



United States Department of the Interior

OFFICE OF SURFACE MINING
Reclamation and Enforcement
Casper Area Office
100 East B Street, Room 4100
Casper, Wyoming 82601



August 12, 2022

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

Dear Mr. Wendtland:

The Office of Surface Mining Reclamation and Enforcement (OSMRE) has completed its review of Wyoming's June 4, 2021 formally-proposed amendment (Docket ID: OSM-2021-0004; State Amendment Tracking System (SATS) No.: WY-050-FOR). The amendment includes more detailed instructions for plugging and sealing drill holes, incorporates best management practices, and makes additional formatting and organizational changes to Chapter 14 of the Land Quality Division (LQD) Rules and Regulations. Additionally, between 1978 and 2007 the Wyoming state legislature enacted a number of revisions to the statutes governing coal exploration by drilling. The proposed statutory revisions reflect organizational updates at the Wyoming LQD, correct a typographical error, provide more detailed instructions for plugging and sealing drill holes, incorporate provisions for the awarding of attorney fees and other litigation costs, and include more detailed instructions for bond release. OSMRE finds the provisions of the proposed amendment identified in the enclosure to this letter to be less effective than the federal regulations and / or less stringent than the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The Regional Director, Interior Regions 5 & 7-11 is prepared to delay final rulemaking on the proposed amendment to allow Wyoming an opportunity to submit a revised amendment or draft proposed changes in response to the deficiencies. Please submit such a response no later than 30 days from the date of this letter.

Should Wyoming indicate it does not wish to or is unable to submit further modifications to address the identified concerns, the Regional Director will not approve the proposed rule provisions of the amendment identified in the enclosure to this letter.

Please advise me at your earliest convenience whether you wish to submit materials to address OSMRE's concerns within the next 30 days. If Wyoming does not intend to submit additional material, OSMRE will proceed directly with publication in the Federal Register of the Regional

Director's decision.

We are available to meet with you to discuss our review findings or any matters of concern regarding the proposed amendment. If you have any questions, please call me at (307) 261-6550 or Tom Medlin at (303) 236-3982.

Sincerely,

Jeffrey W. Fleischman, Director
Casper Area Office

Enclosure

**CONCERN IDENTIFIED BY OSMRE FOR WYOMING'S
June 4, 2021 FORMALLY-PROPOSED AMENDMENT
(DOCKET ID: OSM-2021-0004; SATS NO. WY-050-FOR)**

We have completed our review of your June 4, 2021 formally-proposed amendment regarding changes to Chapter 14 of the Wyoming LQD's Rules and Regulations plus additional statutory revisions. We have a concern about the proposed rules.

CONCERN

1. Wyoming's omission of "fish" at Chapter 14, Subsection 2 (i).

Wyoming's proposed rule at Chapter 14, Subsection 2 (i) closely mirrors pertinent portions of the federal counterpart provision at 30 CFR 816.13 (the additional requirements of 30 CFR 816.13 are constructed at LQD Rules and Regulations Chapter 4, Subsection 2 (p), and Chapter 10, Subsection 4 (j). Importantly, however, Wyoming omits the word "fish" from the phrase "fish and wildlife." "Fish and wildlife" is a term of art that appears throughout the Endangered Species Act of 1973 (ESA), SMCRA, and implementing federal regulations at 30 CFR Part 700 to end. While an argument can be made the term "wildlife" describes all fauna, including fish, the text of the ESA and SMCRA clearly and consistently demonstrates Congress' intent to use the two words together, forming the phrases "fish and wildlife" or "fish or wildlife."

Additionally, because the thrust of the proposed revisions to Chapter 14 is to incorporate best management practices related to, and enhance protections for, surface and groundwater quality and quantity within the context of exploration for coal by drilling, we feel the inclusion of "fish" adjacent to "wildlife" here is particularly important and appropriate. Accordingly, Wyoming's proposed rule change, as submitted, is less effective than the federal regulations at 30 CFR 816.13 and less stringent than SMCRA.

Based on the discussion above, Wyoming must add the word "fish" to its proposed rule at Chapter 14, Subsection 2 (i).