

NONCOAL CHAPTER 11, IN SITU MINING

TAKINGS CHECKLIST

	CRITERIA	YES	NO
1.	Does the action affect private property? (If no, no further inquiry is necessary.)	X	
2.	Is the action mandated by State or federal law? (If yes, go to question 3. If no, go to question 4.)		X
3.	Does the proposed action advance a statutory purpose?	X	
4.	Does the action result in permanent occupation of private property?		X
5.	Does the action require the property owner to dedicate property or grant an easement?		X
6.	Does the regulatory action interfere with the owner's investment-backed expectations?		X
7.	Does the character of the government action balance the public interest and private burdens?	X	
8.	Does the action deprive the owner of all economically viable uses of the property?		X
9.	Does the action have a significant impact on the landowner's economic interest?		X
10.	Does the action deny the owner a fundamental attribute of ownership?		X
11.	Does the action serve the same purpose that would be served by directly prohibiting use of the land?		X
12.	Could the problem which has necessitated the action be addressed in a less restrictive manner?		X

If these questions are answered yes, legal counsel should be consulted, for it is possible the proposed action will be a taking.

LAND QUALITY DIVISION (LQD)
NONCOAL CHAPTER 11, IN SITU MINING
TAKINGS ANALYSIS

1. Private Property Affected? – YES

The proposed revisions are intended to update regulations for in situ mining operations which may take place on privately owned property.

2. Mandated by State/Federal law? – NO

The proposed revisions to Noncoal Chapter 11 were initiated by the LQD and are intended to update the rules to facilitate more efficient review of permitting actions and provide consistency with the LQD's new Uranium Recovery Program.

3. Advance Statutory Purpose? – YES

The proposed regulations are intended to be consistent with the enabling statutes regarding in situ mining in Wyoming and allow for economic development of a mineral resource while protecting the public and the environment.

4. Permanent Occupation of Private Property? – NO

The proposed regulations do not result in a permanent occupation of private property because they regulate an activity (in situ mining) that has a finite duration.

5. Dedication of property of grant an easement? – NO

The proposed rules do not require a property owner to grant any dedications of property or grant an easement to the property.

6. Action interfere with investment-backed expectations? – NO

The proposed rules regulate an already heavily regulated industry and do not impose additional substantial burdens to in situ mining operations. The rules are also intended to increase the efficiency and reduce ambiguity in the LQD's in situ mining permitting actions, thereby reducing the burden on the regulated community.

7. Does character of government action balance public interest and private burdens? – YES

The proposed rules impact the in situ mining industry (private) while protecting the public interests in the environment (public). The proposed rules are intended to ensure that in situ mining is conducted in a manner that minimizes impacts to the environment while allowing in situ mining operations to economically develop a mineral resource.

8. Action deprive owner of all economically viable uses of the property? – NO

The proposed revisions to the in situ rules only impact one industry or land use. The proposed rules do not preclude any other uses of the property. The proposed regulations also call for the land to be reclaimed to a state that supports returning the land to previous or higher land uses.

9. Does the action have a significant impact on the landowner's economic interest? – NO

The proposed rules do not significantly impact the landowner's economic interest. The proposed rules impact one specific land use (in situ mining) and add very little in the way of increased costs due to additional compliance requirements. In some instances those costs may actually be reduced by the proposed revisions due to a reduction in compliance related costs. It should also be noted that the proposed rules only address one possible use of the land and is therefore narrowly tailored to minimize impacts to a landowner's economic interest and allow a landowner to efficiently develop the mineral resources present.

10. Does the action deny the owner a fundamental attribute of ownership? – NO

The proposed rules do not deny the owner a fundamental attribute of ownership. The landowner would have to voluntarily subject themselves to the regulations by engaging in a mining operation. Mining operations are temporary in nature and the rules require reclamation of the affected land following mining of the land. The proposed revisions impact only one type of land use and do not require a landowner to engage in that land use.

11. Action serve same purpose that would be served by prohibition on use of land? – NO

The proposed rules are intended to allow for the development of mineral resources on the property while at the same time protecting the environment. Prohibition of the land use for in situ mining would not allow the development of the mineral resources.

12. Could be addressed in less restrictive manner? – NO

The proposed rules will be subject to review by the Environmental Protection Agency (EPA) and must be at least as stringent as the Federal regulations. The intent of the proposed revisions is to increase the LQD's efficiency in processing permitting actions and clarify those areas that were identified as needing revision from experience in administering the current Noncoal Chapter 11, In Situ Mining regulations.