

FILED
FEB 11 2014

Jim Ruby, Executive Secretary
Environmental Quality Council

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL



STATE OF WYOMING

September 12, 2013

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

STATEMENT OF PRINCIPAL
REASONS (SOPR) FOR ADOPTON

DOCKET #: 13-4101

Noncoal Rules and Regulations, Chapters 9 and 10
Small Mines and Limited Mining Operations

Table of Contents

Introduction to Rule Package i
Summary of Proposed Amendments in Rule Package iii
Summary of March 25, 2013 Advisory Board..... iv
Chapter 9 Draft Proposed Rules and Statement of Reasons1
Chapter 10 Draft Proposed Rules and Statement of Reasons3
Attachment A: Chapters 9 and 10 Strike & UnderlineA-1
Attachment B: Chapters 9 and 10 Clean Version.....B-1

Introduction to Rule Package

Several sections of the Environmental Quality Act were revised during the 2013 Wyoming Legislative session and will become effective July 1, 2013. These revisions amended requirements and standards for small mines and limited mining operations. The legislative changes were made to reflect the fact that construction projects are larger today and require more materials than was necessary in the past and also that the materials are more difficult to mine as the more easily mined resources are removed. The legislative changes also increased the amount required to bond a limited mining operation for reclamation costs. The updated amounts more accurately reflect the actual costs to reclaim these sites.

As a result of the legislative changes, the Land Quality Division (LQD) is proposing to amend its noncoal rules and regulations to conform to the new statutory requirements and

clarify rule language related to these types of operations. The following is a brief introduction to the proposed changes presented in this rule package.

Chapter 9, Small Mine Operations

The Wyoming Legislature revised W.S. §35-11-401(j) during the 2013 Legislative Session. W.S. §35-11-401(j) allows the Environmental Quality Council to modify or suspend certain requirements for small surface mining operations by rule and regulation. Chapter 9 of the LQD Noncoal Rules and Regulations details that modification or suspension of requirements as allowed under W.S. §35-11-401(j). The amendments to W.S. §35-11-401(j) increased the amount of overburden, excluding topsoil, which may be removed annually. The Legislature also excluded access roads from the annual ten acre disturbance limit placed on small mines, but retained the requirement that roads are to be covered by a reclamation bond.

Chapter 10, Limited Mine Operations

The Wyoming Legislature also revised W.S. §35-11-401(e)(vi) during the 2013 Legislative Session. W.S. §35-11-401(e)(vi) applies to limited mining operations that are exempt from the provisions of Article 4 (Land Quality Division) of the Wyoming Environmental Quality Act (EQA). The EQA was revised to: increase the bonding amounts; increase the affected acreage limitation; exclude roads used to access the limited mining operation from the disturbance limits; add requirements for providing notice to surface owners within one mile of the proposed operation; and limit the proximity to existing structures or land uses. Proposed amendments to Chapter 10 reflect the changes made to the EQA. These changes are discussed more fully in the statement of reasons.

The authority to amend these rules is provided by Wyoming Statute (W.S.) §§ 35-11-112(a)(i), 35-11-114(b), 35-11-401(j), and 35-11-406(e)(vi).

Summary of Proposed Amendments

Chapter 9 Proposed Changes

Section 1. – Proposed changes to Section 1 increase the amount of overburden an operator may remove annually from 10,000 to 35,000 cubic yards and add an exclusion for topsoil from the overburden limit. Section 1 was also revised to exclude access roads from the 10-acre affected land limitation, but retains the bonding requirements.

Section 2. – Section 2 was revised to include the requirement that access roads are included in the permitted area and must also be bonded for reclamation.

Section 7. – Section 7 was revised to include the limitations and exclusions in Section 1.

Chapter 10 Proposed Changes

Section 1. – Section 1 was revised to add a requirement that notification must be provided to the Administrator thirty (30) days prior to commencing operations. Proposed changes increase the size limitation from ten (10) to fifteen (15) acres for limited mining operations. Proposed revisions also exclude access roads from the size limitation and clarify that access roads must be bonded for reclamation. Section 1(a)(v) and Section 1(a)(vii)(D) were deleted from the information that must be included in the notification. Section 1(b) was added to include the requirement that operators must notify surface owners within one mile of the proposed operation and details what must be included in the notification.

Section 2. – Section 2 was revised to increase the bond amounts from \$1,000 per acre to \$2,000 per acre, and \$3,000 per acre for quarry type operations.

Section 4. – Section 4 was revised to add the requirement that landowner consent must be obtained for a limited mining operation that would be within 300 feet of certain structures and land uses.

Section 6. – Section 7 was revised to remove a reference to a form which is no longer applicable.

Section 8. – Section 8 was revised to be consistent with the new size limitations for limited mining operations.

Summary of March 25, 2013 Advisory Board

Recommendation:

Proceed to Environmental Quality Council with rules as presented with the provision that the introduction section of the statement of reasons be modified to describe the LQD's approach to defining quarry over time and experience.

Discussion:

During the Advisory Board meeting held on March 25, 2013, the Board Members had questions about Section 2 of Chapter 10. Specifically, the Board questioned whether the LQD had a definition for "quarry" as discussed in Section 2. Chapter 10, Section 2, sets bond amounts for quarries at \$3,000.00 per acre and all other operations at \$2,000.00 per acre. The proposed regulations mirror the new legislation which also does not define what a "quarry" is. As such, the LQD will need time to gain experience in determining when an operation will be considered a "quarry" for purposes of administering the bonding of limited mining operations.

The LQD believes that in general, the \$2,000.00 per acre will be sufficient to insure reclamation of the operation is completed as required. However, the legislature also included the requirement that quarries be bonded at \$3000.00 per acre as discussed above. As was pointed out during the Advisory Board meeting the LQD does not currently have an example of any operations that would likely be considered a quarry under the LMO regulations (pgs. 25-33, 3/25/2013 Minutes). Therefore the LQD needs time to consider those circumstances when additional bonding may be required. It is unclear whether the increased acreage limitation will result in notifications for operations that would be considered a quarry for purposes of bonding and as such it would be premature to try and craft a definition for a "quarry" to meet unknown factual situations. As was concluded during the Advisory Board the most practical means of determining if a need exists to draft a definition is to administer the rules as proposed and after a period of time reassess the need with the knowledge and experience gained during that time (pg. 33, 3/25/2013 Minutes) .

The LQD plans to take the approach discussed during the Advisory Board meeting. The Division will review new notifications and note those instances where reclamation may be more costly based on conditions on the ground. Several factors were discussed during the meeting that may be indicative of those cases where the \$3000.00 per acre bond amount may be appropriate and will be monitored as notifications are received after the effective date of the legislation. As discussed during the meeting, some initial factors that may require a higher bond are operations that require highwalls or stepped highwalls, those that require blasting, the depth of the operation or operations that would be considered "hardrock" operations as defined in Chapter 1 of the LQD's Noncoal Rules and Regulations (pgs. 25-33, 3/25/2013 Minutes). The LQD will use the examples on the

ground to determine whether a definition is needed and use those cases to help shape a definition for “quarry” if it is determined that one is necessary.

Comments Received:

Powder River Basin Resource Council (PRBRC) commented that the LQD did not include the Administrator’s discretion to require the operator to post an additional bond per acre within ninety (90) days after the limited mining operation commenced operation as the revised legislation provided (pg. 21, 3/25/2013 Minutes). The LQD agreed that language should have been included in the proposed rules and as such were presented to the Advisory Board for inclusion into the rule package. PRBRC did not offer any other proposed changes to the rules as presented.

DEPARTMENT OF ENVIRONMENTAL QUALITY

LAND QUALITY DIVISION

NONCOAL RULES AND REGULATIONS

CHAPTER 9

PERMIT APPLICATION REQUIREMENTS FOR SMALL MINING OPERATIONS

Section 1. **General.**

(a) Small mine operations are defined pursuant to W.S. § 35-11-401(j) as surface mining operations that remove no more than ~~10,000~~ thirty-five thousand (35,000) cubic yards of overburden, excluding topsoil and subsoil, and disturb no more than ten (10) acres of land in any one year, excluding roads used to access the mining operation.

Subsection (a) above was revised to provide consistency with the revised statutory language. The limitation on removal of overburden was increased from 10,000 cubic yards to 35,000 cubic yards annually. W.S. §35-11-103(e)(iv) defines overburden as “all of the earth and other materials which lie above the mineral deposit and also means such earth and other materials disturbed from their natural state in the process of mining, or mining from exposed natural deposits”. Subsection (a) was also revised to exclude topsoil from the 35,000 cubic yard limitation. W.S. §35-11-103(e)(xiv) defines topsoil as “soil on the surface prior to mining that will support plant life”. In 1998 the Wyoming Supreme Court held that the Environmental Quality Council correctly determined that “overburden” clearly and unambiguously included “topsoil” (Platte Dev. Co. v. State, Env’tl. Quality Council, 966 P.2d 972).

The proposed revisions above also remove roads used to access the mining operation from the 10-acre limitation. Access roads must be covered by a reclamation bond but are not included in the area which may be disturbed in any one year. The proposed revisions to Subsection (a) are consistent to the revised statutory language.

(b) This Chapter sets out the information required for small mine permit applications. The requirements of Chapter 2, Regular Mine Permit Applications, shall not apply to small mine operations. The requirements of Chapter 3, Environmental Protection Performance Standards, shall apply to small mine operations, except as specifically noted herein.

(c) The Administrator shall not accept or approve small mine permit

applications for coal mines, uranium mines, underground mines or in-situ mines.

(d) Prior to the commencement of a small surface mining operation ~~involving not more than 10,000 cubic yards of overburden, topsoil and subsoil, and ten acres of affected land in any one year,~~ an application shall be submitted to the Administrator in duplicate on forms supplied by the Division. Each application shall contain the information as set out in this Chapter and in a format as required by the Administrator.

Subsection (d) was revised to remove redundant language. Subsection (a) above contains a description of the size and volume limitations and therefore the language struck above is unnecessary.

Section 2. **Adjudication Information.**

...

(c) The applicant shall post a reclamation bond in the amount and in a form acceptable to the Administrator prior to approval of the small mine permit application. Roads used to access a small mining operation shall be included in the permit and bonded for reclamation liability.

Subsection 2(c) was revised to state that roads used to access the mining operation are bonded for reclamation liability and included in the permit. Changes made to the Environmental Quality Act during the 2013 Wyoming Legislative session exempted roads from the 10-acre per year size limitation, but reclamation bond amounts must include the roads as part of the estimate.

...

Section 7. **Conversion of Small Mine Permit to Regular Mine Permit.**

(a) If an operator, holding a valid mining permit under W.S. § 35-11-401(j) for a small mining operation, intends to expand his operation within the approved permit area to remove more than ~~10,000~~ thirty-five thousand (35,000) cubic yards of overburden, excluding topsoil and subsoil, per year or affect more than ten (10) acres of land per year, excluding roads used to access the mining operation, the operator shall submit an application for a permit revision and obtain approval for the expansion prior to the time when he intends to exceed the established limits. The application shall include the following information:

Subsection 7(a) is revised to incorporate the new limitations and exclusion which were adopted by the Wyoming Legislature during the 2013 legislative session.

DEPARTMENT OF ENVIRONMENTAL QUALITY

LAND QUALITY DIVISION

NONCOAL RULES AND REGULATIONS

CHAPTER 10

LIMITED MINING OPERATIONS

FOR ~~TEN~~ FIFTEEN ACRES OR LESS OF AFFECTED LAND

Section 1. **Commencement.**

(a) At least thirty (30) days ~~P~~prior to the commencement of surface mining operations for the removal of sand, gravel, scoria, limestone, dolomite, shale, ballast, or feldspar from an area of ~~ten~~ fifteen (15) acres or less of affected land, excluding access roads, a notification shall be submitted by the operator to the Administrator. The notification must be on forms supplied by the Division and shall contain the following:

Proposed revisions to Subsection 1(a) above adds a requirement that notification must be submitted to the Administrator at least 30 days prior to commencement of a limited mining operation. Subsection 1(a) was also edited to improve readability. Notifications must be submitted on forms supplied by the Division.

Legislative changes included an increase in size from ten to fifteen acres excluding access roads. Access roads were removed from the disturbance limit because the inclusion of access roads created an unintentional incentive to locate pits as close to existing roads as possible, which in turn created additional conflicts with nearby landowners. Removing the access roads from the disturbance limitation allows for more remote operations and thereby reduces landowner conflict. Roads used to access the operation will still be bonded for reclamation and included in the permitted acreage.

The disturbance limit was increased from ten to fifteen acres and more accurately reflects current needs related to construction materials. Construction projects are larger and require more material than when the ten acre limitation was legislated. The increase to fifteen acres and removal of haul roads from the disturbance limitation allows the limited mining operation to continue to fulfill the intended purpose of rapid access to a small amount of material. This is particularly true for highway projects where contracts are awarded very near the time at which materials are necessary.

- (i) The name, address, and telephone number of the operator.
- (ii) The written consent for the operation from the surface owner and surface lessee, if any, of the land to be affected.
- (iii) The location of the area of the operation by legal subdivision, section, township, and range. If there is no other survey, the location by protracted survey, metes and bounds, or claims.
- (iv) The mineral to be mined.
- ~~(v) The proposed commencement and completion dates of the operation.~~

Subsection 1(a)(v) was removed because the information is not required by statute and tends to be very speculative based on market conditions and project needs and therefore does not have much value in the administration and oversight of limited mining operations.

- (vi) A USGS topographic map:

(A) ~~Each~~ The notification ~~(Form 10)~~ submitted to the Administrator must be accompanied by an original quadrangle map (photo copies or other similar copies are not acceptable unless prior approval is obtained from the Land Quality Division).

Proposed Subsection 1(a)(v)(A) above was edited for clarity. The "Form 10" language was dropped because the form designation is a remnant of a former naming convention and is no longer accurate.

(B) The following information shall be shown on the quadrangle map:

(I) A legal description of the ~~ten~~ fifteen (15) acres or less of land to be affected.

(II) If any previous mining has taken place, or is taking place, within the ~~ten~~ fifteen (15) acres or less to be affected, show the location and identity of this mining as an existing mining operation.

Subsections (I) and (II) were revised to reflect the new disturbance limitation of fifteen acres.

(III) Show any existing or proposed access or haul roads

into, or away from the proposed mining operation. Any roads to be constructed or upgraded by the operator shall be included as part of the ~~ten-acre~~ operation from that point that they provide exclusive service and shall be covered by a reclamation bond but are not included in the fifteen (15) acres of affected land limitation.

Subsection (III) was revised to clarify that access roads are not included in the fifteen acre limitation but must be covered by a reclamation bond. The section was also revised to remove the reference to “ten acre” operations.

(vii) The operator shall provide a description of the proposed mining operation. This description shall include:

- (A) Number of acres to be affected.
- (B) Maximum depth to which mining will occur.
- (C) Depth to groundwater where known.
- ~~(D) Brief description of the mining operation(s) and methods.~~

Subsection (D) above has been deleted because mining methods for limited mining operations are fairly consistent among operations and the inclusion of this information has become unnecessary to affectively administer oversight of these operations. The LQD’s current notification form contained a brief description of the typical mining method used for limited mining operations. The notification form did not however ask for a description of the mining method, it was merely included as a statement that did not require any input from the operator and therefore was of little value to the Land Quality Division.

(D E) The premining and proposed postmining land use.

(viii) A sworn statement that all information contained in the notification is true and correct to the best knowledge of the operator.

Subsection headings were revised above to reflection the removal of current subsection (v) above.

(b) At least thirty (30) days prior to commencing operations, the operator must notify by mail all surface owners located within one (1) mile of the proposed boundary of the limited mining operation. The surface owner notification must include:

(i) A copy of the notification submitted to the Administrator in Subsection (a) above;

above; and

(ii) A copy of the map submitted in compliance with Subsection (a)(v)

(iii) The name, postal address and telephone number of the operator.

Proposed Subsection (b) above is intended to specify the operation of the new statutory requirements. W.S. §35-11-401(e)(vi) was revised to include a requirement that all surface owners within one mile of the proposed operation be provided with a copy of the notification. Notification to surface owners must include a copy of the notification sent to the Administrator in Subsection 1(a), a copy of the map submitted in Subsection 1(a)(v) and the name, postal address and telephone number of the operator.

Section 2. **Bond.**

The operator shall file a bond pursuant to W.S. § 35-11-401(e)(vi)(B) in the amount of two thousand dollars (\$2,000.00) per acre, except for quarries for which the bond amount shall not exceed three thousand dollars (\$3,000.00) per acre of affected land. Roads used to access the mining operation must be included in the acreage total when calculating bond amounts. Within ninety (90) days after limited mining operations commence, the Administrator may require the operator to post an additional bond per acre of affected land if it is determined that such amount is necessary to insure reclamation. The operator shall post the additional bond not later than thirty (30) days after receipt of such notification.

Subsection 2 above was revised to reflect the new section headers in W.S. §35-11-401(e)(vi) which was reorganized. W.S. §35-11-401(e)(vi) was also amended to include increased amounts per acre for reclamation bonds. The legislature raised the amount from \$1000/acre to \$2,000/acre for limited mining operations, except for quarries which will be bonded at \$3,000/acre. And finally Section 2 was revised to include the new discretion of the Administrator to post an additional bond within 90 days after the LMO has commenced operation and the requirement that this bond must be received not later than 30 days after notification.

See also the Advisory Board discussion on page (iv) of this Statement of Reasons for further discussion regarding Section 2 as proposed. The Advisory Board recommended that the Statement of Reasons be revised to include a discussion regarding how this section will be administered and whether the LQD needed a definition for “quarry” (See pages 25-33, March 25, 2013 Minutes). Page (iv) summarizes that discussion.

...

Section 4. **Operation.**

...

(d) The affected lands shall not be within three hundred (300) feet of any existing occupied dwelling, home, public building, school, church, community or institutional building, park or cemetery unless the landowner's consent has been obtained.

Subsection (d) above was added to be consistent with the revised statutes related to limited mining operations. The revised statute, W.S. §35-11-401(e)(vi)(A), adds a requirement that landowner consent is necessary if a limited mining operation is proposed within three hundred feet of building or other development as listed above. This limitation is consistent with limitations currently applied to other types of mining operations regulated by the Land Quality Division.

...

Section 6. **Transfers**

The right to operate under a limited mining exemption may be transferred to a new operator with written approval of the existing operator and written acceptance by the Administrator, provided the new operator submits a new ~~Form 10~~ notification and bond required for the new operation and assumes the reclamation liability of the existing operator and does not violate the limitations provided in Section 8 below.

The form name was removed from Section 6 and was replaced by a term that is used elsewhere in the Division's rules and regulations and the Wyoming Environmental Quality Act.

...

Section 8. **Limitation of Operations.**

(a) The operator will not be allowed to:

(i) Conduct more than one operation under W.S. § 35-11-401(e)(vi) within adjacent areas when the operations are to mine the same minerals, or

(ii) Conduct more than one operation of ~~ten~~ fifteen (15) acres or less within any six-mile radius when the two operations are to mine the same mineral, so as to circumvent the general requirements of the Environmental Quality Act. The Administrator may allow two operations for the same mineral within the six-mile radius

if one of the operations has completed reclamation work and is awaiting bond release. Complete reclamation for the purposes of this section means backfilling, grading, topsoil application and final seeding activities have been completed.

W.S. §35-11-401(e)(vi) was amended to set the disturbance limit to fifteen acres and Subsection 8(a)(ii) was revised to be consistent with the statutory limits.

CONCLUSION

The Environmental Quality Council, in accordance with the authority granted to it by W.S. § 35-11-112 As Amended, and having complied with the provision of the Wyoming Administrative Procedures Act, find as follows:

1. These rules provide for the regulation of noncoal mining and reclamation operations in accordance with the requirements of W.S. § 35-11-101 through W.S. § 35-11-1803, As Amended (Wyoming Environmental Quality Act).
2. The Department of Environmental Quality, Land Quality Division, Noncoal Rules and Regulations are necessary and appropriate to preserve and exercise the primary responsibilities and rights of the State of Wyoming; to retain for the State the control over its air, land, and water resources and secure cooperation between agencies of the State and Federal Government in carrying out the policy and purposes of the Environmental Quality Act.
3. These Land Quality Division Noncoal Rules and Regulations are reasonable and necessary for the effectuation of the Wyoming Environmental Quality Act, W.S. § 35-11-101 through W.S. § 35-11-1803, As Amended.
4. These Land Quality Division Noncoal Rules and Regulations are necessary and appropriate to protect the public health, safety, welfare, and environment of the State of Wyoming.

Dated this 12th day of September, 2013.



Environmental Quality Council