to clarify that an operation may not be considered a "small mine" if more than 10,000 cubic yards of overburden are removed in a year or the operation affects more than ten acres in a year.

Authority to amend this rule is provided by W.S. §§ 35-11-112(a)(i), 35-11-401(j), 35-11-406(d), (j) and (k).

11b. *Proposed Rule Amendment: Chapter 9, Section 1. Mining Permit Requirements.*

Section 1. Mining Permit Requirements.

(a) Prior to the commencement of a small surface mining operation involving not more than ten thousand (10,000) cubic yards of overburden and ten (10) acres of affected land in any one (1) year, an application shall be submitted to the Administrator in duplicate on forms supplied by the Division. Each application shall contain:

Statement of Reasons:

The term "cubic" has been added to modify yards. Although this term is not included in W.S. § 35-11-401(j), the Environmental Quality Council members present at the February 3, 2000 rules hearing suggested that this term be added for clarity.

Authority to amend this rule is provided by W.S. §§ 35-11-112(a)(i) and 35-11-401(j).

Avoidance of Public Nuisance

12. *This proposed rule amendment has been withdrawn. The decision to withdraw this section was the result of comments to, and suggestions from, the Land Quality Advisory Board at their meeting in Lander, Wyoming on 12/2/98.*

Tailings and Heap Leaching

13a. *Proposed Rule Amendment:* Chapter 1, Section 2(aj)

(aj) "Mine facilities" means those structures and areas incidental to the operation of the mine, including mine offices, processing facilities, mineral stockpiles, storage facilities, shipping, loadout and repair facilities, ~~and utility corridors, mill facilities, tailings impoundments (excluding uranium mill tailings and mill facilities within the Nuclear Regulatory Commission license area), disposal areas, heap leach facilities, and spent ore disposal areas.~~

13b. *Proposed Rule Amendment:* Chapter 2, Section 2(b)(iii)(F)

(F) A plan to assure proper design, construction, operation, monitoring, maintenance and reclamation of any tailings impoundments, tailings disposal areas, heap leaching facilities and spent ore disposal areas utilizing best technology currently available in accordance with the Act and these regulations.

13c. *Proposed Rule Amendment:* Chapter 3, Section 2(h), (h)(i), and (h)(ii)

(h) Tailings impoundments, tailings disposal areas, heap leach facilities, and spent ore disposal areas, excluding uranium mill tailings impoundments facilities regulated by the United States Nuclear Regulatory Commission.

(i) Tailings impoundments to contain mill tailings or slurry tailings, tailings disposal areas, heap leach facilities and spent ore disposal areas shall be designed, constructed, and operated in accordance with established engineering principles using best technology currently available to ensure long term stability and to prevent contamination of surface or groundwater. Appropriate leak detection and groundwater monitoring systems shall be installed to detect any movement of contaminated fluids from the facility. Any leakage or movement of contaminated

fluids shall be promptly controlled and remediated using the best technology currently available subject to the Administrator's approval. Impoundments and shall be approved permitted by the Wyoming State Engineer's Office. and A copyies of the State Engineer's approval permits shall be attached to the application.

(ii) Reclamation of tailings impoundments, tailings disposal areas, heap leach facilities, and spent ore disposal areas shall be accomplished by removal and storage of all topsoil present within the tailings basin. affected lands. After termination of operations, the facility shall be reclaimed in accordance with the approved plan using best technology currently available to ensure long term stability, prevent contamination of surface or groundwater and facilitate the approved postmining land uses. Placement of tailings and spent ore within mine pits or underground mine areas is considered to be a preferred option which shall be thoroughly evaluated in the development of the mine and reclamation plan. The topsoil shall be replaced and revegetated in accordance with these rules and regulations. If other methods of reclamation and stabilization against wind and water erosion are found to be necessary because of natural conditions, this must be stated and described subject to the Administrator's approval.

13d Proposed rule amendment: Chapter 7, Section 2(b)(iv)

(iv) The construction or relocation of mills, and tailings disposal facilities, or heap leach facilities:

Statement of Reasons:

The Land Quality Division's (LQD) objectives in proposing the above amendments are:

1. To clarify permitting requirements for heap leach and tailings facilities; and
2. To establish general performance standards for environmental protection and reclamation of these sites.

Currently, the only reference to heap leaching in the EQA or LQD rules is contained in W.S. § 35-11-103(e)(x) which defines "surface mining" to include "surface leaching." This definition, along with the more general definitions of "operation" (W.S. § 35-11-103(e)(viii)) and "affected land" (35-11-103(e)(xvi)), give the LQD authority to regulate heap leaching operations. However, there are no other references in the EQA or LQD rules to define permitting requirements or performance standards for these facilities. The statutory definitions specifically exclude uranium mill and mill tailings facilities (and presumably uranium heap leach facilities which are regulated by the U.S. Nuclear Regulatory Commission) from LQD jurisdiction.

Due to the critical construction and operational parameters for heap leach facilities and the potential for serious environmental harm (most of these operations utilize cyanide leach solution), it is apparent that a more definitive LQD regulatory framework is required. The need for such regulations has become more urgent since the LQD was designated as the lead regulatory authority for mine-related water treatment facilities in May, 1996. Previously, the Water Quality Division of DEQ took the lead in regulating these facilities.

It is proposed that heap leach facilities be addressed in the same regulatory context as mill tailings facilities since they are similar in construction. Review of the LQD rules has also revealed that tailings facilities are only minimally addressed. Therefore, the regulations relating to tailings will also be strengthened somewhat in this proposed rulemaking.

References to "approval" by the State Engineer's Office have been replaced with references to "permits" since the SEO's approval will come about through the issuance of permits.

The authority to amend these rules is provided by W.S. §§ 35-11-112(a)(i), 35-11-103(e)(viii), (x), and (xvi).

Limited Mining Operations

14 Proposed Rule Adoption: Chapter 10, Section 4.

Section 4. Operation.

(a) A sign shall be posted and maintained at the entrance of the operation that, at a minimum, clearly shows:

- (i) The name, address, and telephone number of the operator;
- (ii) The name of the operator's local authorized agent; and
- (iii) The LQD limited mining operation number.

(b) All topsoil from affected lands shall be saved and stockpiled in such a manner to minimize wind and water erosion. Such stockpiles shall be clearly identified by a sign.

(c) In no case shall any materials be pushed or dumped over natural escarpments.

Statement of Reasons:

In order to provide operation requirements in a more organized way, an entirely new Section titled "Operation" is proposed here. Various steps that need to be taken by an operator are included within this new Section. The proposed new subsection (a) requires the operator to erect signs at the entrance of their mine because the inability to identify the site and the owner of "ten acre exemption" operations is a major problem for LQD staff and the public. The adoption of subsection (a) will alleviate this problem.

Proposed subsections (b) and (c) simply relocate provisions in existing Section 4 to a more logical position in the rules.

The authority to adopt these rules is provided by W.S. §§ 35-11-112(a)(i), and 35-11-401(f).

15a. *Proposed Rule Amendment:* Chapter 10, Section 4(b)(ii),(v),(vi),(vii)

Section 45. Reclamation

~~(b)(ii) All topsoil material from affected lands shall be saved and stockpiled in such a manner to minimize wind and water erosion. Such stockpiles shall be clearly identified by a sign. On commencement of reclamation the topsoil shall be redistributed evenly over the affected area.~~

~~(b)(v) In no case shall any materials be pushed or dumped over escarpments.~~

(b)(vi) Petroleum wastes and other toxic materials shall be disposed of by methods which ensure that topsoil, vegetation, surface water and groundwater are not contaminated.

(b)(vii) For soft rock operations, final slopes shall be gentle enough to allow for contour seeding and all final forms topography shall be approved by the Division, provided however, that the final slope shall not be greater than a ratio of 3 to 1 (3:1).

15b. *Proposed Rule Adoption:* Chapter 10, Section 5(b)(vii)

(b)(vii) For hard rock operations, whenever possible, the highwall shall be reduced to no greater than a 3:1 slope. The operator must demonstrate the stability of any steeper slope or of any remaining highwall, so that the reclaimed area is left in a condition so as not to create a potential erosion problem or safety hazard to the public or wildlife. Slopes, including any remaining highwall, shall be modified to blend as much as possible to the native landscape.

Statement of Reasons:

Modifications to existing subsections 4(b)(ii) and (v) are necessary because the deleted language in those subsections has been moved into the new Section 4. The amended language in subsection 5(b)(vi) and the proposed adoption of subsection 5(b)(vii) is necessary to clarify differences between reclamation requirements for soft rock operations (typically sand and gravel) and hard rock operations such as limestone, dolomite, or ballast rock. Experience has shown that for hard rock operations it is often not practicable to completely eliminate the highwall and the proposed language in new subsection 5(b)(vii) allows the LQD some case by case discretion for final reclamation of hard rock operations.

The authority to amend and adopt this group of rules is provided by W.S. §§ 35-11-112(a)(i), 35-11-401(e)(viii), and 35-11-401(f).

16. *Proposed Rule Adoption:* Chapter 10, Section 6.

Section 6. Transfers and Other Authorized Operators

(a) The right to operate under a limited mining exemption may be transferred to a new operator with written approval of the existing operator and written acceptance by the Administrator, provided the new operator submits a new Form 10 and bond required for the new operation and assumes the reclamation liability of the existing operator.

(b) The operator may allow contractors to operate within its limited mining area provided notice is given to the Division and the contractor meets the other requirements of the Division, including the filing of Form 10.

Statement of Reasons:

The purpose of new Section 6(a) is to clarify the procedures that must be followed to transfer a limited mining operation from one operator to another. New Section 6(b) clarifies procedures that must be followed to allow contractors to work within a limited mining area.

The LQD has been requiring operators to follow these procedures for many years and has found them to be useful and necessary. Without these procedures, the LQD found it very difficult to maintain accurate records concerning which operators were responsible for which pits. Regulations are needed to codify the requirements.

The authority to adopt this rule is provided by W.S. §§ 35-11-103(e)(ix), 35-11-112(a)(i), 35-11-401(e)(vi), and 35-11-401(f).

17. *Proposed Rule Amendment:* Chapter 10, Section 5.

Section 57. Release of Bonds and Forfeiture of Bonds

Statement of Reasons:

The proposed numbering change is necessary because of the addition of two new Sections in this Chapter.

The authority to amend this rule is provided by W.S. §§ 35-11-112(a)(i) and 35-11-401(f).

18. *Proposed Rule Amendment:* Chapter 10, Section 6(a)(ii)

Section 68. Limitation of Operations

Statement of Reasons:

The section number has been changed to account for the reorganization and the additional sections added to the Chapter.

The authority to amend this rule is provided by W.S. §§ 35-11-112(a)(i), 35-11-401(f), and 35-11-401(h).

18a. *Proposed Rule Amendment:* Chapter 10, Section 6(a)(ii)

This proposed rule adoption has been denied by the Environmental Quality Council. The Council has remanded the proposed rule to the Land Quality Advisory Board for additional consideration.

Fish and Wildlife Habitat and Resource Information

19a. *Proposed Rule Repeal:* Chapter 1, Section 2(p)

~~(p) "Critical habitat" means that habitat which is present in minimum amounts and is the determining factor in the potential for population maintenance or growth. The determination of "critical" is related to a specific population unit and is not related to the density of species relative to another population unit.~~

19b. *This proposed rule adoption has been withdrawn. A definition for "crucial habitat" was originally proposed here. The term "crucial habitat" is no longer being proposed for use within the noncoal rules, therefore the term does not require definition in Chapter 1.*

19c. *Proposed Rule Amendment:* Chapter 1, Section 2(af)

(af) "Important habitat" means areas of especially high value for a diversity of wildlife or areas that provide certain elements essential to the existence of certain groups of wildlife. that habitat which, in limited availability, increases the species diversity of a localized area, or fulfills one or more living requirements of important wildlife species. Examples of important habitat include, but are not limited to, wetlands, riparian areas zones, rimrocks, areas offering special shelter or protection, reproduction and nursery areas and wintering areas, big game winter range, parturition areas, grouse leks, and significant raptor nesting areas.

19d. *This proposed rule adoption has been withdrawn. A definition for "federal trust species" was originally proposed here. The term "federal trust species" is no longer being proposed for use within the noncoal rules, therefore the term does not require definition in Chapter 1.*

(Repeal of the definition for "critical habitat" as shown in 19a. above will necessitate modification of subsequent numbering in Chapter 1, Section 2. Those changes are not substantive and are not included in this Statement of Reasons).

Statement of Reasons:

The decision to repeal the definition for crucial habitat was made because the term is no longer used within any of the noncoal rules. However, because crucial habitat is recognized as a distinct type of wildlife habitat and is designated by the Wyoming Game and Fish Department throughout Wyoming, the LQD would like to incorporate the previously proposed definition for crucial habitat into the LQD's Guideline 5 - Wildlife. The LQD also proposes to add the definitions for critical and important habitat into Guideline 5 as well to ensure that all three definitions are readily accessible to persons engaged in the compilation of a mining permit application. In addition, the term "important habitat" is still used in noncoal, Chapter XI regarding in situ mining. Consequently, the LQD proposes to amend but retain this definition in Chapter 1.

Authority to repeal and amend this group of rules is provided by W.S. §§ 35-11-112(a)(i) and 35-11-406(a)(vii).

20a. Proposed Rule Adoption: Chapter 2, Section 1(f)

(f) The applicant shall consult with both the Wyoming Game and Fish Department and the U.S. Fish and Wildlife Service prior to submission of the permit application. The Administrator shall also consult with both wildlife agencies during permit application review. The Administrator shall review recommendations from the wildlife agencies and may reject recommendations that are outside the scope of the Act. Those recommendations accepted by the Administrator shall be presented to the applicant for their review and comment. Those recommended mitigation plans from the wildlife agencies resulting from review and comment and accepted by the Administrator shall be incorporated into the permit application.

20b. Proposed Rule Repeal: Chapter 2, Section 2(a)(i)(E)(II)

~~(II) If critical or important habitat or migration route disruption is likely, the Wyoming Game and Fish Department shall be contacted in order to determine the types and numbers of wildlife likely to be disturbed or displaced.~~

20c. Proposed Rule Amendment: Chapter 2, Section 2(b)(iii)(C)

(C) A plan to assure revegetation of all affected land in accordance with Chapter III, Section 2(d). The plan shall include the method and schedule of revegetation, including but not limited to species of plants, seeding rates, seeding techniques, mulching requirements or other erosion control techniques, and seeding times to be used in a given area for reclamation purposes. The standards and specifications adopted by the State Conservation Commission for mine reclamation, shall be considered by the applicant during preparation of the reclamation plan whenever practicable. The Wyoming Game and Fish Department and the plan shall also reflect reclamation recommendations accepted by the Administrator through consultation with the Wyoming Department of Agriculture if the applicant is proposing to reclaim an area to shall be consulted regarding revegetation procedures for wildlife habitat, critical habitat, croplands and erosion control techniques.

Statement of Reasons:

The proposed rule adoption at Chapter 2, Section 1(f) requires the applicant to consult with the Wyoming Game and Fish Department (WGFD) and the U.S. Fish and Wildlife Service (USFWS) prior to submitting a permit application to the LQD. In this way, the agencies with fish and wildlife expertise can be made aware of conditions or particular species on a proposed mine site early in the planning process. This early notification is intended to make it easier for the operator to accommodate needs identified for fish or wildlife. This same proposed rule then requires the Administrator to consult with both wildlife agencies during permit application review to obtain the agency recommendations regarding wildlife needs. This requirement for the Administrator to also consult with both wildlife agencies is necessary because the Administrator is using the state and federal wildlife management agency staff in the place of wildlife specialists that are not represented on the LQD staff. Representatives from both wildlife agencies must review the permit application to ensure that the agreed upon commitments between the applicant and the agency have been properly incorporated into the permit application.

There may also be cases where an applicant did not confer with either agency prior to submitting an application. This presents another instance where representatives from both agencies will need to review the application to ensure that the needs of wildlife have been addressed. In either case, the Administrator will always review the recommendations from the WGFD and USFWS. If the Administrator feels that certain recommendations are beyond the intent of the Wyoming Environmental Quality Act, these recommendations will either not need to remain in the permit application (in the case of preconsultation) or will not be forwarded to the applicant for their review and comment. The applicant will always be notified (through the LQD comment and review process) of which recommendations are being considered for inclusion in their application. Through this process, the operator will always have the opportunity to comment on and respond to the wildlife agency recommendations. In addition, the applicant is encouraged to contact the wildlife agencies directly to resolve any outstanding comments. Upon resolution of all comments, the agreed upon WGFD and USFWS recommendations that have been accepted by the Administrator shall be included in an applicant's permit application.

With the proposed adoption of the rule at Chapter 2, Section 1(f), the rule at Section 2(a)(i)(E)(II) (listed as item 20b.) is no longer necessary because the operator will now consult with the WGFD and the USFWS under all permitting circumstances, not simply when the operator suspects critical or important habitat or migration route disruption is likely. Therefore, Chapter 2, Section 2(a)(i)(E)(II) is proposed for repeal.

The existing rule at Chapter 2, Section 2(b)(iii)(C) requires the operator to contact the State Conservation Commission. However, this Commission no longer exists and the State Board of Agriculture now has the Commission's responsibilities. This Board does not have any recommendations for mine land reclamation, therefore any reference to this Commission is being proposed for repeal. Previous versions of this proposed rule amendment also had the following sentence proposed for adoption at the end of this rule:

The operator may consult with the local conservation district for recommendations when developing the reclamation plan.

However, this statement is no longer necessary with the adoption of the language regarding the local conservation district in the proposed rule amendment to Chapter 2, Section 1(e), Item no. 6a. above.

The rule at Chapter 2, Section 2(b)(iii)(C) also required that an applicant consult with the WGFD regarding the development of reclamation plans for wildlife habitat, critical habitat, etc. With the proposed adoption of the rule at Chapter 2, Section 1(f), this portion of the rule at Chapter 2, Section 2(a) is no longer needed and is proposed for deletion.

In those rare circumstances where land is being reclaimed to cropland, the proposed rule at Section 2(b)(iii)(C) requires the Administrator to consult with the Wyoming Department of Agriculture. The recommendations from the Department of Agriculture that are accepted by the Administrator shall then be reflected in the reclamation plan. Providing discretion for the Administrator to accept the Department of Agriculture's recommendations prior to them being incorporated into a mining permit application was not part of the rule originally taken before and approved by the Land Quality Advisory Board at the March 24, 1999 meeting. However, the Division felt that it would be prudent if the Administrator was provided the opportunity to review and discuss any cropland restoration recommendations with the Department of Agriculture, rather than having to automatically enforce anything the Department of Agriculture may prescribe. As stated above with regards to the state and federal wildlife agencies, the applicant will also be provided the opportunity to comment on any recommendations provided by the Department of Agriculture prior to being required to adopt any such recommendations.

The authority to adopt, amend and repeal this group of rules is provided by W.S. §§ 35-11-112(a)(i), 35-11-402(a)(i), and 35-11-406(a)(vii).

Professional Geologists

21. *This item has been temporarily withdrawn pending the LQD testing the use of guidance for directing LQD and industry staff as to which types of permit application information will require certification by a Professional Engineer.*

Bentonite Mining

22a. *Proposed Rule Amendment:* Chapter 13, Section 1.

Section 1. **Applicability.** The provisions of this Chapter apply to all bentonite operations permitted as of the effective date of this Chapter August 31, 1981. If a conflict occurs between any particular requirements of this Chapter and any other Chapter of Land Quality Division Rules and Regulations, this Chapter shall be controlling.

22b. *Proposed Rule Amendment*: Chapter 13, Section 2.

Section 2. Information submittal requirements.

(b) For lands for which permits ~~have been were~~ issued by ~~as of the date of this rule August 31, 1981,~~ but which have not been affected by ~~the effective date of this rule August 31, 1981,~~ the following general information shall be provided to the Administrator:

(iv) ~~Consultation with the Administrator if the presence of endangered species as listed by the Wyoming Game & Fish Department is possible or if significant habitat or migration route disruption is likely. The applicant shall consult with both the Wyoming Game and Fish Department and the U.S. Fish and Wildlife Service prior to submission of the mine and reclamation plan. The Administrator shall also consult with both wildlife agencies during review of the proposed mine and reclamation plan. The Administrator shall review recommendations from the wildlife agencies and may reject recommendations that are outside the scope of the Act. Those recommendations accepted by the Administrator shall be presented to the applicant for their review and comment. Those recommended mitigation plans from the wildlife agencies resulting from review and comment and accepted by the Administrator shall be incorporated into the mine and reclamation plan.~~

(c) ~~Within one year from the effective date of this rule August 31, 1981, the information required by (b) shall be furnished for lands to be affected between the effective date of this rule August 31, 1981, and August 31, 1983 the date two years from the effective date of this rule. Thereafter, data for a one-year period shall be furnished one year in advance of the time that additional lands will be affected. In the event that the operator encounters an exceptional situation where mining is necessary on a site that had not been described in the above plan, he will notify the Administrator and provide the above information prior to affecting the land. Provided, however, this shall not affect the requirements applicable to permit revisions.~~

22c. *Proposed Rule Repeal*: Chapter 13, Section 4.

~~Section 4. Effective date. This Chapter is effective immediately upon filing with the Secretary of State.~~

Statement of Reasons:

Requirements of this Chapter are keyed to the date found in Section 3(a) which states that the requirements of Chapter III, Sections 1 and 2 shall apply only to lands affected after August 31, 1981. Over time, the date associated with this grandfather clause has become difficult to remember. For this reason, it is proposed that references to the "effective date of the Chapter" be replaced with a specific date. This date, August 31, 1981, is the date that has been accepted in the past by both LQD and the regulated community as being the effective date of the Chapter. Consequently, Sections 2(b) and 2(c) are proposed for amendment to incorporate this date. In addition, the current rule at Section 4 is no longer necessary with the inclusion of a specific date into the remainder of this Chapter:

It is important to note that Chapter 13 was filed with the Wyoming Secretary of State on May 24, 1983. However, this date is not the actual date of implementation of this Chapter.

The current rule at Section 2(b)(iv) incorrectly references the Wyoming Game and Fish Department (WGFD) as the point of contact for determining the possible presence of endangered species for land which has not been affected as of August 31, 1981. The current rule makes no provision for consultation with the U.S. Fish and Wildlife Service (USFWS). The USFWS is the agency with jurisdiction over threatened and endangered species and their habitats. This rule is proposed for amendment to clarify this distinction. The proposed rule amendment at Section 2(b)(iv) also makes it clear that the applicant shall consult with both the WGFD and the USFWS prior to submission of the mine and reclamation plan to the LQD. In this way, the agencies with expertise over fish and wildlife can be made aware of conditions on a proposed mine site early in the mining and reclamation planning process making it easier for the operator to accommodate needs identified for wildlife.

Please refer to the Statement of Reasons provided for proposed rule change 20a. The explanation for proposing to amend Section 2(b)(iv) of Chapter 13 is identical to the explanation provided for Chapter 2, Section 1(f) on page 14 of this document with one exception. The rule proposed for amendment in Chapter 13 refers to the "mine and reclamation plan" rather than the "permit application", which is used in the proposed rule for Chapter 2. This distinction is necessary because the proposed rule at Chapter 2, Section 1(f) is referring to applications for new permits or new lands to be added to existing permits. Section 2(b) of Chapter 13 is referring to lands which were permitted by the LQD as of August 31, 1981, however the actual mine and reclamation plan for a particular pit or group of pits has yet to be submitted for approval. Therefore, the use of the term "permit application" in Chapter 13, Section 2(b) would be erroneous.

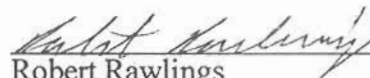
The authority to amend and repeal this group of rules is provided by W.S. §§ 35-11- 112(a)(i), 35-11-402(a)(i) and 35-11-406(a)(vii).

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 regulations are reasonable and necessary for the effectuation of W.S. § 35-11-101 through W.S. § 35-11-1304, As Amended.
2. These rules and regulations are necessary and appropriate to protect the public health, safety, welfare, and environment of the State of Wyoming.

Dated this 2 day of May, 2000.


Robert Rawlings
Hearing Examiner
Environmental Quality Council