

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING



February 25, 2021

IN THE MATTER OF THE)
PROPOSED REVISION OF) STATEMENT OF PRINCIPAL
LAND QUALITY DIVISION) REASONS (SOPR) FOR ADOPTON
RULES RELATED TO THE)
REGULATION OF) DOCKET #: 21-4103
NONCOAL MINING)

Noncoal Rules and Regulations, Chapter 10
Limited Mining Operations

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Introduction to Rule Package

The proposed rules presented in this rule package are intended to streamline the Department of Environmental Quality (DEQ), Land Quality Division (LQD) procedures for Limited Mining Operations (LMO) and provide consistency with legislative changes to Wyoming Statute § 35-11-401(e) made during the 2019 legislative session. The proposed rules remove the requirement to begin reclamation thirty (30) days after abandonment and adds a five (5) year renewal period for LMO's.

Presently there is no mechanism to terminate LMO operations that have never been developed or were initially opened and have been inactive for 5 years or more. LQD must expend resources reviewing these operations through the required annual report and field inspections. The proposed rules provide a mechanism for LQD to remove undeveloped LMO sites with no foreseeable development opportunities in the next five years from the review and inspection process and refocus those resources on issuing and regulating active permits. The proposed rules assist both

the state and industry by providing certainty to the life of mine and reclamation requirements of LMO's.

The authority to amend these rules is provided by Wyoming Statute (W.S.) §§ 35-11-112(a)(i), 35-11-114(b), and 35-11-401(e)(vi).

Summary of Proposed Amendments

Chapter 10 Proposed Changes

Chapter 10 Header – Header was revised to conform to the Secretary of State's Rules on Rules.

Section 1. – Section 1 was revised to clarify that the inspector of mines must also be notified of the proposed operation and one subsection removed due to lack of statutory authority.

Section 5. – Section 5 was revised to remove the requirements regarding abandonment of limited mining operations. Revisions to W.S. § 35-11-401(e)(vi)(C) removed the requirement for the operator to notify the LQD within 30 days of abandonment.

Section 6. – Section 6 was revised to be consistent with new statutory language in W.S. § 35-11-401(e)(vi)(E) and (F). New sections (E) and (F) allows a limited mining operation to be authorized for not more than five (5) years from the date of notification to the LQD.

Sections 7, 8 & 9. – Sections 7, 8 and 9 were renumbered to account for new Section 6.

DEPARTMENT OF ENVIRONMENTAL QUALITY

LAND QUALITY DIVISION

NONCOAL RULES AND REGULATIONS

The chapter header has been revised to conform to the Secretary of State's Rules on Rules, Chapter 2, Section 1(j).

CHAPTER 10

LIMITED MINING OPERATIONS FOR FIFTEEN ACRES OR LESS OF AFFECTED LAND

Section 1. Commencement.

(a) At least thirty (30) days prior to the commencement of surface mining operations for the removal of sand, gravel, scoria, limestone, dolomite, shale, ballast, or feldspar from an area of fifteen (15) acres or less of affected land, excluding access roads, a notification shall be submitted by the operator to the Administrator and the inspector of mines within the department of workforce services. The notification must be on forms supplied by the Division and shall contain the following:

Subsection (a) is proposed for revision to clarify that the inspector of mines within the department of workforce services must also be notified of the proposed operation. This is consistent with the statutory language of W.S. §35-11-401(e)(vi).

...

~~(vii) A sworn statement that all information contained in the notification is true and correct to the best knowledge of the operator.~~

Subsection (vii) is proposed for deletion due to lack of statutory authority.

...

Section 5. Reclamation.

(a) After the mining operations have ceased ~~or within 30 days after the abandonment of the mining operation~~, the operator shall notify the Administrator of such fact and commence reclamation and restoration. Provided however, that immediate reclamation will not be required if the landowner advises the Department in writing of his intent to further utilize the product of the mine, and if he assumes the obligation of reclamation and furnishes an appropriate bond to the Administrator.

~~(i) The operation will be considered to be abandoned if any of the following occur:~~

- (A) ~~The individual, partnership, or corporation conducting the operation goes out of business.~~
- (B) ~~No further mining or reclamation work has been done from one annual report to the next.~~
- (C) ~~The mineral being mined has been exhausted.~~
- (D) ~~The period of time for which the surface owner (or lessee) gave permission has expired and a written extension has not been obtained.~~

Chapter 10, Section 5(a) is revised to be consistent with HB0026 revisions at Wyoming Statute (W.S.) § 35-11-401(e)(vi)(C) which removed the requirement to notify the Administrator within thirty (30) days of abandonment of the limited mining operation. Proposed new Section 6 below provides a five (5) year renewal term in place of the thirty (30) day requirement and therefore the definition of abandonment is proposed for deletion. Section 5 does retain however the requirement to notify the LQD when operations have ceased and to begin reclamation and restoration of the affected lands.

...

Section 6. Renewals

Limited mining operations may be renewed after five (5) years from the date of commencement. An applicant seeking renewal beyond the initial five (5) year period shall file a notification to extend operations on a form provided by the Division. The notification to extend operations shall be filed with the operator's fifth annual report and, for successive renewals, with an annual report every five (5) years thereafter.

Section 6 above replaces the requirement to begin reclamation within thirty (30) days of abandonment with a five (5) year renewal term. Renewal requests shall be indicated on the LQD's LMO Annual Report form and submitted as noted above.

Section 6 7. Transfers

The right to operate under a limited mining exemption may be transferred to a new operator with written approval of the existing operator and written acceptance by the Administrator, provided the new operator submits a new notification and bond required for the new operation and assumes the reclamation liability of the existing operator and does not violate the limitations provided in Section 8 9 below.

Section 7 8. Release of Bonds and Forfeiture of Bonds.

Bond release. Forfeiture and cancellation shall be handled as provided in W.S. §§ 35-11-417 through 35-11-424.

Section 8 9. Limitation of Operations.

(a) The operator will not be allowed to:

(i) Conduct more than one operation under W.S. § 35-11-401(e)(vi) within adjacent areas when the operations are to mine the same minerals, or

(ii) Conduct more than one operation of fifteen (15) acres or less within any six-mile radius when the two operations are to mine the same mineral, so as to circumvent the general requirements of the Environmental Quality Act. The Administrator may allow two operations for the same mineral within the six-mile radius if one of the operations has completed reclamation work and is awaiting bond release. Complete reclamation for the purposes of this section means backfilling, grading, topsoil application and final seeding activities have been completed.

Section numbers in 7, 8 and 9 above were revised to account for the addition of new Section 6, Renewals.

CONCLUSION

The Environmental Quality Council, in accordance with the authority granted to it by Wyoming Statute (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 noncoal 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).
2. The Department of Environmental Quality, Land Quality Division, Noncoal 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 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.
3. These Land Quality Division Noncoal 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.
4. The Land Quality Division Noncoal Rules and Regulations are necessary and appropriate to protect the public health, safety, welfare, and environment of the State of Wyoming.

Dated this _____ day of _____, 2021.

Environmental Quality Council

Printed Name