BEFORE THE

ENVIRONMENTAL QUALITY COUNCIL

STATE OF WYOMING

February 19, 2019

IN THE MATTER OF THE PROPOSED REVISION OF QUALITY DIVISION RULES RELATED TO THE REGULATION OF COAL MINING	**)**	**STATEMENT OF PRINCIPAL THE LAND REASONS (SOPR) FOR ADOPTON** **DOCKET #: 18-4102**

Coal Rules and Regulations, Chapter 11, Self-Bonding Program

and Chapter 20, Letters of Credit

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Introduction to Rule Package

This rule package was developed to address changes in financial assurance instruments, corporate structuring, and financial markets that have occurred since the original bonding rules and regulations were adopted in 1980. Multiple changes have occurred since establishment of financial assurance rules and regulations, such as the Sarbanes Oxley Act, the Dodd-Frank Act, increased complication in corporate structures, on- and off- balance sheet debt restructuring and digital financial instrument filing. Bankruptcy actions in the energy sector have highlighted specific rules requiring review. WDEQ carefully considered the changes that have occurred over the past 35 years and has taken both a broad and detailed approach to this review and the resultant proposed rule and regulation update. The proposed rules have taken into consideration input from industry,

the Interstate Mining Compact Commission (IMCC), third party interests, and detailed internal agency review.

The goals of the proposed rules are to modernize the financial assurance regulations, retain all financial instruments for use now and into the future, diversify the financial assurance portfolios, provide for immediate cash needs in the event of forfeiture, and ultimately reduce the reclamation liability risk to the state of Wyoming.

Wyoming statutes recognize surety bonds, self-bonds, certificates of deposit, cash, government securities, and letters of credit as acceptable bond instruments (W.S.35-11-417 & 35-11-418). During the 2018 legislative session, changes to the financial assurance statutes were made to clarify the use of real property collateral bonds as an acceptable bond instrument (W.S. 35-11-417(e)). This rule package proposes revisions to rules governing self-bonds and letters of credit, and adds rules governing real property collateral.

Specific changes to the Land Quality Division coal bonding program include:

- Chapter 20 (Letters of Credit) is deleted, and the rules on letters of credit inserted into Chapter 11. The name of Chapter 11 is changed from "Self-Bonding Program" to "Financial Assurance." All regulations regarding financial assurance are now in a single chapter.
- Significant revisions to the self-bonding program
- Removal of collateralized self-bonds
- Minor revision to Letters of Credit
- Addition of a real property collateral bond instrument
- Removal of personal property collateral bond instruments
- Clarification of the requirements for Securities bonds
- Establishment of irrevocable trust account options for collateral bond

Summary of Proposed Amendments

Self-Bonding Rules

As recently as 2015, the OSMRE conducted an oversight review of the LQD self-bonding program and found that LQD "implements their self-bonding program in full compliance with their self-bonding rules", which remain in compliance with the LQD regulatory program as approved by OSM. While the LQD self-bonding program continues to meet or exceed OSM requirements, the financial marketplace has evolved and changed since these rules were promulgated. These revisions ensure that the rules adequately provide assurances that the state will be able to recover the cost of reclamation in the event of Chapter 7 forfeiture. Recent experience in Wyoming has informed the WDEQ regarding approaches to improving self-bonding regulations in ways that both safeguard the interests of the State and also allow financially healthy companies to use self-bonds as a component of their reclamation liability bond.

The significant proposed changes to the self-bonding program are discussed below:

- Only the ultimate parent entity may act as bonder. The permittee, if not the ultimate entity, will also have to qualify.

This change eliminates the ability for companies to self-bond at the subsidiary level. This change is a result of recent energy sector bankruptcy actions where the parent company collected on the assets of the subsidiary at the time of Chapter 11 filing. This action effectively bankrupted the subsidiary company leaving the state in an unsecured debtor position.

- The allowed self-bond amount is restricted to three options, with eligibility based on investment credit ratings. The maximum self-bond amount is limited to 75% of the required bond amount. Two additional options of seventy percent (70%) and fifty percent (50%) of the required bond amount are included for bonders with lower, but still strong, investment credit ratings.

The cap on self-bonds serves two primary functions. First, the alternative percentage to self-bond provides immediate cash to the state in the event of forfeiture to protect the physical assets such as building and infrastructure and provide capital to start prefeasibility and feasibility level engineering and contracting work Completing these tasks prior to receiving the self-bond forfeiture funds (28-32 months on average) will allow the state to immediately start reclamation work, and reduce the erosion of capital resulting from inflation and time value of money, lack of maintenance, and environmental impacts. Secondly, the cap also adds diversification to the financial assurance portfolio, which effectively reduces the overall risk to the state.

- Audited financial statements and ratios may no longer be used to qualify for a self-bond. The bonder must qualify using ratings issued by nationally recognized credit rating services, such as the Moody's Investor Service or Standard and Poor's Corporation.

The credit ratings serve two functions. First, the credit ratings provide for a real time current assessment of a company's financial condition at the time the self-bond application is reviewed.

Second, the credit rating is an assessment of the company's condition that is made by an independent third party. The elimination of the ratios is proposed because during each of the bankruptcy actions, the companies drew on large revolving credit lines on the day prior to the Chapter 11 filings. These revolvers could not be considered in the self-bond review as they reside in the off-balance sheet until such time they are drawn upon. Review of these actions indicated that if the ratios were to be considered in the future, the off balance sheet including the revolvers would need to be considered in the ratio calculation. If the agency were to include these off balance sheet items, no company would qualify under the ratio determination. Because of this analysis, the use of the credit ratings was determined to be the best option in modernizing the regulations.

- Collateralized self-bonds, including real property, personal property and securities will no longer be accepted. Real property collateral is a separate bond type. Securities are already a separate financial instrument.

- Collateral, in the form of real property located in Wyoming, is now a separate stand-alone bond instrument.

The current real property collateral regulations reside within the self-bond section. The proposed statutory change would allow for regulations to separate real property collateral from self-bonds. The rules as proposed create a separate section for real property to stand as its own financial assurance instrument. This proposed change also more closely mirrors existing SMCRA regulations.

- Collateral in the form of personal property will not be accepted

The federal SMCRA rules do not provide for the acceptance of personal property. This updates the rules to be compatible with the provisions of SMCRA.

- Requirement of a minimum five (5)-year life-of-mine remaining in the mine operation in order to qualify for a self-bond.

LQD has experienced that as a mining operation matures, reaches its mineral reserve life, and production and revenue decrease, it is considerably more difficult to obtain alternative financial assurance instruments as the mine nears closure. The limits on life-of-mine are proposed so that companies can transition away from self-bonding as the risk of closure increases, and it becomes more difficult to obtain replacement instruments. The LQD's experience with the recent Chapter 11 bankruptcies was that operators had difficulty in some cases obtaining surety bonds when their life-of-mine was at less than ten years. The proposed five year life of mine restriction strikes a balance between operation and initiation of final reclamation.

Letters of Credit

- The rules clarify that only *Irrevocable* Letters of Credit are acceptable, as already specified in statute (35-11-418)

- The Administrator will no longer accept standby Letters of Credit

Standby letters of credit fund only when drawn upon. This rule change is proposed so that only fully funded letters of credit are used and there is greater certainty of collection in the event of a forfeiture.

Collateral Bonds

The proposed revisions to the collateral bond section includes a trust account option. This change was made to address changes in the issuance of digital government securities that no longer provide a method for the state to be added to the face of the paper instrument. The trust account option allows the securities to be held in a trust account that is assigned to the Department, such that the Department has a priority claim to the assets pledged for reclamation.

Real Property Collateral Bonds

Collateral Bonds in the form of real property will be accepted as a separate bond instrument, providing:

- The property is located in Wyoming

- The Wyoming Department of Environmental Quality holds a perfected, first lien interest

- If the lands are within the permit boundary, they may not be disturbed *by mining* while pledged as collateral, and/or must be fully bond released with a demonstration of satisfactory reclamation.

  Collateral bonds are currently accepted to support a self-bond. These proposed rules allow a collateral bond to be accepted as a separate financial assurance, with no association to a self-bond. This adds an additional alternative bond instrument to the list of possible bonds, which provides the operator with more options and facilitates diversity of bond instruments.

Security Bonds

The Land Quality Division already accepts Security bonds as provided in WS 35-11-418. The rules clarify the requirement that Government securities are United States securities or State Government securities. The rules add the requirement that the security be unencumbered and insured by the FDIC.

~~DEPARTMENT OF ENVIRONMENTAL QUALITY~~

~~LAND QUALITY DIVISION~~

CHAPTER 11

~~SELF-BONDING PROGRAM~~ FINANCIAL ASSURANCE

Section 1. **Definitions**

~~(c) "Comparative balance sheet" means item amounts from a number of the operator's successive yearly balance sheets arranged side-by-side in a single statement.~~

~~(d) "Comparative income statement" means an operator's income statement amounts for a number of successive yearly periods arranged side-by-side in a single statement.~~

~~(e) "Current assets" means cash and assets that are reasonably expected to be realized in cash or sold or consumed within one year or within the normal identified operating cycle of the business.~~

~~(f) "Current liabilities" means debts or other obligations that must be paid or liquidated within one year or within the normal identified operating cycle of the business. This shall also include dividends payable on preferred stock within one quarter if declared, or one year if a pattern of declaring dividends each quarter is apparent from the business' past practices.~~

~~(g) "Fixed assets" means plants and equipment, but for coal mining operations does not include land or coal in place.~~

Comparative balance sheet, comparative income statement, current assets, current liabilities, and fixed assets (Ch.20 Section 1(e-g)) are all financial information required used to evaluate the eligibility of an applicant for a self-bond. The proposed rules eliminate use of financial data to determine if an applicant qualifies for a self-bond based on the balance sheet and financial ratios. Therefore, these definitions are no longer required.

(a) "Irrevocable letter of credit" is a negotiated financial instrument that is used to pay a beneficiary issued by a banking institution to guarantee payment.

(b ~~h~~) "Liabilities" means obligations to transfer assets or provide services to other entities in the future as a result of past transactions including off-balance sheet liabilities.

Adding off-balance sheet liabilities ensures that WDEQ receives all the pertinent financial information regarding the financial status of an applicant.

(c ~~k~~) "Net worth" means total assets minus total liabilities including on and off-balance sheet liabilities ~~and is equivalent to owners' equity~~.

(~~i~~) ~~"Parent corporation" means a corporation which owns or controls the applicant.~~

The definition of parent corporation was deleted and replaced by "ultimate parent entity." The reasons for this are discussed under the definition for "ultimate parent entity".

(d) "Real property" means land and appurtenances as defined in Wyoming Statute (W.S.) §39-15-101(a)(v).

A definition for "real property" was added to clarify what types of property may qualify as a real property collateral financial assurance.

(e ~~b~~) "Real property c~~C~~ollateral" means the actual or constructive deposit of ~~, as appropriate, with the Administrator of one or more of the following kinds of property to support a self- bond: Section 1(b)(i) A~~ a perfected, first lien security interest in real property located within the State of Wyoming, in favor of the Wyoming Department of Environmental Quality which meets the requirements of this Chapter. The property may include land which is part of the permit area; however, land pledged as collateral for a bond shall not be disturbed under any permit while it is serving as security.

~~(ii) Securities backed by the full faith and credit of the United States government or State government securities acceptable to the Administrator. These securities must be endorsed to the order of, and placed in the possession of, the Administrator.~~

~~(iii) Personal property located within the State, owned by the operator, which in market value exceeds 1 million dollars per property unit.~~

The "Real property collateral" definition is changed to remove personal property as possible collateral bond instruments.

- *The addition to the real property definition specifies the restrictions that must be in place for to be allowed for a collateral bond.*
- *Securities were placed into the collateral bonds section because they are secured by cash and are considered a type of collateral.*
- *There are difficulties with allowing personal property as collateral. More importantly, SMCRA does not allow for the use of personal property as a type of collateral bond.*
- *The value of personal property fluctuates, which requires frequent re-appraisal. The quality of maintenance of personal property might change, resulting in a decrease in appraisal value. WDEQ experience has shown that the expense and overhead in valuing personal property makes this an uneconomical collateral option. In contrast, real estate values are relatively stable. Periodic re-appraisals (in this case every three years) will accurately affect real property values, and therefore, protect the state's interests.*

(f ~~a~~) "Self-bond" means an indemnity agreement in a sum certain made payable to the State, with or without separate surety. The indemnity agreement is signed by the permittee and, if applicable, the ultimate parent entity ~~or non-parent corporate~~ guarantor.

The proposed rules eliminate the ability of a non-parent guarantor to guarantee a self-bond. Non-parent guarantors have limited control of their assets because the ultimate parent entity has final asset control. WDEQ found that in the case of Chapter 11 bankruptcies, assets may be moved out of the non-parent guarantor (subsidiary). The result is that a Chapter 7 bankruptcy could potentially not be adequately funded when WDEQ attempts to recover the bond. The state would then be responsible for the remaining cost of the reclamation.

(g ~~j~~) "Tangible net worth" means net worth minus intangibles such as goodwill, patents or royalties.

(h) "Ultimate parent entity" means an entity not controlled by any other entity and is the topmost responsible entity which owns or controls the applicant and is the guarantor for a self-bond.

WDEQ experience with non-parent and parent guarantors is that assets may be re-allocated out of the subsidiary (non-parent) entity, thus potentially preventing WDEQ from collecting the full value of the reclamation cost in the event of bankruptcy and forfeiture. The definition for an ultimate parent entity makes it clear that there are no other entities which control the assets of the guarantor. This protects the state from asset re-allocation in the event of Chapter 7 bankruptcy and subsequent forfeiture.

Section 2. **Acceptable Financial Instruments.**

The following bond instruments are accepted by the Division: corporate surety, irrevocable letters of credit, self-bond, federally insured certificates of deposit, cash, government securities, and real property collateral.

This section was added to clarify the bond instruments that are acceptable financial assurance instruments. This is consistent with W.S. 35-11-417 and 418.

Section 3 ~~2~~. **Irrevocable Letters of Credit.** ~~**Initial Application to Self-bond.**~~

~~Chapter 20 Section 1. **Conditions on the Letter of Credit.**~~

Rules on letters of credit are moved from Coal Rules, Chapter 20 into this chapter in order to combine all financial assurance instrument rules into a single chapter.

(a) Letters of credit as authorized by W.S. § 35-11-418, shall be subject to the following conditions:

~~(i) The letter shall be irrevocable during its term, which shall coincide with the annual bonding period. The letter shall also assign the State of Wyoming as the debtor in possession of the letter of credit. The Administrator may approve the use of letters of credit as security in accordance with a schedule approved with the permit. Any bank issuing a letter of credit shall notify the Director in writing at least 90 days prior to the maturity date of such letter or the expiration of the letter of credit agreement. Letters of credit utilized as security for reclamation liability shall be collected by the Director if not replaced by other suitable evidence of financial responsibility at least 30 days before the expiration date of the letter of credit agreement;~~

This section is deleted because it is contradictory to the statute. W.S. § 35-11-418 states that irrevocable letters of credit are acceptable financial assurance instruments. The paragraph above implies that letters of credit may expire.

(~~i~~ii) The letter must be payable to the Department in part or in full upon demand and receipt from the Director of a notice of forfeiture issued in accordance with W.S. § 35-11-421;

(~~ii~~iii) The letter shall not be in excess of ten percent of the issuing or supporting bank's ~~(s)~~ capital surplus account as shown on a balance sheet liabilities certified by a certified public accountant;

(iii) The Administrator shall not accept standby letters of credit;

For a standard irrevocable letter of credit, the bank funds the amount of the letter. With a standby letter of credit, the bank does not fund the letter of credit until it is drawn upon for collection. In this case, the state is at risk of not recovering a forfeited bond in the event that the bank cannot fully fund the letter when drawn.

(iv) The Administrator shall not accept letters of credit from a bank for any person, on all permits held by that person, in excess of ~~three times~~ the limitations imposed by W.S. §13-3-402; and

The "three times" restriction is already contained in the referenced statute.

(v) The letter of credit shall provide that:

(A) The bank will give prompt notice to the permittee and the Director of any notice received or action filed alleging the insolvency or bankruptcy of the bank, or alleging any violations of regulatory requirements which could result in suspension or revocation of the bank's charter or license to do business;

(B) In the event the bank becomes unable to fulfill its obligations under the letter of credit for any reason, notice shall be given immediately to the permittee and the Director; and

(C) Upon the incapacity of a bank by reason of bankruptcy,

insolvency, or suspension or revocation of its charter or license, the permittee shall be deemed to be without performance bond coverage in violation of the Act. The Director shall issue a notice of violation against any operator who is without bond coverage, specifying a reasonable period to replace bond coverage, not to exceed 90 days. During this period the Director or his designated representative shall conduct weekly inspections to ensure continuing compliance with other permit requirements, the regulations and the Act. If the notice is not abated in accordance with the schedule, a cessation order shall be issued.

(D) The irrevocable letter of credit may be cancelled by the surety only after ninety (90) days notice to the Director, and upon receipt of the Director's written consent, which may be granted only when the requirements of the bond have been fulfilled.

This was added to replace similar language deleted in (i) above, and specifies how a bank may cancel a letter of credit. The letter of credit may only be cancelled when a replacement bond has been accepted, and by written consent of the Director.

(b) ~~Chapter 20 Section 2.~~ **~~Agent for Service of Process.~~** ~~(a)~~ The letter may only be issued by a bank organized to do business in the U.S. which identifies by name, address, and telephone number an agent upon whom any process, notice or demand required or permitted by law to be served upon the bank~~,~~ may be served.

(i) If the bank fails to appoint or maintain an agent in this State, or whenever any such agent cannot be reasonably found, then the Director shall be an agent for such bank upon whom any process, notice or demand may be served for the purpose of this Chapter. In the event of any such process, the Director shall immediately cause one copy of such process, notice or demand to be forwarded by registered mail to the bank at its principal place of business. The Director shall keep a record of all processes, notices, or demands served upon him under this paragraph, and shall record therein the time of such service and his action with reference thereto.

(ii) Nothing herein contained shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon the bank in any other manner now or hereafter permitted by law.

Section 4 ~~3~~. **Self-bonds.** ~~**Approval or Denial of Operator's Self-bond Application.**~~

(a) Application to Self-bond.

(i) ~~Section 2(a)~~ Initial application to self-bond shall be made at the time the operator makes written application to the Administrator for a license to mine. An operator conducting an existing operation with greater than a five (5)-year life of mine remaining may submit an application to self-bond to the Administrator. The application shall be on forms furnished by the Administrator and shall contain:

As discussed in the opening statement of reasons, the additional restriction of the remaining 5-year life of mine was added because WDEQ has found that companies

nearing the end of mining may have difficulty substituting or obtaining alternate bonding instruments as revenue generation declines.

(A) ~~Section 2(a)(i)~~ Identification of operator ~~by~~:

(I) ~~Section 2(a)(i)(A)~~ For corporations, name, address, telephone number, state of incorporation, a description of the corporate structure, principal place of business and name, title and authority of person signing application, and statement of authority to do business in the State of Wyoming, or

The description of the corporate structure was added to ensure that WDEQ receives the information necessary to evaluate the self-bond application. Since the rules specify what type of entity may guarantee a bond, it follows that a description of the corporate structure be included in the application.

(II) ~~Section 2(a)(i)(B)~~ For all other forms of business enterprises, name, address and telephone number and statement of how the enterprise is organized, law of the state under which it is formed, place of business, and relationship and authority of the person signing the application.

(B) ~~Section 2(a)(ii)~~ Amount of bond proposed to be under a self-bond ~~required, to be determined~~ in accordance with W.S. § 35-11-417(c)(i) ~~(1977)~~. ~~If the self-bond amount is proposed to be less than the full-bond amount, the amount which is proposed is to be under a self-bond.~~ The proposed self-bond maximum amount shall not exceed seventy-five percent (75%) of the required bond amount.

This fundamental change to self-bonding is discussed more thoroughly in the opening statement of reasons. In the event of a Chapter 7 bankruptcy, all assets will be tied up in forfeiture proceedings. Sudden cessation of an operating mine would result in potential public health and safety conditions needing corrective action (fire sealing, and highwall scaling), depreciation and loss of value in the mine operation and equipment, and potential on- and off-site environmental impacts needing mitigation. Therefore, the WDEQ is proposing to restrict the amount that any operator may self-bond so that there will be ready access to funds for maintaining the permit in a functional and compliant form until such time closure is completed.

(C) ~~Section 2(a)(iii)~~ Type of operation and anticipated dates performance is to be commenced and completed.

(D) ~~Section 2(a)(iv)~~ Brief chronological history of business operations conducted within the last five years which would illustrate a continuous operation for five years immediately preceding the time of application. ~~Section 2(a)(iv)(A)~~ The Administrator may allow a joint venture or syndicate with less than five years of continuous operation to qualify under this requirement, if each member of the joint venture or syndicate has been in continuous operation for at least five years immediately preceding the time of

application.

~~Section 2(a)(iv)(B) When calculating the period of continuous operation, the Administrator may exclude past periods of interruption to the operation of the business entity that were beyond the applicant's control and that do not affect the applicant's likelihood of remaining in business during the proposed surface coal mining and reclamation operations.~~

The period of continuous operation is part of the qualification for a self-bond using investment credit rating information. Since these proposed rules only use investment credit ratings, this information is no longer necessary.

(E) ~~Section 2(a)(v)~~ Information in sufficient detail to show good faith performance of past mining and reclamation obligations. ~~For coal operations, t~~The compliance information in the permit and/or annual reports may be referenced to satisfy part of this requirement.

~~Section 2(a)(vi) A statement, in detail, so as to show a history of financial solvency. For an initial bond, each operator must provide:~~

~~(A) Audited financial statements supporting the following comparative documents, prepared and certified by an independent Certified Public Accountant who, by reason of education, experience or special training, and disinterest, is competent to analyze and interpret the operator's financial solvency. All statements shall be prepared following generally accepted principles of accounting:~~

~~(I) A comparative balance sheet which shows assets, liabilities and owner equity for five years. The operator may provide common size documents for confidentiality.~~

~~(II) A comparative income statement which shows all revenues and expenses for five years. The operator may provide common size documents for confidentiality.~~

~~(III) A report for the most recently completed fiscal year containing the accountant's audit opinion or review opinion of the balance sheet and income statement with no adverse opinion.~~

~~(IV) Notwithstanding the language in (A) above, unaudited financial statements may be submitted to support the comparative documents where current fiscal year quarters have ended but a CPA opinion has not yet been obtained because the fiscal year has not yet ended.~~

Section 2(a)(vi) is deleted because audited financial statements will no longer be considered in an application to self-bond. This change is discussed in the opening statement of reasons.

(F) ~~Section 2(a)(vii) For coal mining operations, f~~Financial information in sufficient detail to show that the operator and ultimate parent entity ~~meets one of the following criteria (the specific criterion relied upon shall be identified)~~:

The ultimate parent entity replaces non-parent and parent guarantor as the entity that qualifies to guarantee a self-bond. The justification for this is discussed in section 1(g) above and in the opening statement of reasons.

(I) ~~Section 2(a)(vii)(A) The operator~~ Have ~~has~~ a rating for all bond issuance actions and long term credit rating within the current year ~~over the past five years~~ of "Aa3" or higher as issued by Moody's Investor Service, "AA-"~~,~~ or higher as issued by Standard and Poor's Corporation or "AA-" or higher as issued by Fitch Ratings. ~~or any other nationally recognized rating organization that is acceptable to the regulatory authority. Any additional rating organization must be a "nationally recognized statistical rating organization" as approved by the Securities and Exchange Commission. If the additional rating organization uses a different rating system, only ratings that are equivalent to a rating of "A" or higher by either Moody's Investor Service or Standard and Poor's Corporation will qualify (the rating organization should be identified together with any further breakdown of specific ratings).~~ The operator is eligible for a maximum of seventy-five percent (75%) of the approved reclamation cost estimate in the most recent Director's bond letter.

(II) Have a rating for all bond issuance actions and long term credit rating within the current year of "A2" or higher as issued by Moody's Investor Service, "A" or higher as issued by Standard and Poor's Corporation or "A" or higher as issued by Fitch Ratings. The operator is eligible for a maximum of seventy percent (70%) of the approved reclamation cost estimate in the most recent Director's bond letter unless the requirements of subsection (I) are met above.

(III) Have a rating for all bond issuance actions and long term credit rating within the current year of "Baa2" or higher as issued by Moody's Investor Service, "BBB" or higher as issued by Standard and Poor's Corporation or "BBB" or higher as issued by Fitch Ratings. The operator is eligible for a maximum of fifty percent (50%) of the approved reclamation cost estimate in the most recent Director's bond letter unless the requirements of subsection (II) are met above.

(IV) In the event of a split rating, the Director has the discretion to determine which rating would be accepted and applied to (I), (II) or (III) of this subsection.

The credit ratings serve two key functions. First, the credit ratings provide for a real time assessment of a company's financial condition at the time the self-bond application is filed and reviewed. Second, the credit rating is an assessment of the company's condition that is made by an independent third party. The elimination of the ratios is proposed because during each of the bankruptcy actions reviewed, the companies drew on large revolving credit lines the day prior to the Chapter 11 filings. These revolvers could not be considered in the self-bond review and

eligibility calculations as they reside in the off-balance sheet until such time they are drawn upon. Review of these actions indicated that if the ratios were to be considered in the future, the off balance sheet including the revolvers would need to be considered in the ratio calculation in order for an accurate accounting of liabilities to be made. If the agency were to include these off balance sheet items, no company would qualify under the ratio determination based on LQD's review. Because of this analysis, the use of the credit ratings was determined to be the best compromise in modernizing the regulations and adequately protecting the state.

The range of percentages from fifty to seventy-five percent are based on the credit ratings of the bonder and the associated risk with each rating. This strikes a balance between allowing bonders with credit ratings above marginal to junk ratings to use a self-bond as part of their total financial assurance while ensuring that the state is protected and can recover the value of the self-bond in the event of forfeiture.

~~Section 2(a)(vii)(B) The operator has a tangible net worth of at least 10 million dollars, and a ratio of total liabilities to net worth of 2.5 times or less, and a ratio of current assets to current liabilities of 1.2 times or greater. The two ratio requirements must be met for the past year, and documented for the four years preceding the past year. Explanations should be included for any year where the ratios fall below the stated limits.~~

~~Section 2(a)(vii)(C) The operator's fixed assets in the United States total at least 20 million dollars, and the operator has a ratio of total liabilities to net worth of 2.5 times or less, and a ratio of current assets to current liabilities of 1.2 times or greater. The two ratio requirements must be met for the past year and documented for the four years preceding the past year. Explanations should be included for any year where the ratios fall below the stated limits.~~

~~Section 2(a)(vii)(D) If the operator chooses (B) or (C), the two ratios shall be calculated with the proposed self-bond amount added to the current or total liabilities for the current year. The operator may deduct the costs currently accrued for reclamation which appear on the balance sheet.~~

These three sections are requirements associated with financial information used to derive ratios that are no longer an element of a self-bond application.

(G) ~~Section 2(a)(ix)~~ A statement identifying by name, address and telephone number:

(I) ~~Section 2(a)(ix)(A)~~ A registered office which may be, but need not be, the same as the operator's place of business.

(II) ~~Section 2(a)(ix)(B)~~ A registered agent, which agent must be either an individual resident in this State, whose business office is identical with such registered office, a domestic corporation, or a foreign corporation authorized to transact

business in this State, having a business office identical with such registered office. The registered agent so appointed by the operator shall be an agent to such operator upon whom any process, notice or demand required or permitted by law to be served upon the operator may be served.

(III) ~~Section 2(a)(ix)(C)~~ If the operator fails to appoint or maintain a registered agent in this State, or whenever any such registered agent cannot be reasonably found at the registered office, then the Director shall be an agent for such operator upon whom any process, notice or demand may be served. In the event of any such process, the Director shall immediately cause one copy of such process, notice or demand to be forwarded~~,~~ by registered mail, to the operator at his principal place of business. The Director shall keep a record of all processes, notices, or demands served upon him under this paragraph, and shall record therein the time of such service and his action with reference thereto.

(IV) ~~Section 2(a)(ix)(D)~~ Should the operator change the registered office or registered agent, or both, a statement indicating such change shall be filed immediately with the Land Quality Division.

(V) ~~Section 2(a)(ix)(E)~~ Nothing herein contained shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon an operator in any other manner now or hereafter permitted by law.

(H) ~~Section 2(a)(x)~~ A written guarantee for an operator's self-bond from ~~a~~ the ultimate parent entity ~~corporation~~ guarantor if the guarantor meets the conditions of subsections (a)(i~~v~~)(D), ~~(vi),~~ (a)(i)(F) ~~(vii)~~ and (a)(i)(G)(i~~x~~) of this Section as if it were the operator. Such a written guarantee may be accepted by the Administrator and shall be referred to as an "ultimate parent entity ~~corporate~~ guarantee." The terms of the ultimate parent entity ~~corporate~~ guarantee shall provide for the following:

(I) ~~Section 2(a)(x)(A)~~ If the operator fails to complete the reclamation plan, the ultimate parent entity ~~corporate~~ guarantor shall do so or the ultimate parent entity ~~corporate~~ guarantor shall be liable under the indemnity agreement to provide funds to the state sufficient to complete the reclamation ~~plan~~, but not to exceed the actual reclamation costs ~~bond amount~~.

(II) ~~Section 2(a)(x)(B)~~ The ultimate parent entity ~~corporate~~ guarantee shall remain in force unless the ultimate parent entity ~~corporate~~ guarantor sends notice of cancellation by certified mail to the operator and to the Administrator at least 120 ~~90~~ days in advance of the cancellation date, and the Administrator accepts the cancellation. The cancellation shall be accepted by the Administrator if the operator obtains a suitable replacement bond before the cancellation date, if the lands for which the self-bond, or portion thereof, was accepted have not been disturbed, or if the lands have been released under Chapter 15 or W.S. §§ 35-11-417(e) and 423.

(I) ~~Section 2(a)(xi) A written guarantee for an applicant's self-bond from any corporate guarantor, whenever the operator meets the conditions of subsections~~

~~(a)(iv), (a)(vi) and (a)(ix) of this Section, and the guarantor meets the conditions of subsections (a)(iv), (a)(vi), (a)(vii) and (a)(ix) of this Section may be accepted by the Administrator. Such a written guarantee shall be referred to as a "non-parent corporate guarantee." The terms of this guarantee shall provide for compliance with the conditions of subsections (a)(x)(A) and (B) of this Section.~~ The Administrator ~~may~~ shall require the operator to submit any information specified in subsection (a)(~~vi~~i)(F) of this Section in order to determine the financial capabilities of the operator.

The deleted text in subsection (I) is already addressed in subsection (H) above.

(J) ~~Section 2(a)(xii)~~ The following in order:

(I) ~~Section 2(a)(xii)(A)~~ For the Administrator to accept an operator's self-bond, the total amount of the outstanding ~~and proposed~~ self-bonds of the operator shall not exceed 25 percent of the operator's tangible net worth in the United States; ~~or~~ and

(II) ~~Section 2(a)(xii)(B)~~ For the Administrator to accept an ultimate parent entity ~~corporate~~ guarantee, the total amount of the ultimate parent entity ~~corporation~~ guarantor's outstanding ~~present and proposed~~ self-bonds and guaranteed self-bonds shall not exceed 25 percent of the ultimate parent entity ~~corporate~~ guarantor's tangible net worth in the United States.~~; or~~

~~Section 2(a)(xii)(C) For the Administrator to accept a non-parent corporate guarantee, the total amount of the non-parent corporate guarantor's present and proposed self-bonds and guaranteed self-bonds shall not exceed 25 percent of the non-parent corporate guarantor's tangible net worth in the United States.~~

As discussed earlier in this section and in the statement of reasons, the proposed rules do not include non-parent guarantors. Simply, the ability to self-bond at the subsidiary level has been removed from the proposed regulations.

(b) ~~Section 3.~~ Approval or Denial of Operator's Self-bond Application.

(i) ~~Section 3(a)~~ The Administrator, within 60 days of operator's submission of all materials necessary to base a decision on the application shall:

(A) ~~Section 3(a)(i)~~ Approve or reject such application and declare in writing his reasons for such action to the operator or his registered agent. The decision shall be based on all the information submitted and shall be sufficient to meet the demonstrations required by W.S. § 35-11-417(d).

(B) ~~Section 3(a)(ii)~~ If a rejection is based on inadequate information or failure of the operator to supply all necessary material, the Administrator shall allow the operator 30 days to remedy the deficiencies. Such corrections must be made to the satisfaction of the Administrator. The Administrator shall have an additional 60 days to approve or reject the corrected application.

(ii) ~~Section 3(b)~~ If the Administrator accepts a~~n uncollateralized~~ self-bond, an indemnity agreement shall be submitted subject to the following requirements:

(A) ~~Section 3(b)(i)~~ The indemnity agreement shall be executed by all persons and parties who are to be bound by it, including the ultimate parent ~~or non-parent corporate~~ entity guarantor, and shall bind each jointly and severally.

(B) ~~Section 3(b)(ii)~~ Corporations applying for a self-bond or ~~parent and non-parent~~ ultimate parent corporations guaranteeing an operator's self-bond shall submit an indemnity agreement signed by two corporate officers who are authorized to bind their corporations. A copy of such authorization shall be provided to the Administrator along with an affidavit certifying that such an agreement is valid under all applicable Federal and State laws. In addition, all corporate guarantors shall provide a copy of the corporate authorization demonstrating that the corporation may guarantee the self-bond and execute the indemnity agreement.

(C) ~~Section 3(b)(iii)~~ If the applicant is a partnership, joint venture or syndicate, the agreement shall bind each partner or party who has a beneficial interest directly or indirectly~~,~~ in the operator.

(D) ~~Section 3(b)(iv)~~ The indemnity agreement shall provide that the persons or parties bound shall pay all litigation costs incurred by the State in any successful effort to enforce the agreement against the operator.

(c) ~~Section 4.~~ Self-Bond Renewal ~~Bonds~~.

(i) ~~Section 4(a)~~ Information for the self-bond renewal under the self-bonding program which shall accompany the annual credit rating evaluation shall include:

(A) ~~Section 4(a)(i)~~ The amount of bond required which is determined by the reclamation cost estimate in accordance with W. S. § 35-11-417(c)(ii)~~. If the self-bond amount is proposed to be less than the full bond amount,~~ and the amount which is proposed ~~is~~ to be under a self-bond.

(B) ~~Section 4(a)(ii)~~ Financial information in sufficient detail to show that the guarantor still meets one of the criteria in Section ~~2(a)(vii)~~ 4(a)(i)(F), and the limitation in Section ~~2(a)(xii)~~ 4(a)(i)(J). ~~The Administrator may request financial statements for the most recently completed fiscal year together with an independent certified public accountant's audit opinion or review opinion of the financial statements with no adverse opinion.~~ The guarantor shall submit the full report from the credit reporting agency or agencies supporting its rating for the current year. Additional ~~unaudited~~ information may be requested by the ~~Administrator~~ Director when a split rating occurs.

As discussed in the opening Statement of Reasons, these proposed rules do not use on balance sheet financial statements for ratio determinations in self-bond applications. Because of the change to exclusive use of investment credit ratings, the LQD needs the full report from the credit reporting agency.

~~Section 4(a)(iii) If the Administrator has accepted a mortgage, any changes in evidence of value, title and possession of the property shall be submitted.~~

~~Section 4(a)(iv) If the Administrator deems it necessary to value any asset, he may appoint the appraiser or appraisers mutually acceptable to the Administrator and the operator. Any such appraisal shall be expeditiously made, and a copy thereof furnished to the Administrator and the operator. The expense of the appraisal shall be borne by the operator. The findings of the appraisal shall be final and binding unless both parties agree to a reappraisal.~~

~~Section 4(a)(v) For coal operators using personal property as collateral to support a self-bond, the operator's current financial information showing continuing compliance with Section 3(c)(ii) of this Chapter~~.

The deleted sections above refers to collateralized self-bonds, which the proposed rules do not include. Real property is considered an independent financial assurance instrument and rules for real property collateral are included in Section 5 of this Chapter. Personal property will no longer be an acceptable form of collateral for the purpose of reclamation financial assurance.

~~Section 4(b) If the Administrator has authorized a parent corporate guarantee, the parent corporation shall supply all information required under subsection (a)(ii) of this Section.~~

~~Section 4(c) Any valid initial self-bond shall carry the right of successive renewal as long as the above listed information is submitted which demonstrates that the guarantor remains qualified under W.S. § 35-11-417(d).~~

The rule language above is redundant with the language below. Therefore, it has been deleted.

(ii) Any valid initial self-bond may carry the right of successive renewal as long as the above listed information is submitted and demonstrates that the guarantor remains qualified under W.S. § 35-11-417(d) and there is a minimum five (5)-year life of mine remaining.

(iii) Renewal of self-bonds approved prior to the effective date of these rules shall require the bond and credit ratings described in Section 4(a)(i)(F) and shall meet the limitations in Section 4(a)(i)(J). Operators with self-bonds approved prior to the effective date of these rules shall submit a new application to self-bond within eighteen (18) months of the effective date of these rules.

This section specifies the length of the transition period that will be provided for operators to meet the to the new rule requirements.

(d) ~~Section 5.~~ Self-bond Substitution ~~of the Operator's Self-bond~~.

(i) ~~Section 5(a)~~ The Administrator may require the operator to substitute a

good and sufficient bond instrument ~~corporate surety licensed to do business in the State~~ if the Administrator determines in writing that the self-bond of the operator fails to provide the protection consistent with the objectives and purposes of this Act. The Administrator shall require ~~this~~ full or partial substitution if the financial information submitted or requested under Section 4(c)(i)(B)~~(a)(ii)~~ indicates that the operator and/or the ultimate parent entity no longer qualifies under the self-bonding program. Substitution of an alternate bond shall be made within 90 days. The operator may also request substitution. This request is contingent upon the operator meeting all the requirements of the bond provisions (W.S. §§ 35-11-417 through ~~to~~ 424 ~~(1977)~~) of the Act. If these requirements are met, the Administrator shall accept substitution.

The change from "corporate surety" to "bond instrument" reflects that different types of bonds are acceptable forms of financial assurance, as listed in Section 2 of these proposed rules.

(ii) ~~Section 5(b)~~ If the operator fails within 90 days to make a substitution for the revoked self-bond ~~with a corporate surety, cash, governmental securities, or federally insured certificates of deposit, or irrevocable letters of credit~~, the Administrator shall suspend or revoke the license of the operator to conduct operations upon the land described in the permit until such substitution is made.

(iii) ~~Section 5(c)~~ All methods of substitution shall be made in accordance with the bonding provisions (W.S. §§ 35-11-417 through ~~to 35-11-~~418 ~~424 (1977)~~) of the Act. The Administrator shall require substitution of a good and sufficient bond. ~~either:~~

Section 2 of this chapter lists the acceptable bond instruments.

~~Section 5(c)(i) Require substitution of a good and sufficient corporate surety licensed to do business in the State that will stand as surety so as to cover all periods of time as they relate to the mining operations, or~~

~~Section 5(c)(ii) Retain from the operator sufficient assets within the department so as to cover that period of time of the mining operation which is not covered by the substituted surety. Those assets not retained shall be returned to the operator within 60 days free from the Department's encumbrances, liens, mortgages or security interests.~~

(e) Reporting Requirements.

(i) If a devaluation in the credit rating occurs, the Administrator shall be notified within thirty (30) days of the change and a copy of the rating report shall be provided to the Administrator.

This provision ensures that the LQD will be informed of a drop in an investment credit rating with sufficient advance notice to require a bonder to replace the self-bond with an approved alternative financial assurance instrument.

(ii) ~~Section 2(a)(viii)~~ A statement listing any notices issued by the Securities and Exchange Commission or proceedings against the operator or the ultimate parent entity initiated by any party alleging a failure to comply with any public disclosure or reporting requirements under the securities laws of the United States. Such statement shall include a summary of each such allegation, including the date, the requirement alleged to be violated, the party making the allegation, and the disposition or current status thereof. The Administrator shall be notified within thirty (30) days of the filing.

Section 5. **Collateral Bonds.**

(a) Collateral bond means an indemnity agreement in a sum certain executed by the operator as principal which is supported by the deposit with the Department of one or more of the following:

(i) Cash directly deposited with the Department is exempt from the trust provisions;

(ii) Negotiable bonds of the United States, a State or a municipality, endorsed to the order of the Department and placed in possession of the Department. Possession may be in the form of the cash value of the irrevocable trust for the full amount of the reclamation obligation and payable to the Department and federally insured. An operator may satisfy the requirements of this subsection by establishing an irrevocable trust that conforms to the requirements below and submitting an originally signed duplicate of the trust agreement to the Administrator for consideration.

(A) The wording of the irrevocable trust must be identical to the wording specified on the Wyoming Department of Environmental Quality Irrevocable Trust for Coal Reclamation Form and be signed by the operator or guarantor as principal, the financial institution as Trustee and be made payable to the Department;

(B) The Trustee must be a bank organized to do business in the United States that has the authority to act as a trustee and whose trust operations is regulated and examined by a Federal or State Agency;

(C) The irrevocable trust must be cash funded for the full amount of the reclamation obligation to be provided in the irrevocable trust before it may be approved to satisfy the requirements of financial assurance in lieu of a bond. For purposes of this subsection, "the full amount of the reclamation obligation to be provided" means the amount of coverage for reclamation required to be provided for the permit, less the amount of financial assurance for reclamation obligation that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the operator or guarantor;

(D) Cancellation of an irrevocable trust shall follow the same procedures detailed in W.S. 35-11-419 for performance bonds; and

(E) Forfeiture proceeding for an irrevocable trust shall follow the same

procedures detailed in W.S. 35-11-421 for performance bonds.

Subsection (a) above was added to provide a vehicle for government securities which may not have a tangible or physical form so that physical deposit with the Department is not possible. The irrevocable trust provides the applicant a method to pledge government securities which may be issued digitally. The irrevocable trust also allows the applicant greater flexibility to fund the trust while allowing the Department to have first priority with regards to pledged amount within the irrevocable trust.

(iii) ~~Section 3(c)(i)~~ For any real property collateral ~~offered to support a self-bond~~, the following information shall be provided:

(A) ~~Section 3(c)(i)(A)~~ The value of the real property. The property shall be valued at the difference between the fair market value and any reasonable expense anticipated by the Department in selling the property. The fair market value shall be determined by a market analysis that may be conducted by an appraiser ~~or appraisers~~ or qualified agent proposed by the operator. The appraiser ~~or appraisers~~ shall be selected by the Administrator. The Administrator has the option to reject any appraiser proposed by the operator. ~~The appraisal shall be expeditiously made, and copy thereof furnished to the Administrator and the operator.~~ The expense of the appraisal shall be borne by the operator. The real property shall be appraised every three (3) years.

The addition of market valuations specifies the approach used to value/appraise the real property. The requirement for an appraisal every three years is because property values for large property pledged as collateral are stable, and typically do not require a yearly re-assessment.

(B) ~~Section 3(c)(i)(B)~~ A description of the property satisfactory for deposit to further assure that the operator shall faithfully perform all requirements of the Act. The Administrator shall have full discretion in accepting any such offer.

(I) ~~Section 3(c)(i)(B)(I)~~ Real property shall not include any lands in the process of being mined, reclaimed, or the subject of this application. The operator may offer any lands within the permit boundary ~~the bonds for~~ which have received phase 3 bond release ~~have been released~~ or ~~lands within a permit area~~ which will not be disturbed ~~affected~~ while pledged as collateral. ~~In addition, any land used as a security shall not be mined or otherwise disturbed while it is a security.~~ The acceptance of real property within the permit boundary shall be at the discretion of the Director.

These provisions for acceptable property follow the provisions of SMCRA CFR 800.21.

~~Section 3(c)(i)(B)(III) Personal property shall be in the possession of the operator, shall be unencumbered, and shall not include:~~

~~(1.) Property which is already being used a collateral, or~~

~~(2.) Goods which the operator sells in the ordinary course of his business, or~~

~~(3.) Fixtures, or~~

~~(4.) Certificates of deposit which are not federally insured or where the depository is unacceptable to the Administrator.~~

As discussed in the opening statement of reasons, the proposed rules do not include personal property as a type of acceptable collateral in order to be compatible with CFR 800.21. The agency's experience has also shown that personal property in most cases is not an economical alternative in today's financial assurance marketplace because of the requirements needed to verify the valuation of individual personal property.

(C) ~~Section 3(c)(i)(C)~~ Evidence of ownership ~~submitted in one of the following forms:~~ of the real property shall be in the form of a clear and unencumbered title. ~~Section 3(c)(i)(C)(I) If the property offered for deposit is real property, the operator's interest must be evidenced by:~~

~~Section 3(c)(i)(C)(I)(1.) In the case of a Federal or State lease, a status report prepared by an attorney, satisfactory to the Administrator as disinterested and competent to so evaluate the asset, and an affidavit from the owner in fee establishing that the leasehold could be transferred upon default.~~

~~Section 3(c)(i)(C)(I)(2.) In the case of a fee simple interest, a title certificate or similar evidence of title and encumbrances prepared by an abstract office authorized to transact business within the State and satisfactory to the Administrator.~~

~~Section 3(c)(i)(C)(III) If the property offered for deposit is personal property as defined in Section 1(b)(iii), evidence of ownership shall be submitted in the form satisfactory to the Administrator to establish unquestionable title to the property in the operator.~~

The federal SMCRA rule provisions do not provide for the acceptance of personal property. This updates the coal rules and regulations to be compatible with the provisions of SMCRA CFR 800.21.

~~Section 3(c)(ii) In addition to submitting the above information, if the operator offers personal property as collateral to support a self-bond, he must meet the financial criteria contained in (A) or (B) following:~~

~~Section 3(c)(ii)(A) The operator must have a tangible net worth of at least 10 million dollars, a ratio of total liabilities to net worth of 3.0 times or less, and a ratio of current assets to current liabilities of 1.0 times or greater. The two ratios shall be~~

~~calculated with the proposed self-bond amount added to the current or total liabilities for the current year. The operator may deduct the costs currently accrued for reclamation which appear on the balance sheet.~~

~~Section 3(c)(ii)(B) The operator must have fixed assets in the United States that total at least 20 million dollars, a ratio of total liabilities to net worth of 3.0 times or less, and a ratio of current assets to current liabilities of 1.0 times or greater. The two ratios shall be calculated with the proposed self-bond amount added to the current or total liabilities for the current year. The operator may deduct the costs currently accrued for reclamation which appear on the balance sheet.~~

Ratio calculations are no longer accepted in the proposed rules and are replaced by investment credit ratings. This makes this section obsolete. Please reference the Statement of Reasons for further detail of the investment credit ratings discussed above.

~~Section 3(c)(iii) If the Administrator accepts personal property as collateral to support a self-bond, he shall require:~~

~~Section 3(c)(iii)(A) Quarterly maintenance reports prepared by the operator, and~~

~~Section 3(c)(iii)(B) A perfected first lien security interest in the property used, in favor of the Wyoming Department of Environmental Quality. This security interest shall be perfected by filing a financing statement or taking possession of the collateral in accordance with (v)(B) below.~~

~~Section 3(c)(iv) In addition, the Administrator may also require quarterly inspections of the personal property by a qualified representative of the Department.~~

As discussed previously above in the Statement of Reasons WDEQ will no longer accept personal property collateral.

(D) ~~Section 3(c)(v)~~ If the Administrator accepts any real property as collateral ~~to support a self-bond~~, the Administrator shall~~, as applicable,~~ require possession by the Department of the ~~personal property, or a~~ mortgage ~~or security~~ agreement executed by the operator in favor of the Department of Environmental Quality. The requirement shall be ~~that which is~~ sufficient to vest such interest in the property in the Department to secure the right and power to sell or otherwise dispose of the property by public or private proceedings so as to ensure reclamation of the affected lands in accordance with the Act. ~~Personal property collateral to support a self-bond shall be secured under the provisions of uniform commercial code as required by (B) below.~~ ~~Section 3(c)(v)(A)~~ Any mortgage shall be executed and duly recorded as required by law so as to be first in time and constitute notice to any prospective subsequent purchaser of the same real property or any portion thereof.

(E) ~~Section 3(c)(v)(B)~~ Any security interest created by a security

agreement shall be perfected by filing a financing statement or taking possession of the collateral in accordance with W.S. §§ 34.1-9-401 through 406 ~~34-21-950 through 34-21-955 (1977)~~. The Department shall have all rights and duties set forth in W.S. § 34.1-9-207 ~~34-21-926 (1977)~~ when the collateral is in its possession as a secured party, as defined in W.S. § 34.1-9-102(a)(lxxv) ~~34-21-905(a)(ix)~~. Any money received from the collateral during this period of time shall be remitted to the operator. When the collateral is left in the possession of the operator, the security agreement shall require that, upon default, the operator shall assemble the collateral and make it available to the Department at a place to be designated by the Department which is reasonably convenient to both parties.

(F) ~~Section 3(c)(vi)~~ The operator may, with written approval by ~~consent from~~ the Administrator, substitute for any of the real property held hereunder other real property upon submittal of all information required under this ~~sub~~section. ~~and compliance with all requirements of this subsection so as to secure all obligations under all periods of time as they relate to mining operations.~~

(G) ~~Section 3(c)(vii) For collateral posted to support a self-bond, all persons with an interest in the collateral~~ All parties with a claim subordinate to the Department in property held as collateral under this section shall be notified by the operator ~~of the posting, and~~ of all ~~other~~ actions affecting the collateral.

With these proposed rules, the state will require a perfected first lien security interest on the mortgage of the pledged property.

(iv) Securities.

(A) ~~Section 3(c)(i)(B)(II)~~ Securities that are unencumbered shall only include those which are United States government securities or ~~those~~ State government securities which are acceptable to the Administrator. ~~Securities shall meet the requirements specified in the definition of "Securities" found in Section 1(b)(ii).~~ Certificates of deposit shall be insured by the Federal Deposit Insurance Corporation (FDIC).

The addition of the FDIC language makes the proposed rules compatible with federal banking insurance requirements.

(B) ~~Section 3(c)(i)(C)(II)~~ If the instrument ~~property~~ offered for deposit is a security, the operator's interest must be evidenced by possession of the original or a notarized copy of the certificate or a certified statement of account from a brokerage house.

(C) ~~Section 3(c)(v)~~ If the Administrator accepts any ~~real property or~~ government securities ~~as collateral~~, the Administrator shall~~, as applicable,~~ require possession by the Department of the ~~personal property, or a mortgage or~~ security agreement executed by the operator in favor of the Department of Environmental Quality. The requirement shall be ~~that which is~~ sufficient to vest such interest in the property in the Department to secure the right and power to sell or otherwise dispose of the property by public or private proceedings so as to ensure reclamation of the affected lands in accordance with the Act. ~~Personal property collateral~~

~~to support a self-bond shall be secured under the provisions of uniform commercial code as required by (B) below.~~

Section 6. **Requirements for Forfeiture and Release.**

(a) All requirements as to bond forfeiture proceedings and the release of bonds shall be consistent with W.S. § 35-11-417(e) and W.S. §§ 35-11-421 through ~~35-11-~~424 of the Act, excepting the requirements as to notification to the surety. ~~When the Administrator has required a mortgage and the bond has been forfeited, foreclosure procedures shall be in accordance with W.S. §§ 34-4-101 through 34-4-113 (1977).~~

(b) The Department shall retain the full value of the real property until the bond liability equal to the value of the real property is released or substituted with another financial instrument. ~~Upon bond release of self-bonds supported by collateral, property return shall be of that form sufficient for the Department to release that portion of the interest or mortgage commensurate with the amount of the bond released less any disposed of in accordance with the mortgage or indemnity agreement.~~

This prevents the WDEQ from becoming a fractional owner.

~~Section 7. **Existing Operations.**~~

~~(a) An operator conducting an existing, ongoing operation may at any time submit to the Administrator an application to self-bond. The application shall contain all information required in Section 2 of this Chapter except Section 2(a)(ii) shall read: "Amount of bond required to be determined in accordance with W.S. § 35-11-417(c)(ii) (1977).~~"

~~(b) If the Administrator determines that the operator qualifies for self-bonding, then the operator shall execute all required agreements or instruments and sign a new bond payable to the State of Wyoming which covers all periods of time as they relate to the mining operation. At this time, the prior bond shall be released. This release shall not be governed by any requirements as to the release of bonds which occur upon completion in whole or in part of the reclamation program.~~

~~(c) Any operation which holds a self-bond on the effective date of this Chapter shall be presumed to meet the requirements of this Chapter. To continue the self-bond, within one year from the effective date of this Chapter an application for a renewal self-bond shall be filed with the Administrator which meets all requirements in Section 3. A new indemnity agreement shall be executed which includes the requirements in Section 4(b).~~

This section is no longer necessary because revision to the first self-bond section which now includes operators of existing operations as well as new operators to qualify as applicants for self-bonds. Requirements for new self-bond applications are consolidated into the new Section 4(a).

CHAPTER 20

LETTERS OF CREDIT

Section 1. **Conditions on the Letter of Credit.**

(a) Letters of credit as authorized by W.S. § 35-11-418, shall be subject to the following conditions:

(i) The letter shall be irrevocable during its term, which shall coincide with the annual bonding period. The Administrator may approve the use of letters of credit as security in accordance with a schedule approved with the permit. Any bank issuing a letter of credit shall notify the Director in writing at least 90 days prior to the maturity date of such letter or the expiration of the letter of credit agreement. Letters of credit utilized as security in areas requiring continuous bond coverage shall be forfeited and collected by the Director if not replaced by other suitable evidence of financial responsibility at least 30 days before the expiration date of the letter of credit agreement;

(ii) The letter must be payable to the Department in part or in full upon demand and receipt from the Director of a notice of forfeiture issued in accordance with W.S. § 35-11-421;

(iii) The letter shall not be in excess of ten percent of the bank's capital surplus account as shown on a balance sheet certified by a certified public accountant;

(iv) The Administrator shall not accept letters of credit from a bank for any person, on all permits held by that person, in excess of three times the limitation imposed by W.S. § 13-3-402;

(v) The letter of credit shall provide that:

(A) The bank will give prompt notice to the permittee and the Director of any notice received or action filed alleging the insolvency or bankruptcy of the bank, or alleging any violations of regulatory requirements which could result in suspension or revocation of the bank's charter or license to do business;

(B) In the event the bank becomes unable to fulfill its obligations under the letter of credit for any reason, notice shall be given immediately to the permittee and the Director; and

(C) Upon the incapacity of a bank by reason of bankruptcy, insolvency, or suspension or revocation of its charter or license, the permittee shall be deemed to be without performance bond coverage in violation of the Act. The Director shall issue a notice of violation against any operator who is without bond coverage, specifying a reasonable period to replace bond coverage, not to exceed 90 days. During this period the Director or his designated representative shall conduct weekly inspections to ensure continuing compliance with other permit requirements, the regulations and the Act. Such notice, if abated within the period allowed, shall not be counted

as a notice of violation for purposes of determining a pattern of violations under W.S. § 35-11-409(c), and need not be reported as a past violation in permit applications under Chapter 2, Section 2(a)(ii)(B). If the notice is not abated in accordance with the schedule, a cessation order shall be issued.

Section 2. **Agent for Service of Process.**

(a) The letter may only be issued by a bank organized to do business in the U.S. which identifies by name, address, and telephone number an agent upon whom any process, notice or demand required or permitted by law to be served upon the bank, may be served.

(i) If the bank fails to appoint or maintain an agent in this State, or whenever any such agent cannot be reasonably found, then the Director shall be an agent for such bank upon whom any process, notice or demand may be served for the purpose of this Chapter. In the event of any such process, the Director shall immediately cause one copy of such process, notice or demand to be forwarded by registered mail to the bank at its principal place of business. The Director shall keep a record of all processes, notices, or demands served upon him under this paragraph, and shall record therein the time of such service and his action with reference thereto;

(ii) Nothing herein contained shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon the bank in any other manner now or hereafter permitted by law.

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 provision of the Wyoming Administrative Procedures Act, find as follows:

1. These rules provide for the regulation of coal mining and reclamation operations in accordance with the requirements of W.S. § 35-11-101 through W.S. § 35-11-1803, As Amended (Wyoming Environmental Quality Act), and the requirements of the Surface Mining Control and Reclamation Act, (P.L. 95-87, As Amended).

2. These rules and regulations are as effective as those promulgated by the Secretary of the Interior pursuant to P.L. 95-87, As Amended.

3. The Department of Environmental Quality, Land Quality Division, Coal Rules and 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 Land Quality Division Coal Rules and Regulations are reasonable and necessary for the effectuation of the Wyoming Environmental Quality Act, W.S. § 35-11-101 through W.S. § 35-11-1803, As Amended.

5. These Land Quality Division Coal Rules and Regulations are necessary and appropriate to protect the public health, safety, welfare, and environment of the State of Wyoming.

Dated this 19th day of February, 2019.

Deborah Baumann

Hearing Examiner, Environmental Quality Council