



# BKS Environmental Associates, Inc.

January 16, 2009

Craig Hults, Environmental Scientist I  
Wyoming Department of Environmental Quality,  
Land Quality Division  
122 West 25<sup>th</sup> Street  
Herschler Building – 3W  
Cheyenne, WY 82002

**FILED**  
JAN 16 2009  
Jim Ruby, Executive Secretary  
Environmental Quality Council

**Re: Docket No. 08-4101, Rule Package 1-S**

Dear Mr. Hults:

I wish to extend my appreciation to the Wyoming Department of Environmental Quality – Land Quality Division and members of the Wyoming Mining Association for their hard work over the last five years in bringing the proposed rule changes for vegetation sampling and determination of reclamation success as part of Rule Package 1-S. Thanks go also to the Environmental Quality Council for allowing me to comment on these proposed rules. As a long-term member of the vegetation consulting community in Wyoming, I have watched this revision process over the last several years and understand well the dynamics and discussion that has occurred. I submit the following as comments:

**1) General Comment on Flexibility in Pre-Sampling Negotiations**

Although phrases such as “will be determined by the Administrator” or “as approved by the Administrator” have been part of the current rules and regulations, it is my desire that continued flexibility be allowed during implementation of the proposed rules and regulations. Working with the WDEQ prior to initiation of fieldwork evaluations has been historically beneficial to me. However, based on existing permit conditions and site specific nature of each mining operation, as well as regional differences, continued flexibility by the WDEQ-LQD must be part of the pre-sampling negotiations.

**2) Inclusion of *Salsola tragus* and *Kochia scoparia* within the Definition of Species Lacking Creditable Value (page 37 of 149)**

*Salsola tragus* and *Kochia scoparia* are both listed under this definition. These two species are quite common within recently seeded areas and can often be controlled during the first two growing seasons, if necessary, by mechanical means. In addition, both often crowd themselves out after two growing seasons. They provide valuable “mulching” effects for more desirable perennial plants during those early years. Their listing under this definition is unnecessary, in

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my mind, as both are short-lived and would likely not be present during any submittal for final bond release. In addition, no restriction on seed quality is present for these two species within the State of Wyoming Department of Agriculture Chapter 51.

**3) Inclusion of *Bromus tectorum* and *Bromus japonicus* within the Definition of Species Lacking Creditable Value (page 37 of 149)**

Flexibility in negotiation with the WDEQ-LQD on issues pertaining to *Bromus tectorum*, cheatgrass, and *Bromus japonicus*, Japanese brome, are essential for the following reasons:

- a) Degraded pre-mine vegetation communities exist throughout the mining regions of Wyoming that often contain such species;
- b) Salvaged topsoil from such communities will contain plant seed;
- c) Both species are considered "regulated weeds" ONLY under the Wyoming Department of Agriculture Chapter 51 regulations pertaining to seed, i.e., not considered Prohibited Noxious and Restricted Noxious;
- d) Per "c" above, seed quality in the State of Wyoming does not exclude seed contamination by cheatgrass or Japanese brome, both of which are allowed up to 1200 seeds per pound;
- e) The two plants listed above are not currently on the state list of designated and prohibited noxious weeds under the Weed and Pest Control Act;
- and,
- f) Resulting seeded plant communities, defined and described by cover estimates, will often reflect such topsoil and seed contamination, especially in drought years.

**4) Number of Sampling Years for Bond Release**

The current revised regulations (8-28-2008, page 107 of 149) state that the requirements for cover, production and species diversity must be met for "two out of four years beginning no sooner than year eight of the bond responsibility period". It is unclear whether this means two consecutive years for all parameters. This should be clarified and flexibility instilled that allows an operator in consultation with WDEQ-LQD to utilize differing years' cover, production, and species diversity and composition data.

Once again, thank you for your consideration of my comments.

Sincerely,



Brenda K. Schladweiler, Ph.d  
BKS ENVIRONMENTAL ASSOCIATES, INC.