

FILED

MAY 12 1992

**Terri A. Lorenzon, Adm. Aide
Environmental Quality Council**

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

IN THE MATTER OF THE)
PROPOSED REVISION OF)
RULES RELATED TO COAL)
MINING OPERATIONS)

STATEMENT OF
PRINCIPAL REASONS
FOR ADOPTION

Proposed wildlife monitoring rules evolved over a period of several years. Under current regulations and statutes there has been a noticeable lack of continuity regarding how wildlife monitoring should be conducted at all coal mining operations across the state. This resulted in there being considerable disagreement and subsequent negotiation between the Land Quality Division (LQD), the Wyoming Game and Fish Department (WGFD) and operators regarding specific wildlife monitoring methodologies and monitoring requirements. The LQD felt that it was necessary to develop a standardized set of instructions regarding wildlife monitoring on coal mining operations to settle most of the basic disagreements and reduce the scope of negotiations needed every time a permit application was filed. Developing standardized instructions would also make data from adjacent mines more comparable and provide for a more accurate assessment of whether or not there are cumulative effects on wildlife populations caused by mining.

At the request of the Land Quality Advisory Board (LQAB), a number of meetings were held between the LQD, WGFD and coal operators to facilitate development of wildlife monitoring rules that all parties could adhere to. Negotiations continued for approximately one year and culminated on April 26, 1990 with the LQAB voting to forward the proposed wildlife monitoring rules to the Environmental Quality Council.

The proposed regulations were brought before the Environmental Quality Council on September 5, 1990. Public comments regarding the proposed rules were received through October 19, 1990. As a result of public comment, several modifications were made to Appendix B of the proposed rules.

Chapter II, Section 3(b)(iv)(B)

(B) A statement of how the applicant will utilize monitoring methods as specified in Appendix B of these rules and regulations, and impact control measures and management techniques, to protect or enhance the following, if they are likely to be affected by the proposed operation:

- (I) Threatened or endangered species of plants or animals listed by the Secretary under the Endangered Species Act of 1973, as amended (16 U.S.C. Section 1531 et seq.) and their critical habitats;**
- (II) Species identified through the consultation process described in (a)(vi)(E) of this section;**
- (III) Important habitats for fish and wildlife, such as wetlands, riparian areas, rimrocks, areas offering special shelter or protection, reproduction and nursery areas, and wintering areas.**

Statement of Principle Reasons for Adoption

No comments were received regarding this proposed rule change. Therefore, it is being adopted in its original form.

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Chapter IV, Section 3(o)(iv)

(iv) The operator shall perform periodic surveys, in the level of detail and for those areas as determined by the Administrator, in accordance with Appendix B of these rules and regulations.

Statement of Principle Reasons for Adoption

No specific changes to this regulation were proposed by commentors. Therefore, it is being adopted in its original form.

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Appendix B (attached)

Statement of Principle Reasons for Adoption

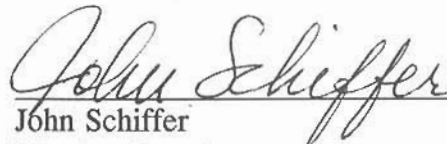
Two major changes were made to Appendix B in response to commentors concerns. The first change proposed that it be mandatory rather than optional for adjacent mines to conduct coordinated and consolidated wildlife monitoring in order to ensure the collection of meaningful and comparable data. The second change proposed to clearly specify that persons conducting the wildlife surveys must be qualified wildlife professionals.

At the Environmental Quality Council Hearing on April 23, 1992 the EQC decided against requiring coordinated monitoring. Members of the Council felt that the Department should honor the wishes of the Land Quality Advisory Board which believed that coordinated monitoring should be conducted voluntarily. The Council accepted the redefinition of "qualified wildlife professionals".

Editorial changes were made throughout Appendix B to clarify what is required by regulation by changing "should" to "shall" or "must".

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Dated this 8 day of May, 1992



John Schiffer
Hearing Examiner
Environmental Quality Council

APPENDIX B

WILDLIFE MONITORING REQUIREMENTS FOR SURFACE COAL MINING OPERATIONS

INTRODUCTION

Procedures specified in this Appendix are required for surface coal mining operators per Chapter II, Section 3(b)(iv)(B) and Chapter IV, Section 3(o)(iv) of the WDEQ/LQD Rules and Regulations. The requirements herein shall become effective January 1 following filing with the Wyoming Secretary of State. The monitoring procedures specified in this Appendix are applicable to surface coal mines disturbing 640 acres or more of land. Where landowner constraints prevent access to adjoining lands, monitoring would not be required unless it could be reasonably conducted from a distance.

Permission for significant departures from this Appendix shall be requested by formal proposal to the LQD. Proposed alternatives will be reviewed by the appropriate wildlife agencies prior to approval and implementation. Alternative methods which are equally effective as those recommended in this Appendix will be given due consideration and may be approved by the Administrator. Specific procedures in this Appendix may be waived by the Administrator where the operator affirmatively demonstrates that the impact cannot occur or is not a reasonable concern during the life of the mine. The type and amount of monitoring may be modified depending upon the wildlife species and habitats on and adjacent to the permit area, the size of the area to be affected over the mine life, and site-specific problems.

Operators with overlapping monitoring areas shall coordinate their monitoring programs to eliminate duplication. Though not required, operators should consider coordinated and consolidated monitoring efforts with neighboring mines in order to assure the collection of meaningful and comparable data. Qualified wildlife professionals must be utilized for the collection and analysis of data in order to assure accuracy and consistency. Each mine's annual report to the LQD shall include the monitoring data and analysis specified by this Appendix. Data comparisons should consider all years since the onset of data collection, though only the data for the current year and the four previous years need be presented in the annual report. Data analysis procedures and standardized reporting shall be in a form acceptable to the Administrator. The Administrator will strive to ensure the timely review of wildlife monitoring data provided in annual reports to the LQD and the cumulative analysis of monitoring data from all operators.