

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING



February 22, 2023

IN THE MATTER OF THE)
PROPOSED REVISION OF) STATEMENT OF PRINCIPAL
THE LAND QUALITY) REASONS (SOPR) FOR ADOPTON
DIVISION RULES RELATED)
TO THE REGULATION OF) DOCKET #: 23-4103
NONCOAL MINING)

Noncoal Rules

Chapter 2 – Regular Noncoal Mine Permit Applications

Chapter 9 – Permit Application Requirements for Small Mining Operations

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Introduction to Rule Package

Chapter 2 – Regular Noncoal Mine Permit Applications

During the 2022 WY Legislative session, the legislature passed House Bill 0123 (HB0123). HB0123 authorized and required the Department of Environmental Quality (DEQ) and the Environmental Quality Council (EQC) to establish rules for the use of inert material as backfill at noncoal mining operations as part of an approved reclamation plan. The legislation provided that at a minimum, rules promulgated under the legislation shall provide for burial depths below the surface and above any aquifers, disposal fees to be remitted to the DEQ, and the incorporation of any rules pertaining to solid and hazardous waste necessary to ensure reclamation of the sites.

HB0123 was signed by the Governor and became effective on July 1, 2022. Wyoming Statutes (W.S.) § 35-11-103 and 402 were revised to incorporate new definitions and set minimum

standards for any rules promulgated under the new legislation. The proposed rule changes to LQD’s Noncoal Chapter 2 in this rule package are intended to comply with those requirements.

Chapter 9 – Permit Application Requirements for Small Mining Operations

Revision to Noncoal Chapter 9 was necessary to ensure that the requirements of Noncoal Chapter 2 related to the use of inert materials as backfill at noncoal operations would apply to noncoal small mine operations as well as regular noncoal mine operations. The current Chapter 9 rules state that Noncoal Chapter 2 do not apply to small mining operations. Therefore, it was necessary to draft an exception to incorporate the revised rules in Chapter 2 and make the section regarding inert materials applicable to small mines.

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), and 35-11-402(a)(xv).

Chapter 2

Regular Noncoal Mine Permit Applications

...

No changes are proposed for Section 1 of this Chapter.

Section 2. General Application Content Requirements.

...

(b) In addition to that information required by W.S. § 35-11-406(b), each application for a mining permit shall contain:

...

(iii) A plan whereby the operator will reclaim the affected lands to the proposed postmining land use in accordance with Chapter 3, Section 2(a) which shall include:

...

(B) A plan for backfilling, grading and contouring of all affected lands in accordance with Chapter 3, Section 2(b). The plan shall include:

...

(VI) Applications for disposal of inert material as backfill, shall be subject to the following requirements:

(1.) Applications for disposal of inert material as backfill shall be considered a significant permit revision and will be processed in accordance Noncoal Chapter 7.

(2.) On-site stockpiling of inert materials shall not be allowed prior to the use of the materials as final backfill. Inert materials shall not be processed at the mining operation, only final products may be used as backfill.

Stockpiling or processing inert materials is not allowed at the mine site. All inert material to be used as backfill shall be in a state that is ready for backfill.

(3.) Inert materials shall be approved by the Administrator prior to being used as backfill.

Inert materials to be used as backfill shall be approved prior to use. HB0123

included a definition of “inert material” at W.S. § 35-11-103(e)(xxxi) that requires that a material that is “suitable” as backfill. Because there is not a list of materials in the definition, the material to be used will be evaluated on a case by case basis that will look at the specific site conditions and materials.

(4.) Approved backfill locations shall include:

a. Inert materials shall only be used as backfill on privately owned land with surface owner’s consent;

Inert materials may only be used as backfill on privately owned lands. Mining operations that are conducted on state or federal lands may not use inert materials as backfill.

b. Inert materials shall only be placed in the end walls or the final pit voids that are not located in drainages or impoundments;

c. The inert backfill material shall be placed in a lift not to exceed ten feet and covered by a minimum lift of at least fifteen feet of suitable backfill material in accordance with Chapter 3, Section 2(b) of these rules in order to minimize potential future surface subsidence. Multiple lifts are permitted. The approved materials shall be placed a minimum of twenty feet above the pre-mining potentiometric surface of the native aquifer and a minimum of twenty feet below the final regraded spoils surface. The pit shall not be saturated. If the mined pit is dry, the disposal shall be above the confining layer; and

The above placement requirements are modelled after the Coal Rules for the use of wind turbine blades as backfill that were filed with the Secretary of State on April 29, 2021. This section is intended to comply with the requirements of W.S. § 35-11-402(a)(xv)(A).

d. The proposed backfill disposal location shall be mapped and a legal description of the location shall be provided. The proposed location shall also comply with Chapter 4, Section 4 of the Solid and Hazardous Waste Division Rules.

Chapter 4, of the Solid and Hazardous Waste Division rules details regulations for “Construction and Demolition Landfills”. Section 4 of that chapter details the “location standards” for these types of landfills.

(5.) Monitoring and reporting requirements.

a. Backfill disposal location maps and groundwater monitoring locations shall be updated annually in the required annual report;

b. The groundwater monitoring plan required by Section 2(b)(iii)(D) of this Chapter shall include monitoring wells to be installed and

monitored in accordance with the Chapter 4, Section 8(b)(i)(A) through (C) and 8(b)(iv)(A) of the Solid Waste Rules. The monitoring results shall be reported in the annual report; and

LQD is proposing to adopt the standards for groundwater monitoring of the Solid Waste Rules in the above referenced subsections in accordance with W.S. § 35-11-402(a)(xv)(C).

c. The groundwater and vegetation monitoring shall continue until final bond release and shall at a minimum continue for five years after final reclamation. Groundwater constituents to be monitored shall be based on the type of material used as backfill.

In order to be flexible regarding what types of inert materials that may be used as backfill a static list of constituents to be monitored is not provided. Based on the material proposed a list will be developed on a case by case basis.

d. If the monitoring data demonstrates any groundwater contamination associated with the disposed backfill materials, the Administrator may require the operator to characterize the nature and extent of the release, conduct an assessment of corrective measures, and institute corrective action remedies approved by the Administrator.

(6.) Final surface reclamation requirements.

a. The final reclamation surface must blend with the surrounding mine reclamation and have a permanent vegetative cover in accordance with Chapter 3, Section 2 (c) and (d) of these rules;

b. Final reclamation must drain properly and not impound water in accordance with the Chapter 3, Section 2(c)(iv) requirements;

c. The backfill site shall be released by the Division in accordance with the approved reclamation plan; and

d. Upon final reclamation, a disclosure must be placed on the real property deed for the described lands prior to final bond release.

(7.) The operator shall remit fees quarterly to the Department in the amount of ten percent of any revenues collected by the operator for the disposal of inert materials.

Subsection (7.) above is intended to comply with the requirements of W.S. § 35-11-402(a)(xv)(C).

Chapter 9

Permit Application Requirements for Small Mining Operations

Section 1. General.

(a) Small mine operations are defined pursuant to W.S. § 35-11-401(j) as surface mining operations that remove no more than thirty-five thousand cubic yards of overburden, excluding topsoil, and disturb no more than ten acres of land in any one year, excluding roads used to access the mining operation.

(b) This Chapter sets out the information required for small mine permit applications. The requirements of Chapter 2, Regular Noncoal Mine Permit Applications, shall not apply to small mine operations except the application requirements for the use of inert materials as backfill contained in Section 2(b)(iii)(B)(VI). The requirements of Chapter 3, Environmental Protection Performance Standards, shall apply to small mine operations, except as specifically noted herein.

The Division has added an exception to the applicability of Chapter 2 to small mining operations. This was necessary because typically only the requirements of Chapter 9 apply to small mine permit applications. The language of HB0123 did not limit the use of inert materials to only regular noncoal mine operations. No additional revisions are proposed for Chapter 9.

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 provisions 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 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.
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. These 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 _____, 2023.

Hearing Examiner or Chairperson, Wyoming Environmental Quality Council