BEFORE THE

ENVIRONMENTAL QUALITY COUNCIL

STATE OF WYOMING

February, 2002

IN THE MATTER OF THE PROPOSED REVISION OF THE LAND QUALITY DIVISION RULES RELATED TO THE REGULATION OF COAL MINING	))))))	STATEMENT OF PRINCIPAL REASONS FOR ADOPTION

Coal - Chapters 1, 4, 11, 12, 13 and 15

Rule Package 1-O: Identification of Interests; Placement of Spoil Outside the Mined-out Area; Self-bonding; Permit Revisions; Incremental Bonds; Incidental Changes to Permits; and Termination of Jurisdiction

Introduction

In order to maintain Wyoming's approved State Program for the environmental regulation of coal mining, as well as maintain Federal funding for Wyoming's Abandoned Mine Land Program, the State must keep its laws, regulations, and policies consistent with and as stringent as the Federal laws and regulations. Through various 30 Code of Federal Regulations (CFR) Part 732 letters and final rule Federal Register notices dating from 1986 to 1992, the Office of Surface Mining Reclamation and Enforcement (OSM) has notified Wyoming that various portions of its regulations are no longer as effective as the Federal regulations. Authority to request amendments is provided to the OSM under the CFR Title 30, § 732.17.

The formally proposed rule revisions presented in this package are intended to address those identified deficiencies regarding placement of spoil outside of the mined-out area, clarification of self-bonding requirements, approving permit revisions, incremental bonds, incidental operation changes and termination of jurisdiction.

These required amendments are presented as follows:

Item 1.	Identification of Interests - Chapter 2 (page 2) [withdrawn]
Item 2.	Placement of Spoil Outside the Mined-out Area - Chapter 4 (pages 2-3)
Item 3.a - j	Self-bonding - Chapter 11 (pages 4 - 11)
Item 4.	Self-bonding - Chapter 11 (Now combined with Item 3)
Item 5.a - f	Permit Revisions - Chapters 12 and 13 (pages 11 - 15)
Item 6.	Incremental Bonds - Chapter 12 (pages 15 - 16)
Item 7.a - b	Incidental Changes - Chapters 1 and 13 (pages 16 - 19)
Item 8.	Termination of Jurisdiction - Chapter 15 (pages 20 - 21)

For clarification purposes, the "Statement of Reasons" portions of this package appear in italicized type.

Chapter 2

Identification of Interests

1. Proposed Rule Adoption: Chapter 2, Section 2(a)(i)(E) - WITHDRAWN

This proposed rule adoption has been withdrawn from this package. The rule change, as originally proposed, would have added three requirements regarding "identification of interests" which mimicked the OSM rules at 30 CFR 778.13(b)(1) through (3) (as approved on April 21, 1997). However, the LQD was mistakenly proposing to adopt counterpart Federal language which was superceded by the OSM on January 18, 2001. Consequently, the LQD recommended that it would be prudent to withdraw the originally proposed rules from consideration and address the OSM required rule amendment at a later date. This will provide time for the depth and breadth of the January 18, 2001 rule changes to be researched and their impact on the Wyoming program to be properly understood.

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Chapter 4

Placement of Spoil Outside the Mined-out Area

2. Proposed Rule Amendment/Adoption: Chapter 4, Section 2(b)(iv)

The authority to amend/adopt these rule is provided by W.S. §§ 35-11-112(a)(i), 35-11-402(a)(ii) and 35-11-415(a) and (b)(v).

Proposed State Rule Amendment	Counterpart Federal Rule
Chapter 4, Section 2(b) Backfilling, grading and contouring.	**30 CFR 816.102** Backfilling and grading: General requirements.

Proposed State Rule Amendment	Counterpart Federal Rule
Chapter 4, Section 2(b)(iii) All affected lands shall be returned to their approximate original contour, except as authorized by a variance or exemption under Chapter 5, Sections 6 and 7, or Chapter 8, or Chapter 9. **Chapter 4, Section 2(b)(iv)** All spoil shall be transported, backfilled, compacted (where necessary to insure stability or to prevent leaching) and graded to eliminate all highwalls, spoil piles, and depressions, except that:	**30 CFR 816.102(a)** Disturbed areas shall be backfilled and graded to-- **30 CFR 816.102(a)(1)** Achieve the approximate original contour, except as provided in Paragraph (k) of this Section; **30 CFR 816.102(a)(2)** Eliminate all highwalls, spoil piles, and depressions, except as provided in Paragraph (h) (small depressions) and in Paragraph (k)(3)(iii) (previously mined highwalls) of this Section;
Chapter 4, Section 2(b)(iv)(C) Spoil may be placed on an area outside the mined-out area to restore the approximate original contour by blending the spoil into the surrounding terrain ~~if the spoil is backfilled and graded on the area in accordance with~~ if the following requirements ~~of this subsection~~ are met:	**30 CFR 816.102(d)** Spoil may be placed on the area outside the mined-out area in nonsteep slope areas to restore the approximate original contour by blending the spoil into the surrounding terrain if the following requirements are met:
Chapter 4, Section 2(b)(iv)(C)(I) All vegetative and organic material shall be removed from the area.	**30 CFR 816.102(d)(1)** All vegetative and organic material shall be removed from the area.
Chapter 4, Section 2(b)(iv)(C)(II) The topsoil on the area shall be handled in accordance with Section 2(c) of this Chapter.	**30 CFR 816.102(d)(2)** The topsoil on the area shall be removed, segregated, stored, and redistributed in accordance with Section 816.22.
Chapter 4, Section 2(b)(iv)(C)(III) The spoil shall be backfilled and graded on the area in accordance with the requirements of this subsection 2(b).	**30 CFR 816.102(d)(3)** The spoil shall be backfilled and graded on the area in accordance with the requirements of this Section.

Statement of Reasons:

In the November 24. 1986, Federal Register notice (51 FR 42209, 42214), the OSM required Wyoming to include the three provisions found at 30 CFR 816.102(d)(1 - 3) in the Land Quality Division rules. As shown above, the three required provisions have been included. The third provision was already a part of the Land Quality Division rules in subsection 2(b)(iv)(C), however it has been relocated as subparagraph (III) to improve the readability of subsection (iv)(C).

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Chapter 11

Self-bonding

3. Proposed Rule Amendment/Adoption: Chapter 11, Sections 1(a), 2(a), 3(b), 3(c) and 4(a)

The authority to amend/adopt these rules is provided by W.S. §§ 35-11-112(a)(i) and 35-11-417(d).

	Proposed State Rule Amendment	Counterpart Federal Rule
	Chapter 11 Self-bonding Program	**30 CFR 800 - Bond and Insurance Requirements for Surface Coal Mining Operations Under Regulatory Programs**
3.a	**Chapter 11 Section 1(a)** "Self-bond" means an indemnity agreement in a sum certain made payable to the State, with or without separate surety. The indemnity agreement is signed by the permittee and, if applicable, the parent or non-parent corporate ~~company or federal agency~~ guarantor.	**30 CFR 800.5** Definitions **30 CFR 800.5(c)** "Self-bond" means an indemnity agreement in a sum certain executed by the applicant or by the applicant and any corporate guarantor and made payable to the regulatory authority, with or without separate surety.
	Chapter 11 Section 2. Initial Application to Self-bond. **Chapter 11 Section 2(a)** Initial application to self-bond shall be made at the time the operator makes written application to the Administrator for a license to mine. The application shall be on forms furnished by the Administrator and shall contain:	**30 CFR 800.23** Self-bonding **30 CFR 800.23(b)** The regulatory authority may accept a self-bond from an applicant for a permit if all of the following conditions are met by the applicant or its parent corporation guarantor:
3.b	**Chapter 11, Section 2(a)(x)** ~~The Administrator may accept a~~ A written guarantee for an operator's self-bond from a parent corporation guarantor ~~or from a Federal agency,~~ if the guarantor ~~or Federal agency~~ meets ~~satisfies~~ the ~~financial criteria~~ conditions of subsections (a)(iv), (vi), (vii) and (ix) of this ~~Chapter~~ Section as if it were the operator. Such a written guarantee may be accepted by the Administrator and ~~The operator must only supply information addressing requirements not met by the parent corporation guarantor.~~ shall be referred to as a "parent corporate guarantee." The terms of the parent corporate ~~or Federal agency~~ guarantee shall provide for the following:	**30 CFR 800.23(c)(1)** The regulatory authority may accept a written guarantee for an applicant's self-bond from a parent corporation guarantor, if the guarantor meets the conditions of Paragraphs (b)(1)-(b)(4) of this Section as if it were the applicant. Such a written guarantee shall be referred to as a "corporate guarantee." The terms of the corporate guarantee shall provide for the following:

	Proposed State Rule Amendment	Counterpart Federal Rule
3.c	**Chapter 11, Section 2(a)(x)(A)** If the operator fails to complete the reclamation plan the parent corporate guarantor shall do so or the parent corporate guarantor shall be liable under the indemnity agreement to provide funds to the state sufficient to complete the reclamation plan, but not to exceed the bond amount.	**30 CFR 800.23(c)(1)(i)** If the applicant fails to complete the reclamation plan, the guarantor shall do so or the guarantor shall be liable under the indemnity agreement to provide funds to the regulatory authority sufficient to complete the reclamation plan, but not to exceed the bond amount.
3.d	**Chapter 11, Section 2(a)(x)(B)** The parent corporate ~~or Federal agency~~ guarantee shall remain in force unless the parent corporate guarantor sends notice of cancellation by certified mail to the operator and to the Administrator at least 90 days in advance of the cancellation date, and the Administrator accepts the cancellation.	**30 CFR 800.23(c)(1)(ii)** The corporate guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the applicant and to the regulatory authority at least 90 days in advance of the cancellation date, and the regulatory authority accepts the cancellation.
	Chapter 11, Section 2(a)(x)(B) *continued:* The cancellation shall be accepted by the Administrator if the operator obtains a suitable replacement bond before the cancellation date, if the lands for which the self-bond, or portion thereof, was accepted have not been disturbed, or if the lands have been released under Chapter 15 or W.S. §§ 35-11-417(e) and 423.	**30 CFR 800.23(c)(1)(iii)** The cancellation may be accepted by the regulatory authority if the applicant obtains suitable replacement bond before the cancellation date or if the lands for which the self-bond, or portion thereof, was accepted have not been disturbed.
3.e	**Chapter 11, Section 2(a)(xi)** A written guarantee for an applicant's self-bond from any corporate guarantor, whenever the operator meets the conditions of subsections (a)(iv), (a)(vi) and (a)(ix) of this Section, and the guarantor meets the conditions of subsections (a)(iv), (a)(vi), (a)(vii) and (a)(ix) of this Section may be accepted by the Administrator. Such a written guarantee shall be referred to as a "non-parent corporate guarantee." The terms of this guarantee shall provide for compliance with the conditions of subsections (a)(x)(A) and (B) of this Section. The Administrator may require the operator to submit any information specified in subsection (a)(vii) of this Section in order to determine the financial capabilities of the operator.	**30 CFR 800.23(c)(2)** The regulatory authority may accept a written guarantee for an applicant's self-bond from any corporate guarantor, whenever the applicant meets the conditions of paragraphs (b)(1), (b)(2) and (b)(4) of this section, and the guarantor meets the conditions of paragraphs (b)(1) through (b)(4) of this section. Such a written guarantee shall be referred to as a "non-parent corporate guarantee." The terms of this guarantee shall provide for compliance with the conditions of paragraphs (c)(1)(i) through (c)(1)(iii) of this section. The regulatory authority may require the applicant to submit any information specified in paragraph (b)(3) of this section in order to determine the financial capabilities of the applicant.

	Proposed State Rule Amendment	Counterpart Federal Rule
3.f	**Chapter 11, Section 2(a)(xii)** The following in order; (A) For the Administrator to accept an ~~coal~~ operator's self-bond, the total amount of the outstanding and proposed self-bonds of the operator shall not exceed 25 percent of the operator's tangible net worth in the United States~~.~~, or (B) For the Administrator to accept a parent corporate guarantee, the total amount of the parent corporation guarantor's present and proposed self-bonds and guaranteed self-bonds shall not exceed 25 percent of the parent corporate guarantor's tangible net worth in the United States~~.~~, or	**30 CFR 800.23(d)** For the regulatory authority to accept an applicant's self-bond, the total amount of the outstanding and proposed self-bonds of the applicant for surface coal mining and reclamation operations shall not exceed 25 percent of the applicant's tangible net worth in the United States. For the regulatory authority to accept a corporate guarantee, the total amount of the parent corporation guarantor's present and proposed self-bonds and guaranteed self-bonds for surface coal mining and reclamation operations shall not exceed 25 percent of the guarantor's tangible net worth in the United States.
3.g	**Chapter 11, Section 2(a)(xii)** continued... (C) For the Administrator to accept a non-parent corporate guarantee, the total amount of the non-parent corporate guarantor's present and proposed self-bonds and guaranteed self-bonds shall not exceed 25 percent of the non-parent corporate guarantor's tangible net worth in the United States.	**30 CFR 800.23(d)** continued.... For the regulatory authority to accept a non-parent corporate guarantee, the total amount of the non-parent corporate guarantor's present and proposed self-bonds and guaranteed self-bonds shall not exceed 25 percent of the guarantor's tangible net worth in the United States.
	Chapter 11, Section 3(b) If the Administrator accepts an uncollateralized self-bond, an indemnity agreement shall be submitted subject to the following requirements:	**30 CFR 800.23(e)** If the regulatory authority accepts an applicant's self-bond, an indemnity agreement shall be submitted subject to the following requirements:
3.h	**Chapter 11, Section 3(b)(i)** The indemnity agreement shall be executed by all persons and parties who are to be bound by it, including the parent or non-parent corporat~~ion or Federal agency~~ guarantor, and shall bind each jointly and severally.	**30 CFR 800.23(e)(1)** The indemnity agreement shall be executed by all persons and parties who are to be bound by it, including the parent corporation guarantor, and shall bind each jointly and severally.

	Proposed State Rule Amendment	Counterpart Federal Rule
3.i	**Chapter 11, Section 3(b)(ii)** Corporations applying for a self-bond or parent and non-parent corporations guaranteeing an operator's ~~subsidiary's~~ self-bond shall submit an indemnity agreement signed by two corporate officers who are authorized to bind their corporations. A copy of such authorization shall be provided to the Administrator along with an affidavit certifying that such an agreement is valid under all applicable Federal and State laws. ~~A Federal agency guaranteeing an operator's self-bond shall submit an indemnity agreement signed by two officers of the agency who are authorized to bind the agency and a copy of their authorization. The agency shall also submit documents supporting the availability of a cause of action against the Federal agency for performance under the indemnity agreement.~~ In addition, all corporate guarantors shall provide a copy of the corporate authorization demonstrating that the corporation may guarantee the self-bond and execute the indemnity agreement.	**30 CFR 800.23(e)(2)** Corporations applying for a self-bond, and parent and non-parent corporations guaranteeing an applicant's self-bond shall submit an indemnity agreement signed by two corporate officers who are authorized to bind their corporations. A copy of such authorization shall be provided to the regulatory authority along with an affidavit certifying that such an agreement is valid under all applicable Federal and State laws. In addition, the guarantor shall provide a copy of the corporate authorization demonstrating that the corporation may guarantee the self-bond and execute the indemnity agreement.

3.j Proposed Rule Amendments:

(i) **Chapter 11, Section 3(c)** If the application is rejected based on the information required in Section 2, or based on the limitation set in Section 2(a)(xii), then the operator may offer collateral and an indemnity agreement to support the self-bond application. The indemnity agreement shall be subject to the requirements of (b) above.

(ii) **Chapter 11, Section 4(a)(ii)** Financial information in sufficient detail to show that the guarantor still meets one of the criteria in Section 2(a)(vii), and the limitation in Section 2(a)(xii). The Administrator may request financial statements for the most recently completed fiscal year together with an independent certified public accountant's audit opinion or review opinion of the financial statements with no adverse opinion. Additional unaudited information may be requested by the Administrator.

Statement of Reasons:

These subsections in Chapter 11 are being proposed for amendment to address four issues. The first two have been directly required by the OSM. The first requires rules ensuring that the conditions for approval of a non-parent guarantee are supported by meeting the conditions established in the Federal rules regarding service agent, continuous operation and financial information. The second Federal

requirement pertains to the submission of an affidavit of authorization accompanying an indemnity agreement. The other two general changes are being made throughout Sections 1, 2 and 3 in order to eliminate any reference to a Federal agency guarantor and to provide consistent terms when referring to a parent corporate guarantor and a non-parent corporate guarantor.

There was considerable discussion at the December 7, 2001 Environmental Quality Council hearing regarding these proposed rules. The discussion centered on confusion as to how the OSM views a corporate guarantor, parent corporate guarantor and a non-parent corporate guarantor. Part of the confusion was the result of the fragmented way the LQD had presented rule changes within Chapter 11, Sections 1, 2 and 3. This has been corrected. The remainder of the confusion was the result of the OSM using the term "corporate guarantor" and "parent corporate guarantor" interchangeably, while also using the term "any" to refer to both a "parent" and a "non-parent corporate guarantor." The implied relationship of these terms is not readily obvious when reading the Federal rules. Consequently, to avoid repeating this same confusion, the LQD has modified the term "corporate" with the appropriate identifier of "parent" or "non-parent" where necessary.

Amendment 3.a

This definition is proposed for amendment to remove the reference to a Federal agency guarantor and clarify that the definition applies to both a parent and non-parent corporate guarantor.

Amendments 3.b

The OSM in a 732 letter dated November 7, 1988 explained that "Wyoming allows non-parent third parties (in the form of Federal agencies) to guarantee self-bonds, but the Wyoming rules specify that the applicant need only supply information addressing requirements not met by the guarantor (Chapter 11, Section 2(a)(x)). Wyoming will need to revise this rule to be no less effective than the Federal requirements."

The LQD is proposing to amend the rule at Section 2(a)(x) in order to make it similar to the counterpart Federal rule at 30 CFR 800.23(c)(1). In addition, the references to a Federal agency guarantee are proposed for repeal because the LQD does not have any self-bonded coal mine permits where the bond is guaranteed by a Federal agency.

The use of a Federal agency guarantor is probably partially attributable to early LQD permitting events, that occurred in the early 80's, associated with the U.S. Department of Energy (D.O.E.) permitting experimental coal gasification and oil shale development projects. At that time, the LQD may have been encouraging the D.O.E. to post the bond for these sites. However, the D.O.E chose to have their contract operator post the bond and the situation where a Federal agency would post a coal mining operator's bond never occurred. However, the Tennessee Valley Authority did at one time bond a uranium mine in Wyoming. Therefore, the presence of this term in the coal rules is also probably a remnant of the noncoal program that was left within the coal rules when the coal and noncoal rules were separated in 1994. The LQD does not anticipate that any Federal agency would ever step forward to guarantee the self-

bond of a coal mine operator. In addition, this provision is not a part of the Federal rules. Therefore, for these reasons, the LQD proposes to remove all references to a Federal guarantee.

The introductory language to subsection 2(a)(x) is also proposed for revision so that the introductory language in this paragraph coincides with the lead-in phrase "and shall contain" found in subsection 2(a).

Amendment 3.c

Subsection 2(a)(x)(A) is proposed for amendment to insert the term "parent corporate" in front of guarantor to clarify which type of guarantor is being referred to in this rule.

Amendment 3.d

Subsection 2(a)(x)(B) is proposed for amendment to remove the reference to "Federal agency" guarantee and insert the term "parent corporate" in front of guarantor to clarify which type of guarantor is being referred to in this rule.

Amendments 3.e

The Federal rules regarding self-bonding were revised on January 14, 1988 (53 FR 994). These rules established conditions under which the regulatory authority may accept a written guarantee of an applicant's self-bond from a third party other than a parent corporation. Among these conditions are the requirements that the applicant meet the service agent, continuous operations and financial statement requirements of 30 CFR 800.23(b) and that the third party guarantor meet all requirements of 30 CFR 800.23(b). The OSM required the LQD to revise appropriate rules as necessary in a 732 letter dated November 7, 1988.

In order to accommodate this rule adoption a new subsection (xi) is being proposed to incorporate counterpart Federal language into the Wyoming program.

Attachment A (page 22) contains the rules which are cross-referenced in the proposed amendments to Chapter 11, Section 2(a)(xi) {and subsection 2(a)(x) - Amendment 3.b}. Please refer to this Attachment to view the LQD Coal rule which coincides with the Federal rules cross-referenced in 30 CFR 800.23(c)(2).

Amendment 3.f

The insertion of a new rule as Chapter 11, Section 2(a)(xi) requires that the existing rule at Section 2(a)(xi) be reordered as (xii).

The introductory language to new subsection 2(a)(xii) is proposed for revision so the introductory language in this paragraph coincides with the lead-in phrase "and shall contain" found in subsection 2(a). The clarifying terms "parent" and "parent corporate" are also being proposed for amendment in subsection 2(a)(xii)(B) to maintain consistent references to the term "parent corporate guarantor."

Adoption 3.g

The LQD rules were silent on the option of a non-parent corporate guarantor. The Federal rules at 30 CFR 800.23(d) provided guidelines for acceptance of a non-parent corporate guarantee. Consequently, a new subsection 2(a)(xii)(C) is being proposed to incorporate counterpart Federal language into the Wyoming program.

Amendments 3.h and i

In a 732 letter dated November 7, 1988, the OSM explained that:

> *"The Federal rules at 30 CFR 800.23(e)(2) had been revised to require that all self-bond indemnity agreements be accompanied by an affidavit certifying that the agreement is valid under all applicable State and Federal laws. It also requires that any guarantor provide a copy of the corporate authorization demonstrating that the corporation may guarantee the self-bond and execute the indemnity agreement. Neither the current Wyoming program nor the May 10, 1988 informal submittal include such requirements. Therefore, Wyoming will need to modify its program to be no less effective than the Federal rule. While revision of the State rules is the preferred means of doing so, the State may, if it desires, do so by policy statement or other program amendment."*

The proposed revision to Chapter 11, Section 3(b)(ii) requiring the submission of an affidavit will satisfy the first requirement imposed by the OSM. As discussed above for changes to Chapter 11, references to a Federal agency guarantor are being removed. Therefore, language to that effect must also be removed from Chapter 11, Section 3(b)(i).

The LQD policy memorandum regarding "Wyoming Environmental Quality Act - Form and Execution of Self-Bonding Indemnity Agreement and Corporate or Federal Agency Guaranty" will be revised to remove all references to a "Federal Agency Guaranty" and to add the requirement that an affidavit certifying the agreement is valid under all applicable State and Federal laws shall also be submitted.

The second concern presented by the OSM was satisfied by the inclusion of subsection no. 5 to the policy memorandum mentioned above. This subsection requires that "The corporate guarantor must certify and demonstrate that it has full authority under applicable laws, the laws of the state of its incorporation, its articles of incorporation and bylaws to enter into this guaranty; and, that guarantor has full approval from its Board of Directors to enter into this guaranty." The corporate guarantor is then required to submit a specific LQD form which serves as the "certification and demonstration."

In subsection 3(b)(i), the term "or non-parent" has been inserted in front of corporate to clarify that both types of corporate guarantors are being referred to in this rule. The modifying term "all corporate" has been inserted in front of "guarantors" in the last sentence to be adopted in subsection 3(b)(ii) to make it clear that all three types of corporate guarantors shall provide the corporate authorization.

Amendment 3.j

The insertion of a new rule as Chapter 11, Section 2(a)(xi) requires that the existing rule at Section 2(a)(xi) be reordered as (xii). Consequently, any existing cross-references to subsection (xi) in Chapter 11 require amendment to revise the cross-reference. Therefore, the rules at Section 3(c) and Section 4(a)(ii) are proposed for revision accordingly.

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Chapter 11

Self-bonding, continued

4. Previously proposed Amendment No. 4 has been incorporated into Amendment No. 3, consequently there are no longer any rule amendments proposed under Amendment No. 4. However, the number "4" is being retained to maintain consistency between the Draft Proposed Rules and Statement of Reasons and this document.

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Chapter 12

Procedures Applicable to Surface Coal Mining Operations

5. Proposed Rule Amendment/Adoption/Repeal: Chapter 12, Section 1(b) & Chapter 13, Section 1(d)(iv)(D)

The authority to amend/repeal these rules is provided by W.S. §§ 35-11-112(a)(i) and 35-11-405(e).

	Proposed State Rule Amendment	Counterpart Federal Rule
	Chapter 12 Procedures Applicable to Surface Coal Mining Operations	**30 CFR 774.15** Permit Renewals.
	Chapter 12, Section 1(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 transfers. In addition, the following requirements are applicable.	**30 CFR 774.15(b)(3)** Applications for renewal shall be subject to the requirements of public notification and public participation contained in Sections 773.13 and 773.19(b) of this Chapter.

	Proposed State Rule Amendment	Counterpart Federal Rule
5.a	**Chapter 12, Section 1(b)(i)** All requirements imposed by W.S. § 35-11-405(e) for permit renewals. The ~~additional revised or updated information~~ application shall be filed at least 120 days before the expiration of the permit term and shall include at a minimum:	**30 CFR 774.15(b)** Application requirements and procedures. (1) An application for renewal of a permit shall be filed with the regulatory authority at least 120 days before expiration of the existing permit term.
		30 CFR 774.15(b)(2) An application for renewal of a permit shall be in the form required by the regulatory authority and shall include at a minimum–
	Chapter 12, Section 1(b)(i)(A) A statement of the name and address of the permittee, the term of the renewal requested, the permit number, a description of any changes to the matters set forth in the original application for a permit or prior permit renewal;	**30 CFR 774.15(b)(2)(i)** The name and address of the permittee, the term of the renewal requested, and the permit number or other identifier;
	Chapter 12, Section 1(b)(i)(B) A copy of the public notice and proof of publication;	**30 CFR 774.15(b)(2)(iv)** A copy of the proposed newspaper notice and proof of publication of same, as required by Section 778.21 of this Chapter; and
	Chapter 12, Section 1(b)(i)(C) Evidence that the bond and a liability insurance policy will be provided; and	**30 CFR 774.15(b)(2)(ii)** Evidence that a liability insurance policy or adequate self-insurance under Section 800.60 of this Chapter will be provided by the applicant for the proposed period of renewal;
	see above	**30 CFR 774.15(b)(2)(iii)** Evidence that the performance bond in effect for the operation will continue in full force and effect for any renewal requested, as well as any additional bond required by the regulatory authorities pursuant to Subchapter J of this Chapter;

	Proposed State Rule Amendment	Counterpart Federal Rule
5.b	**Chapter 12, Section 1(b)(i)~~(D) A revised and updated probable hydrologic consequences assessment shall be provided if significant changes in the results of the assessment are expected in comparison to the previous assessment, considering a revised operation or new data. If a new or updated assessment is required, the Administrator shall reassess the probable cumulative hydrologic impacts in accordance with Chapter 19, Section 2 of these regulations.~~** LAST SENTENCE MOVED TO CHAPTER 13 - REVISIONS, SEE 5.f BELOW	No Federal counterpart in 30 CFR 774.15. The possible need for a revised and updated probable hydrologic consequences assessment in association with a permit revision is required by 30 CFR 780.21(f)(4).
5.c	**Chapter 12, Section 1(b)(i)(D)** Additional revised or updated information required by the Administrator.	**30 CFR 774.15(b)(2)(v)** Additional revised or updated information required by the regulatory authority.
5.d	**Chapter 12, Section 1(b)(i)(E)** If an application for renewal includes any proposed revisions to the mine or reclamation plan, such revisions shall be identified and subject to the requirements of Chapter 13.	**30 CFR 774.15(b)(4)** If an application for renewal includes any proposed revisions to the permit, such revisions shall be identified and subject to the requirements of § 774.13.
5.e .	**Chapter 12, Section 1(b)~~(iii) If the Administrator determines that there is insufficient time within the 120-day period to review any revised or updated information, he may renew the existing valid coal mining permit for another five-year term and consider the revised or updated information submitted in the renewal application as a revision of the renewed permit, subject to the provisions of Chapter 13.~~**	No Federal counterpart exists within the OSM rules

Chapter 13

Surface Coal Mining Permit Revisions

5. f Proposed Rule Amendment: Chapter 13, Section 1(d)(iv)(D)

(D) For surface coal mining operations, 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

shall be in sufficient detail to enable the Administrator to determine whether a new or updated assessment of probable cumulative hydrologic impacts is required. If a new or updated assessment is required, the Administrator shall reassess the probable cumulative hydrologic impacts in accordance with Chapter 19, Section 2 of these regulations.

Statement of Reasons:

OSM has codified a required program amendment at 30 CFR 950.16(y) requiring Wyoming to revise its rules at Chapter 12, Section 1(b) concerning permit renewals by removing the provisions at (iii) or amending it and the related rules to be no less effective than the Federal regulations at 30 CFR 774.15(c)(1). OSM asserted that Wyoming's proposed rule would allow the regulatory authority to approve a permit renewal application without first determining that the application is complete and accurate. This was prescribed in the Federal Register notice dated October 29, 1992 (57 FR 48984, 48988).

In this Federal Register notice the OSM stated that:

> *"The Federal regulations at 30 CFR 774.15 specify requirements for permit renewals. At 30 CFR 774.15(b)(4) is a provision that "if an application for renewal includes any proposed revisions to the permit, such revisions shall be identified and subject to the requirements of Section 774.13"(emphasis added). The Federal regulations at 30 CFR 774.13 provide requirements for permit revisions.*
>
> *The "revised or updated information" required for permit renewals by Wyoming's existing LQD Rule at Chapter 12, Section 1(b)(i) would appear to be needed by the regulatory authority in order to make a decision on a renewal application but this information is not of the type intended to be processed as permit revisions under 30 CFR 774.13 pursuant to 30 CFR 774.15(b)(4). As written, Wyoming's proposed rule would allow information that is critical for evaluating the adequacy of a renewal application, whether or not it includes permit revisions, to remain unreviewed prior to the decision on the renewal application. Thus, there is no assurance that such application would be complete and accurate as required by the Federal regulations at 30 CFR 774.15(c)(1) (Criteria for approval).*
>
> *Therefore, the Director finds that to the extent that Wyoming's proposed LQD Rule at Chapter 12, Section 1(b)(iii) would allow the regulatory authority to approve a permit renewal application without first determining that the application is complete and accurate, the proposed amendment is less effective than the Federal rule at 30 CFR 774.15(c)(1). Accordingly, the Director is not approving this proposed amendment to the extent it could so be applied and is requiring that Wyoming either remove this provision or amend it and related rules to correct the deficiency discussed above. Nothing in this finding or the Director's decision shall be interpreted as prohibiting the State from separately processing, or requiring that the applicant separately submit, permit revision materials not essential to the evaluation of the permit renewal application."*

Consequently, in order to alleviate what appears to be a misconception, brought about by the language in Chapter 12, Section 1(b)(iii), regarding how Wyoming processes permit renewal applications, the

LQD proposes to repeal the offending rule (Rule Repeal 5.e). In lieu of this rule, the LQD proposes to adopt rules similar to the counterpart Federal rules at subsections (D) and (E) (Rule Adoptions 5.c and 5.d, respectively). This adoption, within Chapter 12, will make it clear that the LQD does review all portions of a renewal application to ensure that the application is complete and accurate. The LQD requests that an operator not include any revised material in a renewal application.

Any revised information that is being included at the applicant's discretion is normally required to be removed from the renewal application and resubmitted under separate cover as a revision application. However, there are instances where the included revised material is of a minor nature and the staff feel that it can be reviewed within the limited renewal time frame. This material is allowed to remain within the renewal application. In this case, the staff shall review the revised material in accordance with Chapter 13, Permit Revisions. In all other instances, this revision application is reviewed separately from the renewal application and is subject to specific public notification procedures, etc. distinct from the renewal approval process.

The LQD is proposing to repeal the existing language at subsection (D) (Amendment 5.b) because a revised and updated probable hydrologic consequences assessment is not normally necessary in conjunction with a simple permit renewal. The need for a revised and updated probable hydrologic consequences assessment would be determined as part of an operator's proposal to revise their mine plan. Language to this effect already exists in Chapter 13, Section 1(d)(iv)(D) (Amendment 5.f). Therefore, the modifying language regarding the assessment being conducted in accordance with Chapter 19, Section 2 is more appropriately placed in Chapter 13, rather than its original location in Chapter 12.

* *

Chapter 12

Procedures Applicable to Surface Coal Mining Operations

6. Proposed Rule Amendment: Chapter 12, Section 2(d)(iii)

The authority to amend this rule is provided by W.S. §§ 35-11-112(a)(i) and 35-11-417(a).

Proposed State Rule Amendment	Counterpart Federal Rule
Chapter 12, Procedures Applicable to Surface Coal Mining Operations	**30 CFR Part 800** - Bond and insurance requirements for surface coal mining operations under regulatory programs.
Section 2. **Bonding and Insurance Procedures.**	**30 CFR 800.11** Requirement to file a bond.
Chapter 12, Section 2(d) Liability.	

Proposed State Rule Amendment	Counterpart Federal Rule
Chapter 12, Section 2(d)(iv) Isolated increments of bonded land. (A) Isolated and clearly defined portions of the permit area requiring extended liability or limited areas or increments being assessed a specific bond amount may be separated from the original area and bonded separately with the approval of the Administrator. (B) Such areas shall be ~~limited in extent~~ of sufficient size and configuration and not constitute a scattered, intermittent, or checkerboard pattern ~~of failure~~ to provide for efficient reclamation operations should reclamation by the Administrator become necessary pursuant to Section 2(b) of this Chapter. (C) Access to the ~~separated~~ isolated areas for remedial work may be included in the area under extended liability if deemed necessary by the Administrator.	**30 CFR 800.11(b)(4)** Independent increments shall be of sufficient size and configuration to provide for efficient reclamation operations should reclamation by the regulatory authority become necessary pursuant to § 800.50.

Statement of Reasons:

In a February 21, 1990, 732 letter, the OSM informed Wyoming about a change to the OSM rules which occurred on July 19, 1983 (48 FR 32932). This new rule required separately bonded increments within a permit area be of sufficient size and configuration to provide for efficient reclamation operations should reclamation by the regulatory authority become necessary. In a letter dated May 14, 1990, the State responded by saying that Wyoming will amend the LQD rules at Chapter 12, Section 2(d) to require separately bonded increments within a permit area be of sufficient size and configuration to provide for efficient reclamation operations should reclamation by the State become necessary.

Therefore, the proposed rule amendment presented above is intended to satisfy this identified deficiency.

* *

Chapters 1 and 13

Incidental Changes

7.a Proposed Rule Amendment: Chapters 1, Section 2(by)

The authority to amend these rules is provided by W.S. §§ 35-11-112(a)(i) and 35-11-402(a)(x).

Chapter 1, Section 2. **Definitions.**

(by) "Revised mining or reclamation operations" means~~, except for incidental operation changes,~~ mining and/or reclamation operations conducted during the term of a permit

which differ from those operations described in the original mine permit application and approved under the original permit.

7.b Proposed Rule Amendments: Chapter13, Section 1(a), (b) and (c)

Section 1. **Submittal of Revisions.**

(a) A permit may be revised, upon approval by the Administrator, if the operator submits an application ~~request~~ 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. ~~If promptly filed, and unless notified by the Administrator to delay, the operator may initiate the proposed change within 72 hours of filing.~~ All non-significant revisions shall include:

(c) ~~Incidental changes which are not categorized under (a) or (b) of this Section shall be noted in the annual report.~~ reserved

Statement of Reasons:

Amendment 7.a

In the July 25, 1990, Federal Register notice (55 FR 30221, 30229), the OSM explained that:

> *"...because the Director is not approving the concept of incidental operation changes, Wyoming's proposed revision to the definition of "revised mining and reclamation operations" at Chapter 1, Section 2(by) cannot be approved. As proposed, the term means "except for incidental operation changes, mining and/or reclamation operations conducted during the term of a permit which differ from those operations described in the original mine permit." The phrase "except for incidental operation changes" renders the revised definition less effective than the Federal regulations. Therefore, the Director is not approving the proposed addition of the phrase "except for incidental operation changes" to the existing definition of "revised mining or reclamation operations."*

Therefore, in order to clarify that Wyoming will process all changes to an approved permit as either a significant or non-significant revision (both of which require written approval by the Administrator), the offending language in the definition for "revised mining and reclamation operations" is proposed for repeal.

This repeal will satisfy that portion of program approval exception, 30 CFR 950.15(k) pertaining to Chapter 1 found on page 30233 of the July 25, 1990, Federal Register notice.

Amendment 7.b

The amendments proposed to Chapter 13, Section 1 were also required by the OSM in the July 25, 1990 Federal Register notice (55 FR 30221).

***Chapter 13, Section 1(a)** is proposed for revision in response to the 30 CFR 950.16(j) codified disapproval imposed by the OSM in this Federal Register notice. This required program amendment requires Wyoming to revise Section 1(a) to include a cross-reference to Section 1(d) of the same Chapter. Section 1(d) lists the information that must be included in every mine permit revision application. The amendment, as proposed above, will satisfy this disapproval.*

***Chapter 13, Section 1(b)** is proposed for amendment to repeal the statement; "If promptly filed, and unless notified by the Administrator to delay, the operator may initiate the proposed change within 72 hours of filing." The removal of this sentence was also required in the July 25, 1990 Federal Register notice. On page 30229 of this Federal Register, the OSM explained that "the September 26, 1983, preamble to the Federal regulations governing permit revisions made clear that all permit revisions, whether significant or not, must be based on written findings and subject to administrative and judicial review (48 FR 44344, 44376). Under the final rule, the regulatory authority will establish the guidelines for revisions. However, all revisions must be approved and incorporated into the permit since they are changes to the document" (Id, at 44377). The proposed State rule does not require 'written approval' of a proposed permit revision prior to implementation nor does it require the findings specified in section 511(a)(2) of SMCRA and 30 CFR 774.13(c) of the Federal regulations. Therefore, the Director finds that Wyoming's proposed rule at chapter 13, section 1(b) is less effective than the counterpart Federal provisions and is not approving the proposed change."*

This rule amendment requirement was again reiterated by the OSM in the October 29, 1992 Federal Register notice (57 FR 48984, 48988). As part of this notice, this requirement was codified as required program amendment 30 CFR 950.16(z).

This repeal will satisfy that portion of program approval exception, 30 CFR 950.15(k) pertaining to Chapter 13 found on page 30234 of the July 25, 1990, Federal Register notice and required program amendment 30 CFR 950.16(z) found on page 48992 of the October 29, 1992 Federal Register.

***Chapter 13, Section 1(c)** is proposed for repeal as requested by the OSM on page 30229 of the July 25, 1990 Federal Register notice. The OSM explained that:*

> *"Wyoming proposes to revise Chapter 13, 1(c) to provide that incidental changes which are not categorized under the significant or non-significant provisions of this section shall be noted in the annual report. The Federal regulations do not contain a direct counterpart to the proposed State rule.*
>
> *However, as set forth in the findings above, dealing with the significant and non-significant permit revisions respectively, Federal provisions at section 511 of SMCRA*

and 30 CFR 774.13 and 774.15 of the Federal regulations require the regulatory authority to review applications for permit revisions and make applicable written findings prior to an operator's initiation of proposed revisions.

The proposed State rule governing incidental changes does not require review of the proposed change by the regulatory authority prior to an operator's implementation of so-called incidental changes to the permit. Nor does the proposed rule require any findings by the regulatory authority prior to an operator's implementation of incidental changes. Therefore, the Director finds the proposed State rule at Chapter 13, section 1(c) to be less effective than the Federal regulations and is not approving the proposed rule."

Therefore, Section (c) is proposed for repeal from Chapter 13. However, rather than remove Section (c) all together and renumber the existing rule (d) which follows as (c), the rule notation (c) will remain in place as "reserved." By doing so, any cross-references to (d) in any other Land Quality Division documents (i.e., Guidelines, Standard Operating Procedures, Forms) will not require revising.

* *

Proposed Adoption No. 8 is on the next page.....

Chapter 15

Termination of Jurisdiction

8. Proposed Rule Adoption: Chapter 15, Section 7

The authority to adopt these rules is provided by W.S. §§ 35-11-112(a)(i) and 35-11-405(b).

Release of Bonds or Deposits; and Termination of Jurisdiction
for Surface Coal Mining Operations

Proposed State Rule Amendment	Counterpart Federal Rule
Chapter 15, Section 7. **Termination of Jurisdiction.**	**30 CFR 700.11** Applicability.
Chapter 15, Section 7(a) The Administrator may terminate jurisdiction over the reclaimed site of a completed surface coal mining and reclamation operation, or increment thereof, when	**30 CFR 700.11(d)(1)** A regulatory authority may terminate its jurisdiction under the regulatory program over the reclaimed site of a completed surface coal mining and reclamation operation, or increment thereof, when:
Counterpart rule is not necessary for the LQD rules because Wyoming doesn't have any coal mine operations permitted under the Initial Federal Program rules.	**30 CFR 700.11(d)(1)(i)** The regulatory authority determines in writing that under the initial program, all requirements imposed under Subchapter B of this chapter have been successfully completed; or
Chapter 15, Section 7*(a) continued:* the Administrator determines in writing that all requirements imposed under the rules and regulations and Environmental Quality Act have been successfully completed and the Administrator has made a final decision in accordance with Chapters 4 and 15 to release the performance bond fully.	**30 CFR 700.11(d)(1)(ii)** The regulatory authority determines in writing that under the permanent program, all requirements imposed under the applicable regulatory program have been successfully completed or, where a performance bond was required, the regulatory authority has made a final decision in accordance with the State or Federal program counterpart to Part 800 of this chapter to release the performance bond fully.
Chapter 15, Section 7(b) Following a termination under paragraph (a) of this Section, the Administrator shall reassert jurisdiction over a site if it is demonstrated that the bond release or written determination referred to in paragraph (a) of this Section was based upon fraud, collusion, or misrepresentation of a material fact.	**30 CFR 700.11(d)(2)** Following a termination under paragraph (d)(1) of this section, the regulatory authority shall reassert jurisdiction under the regulatory program over a site if it is demonstrated that the bond release or written determination referred to in paragraph (d)(1) of this section was based upon fraud, collusion, or misrepresentation of a material fact.

Statement of Reasons:

In a February 21, 1990 732 letter, the OSM informed Wyoming that a new Federal rule had been adopted on November 2, 1988 (53 FR 44356) which established procedures and clarified conditions under which a regulatory authority may terminate jurisdiction over sites mined and reclaimed under an approved state program. The OSM further explained that the regulatory authority must make a written determination that all applicable reclamation requirements have been met and the regulatory authority has issued a final decision fully releasing the performance bond before jurisdiction can be terminated. In addition, this new rule requires that jurisdiction be reasserted if it is demonstrated that the written finding or bond release was based upon fraud, collusion or misrepresentation of a material fact. The OSM then required Wyoming to amend its program to include criteria and procedural requirements no less effective than the Federal rule. Consequently, Wyoming is proposing to adopt applicable rules for the state program which are similar to the counterpart Federal rules.

* *

Federal Rule	*Counterpart LQD Rule Referenced in the Proposed Rule Amendments (3.b and e)*
***30 CFR 800.23(b)(1)** The applicant designates a suitable agent to receive service of process in the State where the proposed surface coal mining operation is to be conducted.*	***Chapter 11, Section 2(a)(ix)** A statement identifying by name, address and telephone number:* ***(A)** A registered office which may be, but need not be, the same as the operator's place of business.*
see above	***(B)** A registered agent, which agent must be either an individual resident in this State, whose business office is identical with such registered office, a domestic corporation, or a foreign corporation authorized to transact business in this State, having a business office identical with such registered office. The registered agent so appointed by the operator shall be an agent to such operator upon whom any process, notice or demand required or permitted by law to be served upon the operator may be served.*
see above	***(C)** If the operator fails to appoint or maintain a registered agent in this State, or whenever any such registered agent cannot be reasonably found at the registered office, then the Director shall be an agent for such operator upon whom any process, notice or demand may be served. In the event of any such process, the Director shall immediately cause one copy of such process, notice or demand to be forwarded, by registered mail, to the operator at his principal place of business. The Director shall keep a record of all processes, notices, or demands served upon him under this paragraph, and shall record therein the time of such service and his action with reference thereto.*
see above	***(D)** Should the operator change the registered office or registered agent, or both, a statement indicating such change shall be filed immediately with the Land Quality Division.*
see above	***(E)** Nothing herein contained shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon an operator in any other manner now or hereafter permitted by law.*

Attachment A continued	
Federal Rule	*Counterpart LQD Rule Referenced in the Proposed Rule Amendments (3.b and e)*
30 CFR 800.23(b)(2) *The applicant has been in continuous operation as a business entity for a period of not less than 5 years. Continuous operation shall mean that business was conducted over a period of 5 years immediately preceding the time of application.*	***Chapter 11, Section 2(a)(iv)*** *Brief chronological history of business operations conducted within the last five years which would illustrate a continuous operation for five years immediately preceding the time of application.*
30 CFR 800.23(b)(2)(i) *The regulatory authority may allow a joint venture or syndicate with less than 5 years of continuous operation to qualify under this requirement, if each member of the joint venture or syndicate has been in continuous operation for at least 5 years immediately preceding the time of application.*	***Chapter 11, Section 2(a)(iv)(A)*** *The Administrator may allow a joint venture or syndicate with less than five years of continuous operation to qualify under this requirement, if each member of the joint venture or syndicate has been in continuous operation for at least five years immediately preceding the time of application.*
30 CFR 800.23(b)(2)(ii) *When calculating the period of continuous operation, the regulatory authority may exclude past periods of interruption to the operation of the business entity that were beyond the applicant's control and that do not affect the applicant's likelihood of remaining in business during the proposed surface coal mining and reclamation operations.*	***Chapter 11, Section 2(a)(iv)(B)*** *When calculating the period of continuous operation, the Administrator may exclude past periods of interruption to the operation of the business entity that were beyond the applicant's control and that do not affect the applicant's likelihood of remaining in business during the proposed surface coal mining and reclamation operations.*
30 CFR 800.23(b)(3) *The applicant submits financial information in sufficient detail to show that the applicant meets one of the following criteria:*	***Chapter 11, Section 2(a)(vii)*** *For coal mining operations, financial information in sufficient detail to show that the operator meets one of the following criteria (the specific criterion relied upon shall be identified):*
30 CFR 800.23(b)(3)(i) *The applicant has a current rating for its most recent bond issuance of "A" or higher as issued by either Moody's Investor Service or Standard and Poor's Corporation;*	***Chapter 11, Section 2(a)(vii)(A)*** *The operator has a rating for all bond issuance actions over the past five years of "A" or higher as issued by either Moody's Investor Service or Standard and Poor's Corporation (the rating service should be identified together with any further breakdown of specific ratings).*

Attachment A continued	
Federal Rule	*Counterpart LQD Rule Referenced in the Proposed Rule Amendments (3.b and e)*
30 CFR 800.23(b)(3)(ii) *The applicant has a tangible net worth of at least $10 million, a ratio of total liabilities to net worth of 2.5 times or less, and a ratio of current assets to current liabilities of 1.2 times or greater; or*	***Chapter 11, Section 2(a)(vii)(B)*** *The operator has a tangible net worth of at least 10 million dollars, and a ratio of total liabilities to net worth of 2.5 times or less, and a ratio of current assets to current liabilities of 1.2 times or greater. The two ratio requirements must be met for the past year, and documented for the four years preceding the past year. Explanations should be included for any year where the ratios fall below the stated limits.*
30 CFR 800.23(b)(3)(iii) *The applicant's fixed assets in the United States total at least $20 million, and the applicant has a ratio of total liabilities to net worth of 2.5 times or less, and a ratio of current assets to current liabilities of 1.2 times or greater.*	***Chapter 11, Section 2(a)(vii)(C)*** *The operator's fixed assets in the United States total at least 20 million dollars, and the operator has a ratio of total liabilities to net worth of 2.5 times or less, and a ratio of current assets to current liabilities of 1.2 times or greater. The two ratio requirements must be met for the past year and documented for the four years preceding the past year. Explanations should be included for any year where the ratios fall below the stated limits.*
No Federal Counterpart	***Chapter 11, Section 2(a)(vii)(D)*** *If the operator chooses (B) or (C), the two ratios shall be calculated with the proposed self-bond amount added to the current or total liabilities for the current year. The operator may deduct the costs currently accrued for reclamation which appear on the balance sheet.*
30 CFR 800.23(b)(4) *The applicant submits--*	***Chapter 11, Section 2(a)(vi)*** *A statement, in detail, so as to show a history of financial solvency. For an initial bond, each operator must provide:*
30 CFR 800.23(b)(4)(i) *Financial statements for the most recently completed fiscal year accompanied by a report prepared by an independent certified public accountant in conformity with generally accepted accounting principles and containing the accountant's audit opinion or review opinion of the financial statements with no adverse opinion;*	***Chapter 11, Section 2(a)(vi)(A)*** *Audited financial statements supporting the following comparative documents, prepared and certified by an independent Certified Public Accountant who, by reason of education, experience or special training, and disinterest, is competent to analyze and interpret the operator's financial solvency. All statements shall be prepared following generally accepted principles of accounting:*

Attachment A continued	
Federal Rule	*Counterpart LQD Rule Referenced in the Proposed Rule Amendments (3.b and e)*
***30 CFR 800.23(b)(4)(ii)** Unaudited financial statements for completed quarters in the current fiscal year; and*	***Chapter 11, Section 2(a)(vi)(A)(III)** A report for the most recently completed fiscal year containing the accountant's audit opinion or review opinion of the balance sheet and income statement with no adverse opinion.*
***30 CFR 800.23(b)(4)(iii)** Additional unaudited information as requested by the regulatory authority.*	***Chapter 11, Section 2(a)(vi)(A)(I)** A comparative balance sheet which shows assets, liabilities and owner equity for five years. The operator may provide common size documents for confidentiality.* ***Chapter 11, Section 2(a)(vi)(A)(II)** A comparative income statement which shows all revenues and expenses for five years. The operator may provide common size documents for confidentiality.* ***Chapter 11, Section 2(a)(vi)(A)(IV)** Notwithstanding the language in (A) above, unaudited financial statements may be submitted to support the comparative documents where current fiscal year quarters have ended but a CPA opinion has not yet been obtained because the fiscal year has not yet ended.*

****

Conclusion

The Environmental Quality Council, in accordance with the authority granted to it by W.S. § 35-ll-112 As Amended, and having complied with the provisions of the Wyoming Administrative Procedures Act, finds as follows:

1. **These rules provide for the regulation of surface coal mining and reclamation operations in accordance with the requirements of P.L. 95-87.**

2. **These rules and regulations are as effective as those promulgated by the Secretary of the Interior pursuant to P.L. 95-87.**

3. **These 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 regulations are reasonable and necessary for the effectuation of W.S. § 35-11-101 through W.S. § 35-11-1304, As Amended.**

5. **These rules and regulations are necessary and appropriate to protect the public health, safety, welfare, and environment of the State of Wyoming.**

Dated this 22 **day of** FEB **, 2002**

Hearing Examiner, Dr. Jason Shogren
Environmental Quality Council