

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL

STATE OF WYOMING

September 13, 2022



IN THE MATTER OF THE)
PROPOSED REVISION OF)
THE LAND QUALITY)
DIVISION RULES RELATED)
TO THE REGULATION OF)
COAL MINING)

STATEMENT OF PRINCIPAL
REASONS (SOPR) FOR ADOPTON

DOCKET #: 22-4103

Coal Rules

Chapter 10, Coal Exploration and Chapter 13, Surface Coal Mining Permit Revisions

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Introduction to Rule Package

This rule package provides revisions to Coal Chapter 10, Coal Exploration and Coal Chapter 13, Surface Coal Mining Permit Revisions. The proposed revisions are intended to bring the two chapters into conformity with the statutory changes made to Wyoming Statute (W.S.) § 35-11-406 during the 2020 legislative session in Senate File 0044. Those changes were intended to bring the public notice and objection procedures into conformity with the Office of Surface Mining Reclamation and Enforcement (OSMRE). Prior to the legislative changes the statute allowed requests for an informal conference to be considered by the Director but did not require the Director to hold an informal conference. The OSMRE’s regulations on the topic required and informal conference if requested. The new legislation is now in line with the Federal regulations and informal conferences shall be held if requested.

The legislative changes also included an adjustment to timeframes for decision making by the Department and other procedures related to appeals of the Director’s decisions regarding permitting actions. The revisions in this rule package are intended to mirror the changes made to the statutory language.

Summary of Proposed Rule Changes

Coal Chapter 10, Coal Exploration

Coal Chapter 10, Section 3(b) was revised to make corrections to statutory citations contained in the section which relate to the filing of objections to coal exploration operations. Section 3(b) include corrections to references to statute subsections that were repealed. Chapter 10 was also revised to include suggested revisions from the Attorney General’s Office that included grammatical and organizational changes.

Coal Chapter 13, Surface Coal Mining Permit Revisions

Coal Chapter 13 was also revised to make corrections to statutory citations contained in Section 3(b) similar to Chapter 10 above. Chapter 13, Section 4 also required revision to the decision-making process for permit revision applications. Timelines for decision making, notice requirements and other procedural adjustments to comply with the statutory changes to W.S. § 35-11-406. Chapter 13 was also revised to include suggested revisions from the Attorney General’s Office that included grammatical and organizational changes.

The authority to amend these rules is provided by Wyoming Statute (W.S.) §§ 35-11-112(a)(i), 35-11-114(b), 35-11-401(j), 35-11-402(a), and 35-11-406.

DEPARTMENT OF ENVIRONMENTAL QUALITY

LAND QUALITY DIVISION

CHAPTER 10

COAL EXPLORATION

The chapter header was revised to conform to the Secretary of State's Rules on Rules.

Section 1. General Requirements: Exploration of 250 Tons or Less.

(a) Any person who intends to conduct coal exploration outside a permit area ~~during which and remove less than 250 tons or less of coal will be removed~~ in the area to be explored shall, before conducting the exploration, file with the Administrator a notice of intent to explore.

(b) The notice shall include:

(i) The person's name, address, and telephone number;

(ii) The name, address, and telephone number of the person who will be present at and responsible for the exploration operation;

(iii) A narrative describing the proposed exploration area and a map at a scale of 1:24,000, or greater, showing the proposed area of exploration and the general location of drill holes and trenches, existing and proposed roads, occupied dwellings, topographic features, bodies of surface water, and pipelines. ~~This description~~ The narrative shall clearly describe the areas to be disturbed as well as the natural and man-made features in and immediately around the exploration area;

(iv) ~~A statement of the~~ The proposed period of ~~the proposed~~ exploration; and

(v) ~~A description of the~~ The method of exploration to be used and the practices proposed to protect the environment and reclaim the area, including those necessary to comply with Section 3 4 of this Chapter.

Section 1 was revised to include suggested grammatical changes from the WY Attorney General's Office.

Section 2. General Requirements: Exploration of More than 250 Tons or in an Area Designated as Unsuitable.

(a) Any person who intends to conduct coal exploration outside a permit area ~~during which and remove~~ more than 250 tons of coal ~~will be removed~~ in the area to be explored or which will take place on lands designated as unsuitable for surface mining under Chapter 17 of

~~these rules and those protected under Chapter 12, Section 1(a)(v) of these rules shall, before conducting the exploration, file an application for a coal mine exploration license with the Administrator and obtain the approval of the Administrator for an application for a coal mine exploration license before conducting the exploration.~~

- (b) The application shall include at a minimum, the following information:
- (i) The applicant's name, address, and telephone number;
 - (ii) The name, address and telephone number of the applicant's representative who will be present at, and responsible for, conducting the exploration activities;
 - (iii) A narrative describing the proposed exploration area;
 - (iv) A narrative description of the methods and equipment to be used to conduct the exploration and reclamation;
 - (v) An estimated timetable for conducting and completing each phase of the exploration and reclamation;
 - (vi) The estimated amount of coal to be removed, a description of the methods to be used to determine the amount, and a statement explaining ~~of~~ why extraction of more than 250 tons of coal is necessary for exploration;
 - (vii) A description of historic or cultural features or resources listed or known to be eligible for listing on the National Register of Historic Places. This shall include a detailed description of all archeological and historic resources located within the areas to be directly affected by the proposed exploration activities. This shall also include any other information which the Administrator may require regarding known or possible historic or archeological resources;
 - (viii) A description of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and identified within the proposed exploration area;
 - (ix) A description of the measures to be used to comply with Section 3 ~~4~~ of this Chapter;
 - (x) The name and address of the owner of record of the surface land and of the subsurface mineral estate of the area to be explored;
 - (xi) A map(s) at a scale of 1:24,000 or larger, showing the areas of land to be disturbed by the proposed exploration and reclamation. The map(s) shall specifically show the location of: existing roads, occupied dwellings, topographic and drainage features, bodies of surface water, and pipelines; proposed ~~locations of~~ trenches, roads, ~~and other~~ access routes, and other structures to be constructed; ~~the location of~~ proposed land excavations; ~~the location of~~

exploration holes or other drill holes or underground openings; ~~the location of excavated earth or waste material disposal areas; and the location of critical habitats of any endangered or threatened species listed pursuant to the Endangered Species Act;~~

(xii) If the surface is owned by a person other than the applicant, a description of the basis upon which the applicant claims the right to enter the area for the purpose of conducting the exploration and reclamation; and

(xiii) For any lands designated as unsuitable for surface mining under Chapter 17 or listed under Chapter 12, Section 1(a)(v) of these rules ~~Division's Coal Rules and Regulations~~, a demonstration that to the extent technologically and economically feasible, the proposed exploration activities have been designed to minimize interference with the values features for which those lands were designated as unsuitable for surface coal mining operations or listed under Chapter 12, Section 1(a)(v). ~~The Where applicable, the application shall include documentation of consultation~~ applicant shall document its consultation with the owner of the feature causing the land to be designated as unsuitable for surface mining under Chapter 17 or listed under Chapter 12, Section 1(a)(v), as well as the applicant's consultation ~~come under the protection of Chapter 12, Section 1(a)(v), and, when applicable, with the agency with primary jurisdiction over the that feature of the land with respect to the values that caused the land to come under the protection of Chapter 12, Section 1(a)(v).~~

(c) Within ~~30~~ thirty days after submittal of an application for a license to explore under this Section, the Administrator will notify the applicant whether the application is complete. Upon a determination that the application is ~~administratively~~ complete, the Administrator shall require the applicant to publish a notice of filing in a newspaper of general circulation in the county of the proposed exploration area. The notice shall state the name and address of the person seeking approval, the filing date of the application, the address where written comments on the application may be submitted, the closing date of the comment period, and a description of the area of exploration. ~~Any person having an interest which is or may be adversely affected shall have the right to file written comments on the application within 30 days from the date of publication.~~

~~Section 3. Approval of Applications for Exploration of More than 250 Tons or in an Area Designated as Unsuitable for Surface Coal Mining Operations.~~

(a) ~~No later than 40 days after newspaper publication, the Administrator shall notify the applicant, any appropriate government agencies and other commenters, in writing of his intention to approve the application, or if he has denied it. If the application is denied, the notice shall include a statement of the reasons for denial. A copy of the notice shall also be posted at the district office covering the area for the proposed exploration.~~

(b) ~~Any person having an interest which is or may be adversely affected by the decision of the Administrator shall have the right to file written objections to the application within 30 days after the notification. Such persons shall have the opportunity for administrative and judicial review as outlined in W.S. § 35-11-406(k). The final decision, to issue or deny the license, shall be done in accordance with W.S. § 35-11-406(p). If there are no objections, the Administrator shall promptly approve and issue the license in accordance with (c) immediately below.~~

(d) Any interested person shall have the right to file written objections to the application within thirty days from the date of publication. The Director shall consider any objections, conduct an informal conference upon request, and make a decision on the application in accordance with Wyoming Statute (W.S.) § 35-11-406(p).

(e) The ~~Administrator~~ Director shall approve a complete application and issue the license only if the Administrator finds in writing that the exploration and reclamation:

(i) Will be conducted in accordance with Section 3 4 of this Chapter;

(ii) Will not jeopardize the continued existence of an endangered or threatened species list pursuant to Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) or result in the destruction or adverse modification of critical habitat of those species; ~~and~~

(iii) Will not adversely affect any cultural or historical resources listed on the National Register of Historic Places, pursuant to the National Historic Preservation Act, as amended, unless the proposed exploration has been approved by the Administrator and the agency with jurisdiction over such matters; and

(iv) With respect to exploration activities on any lands designated as unsuitable for surface coal mining under Chapter 17 or protected listed under Chapter 12, Section 1(a)(v) of these rules ~~Division's Coal Rules and Regulations~~, will minimize interference, to the extent technologically or economically feasible, with the ~~values~~ features for which those lands were designated as unsuitable for surface coal mining operations or listed under Chapter 12, Section 1(a)(v). Before making this finding, the Administrator shall provide reasonable opportunity to the owner of the feature causing the land to come under the protection of Chapter 17 or Chapter 12, Section 1(a)(v), and, ~~when~~ where applicable, to the agency with primary jurisdiction over ~~the~~ that feature of the land with respect to the values that caused the land to come under the protection of Chapter 12, Section 1(a)(v), to comment on whether the finding is appropriate.

Sections 2 and 3 were reorganized into a single section. The section was also revised to include suggested language from the Wyoming Attorney General's Office and includes grammatical changes, updated statutory references and other non-substantive changes. The section was also revised to provide conformity with the statutory changes to W.S. §35-11-406.

Section 3 4. Exploration and Reclamation Performance Standards.

(a) Any person who conducts coal exploration operations which substantially disturb the natural land surface shall minimize environmental damage to the area by complying with the requirements of this Section.

(b) Backfilling, regrading, and recontouring shall be conducted as is necessary to promptly return the affected land to its approximate original contour.

(c) Topsoil removal, storage, and redistribution practices shall be used, including those measures designed to assure successful revegetation.

(d) Revegetation shall be conducted by seeding or planting to the same seasonal variety native to the areas disturbed, so as to encourage stabilization of the affected land and prompt recovery of a diverse, effective, and permanent vegetative cover.

(e) Critical habitats of threatened or endangered species identified pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) shall not be disturbed during coal exploration. Crucial or important habitat for wildlife shall not be disturbed during coal exploration unless written evidence of consultation with the Wyoming Game and Fish Department and any resulting recommendations are submitted to the Administrator as part of either a notice of intent to explore under Section 1 of this Chapter or a coal exploration license application under Section 2 of this Chapter ~~or notice of intent to explore application.~~

(f) Diversions shall be made in accordance with Chapter 4, Section 2 of these rules.

(g) All drill holes shall meet the requirements of Chapter 14, Section 3, Chapter 14, Land Quality Rules and Regulations of these rules.

(h) Vehicular travel and road construction, maintenance, and reclamation shall meet the requirements of Chapter 4, Section 2, Chapter 4, Land Quality Rules and Regulations of these rules.

(i) Toxic or acid-forming materials shall be handled and disposed of in accordance with Chapter 4, Section 2(c), Chapter 4, Land Quality Rules and Regulations of these rules.

(j) Activities shall be conducted to minimize disturbance to the prevailing hydrologic balance, including, at a minimum, sediment control measures or sedimentation ponds, ~~which~~ that comply with Chapter 4, Section 2(e)(ii)(A) and Chapter 4, Section 2(f) of these rules.

(k) Facility removal shall be conducted in accordance with Chapter 4, Section 2(m) of these rules.

Prior Section 4 was renumbered to "3" to account for the consolidation of Sections 2 and 3 above. Section 3 has also been revised to make grammatical changes and provide consistent citations to other chapters of the LQD's coal rules.

Section 4 5. Additional Requirements.

~~Where the p~~Proposed coal exploration operations activity falls that include activities within that activity described as exploration by dozing or exploration by drilling, any requirements imposed by the Act or the regulations which may be additional to the above described requirements, including the bonding requirement, may be applicable to the proposed operation shall also meet the requirements of W. S. § 35-11-404 and Chapter 14 of these rules. The Administrator shall make a determination, on a case by case basis, as to whether any additional requirements shall be imposed.

Section 4 was renumbered to account for the consolidation of 2 previous sections. The paragraph was also revised to improved readability and make grammatical corrections.

Section 5 6. Public Availability of Information.

(a) ~~Except for trade secrets, as defined in Chapter 1, Section 2, Land Quality Rules and Regulations, all information submitted under this Chapter shall be made available for public inspection and copying at the Land Quality Division of the Department of Environmental Quality. For confidentiality, the person submitting the information must request in writing that it be kept confidential and that it meets the requirements for "trade secrets."~~

(b) Information requested to be held confidential shall not be made publicly available until after notice and opportunity to be heard is afforded persons both seeking and opposing disclosure of the information.

Section 5 was renumbered as described in the previous sections. Current subsection (a) was deleted because it is covered by statute. Former subsection (b) was retained to clarify that information that is requested to be held confidential will not be released until interested parties have a chance to weigh in on the disclosure.

~~Section 7. Existing Operations.~~

~~The exploration and reclamation performance standards contained in Section 5 shall apply to all coal exploration operations which substantially disturb the natural land surface two months after final approval of a State program pursuant to Section 503 of P.L. 95-87.~~

Former Section 7 is being deleted because it is outdated. The state program approval happened many years ago.

Section 6 8. Commercial Use or Sale of Coal Extracted under a Coal Exploration License.

(a) Except as provided under subparagraph (b) below, any person who intends to commercially use or sell coal extracted during coal exploration operations under an exploration license, shall first obtain a permit to conduct surface coal mining operations for those operations.

(b) ~~With the prior written approval of the Administrator, no permit to conduct surface coal mining operations is required for the sale or commercial use of a licensee may sell or commercially use coal extracted during exploration operations if such sale or commercial use is for coal testing purposes only. The person conducting the exploration shall file an application for such approval with the Administrator. The application shall demonstrate~~ To obtain approval for sale or commercial use, the licensee shall submit an application demonstrating that the coal testing is necessary for the development of a surface coal mining and reclamation operation for

which a surface coal mining operations permit application is to be submitted in the near future, and that the proposed sale or commercial use ~~or sale~~ of coal extracted during exploration operations is solely for the purpose of testing the coal. The application shall contain the following:

(i) The name of the testing firm and the locations at which the coal will be tested;

(ii) ~~If the coal will be sold directly to, or commercially used directly by, the intended end user, a statement from the~~ A statement from the intended end user of the coal, or an agent or broker, describing ~~or if the coal is sold indirectly to the intended end user through an agent or broker, a statement from the agent or broker. The statement shall include:~~

(A) The specific reason for the test, including why the coal may be so different from the intended user's other coal supplies as to require testing;

(B) The amount of coal necessary for the test and why a lesser amount is not sufficient; and

(C) A description of the specific tests that will be conducted;

(iii) ~~Evidence that sufficient reserves of coal are available to the person conducting exploration or its principals for future commercial use or sale to the intended end user, or agent or broker of such user identified above, to demonstrate~~ demonstrating that the amount of coal to be removed is not the total reserve, but is a sampling of a larger reserves large enough to adequately supply the intended end user; and

(iv) An explanation ~~as to~~ why other means of exploration, such as core drilling, are not adequate to determine the quality of the coal ~~and~~ or the feasibility of developing a surface coal mining operation.

The section above was renumbered to account for the reorganization of the prior sections. Section 6 was also revised to make grammatical corrections and improved readability.

CHAPTER 13

SURFACE COAL MINING PERMIT REVISIONS

Section 1. ~~Submittal of Revisions.~~ Permit Revision Applications.

~~(a) A permit may be revised, upon approval by the Administrator, if the operator submits an application to the Division in accordance with Section 1(d) of this Chapter. Significant revisions are those which constitute a change described in Section 2 of this Chapter.~~

~~(b) Non-significant revisions shall be submitted in a format approved by the Administrator. All non-significant revisions shall include:~~

~~(i) A brief description of the change and why the change is being sought;~~

~~(ii) An outline or index indicating what pages, maps, tables, or other parts of the approved permit are affected by the revision; and~~

~~(iii) Additional information necessary to support or justify the change.~~

~~(e) RESERVED~~

~~(a d) Each application shall contain~~ Applications for a permit revision shall contain:

(i) The name and address of the operator;

(ii) The permit number and date approved;

(iii) A description of the change and why the change is being sought;

(iv) An outline or index indicating what pages, maps, tables, or other parts of the approved permit will be affected by the revision; and

(v ~~iii~~) The following information, if different from that submitted in the original permit application:

(A) The precise location of the permit area by legal subdivision, ~~S~~section, township, range, county, and municipal corporation, if any;

(B) The names and last known addresses of the owners of record of the surface and mineral rights of the land covered by the permit; and

(C) The names and last known addresses of the owners of record of the surface rights of the lands immediately adjacent to the permit area;

(vi ~~iv~~) A detailed description of the proposed revised mining or reclamation

operation which shall also include:

~~(A)~~ A USGS topographic map or equivalent of the permit area showing the land to be affected by the revised mining or reclamation operation, in detail, distinctly outlined and identified;

~~(A B)~~ For any proposed newly affected lands, if not submitted and approved in the original application for the permit:

(I) A USGS topographic map or equivalent of the permit area showing the land to be affected by the revised mining or reclamation operation, in detail, distinctly outlined and identified;

(II) The information required in Wyoming Statute (W.S.) § 35-11-406(a)(vii) and (ix) or, for in situ mining operations, the information required in W.S. § 35-11-428; and

(III) The extent to which the revised mining or reclamation operation will disturb, change or deface the lands proposed to be affected; and, the proposed future use or uses and the plan whereby the operator will reclaim the affected lands to the proposed future use or uses.

(IV) The proposed future use or uses of the affected lands and the plan whereby the operator will reclaim the affected lands to the proposed use or uses;

~~(B C)~~ Any ~~significant~~ changes in the estimate of the total cost of reclaiming the affected and proposed affected lands, computed in accordance with established engineering principles;:

(vii) Any additional information necessary to support or justify the change; and

(viii) Such other information as the Administrator deems necessary.

~~(b D)~~ For surface coal mining operations, ~~the~~ The Administrator shall require a revised or updated probable hydrologic consequences assessment if significant changes in the results of the assessment are expected to occur as a result of a revised operation ~~or new data~~. The ~~information assessment~~ shall be in sufficient detail to enable the Administrator to determine whether a new or updated ~~assessment of probable~~ cumulative hydrologic impacts assessment (CHIA) is required. If a new or updated CHIA assessment is required, the Administrator shall reassess the probable cumulative hydrologic impacts in accordance with Chapter 19, Section 2 of these rules regulations.

~~(v)~~ ~~Such other information as the Administrator deems necessary or as good faith compliance with the provisions of the Act require.~~

Section 1 was reorganized for clarity and consistency with other coal regulations.

Section 1 was also revised to make grammatical corrections and remove a “reserved” subsection.

Section 2. Criteria for Public Notice Requirements.

(a) Within ~~90~~ ninety days after ~~submission of the~~ receiving a ~~application for permit revision~~ application, the Administrator shall notify the operator ~~of~~ whether or not the application is complete and whether the revision is determined to be significant, requiring notice and opportunity for interested parties to submit objections to the revision application for public hearing is required.

(b) Notice and opportunity to submit objections for public hearing is required whenever the application ~~for permit revision proposes the following changes, so long as they constitute~~ proposes significant deviations from ~~that which was contemplated in~~ the approved mining and reclamation plan. The following will ~~normally~~ be considered significant deviations, unless otherwise determined by the Administrator:

(i) A change in the approved future land use or uses ~~which~~ that affects more than ~~20~~ twenty percent of the land within the permit area;

(ii) A change in the approved method for insuring that all acid-forming or toxic materials, radioactive materials, or materials constituting a fire, health or safety hazard uncovered during or created by the mining process are promptly treated or disposed of during the mining or reclamation process in a manner designed to prevent pollution of surface or subsurface water or threats to human or animal health and safety;

(iii) The construction or relocation of mills or ~~and~~ tailings disposal facilities;

(iv) A change in the approved method of mining that ~~which~~ results in surface disturbance (e.g. underground, surface or in situ mining);

(v) A change that ~~which~~ would adversely affect the quality, quantity, or distribution of water in surface or groundwater systems; or

~~(vi) For surface coal mining operations, continuing operation after cancellation or material reduction of the liability insurance policy, the performance bond or other equivalent guarantee upon which the original permit was approved; or~~

(vii) Any changes that ~~which~~ propose significant alterations in the approved mining or reclamation operation, as determined by the Administrator.

Section 2 was revised for clarity and consistency with other coal regulations. Grammatical changes suggested by the WY Attorney General’s Office were also made. Subsection 6 was deleted because the conditions that were listed would not be approved because coal operations would need those things in place for continued operations.

Section 3. Permit Decisions, Public Notice, and Opportunity for Filing Objections Public Hearing.

(a) For all permit revision applications, the Director shall approve or deny the proposed revision in accordance with the applicable criteria set forth in W.S. § 35-11-406 and these rules.

(b) For non-significant revisions, that do not require public notice, the Director shall render a decision on the application within thirty days after the Administrator determines the application to be complete.

(c) For significant permit revisions:

(i) ~~When required under Section 2, the~~ The operator shall cause notice of the application for permit revision to be published in a newspaper of general circulation in the locality of the mining site once a week for four consecutive weeks commencing within 15 days after notification that publication is required. The notice shall contain that information required by W.S. § 35-11-406(j), the permit number and date approved, and a general description of the proposed revision. The operator shall also mail a copy of the application mine plan map to the Wyoming Oil and Gas Commission in accordance with W.S. § 35-11-406(j);

(ii) ~~Any interested person may file objections and request an informal conference. Objections may be filed in accordance with W.S. § 35-11-406(p, k), which objections shall list one or more reasons for denying a permit as set out in W.S. § 35-11-406(m) or (n). If such written objections are filed, a public hearing shall be held in accordance with W.S. § 35-11-406(k). The Council shall issue findings of fact and make a decision on the application within 60 days after the final hearing.~~

Section 4. Decision.

(iii) ~~a) The Director shall hold an informal conference upon request and render a decision on the application in accordance with W.S. § 35-11-406(p); and The Administrator shall, with the concurrence of the Director, render a decision on the application for permit revision and approve or disapprove the proposed revision in accordance with the applicable criteria set out in W.S. § 35-11-406 and any regulations adopted pursuant thereto. The decision shall be made:~~

(iv) The applicant or objector may appeal the Director's decision to the Environmental Quality Council in accordance with W.S. § 35-11-406(p).

(i) ~~Within 30 days after notification of a complete application, if notice is not required; or~~

(ii) ~~If notice is required:~~

(A) ~~Within 30 days after completion of the notice period, if the~~

application for permit revision is not protested; or

(B) ~~If the revision is protested and a hearing held, within 15 days from the receipt of any findings of fact and decision from the Environmental Quality Council.~~

(b) ~~The applicant shall be promptly informed of the decision on the application.~~

The two Sections above were revised into a single Section 3. The revisions in Section 3 are intended to conform to legislative changes made to W.S. §35-11-406 related to procedures for public involvement in permitting actions. The section was also revised to include suggested grammatical and organizational changes suggested by the Wyoming Attorney General's Office.

Section 4 5. Review of Existing Outstanding Permits.

(a) ~~Upon review of the operator's annual report or inspection of the existing operation, The Administrator, with the concurrence of the Director, may require an the operator to submit an application for permit revision when the Administrator finds in writing that a mine or reclamation plan revision is necessary to account for actual changes in the operator's mining or reclamation operations and comply with all requirements of this Chapter. An operator may appeal the Administrator's decision to the Environmental Quality Council in accordance with W.S. § 35-11-112(a)(iii). Any such requirement shall be based on written findings that, upon review of the operator's annual report or inspection of the existing operation, there is or is intended to be conducted a revised mining or reclamation operation. Such review or inspection shall be conducted at least each year upon receipt of the operator's annual report. Right of review shall be afforded as provided in the Wyoming Administrative Procedure Act. Nothing contained herein shall be construed to require compliance with any provision of the Act or regulation from which the existing operation has been specifically excepted.~~

Previous Section 5 was renumbered to Section "4". The paragraph was further revised to remove language that was already covered in statute or was not necessary because the language did not add any regulatory requirement. The paragraph was also revised to include grammatical corrections.

Section 5 6. Exception.

(a) ~~For surface coal mining operations, this This Chapter does not apply to extensions of the mine permit boundary. Any such boundary revision other than an extension, except incidental boundary revisions, must be made in accordance with the Act and by application for a permit amendment with public notice, and opportunity for filing objections hearing. The operator shall notify the Administrator in advance where the extension is an incidental boundary revision, and possess a copy of the notification at the site of the operation. The operator will not be allowed to utilize this provision for incidental boundary revisions so as to circumvent the policy and purpose of this Chapter and or the Wyoming Environmental Quality Act.~~

Section 6 was renumbered to Section “5” to reflect the consolidation of previous sections. Minor grammatical changes were made as well.

CONCLUSION

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 right 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 13th day of September, 2022.



Hearing Examiner, Wyoming Environmental Quality Council