

**BEFORE THE  
ENVIRONMENTAL QUALITY COUNCIL  
STATE OF WYOMING**



**July 10, 2014**

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

**STATEMENT OF PRINCIPAL  
REASONS (SOPR) FOR ADOPTION**

**DOCKET #: 14-4101**

**Coal Rules and Regulations, Chapters 1, 2, 6, 12 and 16  
Blasting, Valid Existing Rights, Ownership & Control, Transfers**

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**Introduction to Rule Package**

The proposed rules presented in this rule package are intended to address concerns related to the effectiveness of the Land Quality Division’s Coal Rules and Regulations. These concerns were identified by the Office of Surface Mining (OSM) during their review of previously submitted rule packages and during their annual oversight of Wyoming’s program. The proposed rules address OSM concerns related to blasting, valid existing rights, ownership and control and transfer, assignment or sale of permit rights for coal mining operations. The LQD has revised Chapters 1, 2, 6, 12 and 16 to address the OSM’s concerns regarding the effectiveness of Wyoming’s program.

The proposed rules in this rule package come from four distinct sources. First, the OSM sent the LQD a Concern Letter on April 9, 2013. This concern letter addressed issues related to the OSM's review of Wyoming's January 8, 2013 formally proposed amendment which proposed changes to Wyoming's Coal Rules and Regulations. The concern letter identified seven areas of concern with the January 8, 2013 formal amendment. These concerns are detailed in the Statement or Reasons that follows below. The proposed rules are intended to address those seven concerns.

Second, the OSM sent the LQD a Concern Letter on June 24, 2013. This concern letter addressed issues related to the OSM's review of Wyoming's January 4, 2013 formally proposed amendment which proposed changes to Wyoming's Coal Rules and Regulations. The concern letter identified three areas of concern with the January 4, 2013 formal amendment. These concerns are detailed in the Statement of Reasons that follows. The proposed rules are intended to address those three concerns.

Third, during the OSM's 2013 review of the LQD's blasting program, the OSM concluded that in one instance the blasting rules were less effective than the corresponding Federal regulations. In particular, the OSM had a concern regarding periodic monitoring of blasting operations. The LQD has addressed that concern in this rule package by removing the language that was the source of the OSM's concern.

Fourth, the proposed draft rules were submitted informally to the OSM for a final review prior to the February 2014 Advisory Board meeting and the OSM responded with additional concerns. Draft rule language was presented to the Advisory Board which was intended to address the OSM's concerns as outlined in their response to the informal submittal.

The proposed rules in this rule package are intended to address concerns that the LQD's rules were less effective than the corresponding Federal regulations in those instances that were identified in the two concern letters, 2013 oversight and response to the LQD's informal submittal. The proposed rules were drafted to be consistent with the Federal regulations in order to ensure that the LQD's rules are as effective as the OSM's rules.

## **Summary of Proposed Amendments**

### Chapter 1 Rules

Revisions were made to the definition of "Control or controller" and "Notice of violation". Control or controller was revised to add the term "surface" when referring to coal mining operations. Notice of violations was revised to correct a grammatical error.

### Chapter 2 Rules

The title to Chapter 2 was revised to include "for Surface Coal Mining Operations".

Chapter 2 was also revised to include clarifying language regarding the identification of interests and to address grammatical errors.

Chapter 6 Rules

The title of Chapter 6 was revised to be consistent with other recently revised chapters and to remove Administrator discretion to require periodic monitoring of blasting to address the OSM’s concern that the regulations was less effective than the corresponding Federal regulation.

Chapter 12 Rules

Chapter 12 was revised to correct several grammatical errors, add minimum requirements for retaining records related to ownership and control findings, clarify language regarding exhausting administrative remedies before seeking judicial review, add the requirement that the Division update AVS following any findings regarding ownership and control and to add specific requirements for the transfer, assignment or sale of permit rights.

Chapter 16 Rules

Chapter 16 was revised to correct two grammatical errors and add the term “coal” to a section that referred to surface mining operations.

**Summary of February 24, 2014 Advisory Board Meeting**

The Land Quality Advisory Board met on February 24, 2014 to review the proposed rules presented in this rule package. Revisions to the rule package were made prior to the Advisory Board meeting in order to address comments from the OSM on the draft proposed rules that were submitted to the OSM informally for review on January 28, 2014. These revisions were presented as a response to comments and discussed during the meeting.

The Advisory Board concluded that the rules should move forward to formal rulemaking as presented with one exception. An additional citation to the Federal rules was added to Chapter 12, Section 1(a)(vii)(F) as discussed during the Advisory Board meeting (2/24/14 Meeting Transcript, pgs. 24-34). The change is intended to address the Board’s concern that the term “conveniently” as used in subsection (F) could be open to interpretation and should therefore be further clarified. The Board concluded that the best approach would be to cite to the Federal regulations found at 30 CFR 840.14(b)-(d) in order to clarify that the LQD would be administering these rules using the Federal method to determine compliance with what “conveniently” would mean in the context of availability of public records related to Valid Existing Rights determinations.

\*\*\*\*\*

*The authority to amend these rules is provided by Wyoming Statute (W.S.) §§ 35-11-112(a)(i), 35-11-114(b), 35-11-402(a), 35-11-406, 35-11-408, 35-11-415(xi) and 35-11-902.*

DEPARTMENT OF ENVIRONMENTAL QUALITY

LAND QUALITY DIVISION

CHAPTER 1

AUTHORITIES AND DEFINITIONS FOR SURFACE COAL MINING OPERATIONS

...

Section 2. **Definitions.** The definitions included in the Wyoming Environmental Quality Act, are hereby adopted by this reference. All references to the “Act” herein refer to the Wyoming Environmental Quality Act, as amended.

(aa) “Control or controller” as used in Chapters 1, 2, 12 and 16 means or refers to:

(i) A permittee of a surface coal mining operation;

(ii) An operator of a surface coal mining operation; or

(iii) Any person who has the ability to determine the manner in which a surface coal mining operation is conducted.

*The addition of the word surface was in response to the Office of Surface Mining’s (OSM), April 9, 2013 Concern Letter that stated that “Wyoming did not include the word surface in its newly proposed definition of Control or Controller” and was therefore less stringent than the Surface Mining Control and Reclamation Act (SMCRA) and less effective than the corresponding Federal regulations at 30 CFR §701.5 (4/9/13 Concern Letter, Section 2).*

...

(co) “Notice of violation” means a written notification from the Department of Environmental Quality or other governmental entity as specified in the definition of “violation” in Chapter 1, Section 2 and the procedures outlined in Chapter 16 of the Land Quality Division, Rules and Regulations.

*The above revision was made to correct a typographical error as indicated in the OSM’s, April 9, 2013 Concern Letter (4/9/13 Concern Letter, Section 1.a.)*

DEPARTMENT OF ENVIRONMENTAL QUALITY

LAND QUALITY DIVISION

CHAPTER 2

PERMIT APPLICATION REQUIREMENTS

FOR SURFACE COAL MINING OPERATIONS

*The phrase “for surface coal mining operations” was added back into the title of Chapter 2 in response to the OSM’s, April 9, 2013 Concern Letter (4/9/13 Concern Letter, Section 2).*

...

**Section 2. Adjudication Requirements.**

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

(i) A complete identification of interests, which shall include:

...

(B) The names, addresses and telephone numbers of any operators, if different from the applicant. If the applicant is a business entity other than a single proprietorship, then the names, addresses and telephone numbers of all limited and general partners, officers, members, directors or person performing a function similar to a director and person who owns, of record, ten (10) percent or more of the entity or if a corporation then the names, addresses and telephone numbers of principal shareholder, officers and director or other person performing a function similar to a director, and resident agent(s) of the applicant. This shall also include a list of all the names under which the applicant, the applicant’s partners or principal shareholders, and the operator and the operator’s partners or principal shareholders operates or previously operated a surface coal mining operation in the United States within the five years period preceding the date of submission of the application;

*The revised language above is intended to address the OSM’s concern the existing language in Subsection (B) warranted the inclusion of the revised language in order to be consistent with and no less effective than both the Federal counterpart rule at 30 CFR §778.12(a) and rule language in Chapter 12, Section 2(a)(i)(F) (4/9/13 Concern Letter, Section 3). Subsection (B) was further revised in response to the OSM’s comments on the draft package which stated that additional grammatical changes were*

*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) (2/10/14 Review Letter, Section 2).*

(ii) A complete statement of compliance which shall include:

(A) A brief statement, including identification and current status of the interest, identification of the regulatory authority, and description of any proceedings and their current status, of whether the applicant, the operator, or any subsidiary, affiliate or entity which the applicant or operator or entities owned or controlled by or under common control with the applicant or operator has:

(I) 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

*The term “surface” was added in response to the OSM’s April 9, 2013 Concern Letter (4/9/13 Concern Letter, Section 2). Grammatical revisions were also made to address the OSM’s comments on the proposed rules as they were originally drafted in the LQD’s informal submittal (2/10/14 Review Letter, Section 1).*

(II) Forfeited a Federal or State ~~coal—mining~~ performance bond or similar security deposited in lieu of bond in connection with surface coal mining and reclamation operations during the five (5) year period preceding the date of submission of the application; ~~or~~

(III) For each suspension, revocation, or forfeiture identified in subsections (I) and (II) above, the applicant shall provide a brief statement of the facts involved including the permit number, date of action and amount of forfeiture if applicable, responsible regulatory authority and stated reasons for action, current status and identifying information regarding any judicial or administrative proceedings related to the action.

*The proposed revision above removes redundant language that became unnecessary when Wyoming last revised this section to include “in connection with surface coal mining and reclamation operations” (4/9/13 Concern Letter, Section 1.b.). The word “or” was removed in order to be consistent with the Federal regulations and address the OSM’s comment on the proposed revisions (2/10/14 Review Letter, Section 1).*

...

(B) A list of notices of violation required by W. S. § 35-11-406(a)(xiv) that describe or identify the violation, a list of all unabated or uncorrected violation notices incurred in connection with any surface coal mining and reclamation operation that the applicant or operator owns or controls on that date, identify the associated permit and MSHA numbers, the name of the person to whom the violation notice was issued, when it occurred, any abatement action taken and if the abatement period has not expired a certification that the violation is being abated or corrected to the satisfaction of the agency with jurisdiction over the violation, the issuing regulatory authority, and any proceedings initiated concerning the violation. This listing shall include only notices issued to the applicant or operator and any subsidiaries, affiliates, or persons owned or controlled by or under common control with the applicant or operator.

*In response to Section 1.c., of the OSM's April 9, 2013 Concern Letter the LQD has revised Subsection (B) above to correct the typographical error (4/9/13 Concern Letter, Section 1.c.).*

DEPARTMENT OF ENVIRONMENTAL QUALITY

LAND QUALITY DIVISION

CHAPTER 6

BLASTING FOR SURFACE COAL MINING OPERATIONS

...

Section 4. **Blasting Standards.**

...

(b) Limitations.

(i) Airblast shall not exceed the values specified below at any dwelling, public building, school, church, and community or institutional building outside the permit area, unless the building is owned by the operator and not leased to another, or, if leased, the lessee signs a waiver relieving the operator from meeting the limitations. If necessary to prevent damage, the Administrator shall specify lower maximum allowable airblast levels.

Lower frequency limit of measuring system, Hz (+3dB)	Maximum level in dB
0.1 Hz or lower-flat response <sup>1</sup>	134 peak
2 Hz or lower-flat response	133 peak
6 Hz or lower-flat response	129 peak
C-weighted, slow response <sup>1</sup>	105 peak dBC

<sup>1</sup> Only if approved by the Administrator.

(A) ~~At the request of the Administrator,~~ The operator shall conduct periodic monitoring to ensure compliance with the airblast standards. The Administrator shall request monitoring in certain instances, including but not limited to complaints, blasting in sensitive areas, and in areas where there is reason to believe airblast limits may be exceeded. The measuring systems shall have an upper-end flat frequency response of at least 200 Hz.

*The proposed revision above was made to address an OSM concern that Subsection (A) was less effective than the corresponding Federal regulation at 30 CFR 816.67(b)(2)(i) for surface mines and 30 CFR 817.67(b)(2)(i) for underground mines. The OSM identified this concern as part of its EY2013 Annual Oversight Report for the blasting program.*



DEPARTMENT OF ENVIRONMENTAL QUALITY

LAND QUALITY DIVISION

CHAPTER 12

PROCEDURES APPLICABLE TO SURFACE COAL MINING OPERATIONS

Section 1. **Permitting Procedures.**

(a) In addition to the permitting procedures described in the Act, the following shall be applicable to applications for a permit for a surface coal mine operation:

...

(vii) VER submission requirements and procedures.

(A) A request for a VER determination shall be submitted to the appropriate agency identified in subsection (vi) above if the applicants intend to conduct surface coal mining operations on the basis of valid existing rights under 30 C.F.R. §761.11 (2009), (<http://www.gpoaccess.gov/cfr/retrieve.html>), or wishes to confirm the right to do so. Requests may be submitted prior to submitting an application for a permit or boundary revision for the land.

*The proposed revision above corrects a grammatical error that was identified in the June 24, 2013 Concern Letter (6/24/13 Concern Letter, Section 1.a.). That letter detailed several concerns the OSM had identified related to the LQD's January 4, 2013 formal amendment that addressed rules related to valid existing rights and individual civil penalties.*

...

(B) Initial review of request.

...

(IV) If the information requested in (II) above is not submitted within the time specified or amended the responsible agency shall issue a determination that the VER has not been demonstrated as discussed in Section 1(a)(vii)(D)(IV) below.

*The above revision corrects a grammatical error identified by the OSM during its review of the LQD's, January 4, 2013 formal amendment (6/24/13 Concern Letter, Section 1.b.).*

...

(E) Administrative and judicial review. A determination that the VER requestor does or does not have VER is subject to administrative and judicial review under the Wyoming Administrative Procedures Act, W.S. 16-3-101 through 16-3-115 (2011).

*Subsection (E) is revised to remove the “s” at the end of the word “procedure” in order to correct the typographical error (6/24/2013 Concern Letter, Section 1.c.).*

(F) Availability of records. When the Land Quality Division is the agency responsible for processing a request subject to notice and comment under subsection (C) above the Division shall make a copy of that request and related materials available to the public in the same manner as public availability of permit applications under these Rules and Regulations. In addition, the Division shall make records associated with that request, and any subsequent determination under subsection (D) above available to the public in accordance with the requirements and procedures of W.S. §35-11-1101 (2011), the Wyoming Public Records Act (W.S. §§ 16-4-201 thru 16-4-205 (2013)), W.S. §35-11-406(d) (2013) and the Division’s rules and regulations related to public review and participation, and shall at a minimum make copies of those records immediately available to the public in the area of mining until at least five years after the expiration of the period during which the operation is active or is covered by any portion of a reclamation bond so that they are conveniently available to residents of that area in compliance with 30 CFR 840.14(b), (c) and (d), (2013) (<http://www.gpo.gov/fdsys/>).

*Subsection (F) was revised to address the OSM’s concerns regarding revisions that were part of the January 4, 2013 formal amendment. The OSM stated that the revised language presented in the formal amendment only met some of the requirements of 30 CFR 840.14 as referenced in 30 CFR 761.16(g). In most instances records related to mining operations are considered permanent records and would therefore be retained longer than the five years referenced above. Additional statutory and regulatory citations were made to clarify that VER related documents are subject to the same requirements as those for public participation in permit applications. The additional clarifying language is a mirror of the Federal language, except for the references to State requirements, and is intended to assure that the minimum Federal requirements in 30 CFR 840.14 are met (6/24/2013 Concern Letter, Section 3).*

...

(viii) Final Compliance Review. After finding the application administratively complete and suitable for publication but prior to permit issuance, the Department of Environmental Quality shall conduct a review of the following before making a permit eligibility determination under (x) of this section:

...

(B) The information the applicant submitted regarding applicant permit history, AVS information and any other available information to review the applicant and operator's permit history. In addition, the ~~regulatory authority~~ Division shall determine if the applicant and operator have previous mining experience and if the applicant or operator does not have any previous mining experience additional ownership or control investigations may be conducted under subsection (ix)(E) below to determine if someone else with mining experience controls the mining operation; and

*The proposed revisions are intended to address the OSM's concern that Subsection (B) warranted "the inclusion of additional clarifying language with respect to conducting additional ownership and control investigations to be consistent with and no less effective than the Federal counterpart rule at 30 CFR 773.10(c)" (4/9/13 Concern Letter, Section 5). The proposed revision above adds the additional clarifying language. In addition the OSM pointed out that "regulatory authority" should be changed to "Division" to be consistent with the remainder of the rules (4/9/13 Concern Letter, Section 5).*

...

(x) In addition to the specific findings required by W.S. § 35-11-406(n) and based on the reviews required in subsection (viii) above, the Land Quality Division (LQD) shall determine whether the applicant is eligible for a coal mining permit. An applicant is not eligible for a permit if the LQD determines ~~that~~ for any surface coal mining operation that:

*The proposed revision above addresses a grammatical error as pointed out in the OSM's, April 9, 2013 Concern Letter (4/9/13 Concern Letter, Section 1.d.).*

...

(D) Exceptions

(I) An applicant is eligible for a permit if an unabated violation occurred after October 24, 1992 and resulted from an unanticipated event or condition at a surface coal mining and reclamation operation on lands that are eligible for remining under a permit that was held by the person applying for the new permit.

*The LQD revised Subsection (D)(I) above in its January 8, 2013 formal amendment to the OSM. The OSM noted that additional language was necessary to make the rule as effective as the Federal counterpart at 30*

*CFR 773.13(a) (4/9/13 Concern Letter, Section 4) during its review of the formal amendment. The proposed revision above addresses that concern.*

...

(xiv) In order to challenge an ownership or control listing or finding a written explanation shall be submitted to the Department of Environmental Quality regarding the basis of the challenge along with any evidence or explanatory materials outlined in subsection (E) below. If the challenge concerns a pending permit application the written explanation shall be submitted to the regulatory authority with jurisdiction over the application. If the challenge concerns the applicant's ownership or control of a surface coal mining operation and the applicant is not currently seeking a permit the written explanation shall be submitted to the regulatory authority with jurisdiction over the surface coal mining operation. The provisions of this section and of subsections D through F below apply only to challenges to ownership or control listings or findings and may not be used to challenge liability or responsibility under any other section of the Wyoming Environmental Quality Act or the Land Quality Division, Coal Rules and Regulations.

...

(C) At any time a person listed in AVS as an owner or controller of a surface coal mining operation may request an informal explanation from the AVS Office as to the reason they are shown in the AVS in an ownership or control capacity. The AVS Office will provide a response describing why the person is listed in AVS in accordance with 30 C.F.R. §773.26(e) (2013) (<http://www.gpo.gov/fdsys/>).

*Subsection (C) was revised in order to include how the AVS Office will provide a response to the request. 30 C.F.R. §773.26(e) requires the AVS Office to respond to the request within fourteen (14) days. The decision was made to include a citation to the Federal regulations to account for the many variables that may affect the timing of the response if the State were to provide a response. The AVS Office noted that Wyoming may not have access to documents that cause an entry into AVS if the operator has operations in multiple jurisdictions. This deficiency was noted during conversations with OSM regarding the LQD's informal submittal, but was not however noted in the 2/10/14 Review Letter.*

(D) When a challenge is made to a listing of ownership or control, or a finding of ownership or control, the challenger must prove by a preponderance of the evidence that they either:

(I) Do not own or control the entire surface coal mining operation or relevant portion or aspect thereof; or

(II) Did not own or control the entire surface coal mining operation or relevant portion or aspect thereof during the relevant time period.

*The revised rule above is intended to clarify Subsection (II) in response to the OSM's April 9, 2013 Concern Letter (4/9/13 Concern Letter, Section 1.e.).*

...

(F) Within sixty (60) days of receipt of a challenge as described above, the Division will review and investigate the evidence and explanatory materials submitted and any other reasonable available information bearing on the challenge and issue a written decision. The decision shall state whether the challenger owns or controls the relevant surface coal mining operation, or owned or controlled the operation during the relevant time period. Decisions regarding the challenge will be promptly provided to the challenger by either certified mail, return receipt requested or by any alternative means consistent with rules governing service under the Wyoming Rules of Civil Procedure. Service of the decision will be complete upon delivery and is not incomplete if acceptance of delivery is refused. The Division will post all decisions made under this section on AVS. Appeals of the written decision will be administered under the Department's Rules of Practice and Procedure. Any person who receives a written decision under this section, and who wishes to appeal that decision shall exhaust all administrative remedies under the procedures of the Wyoming Environmental Quality Act, the Department's Rules of Practice and Procedure, the Wyoming Administrative Procedure Act, W.S. 16-3-101 through 16-3-115 (2013) and Chapter 12 of these Rules and Regulations before seeking judicial review. AVS shall be revised as necessary to reflect these decisions. Following the Division's written decision or any decision by a reviewing administrative or judicial tribunal, the Division must review the information in AVS to determine if it is consistent with the decision. If it is not, the Division shall promptly revise the information to reflect the decision.

*The proposed revisions above are intended to address the OSM's concern that Subsection (F) above was written to generally in those areas that have been struck out as indicated (4/9/13 Concern Letter, Section 6). The OSM concluded that Subsection (F) rendered Wyoming's program less effective than the corresponding Federal rules at 30 CFR §773.28(e) and (f) (4/9/13 Concern Letter, Section 6). Subsection (F) was revised to require that all administrative remedies be exhausted before seeking judicial review of an ownership and 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).*

*Subsection (F) was also revised to address the OSM's comment that the proposed revisions removed the requirement that AVS be revised to reflect any decisions on ownership or control (2/10/14 Review Letter, Section 3).*

*The LQD added language that is consistent with 30 CFR §773.28(d) in place of the second sentence that was struck from the current rule.*

...

(b) All procedural requirements of the Act and the regulations relating to review, public participation, and approval or disapproval of permit applications, and permit term and conditions shall, unless otherwise provided, apply to permit revisions, amendments, renewals and permit transfer, assignment or sale of permit rights. In addition, the following requirements are applicable.

...

(ii) All requirements imposed by W.S. § 35-11-408 and this section provision for shall be applicable to a permit transfer, assignment or sale of permit rights. These requirements shall be met, as evidenced by the written approval of the statement of qualifications by the Administrator and Director, prior to any permit transfer, assignment or sale of permit rights. For purposes of this section, potential transferee, means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.

*Subsection (b)(ii) was revised to address the OSM's concern that previous revisions to this section rendered it awkward and lacking specifics related to application approval requirements for a transfer, assignment or sale of permits rights found in the Federal rule at 30 CFR §774.17 (4/913 Concern Letter, Section 7). The OSM indicated that the LQD needed to provide counterparts to the Federal regulations for advertising requirements for new applications (30 CFR 774.17(b)(2)), approval criteria (30 CFR 774.17(d)) and notification requirements (30 CFR 774.17(e)). In addition to the lack of Federal counterparts, the OSM stated that Wyoming's rules all refer to an undefined term, "potential transferee", and did not include a definition for "potential transferee" (4/9/13 Concern Letter, Section 7). The proposed revision above defines "potential transferee" for purposes of transfers, sales or assignment of permit rights as the OSM defines "successor in interest" at 30 CFR §701.5. Grammatical changes were made to improve the readability of Subsection (b)(ii) and specific requirements were added below to address the additional concerns.*

(A) The potential transferee shall obtain a renewal bond by either transfer of the permit holder's bond, written agreement with the permit holder, or providing other sufficient bond or equivalent guarantee.

(B) The statement of qualifications shall contain all legal, financial, compliance and related information required by Chapter 2, Section 2(a)(i) through (iii) which would be required if the potential transferee were the original

applicant for the permit and, in addition, the name, address and permit number of the existing permit holder.

(C) The applicant for a transfer, assignment or sale of permit rights shall advertise the filing of the application in a newspaper of general circulation in the locality of the operations involved once a week for four (4) consecutive weeks, indicating the name and address of the applicant, the permittee, the permit number, the geographic location of the permit and the address to which written comments may be sent.

*The revision above is intended to provide a counterpart to 30 CFR 774.17(b)(2) to address the OSM's concern regarding advertisement requirements for newly-filed applications (4/9/13 Concern Letter, Section 7).*

(D) Public Participation. Any person having an interest which is or may be adversely affected by a decision on the transfer, assignment or sale of permit rights, including an official of any Federal, State, or local government agency, may submit written comments on the application to the Division within a time specified by the Division.

*The revision above is intended to provide a counterpart to 30 CFR 774.17(c) to address the OSM's concern regarding the lack of specific requirements for the transfer, assignment or sale of permits rights in Wyoming's rules and regulations (4/9/13 Concern Letter, Section 7).*

(E) Criteria for Approval. The Division may allow a permittee to transfer, assign or sell permit rights to a potential transferee, if the Administrator finds in writing that the potential transferee:

(I) Is eligible to receive a permit in accordance with Chapter 12, Section 1(a)(x), (xi) and (xii);

(II) Has submitted a performance bond or other guarantee, or obtained the bond coverage of the original permittee as required in Subsection (A) above; and

(III) Meets any other requirements specified by the Division.

*The revision above is intended to provide a counterpart to 30 CFR 774.17(d) to address the OSM's concern regarding the lack of criteria for approval by the LQD that allows a permittee to transfer, assign or sell permit rights to a potential transferee (4/9/13 Concern Letter, Section 7). Subsection (I) was revised to include citations to Chapter 12, Section*

*1(a)(x) through (xii) in response to the OSM's comment on the draft language (2/10/14 Review Letter, Section 4).*

(F) Notification.

(I) The Administrator shall notify the permittee, potential transferee, commenters and the Office of Surface Mining of its findings.

(II) The potential transferee shall immediately provide notice to the Division of the consummation of the transfer, assignment or sale of permit rights.

*The revision above is intended to provide a counterpart to 30 CFR 774.17(e) to address the OSM's concern regarding notification requirements (4/9/13 Concern Letter, Section 7).*

(G) Continued operation under existing permit. The potential transferee shall assume the liability and reclamation responsibilities of the existing permit and shall conduct the surface coal mining and reclamation operations in full compliance with the Environmental Quality Act, the Division's rules and regulations, and the terms and conditions of the existing permit, unless the applicant has obtained a new or revised permit under the Environmental Quality Act and the Division's rules and regulations.

*The revision above is intended to provide a counterpart to 30 CFR 774.17(f) to address the OSM's concern regarding the lack of specific requirements for the transfer, assignment or sale of permit rights (4/9/13 Concern Letter, Section 7). Subsection (G) was also revised to state that operations must be conducted in full compliance with the EQA and LQD's rules and regulations as well as the terms and conditions of the existing permit (2/10/14 Review Letter, Section 4).*



DEPARTMENT OF ENVIRONMENTAL QUALITY

LAND QUALITY DIVISION

CHAPTER 16

INSPECTIONS, ENFORCEMENT AND PENALTIES FOR

SURFACE COAL MINING OPERATIONS

Section 2. **Enforcement.**

...

(h) Within sixty (60) days after issuing a cessation order, the DEQ will notify in writing the permittee, the operator, and any person who has been listed or identified by the applicant, permittee, or OSM as an owner or controller of the operation as defined in Chapter 1 of these rules and regulations. All cessation orders remain in effect and, unless otherwise ordered, do not affect continuing reclamation operations, until the condition, practice or violation has been abated, or until vacated, modified or terminated in writing by the designated representative, Administrator, Director, or Council. Within 30 days after the issuance of a cessation order the permittee must provide or update all the information required under Chapter 2 related to ownership ~~and~~ or control. Information does not need to be provided if a court of competent jurisdiction granted a stay of the cessation order and that stay remains in effect. Within sixty (60) days of any addition, departure, or change in position of any person identified in Chapter 2, Section 2(a)(i)(E), the applicant or permittee shall provide the information required by that section and the date of any departure.

*The proposed revision is intended to correct a typographical error as noted in the OSM's April 9, 2013 Concern Letter (4/9/13 Concern Letter, Section 1.f.).*

...

Section 4. **Individual Civil Penalties**

...

(c) Amount of Civil Penalty.

(i) In determining the amount of an individual civil penalty assessed under this Section, ~~T~~the Director shall consider the criteria specified in Section 3 of this Chapter, including:

*Subsection 4(c)(i) was revised to correct a grammatical error that was identified by the OSM (6/24/13 Concern Letter, Section 1.d.).*

(A) The individual's history of authorizing, ordering or carrying out previous violations, failures or refusals at the particular surface coal mining operation;

*The term "coal" was added to address a previous disapproval of Subsection (A). The OSM noted that the rules was originally disapproved because "the Federal counterpart provision at 30 CFR §846.14(a)(1) as well as the remainder of Wyoming's rules refer to "surface coal mining operations" (78 FR 10512, 10518, 2/14/2013). The addition of the word "coal" addresses the OSM's concern (6/24/13 Concern Letter, Section 2).*

## 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 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), 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 rights 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 \_\_\_\_\_ day of \_\_\_\_\_, 2012.

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Environmental Quality Council