



WYOMING MINING ASSOCIATION

1401 Airport Parkway, Ste. 230 - Cheyenne, WY 82001 - (307)-635-0331

March 22, 2018

Mr. Kyle Wendtland
Administrator
Wyoming Department of Environmental Quality
Land Quality Division
200 West 17th Street
Cheyenne, WY 82002

RE: Wyoming Mining Association Comments on Proposed Financial Assurance Rules

Dear Administrator 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, Chapters 11 and 20 of the Coal Rules and Regulations, and Chapters 6 and 12 of the Noncoal Rules and Regulations. WMA members have reviewed the proposals and found that they differ only slightly from the proposal released by LQD for the December Advisory Board meeting. The proposals for coal and noncoal do not appear to have any meaningful differences. WMA hereby submits comments that are similar to our comments submitted on February 26, 2018. Several additional items are included in this letter.

The proposals presented by LQD expand coverage of the current Chapter 11 Coal Rule and Chapter 6 Noncoal Rule chapters. These chapters currently address only self-bonding, but as a result of this action, these two chapters will be expanded to address all the various forms of bonding instruments available in Wyoming. WMA appreciates the thought and organization that have gone into creating this March 5, 2018 set of proposals. When completed, the proposals will standardize the language between the various mining sectors and will consolidate rules regarding all of the various acceptable bonding instruments into one location.

Most significantly, the proposal offers changes to self-bonding rules for all operators in Wyoming. 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 three self-bond levels based on credit ratings, with a maximum reduction from 100% to 75%
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 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 apparently 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 LQD proposal 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 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 proposes a new, second step which applies credit rating provisions similar to those proposed by LQD 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, a 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. It 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.
- The ten-year mine life provision is unrealistic and unnecessary in both the Coal and Noncoal rules and should be eliminated. The proposal has three main deficiencies:
 - First, the ten-year mine life is unrealistic in Wyoming where many operators are dependent upon protracted federal agency exploration, leasing and claims processes. Often these federal processes are linked with subsequent federal and state permitting processes that, in total, can exceed ten years. One example which is almost certainly an extreme, but still very real, cites several decades of federal historic preservation processes delaying issuance of a single claim. 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 the leasing and permitting processes, an operator cannot confidently plan to have reserves in place ten years out. We recommend the mine life limitation be eliminated.

- Secondly, LQD states in its justification that as companies near the end of mining they have difficulty finding alternate bonding instruments as revenue generation declines. LQD then proposes a rule that would prevent mining companies from utilizing self-bonding if the mine has less than a ten year life.

In many cases, the ability of a parent company to self-bond or secure alternative financial assurance instruments is unrelated to the remaining life of the mine in question. For example, many companies operate several mines/businesses that spread out their financial risk and make the life of any particular mine immaterial to the company. In such cases, the state is not incurring additional risk by allowing such companies to self-bond as long as they qualify via the other stringent requirements in the rule. A properly established and maintained self-bond is just as safe and liquid in the first year of operation as it is in the last year of operation.

- Finally, some operators in Wyoming question the intent of the ten-year mine life provision. It appears this will act as a blanket restriction on self-bonding. If this provision is intended to act as such a prohibition, then WMA strongly opposes the provision. WMA recommends LQD consider an exemption for those operations that can provide proof of sufficient dedicated financial resources to self-bond to the end of the mine life with operations in these circumstances.
- Use of Reclamation Trust Accounts should be addressed in the proposed rule. As noted in the Proposed Rules, Wyoming statutory law expressly provides that “[i]n lieu of a bond, the operator or its principal may deposit federally insured certificates of deposit payable to the Wyoming department of environmental quality, or cash or government securities, or irrevocable letters of credit issued by a bank organized in the United States, or all four.” See Wyoming Stat. § 35-11-418 (emphasis added). Section 2 (Coal and Noncoal) of the Proposed Rules adopts this statutorily-approved alternative assurance list.

WMA requests that clarification and confirmation in the proposed rules that reclamation trust accounts will constitute cash accounts approved by WDEQ (LQD) as an acceptable alternative form of bonding under Section 2 of the Proposed Coal and Noncoal Rules. In connection with such trust accounts (and consistent with the use of any cash account), requiring an assignment to WDEQ of a contingent interest in the trust account that would become exercisable by

WDEQ in the event of a reclamation default, and provide to WDEQ immediately available funds for reclamation from the trust account.

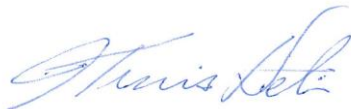
- Portions of existing rules that allow ratings by “...other nationally recognized rating organization...” should be retained. We encourage LQD to continue to allow for the use of other nationally recognized rating organizations as has been done in the past. This would appear to meet the LQD criteria as a third party evaluation.

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.

The mining industry 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,



Travis Deti
Executive Director