Analysis of Comments – Financial Assurance Rules

Coal Chapters 11 & 20 and Noncoal Chapters 6 & 12

General Comments (13 Letters):

1. Neil & Jennifer Miller, Basin WY – general support for strengthening financial assurance standards.
2. Sue Spencer, Jelm WY – general support of the proposed rules.
3. Norman Lutter, Cheyenne WY – Requests that self-bonding be removed from the list of acceptable bonding instruments.
4. Alex Bowler, Cheyenne WY – No longer acceptable to allow self-bonding for coal mines.
5. Robert Strayer, Laramie WY – Companies need to honor obligations to reclaim.
6. Emily Parsons, Laramie WY – General support of the proposed rules.
7. Christy Gerrits, Gillette WY – General support for ensuring reclamation bonds are secure.
8. Emily Nelson, Sheridan WY – General support for tightening financial assurance regulations.
9. Maria Katherman, Inez WY – Supports the elimination of self-bonding for coal industry. Also supports ensuring funds being available for reclamation work.
10. Joanna Taylor, Buffalo WY – General support for the proposed rules.
11. Donna Angel, Cheyenne WY – General support for the proposed rules.
12. Edith Heyward, Sheridan WY – Adequate bonding ensures reclamation work can continue and is important to Wyoming economy. General support for the proposed rules.
13. Zack Houck, Story WY – General support for the proposed rules.

Summary:

LQD had 10 responses generally supporting the proposed rule revisions

LQD had 3 responses supporting the elimination of self-bonding

The LQD thanks the commenters, their comments today do not present new comments that the LQD and the advisory board have not previously addressed. No changes to the rules are suggested based on the above comments.

Western Fuels Association Comments:

1. Comment/Concern that business entities may not have a single "ultimate parent" and therefore an operation may not qualify for self-bonding.

Response:

The Proposed definition by WFA creates a more complicated system and set of requirements. If companies have ultimate parents some or all can be used under LQD's proposed definition. Split ownership occurs and the rules provide for each entity to bond for their share at the parent level.

2. Comment/concern that proposed Chapter 11, Section 4(a)(i)(F) requires both the operator and ultimate parent entity to "have a long-term credit rating for all bond issuance actions". Suggest "and" be replaced by "or" or in the alternative to remove requirement that operator have a credit rating.

Response:

Both the operator and ultimate parent need to be financially solvent to mitigate risk of dead assets (Assets in other states). This is consistent with CFR-30-800 and SMCRA that states "a self-bond program is to recognize that there are companies sound enough that the probability of bankruptcy is "small". The proposed rule as drafted accomplishes this requirement.

3. **WFA Suggests that** the "Senior Secured Rating" should be used as benchmark since all three rating agencies publish that particular rating as a matter of "consistency".

Response:

The proposed rules require that the bond issuance rating and the long-term credit rating, comply with the requirements. Credit ratings are used by investors as indications of the likelihood of receiving the money owed to them in accordance with the terms on which they invested. The bond issuance rating measures the ability of an entity to meet financial commitments of the bond issuances that have already been issued. Thus, it assigns risk of recovery to bond issuances in the past. The long-term issuer rating, or issuer rating, is the credit rating of a Company should it make an issuance today. All the major rating services offer these ratings. The proposed rules look at the financial strength of a company on the debt owed in addition to the present credit worthiness toward any new debt issuances it may seek. The LQD is not prescribing which rating service to use and it is not saying to use multiple credit rating services.

4. **WFA suggests that** new tiers should be considered because the current proposed tiers are too conservative and cites to "One-Year Global Corporate Default Rates by Rating Modifier" as evidence.

Response:

The LQD chose the bottom cutoff as investment grade. Two items to consider as stated

earlier, are that self-bonding is for those companies with superior solvency and the probability of bankruptcy is small. DEQ's experience has shown that after shedding debt through the Chapter 11 process companies may still not qualify for an investment grade credit rating. LQD believes this supports the rules as drafted. LQD experience has shown that for a company to move from below an investment grade credit rating to a Chapter 11 filing is swift and can be very sudden with little or no warning. The terms investment grade and non-investment (or speculative grade) are market conventions. By definition, investment grade categories indicate relatively low to moderate credit risk, while ratings in the speculative categories either signal a higher level of credit risk or that a default has already occurred. In addition, LQD has found that substitution of the self-bond becomes more difficult as the credit rating falls below investment grade. The result is that substitution is hindered once a Chapter 11 filing is made and when the credit rating falls below investment grade. It is also important to consider that Wyoming has a different level of risk because of the size and scale of the mine operations, and the larger reclamation liability that is associated with that size and scale.

There is a point when the risk is too high to adequately protect Wyoming's interest in securing final reclamation, and substitution of another financial instrument should take place. The proposed rules ensure reclamation and make certain that Wyoming is in the best position to be first in line in the event of a forfeiture, which is the fundamental purpose for reclamation bonding.

The LQD thanks WFA, their comments today do not present new comments that the LQD and the advisory board have not previously addressed. The LQD does not propose any changes to the rules as proposed based on WFA's comments above.

Thunder Basin Coal Company Comments

1. Comment/Concern: The rules as proposed effectively remove the option of self-bonding for majority of Wyoming mining companies due to inability to meet the minimum credit rating and may create competitive disadvantage for Wyoming operations in national and international markets.

Response:

Currently we have 23 self-bonds that total approximately $400 million. The state is required to adequately protect its financial interest against default and ensure timely reclamation. The proposed rules meet both goals while still allowing self-bonding. For those Companies with superior solvency and a small risk of bankruptcy, the state is willing to provide a self-bond option. For those companies that cannot meet the requirements, there are several other financial instruments available in the marketplace today.

2. TBCC states that self-bonding will no longer be a "viable option" for financially healthy mining companies.

Response:

As stated previously, self-bonding is an acceptable bonding option for those companies

with superior solvency and a "small" risk of bankruptcy. Experience with recent Chapter 11 proceedings has shown that on balance sheet ratios have a time lag because of the need to use the annual audited financials. In the Chapter 11 filings studied, the state found itself in a position between secured and unsecured. This resulted in the need to negotiate a bridge in the form of a Stipulation Order of reduced funding to the state during the Chapter 11 Process. This is a position Wyoming cannot find itself in moving forward. This is why the proposed revisions to the rules address the risk using and independent third party verification in the form of a credit rating.

In addition, there are degrees of financial health that are measured by credit rating agencies. Wyoming is willing to take on a certain degree of risk that is proposed in the rules. Risk beyond that stated in the proposed rules should be put on financial institutions, not the state. Experience with recent Chapter 11 filings showed the actual risk associated with self-bonding in its current regulatory form. There is a level of risk for large obligations that is better covered by using instruments offered by banks, or sureties. These entities main business is daily assessing its customers' risk and charging them a fee according to that risk. The added risk is borne by the operator and the added risk to the interests of the state is mitigated by having a third party in place should a default occur.

The LQD thanks TBCC, their comments today do not present new comments that the LQD and the advisory board have not previously addressed. The LQD does not propose any changes to the rules as proposed based on TBCC's comments above.

Wyoming Mining Association Comments

1. The current proposed definition for "ultimate parent entity" is too restrictive and does not recognize subsidiaries with strong financials or companies with multiple parents. Also suggests that proposed Chapter 11, Section 4(a)(i)(F) should be revised to remove the word "and" and replace it with "or" as discussed in the WFA comments above.

Response:

This comment was addressed in WFA analysis of comments above.

2. The WMA supports capping the self-bonding to 75% because it meets some of the LQD's stated goals of the proposed revisions, but states that current self-bonded companies be "grandfathered" in at current percentages until some trigger is reached otherwise it may constitute a taking.

Response:

The LQD thanks the WMA for their support in capping the self-bonding at 75%. There are degrees of financial health, and the state is willing to bear a certain degree of risk. However, there is a limit to that risk that cannot be 'grandfathered' as the comment suggests. When the acceptable level of risk is surpassed, substitution must take place to adequately protect Wyoming's interests. Further, self-bonding should not be misconstrued as a right, SMCRA does not require a state to make available self-bonding it merely lists

*it as an option 30 CFR 800. This is further clarified as stated in Wyoming Statute 35-11-417(d) where the EQC **may** promulgate self-bonding rules, and the Administrator and the Director **may** grant a self-bond (emphasis added). With the financial health of mining, there should be no difficulty complying with the proposed rules should they be approved. However, in an effort to make the change gradual for those using self-bonding the proposed rules allow an 18-month transition period to come into compliance with the new regulations.*

3. The WMA states that they can support a credit ratings concept for establishing eligibility for self-bonding but not at the levels as proposed by the LQD.

Response:

There are degrees of financial health and the state is willing to bear a certain degree of risk. However, when the acceptable level of risk is surpassed, substitution must take place to adequately protect the state's interests to ensure reclamation. The LQD disagrees with the WMA's suggestion that the proposed rules are too restrictive and take into account greater risk than necessary because the proposed rules limit risk in other ways. The goal of the financial assurance is to ensure final reclamation and the proposed rules support that goal in a way that is protective of the interests of Wyoming. A simplified example of the risk involved would be to compare the State to a bank. A client is seeking unsecured financing for 100 percent of a project while holding a credit rating of 500 or less. Similar to the banks being protective of their interests, with the implementation of the proposed rules, Wyoming is bring protective of its interests.

4. The WMA stated that the proposed rules is "not yet ready for promulgation".

Response:

The rules have been extensively vetted as noted previously, and portions of industries comments were included in the regulations prior to the September 2018 LQAB meeting. The changes in include:

1) *The addition of a 75% tier*
2) *Extension of the substitution period to 5 years of mine life in place of 10*
3) *The addition of a trust option for government securities).*

The LQD thanks WMA, their comments today do not present new comments that the LQD and the advisory board have not previously addressed. The LQD does not propose any changes to the rules as proposed based on WMA's comments above.

Powder River Energy Corporation Comments

1. Concerns that even coal mines with excellent financial qualifications will only qualify for partial self-bonding under the proposed rules. Concerned about impact to rural electricity rates and impact to consumers.

Response:

The LQD has concluded that the maximum amount of self-bonding will be limited to 75% of the bonding obligation to include a level of liquidity and diversification to the bonding portfolio to mitigate risk. As noted above, Powder River Energy as part of Western Fuels is a company that maintains a reclamation cash accrual account based on a cost per ton. The proposed rules as written allows the company to pledge those assets for the potion of the bond above the cap (25%) provided the account has not been collateralized for other reasons. In this case, it is difficult for DEQ to see how the use of this account would add cost to the Cooperative members.

The LQD thanks PRECorp, and their comments today do not present new comments that the LQD and the advisory board have not previously addressed. The LQD does not propose any changes to the rules as proposed based on PRECorp's comments above.

Powder River Basin Resource Council Comments

1. Comments provided by the PRBRC are in support of the rules as proposed and included eight specific reasons for support and encouragement of a "Yes" vote by the Environmental Quality Council.

- Bonding is a common sense approach to protect State and public, but rules must be in place to protect when "worst-case scenario" occurs.
- 2016 Moody's report concluded reclamation liabilities are a more pressing issue due to market conditions.
- Time is now to fix perceived shortcomings of financial assurance rules and impact to industry is reduced due to the smaller amount of self-bonds currently held by the State.
- Self-bonding is a privilege, not a right and LQD has discretion to limit self-bonding.
- Supports the requirement to have "ultimate parent entity" guarantee self-bonds rather than subsidiaries.
- Supports the limitation on the portion of total reclamation liability that can be covered by self-bonds because of reduced risk and greater liquidity in event of forfeiture.
- Supports use of credit ratings to determine eligibility for self-bonds due to past results of using the financial rations to determine eligibility.
- Supports the elimination of personal property collateral bonds due to difficulty providing accurate value especially in the event of mine closure or liquidation.

Response: The LQD thanks PRBRC for their comments. No changes to the proposed rules are suggested based on the comments.