

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

IN THE MATTER OF PROPOSED RULE)
REVISION OF CHAPTER XII, RELATING)
TO SELF-BONDING)

STATEMENT OF PRINCIPAL REASONS FOR ADOPTION

This rulemaking was initiated pursuant to the Wyoming Administrative Procedure Act, Section 16-3-106, W.S. 1977 as amended. The Environmental Quality Council received a petition for rulemaking from Arch Mineral Corporation seeking a reconsideration of an earlier Council decision which disallowed the use of personal property as collateral for a self-bond. The Environmental Quality Council granted the petition for rulemaking, and a public hearing was held on April 11, 1985.

The Environmental Quality Act provides that "the Council may promulgate rules and regulations for a self-bonding program for mining operations under which the administrator may accept the bond of the operator itself without separate surety when the operator demonstrates to the satisfaction of the administrator the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient for authorization to self-insure or bond this amount." Section 35-11-417(d). The petition submitted by Arch Mineral Corporation proposed that Section 1 of

Chapter XII of the Land Quality Rules and Regulations be revised so that the definition of a collateral bond would include personal property with an appraised value in excess of Six Hundred Thousand Dollars (\$600,000.00). The petition further proposed that Section 2 of Chapter XII be revised to include information on the personal property in the initial application to self-bond. This information serves to restrict the types of personal property that would be acceptable.

Comments made at the hearing and submitted subsequent to the hearing demonstrated that the benefit to industry gained by use of personal property as collateral exceeded any difficulty that may arise for the State in retrieving the property, selling the property, or in using the property in the completion of reclamation. Allowing the use of personal property as collateral gives industries flexibility in meeting their bond requirements and it does not place the State at risk. Problems in handling a particular piece of collateral can best be addressed by the administrator when evaluating the property and the bond applicant on an individual basis. In addition, the State may build into the self-bond agreement and security agreements that are employed in conjunction with the use of collateral, safeguards to protect the State and to facilitate the sale or use of the property.

The testimony also indicated that limiting the personal property that is acceptable to that property valued in excess of Six Hundred Thousand Dollars (\$600,000.00) does not serve to further protect the State. The value assigned to personal property to be used as collateral is reasonable in that this value is the fair market value.

The setting of an arbitrary limit on the monetary value of acceptable property could limit the marketability of the property concerned. The reinstatement of restrictions as to the type of personal property that is acceptable provide better protection for the State. Therefore, the Environmental Quality Council is convinced that not only should personal property be reinstated as acceptable collateral in the self-bond program, but the proposed monetary limitation is unnecessary.

CONCLUSION

After full consideration of the testimony received at the public hearing and the written comments which were received, the Environmental Quality Council has concluded that the adoption of these regulations is necessary and appropriate to implement a reasonable and authorized self-bond system under State and Federal law. Specifically, the Council finds that:

1. The rules and regulations provide for the regulations of surface coal mining and reclamation operations in accordance with the requirements of P.L. 95-87.
2. The rules and regulations are as effective as the regulations issued by the Secretary of 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 to the effectuation of Sections 35-11-101 through 35-11-1207, W.S. 1977 as amended.

5. These regulations are necessary and appropriate to protect the public health, safety, and welfare, and the environment of the state of Wyoming.

DATED this 25th day of October, 1985.


Harold L. Bergman
Chairman