

**OSMRE'S REVIEW FINDINGS ON WYOMING'S
JANUARY 28, 2014, INFORMALLY- PROPOSED AMENDMENT
(SATS NO. WY-046-INF)**

We have completed our review of your January 28, 2014, informal amendment that includes proposed changes to Wyoming's Coal Rules and Regulations concerning ownership and control, valid existing rights, and periodic monitoring of blasting. We have findings and comments on the following proposed rules:

FINDINGS

1. Wyoming's omission of the term "surface" in Chapter 2, Section 2(a) (ii) (A) (I)

In response to OSMRE's April 9, 2013, concern letter addressing ownership and control, Wyoming proposes to reinsert the term "surface" in its revised rule at Chapter 2, Section 2(a) (ii) (A) (I) regarding the requirement that permit applications contain a complete statement of compliance. Wyoming's addition of the term "surface" addresses Item 2 in the April 9, 2013, concern letter. However subsection (I) needs to be further revised in order to be consistent with the corresponding Federal regulations at 30 CFR §778.14(a) (1). Specifically, the language in subsection (I) should read "Had ~~any~~ a Federal or State permit for surface coal mining ~~permit~~ operations suspended or revoked ~~in~~ during the five (5) year period preceding the date of submission of the application; or." This additional change is not only required to be consistent with the language used in the Federal counterpart regulations, but also to correctly reference the term "surface coal mining operations" as defined in Wyoming's statutes at W.S. §35-11-103(e) (xx). Lastly, Wyoming's deletion of the phrase "coal mining" in subsection (II) addresses Item 1.b in the April 9, 2013, concern letter. However, in order to maintain the proper context between subsections (I) and (II), the word "or" should also be deleted at the end of subsection (II).

2. Adjudication Requirements – Identification of Interests at Chapter 2, Section 2(a) (i) (B)

In response to OSMRE's April 9, 2013, concern letter addressing ownership and control, Wyoming proposes to revise its rules at Chapter 2, Section 2(a) (i) (B) by including additional clarifying language to be consistent with and no less effective than both the Federal counterpart rule at 30 CFR §778.12(a) and its proposed rule language in subsection (F). Specifically, Wyoming revises the language in subsection (B) to read "* * * This shall also include a list of all the names under which the applicant, partner or principal shareholder, and the operator and the operator's partners or principal shareholders operate or previously operated a surface coal mining operation in the United States within the five year period preceding the date of submission of the application; * * *." Wyoming's proposed language addresses Item 3 in the April 9, 2013, concern letter. However the previously submitted language needs to be further revised to read "* * * names under which the applicant, the applicant's partners or principal shareholders, and the * * *." These additional grammatical changes are required to address the potential for multiple partners and shareholders of the applicant, and to make the proposed rule language in Chapter 2, Section 2(a) (i) (B) consistent with and no less effective than the corresponding Federal regulations at 30 CFR §778.12(a).

3. Written Agency Decision on Challenges to Ownership or Control Listings or Findings at Chapter 12, Section 1(a) (xiv) (F)

In response to OSMRE's April 9, 2013, concern letter addressing ownership and control, Wyoming proposes to revise its rules at Chapter 12, Section 1(a) (xiv) (F) by requiring that all administrative remedies be exhausted before seeking judicial review of an ownership or control decision and adds the requirement that the Division update AVS as appropriate in order to be consistent with 30 CFR §773.28(e) and (f). Wyoming's proposed language addresses Item 6 in the April 9, 2013, concern letter. However, Wyoming needs to reinsert its counterpart provision to 30 CFR §773.28(d). Specifically, Wyoming deleted its previously submitted language stating that "AVS shall be revised as necessary to reflect these decisions." Thus, in order to be consistent with the corresponding Federal regulations at 30 CFR §773.28(d), this statement needs to be added back to the proposed rule after the sentence "Service of the decision will be complete upon delivery and is not incomplete if acceptance of delivery is refused."

4. Transfer, assignment, or sale of permit rights (TAS) at Chapter 12, Section 1(b) (ii) (E) (I) and (G)

In response to OSMRE's April 9, 2013, concern letter addressing ownership and control, Wyoming proposes to revise its rules at Chapter 12, Section 1(b) (ii) by submitting counterpart provisions to the specific transfer, assignment, or sale of permit rights requirements at 30 CFR §774.17(a)-(f). Wyoming also defines the term "potential transferee" in subsection (b) (ii) with language that is identical to the language OSMRE uses to define "successor in interest" at 30 CFR §701.5 as it relates to transfer, assignment or sale of permit rights in 30 CFR §774.17.

Wyoming's proposed rule language adequately addresses Item 6 in the April 9, 2013, concern letter regarding advertisement requirements, public participation, and notification requirements at Chapter 12, Section 1(b) (ii) (C), (D), and (F), respectively. Subsections (E) (II) and (III) in Wyoming's proposed rules concerning "criteria for approval" are also no less effective than the applicable Federal counterpart language at 30 CFR §774.17(d) (2) and (3). However, in order to be no less effective than the Federal rules at 30 CFR §774.17(d) (1), Wyoming needs to further revise proposed subsection (I) by adding cross-references to its rules at Chapter 12, Section 1(a) (xi) and (xii) which are the counterpart provisions to 30 CFR §773.12(c) and (d). As a result, the cross-reference in Wyoming's proposed rule language should read "* * * Chapter 12, Section 1(a) (x), (xi), and (xii)" or "* * * Chapter 12, Section 1(a) (x)-(xii)."

In addition, Wyoming needs to revise a portion of the language in proposed subsection (G) regarding "continued operation under the existing permit" to read "* * * shall conduct the surface coal mining and reclamation operations in full compliance with the Environmental Quality Act and the Division's rules and regulations, unless the applicant has obtained a new or revised permit as provided in this Chapter." This grammatical change is required in order to be consistent with the Federal counterpart language in 30 CFR §774.17(f) and preserve the intent of the rule by ensuring that potential transferee's who succeed to rights granted under a permit, by transfer, assignment, or sale of those rights continue to operate in full compliance with the Environmental Quality Act and the Division's rules and regulations unless they have obtained a new or revised permit.