

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

IN THE MATTER OF THE)	
PROPOSED REVISION OF)	
THE LAND QUALITY)	STATEMENT OF PRINCIPAL
DIVISION RULES RELATED)	REASONS FOR ADOPTION
TO THE REGULATION OF)	
NONCOAL MINING)	

During the course of creating a "cite-by-cite" table comparing the 1989 Rules to the recently reorganized Noncoal rules, it was noted that several rules were inadvertently repealed from the reorganized rules. In addition, Item number 2 proposes to correct an editorial error in Chapter IX.

These proposed rules went to public notice for three weeks commencing on December 14, 1993 and were heard and approved by the Environmental Quality Council on January 28, 1994. However, these rules were not received in the Secretary of State's Office prior to the 60 days allowed for filing. Therefore, it was necessary to republish these rules and bring them before the Environmental Quality Council again.

Proposed changes are presented with the reorganized citation only, as these rules are now being used by the Division, industry and the public.

Chapter VI: Self-bonding Program

1. *Proposed Rule Adoption:* Section 2.(a)(vii)

Section 2. Initial application to self-bond.

(vii) FOR ~~each~~ ALL MINING OPERATIONS, FINANCIAL INFORMATION IN SUFFICIENT DETAIL TO SHOW THAT THE OPERATOR MEETS ONE OF THE FOLLOWING CRITERIA (THE SPECIFIED CRITERION RELIED UPON SHALL BE IDENTIFIED):

(A) THE OPERATOR HAS A RATING FOR ALL BOND ISSUANCE ACTIONS OVER THE PAST 5 YEARS OF "A" OR HIGHER AS ISSUED BY EITHER MOODY'S INVESTOR SERVICE OR STANDARD AND POOR'S CORPORATION (THE RATING SERVICE SHOULD BE IDENTIFIED TOGETHER WITH ANY FURTHER BREAKDOWN OF SPECIFIC RATINGS);

(B) THE OPERATOR HAS A TANGIBLE NET WORTH OF AT LEAST \$10 MILLION, AND A RATIO OF TOTAL LIABILITIES TO NET WORTH OF 2.5 TIMES OR LESS, AND A RATIO OF CURRENT ASSETS TO CURRENT LIABILITIES OF 1.2 TIMES OR GREATER. THE TWO RATIO REQUIREMENTS MUST BE MET FOR THE PAST YEAR, AND DOCUMENTED FOR THE FOUR YEARS PRECEDING THE PAST YEAR. EXPLANATIONS SHOULD BE INCLUDED FOR ANY YEAR WHERE THE RATIOS FALL BELOW THE STATED LIMITS.

(C) THE OPERATOR'S FIXED ASSETS IN THE UNITED STATES TOTAL AT LEAST \$20 MILLION, AND THE OPERATOR HAS A RATIO OF TOTAL LIABILITIES TO NET WORTH OF 2.5 TIMES OR LESS, AND A RATIO OF CURRENT ASSETS TO CURRENT LIABILITIES OF 1.2 TIMES OR GREATER. THE TWO RATIO REQUIREMENTS MUST BE MET FOR THE PAST YEAR, AND DOCUMENTED FOR THE FOUR YEARS PRECEDING THE PAST YEAR. EXPLANATIONS SHOULD BE INCLUDED FOR ANY YEAR WHERE THE RATIOS FALL BELOW THE STATED LIMITS.

(D) IF THE OPERATOR CHOOSES (B) OR (C), THE TWO RATIOS SHALL BE CALCULATED WITH THE PROPOSED SELF BOND AMOUNT ADDED TO THE CURRENT OR TOTAL LIABILITIES FOR THE CURRENT YEAR. THE OPERATOR MAY DEDUCT THE COSTS CURRENTLY ACCRUED FOR RECLAMATION WHICH APPEAR ON THE BALANCE SHEET.

The following citation changes will be necessary to accommodate inclusion of the language listed above.

(vii viii) For noncoal mining operations:

(A) Any rating for bond.....(the rating service should be identified);

(B) The value of the operator's.....tangible net worth.

(C) The ratio of total liabilities.....which appear on the balance sheet.

(D) The criteria listed in (vii) shall be considered in determining whether the operator can qualify to self-bond. However, the criteria in (vii) need not be determinative, based upon other financial demonstrations which may be made by the applicant to meet W.S. § 35-11-417(d).

(viii ix) A statement listing any notices..... or current status thereof.

(ix x) A statement identifying by name, address and telephone number:

(x xi) The Administrator may accept a written.....guarantee shall provide for the following:

(xi xii) For a noncoal operator, the obligation.....tangible net worth in the United States.

Statement of Reasons:

This adoption is intended to reinstate self-bonding requirements that were inadvertently repealed from Chapter VI of the reorganized rules package for Noncoal mining operations. These rules are proposed for adoption pursuant to W.S. § 35-11-417(d). Apparently, during the process of administratively separating the 1989 Coal mining and Noncoal mining rules, LQD mistakenly removed the proposed capitalized rules language because of the introductory sentence of the 1989 rule at Chapter XII, Section 2.(a)(vii) which began "[F]or coal mining operations" (emphasis added).

The reorganized Noncoal rules at Chapter VI, Section 2.(a)(vii), which address self-bonding for Noncoal mining operations, include a cross-reference in subsection (D) (shown above) to the "criteria in (vii)". Therefore, this provision (vii) regarding self-bonding was intended for use on all mining operations. As a result of this inadvertent repeal of subsection (vii) and subsequent renumbering, Chapter VI, Section 2.(a)(vii)(D) currently references itself. Section 2.(a)(vii)(D) states that "the criteria listed in (vii) shall be considered in determining whether the operator can qualify to self-bond." Therefore the original provisions of subsection (vii) are necessary for adequate review of a Noncoal self-bond application.

Chapter IX: Small Mining Operations

2. *Proposed Rule Amendment:* Section 1.(b)(ii) and (c)

(ii) All requirements of W.S. 35-11-406(f j) shall be met except the applicant shall cause notice of the application to be published once a week for only two (2) consecutive weeks in a newspaper of general circulation in the location of the proposed operation.

(c) All requirements of W.S. 35-11-406(g k) shall be met.

Statement of Reasons:

The references to W.S. § 35-11-406 as currently specified do not direct the reader to the appropriate subsections within the Act. This improper referencing is the result of the Act being modified in 1977 and 1980 after Chapter IX (formerly Chapter XIX) of the Land Quality Division rules was approved and filed with the Secretary of State. At that time, new subsections were added to W.S. § 35-11-406 which in turn changed the lettering associated with those provisions referenced in the Land Quality Division rules. The above amendments will provide the correct references to the Act.

All references to W.S. § 35-11-406 in Chapter IX are made pursuant to W.S. § 35-11-401(j).

Chapter XI: In Situ Mining

3. *Proposed Rule Amendment:* Section 3.(b)(vii) & (x)

(vii) The name, description and map of all surface waters within the permit area and on adjacent lands. A list and mapping of all adjudicated and permitted surface water and groundwater rights within AND ADJACENT TO the permit area ~~and to a distance of three (3) miles outside of the permit area~~ shall be provided.

(x) Locations and present owners of all water wells in use within the permit area and on adjacent lands, including a description of well completion data, producing interval(s), and variations in water level to the extent such information is available in the public records and from reasonable inspection of the property. The Administrator shall require a mapping of all wells WITHIN AND ADJACENT to ~~a distance of three (3) miles outside~~ the permit area.

Statement of Reasons:

Changing the requirement for water rights listing and water well mapping from three miles to one half mile (adjacent¹) outside the permit boundary was approved as part of a formal rulemaking and was filed with the Secretary of State on June 17, 1991.

The changes listed above were inadvertently repealed from the reorganized Noncoal rules which went to public notice on May 16, 1992 and September 3, 1992. This rulemaking is intended to adopt the rules as filed in 1991.

All proposed amendments to Chapter XI are being made pursuant to W.S. § 35-11-428.

¹ The term "adjacent" is used here instead of specifically listing the 1/2 mile distance because the term "adjacent areas" is defined in Chapter I as being limited to lands within 1/2 mile of the proposed permit area.

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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 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.**

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

Dated this 24 day of June, 1994.



Hearing Examiner
Environmental Quality Council