

TAKINGS ANALYSISJim Ruby, Executive Secretary
Environmental Quality Council1. Private Property Affected? – YES

The proposed regulations are intended to regulate in situ mining operations which may take place on privately owned property.

2. Mandated by State/Federal law? – YES

The rule package has been drafted to address a deficiency that the United States Environmental Protection Agency (EPA) has identified in the current rules regarding how aquifer exemption boundaries are delineated. The proposed rules require an applicant to provide a “description and calculations that support the proposed distance beyond the monitor well ring boundary required to mine and to restore groundwater” for the aquifer exemption boundary and will therefore provide a more accurate boundary compared to the current regulations which used ¼ ¼ boundaries.

In addition to the above change the rules have been revised to include several changes initiated by the Wyoming Department of Environmental Quality, Land Quality Division (LQD). These changes are intended to facilitate a more efficient review of permitting actions and provide consistency with other LQD rules. The rules were also revised to improve consistency with the Federal regulations.

3. Advance Statutory Purpose? – YES

The State and Federal Regulations regarding regulation of in situ mining are intended to protect the environment while at the same time allow for the use of natural resources.

4. Permanent Occupation of Private Property? – NO

The proposed regulations do not result in a permanent occupation of private property as they are intended to regulate a non-permanent activity (in situ mining).

5. Dedication of property or grant an easement? – NO

The rules as proposed do not require the property owner to grant any dedications of property or grant an easement to the property.

6. Action interfere with investment-backed expectations? – NO

The proposed rules regulate an already heavily regulated field and do not impose additional substantial burdens to property owners. The rules are also intended to increase the efficiency with which the LQD can approve permitting actions, thereby reducing the burden on the regulated community.

7. Does character of government action balance public interest and private burdens? – YES

The proposed rules impact the in situ mining industry (private) while protecting the public interests in groundwater protection (public). The rules are intended to insure that in situ mining is conducted in a manner that minimizes impacts to groundwater and protects groundwater for other users.

8. Action deprive owner of all economically viable uses of the property? – NO

The proposed revisions to the in situ rules only impact one industry or land use. The proposed rules do not preclude any other uses of the property.

9. Does the action have a significant impact on the landowner's economic interest? – NO

The proposed rules do not significantly impact the landowner's economic interest. The proposed rules add little in the way of increased costs in compliance efforts. In fact in some instances the burdens on the regulated community are actually decreased because of the reduction in required submissions for compliance with the LQD regulations.

10. Does the action deny the owner a fundamental attribute of ownership? – NO

The proposed rules do not deny the owner a fundamental attribute of ownership. First, the landowner would have to voluntarily subject themselves to the regulations by engaging in in situ mining. The proposed rules do not require any easements or for the landowner to give up any fundamental rights associated with the property.

11. Action serve same purpose that would be served by prohibition on use of land? – NO

The proposed rules are intended to allow for the development of mineral resources on the property while protecting the groundwater and environment. Prohibition would not allow the development of the mineral resources.

12. Could be addressed in less restrictive manner? – NO

The proposed rules are subject to review by the EPA and must be at least as stringent as the Federal regulations. Generally if the LQD's rules were less restrictive than the Federal regulations they would not be approved at the Federal level. The rules regarding delineating an aquifer exemption boundary have already been found to be less effective than the Federal regulation which is the reason for developing the rule package. Additional changes to the rules were intended to increase the LQD's efficiency in reviewing permit actions.