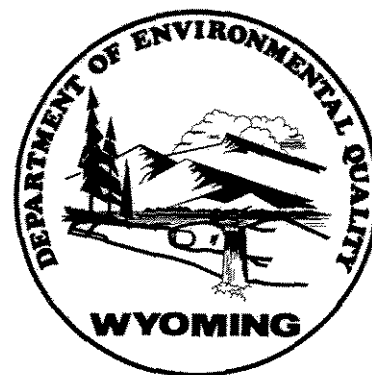


Department of Environmental Quality  
Land Quality Division

**Draft Proposed Rules and Statement of Reasons**

**Coal - Chapters 4, 15, and Appendix A**

**Rule Package 1P - Bond Release**



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CHAPTER 4

ENVIRONMENTAL PROTECTION PERFORMANCE STANDARDS  
FOR SURFACE COAL MINING OPERATIONS

**1. Proposed Rule Amendment: Chapter 4, Section 2(d)(ix)**

**Section 2(d)(ix)** Bond release. The bond for revegetation shall be retained for not less than ten years after the operator has completed seeding, fertilizing, irrigation, or other work to ensure revegetation. The bonding period shall not be affected where normal and reasonably good husbandry practices are being followed. The success of revegetation shall be determined in accordance with Section 2(d)(x) of this chapter and paragraphs (E)-(H)(J) below. If the Administrator approves an alternative success standard, as allowed by Section 2(d)(x) of this Chapter, the standard shall be based on technical information obtained from a recognized authority (e.g. ~~Soil Conservation Service~~ Natural Resource Conservation Service, Agricultural Research Service, Universities, Wyoming Game and Fish Department, U. S. Fish and Wildlife Service, etc.), or be supported by scientifically valid research. Use of an alternative technical standard shall be supported by concurrence from State and Federal agencies having an interest in management of the affected lands.

*This rule amendment is proposed because the name of the federal Soil Conservation Service has been changed to the Natural Resource Conservation Service.*

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*The authority to amend this rule is provided by Wyoming Statute (W.S.) §§ 35-11-112(a)(i), 35-11-114(b), and 35-11-403(a)(i).*

## 2. Proposed Rule Amendment: Chapter 4, Section 2(d)(x)

**Section 2(d)(x)** The Administrator shall not release the entire bond of any operator until such time as revegetation is complete, if revegetation is the method of reclamation as specified in the operator's approved reclamation plan. Revegetation shall be deemed to be complete when: (1) the vegetation cover of the affected land is shown to be capable of renewing itself under natural conditions prevailing at the site, and the vegetative cover and total ground cover are at least equal to the cover on the area before mining, (2) the productivity is at least equal to the productivity on the area before mining, (3) the species diversity and composition are suitable for the approved postmining land use, and the revegetated area is capable of withstanding grazing pressure at least comparable to that which the land could have sustained prior to mining, unless Federal, State or local regulations prohibit grazing on such lands; and (4) the requirements in (1), (2), and (3) are met for the last two consecutive years of the bonding period for those mines using native area comparisons or the requirements in (1), (2), and (3) are met for two out of four years beginning no sooner than year eight of the bonding period for those mines using technical standards. The Administrator shall specify quantitative methods and procedures for determining whether equal cover and productivity has been established including, where applicable, procedures for evaluating postmining species diversity and composition. The following options or an alternative success standard approved by the Administrator are available:...

*The proposed changes to this section relate to two topics: (1) removal of the Grazing Demonstration currently required for bond release; and (2) development of a Vegetation Technical Standard for bond release evaluations.*

### *GRAZING DEMONSTRATION*

*The Office of Surface Mining (OSM) regulation at in the Code of Federal Regulations (CFR) at 30 CFR 816.115, which was first promulgated in 1979, required livestock grazing on a reclaimed area for the last two years of the bond responsibility period when the approved postmining land use was range or pastureland. The OSM later removed this rule from its regulatory program (48 Federal Register (FR) 40160, September 2, 1983).*

*The Land Quality Division (LQD) has continued to maintain a rule requiring grazing demonstration as part of bond release evaluation. However, the LQD has found it extremely difficult to maintain oversight on grazing programs being implemented. It has been the experience of LQD staff that it is almost impossible to collect meaningful information on the effects of grazing on reclaimed lands with limited episodes of grazing and limited vegetation data collection associated with each grazing episode. Consequently, the LQD is proposing to repeal the requirement that an operator shall implement a grazing program to show that the reclaimed area can withstand grazing pressure at least comparable to that which the land could have sustained prior to mining. This will make the Wyoming coal program no more effective than the Federal program.*

*This removal of grazing demonstrations from bond release evaluations is intended to be applied to all lands that have been disturbed to facilitate coal mining in the past as well as all lands disturbed to facilitate coal mining in the future.*

*A mine operator may wish to use grazing as a husbandry tool. This activity will still be permissible and encouraged. If grazing is used as a husbandry practice, operators*

*shall discuss the practice in the Reclamation Plan. The discussion shall include how grazing will be used as a tool to redirect the composition, cover, or productivity of the reclaimed area. The operator will be required to inform and gain approval for first-time grazing from the LQD and report all grazing activities in the Annual Report.*

*DEVELOPMENT OF A TECHNICAL STANDARD*

*The option of using a technical standard to evaluate revegetation success is proposed in Rule Amendment No. 5, which adds Subsection J to Chapter 4, Section 2(d)(x). However, because the bond release time frames are discussed at the beginning of Section 2(d)(x), some discussion of the technical standards is also necessary in this Rule Amendment No. 3.*

*The climatic conditions in Wyoming vary greatly from one year to the next. The climatic variability is not considered a problem in the use of a reference area because the reference area would be impacted by drought or other adverse environmental conditions in a manner similar to the corresponding reclaimed area. However, the climatic variability may impact an operator's ability to achieve two consecutive years of vegetation success when using a technical standard because the standard would not be based on drought conditions but on a mean or median of several years of differing climatic conditions (see Rule Amendment No. 5). It is hoped this added flexibility for meeting a technical standard will encourage operators to start bond release demonstrations sooner than such demonstrations are currently started because a failure to meet the criteria during the second year of sampling will not force the sampling period to start over.*

*The OSM has recognized climatic variability in the east and has allowed states in the east to modify their regulations to require the operators to meet the bond release criteria in two out of three years. It should be noted that the eastern states only have a five-year bond period due to the amount of rainfall they receive and the positive effect the added moisture has on the ability to meet reclamation standards. Conversely, the western states, including Wyoming, have a ten-year bond period because of the limited rainfall and the longer time required for vegetation to become established during reclamation.*

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*The authority to amend this rule is provided by W.S. §§ 35-11-112(a)(i), 35-11-114(b), 35-11-406(b)(iii), and 35-11-415(b)(vii).*

**3. Proposed Rule Amendment:** Chapter 4, Section 2(d)(x)(E)(I)&(II)

**Section 2(d)(x)(E)** The postmining density, composition, and distribution of shrubs shall be based upon site-specific evaluation of premining vegetation and wildlife use. Shrub reclamation procedures shall be conducted through the application of best technology currently available.

**(I)** For lands affected between May 3, 1978 and August 6, 1996, a goal of a density of a minimum one shrub (full shrubs plus subshrubs) per square meter within a mosaic of shrub patches shall be restored using the best practicable technology. These shrub patches shall: cover a minimum of 10 percent of the postmining (affected area) landscape; be no smaller than 0.05 acres; and be arranged in a mosaic that will optimize interspersion and edge effect.

**(II)** Except where a lesser density is justified from premining conditions in accordance with Appendix A, at least 20 percent of the eligible lands shall be restored to shrub patches supporting an average density of one shrub per square meter. Patches shall be no less than 0.05 acres each and shall be arranged in a mosaic that will optimize habitat interspersion and edge effect. Criteria and procedures for establishing the standard are specified in Appendix A. This standard shall apply to all lands affected after August 6, 1996.

*Subsection 2(d)(x)(E)(I) - In 1978, a rule package was adopted that required shrubs to be replaced to a density equal to the premining density. For many areas and for the postmining land use of grazingland and wildlife, the amount of shrubs required by the rule was not desirable. In 1981, the rules were changed to establish a goal of returning shrubs to one shrub per square meter across 10% of the reclaimed lands. In 1996, a rule package was approved which changed the regulatory requirement for the reestablishment of shrubs from a 10% goal to a 20% standard. The effective date of the new rules was the date those rules were approved by OSM. Lands disturbed before that date retained the shrub goal requirement.*

*Unfortunately, the 1996 rule package inadvertently deleted the shrub goal rule. The deletion of the shrub goal rule was an oversight, and it was intended that the shrub goal rule still applied to those lands affected after the initial date of the shrub reestablishment requirement (1978) and prior to the approval of the shrub standard rule (1996). In practice, both the LQD and the operators have been working with the understanding that the shrub goal would be reinstated.*

*The above rule reinstates the goal rule and clarifies that prior to May 3, 1978 there was no specific requirement for shrub reestablishment and also clarifies that the shrub goal is to be applied from May 3, 1978 to August 6, 1996.*

*Subsection 2(d)(x)(E)(II) - The only change to this section is the section number.*

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*The authority to amend this rule is provided by W.S. §§ 35-11-112(a)(i), 35-11-114(b), 35-11-406(b)(iii), and 35-11-415(b)(vii).*

**4. Proposed Rule Amendment:** Chapter 4, Section 2(d)(x)(E)(III), (E)(IV), & (F)

**Section 2(d)(x)(E)(III)** Approved shrub species and seeding techniques shall be applied to all remaining grazingland. Trees shall be returned to a density number equal to the premining conditions number.

**(H H IV)** For areas containing crucial habitat, designated as such prior to the submittal of a permit application or any subsequent amendment, or critical habitat the Wyoming Game and Fish Department shall be consulted about, and its approval shall be required for, minimum stocking and planting arrangements of shrubs, including species composition. For areas determined to be important habitat, the Wyoming Game and Fish Department shall be consulted for recommended minimum stocking and planting arrangements of shrubs, including species composition, that may exceed the programmatic standard discussed above.

**(F)** On affected lands, the total number of postmining trees shall be at least equal to the premining total number on those lands. The Reclamation Plan shall specify the tree species, the number per species and the location of tree plantings. The permittee may also receive credit for tree species which invade the reclaimed lands if those tree species support the postmining land use and are approved by the Administrator. Planted trees counted ~~Where trees are part of the approved reclamation plan, at the time of bond release the trees to meet the required approved~~ stocking rate shall be healthy, and at least 80 percent shall have been planted for at least eight years. Invaded trees that are counted to meet the approved stocking rate shall be healthy and may be of any age.

*Subsections 2(d)(x)(E)(III) & (F) - The rule concerning the density of trees is being revised to reflect the actual intent of the regulations. Density is a number per unit area and the actual standard is the number of trees (sometimes the number of trees per species) on the affected lands, not on a unit area. Therefore, the rule concerning the tree establishment is being modified to clarify that tree reestablishment is based on premining number of trees on the affected lands. The rule is also being modified to clarify that the operator may take credit for trees that naturally become established on reclaimed lands. Trees that invade indicate an evolving self-renewing ecosystem and therefore the age of trees that invade is not an issue as long as they are healthy. In these requirements, preference is given to those species that are native or which are known not to be 'weedy' (e.g. species approved by the Natural Resource Conservation Service).*

*Subsection 2(d)(x)(E)(IV) - The only change to this section is the section number.*

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*The authority to amend this rule is provided by W.S. §§ 35-11-112(a)(i), 35-11-114(b), 35-11-406(b)(iii), and 35-11-415(b)(vii).*

**5. Proposed Rule Amendment:** Chapter 4, Section 2(d)(x)(J)

**Section 2(d)(x)(J)** The Administrator may set technical success standards for cover and production based on data collected from undisturbed portions of the permit area or adjacent areas during a minimum of five independent sampling programs over a minimum of five years. The technical success standards may be set for a single mine or a group of mines in the same geographical area.

*The current rules require the cover and production of the reclamation to be compared to native areas at the time of bond release. Under this approach, the operators and the LQD do not know in advance, nor through the bond period, exactly what the bond release cover and production standards will be. This introduces a measure of uncertainty into the reclamation and bond release processes. The operators are hindered from being proactive in managing the reclamation since they cannot tell if the cover and production of the reclamation are approaching the bond release standards. Operators are also less willing to spend the large amount of resources to initiate bond release when it is uncertain if they meet the bond release standards. The purpose of the proposed rule is to allow for an alternate method to evaluate revegetation success, specifically, the development of technical standards for cover and production. The standards are calculated from baseline vegetation data, and the cover and production of the reclamation are compared to those standards.*

*A five-year period is deemed necessary to account for differing climatic factors during the collection of baseline information for development of technical standards. OSM has also previously approved a five-year period for technical standards in other states.*

*The vegetation does vary across Wyoming and within smaller regions such as the Powder River Basin. However, even smaller subregions (such as the southern portion of the Basin) and individual permit areas may have similar vegetation that lends itself, or is conducive to, development of technical standards. A mine operator may opt to apply for mine-specific technical standards in the event the LQD has not developed standards for the subregion in which the mine is located. Alternately, an operator may apply to 'fine tune' technical standards developed by the LQD for that subregion.*

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*The authority to amend this rule is provided by W.S. §§ 35-11-112(a)(i), 35-11-114(b), 35-11-406(b)(iii), and 35-11-415(b)(vii).*

**6. Proposed Rule Amendment:** Chapter 4, Section 2(d)(xiv)

**Section 2(d)(xiv)** In those areas where there were no or very few noxious weeds prior to being affected by mining, the operator must control and minimize the introduction of noxious weeds into the revegetated areas for a period of at least five years after the initial seeding. The operator must control and minimize the introduction of noxious weeds in accordance with Federal and State requirements until bond release.

*This rule was enacted in 1975 prior to the passage of the Surface Mining Control and Reclamation Act (SMCRA) when the state's time period for bond release was five years. It appears the intent was to control noxious weeds through the bond period. The time period for bond release is now ten years as required by SMCRA. While the above rule was found to be as effective as the federal rule when the State Coal Program was approved in 1980, the OSM later revised the federal rule in 1983. The federal rule concerning noxious weeds is now:*

*30 CFR 816.111(b) "The reestablished plant species shall...  
(5) Meet the requirements of applicable State and Federal seed, poisonous and noxious plant, and introduced species laws or regulations."*

*Discussions with OSM staff indicate they now believe the state rule to be less effective than the federal rule. The current state language could be interpreted that noxious weeds are only to be controlled for the first five years after seeding. The federal rule does not include a time restriction for the control of noxious weeds. To address OSM's concerns, the existing language concerning five years has been struck and replaced with "until bond release".*

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*The authority to amend this rule is provided by W.S. §§ 35-11-112(a)(i), 35-11-114(b), 35-11-406(b)(iii), and 35-11-415(b)(vii).*



CHAPTER 15

RELEASE OF BONDS OR DEPOSITS AND TERMINATION OF JURISDICTION  
FOR SURFACE COAL MINING OPERATIONS

7. *Proposed Rule Amendment:* Chapter 15, Section 1(a)

**Section 1. Request for Release.**

(a) The procedures in this Chapter are administrative in nature and the operator shall submit and resolve with the Division any demonstration of meeting the performance standards of the Act, regulations, or approved permit prior to requesting bond release. The Division shall review any such demonstrations by the operator within the time frames required for revisions specified in Chapter 13 of these regulations. Failure to demonstrate the required performance standards prior to filing a request under this Chapter may be grounds for rejecting the request and the reasons for the denial will be provided by the Administrator.

*A new introductory paragraph is being added to clarify the intent of the Chapter. During an LQD Advisory Board meeting in Jackson in September 2001, proposed changes to Chapter 15 were discussed. The proposed changes would have modified the time frames in the Chapter to allow review of technical information as part of a bond release request. After much discussion, Mr. Guy Padgett of OSM, pointed out the intent of the federal regulations on which Chapter 15 is patterned was meant to be administrative. It was assumed that all technical items concerning the demonstration of the numerous performance standards would be resolved and approved prior to the submittal of any bond release request. The purpose of the administrative process is to allow the public an opportunity to be involved in the final decision making process.*

*The LQD Board members and industry members at that meeting agreed that using Chapter 15 as an administrative process only and not including technical issues, was a better approach to bond release. The clarification that the Chapter 15 is an administrative process is not intended to stop or slow down the bond release process. The LQD believes the process of doing technical evaluations throughout the reclamation process will actually speed the release process by eliminating much of the technical review from the final step. There was concern expressed at the meeting regarding review times for any technical information presented prior to a bond release request. The LQD committed to reviewing such information in accordance with the time frames for revisions contained in Chapter 13. The above change incorporates that commitment into regulation.*

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*The authority to amend this rule is provided by W.S. §§ 35-11-112(a)(i), 35-11-114(b), 35-11-423(a)&(d).*

**8. Proposed Rule Amendment:** Chapter 15, Section 1(b)

**(ab)** The operator may file a request with the Division for the release of all or part of the area bond, an incremental bond, of a deposit. The request shall contain the following information.

**(i)** The precise location of the land affected by legal subdivision, Section, township, range, county and municipal corporation, if any.

**(ii)** The number of acres affected.

**(iii)** The permit number and the date approved.

**(iv)** The type and amount of bond, and type and portion sought to be released.

**(v)** A map describing the location and acreage of each type of bond release in the request, the dates of rough backfilling, the dates of topsoil replacement and replacement depths, and the dates of seeding.

**(vi)** A notarized statement, signed by the applicant's authorized representative, which certifies that all applicable reclamation activities have been accomplished in accordance with the Act, the regulations, and the approved permit. Such certification shall be submitted for each bond release application.

**(bc)** Within 15 days of receipt of the request, the Administrator shall determine if the request is complete, i.e., does it contain all information required by **(ab)** immediately above. If it is not complete, the Administrator will promptly notify the operator of any deficiencies. If it is complete, the Administrator will promptly notify the operator in writing of that fact.

**(cd)** Within 15 days of notification by the Administrator that the request is complete, the operator shall cause notice of the request for bond release to be published in a newspaper of general circulation in the locality of the surface coal mining operation at least once per week for four consecutive weeks commencing within 15 days after filing of the completed request. The publisher's affidavit and copy of the notice shall be promptly submitted to the Administrator. The notice shall contain information regarding:

**(i)** The name of the operator.

**(ii)** The information contained in **(ab)**(i)-(iv) above plus a description of the types and dates of reclamation work performed and the results achieved.

**(iii)** The location and final date for filing objections to and requests for a hearing on the bond or deposit release request.

(de) Also within 15 days of notification by the Administrator that the request is complete, letters stating the operator's intent to seek release from the bond(s) or deposit shall be sent to:

(i) The overlying and adjoining surface owners of record;

(ii) The county or counties in which the operation is located and any incorporated municipality within five miles of the permit area; and

~~(iii) The Economic Development and Stabilization Board (EDS Board) and other area-wide planning entities within the State; and~~

(iviii) Sewage and water treatment authorities or water companies in the locality of the operation.

(ef) These letters shall contain the information outlined in (cd) above. Copies of the letters shall be promptly submitted to the Administrator.

*In addition to the section number changes to accommodate the new Section 1(a), the following changes are proposed:*

*SECTION 1(b)(vi)*

*The adoption of Section 1(b)(vi) is being proposed to alleviate a program deficiency identified by the OSM in a 30 CFR 732.17 letter dated June 19, 1997. The deficiency relates to the federal requirement for a notarized statement as part of the bond release package. This requirement was added to the federal rules on November 26, 1991 (56 FR 59992):*

*30 CFR 800.40(a)(3) "The permittee shall include in the application for bond release a notarized statement which certifies that all applicable reclamation activities have been accomplished in accordance with the requirements of the Act, the regulatory program, and the approved reclamation plan. Such certification shall be submitted for each application or phase of bond release."*

*In the final rule adoption Federal Register notice, the OSM said the following with regards to the notarized statement in response to comments:*

*"One commenter suggested that to prevent false and self-serving certification, the statement should not only be notarized, but sworn to as an affidavit under penalty of perjury. OSM agrees with the commenter that false certification should be discouraged. No need exists, however, to require the filing of a sworn affidavit. The filing with OSM or a regulatory authority of a false certification, even if not sworn, would be violative of law and subject to appropriate sanction. Thus, the final rule discourages false filings...."*

*Several commenters noted that the State or Federal regulatory authority (RA) has non-delegable responsibility to evaluate a request for bond release. The commenters stated that a single affidavit, i.e. notarized statement, is not a substitute for the RA's determination and written findings, before bond release, as to completeness and compliance of the reclamation effort. While OSM recognizes that the notarized statement is not a substitute for the regulatory authority's determination, OSM's position is that a written affirmation of the completion for bond release will encourage operators to look at their postmining land use plan more clearly to ensure that they meet the requirements for bond release. OSM reaffirms the continued responsibility of the RA to determine the completeness and compliance of the reclamation effort prior to bond release. Upon request for bond release, the notarized statement is an additional piece of information used by the RA to evaluate the extent of reclamation according to the approved plan. Most importantly, the certification serves as a written record indicating that the permittee had examined the requirements of his permit and investigated the nature and extent of reclamation. It would specify that all applicable reclamation responsibilities had been completed....*

*OSM believes that a request for a notarized statement will discourage those situations where a request for bond release is premature. Premature requests for bond release can be categorized into two groups: (1) Operators that have not adequately completed the approved reclamation, or (2) operators that have proceeded with reclamation that was not approved."*

*The OSM has interpreted the notarized statement as not being a substitute for the information an operator needs to submit (i.e., data presentation, sampling methodology, data analysis) in order for the regulatory authority to determine whether all the requirements for bond release have been met. Therefore, the notarized statement is not to be construed as being all an operator needs to submit to obtain release from bond. With the proposed adoption of this requirement, the LQD is also adopting this interpretation.*

*The LQD is also proposing to add an additional phrase to the rule regarding the notarized statement. This phrase "signed by the applicant's authorized representative" is proposed to clarify the phrase, "a notarized statement" at the beginning of the rule. This is intended to clarify that only those individuals that have already been accepted by the LQD, through previous permitting actions, as being authorized representatives, are qualified to sign the notarized statement.*

*SECTION 1(d)*

*Section 1(d) is being revised to add the requirement that the publisher's affidavit and a copy of the notice be submitted to the Administrator. This is current practice and is required by statute and regulations for other public notice procedures. This language is being added to clarify the requirement and to be consistent.*

*SECTION 1(e)(iii)*

*Repeal of Section 1(e)(iii) is proposed to remove the reference to the now nonexistent Economic Development and Stabilization Board (the EDS Board). The federal rule at 30 CFR 800.40(a)(2) requires " ... the permittee shall submit copies of letters which he or she has sent to adjoining property owners, local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which the surface coal mining and reclamation operation took place, notifying them of the intention to seek release from the bond." Therefore, the LQD rule originally included the EDS Board. However, now that the EDS Board no longer exists, the rule needs to be updated.*

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*The authority to amend this rule is provided by W.S. §§ 35-11-112(a)(i), 35-11-114(b), 35-11-406(j), 35-11-423(a)&(d).*

APPENDIX A

VEGETATION SAMPLING METHODS AND RECLAMATION  
SUCCESS STANDARDS FOR SURFACE COAL MINING OPERATIONS

NOTE: In Appendix A, headings and some phrases are underlined. To avoid confusion with the strike-and-underline format of the proposed rules, the underlines in the Appendix A have been omitted in the following proposed rule amendments.

9a. Proposed Rule Amendment: Appendix A, Subsection III.A

III. Establishing Revegetation Success Goals

A. Quantitative and Qualitative Vegetation Standards

Chapter 4, Section 2(a)(i) requires that reclamation restore the land to a condition equal to or greater than the "highest previous use". Chapter 4, Section 2(d)(x) outlines specific vegetation parameters which constitute revegetation success goals when reclaimed lands are considered for full bond release.

These qualitative and quantitative vegetation parameters which constitute revegetation success goals include:

1. % vegetation cover (absolute value).
2. % total ground cover (absolute value).
3. Total production for herbaceous species (absolute value).
4. Density of full shrub and subshrub species (~~postmining shrub habitat~~): (in mosaics according to the applicable goal or standard).
5. Areal extent of ~~dense~~ shrub mosaics according to the applicable goal or standard.
6. ~~Density~~ Total number of trees.
7. Species diversity and species composition.
- ~~8. Ability to withstand grazing pressure.~~
- ~~9~~ 8. Attainment of these parameters for the last ~~(2)~~ two consecutive years for those mines using reference areas, or for those mines using an approved technical standard two out of four years beginning no sooner than year eight of the bonding period.

*The above changes simply update Appendix A to reflect the proposed Rule Amendments Nos. 2, 3, 4, and 5 which relate to: the removal of grazing as a bond release criteria; attainment of the standards for two out of four years for those mines using a technical standard; reincorporating the shrub goal; and changing the density of trees to the number of trees; respectively. For a complete discussion of the reasons for adoption, please refer to those referenced rule changes.*

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*The authority to amend this rule is provided by W.S. §§ 35-11-112(a)(i), 35-11-114(b), 35-11-406(b)(iii), and 35-11-415(b)(vii).*

**9b. Proposed Rule Amendment:** Appendix A, Subsection VII.E

**VII. Developing a Revegetation Plan**

**E. Postmining Grazing Practices**

Chapter 4, Section 2(d)(xiii) states that the LQD, the permittee and the landowner or land managing agency will mutually determine if and when domestic livestock grazing will be introduced on revegetated areas. ~~Secondly, as per Chapter 4, Section 2(d)(x) the capability of revegetated areas to withstand livestock grazing pressure is a distinct criterion for full bond release.~~

The Reclamation Plan ~~should~~ shall include some discussion of ~~both~~ the above points. ~~Due to the temporal lag between permit preparation and permanent reclamation activities, the LQD believes that a full, detailed postmining grazing program is not necessary at the permitting stage. However, the applicant should, at a minimum, commit to providing a grazing plan prior to the introduction of grazing on reclaimed~~

*The above change simply updates Appendix A to reflect the proposed Rule Amendment No. 2 which relates to the removal of grazing as a bond release criteria. For a complete discussion of the reasons for adoption, please refer to Rule Amendment No. 2.*

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*The authority to amend this rule is provided by W.S. §§ 35-11-112(a)(i), 35-11-114(b), 35-11-403(a)(i), and 35-11-423(d).*

**9c. Proposed Rule Amendment:** Appendix A, Subsection VIII.A

**VIII. Testing Adequacy of Reclamation**

**A. Reclamation Success Standards**

Chapter 2, Section 2(b)(xiv) of the LQD Rules and Regulations requires that the applicant clearly define the postmining land uses. Livestock grazing and wildlife habitat are the most commonly proposed postmining land uses. Chapter 4, Section 2(d)(x) defines the following success goals for all operators:

1. Postmining cover equal to premining cover;
2. Postmining production equal to premining production;
3. Species composition and species diversity capable of supporting the postmining land uses;
4. ~~Ability of the reclaimed community to sustain grazing pressure at least equal to premining grazing pressure.~~
- 5 4. Attainment of all the above for two (2) consecutive years immediately prior to full bond release for those mines using reference areas, or two out of four years beginning no sooner than year eight of the bonding period for those mines using an approved technical standard.

*The above changes simply update Appendix A to reflect the proposed Rule Amendment No. 2 which relates to the removal of grazing as a bond release criteria and to attainment of the standards for two out of four years for those mines using a technical standard. For a complete discussion of the reasons for adoption, please refer to Rule Amendment No. 2.*

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*The authority to amend this rule is provided by W.S. §§ 35-11-112(a)(i), 35-11-114(b), 35-11-403(a)(i), and 35-11-423(d).*



**9d. Proposed Rule Amendment:** Appendix A, Subsection VIII.F

**VIII. Testing Adequacy of Reclamation**

**F. Summary**

The major components of a complete proposal for evaluation of revegetation success ~~should~~ shall be presented in the Reclamation plan and ~~should~~ shall include:

1. A commitment to provide a brief discussion of the reclamation practices used on each reclaimed area, including the seed mix applied, any husbandry practices used (e.g., interseeding, biocide application, grazing practices, etc.) and the land management practices applied.
- ...
- ~~8. Specification of methods to demonstrate that the reclaimed area is capable of withstanding grazing pressure at least comparable to that sustained prior to mining.~~
- 9 8.** Specification of methods to assess the establishment of suitable postmining wildlife habitat, including assessment of the quantitative and qualitative aspects of wildlife habitat.

*The above change simply updates Appendix A to reflect the proposed Rule Amendment No. 2 which relates to the removal of grazing as a bond release criteria, although grazing as a husbandry practice is still encouraged. For a complete discussion of the reasons for adoption, please refer to Rule Amendment No. 2.*

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*The authority to amend this rule is provided by W.S. §§ 35-11-112(a)(i), 35-11-114(b), 35-11-403(a)(i), and 35-11-423(d).13. Proposed Rule Amendment: Appendix A, Subsection VIII F. 8.*

## 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 provisions of the Wyoming Administrative Procedures Act, finds as follows:

1. These rules provide for the regulation of surface coal mining and reclamation operations in accordance with the requirements of P.L. 95-87 As Amended (The Surface Mining Control and Reclamation Act).
2. These rules and regulations are as effective as those promulgated by the Secretary of Interior pursuant to P.L. 95-87 As Amended.
3. These 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.
4. These regulations are reasonable and necessary for the effectuation of W.S. §§ 35-11-101 through W.S. § 35-11-1803, As Amended.
5. These rules and regulations are necessary and appropriate to protect the public health, safety, welfare, and environment of the State of Wyoming.

Dated this 6 day of July, 2005



Environmental Quality Council