

Oct 05, 2012

**BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL**

**Jim Ruby, Executive Secretary
Environmental Quality Council**



STATE OF WYOMING

OCTOBER 5, 2012

**IN THE MATTER OF THE)
PROPOSED REVISION OF)
THE LAND QUALITY)
DIVISION RULES RELATED)
TO THE REGULATION OF)
COAL MINING)**

ANALYSIS OF COMMENTS

DOCKET #: 12-4102

Coal Rules and Regulations, Chapters 1, 2, 4, 11, 12 and 16

Variable Topsoil, Self-Bonding and Housekeeping Rule Package

The Department of Environmental Quality, Land Quality Division (LQD) received comments from three interested parties on the proposed rules. Below is a response to those comments. The LQD adopted the Office of Surface Mining Reclamation and Enforcement (OSM) comments made in response to the LQD's informal submittal of the rules for review by the OSM.

Wyoming Game and Fish Department

The staff of the Wyoming Game and Fish Department reviewed the proposed rules and concluded that there were "no terrestrial wildlife or aquatic habitat concerns with the proposed revisions".

Response: No changes were made as a result of the comments.

Wyoming Outdoor Council

The Wyoming Outdoor Council (WOC) provided several comments on the proposed rules which were generally supportive of the rules as proposed. The following discussion details those comments and the LQD appreciates the opportunity to clarify.

1. Supported the added requirement in Chapter 2, Section 1(a) that, "All applicants must swear or affirm" that information provided in permit applications is accurate and complete.

Response: No changes were made as a result of the comments.

2. Proposed that specific standards be specified to clarify how a determination of how variation

in topsoil depth will help “meet the specified revegetation goals”, pursuant to the Chapter 4 revision. WOC was concerned it could be too discretionary in the absence of standards.

Response: The language proposed is a mirror of the Federal language in 30 C.F.R. 816.22(d)(1)(i) which was promulgated August 30, 2006 by the OSM. This is a new tool that operators will have to use if they believe it will help meet their revegetation goals. A plan to use variable topsoil depths must be included in a reclamation plan and therefore would go through a technical review. The operator will have to provide a justification for using variable topsoil depths to the LQD. This justification will provide the basis for determining whether the variations will help meet the revegetation efforts. The OSM stated that “[t]he fact that the permit applicant must clearly set forth the justification for any non-uniform redistribution of topsoil should largely protect against potential abuse” (71 FR 51685). The LQD agrees. Additionally the LQD is actively revising guidance documents to include information which is learned through the LQD’s extensive experience evaluating reclamation efforts. Variable topsoil replacement depths will be no exception. As data is gathered and experience catalogued the LQD will continue to develop guidance and standards that share this experience. No changes were made as a result of the comments.

3. Supported the revision to Chapter 12, Section 1(a)(v)(D) which requires a public comment period and opportunity to request a public hearing when an applicant is seeking an authorization for an exception to the prohibition from mining within 100 feet of a public road.

Response: No changes were made as a result of the comments.

4. Suggested that notice should be given to State Historic Preservation Officer or National Park Service and other agencies if cultural resources might be impacted under the proposed rules at Chapter 12, Section 1(a)(vii)(C)(II)(2.).

Response: The referenced rule has been revised to be as stringent as and no less effective than the Federal regulations under the Surface Mining Control and Reclamation Act. The examples that were added to the rules are a mirror of the Federal regulations. The LQD believes that the notice given in this case is only related to claims falling under the valid existing rights regulations. Notice is only given to the agencies with jurisdiction over the feature that would make the land unsuitable for mining under this subsection.

Other cultural resources are typically identified during the permitting application stage. That is when the “might” impact notice is given to a variety of interested agencies. That is the stage where those administering the National Historic Preservation Act make decisions regarding eligibility of features and if eligible, plans for mitigation or avoidance.

No changes were made as a result of the comments.

5. Supported the inclusion of additional documents available for public inspection in Chapter 12, Section 1(a)(vii)(F).

Response: No changes were made as a result of the comments.

Office of Surface Mining Reclamation and Enforcement

The Land Quality Division submitted the rules informally to OSM for their review prior to the EQC hearing. The OSM provided comments in a table which compares the LQD regulations to the Federal regulations. This table was amended to include revisions to the rules as proposed and point out rules which were no less effective than, or not as stringent as, the Federal regulations.

Response: The LQD has reviewed those comments and adopted the changes as proposed by the OSM. Revisions to the proposed rules were made as appropriate and were included in a revised SOPR to the EQC.