

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL

STATE OF WYOMING

April 25, 1991

IN THE MATTER OF THE)
PROPOSED REVISION OF)
RULES RELATED TO COAL,)
NONCOAL AND IN SITU)
MINING OPERATIONS)

STATEMENT OF
PRINCIPLE REASONS
FOR ADOPTION

In order to maintain Wyoming's approved State Program for the environmental regulation of coal mining, as well as maintain Federal funding for Wyoming's Abandoned Mine Land Program, it is required that the State keep its laws, regulations and policies consistent with, and as stringent as, Federal (OSM) laws and rules. During the past four years OSM has notified Wyoming that numerous portions of its regulations are no longer as effective as OSM regulations. The proposed rule changes presented in this package are intended to address many of the issues raised by OSM.

OSM's own regulations have been undergoing changes for the last nine years. Soon after the Reagan Administration came on board in 1981, OSM made a series of changes to their regulations. Shortly after the OSM rule changes took effect, Wyoming voluntarily began to change its rules to match the new, more flexible OSM regulations. The last of the Wyoming changes were made in March of 1989.

While Wyoming was making its rule changes, a series of environmental law suits were filed against OSM, alleging that OSM's new rules were contrary to the 1977 Surface Mining Control and Reclamation Act (SMCRA) and too favorable to industry. In a series of 1984 and 1985 court rulings, Judge Flannery declared many of OSM's newer rules invalid, and in response OSM was forced to begin promulgating revised rules. By 1986, when Wyoming had finally completed its rule changes and essentially brought State rules into line with the 1982 OSM rules, OSM's rules had changed dramatically. Wyoming's rules are now less stringent than OSM rules in many areas.

Several of the following rule revisions are State initiatives resulting from modifications made to the Wyoming Environmental Quality Act by the 1989 Wyoming legislature. Another State initiative was pursued in order to ensure that all coal operators are including plans for revegetation monitoring in Reclamation Plans. A proposed regulation requiring the inclusion of a grazing management plan in all coal permits was rejected by the Environmental Quality Council on April 25, 1991. Please refer to items 9 and 10 for further discussion.

As a result of public comment received in 1990, slight modifications were made to the proposed revisions. Other proposed rules received no comment, and therefore remain as originally proposed.

1. Chapter I, Section 2 Definition of "Public Building"

"Public Building" means any structure that is owned or leased, and principally used by a governmental agency for business or meetings.

Statement of Principle Reasons for Adoption

OSMRE, in a Section 732 letter dated December 23, 1985, indicated that a definition of the term "public building" is required by Federal regulation, 30 CFR 761.5. This proposed rule adopts the Federal definition verbatim and brings Wyoming's rules into line with OSM's.

2. Chapter I, Section 3 (b)(i) Two Acre Exemptions

~~(i) 35-11-401 (e)(v) shall be limited for surface coal mining operations to the extraction of coal where the surface mining operation affects two acres or less and from which 250 tons or less of minerals are removed within 12 consecutive calendar months.~~

Statement of Principle Reasons for Adoption

The Federal rule at 30 CFR 700.11 (b) implements Public Law 100-34 by repealing the two acre exemption previously contained in Section 528 (2) of SMCRA. Although Wyoming is not required to amend its program to remove the cited provision, OSMRE in a 732 letter dated November 7, 1988 encouraged the State to do so for purposes of consistency and to minimize confusion on the part of the public, which may not be aware of the Federal preemption. The State will therefore remove the provision for two acre exemptions from its rules because they are no longer allowed under SMCRA.

3. Chapter II, Section 3 (a)(vi) Fish and Wildlife Resource Information Outside the Permit Area

(E) Studies of fish, wildlife, and their habitats, in the level of detail and for those areas as determined by the Administrator, after consultation with the Wyoming Game and Fish Department in accordance with the Memorandum of Understanding between the two agencies; and Federal agencies having responsibilities for the management or conservation of such environmental values, including:

(I) A list of species as specified in Section 2 (a)(i)(E)(1) of this chapter within and adjacent to the permit area. The area of survey for the possible presence of threatened or endangered species shall be on or within one (1) mile of the permit area.

Chapter II, Section 2 (a)(E)(I) shall remain as follows:

(I) The operator shall submit a list of the indigenous vertebrate wildlife species in the permit area by common and scientific names. Special attention shall be paid to the possible presence of wildlife on or adjacent to the proposed permit area which are listed on the "Threatened or Endangered Species List".

Statement of Principle Reasons for Adoption

Originally, the proposed regulation change was to be incorporated into Chapter II, Section 2 (a)(i)(E)(1)). However, on the basis of comments received by Wyo-Ben Inc., the State recommends that the proposed regulation change be incorporated into Chapter II, Section 3 (a)(vi)(E). The primary reasoning behind this is that since SMCRA and its attendant rules and regulations deal exclusively with coal mining, it is both unnecessary and inappropriate to change any of the existing Wyoming Rules and Regulations dealing with noncoal minerals as part of the State's response to the OSMRE finding under 30 CFR 950.12 (a)(2). Alternatively, Chapter II, Section 3 deals exclusively with coal operations, and moving the proposed change to Section 3 would avoid incorporating noncoal operations into the rule changes while still satisfying the requirements of OSMRE's 732 letter of November 7, 1988.

4. Solid Waste Permitting for Mines

The 1989 Legislature modified the Environmental Quality Act at 35-11-103 (d)(i)(D) by excluding from Solid Waste Management jurisdiction, any on-site waste management facility subject to the permitting requirements of Articles 2, 3 or 4 of the Act. These proposed rules provide for the transfer of jurisdiction for mines to the Land Quality Division relative to informational requirements and compliance standards.

a. Chapter II, Section 3 (a)(v)(A)

(II) Solid Waste Information: The information from the application for the approved permit(s) for any Solid Waste Management Facility(ies) located within the proposed permit area. Note that a Solid Waste Management Facility, as defined by W.S. 35-11-103 (d)(ii), is a facility that receives solid waste which is generated outside the proposed permit area by any activity other than a mine mouth power plant or mine mouth coal drier. Solid Waste Management Facilities are subject to the permitting, bonding and performance standards of Article 5 of the Environmental Quality Act.

Statement of Principle Reasons for Adoption

Adoption of the proposed regulation results from the modification of the Environmental Quality Act transferring jurisdiction of on-site waste management for mines to the Land Quality Division.

b. Chapter II, Section 2 (b)(iii)

- (I) A plan for the management and disposal within the proposed permit area of industrial solid wastes generated by the operation (such as, but not limited to, grease, lubricants, paints, flammable liquids, garbage, trash, discarded mining machinery, lumber and other combustible materials) in accordance with Chapter IV, Section 2 (c) and with those provisions of the Solid Waste Management Rules and Regulations deemed appropriate by the Administrator.

Statement of Principle Reasons for Adoption

Adoption of the proposed regulation results from the modification of the Environmental Quality Act transferring jurisdiction of on-site waste management for mines to the Land Quality Division.

c. Chapter II, Section 3 (b)

- (xxi) A plan for the management and disposal within the proposed permit area of industrial solid wastes generated by the operation (such as, but not limited to, grease, lubricants, paints, flammable liquids, garbage, trash, discarded mining machinery, lumber and other combustible material), in accordance with Chapter IV, Sections 2 (c) and 3 (c) and with those provisions of the Solid Waste Management Rules and Regulations deemed appropriate by the Administrator.

Statement of Principle Reasons for Adoption

This proposed regulation is necessary because of the reference to Section 3 (c) within Chapter IV which pertains to coal only.

d. Chapter II, Section 3 (b)

- (xxii) Plans for the management and disposal within the permit area of any solid wastes generated by a mine mouth power plant or mine mouth coal drier, in accordance with Chapter IV, Sections 2 (c) and 3 (c) and with provisions of the Solid Waste Management Rules and Regulations deemed appropriate by the Administrator.

Statement of Principle Reasons for Adoption

Adoption of the proposed regulation results from the modification of the Environmental Quality Act transferring jurisdiction of on-site waste management for mines to the Land Quality Division.

e. Chapter IV, Section 2 (c)

- (v) Management and final burial on the permit area of all industrial solid wastes generated by the operation (such as, but not limited to grease, lubricants, paints, flammable liquids, garbage, trash, discarded mining machinery, lumber and other combustible materials)

shall be in accordance with this section and with provisions of the Solid Waste Management Rules and Regulations deemed appropriate by the Administrator.

Statement of Principle Reasons for Adoption

Adoption of the proposed regulation results from the modification of the Environmental Quality Act transferring jurisdiction of on-site waste management for mines to the Land Quality Division.

f. Chapter IV, Section 3 (c)(iii)

(C) Final burial of noncoal mine waste materials (such as grease, lubricants, paints, flammable liquids, garbage, trash, abandoned mining machinery, lumber and other combustible materials) and any wastes classified as hazardous shall be in a designated disposal site authorized by the Solid Waste Management section of the Department.

Statement of Principle Reasons for Adoption

This regulation remains unchanged as recommended by the Wyoming Mining Association. Refer to item 4.f. of the Analysis of Comments for further discussion.

g. Chapter IV, Section 3 (c)(iii)

(D) Management and final burial on the permit area of solid wastes generated by a mine mouth power plant or mine mouth coal drier shall be in accordance with this section and with provisions of the Solid Waste Management Rules and Regulations deemed appropriate by the Administrator.

Statement of Principle Reasons for Adoption

Adoption of the proposed regulation results from the modification of the Environmental Quality Act transferring jurisdiction of on-site waste management for mines to the Land Quality Division.

5. Chapter II, Section 3 (a)(vi). Information requirements and Confidentiality - Historic and Archaeological Resources

(M) Boundaries and descriptions of all cultural, historic, and archaeological resources listed on, or eligible for listing on, the National Register of Historic Places. In compliance with the Archaeological Resources Protection Act of 1979 (P.L. 96-85), this information shall not be placed on display at the county clerk's office (as required by W.S. 35-11-406 (d)) where such resources occur on lands owned by the United States.

Statement of Principle Reasons for Adoption

Permit application requirements for information on archaeological and historic resources are necessary for compliance with OSMRE coal regulation changes under 30 CRR 779.12 (b)(1), 783.12 (b)(1), 779.24 (i), and 783.24 (i), as stated in a Section 732 letter dated June 9, 1987. A rule requiring the confidentiality of archaeological and historic site locations is necessary to achieve compliance with the Archaeological Resources Protection Act and 30 CFR 773.13 (d)(3)(iii), as stated in a Section 732 letter dated December 23, 1985. The addition of this language brings Wyoming's rules into line with OSM's.

6. Chapter II, Section 3 (b)(xvi) Stability Analysis Waiver

(D) A stability analysis including, but not limited to, strength parameters, pore pressures and long term seepage conditions. These data shall be accompanied by a description of all engineering design assumptions and calculations and the alternative considered in selecting the specific design specification and methods.

Statement of Principle Reasons for Adoption

As stated in a Section 732 letter dated August 12, 1988, Section 515 (b) of SMCRA contains a mandatory requirement for a stability analysis. OSMRE's general policy is that if a performance standard is explicitly described in SMCRA, it must at least be explicitly described in State regulations. The revised rule brings the State into compliance with OSM.

7. Chapter II, Section 3 (b) Cultural Resources Management Plan

(xx) A CULTURAL RESOURCES MANAGEMENT PLAN WHICH:

(A) Describes the measures to be used to prevent impacts to public parks or places listed on the National Register of Historic Places or, in cases of valid existing rights or where joint agency approval has been obtained, to minimize impacts to such parks or places;

(B) Provides for the mitigation of adverse effects to historic or archaeological properties eligible for listing on the National Register of Historic Places; and

(C) Ensures that the appropriate treatment measures or mitigation will be undertaken prior to the commencement of any specific mining operation that would affect such parks, places or properties.

Statement of Principle Reasons for Adoption

As stated in a Section 732 letter dated June 9, 1987, Federal Regulations 30 CFR 780.31 (a) and 784.17 (a) specify reclamation plan requirements

relative to cultural resources. These Federal regulations also allow the permittee to minimize impacts to public parks or places listed on the National Register of Historic Places only if valid existing rights exist or joint approval by all affected agencies is obtained. The addition of this language brings Wyoming's rules into line with OSM's.

Chapter I, Section 2. Definition of "Joint Agency Approval"

(ba) "Joint agency approval" means, for surface coal mining operations, the approval of mining or reclamation plans that would adversely effect any publicly owned park or any place included in the National Register of Historic Places by the federal, state, or local agency with jurisdiction over the park or place.

Statement of Principle Reasons for Adoption

"Joint Agency Approval" is not currently defined in Chapter I of the WDEQ/LQD Regulations. Therefore, the definition is being added to maintain compliance with the Federal rules.

8. Chapter IV, Section 3 (b) Topsoil Substitutes

(vii) If a sufficient volume of suitable topsoil or subsoil is not available for salvage or redistribution then selected overburden may be used as a topsoil substitute or supplement. The operator shall demonstrate by analyses or test plots that the resulting soil medium is of an equivalent or better suitability than the existing topsoil and will be the best available at the time of use.

Statement of Principle Reasons for Adoption

The Wyoming Mining Association's comment regarding inconsistencies in the list of parameters to be used to demonstrate the suitability of a topsoil/subsoil substitute is acknowledged. The State concurs that these parameters, which were adopted verbatim from 30 CFR 780.18 (b)(4), and recommended by OSM through a Section 732 letter dated June 21, 1989, are not applicable to a topsoil/subsoil substitute which cannot be classified as a soil. The obvious technical inconsistencies associated with this proposed regulation leave it open for a variety of interpretations. Therefore the approved language in Section 3 (b) will be retained. A more appropriate draft regulation will be proposed in future rulemaking.

9. Chapter II, Section 3 (b)(v) Revegetation Monitoring

(C) A plan for monitoring permanent revegetation on reclaimed areas, specifically including quantitative sampling, as required by Chapter IV, Section 3 (d)(vii);

Chapter IV, Section 3 (d)

(vii) Monitoring of permanent revegetation on reclaimed areas before and after grazing shall be conducted at intervals throughout the period prior to bond release in accordance with the plan required by Chapter II, Section 3 (b)(v)(C). Monitoring results shall be presented in the annual report.

Statement of Principle Reasons for Adoption

Although not required by OSM, this regulation has been proposed through State initiative to ensure that every coal operator conducts quantitative monitoring of revegetation on reclaimed areas.

Comments by the Wyoming Mining Association and Cyprus Shoshone Coal Corporation concerning points of confusion or need for clarification within the regulation are acknowledged. The suggested treatment of and revised language for the regulation has been incorporated into the regulation. The first regulation presented in this section was renumbered and reworded to coincide with numbering and wording already existing in Chapter II, Section 3 (b). Refer to item 9 of the Analysis of Comments for further discussion. The Environmental Quality Council, on April 25, 1991, amended the original rule by adding the language "before and after grazing". This language was added as a result of the Environmental Quality Council's rejection of the following rule.

10. Chapter II, Section 3 (b)(v)(D) Livestock Grazing

Statement of Principle Reasons for Rejection

The Environmental Quality Council rejected this rule but compromised by adding new language to the above rule concerning grazing.

11. Chapter IV, Section 3 (e)(i) Conditions for Removal of Diversions

{H} When no longer needed to achieve the purpose for which they were authorized, all temporary diversions shall be removed and the affected land regraded and revegetated, in accordance with this chapter. Before diversions are removed, downstream water treatment facilities previously protected by the diversion shall be modified or removed, as necessary, to prevent overtopping or failure of the facilities. This requirement shall not relieve the operator from maintaining water treatment facilities as otherwise required.

Statement of Principle Reasons for Adoption

As stated in a Section 732 letter dated December 23, 1985, the Federal rule at 30 CFR 816.43 (a)(3)) requires that water treatment facilities

downstream of a diversion shall be modified or removed before the protective diversion is removed. Wyoming's rules have no specific language regarding removal or modification of such downstream facilities. This proposed rule is taken verbatim from the Federal rules.

12. Chapter XI, Section 2 (b) Information on Historic/Archaeological Resources for Coal Exploration Permits

(iv) A description of historic or cultural features or resources listed or known to be eligible for listing on the National Register of Historic Places. This shall include a detailed description of all archaeological and historic resources located within the areas to be directly affected by the proposed exploration activities.

Statement of Principle Reasons for Adoption

As stated in a Section 732 letter dated June 9, 1987 OSMRE has added new paragraph (b)(8)(iv) to 30 CFR 772.12 to require that applications for exploration operations intending to remove more than 250 tons of coal include any additional information which the regulatory authority may require regarding known or unknown historic or archaeological resources. In order to bring Wyoming's rules into line with the revised Federal rules, OSMRE has required the State to modify its coal exploration permit requirements at Chapter XI, Section 2 (b)(iv).

"Known" archaeological resources are those which appear on the State's Historic Preservation Office's records: LQD has clarified the reporting requirement to specify that a detailed description of all such resources within the affected areas be submitted.

To comply with the State/Federal Cooperative Agreement governing the Federal Lands Program, LQD must afford significant archaeological sites the same level of protection they would receive if exploration activities were regulated directly by the Federal land management agency, here the Bureau of Land Management. BLM rules require that all cultural resources within areas to be affected by a Federal undertaking (e.g. permitting) must be identified by means of an on-the-ground intensive survey.

13. Chapter XII, Section 1 Definition of Self-Bond

(a) "Self-bond means an indemnity agreement in a sum certain made payable to the State, with or without separate surety. The indemnity agreement is signed by the permittee and, if applicable, the parent company or federal agency guarantor.

Statement of Principle Reasons for Adoption

As stated in a Section 732 letter dated November 7, 1988 the Federal definition of "self-bond" (at 30 CFR 800.5(c)) has been revised to require

that, when an applicant's self-bond is being guaranteed by another corporation, the indemnity agreement must be signed by both the applicant and the corporate guarantor. Therefore, for purposes of consistency and in order to bring Wyoming's rules into line with OSM's, the State adopts the Federal suggestion by removing the ambiguous "and/or" and clarifying the sentence describing who must sign the indemnity agreement.

14. Chapter XIII, Section 1 (a) Required Finding on Historic Resources for Permit Approval

(iv) In addition to the specific findings required by W.S. 35-11-406 (n) no permit shall be approved unless the Administrator also finds in writing that:

(A) The proposed operation will not be inconsistent with other surface coal mining and reclamation operations proposed or contemplated in pending or approved mining permits;

(B) The effect of the proposed operation on properties eligible for listing on the National Register of Historic Places has been taken into account; and

(I) Mining has been prohibited within 100 feet of any such properties by permit condition; or

(II) The applicant has provided for the protection of such properties in the approved mining and reclamation plan; or

(III) The Administrator has determined, in consultation with the State Historic Preservation Officer, that no additional protection measures are necessary.

Statement of Principle Reasons for Adoption

OSMRE has added a new finding to the list of written findings at 30 CFR 773.15(c) which the State must make prior to approving any permit application or application for a significant revision of a permit. This finding states that the regulatory authority has taken into account the effect of the proposed permitting action on properties listed on or eligible for listing on the National Register of Historic Places. It also states that this finding may be supported in part by inclusion of appropriate permit conditions or operation plan changes to protect historic resources, or a documented decision that no additional protective measures are necessary. Through a 732 letter dated June 9, 1987, OSMRE informed Wyoming that it must revise its rules in this regard to be no less effective than the Federal regulations. The addition of this language bring's Wyoming's rules into line with OSM's.

15. Chapter XIII, Section 1 (a)(v) Wild and Scenic River Study Corridors

....surface coal mining operations are prohibited or limited:

(A) On any lands within the boundaries of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including study rivers designated under Section 5 (a) of the Wild and Scenic Rivers Act or study rivers or study river corridors as established in any guidelines pursuant to that act and National Recreation Areas designated by Act of Congress;

Statement of Principle Reasons for Adoption

As stated in a Section 732 letter dated November 1988, the Federal rule at 30 CFR 761.11 (a) replaces the previous quarter-mile restriction on the maximum width of wild or scenic study river corridors afforded with protection. The new rule provides a more flexible provision stating that protection shall be afforded for the full corridor width established in the Scenic Rivers Act. The State rule now conforms to the Federal regulation.

16. Chapter XIII, Section 1 (b) Coal Mine Permit Renewal Processing

(iii) If the Administrator determines that there is insufficient time within the 120-day period to review any revised or updated information, he may renew the existing valid coal mining permit for another five year term and consider the revised or updated information submitted in the renewal application as a revision of the renewed permit, subject to the provisions of Chapter XIV.

Statement of Principle Reasons for Adoption

W.S. 35-11-405 (g) contains the provision that application for renewal of a valid surface coal mining permit shall be made at least 120 days prior to expiration of a valid coal permit. This time frame has been found to be insufficient for the review and approval of major changes to the mine and reclamation plan. Additionally, the Attorney General's Office has suggested that a rule be developed to codify the permit renewal procedure and notify potential affected parties. Accordingly, the State has adopted the procedure described in the above proposed regulation to avoid automatically approving a revision without giving it a thorough review.

17. Chapter XIV, Section 1 Time Frame for Permit Revisions

(b) Non-significant 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 non-significant revisions shall include:

Statement of Principle Reasons for Adoption

Through a 732 letter dated June 21, 1989, OSMRE has required the State to include a time frame in the LQD coal rules for all permit revisions. SMCRA Section 511 (a)(2) requires that all permit revisions be approved within a period of time established by the State or Federal program. In order to bring Wyoming's rules into line with OSM's, LQD has revised the rule to add the language "within 72 hours of filing" to the existing rule.

18. Chapter XXI, Section 3 (b) Area of Water Rights Reporting for In Situ Mines

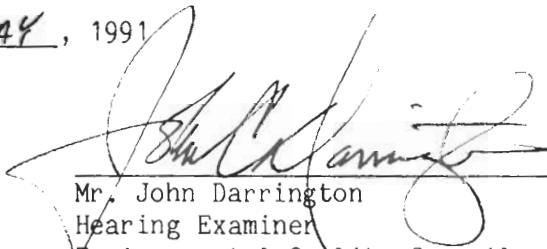
(vii) The name, description and map of all surface waters within the permit area and on adjacent lands. A list and mapping of all adjudicated and permitted surface water and groundwater rights within and adjacent to the permit area shall be provided.

(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 a reasonable inspection of the property. The Administrator shall require a mapping of all wells within and adjacent to the permit area.

Statement of Principle Reasons for Adoption

LQD's Chief Hydrologist examined the issue of area of water rights reporting for in situ mine permit applications. It was determined that the area of reporting should be restricted to the approximate area of potential effects - about one-half mile, or "adjacent to the permit area" (adjacent is defined in Chapter I as one-half mile rather than three (3) miles).

Dated this 1 day of MAY, 1991



Mr. John Darrington
Hearing Examiner
Environmental Quality Council