

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	)	
COAL MINING	)	

The proposed rule changes which follow are the result of meetings held with the Wyoming Outdoor Council and the Office of Surface Mining (OSM). These meetings were held to discuss issues the Wyoming Outdoor Council had raised through the OSM public comment period regarding changes to Land Quality Division Rules, Chapter XIV entitled Permit Revisions. A proposed change to Chapter II, entitled Permit Applications, is in response to a letter dated November 17, 1992 from OSM.

In the November 2, 1993 Federal Register (58:58490), OSM asked that Wyoming promulgate the following proposed rule amendments/ repeals in order to be consistent with and no less effective than the Federal program requirements.

Each proposed change is presented using the rule citation and wording found in both the 1989 Rules and Regulations previously approved by the OSM and the reorganized Rules and Regulations package filed with the Wyoming Secretary of State on December 1, 1992, but currently not formally approved by OSM.

**1. Proposed Rule Amendment: Chapter II, Section 3(a)(i)(D) 1989 Rule  
Chapter II, Section 2(a)(i)(D) Reorganized Coal Rules**

(D) A statement of all lands, interests in lands, options, or pending bids on interest held or made by the applicant for lands which are contiguous to the proposed PERMIT area ~~to be mined during the term of the permit.~~

*Statement of Reasons:*

OSM commented in the November 17, 1992 letter that Wyoming's rules currently contain language that appears to conflict with the "Special application content requirements for surface coal mining operations." The language at Chapter II, Section 3(a)(i)(D) requires information regarding a statement of interest for only those lands contiguous to the proposed area to be mined during the term of permit not the entire permit area. The proposed rule change will ensure that the Wyoming Rules and Regulations are consistent with Federal rule 30 CFR 778.13(h).

This rule is being amended in accordance with W.S. § 35-11-406(a)(v).

2. *Proposed Rule Amendment:* Chapter XIV, Section 6. Exception. **1989 Rule**

(a) For surface coal mining operations, this Chapter does not apply to extensions ~~to~~ OF the ~~five-year area identified in Chapter II, Section 3.(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 OPPORTUNITY FOR 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.

*Proposed Rule Amendment:* Chapter XIII, Section 6. Exception. **Reorganized Coal Rules**

(a) For surface coal mining operations, this Chapter does not apply to extensions of the mine permit boundary. Any such extension, except incidental boundary revisions, must be made in accordance with the Act and by application for a permit amendment with public notice, and OPPORTUNITY FOR 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:*

This change is being proposed to clarify the intent of the regulations regarding the requirement for public notice. The OSM and Wyoming Outdoor Council expressed concern that the way the regulation was currently worded appears to infer that both public notice and hearing are not always required for an amendment application. This new wording will make it clear that all amendments require public notice, but that not all amendments require hearings.

This rule is being amended in accordance with W.S. § 35-11-402(a)(x).

3. *Proposed Rule Repeal:* Chapter XIV, Section 2.(b)(i) **1989 Rule**  
Chapter XIII, Section 2.(b)(i) **Reorganized Coal Rules**

~~(i) More than a twenty percent increase in affected land from which was approved in the original permit;~~

*Statement of Reasons:*

Subsection (i) is proposed for deletion as requested by the OSM and Wyoming Outdoor Council. Both entities felt that this provided too broad an interpretation of what might constitute a significant change to a mining operation.

For example, a large surface coal mine could propose to affect 15 percent more land than originally approved. This proposed change could then result in a drastically different postmining topography than originally reviewed by the public. With Section 2.(b)(i) in place, it is conceivable that the public would not be provided the opportunity to review and comment on the new postmining topography because the new mine plan did not meet the greater than 20 percent criteria.

This rule is proposed for repeal in accordance with W.S. § 35-11-406(a)(xii).

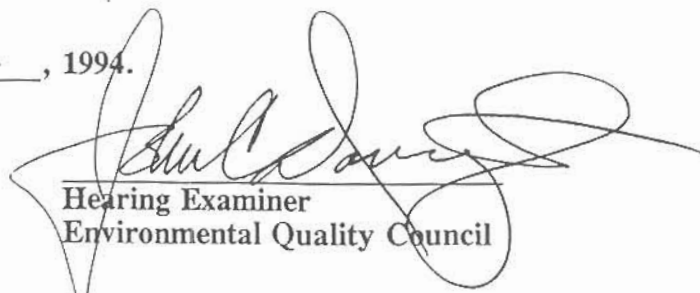
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**Conclusion**

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 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 28 day of January, 1994.



Hearing Examiner  
Environmental Quality Council