

**BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING**



JUNE 6, 2011

IN THE MATTER OF THE)	
PROPOSED REVISION OF)	STATEMENT OF PRINCIPAL
THE LAND QUALITY)	REASONS FOR ADOPTION
DIVISION RULES RELATED)	
TO THE REGULATION OF)	DOCKET #: 11-4101
COAL MINING)	

**Draft Proposed Rules and Statement of Reasons
Coal Rules and Regulations, Chapters 1, 2, 4, 12 and 16
Ownership & Control (O&C) Rule Package**

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Introduction to O&C Rule Package

This rule package is intended to address deficiencies identified by the Office of Surface Mining Reclamation and Enforcement (OSM). On October 28, 1994, December 19, 2000 and December 3, 2007, the OSM promulgated final rules that adopted or revised certain regulatory definitions and provisions pertaining to: review of applications; permit eligibility; application information; applicant, operator, and permittee information; automated information entry and maintenance; permit suspension and rescission; ownership and control findings and challenge procedures; transfer, assignment, or sale of permit rights; and alternative enforcement (59 FR 54306, 65 FR 79582 and 72 FR 68000). After promulgation the rules were challenged on several legal fronts and were not implemented until the legal challenges had been resolved.

Under 30 CFR 732.17(d), the OSM is required to notify States of all changes in the Act and the Federal regulations that may require a State to modify its regulatory program to remain consistent with all Federal requirements. Additionally, under 30 CFR 732.17(c), the OSM must also notify States whenever it determines that such amendments are in fact required. The OSM drafted an analysis of the LQD's program on October 2, 2009 and concluded that numerous amendments to the program were necessary to make Wyoming's program no less effective than the recently promulgated rules. The following rule package was drafted to address those deficiencies identified in the OSM's October 2, 2009, 732 letter.

This rule package also provides draft language to address four concerns the OSM identified in response to Wyoming's formally submitted revegetation rule package (10/15/2009 amendment). The LQD received a concern letter from OSM which detailed 5 areas that could potentially be considered deficient or less effective than the federal regulations. The required amendments are discussed in the Statement of Reasons where appropriate. The concerns noted by the OSM required revised rule language or the reestablishment of language which was removed during the previous rulemaking and were substantive in nature which therefore required further rulemaking.

The rule package was presented to the LQD Advisory Board on August 25, 2010 and was recommended to advance to the Environmental Quality Council for formal rulemaking after minor corrections were made. The Advisory Board also recommended revising the statement of reasons to address comments that were made during the meeting. Those corrections and revisions are noted in the statement of reasons where required.

The authority to amend these rules is provided by Wyoming Statute (W.S.) §§35-11-109(a)(i), 35-11-110(a)(ix), 35-11-112(a)(i), 35-11-114(b), 35-11-402(a), 35-11-406(b)(xiii).

Summary of Proposed Changes to Rules

1. Amended the definitions sections to include four new definitions related to ownership and control. Also added “Surface coal mining and reclamation operations” back in to definitions to address OSM concern. Added the word “surface” back into definitions where removed to comply with OSM concern. And finally the Chapter was revised the subsections to account for addition of new definitions in subsection 2.
2. Addressed OSM concern regarding the map scale requirements. Added detailed required application information as required by the revised Ownership and Control rules adopted by OSM. Added language to clarify that wildlife enhancement is not limited to revegetation efforts as noted in OSM concern letter regarding revegetation rule package. Corrected numerous incorrect citations and added the word “surface” where it was removed from the rules during the promulgation of Rule Package 1-S.
3. Corrected improper citations and added the word “surface where it was removed from Chapter 4 as part of Rule Package 1-S. This is to address OSM concerns noted in their review of Rule Package 1-S.
4. Added details regarding review process for a permit eligibility determination and details the procedures and requirements and related Applicant Violator System (AVS) entries. The reviews below basically fall into 3 categories: review of applicant and operator information, review of permit history and review of compliance history and are required by the revised OSM regulations.
5. Added requirements related to AVS and the LQD’s enforcement regulations. Requires the LQD to notify those persons identified as owners or controllers and also details when enforcement actions may be warranted. These changes are proposed to address OSM deficiencies related to revised ownership and control regulations.

Summary of Advisory Board Comments and Changes Made Since AB Meetings

1. Clarified the statement of reasons regarding the application of the ten percent requirement under the adjudication section of Chapter 2. (AB Minutes, pages 21-25)
2. Clarified the operation of the rules in relationship to overlapping permit boundaries and overstrip areas. (AB Minutes, pages 27-32)
3. Revised the rules to remove the use of general pronouns to identify who the rules applied. (AB Minutes, pages 40-42)
4. Corrected numerous Chapter citations that were not corrected due to the revisions in Rule Package 1-S. (AB Minutes, pages 49-50)

1. Proposed Rule Amendment: Definitions, Chapter 1 Revisions

Section 2. **Definitions.** The definitions included in the Wyoming Environmental Quality Act, are hereby adopted by this reference. All references to the “Act” herein refer to the Wyoming Environmental Quality Act, as amended.

...

No changes are proposed to the previous sections, revised language begins below.

(i) “Applicant violator system or AVS” means an automated information system of applicant, permittee, operator, violation and related data the Office of Surface Mining Reclamation and Enforcement maintains to assist in implementing the Surface Mining Control and Reclamation Act of 1977, as amended.

A similar definition was included in the Memorandum of Understanding (MOU) between Wyoming and the OSM (March 31, 1991). The term was revised as part of the Federal rule changes promulgated in 2000 (65 FR 79594). Wyoming has proposed to adopt this revised definition above in the effort to remove deficiencies and place language contained in the MOU into rule as directed by OSM.

Current Subsections (i) through (s) will be reorganized to reflect the addition of proposed subsection (i) above. Due to the addition these subsections will become subsections (j) through (t).

(u) “Coal exploration” means either:

(i) The field gathering of surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical or other techniques necessary to determine the quality and quantity of overburden and coal of an area. If this activity results in the extraction of coal, the coal shall not be offered for commercial sale (except for test burns); or

(ii) The gathering of environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations.

The addition of the word “surface” above is proposed to address an OSM concern regarding having undefined terms with in the Coal Rules and Regulations (May 21, 2010 concern letter from OSM). The word “surface had been removed during the promulgation of Rule Package 1-S. In their review of that formal submission they found that the removal of the term in combination with removing the definition for “surface coal mining and

reclamation operations” left some areas without defined terms. Rather than attempting to create a new definition it was decided that where the term or word was removed it would be put back into rule as originally approved.

...

Former Subsections (u) through (y) will be revised to Subsections (v) through (z) to reflect the addition of proposed new definitions.

(aa) “Control or controller” as used in Chapters 1, 2, 12 and 16 means or refers to:

(i) A permittee of a surface coal mining operation;

(ii) An operator of a surface coal mining operation; or

(iii) Any person who has the ability to determine the manner in which a surface coal mining operation is conducted.

The above definition was added by the OSM in their proposed revision to the O&C regulations and is discussed more fully at 72 FR 68003 (12/3/2007). The original definitions contained the terms “owns or controls”, and the decision was made by the OSM to define the two terms separately to remove the use of rebuttable presumptions of ownership or control (e.g., an officer or director was previously presumed to be an owner or controller). The above definition mirrors the current Federal definition and was identified as a deficiency in WY’s program in the OSM’s 732 review.

...

Current Subsections (z) through (at) will be revised to reflect the reorganization of the Chapter. The designated subsections are proposed as Subsections (ab) through (av).

(aw ~~at~~) “Existing structure” means a structure or facility used in connection with or to facilitate surface coal mining and reclamation operations for which construction begins prior to the approval of a State program pursuant to Section 503 of P.L. 95-87.

The word “surface” is added for conformity with the OSM’s concern letter regarding the promulgation of Rule Package 1-S as discussed previously.

...

Former Subsections (av) and (aw) will be revised to (ax) and (ay) to reflect the reorganization of the Chapter.

(az ~~ax~~) “Farm” means, with respect to alluvial valley floors, one or more land units on which agricultural activities are conducted. A farm is generally considered to be the combination of land units with acreage and boundaries in existence prior to August 3, 1977, or, if established after August 3, 1977, with those boundaries based on enhancement of the farm's agricultural productivity and not related to surface coal mining operations.

The word “surface” is reinserted as described above.

...

Current Subsections (ay) through (bo) are revised to (ba) through (bq) to reflect the addition of proposed new definitions.

(br ~~bp~~) “Imminent danger to the public” means the existence of any condition or practice, or any violation of a permit or other requirements of the Act in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

The word “surface” is reinserted as described above.

...

Current Subsections (bq) through (bw) are revised to (bs) through (by) to reflect the addition of proposed new definitions.

(bz ~~bx~~) “Joint agency approval” means, for surface coal mining operations, the approval of mining or reclamation plans that would adversely affect 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.

(ca ~~cy~~) “Land use” means for surface coal mining operations, specific uses or management-related activities, rather than the vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal uses occur. Changes of land use or uses from one of the following categories to another shall be considered as a change to an alternative land use which is subject to approval by the Administrator. Land used for mine facilities in support of the operations which are adjacent to or an integral part of these operations are also included. Support facilities include, but are not limited to, parking,

storage or shipping facilities.

The word “surface” is reinserted as described above.

...

Current Subsections (bz) through (cd) are revised to (cb) through (cf) to reflect the addition of proposed new definitions. No changes to the definitions in those sections are proposed.

(cg ee) “Materially damage the quantity or quality of water” means, with respect to alluvial valley floors, changes in the quality or quantity of the water supply to any portion of an alluvial valley floor where such changes are caused by surface coal mining and reclamation operations and result in changes that significantly decrease the capability of the alluvial valley floor to support subirrigation or flood irrigation agricultural activities.

The word “surface” is reinserted as described above.

...

Current Subsections (cf) through (cl) are revised to (ch) through (cn) to reflect the addition of proposed new definitions. No changes to the definitions in those sections are proposed.

(co) “Notice of violation” means a written notification from a regulatory authority or other governmental entity as specified in the procedures outlined in Chapter 16 of the Land Quality Division, Rules and Regulations.

OSM added the term “violation notice” to clarify that the term meant the written notification from the regulatory authority (2000 rule, 65 FR 79663). WY proposes to use the term “notice of violation” in order to provide conformity with the terms used in Chapter 16.

...

Current Subsections (cm) and (cn) are revised to (cp) and (cq) to reflect the addition of proposed new definitions. No changes to the definitions in those sections are proposed.

(cr) “Own, owner or ownership” as used in Chapters 1, 2, 12 and 16 and excluding the context of real property ownership means being a sole proprietor or owning of record in excess of 50 percent of the voting securities or other instruments of ownership of an entity.

The revisions to the Federal rules in 2000 separated “owns or own” from “controls or control”, applied the rule to sole proprietors and clarified that the rule did not apply to ownership of real property (65 FR 79594-96). A 2007 revision added the term “owning of record” as used in SMCRA (72 FR 68005-07). WY has proposed adopting a similar definition which limits its application to the Chapters referenced above as these are the Chapters which address O&C issues.

...

Current Subsections (co) through (cy) are revised to (cs) through (dc) to reflect the addition of proposed new definitions. No changes to the definitions in those sections are proposed.

(~~dd~~ ~~ez~~) “Probable hydrologic consequences” means the projected impacts or changes to the hydrologic regime caused by the proposed surface coal mining and reclamation operation including the effects of adjacent mining operations.

The word “surface” is reinserted as described above.

...

Current Subsection (da) was revised to (de) to reflect the addition of proposed new definitions. No change to the definition in that section is proposed.

(~~df~~ ~~db~~) “Property to be mined” means, for surface coal mining operations, both the surface estates and mineral estates within the area covered under the term of the permit and the area covered by underground workings.

The word “surface” is reinserted as described above.

...

Current Subsections (dc) through (dn) are revised to (dg) through (dr) to reflect the addition of proposed new definitions. No changes to the definitions in those sections are proposed.

(~~ds~~ ~~de~~) “Road(s)” means a surface corridor of affected land associated with travel by land vehicles used in surface coal mining and reclamation operations or coal exploration. A road consists of the roadbed, shoulders, parking and side areas, approaches, structures, ditches, and surface. The term includes access and haulroads constructed, used, reconstructed, improved, or maintained for use in surface coal mining and reclamation operations or coal exploration, including use by coal hauling vehicles to and from transfer, processing, or storage areas. The term does not include ramps and

routes of travel within the immediate mining area or within spoil or coal mine waste disposal areas. Immediate mining area refers to areas subject to frequent surface changes. This includes areas where topsoil and overburden are being moved and areas undergoing active reclamation.

The word “surface” is reinserted as described above.

...

Current Subsections (dp) through (eu) are revised to (dt) through (ey) to reflect the addition of proposed new definitions. No changes to the definitions in those sections are proposed.

(ez) “Surface coal mining and reclamation operations” means surface coal mining operations and all activities necessary or incidental to the reclamation of such operations.

The proposed definition above was removed during the promulgation of Rule Package 1-S. OSM issued a concern letter that stated that the removal of the definition would result in WY’s use of undefined terms. Rather than create new terms the LQD decided to reinsert the rule as originally approved. This change in addition to the proposed reinsertion of “surface” where removed should address the OSM concern.

...

Current Subsections (ev) through (fc) are revised to (fa) through (fh) to reflect the addition of proposed new definitions. No changes to the definitions in those sections are proposed.

(fi ~~fd~~) “Trade secret” means, for purposes of surface coal mining or exploration operations:

The word “surface” is reinserted as described above.

...

Current Subsections (fe) through (fo) are revised to (fj) through (ft) to reflect the addition of proposed new definitions. No other changes to the definitions found in current Section 2 are proposed.

Section 3. Applicability.

(a) All mining operations or operations by which solid minerals are intended to be extracted from the earth, which are commenced or conducted after the effective date of these rules and regulations, shall comply with the requirements hereof, except as

specific exemptions are allowed by the Act.

(b) The discretionary exemptions shall be limited as follows:

(i) W.S. § 35-11-401(g), (h) and (j) shall not apply to surface coal mining operations.

The word “surface” is reinserted as described above.

...

No additional changes to Subsection 3(b) are proposed.

(c) If any provision of these regulations or the applicability thereof to any person or circumstances related to surface coal mining operations is held invalid, the provision or its applicability to other mining operations or circumstances shall not be affected thereby.

The word “surface” is reinserted as described above.

2. Proposed Rule Amendment: Permit Applications, Chapter 2 Revisions

Section 1. General Requirements.

(a) All applications shall be filed in a format required by the Administrator and shall include, at a minimum, all information required by the Act and, for surface coal mining operations, all the applicable information required under Sections 2 through 5 of this Chapter.

...

(c) Maps submitted with the application shall be, or be the equivalent of a U.S. Geological Survey topographic map at a scale determined by the Administrator, but in no event smaller than 1:24,000. All maps shall contain a title relative to the subject matter of the map, a map number, legend, and show the limits of the permit area. The maps shall distinguish among the following phases of the operation:

...

(v) The five “regulatory categories” ~~periods~~ as defined in Chapter 1, Section 2(~~dm~~).

A second concern that the OSM had regarding the promulgation of Rule Package 1-S was the removal of a minimum map scale for maps submitted as part of the application materials. The proposed revision above reinstates the scale that was originally in the rule prior to the promulgation of Rule Package 1-S. Also subsection (v) was revised to use the term as defined in Chapter 1 and the specific section designation was removed in order to facilitate future revisions of definitions section in Chapter 1.

...

No changes to the remainder of Section 1 are proposed.

Section 2. Adjudication Requirements.

(a) In addition to that information required by W.S. § 35-11-406(a), each application for a surface coal mining permit shall contain:

(i) A complete identification of interests, which shall include:

(A) All owners of record of the property to be mined including legal and equitable owners, holders of record of any leasehold interest, and any purchaser

of record under a real estate contract for the property to be mined;

(B) The names, addresses and telephone numbers of any operators, if different from the applicant. If the applicant is a business entity other than a single proprietorship, then the names, addresses and telephone numbers of all limited and general partners, officers, members, directors or person performing a function similar to a director and person who owns of record ten (10) percent or more of the entity or if a corporation then the names, addresses and telephone numbers of principal shareholder, officers and director or other person performing a function similar to a director, and resident agent(s) of the applicant. This shall also include the names under which the applicant, partner or principal shareholder operates or previously operated a surface coal mining operation in the United States within the five years preceding the date of application;

Several amendments were made to 30 CFR 778.11 (72 FR 68019) which require the LQD to revise application requirements in order for the LQD's rules to be as effective as or at least as stringent as the Federal rules. The first is the requirement that requires additional organizational members to be identified in the application. Here the different types of business members were revised and includes the new requirement that owners of record of ten percent of the business entity in question. This requirement is in effect calling for "principal shareholder" information; however to more efficiently address the OSM concern the actual percentage was used because the ten percent requirement applies to business organizations other than corporations. During the August 25, 2010 Advisory Board meeting this issue was discussed and it should be made clear that this requirement applies to actual owners of record. It would not require individual shareholders of a holding company for example, the requirement applies only to ten percent owners of the business entities listed above.

(C) Taxpayer identification numbers for the applicant and operator;

Proposed amendment above adds the Federal requirement to provide applicant and operators taxpayer identification numbers.

(D) The names, addresses and telephone numbers for each business entity in the applicant's and operator's organizational structure, up to and including the ultimate parent entity of the applicant and operator. For each business entity identified the applicant shall also provide the names, addresses and telephone numbers for every president, chief executive officer, director or other persons performing in similar roles and every person who owns of record ten (10) percent or more of the entity;

Several amendments were made to 30 CFR 778.11 in the amended 2007 rule. One of which was the addition of the requirement to identify in an application each business entity in the applicant's and operator's organizational structure "up to and including the ultimate parent entity". The proposed language in (D) above adds that requirement.

(E) The name, address, telephone number, position title and relationship to applicant and operator including percentage of ownership and location in the organizational structure and date the person began functioning in that position for every officer, partner, member, director, person performing a function similar to a director and person who owns of record ten (10) percent or more of the operator or applicant for both the operator and the applicant;

Proposed Subsection (E) above adds the requirement of revised 30 CFR 778.11(c) which requires the applicant to provide the information above for the applicant and operator. The ten percent requirement follows Section 507(b)(4) of SMCRA which details the permit application requirements. Also note that during the Advisory Board meeting a question came up regarding overstrip areas which may be part of two overlapping but different permits. In this instance the applicant is only required to detail information regarding those operators associated with that particular permit. It is not necessary to include information regarding the overlapping permit's operators as this information will be provided by that applicant.

(F) A statement and identification of any pending, current or previous surface coal mining permit in the United States held by the applicant, partner or principal shareholder and the operator and operator's partners, principal shareholders who operate or previously operated a surface coal mining operation during the five years preceding the date of the application. For any surface coal mining operations that the applicant or the operator owned and controlled with the five year period preceding the application submission date and for any surface coal mining operation that the applicant or operator owned and controlled on that date, the applicant shall provide: This shall also identify the regulatory authority with jurisdiction over the operation.

- (I) Permittee's and operator's name and address;
- (II) Permittee's and operator's taxpayer identification numbers;
- (III) Federal or State permit number and corresponding MSHA number;
- (IV) Regulatory authority with jurisdiction over the permit; and

(V) Permittee's and operator's relationship to the operation, including percentage of ownership and location in the organizational structure.

Proposed Subsection (F) above is revised to reflect the newly added requirements of the 2000 amended rules (2000 rule, 65 FR 79669). This section was a newly added section in the 2000 rule and was constructed from provisions in previous 30 CFR 778.13. The requirement for an applicant to provide permit history information for the operator was added while the requirement for submission of the date of MSHA identification number issuance was removed (65 FR 79644).

(G) If the applicant has previously applied for a coal mining permit and the information required in subsections (B) – (F) above is already in AVS, then the information may be updated as follows:

(I) If all or part of the information already in AVS is accurate and complete then the applicant shall certify to the LQD by swearing or affirming under oath and in writing that the relevant information in AVS is accurate, complete and up to date;

(II) If part of the information in AVS is missing or incorrect then the applicant shall submit to the LQD the necessary information or corrections and swear or affirm under oath and in writing that the information to be submitted is accurate and complete; or

(III) If the applicant can neither certify that the data in AVS is accurate and complete nor make corrections then the applicant shall include in the permit application the information required in subsections (B) – (F).

Proposed Subsection (G) above and its Federal counterpart 30 CFR 778.9 allows an applicant who has previously applied for a permit with the regulatory authority and who has information which is already in the Applicant/Violator System (AVS) to update the information as described above. The Federal regulation was a newly adopted section in the 2000 rule and was designed to reduce paperwork and burden on applicants for permits. This avoids the need for an applicant and operator to submit identical information in multiple applications and for the LQD to review and compare multiple submissions to the information in AVS (65 FR 79643).

(H) A statement of all lands, interests in lands, options, or pending bids on interests held or made by the applicant for lands which are contiguous to the proposed permit area; and

(I E) Legal ownership - if the operator includes roads or spur lines within the permit area but does not possess the mineral rights or the right-to-mine for these lands, the legal land description shall then be listed in the application as a separate subsection in Appendix "C". The heading of the subsection shall make it clear that the right-to-mine is not claimed on the described lands. Surface owners shall be listed for all lands crossed by spur lines and roads.

The two subsections above were amended to account for the addition of the newly proposed subsections.

(ii) A complete statement of compliance which shall include:

(A) A brief statement, including identification and current status of the interest, identification of the regulatory authority, and description of any proceedings and their current status, of whether the applicant, the operator, or any subsidiary, affiliate or entity which the applicant or operator or entities owned or controlled by or under common control with the applicant or operator has:

(I) Had any Federal or State coal mining permit suspended or revoked in the five years preceding the date of application; ~~or~~

(II) Forfeited a Federal or State coal mining performance bond or similar security deposited in lieu of bond during the five (5) year period preceding the date of application; or

(III) For each suspension, revocation, or forfeiture identified in subsections (I) and (II) above, the applicant shall provide a brief statement of the facts involved including the permit number, date of action and amount of forfeiture if applicable, responsible regulatory authority and stated reasons for action, current status and indentifying information regarding any judicial or administrative proceedings related to the action.

The proposed revisions above reflect amendments to the 2000 Federal rules. This subsection was revised to clarify that the information required above must be submitted for the applicant and the operator. The requirement to provide a brief statement regarding the facts involved was added, and a 5-year window was imposed on reporting bond forfeitures (2000 rule, 65 FR 79669)

(B) The listing of notices of violation required by W. S. § 35-11-406(a)(xiv) shall describe or identify the violation, identify the associated permit and MSHA numbers, name of person to whom the violation notice was issued, when it occurred, any abatement action taken and if the abatement period has not expired a certification that the violation is being abated or corrected to the satisfaction of the agency with jurisdiction over the violation, the issuing regulatory authority, and any proceedings initiated concerning the violation. This listing shall include only notices

issued to the applicant and operator and any subsidiaries, affiliates, or persons owned or controlled by or under common control with the applicant and operator.

Proposed Subsection (B) above was revised to expand the information required to include the operators associated with the permit application. This mirrors the requirements of 30 CFR 778.14. Also updated the information required for AVS compliance to include additional identifying information and status of any notice of violations (2000 rule, 65 FR 79649).

...

No changes proposed for Subsection (iii) regarding the rights of entry statements required.

(iv) A statement on whether the proposed area to be mined during the term of the permit is within an area designated unsuitable for surface coal mining operations pursuant to W.S. § 35-11-425, under study for any designation, or within an area where mining is prohibited pursuant to Chapter 12, Section 1(a)(v), Land Quality Rules and Regulations. This shall also include the basis on which the applicant claims any available exemption so as to obtain the permit to mine;

The term “surface” was reinserted as previously described.

...

Subsection 2(a)(v) is revised as follows to reinsert the term “surface” where it was removed during the promulgation of Rule Package 1-S.

Section 2(a)(v)(A)(I) (2.) There is a plan for the collection, recording, and reporting of groundwater quality and surface water quality according to Chapter II, Section 12, Water Quality Rules and Regulations. This plan shall, at a minimum, be adequate to measure accurately and record water quantity and quality of the discharges from the permit area in order to plan for modification of surface mining activities, if necessary, to minimize adverse effects on the water of the State.

...

Section 2(a)(v)(A) (III) State Engineer Information. The information from the application for the approved permit to construct a reservoir to store or impound water which affirmatively demonstrates that the reservoirs will be constructed and maintained in accordance with the requirements set out in Chapter V, Section 8, State Engineer Rules and Regulations. In addition, if the application includes a proposed transfer of a well for use as a water well, the application shall contain information from the approved application for a permit to appropriate groundwater which affirmatively demonstrates a

plan for construction, completion and removal of wells in accordance with requirements which are at least as stringent as those governing wells drilled in conjunction with surface coal mining or exploration operations.

...

Section 3 **Vegetation Baseline Requirements.**

...

(c) The applicant shall map the vegetation communities within the permit area and adjacent area and shall sample and describe the characteristics of vegetation communities within the permit area, to include:

...

(iii) The vegetation community map shall identify:

...

(F) The location and extent of designated and/or prohibited noxious weeds per Chapter 2, Section 3(~~k~~ 4); and

...

(f) A “Reference area”, as defined in Chapter 1, Section 2(~~d~~), shall be established for each vegetation community which will be disturbed unless a technical success standard is proposed for evaluation of revegetation.

...

(i) The applicant shall compile an inventory, by vegetation community, of all plants species observed within the study area and corresponding Reference Areas, in accordance with the following requirements:

(i) The plant species shall be listed:

(A) By “life forms” as defined ~~described~~ in Chapter 1, Section 2(~~ea~~);

Section 3(c)(iii)(F) corrects inaccurate citation. Specific citation to definitions in 3(f) and 3(i)(i)(A) were removed so that if Chapter references change when new definitions are added new citations do not need to be added each time. No changes are proposed for the remainder of Section 2 and 3. The next proposed revision to Chapter 2 of the Land Quality Rules and Regulations occurs in Subsection 4 below.

Section 4(a)(xvii) 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. 96-95), 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. This information shall be clearly labeled as "Confidential" and submitted separately from the remainder of the application materials. Requests to disclose confidential information shall be administered under the Department of Environmental Quality, Rules of Practice and Procedure, the Wyoming Public Records Act (W.S. §§ 16-4-2001 thru 16-4-2005 (2007)) and the Wyoming Environmental Quality Act (2007).

Section 4(a)(xvii) above was revised to correct an improper reference to the Wyoming Public Records Act. During the promulgation of Rule Package 1-S an extra zero was inadvertently added to the citation. This addresses an issue noted in the OSM's concern letter regarding a review of the references and citations which were updated in Rule Package 1-S.

...

Section 5 **Mine Plan.**

(a) In addition to that information required by W.S. § 35-11-406(b), each application for a surface coal mining permit shall contain:

...

(viii) A plan for minimizing adverse impacts to fish, wildlife and related environmental values within and adjacent to the permit area during the operation and how enhancement of these resources will be achieved where practicable. Where a plan does not include enhancement measures, the applicant shall affirmatively demonstrate why such measures are not practicable. The plan shall include ~~including~~:

(A) Whether such resources will be enhanced through successful revegetation and other enhancement measures in accordance with Chapter 4, Section 2(r);

(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 Section ~~4 2(a)(vi)(G)~~; and

(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.

(C) Upon request, the Administrator shall provide the resource information required under paragraph (B) of this Section and that required by Section ~~4 2(a)(vi)(G)~~ of this Chapter to the U.S. Department of the Interior, Fish and Wildlife Service regional or field office for their review. This information shall be provided within 10 days of receipt of the request from the Service.

The proposed revision to Section 5(a)(viii) above is intended to address a third concern that the OSM identified in their review of Rule Package 1-S. Wyoming had a required amendment at 30 CFR 950.16(p) (57 FR 30124, July 8, 1992) regarding two distinct items. The first was the requirement that Chapter 2 be revised to specify that when fish and wildlife enhancement measures are not included in a proposed permit application, the applicant must provide a statement explaining why such measures are not practicable. The second item required that the rules be revised to specify that fish and wildlife enhancement measures were not limited to revegetation efforts. Wyoming responded to the concern letter stating that enhancement measures were not limited to revegetation efforts as indicated by the requirements in other places throughout Chapters 2 and 4 of the LQD Rules and Regulations. OSM again pointed out the language above and requested additional clarification. The proposed amendments are intended to address those concerns by referring to “other enhancement measures” described in Chapter 4 and providing for the required statement regarding why enhancement measures are not practicable if necessary.

...

The remainder of the revisions below are intended to correct inaccurate citations contained in Chapter 2. In several instances the corrections were made to simplify future revisions due to the changes that may be made to Chapter 1 definitions which would require changes to the citations each time a definition was added. This addresses an issue noted in the OSM’s concern letter regarding a review of the references and citations which were updated in Rule Package 1-S.

(ix) A plan to ensure the protection of the quantity and quality of, and rights to, surface water and groundwater both within and adjacent to the permit area, which shall include:

...

(D) A plan to collect, record and report water quantity and quality data according to Chapter 4, Section 2(i); and

(I) Surface water monitoring plan.

(1.) The application shall include a monitoring plan based upon the PHC determination required under subsection ~~5(a)(x)~~ ~~2(b)(xii)~~ of this Chapter and the analysis of all baseline hydrologic, geologic, and other information in the permit application. The plan shall provide for the monitoring of parameters that relate to the suitability of the surface water for current and approved postmining land uses and to the objectives for protection of the hydrologic balance as set forth in subsection 5(a)(ix) ~~2(b)(xi)~~ of this Chapter.

(2.) The plan shall identify the surface water quantity and quality parameters to be monitored, sampling frequency, and site locations. At a minimum, the parameters specified in Section ~~2(a)(vi)(L)(III)~~ 4(a)(xi)(C) and ~~(D)~~ ~~(IV)~~ of this Chapter shall be measured. Results of monitoring shall be available for inspection at the mine and available to the Director's designated authorized representative, and shall be reasonably current. Surface water monitoring shall be conducted quarterly unless an alternate frequency, appropriate to the monitored site, is approved by the Administrator. Results of monitoring shall be submitted in the annual report for each monitoring location.

(3.) The plan shall describe how the data may be used to determine the impacts of the operation upon the hydrologic balance.

(II) Groundwater monitoring plan.

(1.) The application shall include a groundwater monitoring plan based upon the PHC determination required under subsection ~~5(a)(x)~~ ~~2(b)(xii)~~ of this Chapter and the analysis of all baseline hydrologic, geologic, and other information in the permit application. The plan shall provide for the monitoring of parameters that relate to the suitability of the groundwater for current and approved postmining land uses and to the objectives for protection of the hydrologic balance set forth in subsection 5(a)(ix) ~~2(b)(xi)~~ of this Chapter.

(2.) The plan shall identify the quantity and quality parameters to be monitored, sampling frequency, and site locations. It shall describe how the data may be used to determine the impacts of the operation upon the hydrologic balance. At a minimum, the parameters specified in Section 4(a)(xii)(C) ~~2(a)(vi)(M)(III)~~ of this Chapter and water levels shall be measured. Groundwater monitoring shall be conducted quarterly unless an alternate frequency, appropriate to the monitored site, is approved by the Administrator. Results of monitoring shall be

available for inspection at the mine and available to the Director's designated authorized representative, and shall be reasonably current. Results of monitoring shall be submitted in the annual report for each monitoring location.

...

(xvi) Road Systems.

(A) Each applicant shall submit plans and drawings for each road as defined in Chapter 1 to be constructed, used, or maintained within the proposed permit area. The plans and drawings shall:

...

(IV) Contain a description of measures to be taken to obtain approval from the Administrator for alteration or relocation of a natural stream channel under Chapter 4 Section 2(j)(vii)(D)(~~IV~~);

...

Section 6 Reclamation Plan.

...

(b) The reclamation plan shall also describe how the operator will reclaim the affected lands to the proposed postmining land use in accordance with Chapter 4, Section 2(a) which shall include:

...

(iv) A plan for measurement of revegetation success to include:

(A) How a "Reference area" shall be used for cover and production, unless technical standards for cover and production have been approved for a projected postmine community. A "Reference area" is defined in Chapter 1, Section 2(~~dl~~).

3. Proposed Rule Amendment: Husbandry Measures and Citation Corrections, Chapter 4 Revisions

CHAPTER 4

ENVIRONMENTAL PROTECTION PERFORMANCE STANDARDS

FOR SURFACE COAL MINING OPERATIONS

Section 2. General Environmental Protection Performance Standards

...

(c) Topsoil, subsoil, overburden, spoil, excess spoil, refuse, coal mine waste, acid-forming materials, toxic materials and other wastes.

...

(xi) Overburden, spoil, excess spoil, and refuse.

...

(G) Excess Spoil. In addition to the requirements provided in subsections (xi)(A) through (xi)(D) above (with the exception of (xi)(B)(I)), excess spoil piles shall be located, designed, constructed and inspected as prescribed below.

...

(II) Design Standards:

(1.) All excess spoil shall be:

...

c. Designed using current, prudent professional standards and certified by a qualified registered professional engineer. All piles shall be designed and constructed in accordance with the standards of this subsection. Special structural provisions shall be designed using prudent current engineering practices, in accordance with Chapter 2, Section 5(~~a~~ ~~b~~)(xv).

...

(xii) Coal mine waste.

(A) Coal mine waste shall be disposed only in existing or, if

new, in an approved disposal site within a permit area. Coal mine wastes shall not be used in the construction of dams, embankments, or diversion structures. The disposal area shall be designed, constructed and maintained:

(I) In accordance with the excess spoil disposal requirements of (xi)(F) and (xi)(G) ~~(I), and (K)-(O)~~ above; and

...

Section 2(d)(i) (J) Monitoring of permanent revegetation on reclaimed areas before and after grazing shall be conducted at intervals throughout the bond responsibility period in accordance with the plan required by Chapter 2, Section 6(b)(iii)(J)~~(iv)~~. Monitoring results shall be presented in the annual report.

Citation correction above due to revisions made during the promulgation of Rule Package 1-S.

Section 2(d)(i) (M) The following is a list of normal husbandry practices which, if conducted in a prudent manner, will not restart the minimum ten-year bond responsibility period for re-establishing vegetation.

...

(II) Using approved species, the operator may transplant tree and shrub stock and/or plant containerized or bare root tree or shrub stock into reclamation provided the performance standards of Chapter 4 Section 2(d)(i)~~(H)~~(I) for trees, and Chapter 4 Section 2(d)(ii)~~(A B)~~(II)(2) for shrubs are not compromised.

The proposed revision to Subsection (II) above addresses the fourth concern the OSM had with Rule Package 1-S. There the OSM noted that the citations provided in the rule package related to bond release or did not exist at all. The proposed revision above adds the correct citations. Also the term "surface" was added back into the title of Chapter 4 as originally approved.

...

Section 2(d)(ii)(B)(I) (2.) The operator shall choose one type of "Reference area" as defined in Chapter 1, Section 2~~(d)~~. The "Reference area" shall be approved by the Administrator.

Section 2(d)(ii)(C) (II) Reclamation shall be deemed complete when productive capability is equivalent to an approved "reference area" (Chapter 1 Section

~~2(d)~~) or published county production data collected the same years the crops are harvested. This standard shall be demonstrated for the two out of four years of the bond responsibility period, starting no sooner than year seven.

...

Section 2(d)(ii)(D) (II) If shrub stocking is required, then the standards Section 2(d)(ii)(B)(II)(2.)(A)(II)(2.)(a.) of this chapter apply; and

...

Section 2(f)(iii) Sedimentation ponds shall be designed and constructed to comply with the applicable requirements of subsection 2(g)(iv-vii) of this Chapter. They shall be located as near as possible to the affected lands and out of intermittent or perennial streams; unless approved by the Administrator.

...

Section 2(i) Surface water and groundwater quality and quantity shall be monitored until final bond release to determine the extent of the disturbance to the hydrologic balance. Monitoring shall be adequate to plan for modification of surface mining activities, if necessary, to minimize adverse effects on the water of the State. The operator is responsible for properly installing, operating, maintaining and removing all necessary monitoring equipment. In addition, the operator is responsible for conducting monitoring in accordance with the requirements of Chapter 2, Section 5(a)(ix)(D)(xv) and the approved monitoring plan. Noncompliance results for NPDES discharges shall be promptly reported by the operator to the Water Quality Division Administrator. The operator shall promptly report all other noncompliance results to the Land Quality Division Administrator and shall, after consultation with the Administrator, implement appropriate and prompt mitigative measures for those noncompliance situations determined to be mining caused. The monitoring system shall be based on the results of the probable hydrologic consequences assessment and shall include:

The proposed citation corrections above were intended to address the OSM concern that we look for incorrect citations due to the promulgation of Rule Package 1-S. Also, when specific definitions were cited the specific reference was dropped to aid in future revisions of the definitions in Chapter 1.

4. **Proposed Rule Amendment: AVS Compliance and Review, Chapter 12 Revisions**

The proposed section below describes the review process for a permit eligibility determination and details the procedures and requirements. These changes were added to the Federal requirements under the 2000 O&C rules. A more detailed discussion is provided in the preamble to the rules at 65 FR 79612-79614. The reasons for specific rule changes below are detailed as necessary throughout the following sections. The reviews below basically fall into 3 categories: review of applicant and operator information, review of permit history and review of compliance history.

Section 1. Permitting Procedures.

(a) In addition to the permitting procedures described in the Act, the following shall be applicable to applications for a permit for a surface coal mine operation:

...

(viii) Final Compliance Review. After finding the application suitable for publication but prior to permit issuance, the regulatory authority shall reconsider its approval based on a review of:

(A) The information the applicant submitted regarding applicant, operator, ownership and control information, AVS information and any other available information to review the applicants and operators organizational structure and ownership or control relationships;

(B) The information the applicant submitted regarding applicant permit history, AVS information and any other available information to review the applicant and operator's permit history. In addition, the regulatory authority shall determine if the applicant and operator have previous mining experience and if the applicant or operator does not have any previous mining experience additional ownership and control investigations; and

(C) The information the applicant submitted regarding compliance history, AVS compliance report and any other available information to review histories of compliance with the Wyoming Environmental Quality Act and regulations promulgated thereunder and any other air or water quality laws for the applicant, operator, operations owned and controlled by the applicant and operations the operator owns and controls.

Proposed Subsections (A) – (C) above detail the three part review for permit eligibility. These sections capture the intent of 30 CFR 773.9 through 773.11. Subsection (C) contains the new requirement for a

compliance report from AVS. This is a change from the requirement that a review of the information be merely reviewed (2000 rule, 65 FR 79616 and 79620).

(ix) The regulatory authority shall enter into AVS:

(A) The information submitted in the application regarding business entity type; tax identification numbers, the name, address and phone numbers for the applicant, resident agent, operators if different from the applicant and the applicant's and operator's business organizational structure;

(B) The information submitted pertaining to violations which are unabated or uncorrected after the abatement or correction period has expired; and

(C) The regulatory authority shall update the information above upon verification of any additional information submitted or discovered during the regulatory authority's permit application review.

(D) For the purposes of future permit eligibility determinations and enforcement actions:

(I) All permit records within 30 days after the permit is issued or subsequent changes are made;

(II) All unabated or uncorrected violations within 30 days after the abatement or correction period for a violation expired;

(III) All changes to information initially required to be provided by the applicant as part of the application process within 30 days after receiving notice of a change; and

(IV) All changes in violation status within 30 days after abatement, correction, or termination of a violation or a decision from an administrative or judicial tribunal.

Proposed Subsection (ix) above details the information that will be entered into the AVS system as required by 30 CFR 773.8. Unlike the Federal rule specific language is used rather than the cross-references to other sections. This should provide more clarity and ease of administering the rules.

(x) In addition to the specific findings required by W.S. § 35-11-406(n) and based on the reviews required in subsection (viii) above, the Land Quality Division (LQD) shall determine whether the applicant is eligible for a coal mining permit. An applicant is not eligible for a permit if the LQD determines that any surface coal mining operation that:

(A) The applicant directly own or control has an unabated or uncorrected violation;

(B) The applicant or his operator indirectly control has an unabated or uncorrected violation and your control was established or the violation was cited after November 2, 1988; or

(C) The applicant or his operator controls or has controlled mining operations with a demonstrated pattern of willful violations as outlined in W.S. § 35-11-406(o).

Proposed Subsection (x) above is based on the requirements of 30 CFR 773.12(a) and adds the additional qualifier in (C) to comply with statutory requirements. The proposed subsections above details permit eligibility requirements.

(xi) Following the Director's approval of a permit but prior to issuance of that permit, the applicant shall provide the applicant's and operator's information required in subsections (A - C) below for every, officer, partner, member, director, person performing function similar to a director or person who owns, of record, ten (10) percent or more of the applicant's or operator's interests, including:

(A) The person's name, address and telephone number;

(B) The person's position title and relationship to the applicant, including percentage of ownership and location in the organizational structure; and

(C) The date that person began functioning in that position.

Proposed subsection (xi) above is intended to meet the requirements of 30 CFR 773.12(c) which requires that a final update of information is required prior to permit issuance.

(xii) After the applicant completes the above requirements, the DEQ shall request a compliance history report from AVS to determine if there are any unabated or uncorrected violations that affect the applicant's permit eligibility in subsection (x) above. The DEQ shall request this report no more than five business days before a permit is issued.

Proposed Subsection (xii) above details the final compliance report that must be done no more than five business days prior to permit issuance. This proposed language is intended to meet the requirements in 30 CFR 773.12(c).

(xiii) A person may challenge a listing or finding of ownership or control using the procedures detailed below if that person is:

(A) Listed in a permit application or in AVS as an owner or controller of an entire surface coal mining operation, or any portion or aspect thereof; or

(B) An applicant or permittee affected by an ownership and control listing or finding.

Proposed Subsection (xiii) above details who may challenge ownership and control findings. This is a counterpart to 30 CFR 773.25. These challenges may be made regardless of whether there is a pending application (2000 rule, 65 FR 79631).

(xiv) In order to challenge an ownership and control listing or finding a written explanation shall be submitted to the regulatory authority regarding the basis of the challenge along with any evidence or explanatory materials outlined in subsection (E) below. If the challenge concerns a pending permit application the written explanation shall be submitted to the regulatory authority with jurisdiction over the application. If the challenge concerns the applicant's ownership and control of a surface coal mining operation and are not currently seeking a permit the written explanation shall be submitted to the regulatory authority with jurisdiction over the surface coal mining operation.

(A) When a challenge concerns a violation under the jurisdiction of a different regulatory authority, the regulatory authority with jurisdiction over the permit application or permit shall consult the regulatory authority with jurisdiction over the violation and the AVS Office to obtain additional information.

(B) The regulatory authority responsible for deciding a challenge under this section may request an investigation by the AVS Office.

(C) At any time a person listed in AVS as an owner or controller of a surface coal mining operation may request an informal explanation from the AVS Office as to the reason you are shown in the AVS in an ownership or control capacity.

(D) When a challenge is made to a listing of ownership and control, or a finding of ownership and control, the challenger must prove by a preponderance of the evidence that they either:

(I) Do not own or control the entire operation or relevant portion or aspect thereof; or

(II) Did not own or control the entire operation or

relevant portion or aspect during the relevant time period.

(E) In order to meet the burden of proof in subsection (D) above, the challenger must present reliable, credible, and substantial evidence and any explanatory materials to the regulatory authority. A request to hold materials submitted under this Section confidential may be made to the Administrator subject to Land Quality Division Rules and Regulations and the Wyoming Public Records Act. Acceptable materials include, but are not limited to:

(I) Notarized affidavits containing specific facts concerning the duties that were performed for the relevant operation, the beginning and ending dates pertaining to ownership or control of the operation, and the nature and details of any transaction creating or severing ownership or control of the operation in question;

(II) Certified copies of corporate minutes, stock ledgers, contracts, purchase and sale agreements, leases, correspondence, or other relevant company records;

(III) Certified copies of documents filed with our issued by any State; municipal, or Federal government agency;

(IV) An opinion of counsel, when supported by evidentiary materials, a statement by counsel that they are qualified to render the opinion and a statement that counsel has personally and diligently investigated the facts of the matter.

Proposed Subsection (xiv) above details how to challenge a ownership and control listing or finding. It establishes burdens of proof and provides detail regarding acceptable evidence that may be presented. This subsection also details the proper authority for determining challenges as added in the 2000 rule (65 FR 79631).

(F) Within sixty (60) days of receipt of a challenge as described above, the Division will review and investigate the evidence and explanatory materials submitted and any other reasonable available information bearing on the challenge and issue a written decision. The decision shall state whether the challenger own or control the relevant surface coal mining operation, or owned or controlled the operation during the relevant time period. Decisions regarding the challenge will be promptly provided to the challenger by either certified mail, return receipt requested or by any alternative means consistent with rules governing service under the Wyoming Rules of Civil Procedure. Service of the decision will be complete upon delivery and is not incomplete if acceptance of delivery is refused. Appeals of the written decision will be administered under the DEQ's Rules of Practice and Procedure. AVS shall be revised as necessary to reflect these decisions.

Proposed Subsection (F) is intended to meet the requirements of 30 CFR 773.28. It details the review process and requires a written agency decision. It also details procedures for service and appeals and includes a 60-day deadline for the issuance of a decision.

(G) Improvidently issued coal mining permits.

(I) If the DEQ has reason to believe that a permit was improvidently issued to the permittee a review shall be conducted of the circumstances under which the permit was issued. The DEQ shall make a preliminary finding that the permit was improvidently issued if under the permit eligibility requirements in effect at the time of permit issuance the permit should not have been issued because the applicant or operator owned or controlled a surface coal mining and reclamation operation with an unabated or uncorrected violation.

(II) The DEQ will make a finding under subsection (I) above only if the applicant or operator:

(1.) Continue to own or control the operation with the unabated or uncorrected violation;

(2.) The violation remains unabated or uncorrected; and

(3.) The violation would cause the permittee to be ineligible under the permit eligibility criteria under the current rules and regulations.

(III) When a preliminary finding under subsection (I) above is made, a written notice shall be served on the permittee which must be based on evidence sufficient to establish a prima facie case that the permit was improvidently issued. Within thirty (30) days of receiving a written notice the permittee may challenge the preliminary finding by providing the DEQ with evidence as to why the permit was not improvidently issued under the criteria of subsections (I) and (II) above. Challenges under subsections (I) and (II)(1.) above shall use the procedures outlined in subsections (D) through (F) above when the challenge is related to whether the permittee or operator currently own or control, or owned or controlled, a surface coal mining operation.

(IV) The DEQ shall serve the permittee with written notice of a proposed suspension or rescission together with a statement of the reasons for the proposed suspension or rescission, if after considering any evidence submitted under subsection (III) above the DEQ finds that a permit was improvidently issued under the criteria of subsections (I) and (II) above. If a permit suspension is proposed, sixty (60) days notice shall be provided and if a permit rescission is proposed one hundred twenty (120) days notice shall be provided.

(V) Appeals regarding the notice shall be governed by the Wyoming Environmental Quality Act, DEQ Rules of Practice and Procedure, the Wyoming Administrative Procedure Act and Chapter 12 of these Rules and Regulations. The times specified in subsection (IV) above shall be applicable unless the Environmental Quality Council has granted a stay for temporary relief.

(VI) Except as provided in subsection (VII) below, the DEQ shall suspend or rescind the permit upon expiration of the notice periods provided in subsection (IV) above unless the permittee has submitted evidence and the DEQ finds that:

(1.) The violation has been abated or corrected to the satisfaction of the agency with jurisdiction over the violation;

(2.) The permittee or operator no longer own or control the relevant operation;

(3.) The DEQ's finding for suspension or rescission was in error;

(4.) The violation is the subject of a good faith administrative or judicial appeal, unless there is an initial judicial decision affirming the violation and that decision remains in force;

(5.) The violation is the subject of an abatement plan or payment schedule that is being met to the satisfaction of the agency with jurisdiction over the violation; or

(6.) The permittee is pursuing a good faith challenge or administrative or judicial appeal of the relevant ownership or control listing or finding unless there is an initial judicial decision affirming the listing or finding and that decision remains in force.

(VII) If an administrative review is requested of a notice of proposed suspension or rescission, the DEQ will not suspend or rescind the permit unless and until the finding is affirmed that the permit was improvidently issued.

(VIII) When a permit is suspended or rescinded under this section, the DEQ shall:

(1.) Issue a written notice requiring that the permittee and operator shall cease all surface coal mining operations under the permit; and

(2.) Post the notice in the District office closest

to the permit area.

(IX) Appeals regarding the decision shall be governed by the Wyoming Environmental Quality Act, DEQ Rules of Practice and Procedure, the Wyoming Administrative Procedure Act and Chapter 12 of these Rules and Regulations.

Proposed Subsection (G) above addresses the requirements for procedures related to permits that have been issued improvidently. The Federal rules are analogous to the statutory provisions of SMCRA at 521(a)(3) (See 65 FR 79670-71).

(~~xv~~ ~~viii~~) In addition to the specific findings required by W.S. § 35-11-406(n), no permit authorizing a delay in the contemporaneous reclamation requirements for a proposed combined surface and underground mining operation shall be approved unless the Administrator finds that:

...

(~~xvi~~ ~~ix~~) In granting surface coal mining permits, the Director shall impose the following conditions on the operation:

...

(~~xvii~~ ~~x~~) In addition to the specific findings required by W.S. § 35-11-406(n), no permit authorizing a delay in the contemporaneous reclamation requirements for a proposed combined surface and underground mining operation shall be approved unless the Administrator finds that:

...

(~~xviii~~ ~~xi~~) In granting surface coal mining permits, the Director shall impose the following conditions on the operation:

...

Subsection headers updated to reflect addition of new subsections. No changes are proposed for the remainder of the Chapter.

5. Proposed Rule Amendment: Enforcement & AVS, Chapter 16 Revisions

Section 2. Enforcement.

...

(h) Within sixty (60) days after issuing a cessation order, the DEQ will notify in writing the permittee, the operator, and any person who has been listed or identified by the applicant, permittee, or OSM as an owner or controller of the operation as defined in Chapter 1 of these rules and regulations. All cessation orders remain in effect and, unless otherwise ordered, do not affect continuing reclamation operations, until the condition, practice or violation has been abated, or until vacated, modified or terminated in writing by the designated representative, Administrator, Director, or Council. Within 30 days after the issuance of a cessation order the permittee must provide or update all the information required under Chapter 2 related to ownership and control. Information does not need to be provided if granted a stay of the cessation order and that stay remains in effect.

The proposed revisions to Subsection (h) above are intended to address the requirements presented in 30 CFR 843.11 that require a 60-day notice period. This proposed subsection also requires the permittee to update the AVS information provided in Chapter 2 within 30 of issuance of a cessation order.

(i) Any notice or order shall be terminated by written notice to the person to whom it was issued, when it is determined that all violations or conditions listed in the notice or order have been abated. This determination may be made by conducting an investigation to confirm the abatement, by accepting the information obtained from a government agency or by accepting a signed statement from a permittee that the violation in a notice of violation has been abated. The Division reserves the right to confirm the information included in a signed statement. Termination shall not affect the right to assess civil penalties.

(j) If at any time, the DEQ discovers that any person own or controls an operation with an unabated or uncorrected violation, the LQD will determine whether enforcement action is appropriate under this Chapter. Results of each enforcement action, including administrative and judicial decisions, shall be entered into AVS.

(k) The specified time for abatement of the violation may be extended up to 90 days from issuance of the notice, if the failure to meet the time previously set was not caused by lack of diligence on the part of the person to whom it was issued (W.S. § 35-11-409(c)).

...

(l ~~k~~) Order to show cause for the suspension or revocation of a permit pursuant to W.S. § 35-11-409(c):

...

(m ~~l~~) All cessation orders, notices for abatement and orders to show cause shall be served on the operator either by tendering a copy at the operation or sending it by certified mail or by hand to the operator. All orders to show cause shall issue forthwith upon a determination that the factors exist which justify its issuance.

(n ~~m~~) Pending completion of the investigation and hearing on any enforcement action taken by the Department, the operator may file with the Council a request for temporary relief. The Council shall expeditiously issue an order or decision granting or denying such relief, which shall be within five days from any request for relief from a cessation order. The Council may grant such relief, under such conditions as it may prescribe, if:

...

(o ~~n~~) Inability to comply shall not be a proper factor for consideration in any decision to vacate, or terminate any notice or order under this subsection or to determine whether a pattern of violation exists. It may only be a factor for the duration of the suspension of a permit and in mitigation of the amount of civil penalty, when not caused by lack of diligence.

(p ~~o~~) Surface coal mining operations conducted by any person without a valid permit constitute a condition or practice which causes or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources. For those operations which are an integral, uninterrupted extension of previously permitted operations, and where the person conducting such operations has filed a timely and complete application for a permit to conduct such operations, the cessation order shall be limited to the unpermitted operation.

Section headers updated to account for the addition of new subsection.