

*Aug 22, 2012*

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

**Side-by-side Comparison  
Federal Regulations vs. Land Quality Division Coal Regulations**

**Variable Topsoil Depth**

Federal Regulation	Corresponding State Regulation	Reason for Change
<p><b>30 CFR § 816.22 Topsoil and subsoil.</b></p> <p>(d) <i>Redistribution.</i> (1) Topsoil materials and topsoil substitutes and supplements removed under paragraphs (a) and (b) of this section shall be redistributed in a manner that—</p> <p>(i) Achieves an approximately uniform, stable thickness when consistent with the approved postmining land use, contours, and surface-water drainage systems. Soil thickness may also be varied to the extent such variations help meet the specific revegetation goals identified in the permit;</p> <p>(ii) Prevents excess compaction of the materials; and</p> <p>(iii) Protects the materials from wind and water erosion before and after seeding and planting.</p>	<p><b>Chapter 4, Section 2(c)(v)</b> Topsoil, subsoil, and/or an approved topsoil substitute shall be redistributed in a manner that:</p> <p>(A) Achieves an approximately uniform, stable thickness consistent with the approved permit and the approved postmining land uses, contours and surface water drainage systems. <u>Soil thickness may also be varied to the extent such variations help meet the specific revegetation goals identified in the permit;</u></p> <p>(B) Prevents compaction which would inhibit water infiltration and plant growth;</p> <p>(C) Protects the topsoil from wind and water erosion before and after it is seeded until vegetation has become adequately established; and</p> <p>(D) Conserves soil moisture and promotes revegetation.</p>	<p><b>State Initiative</b></p>

**Side-by-side Comparison  
Federal Regulations vs. Land Quality Division Coal Regulations**

**Self-bonding**

<p><b>30 CFR § 800.23(d)</b> For the regulatory authority to accept an applicant’s self-bond, the total amount of the outstanding and proposed self-bonds of the applicant for surface coal mining and reclamation operations shall not exceed 25 percent of the applicant’s tangible net worth in the United States. ...</p>	<p><b>Chapter 11, Sec.2(a)(xii)(A)</b> For the Administrator to accept an operator's self-bond, the total amount of the outstanding and proposed self-bonds of the operator shall not exceed 25 percent of the operator's tangible net worth in the United States; <del>however the Administrator may allow for an increase in the self-bond amount to 35 percent of tangible net worth for operators that have a ratio of total liabilities to net worth of 1.5 or less and a ratio</del></p>	<p><b>October 14, 2009 Disapproval (74 FR 52677)</b></p>
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	<del>of current assets to current liabilities of 1.7 or greater, or</del>	
<b>30 CFR § 800.23(d)</b> ... For the regulatory authority to accept a corporate guarantee, the total amount of the parent corporation guarantor's present and proposed self-bonds and guaranteed self-bonds for surface coal mining and reclamation operations shall not exceed 25 percent of the guarantor's tangible net worth in the United States. ...	<b>Chapter 11, Sec.2(a)(xii)(B)</b> For the Administrator to accept a parent corporate guarantee, the total amount of the parent corporation guarantor's present and proposed self-bonds and guaranteed self-bonds shall not exceed 25 percent of the parent corporate guarantor's tangible net worth in the United States; <del> however the Administrator may allow for an increase in the self-bond amount to 30 percent of tangible net worth for operators that have a ratio of total liabilities to net worth of 1.5 or less and a ratio of current assets to current liabilities of 1.7 or greater, or</del>	<b>October 14, 2009 Disapproval (74 FR 52677)</b>
<b>30 CFR § 800.23(d)</b> ... For the regulatory authority to accept a non-parent corporate guarantee, the total amount of the non-parent corporate guarantor's present and proposed self-bonds and guaranteed self-bonds shall not exceed 25 percent of the guarantor's tangible net worth in the United States.	<b>Chapter 11 Sec. 2(a)(xii)(C)</b> For the Administrator to accept a non-parent corporate guarantee, the total amount of the non-parent corporate guarantor's present and proposed self-bonds and guaranteed self-bonds shall not exceed 25 percent of the non-parent corporate guarantor's tangible net worth in the United States.	<b>October 14, 2009 Disapproval (74 FR 52677)</b>
<b>No equivalent federal regulation.</b>	<b>Chapter 11 Sec. 2(a)(xii)(D)</b> <del>If the operator chooses to include assets outside the United States in their tangible net worth, the Administrator shall require the information required under subsection (E).</del>	<b>October 14, 2009 Disapproval (74 FR 52677)</b>
<b>No equivalent federal regulation.</b>	<b>Chapter 11 Sec. 2(a)(xii)(E)</b> <del>If the Administrator accepts a foreign parent corporate guarantee or a foreign non parent corporate guarantee, the Administrator shall require:</del>  <del>(I) A legal opinion from a firm recognized to do business in the country of the firm's international headquarters concerning the collectability of the self bond in the foreign country. The opinion shall also provide an estimate of the cost of recovering the self bond under the laws of that foreign country. The firm shall be selected by the Administrator from a list provided by the applicant. The applicant shall be responsible for the cost of the opinion;</del>  <del>(II) A separate bonding instrument to cover the estimated cost of recovering the reclamation bond in the foreign country. This separate bond shall be highly liquid such as cash, letters of credit, certificates of deposit or government securities and be redeemable within 90 days of forfeiture. The</del>	<b>October 14, 2009 Disapproval (74 FR 52677)</b>

	<p><del>Administrator may also require additional information that is deemed necessary to support the self bond; and</del></p> <p><del>(III) All audited financial statements shall be in English and shall be prepared with generally accepted accounting principles, as adopted by the U.S. Financial Accounting Standards Board.</del></p>	
<p><b>Side-by-side Comparison</b>  <b>Federal Regulations vs. Land Quality Division Coal Regulations</b></p> <p><b>Rule Package 1-BZ OSM Concerns</b></p>		
<p><b>30 CFR § 761.5</b> <i>Valid existing rights</i> means a set of circumstances under which a person may, subject to regulatory authority approval, conduct surface coal mining operations on lands where 30 U.S.C. 1272(e) and §761.11 would otherwise prohibit such operations. Possession of valid existing rights only confers an exception from the prohibitions of §761.11 and 30 U.S.C. 1272(e). A person seeking to exercise valid existing rights must comply with all other pertinent requirements of the Act and the applicable regulatory program.</p>	<p><b>Chapter 1, Section 2(fq)</b> "Valid existing rights (VER)" means a set of circumstances under which a person may, subject to regulatory authority approval, conduct surface coal mining operations on lands where Section 522(e) of P.L. 95-87 (2009) (<a href="http://www.gpoaccess.gov/uscode/">http://www.gpoaccess.gov/uscode/</a>) and 30 C.F.R. §761.11 (2009) (<a href="http://www.gpoaccess.gov/cfr/retrieve.html">http://www.gpoaccess.gov/cfr/retrieve.html</a>) would otherwise prohibit or limit such operations. <u>Possession of valid existing rights only confers an exception from the prohibitions of 30 C.F.R. §761.11 and Section 522(e) of P.L. 95-87.</u> A person seeking to exercise VER shall comply with all other applicable requirements of the Act and rules and regulations promulgated thereunder and meet the standards below.</p>	<p><b>8/17/2011 Concern Letter, Section 1.</b></p>
<p><b>30 CFR § 761.5</b> <i>Valid existing rights</i> means ...</p> <p>(b) Except as provided in paragraph (c) of this definition, a person claiming valid existing rights also must demonstrate compliance with one of the following standards: ...</p> <p>(2) <i>Needed for and adjacent standard.</i> The land is needed for and immediately adjacent to a surface coal mining operation for which all permits and other authorizations required to conduct surface coal mining operations had been obtained, or a good faith attempt to obtain all permits and authorizations had been made, before the land came under the protection of §761.11 or 30</p>	<p><b>Chapter 1, Section 2(fq)</b> "Valid existing rights (VER)" means ...</p> <p>(ii) Except as provided in subsection (iii) below, a person claiming VER shall also demonstrate compliance with one of the following standards. Procedures and requirements related to the demonstration are detailed in Chapter 12 of the Division's Coal Rules and Regulations. ...</p> <p>(B) "Needed for and adjacent standard" means the land is needed for and immediately adjacent to a surface coal mining operation for which all permits and other authorizations required to conduct surface coal mining operations had been obtained or a good faith attempt to obtain all permits and</p>	<p><b>8/17/2011 Concern Letter, Section 2.</b></p>

<p>U.S.C. 1272(e). To meet this standard, a person must demonstrate that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of §761.11 or 30 U.S.C. 1272(e). Except for operations in existence before August 3, 1977, or for which a good faith effort to obtain all necessary permits had been made before August 3, 1977, this standard does not apply to lands already under the protection of §761.11 or 30 U.S.C. 1272(e) when the regulatory authority approved the permit for the original operation or when the good faith effort to obtain all necessary permits for the original operation was made. In evaluating whether a person meets this standard, the agency making the determination may consider factors such as:</p> <p>(iv) Whether the land lies within the area identified on the life-of-mine map submitted under §779.24(c) or §783.24(c) of this chapter before the land came under the protection of §761.11.</p>	<p>authorizations has been made, before the land came under the protection of Section 522(e) of P.L. 95-87 (2009) or 30 C.F.R. §761.11 (2009). To meet this standard a person shall demonstrate that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of 522(e) of P.L. 95-87 (2009) or 30 C.F.R. §761.11(2009). Except for operations in existence before August 3, 1977, or for which a good faith effort to obtain all necessary permits had been made before August 3, 1977, this standard does not apply to lands already under the protection of 522(e) of P.L. 95-87 (2009) or 30 C.F.R. §761.11 (2009) when the Department approved the permit for the original operation or when the good faith effort to obtain all necessary permits for the original operation was made. In evaluating whether a person meets this standard, the agency making the determination may consider factors such as:</p> <p>...</p> <p>(IV) Whether the land lies within the area identified on the life-of-mine map submitted <u>under Chapter 2, Section 5(a)(i)(B) of the Land Quality Division Coal Rules and Regulations</u> before the land came under the protection of 30 C.F.R. §761.11 (2009).</p>	<p><b>8/17/2011 Concern Letter, Section 2.</b></p>
<p><b>30 CFR § 761.5</b> <i>Valid existing rights</i> means ...</p> <p>(c) <i>Roads</i>. A person who claims valid existing rights to use or construct a road across the surface of lands protected by §761.11 or 30 U.S.C. 1272(e) must demonstrate that one or more of the following circumstances exist if the road is included within the definition of “surface coal mining operations” in §700.5 of this chapter:</p>	<p><b>Chapter 1, Section 2(fq)(iii)</b> Roads. A person who claims valid existing rights to use or construct a road across the surface of lands protected by 522(e) of P.L. 95-87 (2009) or 30 C.F.R. §761.11 (2009) must demonstrate that one or more of the following circumstances exist if the road is included within a surface <u>coal</u> mining operation:</p>	<p><b>8/17/2011 Concern Letter, Section 3.</b></p>
<p><b>§ 761.14 Procedures for relocating or closing a public road or waiving the prohibition on surface coal mining operations within the buffer zone of a public road.</b></p> <p>...</p> <p>(b) You must obtain any necessary approvals from the authority with jurisdiction over the road if you propose to:</p> <p>(1) Relocate a public road;</p>	<p><b>Chapter 12, Section 1. Permitting Procedures.</b></p> <p>(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:</p> <p>...</p> <p>(v) The criteria contained in W.S. § 35-11-406(n)(iv) regarding Section 522(e) of P.L. 95-87 shall mean that, prior to approval of any complete application for a</p>	

<p>(2) Close a public road; or</p> <p>(3) Conduct surface coal mining operations within 100 feet, measured horizontally, of the outside right-of-way line of a public road.</p> <p>(c) Before approving an action proposed under paragraph (b) of this section, the regulatory authority, or a public road authority that it designates, must determine that the interests of the public and affected landowners will be protected. Before making this determination, the authority must:</p> <p>(1) Provide a public comment period and opportunity to request a public hearing in the locality of the proposed operation;</p> <p>(2) If a public hearing is requested, publish appropriate advance notice at least two weeks before the hearing in a newspaper of general circulation in the affected locality; and</p> <p>(3) Based upon information received from the public, make a written finding as to whether the interests of the public and affected landowners will be protected. If a hearing was held, the authority must make this finding within 30 days after the hearing. If no hearing was held, the authority must make this finding within 30 days after the end of the public comment period.</p>	<p>surface coal mining permit, the applicant must demonstrate and the Administrator determine, utilizing the assistance of the appropriate Federal, State or local government agency, if necessary, that the application does not propose a surface coal mining operation on those lands where such operation is prohibited or limited by Section 522(e) of P.L. 95-87; or if one is so proposed, that the applicant either has valid existing rights or was conducting a surface coal mining operation on those lands on August 3, 1977. Subject to the above stated limitations, surface coal mining operations are prohibited or limited:</p> <p>(D) Within 100 feet, measured horizontally, of the outside right-of-way line of any public road, except where mine primary roads join such right-of-way line. Provided, however, the Administrator may specifically authorize operations where the road is to be relocated, closed, or where the area affected lies within 100 feet of a public road. Such specific authorization shall <u>provide a public comment period</u> <del>follow notice</del> and an opportunity <u>to request a</u> <del>for</del> public hearing in the locality of the proposed operation together with a written finding on whether the interests of the public and the affected landowners will be protected from the proposed operation. If a hearing is requested, a public notice shall be published at least two weeks prior to the hearing in a local newspaper of general circulation. If a hearing is held, the <del>Administrator authority</del> shall make this finding within 30 days after the hearing or if a hearing is not held the <del>Administrator authority</del> must make this finding within 30 days after the end of the public comment period. The Administrator may rely upon findings of the public road authority with jurisdiction over the road in specifically authorizing road relocations or closures;</p>	<p><b>8/17/2011 Concern Letter, Section 4.</b></p>
<p><b>§ 761.16 Submission and processing of requests for valid existing rights determinations.</b></p> <p>(b) <i>What you must submit as part of a request for a valid existing rights determination.</i> You must submit a request for a valid existing rights determination to the appropriate agency under paragraph (a) of this section if you intend to conduct surface coal mining operations on the basis of valid existing rights under §761.11 or wish to confirm the right to do so. You may submit this request before preparing and submitting an application for a</p>	<p><b>Chapter 12, Section 1(a)(vii)</b> VER submission requirements and procedures.</p> <p>(A) A request for a VER determination shall be submitted to the appropriate agency identified in subsection (vi) above <u>if the applicant intends to conduct surface coal mining operations on the basis of valid existing rights under 30 C.F.R. §761.11 (2009), (<a href="http://www.gpoaccess.gov/cfr/retrieve.html">http://www.gpoaccess.gov/cfr/retrieve.html</a>), or wish to confirm the right to do so.</u> Requests may be submitted prior to submitting an application for a permit or boundary</p>	<p><b>8/17/2011 Concern Letter, Section 5.</b></p>

<p>permit or boundary revision for the land, unless the applicable regulatory program provides otherwise.</p> <p>(1) <i>Requirements for property rights demonstration.</i> You must provide a property rights demonstration under paragraph (a) of the definition of valid existing rights in §761.5 if your request relies upon the good faith/all permits standard or the needed for and adjacent standard in paragraph (b) of the definition of valid existing rights in §761.5. This demonstration must include the following items:</p>	<p>revision for the land.</p> <p>(I) Property rights demonstrations <u>required under the VER definition at Chapter 1, Section 2(fq)(i)</u> that rely on the good faith/all permits standard or the needed for and adjacent standard <u>detailed in the VER definition at Chapter 1, Section 2(fq)(ii)(A) and (B) respectively</u> shall include the following:</p>	<p><b>8/17/2011 Concern Letter, Section 5.</b></p>
<p><b>§ 761.16 Submission and processing of requests for valid existing rights determinations.</b></p> <p>...</p> <p>(b) <i>What you must submit as part of a request for a valid existing rights determination.</i> You must submit a request for a valid existing rights determination to the appropriate agency under paragraph (a) of this section if you intend to conduct surface coal mining operations on the basis of valid existing rights under §761.11 or wish to confirm the right to do so. You may submit this request before preparing and submitting an application for a permit or boundary revision for the land, unless the applicable regulatory program provides otherwise.</p> <p>...</p> <p>(4) <i>Requirements for standards for mine roads.</i> If your request relies upon one of the standards for roads in paragraphs (c)(1) through (c)(3) of the definition of valid existing rights in §761.5, you must submit satisfactory documentation that:</p>	<p><b>Chapter 12, Section 1(a)(vii)</b> VER submission requirements and procedures.</p> <p>(A) A request for a VER determination shall be submitted to the appropriate agency identified in subsection (vi) above <u>if the applicant intends to conduct surface coal mining operations on the basis of valid existing rights under 30 C.F.R. §761.11 (2009), (<a href="http://www.gpoaccess.gov/cfr/retrieve.html">http://www.gpoaccess.gov/cfr/retrieve.html</a>), or wish to confirm the right to do so.</u> Requests may be submitted prior to submitting an application for a permit or boundary revision for the land.</p> <p>...</p> <p>(IV) If the request relies on one of the standards for roads <u>detailed in the definition of VER at Chapter 1, Section 2(fq)(iii)(A) through (C),</u> the request shall include documentation that:</p>	<p><b>8/17/2011 Concern Letter, Section 6.</b></p>
<p><b>§ 761.16 Submission and processing of requests for valid existing rights determinations.</b></p> <p>...</p> <p>(c) <i>Initial review of request.</i> (1) The agency must conduct an initial review to determine whether your request includes all applicable components of the submission requirements of paragraph (b) of this section. This review pertains only to the completeness of the request, not the legal or technical adequacy of the materials submitted.</p>	<p><b>Chapter 12, Section 1(a)(vii)</b> VER submission requirements and procedures.</p> <p>...</p> <p>(B) Initial review of request.</p> <p>(I) The responsible agency shall conduct an initial review to determine whether the request includes all applicable components of the submission requirements discussed in subsection (A) above. This review examines completeness only <u>not the legal or technical adequacy of the materials submitted.</u></p>	<p><b>8/17/2011 Concern Letter, Section 7.</b></p>

<p><b>§ 761.16 Submission and processing of requests for valid existing rights determinations.</b></p> <p>...</p> <p>(c) <i>Initial review of request.</i></p> <p>...</p> <p>(4) If you do not provide information that the agency requests under paragraph (c)(2) of this section within the time specified or as subsequently extended, the agency must issue a determination that you have not demonstrated valid existing rights, as provided in paragraph (e)(4) of this section.</p>	<p><b>Chapter 12, Section 1(a)(vii)</b> VER submission requirements and procedures.</p> <p>...</p> <p>(B) Initial review of request.</p> <p>...</p> <p>(IV) If the information requested in (II) above is not submitted within the time specified or amended the responsible agency shall issue a determination that the VER has not been demonstrated as discussed <u>in Section 1(a)(vii)(D)(IV) below.</u></p>	<p><b>8/17/2011 Concern Letter, Section 8.</b></p>
<p><b>§ 761.16 Submission and processing of requests for valid existing rights determinations.</b></p> <p>(d) <i>Notice and comment requirements and procedures.</i> (1) When your request satisfies the completeness requirements of paragraph (c) of this section, the agency must publish a notice in a newspaper of general circulation in the county in which the land is located. This notice must invite comment on the merits of the request. Alternatively, the agency may require that you publish this notice and provide the agency with a copy of the published notice. We will publish a similar notice in the Federal Register if your request involves Federal lands within an area listed in §761.11(a) or (b). Each notice must include:</p> <p>(i) The location of the land to which the request pertains.</p> <p>(ii) A description of the type of surface coal mining operations planned.</p> <p>(iii) A reference to and brief description of the applicable standard(s) under the definition of valid existing rights in §761.5.</p> <p>(A) If your request relies upon the good faith/all permits standard or the needed for and adjacent standard in paragraph (b) of the definition of valid existing rights in §761.5, the notice also must include a description of the property rights that you claim and the basis for your claim.</p>	<p><b>Chapter 12, Section 1(a)(vii)(C)</b> Notice and comment requirements and procedures.</p> <p>(I) When the VER request satisfies the completeness requirements of (B) above, the VER applicant must publish a notice in a newspaper of general circulation in the county in which the land is located. This notice must invite comment on the merits of the request. The applicant must provide the Division with a proof of publication. Each notice shall include:</p> <p>(1.) Location of land to which the VER request pertains;</p> <p>(2.) A description of the type of surface coal mining operations planned;</p> <p>(3.) A reference to and brief description of the applicable standards, <u>found in the definition of VER at Chapter 1, Section 2(fq) of these rules,</u> for which the VER request will be determined;</p> <p>a. If the request relies upon the good faith/all permits standard or the needed for and adjacent standard <u>found in Chapter 1, Section 2(fq)(ii)(A) or (B),</u> the notice shall also contain a description of the property rights claimed and the basis for the claim.</p>	<p><b>8/17/2011 Concern Letter, Section 9.</b></p>

<p>(B) If your request relies upon the standard in paragraph (c)(1) of the definition of valid existing rights in §761.5, the notice also must include a description of the basis for your claim that the road existed when the land came under the protection of §761.11 or 30 U.S.C. 1272(e). In addition, the notice must include a description of the basis for your claim that you have a legal right to use that road for surface coal mining operations.</p> <p>(C) If your request relies upon the standard in paragraph (c)(2) of the definition of valid existing rights in §761.5, the notice also must include a description of the basis for your claim that a properly recorded right of way or easement for a road in that location existed when the land came under the protection of §761.11 or 30 U.S.C. 1272(e). In addition, the notice must include a description of the basis for your claim that, under the document creating the right of way or easement, and under any subsequent conveyances, you have a legal right to use or construct a road across the right of way or easement to conduct surface coal mining operations.</p> <p>(iv) If your request relies upon one or more of the standards in paragraphs (b), (c)(1), and (c)(2) of the definition of valid existing rights in §761.5, a statement that the agency will not make a decision on the merits of your request if, by the close of the comment period under this notice or the notice required by paragraph (d)(3) of this section, a person with a legal interest in the land initiates appropriate legal action in the proper venue to resolve any differences concerning the validity or interpretation of the deed, lease, easement, or other documents that form the basis of your claim.</p>	<p>b. If the request relies upon the standard subsection (A)(IV)(1.) above, the notice shall also include a description of the basis for the claim that the road existed when the land came under the protection of 522(e) of P.L. 95-87 (2009) or 30 C.F.R. §761.11 (2009). In addition the notice shall include a description of the basis for your claim that the VER requestor has a legal right to use that road for surface coal mining operations.</p> <p>c. If the request relies upon the standard in subsection (A)(IV)(2.) above, the notice shall also include a description of the basis for the claim that a properly recorded right-of-way or easement for a road in that location existed when the land came under the protection of 522(e) of P.L. 95-87 (2009) or 30 C.F.R. §761.11 (2009). In addition the notice shall include a description of the basis for the claim that, under the document <u>creating</u> <del>creation</del> the right of way or easement, and under any subsequent conveyances, the VER requestor has a legal right to use or construct a road across the right of way or easement to conduct surface coal mining operations.</p> <p>d. If the request relies upon one or more of the standards in Chapter 1, <u>Section 2(fq)(ii), (iii)(A) or (iii)(B) of the</u> VER definition, a statement that the Division will not make a decision on the merits of the request if, by the close of the comment period under this notice or the notice required below, a person with a legal interest in the land initiates appropriate legal action in the proper venue to resolve any differences concerning the validity or interpretation of the deed, lease, easement or other documents that form the basis of the VER claim.</p>	<p><b>8/17/2011 Concern Letter, Section 9.</b></p>
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<p><b>§ 761.16 Submission and processing of requests for valid existing rights determinations.</b></p> <p>...</p> <p>(d) <i>Notice and comment requirements and procedures.</i></p> <p>...</p> <p>(2) The agency must promptly provide a copy of the notice required under paragraph (d)(1) of this section to:</p> <p>(i) All reasonably locatable owners of surface and mineral estates in the land included in your request.</p> <p>(ii) The owner of the feature causing the land to come under the protection of §761.11, and, when applicable, the agency with primary jurisdiction over the feature with respect to the values causing the land to come under the protection of §761.11. For example, both the landowner and the State Historic Preservation Officer must be notified if surface coal mining operations would adversely impact any site listed on the National Register of Historic Places. As another example, both the surface owner and the National Park Service must be notified if the request includes non-Federal lands within the authorized boundaries of a unit of the National Park System.</p>	<p><b>Chapter 12, Section 1(a)(vii)(C)</b> Notice and comment requirements and procedures.</p> <p>...</p> <p>(II) The Division shall promptly provide a copy of the notice required under this Section to:</p> <p>(1) All reasonably locatable owners of surface and mineral estates in the land included in the VER request.</p> <p>(2) The owner of the feature causing the land to come under the protection of 522(e) of P.L. 95-87 (2009) or 30 C.F.R. §761.11 (2009) and, <del>where</del> <u>when</u> applicable, the agency with primary jurisdiction over the feature with respect to the values causing the land to come under the protection of 522(e) of P.L. 95-87 (2009) or 30 C.F.R. §761.11 (2009). <u>For example, both the landowner and the State Historic Preservation Officer must be notified if surface coal mining operations would adversely impact any site listed on the National Register of Historic Places. As another example, both the surface owner and the national Park Service must be notified if the request includes non-Federal lands within the authorized boundaries of a unit of the National Park System.</u></p>	<p><b>8/17/2011 Concern Letter, Section 10.</b></p>
<p><b>§ 761.16 Submission and processing of requests for valid existing rights determinations.</b></p> <p>...</p> <p>(d) <i>Notice and comment requirements and procedures.</i></p> <p>...</p> <p>(3) The letter transmitting the notice required under paragraph (d)(2) of this section must provide a 30-day comment period, starting from the date of service of the letter, and specify that another 30 days is available upon request. At its discretion, the agency responsible for the determination of valid existing rights may grant additional time for good cause upon request. The agency need not necessarily consider comments received after the closing date of the comment period.</p>	<p><b>Chapter 12, Section 1(a)(vii)(C)</b> Notice and comment requirements and procedures.</p> <p>...</p> <p>(III) The letter transmitting the notice required under subsection (II) above shall provide a 30-day comment period, starting from the date of service of the letter, and specify that another 30 days is available upon request. <u>At its discretion, the Land Quality Division, as the agency responsible for the determination of VER may grant additional time for good cause upon request. The Land Quality Division need not necessarily consider comments received after the closing date of the comment period.</u></p>	<p><b>8/17/2011 Concern Letter, Section 11.</b></p>

<p><b>§ 761.16 Submission and processing of requests for valid existing rights determinations.</b></p> <p>...</p> <p>(e) <i>How a decision will be made.</i></p> <p>(1) The agency responsible for making the determination of valid existing rights must review the materials submitted under paragraph (b) of this section, comments received under paragraph (d) of this section, and any other relevant, reasonably available information to determine whether the record is sufficiently complete and adequate to support a decision on the merits of the request. If not, the agency must notify you in writing, explaining the inadequacy of the record and requesting submittal, within a specified reasonable time, of any additional information that the agency deems necessary to remedy the inadequacy.</p>	<p><b>Chapter 12, Section 1(a)(vii)(D)</b> How a VER decision will be made.</p> <p>(I) The Land Quality Division shall review the materials submitted <u>under Subsection (A) above</u>, any comments received <u>under Subsection (C) above</u> and any other relevant reasonably available information to determine whether the record is sufficiently complete and adequate to support a decision on the merits of the request. If not, the Division shall notify the requestor in writing, explaining the inadequacy of the record and requesting submittal, within a specified reasonable time, of any additional information that the agency deems necessary to remedy the inadequacy.</p>	<p><b>8/17/2011 Concern Letter, Section 12.</b></p>
<p><b>§ 761.16 Submission and processing of requests for valid existing rights determinations.</b></p> <p>...</p> <p>(e) <i>How a decision will be made.</i></p> <p>...</p> <p>(3) <i>Impact of property rights disagreements.</i> This paragraph applies only when your request relies upon one or more of the standards in paragraphs (b), (c)(1), and (c)(2) of the definition of valid existing rights in §761.5.</p> <p>(i) The agency must issue a determination that you have not demonstrated valid existing rights if your property rights claims are the subject of pending litigation in a court or administrative body with jurisdiction over the property rights in question. The agency will make this determination without prejudice, meaning that you may refile the request once the property rights dispute is finally adjudicated. This paragraph applies only to situations in which legal action has been initiated as of the closing date of the comment period under paragraph (d)(1) or (d)(3) of this section.</p> <p>(ii) If the record indicates disagreement as to the accuracy of your property rights claims, but this disagreement is not the subject of pending litigation in a court or administrative agency of</p>	<p><b>Chapter 12, Section 1(a)(vii)(D)</b> How a VER decision will be made.</p> <p>...</p> <p>(III) Impact of property rights disagreements. This subsection only applies when the request relies upon on or more of the standards in the Chapter 1, VER definition.</p> <p>(1.) The Division shall issue a determination that the requestor has not demonstrated VER if the property rights claims are the subject of pending litigation in a court or administrative body with jurisdiction over the property rights in question. A requestor may refile the request once the property rights dispute is finally adjudicated. This subsection only applies if the legal action has been initiated as of the closing date of the comment periods discussed <u>under Subsections (C)(I) and (C)(III) above</u>.</p> <p>(2.) If the record indicates disagreement as to the accuracy of the requestor's property rights claims, but the disagreement is not the subject of pending litigation in a court or</p>	<p><b>8/17/2011 Concern Letter, Section 13.</b></p>

<p>competent jurisdiction, the agency must evaluate the merits of the information in the record and determine whether you have demonstrated that the requisite property rights exist under paragraph (a), (c)(1), or (c)(2) of the definition of valid existing rights in §761.5, as appropriate. The agency must then proceed with the decision process under paragraph (e)(2) of this section.</p>	<p>administrative agency of competent jurisdiction, the <u>Land Quality Division</u> <del>responsible agency</del> shall evaluate the merits of the information in the record and determine whether the requestor has demonstrated that the requisite property rights exist under <u>Subsections (i), (iii)(A) or (iii)(B)</u> of the VER definition in Chapter 1 of these Rules and Regulations, as appropriate. The <u>Land Quality Division</u> <del>responsible agency</del> shall then proceed to subsection (<u>D</u> <del>E</del>)(II) above.</p>	<p><b>8/17/2011 Concern Letter, Section 13.</b></p>
<p><b>§ 761.16 Submission and processing of requests for valid existing rights determinations.</b> ... (f) <i>Administrative and judicial review.</i> A determination that you have or do not have valid existing rights is subject to administrative and judicial review under §§775.11 and 775.13 of this chapter.  <b>§ 775.11 Administrative review.</b>  <b>§ 775.13 Judicial review.</b></p>	<p><b>Chapter 12, Section 1(a)(vii)(E)</b> Administrative and judicial review. A determination that the VER requestor does or does not have VER is subject to administrative and judicial review <u>under the Wyoming Administrative Procedures Act, W.S. 16-3-101 through 16-3-115 (2011).</u></p>	<p><b>8/17/2011 Concern Letter, Section 14.</b></p>
<p><b>§ 761.16 Submission and processing of requests for valid existing rights determinations.</b> ... (g) <i>Availability of records.</i> The agency responsible for processing a request subject to notice and comment under paragraph (d) of this section must make a copy of that request available to the public in the same manner as the agency, when acting as the regulatory authority, must make permit applications available to the public under §773.6(d) of this chapter. In addition, the agency must make records associated with that request, and any subsequent determination under paragraph (e) of this section, available to the public in accordance with the requirements and procedures of §840.14 or §842.16 of this chapter.  <b>§ 840.14 Availability of records.</b>  <b>§ 842.16 Availability of records.</b></p>	<p><b>Chapter 12, Section 1(a)(vii)(F)</b> <u>Availability of records.</u> When the <u>Land Quality Division (LQD)</u> is the agency responsible for processing a request subject to notice and comment under subsection (C) above <u>the LQD</u> shall make a copy of that request and related materials available to the public in the same manner as public availability of permit applications under these Rules and Regulations. <u>In addition, the Land Quality Division shall make records associated with that request, and any subsequent determination under Subsection 1(a)(vii)(D) above available to the public.</u></p>	<p><b>8/17/2011 Concern Letter, Section 15.</b></p>

<p><b>§ 761.17 Regulatory authority obligations at time of permit application review.</b> ...</p> <p>(d) <i>Procedures for joint approval of surface coal mining operations that will adversely affect publicly owned parks or historic places.</i> ...</p> <p>(3) Paragraphs (d)(1) and (d)(2) of this section do not apply to:</p> <p>(i) Lands for which a person has valid existing rights, as determined under §761.16.</p> <p>(ii) Lands within the scope of the exception for existing operations in §761.12.</p>	<p><b>Chapter 12, Section 1(a)(vii)(G)</b> Procedures for joint approval of surface coal mining operations that will adversely affect publicly owned parks or historic places.</p> <p>...</p> <p>(III) Subsections (I) and (II) above do not apply to:</p> <p>(1.) Lands for which a person has VER, as determined under Section 1(a)(vi) and (vii) of this Chapter;</p> <p>(2.) Lands within the scope of the exception for existing operations contained in the Chapter 1, <u>Section 2(fq)(iv)</u> “valid existing rights” definition.</p>	<p><b>8/17/2011 Concern Letter, Section 16.</b></p>
<p><b>§ 701.5 Definitions.</b></p> <p><i>Willful</i> or <i>willfully</i> means that a person who authorized, ordered or carried out an act or omission that resulted in either a violation or the failure to abate or correct a violation acted—</p> <p>(1) Intentionally, voluntarily, or consciously; and</p> <p>(2) With intentional disregard or plain indifference to legal requirements.</p>	<p><b>Chapter 16, Section 4(a)(iii)</b> “Willfully” means that <u>a person who authorized, ordered or carried out an act or omission that resulted in either a violation or a failure to abate or correct a violation an individual</u> acted:</p> <p>(A) Intentionally, voluntarily or consciously; and</p> <p>(B) With intentional disregard or plain indifference to legal requirements.</p>	<p><b>8/17/2011 Concern Letter, Section 17.</b></p>
<p><b>§ 846.12 When an individual civil penalty may be assessed.</b></p> <p>(a) Except as provided in paragraph (b) of this section, the Office may assess an individual civil penalty against any corporate director, officer or agent of a corporate permittee who knowingly and willfully authorized, ordered or carried out a violation, failure or refusal.</p> <p>(b) The Office shall not assess an individual civil penalty in situations resulting from a permit violation by a corporate permittee until a cessation order has been issued by the Office to the corporate permittee for the violation, and the cessation order has remained unabated for 30 days.</p>	<p><b>Chapter 16, Section 4(b)</b> An individual civil penalty may be assessed when:</p> <p>(i) The Director may assess an individual civil penalty as outlined in W.S. §35-11-902(b), <u>against any corporate director, officer or agent of a corporate permittee who knowingly and willfully authorized, ordered or carried out a violation, failure or refusal</u>, except as provided in subsection (ii) below.</p>	<p><b>8/17/2011 Concern Letter, Section 18.</b></p>

**Side-by-side Comparison  
Federal Regulations vs. Land Quality Division Coal Regulations**

**Ownership and Control Rule Package - OSM Concerns**

<p><b>§ 701.5 Definitions.</b></p> <p><i>Violation notice</i> means any written notification from a regulatory authority or other governmental entity, as specified in the definition of <i>violation</i> in this section.</p>	<p><b>Chapter 1, Section 2(co)</b> “Notice of violation” means a written notification from <u>the Department of Environmental Quality</u> <del>a regulatory authority</del> or other governmental entity as specified in the procedures outlined in Chapter 16 of the Land Quality Division, Rules and Regulations.</p>	<p><b>2/14/2012 Concern Letter, Section 1a.</b></p>
<p><b>§ 701.5 Definitions.</b></p> <p><i>Transfer, assignment, or sale of permit rights</i> means a change of a permittee.</p>	<p><b>Chapter 1, Section 2(cv)</b> “Permit transfer, assignment or sale of <u>permit rights</u>” means a change <u>of a permittee in ownership or control over the right to conduct mining operations under a permit or license to mine.</u></p>	<p><b>2/14/2012 Concern Letter, Section 2.</b></p>
<p><b>§ 701.5 Definitions.</b></p> <p><i>Violation</i>, when used in the context of the permit application information or permit eligibility requirements of sections 507 and 510(c) of the Act and related regulations, means—</p> <p>(1) A failure to comply with an applicable provision of a Federal or State law or regulation pertaining to air or water environmental protection, as evidenced by a written notification from a governmental entity to the responsible person; or</p> <p>(2) A noncompliance for which OSM has provided one or more of the following types of notice or a State regulatory authority has provided equivalent notice under corresponding provisions of a State regulatory program—</p> <p>(i) A notice of violation under §843.12 of this chapter.</p> <p>(ii) A cessation order under §843.11 of this chapter.</p> <p>(iii) A final order, bill, or demand letter pertaining to a delinquent civil penalty assessed under part 845 or 846 of this chapter.</p>	<p><b>Chapter 1, Section 2</b></p> <p>...</p> <p>(fr) “Vegetation community” means a recognizable group of species growing together.</p> <p>(fs) <u>“Violation”, when used in the context of the permit application information required in Chapter 2 of these rules and regulations or permit eligibility requirements detailed in Chapter 12 of these rules and regulations means:</u></p> <p style="padding-left: 40px;">(i) <u>A failure to comply with an applicable provision of a Federal or State law or regulation pertaining to air or water environmental protection, as evidenced by a written notification from a governmental entity to the responsible person; or</u></p> <p style="padding-left: 40px;">(ii) <u>A noncompliance for which the Office of Surface Mining has provided one or more of the following types of notice or the Department of Environmental Quality has provided equivalent notice under corresponding provisions of the Act or its implementing regulations:</u></p> <p style="padding-left: 80px;">(A) <u>A “notice of violation” as</u></p>	<p><b>2/14/2012 Concern Letter, Section 3.</b></p>

<p>(iv) A bill or demand letter pertaining to delinquent reclamation fees owed under part 870 of this chapter.</p> <p>(v) A notice of bond forfeiture under §800.50 of this chapter when—</p> <p>(A) One or more violations upon which the forfeiture was based have not been abated or corrected;</p> <p>(B) The amount forfeited and collected is insufficient for full reclamation under §800.50(d)(1) of this chapter, the regulatory authority orders reimbursement for additional reclamation costs, and the person has not complied with the reimbursement order; or</p> <p>(C) The site is covered by an alternative bonding system approved under §800.11(e) of this chapter, that system requires reimbursement of any reclamation costs incurred by the system above those covered by any site-specific bond, and the person has not complied with the reimbursement requirement and paid any associated penalties.</p>	<p><u>defined above:</u></p> <p><u>(B) A cessation order under W.S. 35-11-437 (2011) and/or Chapter 16 of the Land Quality Coal Rules and Regulations;</u></p> <p><u>(C) A final order, bill or demand letter pertaining to a delinquent civil penalty assessed under Chapter 16 of the Land Quality Coal Rules and Regulations;</u></p> <p><u>(D) A bill or demand letter pertaining to delinquent reclamation fees owed under 30 C.F.R. part 870 (Abandoned Mine Lands); or</u></p> <p><u>(E) An order of bond forfeiture under W.S. 35-11-421 (2011) when:</u></p> <p><u>(I) One or more violations upon which the forfeiture was based have not been abated or corrected; or</u></p> <p><u>(II) The forfeited bond is inadequate to cover the cost of the reclamation under W.S. 35-11-421 and 422 (2011);</u></p> <p>(no state equivalent to (C) as we do not have an alternative bonding system approved under 800.11(e))</p> <p>(<del>ft</del> <del>fs</del>) “Warm season” means a plant, which makes most or all its growth during the spring, summer, or fall and is usually dormant during the winter. Warm season plants usually exhibit the C-4 photosynthetic pathway.</p> <p>(<del>fu</del> <del>£</del>) “Water table” means the upper surface of a zone of saturation, where the body of groundwater is not confined by an overlying impermeable zone.</p>	<p><b>2/14/2012 Concern Letter, Section 3.</b></p>
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<p><b>§ 773.12 Permit eligibility determination.</b></p> <p>Based on the reviews required under §§773.9 through 773.11 of this part, we, the regulatory authority, will determine whether you, the applicant, are eligible for a permit under section 510(c) of the Act.</p> <p>(a) Except as provided in §§773.13 and 773.14 of this part, you are not eligible for a permit if we find that any surface coal mining operation that—</p> <p>(1) You directly own or control has an unabated or uncorrected violation; or</p> <p>(2) You or your operator indirectly control has an unabated or uncorrected violation and your control was established or the violation was cited after November 2, 1988.</p> <p>(b) We will not issue you a permit if you or your operator are permanently ineligible to receive a permit under §774.11(c) of this subchapter.</p> <p>(c) After we approve your permit under §773.15 of this part, we will not issue the permit until you comply with the information update and certification requirement of §778.9(d) of this subchapter. After you complete that requirement, we will again request a compliance history report from AVS to determine if there are any unabated or uncorrected violations which affect your permit eligibility under paragraphs (a) and (b) of this section. We will request this report no more than five business days before permit issuance under §773.19 of this part.</p> <p>(d) If you are ineligible for a permit under this section, we will send you written notification of our decision. The notice will tell you why you are ineligible and include notice of your appeal rights under part 775 of this subchapter and 43 CFR 4.1360 through 4.1369.</p>	<p><b>W.S. 35-11-406(n)</b> The applicant for a surface coal mining permit has the burden of establishing that his application is in compliance with this act and all applicable state laws. No surface coal mining permit shall be approved unless the applicant affirmatively demonstrates and the administrator finds in writing:</p> <p>...</p> <p>(vi) The schedule provided in paragraph (a)(xiv) of this section indicates that all surface coal mining operations owned or controlled by the applicant are currently in compliance with this act and all laws referred to in paragraph (a)(xiv) of this section or that any violation has been or is in the process of being corrected to the satisfaction of the authority, department or agency which has jurisdiction over the violation.</p> <p><b>Chapter 12, Section 1(a)(x)</b> 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 for any surface coal mining operation:</p> <p>(A) The applicant directly own or control has an unabated or uncorrected violation;</p> <p>(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</p> <p>(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).</p> <p>(D) <u>Exceptions</u></p> <p>(I) <u>An applicant is eligible for a permit if an unabated violation occurred after October 24, 1992 and resulted from an unanticipated condition at a</u></p>	<p><b>2/14/2012 Concern Letter, Section 4.</b></p>
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<p><b>§ 773.13 Unanticipated events or conditions at remining sites.</b></p> <p>(a) You, the applicant, are eligible for a permit under §773.12 if an unabated violation—</p> <p>(1) Occurred after October 24, 1992; and</p> <p>(2) Resulted from an unanticipated event or condition at a surface coal mining and reclamation operation on lands that are eligible for remining under a permit that was held by the person applying for the new permit.</p> <p>(b) For permits issued under §785.25 of this subchapter, an event or condition is presumed to be unanticipated for the purpose of this section if it—</p> <p>(1) Arose after permit issuance;</p> <p>(2) Was related to prior mining; and</p> <p>(3) Was not identified in the permit application.</p>	<p><u>surface coal mining and reclamation operation on lands that are eligible for remining under a permit that was held by the person applying for the new permit.</u></p> <p>(II) <u>An applicant may be eligible for a provisionally issued permit if the applicant owns or controls a surface coal mining and reclamation operation with a notice of violation issued under Chapter 16 of these rules and regulations for which the abatement period has not yet expired or a violation that is unabated or uncorrected beyond the abatement or correction period. An applicant is eligible for a provisionally issued permit if the applicant is pursuing a good faith challenge to all pertinent ownership or control listings or findings under Chapter 12, Section 1 or administrative or judicial appeal of all pertinent ownership and control listings/findings or contesting the validity of a violation unless there is an initial judicial decision affirming the listing or finding and that decision remains in force.</u></p> <p>(III) <u>A provisionally issued permit will be considered improvidently issued and the Land Quality Division will begin procedures to suspend or rescind the permit as described in Section 1(a)(xiv)(G) if the violations are not abated within the specified abatement period, the applicant, operator or operations that the operator or applicant own or control do not comply with the terms of an abatement plan or payment schedule for fees or penalties assessed. Suspension or rescission proceedings will also be initiated if the disposition of a challenge and any subsequent administrative review as discussed above affirms the validity of the violation or the ownership and control listing or finding in the absence of a request for judicial review or if the initial judicial review decision above affirms the validity of the violation or the ownership and control listing or finding.</u></p>	<p>2/14/2012 Concern Letter, Section 5.</p>
<p><b>§ 773.14 Eligibility for provisionally issued permits.</b></p> <p>(a) This section applies to you if you are an applicant who owns or controls a surface coal mining and reclamation operation with—</p> <p>(1) A notice of violation issued under §843.12 of this chapter or the State regulatory program equivalent for which the abatement period has not yet expired; or</p> <p>(2) A violation that is unabated or uncorrected beyond the abatement or correction period.</p> <p>(b) We, the regulatory authority, will find you eligible for a provisionally issued permit under this section if you demonstrate</p>	<p>(xi) Following the Director’s approval of a permit but prior to issuance of that permit, the applicant shall update, correct or indicate that no change has occurred in the information provided in Chapter 2, Section 2.</p> <p>(xii) After the applicant completes the above requirements, the DEQ shall request a compliance history report</p>	



<p>that one or more of the following circumstances exists with respect to all violations listed in paragraph (a) of this section—</p> <p>(1) For violations meeting the criteria of paragraph (a)(1) of this section, you certify that the violation is being abated to the satisfaction of the regulatory authority with jurisdiction over the violation, and we have no evidence to the contrary.</p> <p>(2) As applicable, you, your operator, and operations that you or your operator own or control are in compliance with the terms of any abatement plan (or, for delinquent fees or penalties, a payment schedule) approved by the agency with jurisdiction over the violation.</p> <p>(3) You are pursuing a good faith—</p> <p>(i) Challenge to all pertinent ownership or control listings or findings under §§773.25 through 773.27 of this part; or</p> <p>(ii) Administrative or judicial appeal of all pertinent ownership or control listings or findings, unless there is an initial judicial decision affirming the listing or finding and that decision remains in force.</p> <p>(4) The violation is the subject of a good faith administrative or judicial appeal contesting the validity of the violation, unless there is an initial judicial decision affirming the violation and that decision remains in force.</p> <p>(c) We will consider a provisionally issued permit to be improvidently issued, and we must immediately initiate procedures under §§773.22 and 773.23 of this part to suspend or rescind that permit, if—</p> <p>(1) Violations included in paragraph (b)(1) of this section are not abated within the specified abatement period;</p> <p>(2) You, your operator, or operations that you or your operator</p>	<p>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. If the applicant is ineligible for a permit the DEQ shall send you written notification of the decision and will detail the reasons for ineligibility and include notice of appeal rights.</p> <p><b>Chapter 4, Section 2(I)</b> Unanticipated conditions.</p> <p>(i) An operator encountering unanticipated conditions shall notify the Administrator as soon as possible and in no event more than five days after making the discovery.</p> <p>(ii) An unanticipated condition is any condition encountered in a mining operation and not mentioned by the operator in his mining or reclamation plan which may seriously affect the procedures, timing, or outcome of mining or reclamation. Such unanticipated conditions include but are not limited to the following:</p> <p>(A) The uncovering during mining operations of any acid-forming, radioactive, inflammable, or toxic materials which must be burned, impounded, or otherwise disposed of in order to eliminate pollution or safety hazards.</p> <p>(B) The discovery during mining operations of a significant flow of groundwater in any stratigraphic horizon.</p> <p>(C) The occurrence of slides, faults, or unstable soil and overburden materials which may cause sliding or caving in a pit which could cause problems or delays with mining or reclamation.</p> <p>(D) The occurrence of uncontrolled underground caving or subsidence which reaches the surface, causing problems with reclamation and safety hazards.</p> <p>(E) A discovery of significant</p>	
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<p>own or control do not comply with the terms of an abatement plan or payment schedule mentioned in paragraph (b)(2) of this section;</p> <p>(3) In the absence of a request for judicial review, the disposition of a challenge and any subsequent administrative review referenced in paragraph (b)(3) or (4) of this section affirms the validity of the violation or the ownership or control listing or finding; or</p> <p>(4) The initial judicial review decision referenced in paragraph (b)(3)(ii) or (4) of this section affirms the validity of the violation or the ownership or control listing or finding.</p> <p><b>§ 785.25 Lands eligible for remining.</b></p> <p>(a) This section contains permitting requirements to implement §773.13. Any person who submits a permit application to conduct a surface coal mining operation on lands eligible for remining must comply with this section.</p> <p>(b) Any application for a permit under this section shall be made according to all requirements of this subchapter applicable to surface coal mining and reclamation operations. In addition, the application shall—</p> <p>(1) To the extent not otherwise addressed in the permit application, identify potential environmental and safety problems related to prior mining activity at the site and that could be reasonably anticipated to occur. This identification shall be based on a due diligence investigation which shall include visual observations at the site, a record review of past mining at the site, and environmental sampling tailored to current site conditions.</p> <p>(2) With regard to potential environmental and safety problems referred to in paragraph (b)(1) of this section, describe the mitigative measures that will be taken to ensure that the applicable reclamation requirements of the regulatory program</p>	<p>archaeological or paleontological importance.</p> <p style="text-align: center;"><u>(F) For the purposes of remining operations an unanticipated condition is one which arises after permit issuance, is related to prior mining and was not addressed in the permit application.</u></p> <p>(iii) In the case of the uncovering of hazardous materials, the operator shall take immediate steps to notify the Administrator and comply with any required measures to eliminate the pollution or safety hazard. Under all conditions the operator must take appropriate measures to correct, eliminate, or adapt to an unanticipated condition before mining resumes in the immediate vicinity of that condition.</p>	<p><b>2/14/2012 Concern Letter, Section 4.</b></p>
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<p>can be met.</p>		
<p><b>§ 774.17 Transfer, assignment, or sale of permit rights.</b></p> <p>(a) <i>General.</i> No transfer, assignment, or sale of rights granted by a permit shall be made without the prior written approval of the regulatory authority. At its discretion, the regulatory authority may allow a prospective successor in interest to engage in surface coal mining and reclamation operations under the permit during the pendency of an application for approval of a transfer, assignment, or sale of permit rights submitted under paragraph (b) of this section, provided that the prospective successor in interest can demonstrate to the satisfaction of the regulatory authority that sufficient bond coverage will remain in place.</p> <p>(b) <i>Application requirements.</i> An applicant for approval of the transfer, assignment, or sale of permit rights shall—</p> <p>(1) Provide the regulatory authority with an application for approval of the proposed transfer, assignment, or sale including—</p> <p>(i) The name and address of the existing permittee and permit number or other identifier;</p> <p>(ii) A brief description of the proposed action requiring approval; and</p> <p>(iii) The legal, financial, compliance, and related information required by part 778 of this chapter for the applicant for approval of the transfer, assignment, or sale of permit rights.</p> <p>(2) Advertise the filing of the application in a newspaper of general circulation in the locality of the operations involved, indicating the name and address of the applicant, the permittee, the permit number or other identifier, the geographic location of the permit, and the address to which written comments may be</p>	<p><b>W.S. 35-11-406(g)</b> After the application is determined complete, the applicant shall publish a notice of the filing of the application once each week for two (2) consecutive weeks in a newspaper of general circulation in the locality of the proposed mining site.</p> <p><b>W.S. 35-11-408 Permit Transfer</b> A permit holder desiring to transfer his permit shall apply to the administrator. The potential transferee shall file with the administrator a statement of qualifications to hold a permit as though he were the original applicant for the permit and shall further agree to be bound by all of the terms and conditions of the original permit. The administrator shall recommend approval or denial of the transfer to the director. No transfer of a permit will be allowed if the current permit holder is in violation of this act, unless the transferee agrees to bring the permit into compliance with the provisions of this act.</p> <p><b>Chapter 12, Section 1(b)</b> All procedural requirements of the Act and the regulations relating to review, public participation, and approval or disapproval of permit applications, and permit term and conditions shall, unless otherwise provided, apply to permit revisions, amendments, renewals and transfers. In addition, the following requirements are applicable.</p> <p>...</p> <p>(ii) All requirements imposed by W.S. § 35-11-408 and this provision for permit transfers. These requirements shall be met, as evidenced by the written approval of the statement of qualifications by the Administrator and Director, prior to any permit transfer. <del>Permit transfers shall not be subject to the requirements of W.S. § 35-11-406(g).</del></p> <p>(A) The potential transferee shall obtain a renewal bond by either transfer of the permit holder's bond, written agreement with the permit holder, or providing other sufficient bond or equivalent guarantee.</p>	<p><b>2/14/2012 Concern Letter, Section 6.</b></p>

<p>sent;</p> <p>(3) Obtain appropriate performance bond coverage in an amount sufficient to cover the proposed operations, as required under subchapter J of this chapter.</p> <p>(c) <i>Public participation.</i> Any person having an interest which is or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any Federal, State, or local government agency, may submit written comments on the application to the regulatory authority within a time specified by the regulatory authority.</p> <p>(d) <i>Criteria for approval.</i> The regulatory authority may allow a permittee to transfer, assign, or sell permit rights to a successor, if it finds in writing that the successor—</p> <p>(1) Is eligible to receive a permit in accordance with §§773.12 and 773.14 of this chapter;</p> <p>(2) Has submitted a performance bond or other guarantee, or obtained the bond coverage of the original permittee, as required by subchapter J of this chapter; and</p> <p>(3) Meets any other requirements specified by the regulatory authority.</p> <p>(e) <i>Notification.</i> (1) The regulatory authority shall notify the permittee, the successor, commenters, and OSM, if OSM is not the regulatory authority, of its findings.</p> <p>(2) The successor shall immediately provide notice to the regulatory authority of the consummation of the transfer, assignment, or sale of permit rights.</p> <p>(f) <i>Continued operation under existing permit.</i> The successor in interest shall assume the liability and reclamation responsibilities of the existing permit and shall conduct the surface coal mining</p>	<p>(B) The statement of qualifications shall contain all information which would be required if the potential transferee were the original applicant for the permit and, in addition, the name, <u>address and permit number</u> of the existing permit holder.</p>	
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<p>and reclamation operations in full compliance with the Act, the regulatory program, and the terms and conditions of the existing permit, unless the applicant has obtained a new or revised permit as provided in this subchapter.</p>										
<p><b>§ 778.9 Certifying and updating existing permit application information.</b></p> <p>In this section, “you” means the applicant and “we” or “us” means the regulatory authority.</p> <p>(a) If you have previously applied for a permit and the required information is already in AVS, then you may update the information as shown in the following table.</p> <table border="1" data-bbox="189 649 892 1161"> <thead> <tr> <th data-bbox="189 649 483 706">If . . .</th> <th data-bbox="483 649 892 706">then you . . .</th> </tr> </thead> <tbody> <tr> <td data-bbox="189 706 483 852">(1) All or part of the information already in AVS is accurate and complete</td> <td data-bbox="483 706 892 852">may certify to us by swearing or affirming, under oath and in writing, that the relevant information in AVS is accurate, complete, and up to date.</td> </tr> <tr> <td data-bbox="189 852 483 1015">(2) Part of the information in AVS is missing or incorrect</td> <td data-bbox="483 852 892 1015">must submit to us the necessary information or corrections and swear or affirm, under oath and in writing, that the information you submit is accurate and complete.</td> </tr> <tr> <td data-bbox="189 1015 483 1161">(3) You can neither certify that the data in AVS is accurate and complete nor make needed corrections</td> <td data-bbox="483 1015 892 1161">must include in your permit application the information required under this part.</td> </tr> </tbody> </table> <p>(b) You must swear or affirm, under oath and in writing, that all information you provide in an application is accurate and complete.</p> <p>(c) We may establish a central file to house your identity information, rather than place duplicate information in each of your permit application files. We will make the information</p>	If . . .	then you . . .	(1) All or part of the information already in AVS is accurate and complete	may certify to us by swearing or affirming, under oath and in writing, that the relevant information in AVS is accurate, complete, and up to date.	(2) Part of the information in AVS is missing or incorrect	must submit to us the necessary information or corrections and swear or affirm, under oath and in writing, that the information you submit is accurate and complete.	(3) You can neither certify that the data in AVS is accurate and complete nor make needed corrections	must include in your permit application the information required under this part.	<p><b>Chapter 2, Section 1. General Requirements.</b></p> <p>(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. <u>All applicants must swear or affirm, under oath and in writing, that all information the applicant provided in an application is accurate and complete. The Division may establish a central file to house an applicant’s identity information, rather than place duplicate information in each of an applicant’s permit application files and this information will be made available to the public upon request.</u></p> <p>...</p> <p><b>Section 2. Adjudication Requirements.</b></p> <p>(a) In addition to that information required by W.S. § 35-11-406(a), each application for a surface coal mining permit shall contain:</p> <p>(i) A complete identification of interests,</p> <p>which shall include:</p> <p>...</p> <p>(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:</p> <p>(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;</p> <p>(II) If part of the</p>	<p><b>2/14/2012 Concern Letter, Section 7.</b></p>
If . . .	then you . . .									
(1) All or part of the information already in AVS is accurate and complete	may certify to us by swearing or affirming, under oath and in writing, that the relevant information in AVS is accurate, complete, and up to date.									
(2) Part of the information in AVS is missing or incorrect	must submit to us the necessary information or corrections and swear or affirm, under oath and in writing, that the information you submit is accurate and complete.									
(3) You can neither certify that the data in AVS is accurate and complete nor make needed corrections	must include in your permit application the information required under this part.									

<p>available to the public upon request.</p> <p>(d) After we approve an application, but before we issue a permit, you must update, correct, or indicate that no change has occurred in the information previously submitted under this section and §§778.11 through 778.14 of this part.</p>	<p>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</p> <p>(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).</p>	
<p><b>§ 778.11 Providing applicant and operator information.</b></p> <p>...</p> <p>(e) We need not make a finding as provided for under §774.11(g) of this subchapter before entering into AVS the information required to be disclosed under this section; however, the mere listing in AVS of a person identified in paragraph (b) or (c) of this section does not create a presumption or constitute a determination that such person owns or controls a surface coal mining operation.</p> <p><b>§ 774.11 Post-permit issuance requirements for regulatory authorities and other actions based on ownership, control, and violation information.</b></p> <p>...</p> <p>(g) After we issue a written preliminary finding under paragraph (f) of this section, we will allow you, the person subject to the preliminary finding, 30 days in which to submit any information tending to demonstrate your lack of ownership or control. If, after reviewing any information you submit, we are persuaded that you are not an owner or controller, we will serve you a written notice to that effect. If, after reviewing any information you submit, we still find that you are an owner or controller, or if you do not submit any information within the 30-day period, we will issue a written finding and enter our finding into AVS.</p>	<p><b>Chapter 12, Section 1(a)</b> 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:</p> <p>...</p> <p>(viii) Final Compliance Review. After finding the application suitable for publication but prior to permit issuance, the <del>Department of Environmental Quality regulatory authority</del> shall reconsider its approval based on a review of:</p> <p>(A) The information the applicant submitted regarding applicant, operator and ownership and control information AVS information and any other available information to review the applicants and operators organizational structure and ownership or control relationships;</p> <p>(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 <del>previous</del> <del>pervious</del> mining experience additional ownership and control investigations; and</p> <p>...</p> <p>(ix) The <del>Land Quality Division regulatory authority</del> shall enter into AVS:</p> <p>(A) The information submitted in the application <del>in compliance with Chapter 2, Sections 2(a)(i)(B)-</del></p>	<p><b>2/14/2012 Concern Letter, Section 1a.</b></p> <p><b>2/14/2012 Concern Letter, Section 1d.</b></p> <p><b>2/14/2012 Concern Letter, Section 1a.</b></p> <p><b>2/14/2012 Concern Letter, Section 8.</b></p>

	<p><del>(F) 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;</del></p> <p>...</p> <p>(C) The <u>Land Quality Division</u> <del>regulatory authority</del> shall update the information above upon verification of any additional information submitted or discovered during the regulatory authority's permit application review.</p> <p>...</p> <p>(E) <u>At any time, the DEQ may identify any person who owns or controls an entire surface coal mining operation or any relevant portion or aspect thereof. If the DEQ identifies such a person, we must issue a written preliminary finding to the person and the applicant or permittee describing the nature and extent of ownership or control. The written preliminary finding must be based on evidence sufficient to establish a prima facie case of ownership or control. After the DEQ issues a written preliminary finding under this section, the DEQ will allow the person subject to the preliminary finding, thirty (30) days in which to submit any information tending to demonstrate your lack of ownership or control. If, after reviewing any information you submit, the DEQ is persuaded that you are not an owner or controller, we will serve you a written notice to that effect. If, after reviewing any information you submit, the DEQ still finds that you are an owner or controller, or if you do not submit any information within the 30-day period, we will issue a written finding and enter our finding into AVS. If the DEQ identifies you as an owner or controller above, you may challenge the finding using the provisions of Chapter 12, Section 1(a)(xiii) and (xiv). If a hearing is not requested regarding preliminary findings on permit eligibility and the time for seeking a hearing has expired, the DEQ will enter the DEQ's finding into AVS, if a hearing is requested the DEQ will enter that finding in AVS only if that finding is upheld on administrative appeal.</u></p> <p>(F) <u>The Land Quality Division need not make a finding as provided for under (E) above before entering into AVS the information required to be disclosed in</u></p>	<p><b>2/14/2012 Concern Letter, Section 1a.</b></p> <p><b>2/14/2012 Concern Letter, Section 8.</b></p>
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	<p><u>compliance with Chapter 2, Section 2(a)(i)(B) – (E); however, the mere listing in AVS of a person identified in Chapter 2, Section 2(a)(i)(B) – (E) does not create a presumption or constitute a determination that such person owns or controls a surface coal mining operation.</u></p>	
<p><b>§ 778.14 Providing violation information.</b></p> <p>(a) You, the applicant, must state, in your permit application, whether you, your operator, or any subsidiary, affiliate, or entity which you or your operator own or control or which is under common control with you or your operator, has—</p> <p>(1) Had a Federal or State permit for surface coal mining operations suspended or revoked during the five-year period preceding the date of submission of the application; or</p> <p>(2) Forfeited a performance bond or similar security deposited in lieu of bond in connection with surface coal mining and reclamation operations during the five-year period preceding the date of submission of the application.</p>	<p>Chapter 2, Section 2(a)(ii) A complete statement of compliance which shall include:</p> <p>(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:</p> <p>(I) Had any Federal or State coal mining permit suspended or revoked in the five years preceding the date of <u>submission of the application</u>; or</p> <p>(II) Forfeited a Federal or State coal mining performance bond or similar security deposited in lieu of bond <u>in connection with surface coal mining and reclamation operations</u> during the five (5) year period preceding the date of <u>submission of the application</u>; or</p> <p>(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 identifying information regarding any judicial or administrative proceedings related to the action.</p>	<p><b>2/14/2012 Concern Letter, Section 9.</b></p> <p><b>2/14/2012 Concern Letter, Section 1c.</b></p>
<p><b>§ 773.8 General provisions for review of permit application information and entry of information into AVS.</b></p>	<p>Chapter 12, Section 1. <b>Permitting Procedures.</b></p> <p>(a) In addition to the permitting procedures</p>	



<p>(a) Based on an administratively complete application, we, the regulatory authority, must undertake the reviews required under §§773.9 through 773.11 of this part.</p> <p>(b) We will enter into AVS—</p> <p>(1) The information you are required to submit under §§778.11 and 778.12(c) of this subchapter.</p> <p>(2) The information you submit under §778.14 of this subchapter pertaining to violations which are unabated or uncorrected after the abatement or correction period has expired.</p> <p>(c) We must update the information referred to in paragraph (b) of this section in AVS upon our verification of any additional information submitted or discovered during our permit application review.</p> <p><b>§ 778.11 Providing applicant and operator information.</b></p> <p>(a) You, the applicant, must provide in the permit application—</p> <p>(1) A statement indicating whether you and your operator are corporations, partnerships, associations, sole proprietorships, or other business entities;</p> <p>(2) Taxpayer identification numbers for you and your operator.</p> <p>(b) You must provide the name, address, and telephone number for—</p> <p>(1) The applicant.</p> <p>(2) Your resident agent who will accept service of process.</p> <p>(3) Any operator, if different from the applicant.</p>	<p>described in the Act, the following shall be applicable to applications for a permit for a surface coal mine operation:</p> <p>...</p> <p>(ix) The <u>Land Quality Division</u> <del>regulatory authority</del> shall enter into AVS:</p> <p>(A) The information submitted in the application <u>in compliance with Chapter 2, Sections 2(a)(i)(B)-(F) 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;</u></p> <p><b>Chapter 2, Section 2. Adjudication Requirements.</b></p> <p>(a) In addition to that information required by W.S. § 35-11-406(a), each application for a surface coal mining permit shall contain:</p> <p>(i) A complete identification of interests, which shall include:</p> <p>(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;</p> <p>(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</p>	<p><b>2/14/2012 Concern Letter, Section 10.</b></p>
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<p>(4) 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 every such business entity, you must also provide the required information for every president, chief executive officer, and director (or persons in similar positions), and every person who owns, of record, 10 percent or more of the entity.</p> <p>(c) For you and your operator, you must provide the information required by paragraph (d) of this section for every—</p> <p>(1) Officer.</p> <p>(2) Partner.</p> <p>(3) Member.</p> <p>(4) Director.</p> <p>(5) Person performing a function similar to a director.</p> <p>(6) Person who owns, of record, 10 percent or more of the applicant or operator.</p> <p>(d) You must provide the following information for each person listed in paragraph (c) of this section—</p> <p>(1) The person's name, address, and telephone number.</p> <p>(2) The person's position title and relationship to you, including percentage of ownership and location in the organizational structure.</p> <p>(3) The date the person began functioning in that position.</p> <p>(e) We need not make a finding as provided for under §774.11(g) of this subchapter before entering into AVS the information required to be disclosed under this section; however, the mere</p>	<p>operated a surface coal mining operation in the United States within the five years preceding the date of application;</p> <p>(C) Taxpayer identification numbers for the applicant and operator;</p> <p>(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;</p> <p>(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. <u>Within sixty (60) days of any addition, departure, or change in position of any person identified above, the applicant or permittee shall provide the information submitted above and the date of any departure;</u></p> <p>(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 <u>withi</u>n 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:</p>	<p><b>2/14/2012 Concern Letter, Section 1b.</b></p>
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<p>listing in AVS of a person identified in paragraph (b) or (c) of this section does not create a presumption or constitute a determination that such person owns or controls a surface coal mining operation.</p> <p><b>§ 778.12 Providing permit history information.</b></p> <p>...</p> <p>(c) For any surface coal mining operations that you or your operator owned or controlled within the five-year period preceding the date of submission of the application, and for any surface coal mining operation you or your operator own or control on that date, you must provide the—</p> <p>(1) Permittee's and operator's name and address;</p> <p>(2) Permittee's and operator's taxpayer identification numbers;</p> <p>(3) Federal or State permit number and corresponding MSHA number;</p> <p>(4) Regulatory authority with jurisdiction over the permit; and</p> <p>(5) Permittee's and operator's relationship to the operation, including percentage of ownership and location in the organizational structure.</p>	<p>(I) Permittee's and operator's name and address;</p> <p>(II) Permittee's and operator's taxpayer identification numbers;</p> <p>(III) Federal or State permit number and corresponding MSHA number;</p> <p>(IV) Regulatory authority with jurisdiction over the permit; and</p> <p>(V) Permittee's and operator's relationship to the operation, including percentage of ownership and location in the organizational structure.</p>	
<p><b>§ 773.25 Who may challenge ownership or control listings and findings.</b></p> <p>You may challenge a listing or finding of ownership or control using the provisions under §§773.26 and 773.27 of this part if you are—</p> <p>(a) Listed in a permit application or AVS as an owner or controller of an entire surface coal mining operation, or any portion or aspect thereof:</p>	<p>Chapter 12, Section 1. <b>Permitting Procedures.</b></p> <p>(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:</p> <p>...</p> <p>(xiii) A person may challenge a listing or finding of ownership or control using the procedures detailed below if that person is:</p>	

<p>(b) Found to be an owner or controller of an entire surface coal mining operation, or any portion or aspect thereof, under §§773.21 or 774.11(g) of this subchapter; or</p> <p>(c) An applicant or permittee affected by an ownership or control listing or finding.</p>	<p>(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;</p> <p>(B) <u>Found to be an owner or controller of an entire surface coal mining operation, or any portion or aspect thereof, under Chapter 12, Section 1(a)(xiv)(G) or Chapter 12, Section 1(a)(ix)(E); or</u></p> <p>(C B) An applicant or permittee affected by an ownership <u>or</u> <del>and</del> control listing or finding.</p>	<p>2/14/2012 <b>Concern Letter, Section 11.</b></p> <p>2/14/2012 <b>Concern Letter, Section 1f.</b></p>
<p><b>§ 773.26 How to challenge an ownership or control listing or finding.</b></p> <p>This section applies to you if you challenge an ownership or control listing or finding.</p> <p>...</p> <p>(b) The provisions of this section and of §§773.27 and 773.28 of this part apply only to challenges to ownership or control listings or findings. You may not use these provisions to challenge your liability or responsibility under any other provision of the Act or its implementing regulations.</p> <p><b>§ 773.27 Burden of proof for ownership or control challenges.</b></p> <p>This section applies to you if you challenge an ownership or control listing or finding.</p> <p>(a) When you challenge a listing of ownership or control, or a finding of ownership or control made under §774.11(g) of this subchapter, you must prove by a preponderance of the evidence</p>	<p>Chapter 12, Section 1. <b>Permitting Procedures.</b></p> <p>(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:</p> <p>...</p> <p>(xiv) In order to challenge an ownership <u>or</u> <del>and</del> 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 <u>the applicant is</u> <del>are</del> not currently seeking a permit the written explanation shall be submitted to the regulatory authority with jurisdiction over the surface coal mining operation. <u>Subsections D through F below apply only to challenges to ownership and control listings or findings and may not be used to challenge liability or responsibility under any other section of the Wyoming Environmental Quality Act or the Land Quality Division, Coal Rules and Regulations.</u></p> <p>...</p> <p>(D) When a challenge is made to a listing of ownership and control, or a finding of ownership and</p>	<p>2/14/2012 <b>Concern Letter, Section 1g.</b></p> <p>2/14/2012 <b>Concern Letter, Section 12.</b></p>

<p>that you either—</p> <p>(1) Do not own or control the entire surface coal mining operation or relevant portion or aspect thereof; or</p> <p>(2) Did not own or control the entire surface coal mining operation or relevant portion or aspect thereof during the relevant time period.</p> <p>b) In meeting your burden of proof, you must present reliable, credible, and substantial evidence and any explanatory materials to the regulatory authority. The materials presented in connection with your challenge will become part of the permit file, an investigation file, or another public file. If you request, we will hold as confidential any information you submit under this paragraph which is not required to be made available to the public under §842.16 of this chapter (when OSM is the regulatory authority) or under §840.14 of this chapter (when a State is the regulatory authority).</p>	<p>control, the challenger must prove by a preponderance of the evidence that they either:</p> <p>(I) Do not own or control the entire <u>surface coal mining</u> operation or relevant portion or aspect thereof; or</p> <p>(II) Did not own or control the entire <u>surface coal mining</u> operation or relevant portion or aspect during the relevant time period.</p> <p>(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. <u>The materials presented in connection with your challenge will become part of the permit file, an investigation file, or another public file.</u> 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:</p> <p>...</p> <p>(III) Certified copies of documents filed with or issued by any State; municipal, or Federal government agency;</p>	<p><b>2/14/2012 Concern Letter, Section 13.</b></p> <p><b>2/14/2012 Concern Letter, Section 1h.</b></p>
<p><b>§ 773.21 Initial review and finding requirements for improvidently issued permits.</b></p> <p>...</p> <p>(e) The provisions of §§773.25 through 773.27 of this part apply when a challenge under paragraph (d) of this section concerns a preliminary finding under paragraphs (a) and (b)(1) of this section that you or your operator currently own or control, or owned or controlled, a surface coal mining operation.</p> <p><b>§ 773.22 Notice requirements for improvidently issued</b></p>	<p>Chapter 12, Section 1. <b>Permitting Procedures.</b></p> <p>(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:</p> <p>...</p> <p>(xiv) In order to challenge an ownership <del>or</del> <u>and</u> 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</p>	

<p><b>permits.</b></p> <p>(a) We, the regulatory authority, must serve you, the permittee, with a written notice of proposed suspension or rescission, together with a statement of the reasons for the proposed suspension or rescission, if—</p> <p>(1) After considering any evidence submitted under §773.21(d) of this part, we find that a permit was improvidently issued under the criteria in paragraphs (a) and (b) of §773.21 of this part; or</p> <p>(2) Your permit was provisionally issued under §773.14(b) of this part and one or more of the conditions in §§773.14(c)(1) through (4) exists.</p> <p>b) If we propose to suspend your permit, we will provide 60 days notice.</p> <p>(c) If we propose to rescind your permit, we will provide 120 days notice.</p> <p>(d) If you wish to appeal the notice, you must exhaust administrative remedies under the procedures at 43 CFR 4.1370 through 4.1377 (when OSM is the regulatory authority) or under the State regulatory program equivalent (when a State is the regulatory authority).</p> <p>(e) After we serve you with a notice of proposed suspension or rescission under this section, we will take action under §773.23 of this part.</p> <p>(f) The regulations for service at §843.14 of this chapter, or the State regulatory program equivalent, will govern service under this section.</p> <p>(g) The times specified in paragraphs (b) and (c) of this section will apply unless you obtain temporary relief under the procedures at 43 CFR 4.1376 or the State regulatory program</p>	<p>application. If the challenge concerns the applicant’s ownership and control of a surface coal mining operation and <u>the applicant is</u> <del>are</del> not currently seeking a permit the written explanation shall be submitted to the regulatory authority with jurisdiction over the surface coal mining operation. <u>Subsections D through F below apply only to challenges to ownership and control listings or findings and may not be used to challenge liability or responsibility under any other section of the Wyoming Environmental Quality Act or the Land Quality Division, Coal Rules and Regulations.</u></p> <p>...</p> <p>(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 owns or controls the relevant surface coal mining operation, or owned or controlled the operation during the relevant time period. Decisions regarding the challenge will ...</p> <p>(G) Improvidently issued coal mining permits.</p> <p>(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.</p> <p>(II) The DEQ will make a finding under subsection (I) above only if the applicant or operator:</p> <p>(1.) Continue to own or control the operation with the unabated or uncorrected violation;</p>	<p><b>2/14/2012 Concern Letter, Section 1g.</b></p> <p><b>2/14/2012 Concern Letter, Section 1i.</b></p>
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<p>equivalent.</p> <p><b>§ 773.23 Suspension or rescission requirements for improvidently issued permits.</b></p> <p>(a) Except as provided in paragraph (b) of this section, we, the regulatory authority, must suspend or rescind your permit upon expiration of the time specified in §773.22(b) or (c) of this part unless you submit evidence and we find that—</p> <p>(1) The violation has been abated or corrected to the satisfaction of the agency with jurisdiction over the violation;</p> <p>(2) You or your operator no longer own or control the relevant operation;</p> <p>(3) Our finding for suspension or rescission was in error;</p> <p>(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);</p> <p>(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</p> <p>(6) You are 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).</p> <p>(b) If you have requested administrative review of a notice of proposed suspension or rescission under §773.22(e) of this part, we will not suspend or rescind your permit unless and until the Office of Hearings and Appeals or its State counterpart affirms</p>	<p>(2.) The violation remains unabated or uncorrected; and</p> <p>(3.) The violation would cause the permittee to be ineligible under the permit eligibility criteria under the current rules and regulations.</p> <p>(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 <u>(xiii) and (xiv)(A) through (E)</u> <del>(D) through (F)</del> 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.</p> <p>(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 <u>or the permit was provisionally issued under Chapter 12, Section 1(a)(x)(D)(II) and one or more of the conditions in Chapter 12, Section 1(a)(x)(D)(III) exists.</u> 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.</p> <p>(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. <u>All administrative remedies shall be exhausted if a</u></p>	<p><b>2/14/2012 Concern Letter, Section 14, paragraph 1.</b></p> <p><b>2/14/2012 Concern Letter, Section 14, paragraph 2.</b></p> <p><b>2/14/2012 Concern Letter, Section 14, paragraph 3.</b></p>
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<p>our finding that your permit was improvidently issued.</p> <p>(c) When we suspend or rescind your permit under this section, we must—</p> <p>(1) Issue you a written notice requiring you to cease all surface coal mining operations under the permit; and</p> <p>(2) Post the notice at our office closest to the permit area.</p> <p>(d) If we suspend or rescind your permit under this section, you may request administrative review of the notice under the procedures at 43 CFR 4.1370 through 4.1377 (when OSM is the regulatory authority) or under the State regulatory program equivalent (when a State is the regulatory authority). Alternatively, you may seek judicial review of the notice.</p>	<p><u>permittee wishes to appeal the notice under the above statutes and regulations.</u> The times specified in subsection (IV) above shall be applicable unless the Environmental Quality Council has granted a stay for temporary relief to provide the administrative review in subsection (VII) below.</p> <p>(VI) <u>Service.</u> For purposes of this Section, service of the notice shall be performed on the permittee by certified mail, or by any alternative means consistent with the rules governing service of a summons and complaint under Rule 4 of the Wyoming Rules of Civil Procedure. Service shall be complete upon tender of the notice of proposed suspension or recession and any attached information or of the certified mail and shall not be deemed incomplete because of refusal to accept. 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:</p> <p>...</p> <p>(2.) The permittee or operator no longer owns or controls the relevant operation;</p> <p>...</p> <p>(IX) <u>If the DEQ suspends or rescinds your permit under this section, you may request administrative review of the notice under 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, or alternatively you may request judicial review of the notice provided all other administrative remedies have been exhausted.</u></p>	<p><b>2/14/2012 Concern Letter, Section 14, paragraph 3.</b></p> <p><b>2/14/2012 Concern Letter, Section 1j.</b></p> <p><b>2/14/2012 Concern Letter, Section 14, paragraph 4.</b></p>
<p><b>§ 774.11 Post-permit issuance requirements for regulatory authorities and other actions based on ownership, control, and violation information.</b></p> <p>(a) For the purposes of future permit eligibility determinations and enforcement actions, we, the regulatory authority, must enter</p>	<p>Chapter 12, Section 1(a)(ix) The regulatory authority shall enter into AVS:</p> <p>...</p> <p>(D) For the purposes of future permit eligibility determinations and enforcement actions:</p>	



into AVS the data shown in the following table—

We must enter into AVS all . . .	Within 30 days after . . .
(1) permit records	the permit is issued or subsequent changes made.
(2) unabated or uncorrected violations	the abatement or correction period for a violation expires.
(3) changes to information initially required to be provided by an applicant under 30 CFR 778.11	receiving notice of a change.
(4) changes in violation status	abatement, correction, or termination of a violation, or a decision from an administrative or judicial tribunal.

(b) If, at any time, we discover that any person owns or controls an operation with an unabated or uncorrected violation, we will determine whether enforcement action is appropriate under part 843, 846 or 847 of this chapter. We must enter the results of each enforcement action, including administrative and judicial decisions, into AVS.

(c) We must serve a preliminary finding of permanent permit ineligibility under section 510(c) of the Act on you, an applicant or operator, if the criteria in paragraphs (c)(1) and (c)(2) are met. In making a finding under this paragraph, we will only consider control relationships and violations which would make, or would have made, you ineligible for a permit under §§773.12(a) and (b) of this subchapter. We must make a preliminary finding of permanent permit ineligibility if we find that—

(1) You control or have controlled surface coal mining and reclamation operations with a demonstrated pattern of willful

(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 expires;

(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.

(E) At any time, the DEQ may identify any person who owns or controls an entire surface coal mining operation or any relevant portion or aspect thereof. If the DEQ identifies such a person, we must issue a written preliminary finding to the person and the applicant or permittee describing the nature and extent of ownership or control. The written preliminary finding must be based on evidence sufficient to establish a prima facie case of ownership or control. After the DEQ issues a written preliminary finding under this section, the DEQ will allow you, the person subject to the preliminary finding, thirty (30) days in which to submit any information tending to demonstrate your lack of ownership or control. If, after reviewing any information you submit, the DEQ is persuaded that you are not an owner or controller, we will serve you a written notice to that effect. If, after reviewing any information you submit, the DEQ still finds that you are an owner or controller, or if you do not submit any information within the 30-day period, we will issue a written finding and enter our finding into AVS. If the DEQ identifies you as an owner or controller above, you may challenge the finding using the provisions of Chapter 12, Section 1(a)(xiii) and (xiv). If a hearing is not requested regarding preliminary findings on permit eligibility and the time for seeking a hearing has expired,

**2/14/2012 Concern Letter, Section 1e.**

**2/14/2012 Concern Letter, Section 15.**

<p>violations under section 510(c) of the Act; and</p> <p>(2) The violations are of such nature and duration with such resulting irreparable damage to the environment as to indicate your intent not to comply with the Act, its implementing regulations, the regulatory program, or your permit.</p> <p>(d) You may request a hearing on a preliminary finding of permanent permit ineligibility under 43 CFR 4.1350 through 4.1356.</p> <p>(e) Entry into AVS.</p> <p>(1) If you do not request a hearing, and the time for seeking a hearing has expired, we will enter our finding into AVS.</p> <p>(2) If you request a hearing, we will enter our finding into AVS only if that finding is upheld on administrative appeal.</p> <p>(f) At any time, we may identify any person who owns or controls an entire surface coal mining operation or any relevant portion or aspect thereof. If we identify such a person, we must issue a written preliminary finding to the person and the applicant or permittee describing the nature and extent of ownership or control. Our written preliminary finding must be based on evidence sufficient to establish a prima facie case of ownership or control.</p> <p>(g) After we issue a written preliminary finding under paragraph (f) of this section, we will allow you, the person subject to the preliminary finding, 30 days in which to submit any information tending to demonstrate your lack of ownership or control. If, after reviewing any information you submit, we are persuaded that you are not an owner or controller, we will serve you a written notice to that effect. If, after reviewing any information you submit, we still find that you are an owner or controller, or if you do not submit any information within the 30-day period, we will issue a</p>	<p><u>the DEQ will enter our finding into AVS only if that finding is upheld on administrative appeal.</u></p> <p style="text-align: center;">(F) <u>The Land Quality Division need not make a finding as provided for under (E) above before entering into AVS the information required to be disclosed in compliance with Chapter 2, Section 2(a)(i)(B) – (E); however, the mere listing in AVS of a person identified in Chapter 2, Section 2(a)(i)(B) – (E) does not create a presumption or constitute a determination that such person owns or controls a surface coal mining operation.</u></p> <p>Chapter 16, Section 2(j) If at any time, the DEQ discovers that any person owns 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.</p> <p>W.S.35-11-406(o) No permit shall be issued to an applicant after a finding by the director or council, after opportunity for hearing, that the applicant or operator specified in the application controls or has controlled mining operations with a demonstrated pattern of willful violations of such nature and duration with such resulting irreparable harm to the environment as to indicate reckless, knowing or intentional conduct.</p>	<p style="text-align: center;"><b>2/14/2012 Concern Letter, Section 1k.</b></p>
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<p>written finding and enter our finding into AVS.</p> <p>(h) If we identify you as an owner or controller under paragraph (g) of this section, you may challenge the finding using the provisions of §§773.25, 773.26, and 773.27 of this subchapter.</p>		
<p><b>§ 774.12 Post-permit issuance information requirements for permittees.</b></p> <p>(a) Within 30 days after the issuance of a cessation order under §843.11 of this chapter, or its State regulatory program equivalent, you, the permittee, must provide or update all the information required under §778.11 of this subchapter.</p> <p>(b) You do not have to submit information under paragraph (a) of this section if a court of competent jurisdiction grants a stay of the cessation order and the stay remains in effect.</p> <p>(c) Within 60 days of any addition, departure, or change in position of any person identified in §778.11(c) of this subchapter, you must provide—</p> <p>(1) The information required under §778.11(d) of this subchapter; and</p> <p>(2) The date of any departure.</p> <p><b>§ 778.11 Providing applicant and operator information.</b> ...</p> <p>(c) For you and your operator, you must provide the information required by paragraph (d) of this section for every—</p> <p>(1) Officer.</p> <p>(2) Partner.</p>	<p>Chapter 16, Section 2(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 <u>a court of competent jurisdiction</u> granted a stay of the cessation order and that stay remains in effect.</p> <p>Chapter 2, Section 2(a)(i)(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. <u>Within sixty (60) days of any addition, departure, or change in position of any person identified above, the applicant or permittee shall provide the information submitted above and the date of any departure;</u></p>	<p><b>2/14/2012 Concern Letter, Section 16, paragraph 1.</b></p> <p><b>2/14/2012 Concern Letter, Section 16, paragraph 2.</b></p>

<p>(3) Member.</p> <p>(4) Director.</p> <p>(5) Person performing a function similar to a director.</p> <p>(6) Person who owns, of record, 10 percent or more of the applicant or operator.</p> <p>(d) You must provide the following information for each person listed in paragraph (c) of this section—</p> <p>(1) The person's name, address, and telephone number.</p> <p>(2) The person's position title and relationship to you, including percentage of ownership and location in the organizational structure.</p> <p>(3) The date the person began functioning in that position.</p>		
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