



## WYOMING MINING ASSOCIATION

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February 26, 2018

Kyle Wendtland, Administrator  
Wyoming Department of Environmental Quality  
Land Quality Division  
200 West 17<sup>th</sup> Street  
Cheyenne, WY 82002

### **RE: Wyoming Mining Association Comments on Proposed Self-Bonding Rules**

Dear Mr. Wendtland:

The Wyoming Mining Association (WMA) is a statewide trade organization that represents and advocates for 26 mining company members producing bentonite, coal, trona and uranium. WMA also represents 120 associate member companies, one railroad, one electricity co-op, and 200 individual members.

Wyoming Land Quality Division (LQD) has proposed changes to the bonding rules (Chapter 11, Coal Rules and Regulations). It is our understanding from your recent presentation at the WMA Regulatory Affairs Committee Meeting, that these proposed changes will apply to both the Coal Rules (Chapter 11) and the Non-Coal Rules (Chapter 6) in a simultaneous rule-making. For this reason, WMA has involved the entire mining industry in Wyoming in reviewing this proposed coal rule. If it turns out that the two proposals have substantive differences, WMA may elect to submit further comments on one or both proposals.

The proposal presented by LQD expands coverage of the current Chapter 11 Coal Rule which addresses only self-bonding, to a chapter addressing all the various forms of bonding instruments available in Wyoming. Most significantly, the proposal offers changes to self-bonding rules. The major components of this change, as viewed by WMA, are:

1. Removing the financial ratio calculation options, leaving only a revised credit rating requirement as a path to self-bonding
2. Creating two self-bond levels based on credit ratings, with a maximum reduction from 100% to 70%
3. Removing self-bonding as an option for mines with remaining lives of less than ten years
4. Restricting self-bonding to the applicant or the parent company
5. Removing personal property as a component of a self-bond guarantee

There is a variety of mining operations in Wyoming. The operations vary in size, the companies vary in structure, and the markets for the various mining sectors are constantly changing. No two of them are alike. At any point in time, the reclamation liability can be quite different among the four mining sectors. All of this makes finding one bonding proposal that is suitable, useful, cost effective and available to all the sectors a very difficult task. Multiple options are needed because the availability and affordability of performance bonding mechanisms can change significantly over time.

The existing self-bond rules have served the State and the regulated community well for many years. Through most of those years, the risk to the State has been fairly low while self-bonding was employed

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by operators in the several mining sectors to varying degrees. Even during periods of reduced demand for products offered by Wyoming mining operations, these risks were considered manageable.

The State has indicated that the self-bonding program needs to be modified in order to remain as a viable bonding instrument in Wyoming. Unfortunately, WMA finds the LQD proposal will remove self-bonding as an option to all but a very few companies in Wyoming. WMA believes the tool can be modified and remain available, at least in part, to a majority of the industry. The modifications must be directed to the areas where risks can be more closely managed without eliminating reasonable options for each of the important mining sectors in Wyoming. WMA asserts the better program will be a mix of the existing and proposed rules that draws the best elements from each program.

The proposal, in Section 1(a) to require the parent company to be the guarantor will provide considerably more valuable risk management information and confidence to the agency and should be retained in the proposal. WMA believes this change will allow Wyoming to have complete and transparent information regarding a company's financial health.

WMA proposes retaining the two financial ratio calculation options (current Chapter 11 Section 2(a)(vii)(B) and (C)), performed at the parent company level, and applying them as a first step in a two-step series of qualifying tests. This provides continuity in assessing eligibility for self-bonding which offers some certainty in the program.

WMA also proposed a new, second step which would be to apply credit rating provisions similar to those proposed in Section 2(a)(vii)(A) and (B) as a further limit to self-bonding capacity. By developing an expanded grid of ratings associated with increasing/decreasing levels of allowable self-bond, the State will gain the desired risk management capabilities if financial conditions deteriorate for a company or a mining sector.

Under this consolidated proposal, the ratings grid would be developed based on credit ratings that reflect levels common or typical of the various mining sectors. The proposed grid is shown below. The graduated reduction of allowed self-bonding levels gives the Agency a tool that allows managed use of self-bonding to tolerable risk levels.

<u>Corporate Rating</u>	<u>Maximum Self-Bonding Percentage</u>
>or= BBB-	100%
BB+	90%
BB	80%
BB-	70%
B+	60%
B	50%
B-	40%
<or= CCC+	0%

WMA membership has expressed concerns about other provisions of the Land Quality Division proposal. For example:

- A number of operators in Wyoming are currently self-bonded to varying levels up to 100% of the calculated bond amounts. The proposed rule should provide for retaining these existing self-bond levels until the financial ratio calculations would require a reduction or the corporate credit ratings begin to decline by more than two levels.

- The proposal to redefine collateral is very restrictive. Proposed Section 1(b)(i) places two limitations on collateral that all but remove it as a useful tool in Wyoming. Many operators in Wyoming have invested in their operation, not in real estate, and further, their real estate is within the permit area where mining will occur. The proposal should retain the existing collateral provisions. Discretion could be retained to reject, on a case by case basis, certain personal property from use as collateral if the value cannot be reliably determined, if it is otherwise encumbered, or if it would be difficult to legally transfer the personal property to the State in the event of forfeiture.
- Existing Section 2 should not be amended as proposed. The ten-year mine life provision is unrealistic in Wyoming where many operators are dependent upon protracted federal agency processes (e.g. coal leasing). Often these federal processes are linked with subsequent federal and state permitting processes that, in total, can exceed ten years. Because of the enormous financial investment it takes to maintain coal reserves in excess of 10 years, for example, coupled with the uncertainty associated with these leasing and permitting processes, an operator cannot confidently plan to have reserves in place ten years out. We recommend the mine life limitation be reduced to five years. Along the same line of reasoning, Section 7 of the existing rules should be retained.
- Portions of existing Section 2(a)(vii)(A and B) that allow ratings by “...other nationally recognized rating organization...” should be retained. We encourage LQD to continue to allow for the use of other nationally recognized rating organizations as has been done in the past.
- Other financial assurance instruments are not addressed in any detail in the proposed rule. While we have no particular suggestions at this time, WMA suggests the agency promulgate a rule that lists a subsection for each financial instrument. This would serve to enumerate the acceptable financial instruments in one place, and provide a place for any future details or issues that need to be addressed.

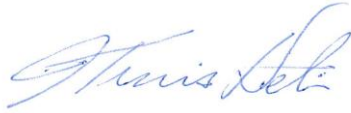
Changes to the Wyoming bonding program may be warranted, but the LQD should not rush the process. WMA has proposed some rather significant changes to the rule proposed by the agency, and we expect other entities have also. But details may be lacking. We encourage the agency to take whatever time is necessary to review, revise and ultimately adopt a rule which will be no less effective for Wyoming than current bonding rules have been for the past several decades. If this means the process takes more time than originally scheduled, the agency should embrace the additional time in getting it right.

WMA recognizes some changes to reclamation performance bonding are appropriate. At the same time, a process that has proven effective for several decades should not be completely eliminated if there are some redeeming provisions. The vast majority of operators in Wyoming that have used the self-bonding program have been stable and productive. The self-bond program has allowed them to be cost effective. The result has been world-class performance in meeting reclamation obligations and arguably the strongest mining industry in any of the fifty United States. We believe this performance supports the idea that while adjustments and improvements may be necessary, wholesale replacement of the self-bond program is unwarranted and unwise.

Mining is important to Wyoming. In addition to directly employing nearly 10,000 people, the industry provides an estimated \$1.2 billion in revenues annually to the State in taxes, royalties and fees. The

self-bonding program has been a valuable tool for the mining industry and the State, and can continue to be with careful management. Beyond this proposal from Wyoming Mining Association, we encourage you to continue exploring additional and creative options for the reclamation performance bonding program.

Best regards,

A handwritten signature in blue ink, appearing to read "Travis Deti". The signature is fluid and cursive, with a prominent initial "T".

Travis Deti  
Executive Director