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Wyoming Outdoor Council

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FILED

Oct 04, 2012

Jim Ruby, Executive Secretary
Environmental Quality Council

JD
OCT 3 2012
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DEQ/Land Quality Division
122 West 25th Street
Herschler Building—3W
Cheyenne, WY 82002

October 1, 2012

Re: Comments on Draft Coal Rules and Regulations, Chapters 1, 2, 4, 11, 12, and 16

To whom it may concern:

Please accept these comments from the Wyoming Outdoor Council regarding the Wyoming Department of Environmental Quality Land Quality Division's (LQD) proposed revisions to the coal mining rules and regulations found in Chapters 1, 2, 4, 11, 12, and 16 of the Wyoming administrative code. The Wyoming Outdoor Council is Wyoming's oldest statewide environmental advocacy group, and has worked for forty-five years to help ensure protection of Wyoming's natural environment.

We will not attempt in these comments to provide comments on all of the proposed revisions to the coal mining rules and regulations. We will focus on just a few issues of special interest and concern to us. In particular, we will focus on the proposal to allow variable depths of topsoil during reclamation.

Pursuant to Chapter 2 of the coal mining rules and regulations, the LQD proposes to add a requirement in section 1(a) that, "All applicants must swear or affirm, under oath and in writing, that all information you provide in an application is accurate and complete." This is an important provision and we support the addition of this requirement to the regulations. We believe, however, that this provision should be clearly linked to penalty provisions that will be applied if this requirement is not met or adhered to. This public affirmation of the accuracy and completeness of submitted information must be accompanied by clear and specified penalty provisions if its public accountability functions are to be fully effective.

Pursuant to Chapter 4 of the coal mining rules and regulations, the LQD proposes in section 1(c)(v)(A) that topsoil that is redistributed to achieve a uniform, stable thickness "may also be varied to the extent such variation helps meet the specific revegetation goals identified in the permit." Relative to this proposed provision, we believe it is critical that standards be specified that will help guide a determination of when "variation helps meet the specified revegetation goals." There should be clear scientific support or at least a well founded, and stated, basis for a professional opinion that the proposed topsoil thickness is sufficient to meet revegetation goals specified in the permit. This determination should not be left as a completely discretionary decision or in an undefined status; there should be guidance (if not requirements) for determining when or if a topsoil thickness is sufficient to meet reclamation goals. This would help build public understanding and acceptance for these determinations,

and it might also help build operator support or understanding. The public record for these decisions should be required to clearly disclose that the variation was linked to “the specific revegetation goals identified in the permit.”

Pursuant to Chapter 12 of the coal mining rules and regulations, the LQD proposes in section 1(a)(v)(D) that where mines are proposed within 100 feet of a public road that authorization for an exception to this prohibition under a valid existing right (VER) claim “shall provide a public comment period and an opportunity to request a public hearing” We support this proposal and are hopeful that the LQD and Environmental Quality Council will adopt it. Coal mining this close to public roads needs to be carefully managed, if not prohibited, and allowing for public involvement in this decision-making will help ensure that well-founded decisions are made.

In section 1(a)(vii)(C)(II)(2.) of Chapter 12, the LQD proposes examples of lands that would be unsuitable for coal mining under section 522(e) of the Surface Mining Control and Reclamation Act (SMCRA), 30 U.S.C. § 1272(e), and which would thus be subject to notice requirements to affected land owners where there are VER claims. We believe it is appropriate, as proposed, to specify that notice must be given to the State Historic Preservation Officer when a property on the National Register of Historic Places might be impacted by coal mining and that the National Park Service be notified when Park Service properties might be impacted, so as to ensure the prohibitions stated in section 552(e) of SMCRA are fully complied with. But in addition to the State Historic Preservation Officer, we believe that notice should also be provided to Advisory Council on Historic Preservation and the National Trust for Historic Preservation, both of which have important roles in ensuring the National Historic Preservation Act is fully complied with, and provisions such as that in SMCRA are adhered to.

The LQD also proposes in section 1(a)(vii)(F) of Chapter 12 that not only *requests* and *related materials* subject to notice and comment where there are VER claims will be made available to the public, but also that, “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.” (emphasis added). We support expanding the scope of materials that are available to the public and we believe that maximum access should be afforded to the public of this kind of information, in the interest of full public disclosure and full public participation in the democratic process.

Thank you for considering these comments, and please feel free to contact me if I can be of any assistance as the LQD and Environmental Quality Council move toward finalization of these rules.

Sincerely,



Bruce Pendery

LQD

OCT 3 2012

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