



## WYOMING MINING ASSOCIATION

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September 18, 2018

Kyle Wendtland, Administrator  
Wyoming Department of Environmental Quality  
Land Quality Division  
200 West 17<sup>th</sup> Street  
Cheyenne, WY 82002

### **RE: Wyoming Mining Association Comments on Proposed Financial Assurance Rules**

Dear Mr. Wendtland:

The Wyoming Mining Association (WMA) is a statewide trade organization that represents and advocates for 26 mining company members producing bentonite, coal, trona and uranium. WMA also represents 120 associate member companies, one railroad, one electricity co-op, and 200 individual members.

Wyoming Land Quality Division (LQD) has proposed changes to the bonding rules, Chapters 11 and 20 of the Coal Rules and Regulations, and Chapters 6 and 12 of the Non-coal Rules and Regulations. WMA members have reviewed the proposals and found that they are very similar to the proposal considered at the March 2018 Land Quality Advisory Board meeting. The proposals for coal and non-coal do not appear to have any meaningful differences. WMA submits these comments in response to this latest proposal dated August 20, 2018. We also refer to our letter of March 22, 2018 and incorporate those comments into this response. WMA finds that this version of the proposed self-bond rule will remove self-bonding as an option to all but a very few companies in Wyoming. In our March letter regarding the previous proposal, we noted that the credit ratings levels proposed were excessively high and served to disqualify most true mining companies in Wyoming. It was explained that most mining companies do not and likely will not ever reach the ratings levels determined by LQD to be acceptable levels of risks. But not reaching these arbitrary ratings levels does not automatically mean that self-bonding by these companies will be an unacceptable financial risk to the State.

In our March letter we proposed a ratings grid based on credit ratings that reflect levels common or typical of the various mining sectors. The objective was to establish a grid of ratings that would give the State of Wyoming the ability to manage their financial risk while keeping self-bonding a viable financial instrument in Wyoming. Our proposal had two primary components. The first, as noted above, was a level of credit ratings that reflect how the third-party credit rating agencies view healthy mining companies. The second, equally important component was a mechanism for the State to manage self-bonding, and therefore their

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financial risks, through time. We noted that the LQD proposal to require the parent company to be the guarantor could provide considerably more information and confidence to the agency for the management of risks. We demonstrated that when a company was financially healthy, the agency could permit a relatively high level of self-bonding. If financial health began to decline, our proposal demonstrated that the agency would have significant advance warning and could require the operator to replace some or all of the self-bond with other forms of bonding.

We still assert that the proposal in our March letter is an improvement over the LQD proposal. In addition to helping the State to manage financial risk, it keeps self-bonding as a viable financial instrument for use by the industry. After further consideration, we now believe the proposed definition of the ultimate parent entity could actually be a deterrent to additional companies from qualifying for self-bonding for reasons unrelated to the level of financial risk. We acknowledge that the ultimate parent entity requirement was made assuming that the ultimate parent entity would be the most financially sound entity within the corporate structure. However, this effectively ignores non-parent subsidiaries within some very successful national and international corporations that meet all of the various qualifications of financial strength to self-bond. Under this proposal they can no longer be the self-bond guarantor. This may have the unintended consequence of further limiting participation in the self-bonding program because of perceived, but unsubstantiated, financial risks with non-parent operators.

WMA believes this is evidence the proposed rule is not yet acceptable for promulgation. We are not sure the definitions are clear enough to advise the Land Quality Advisory Board and ultimately the Environmental Quality Council to make a final decision. The rule must include a definition of the ultimate parent entity that meets all appropriate legal and practical tests. If this language is not written clearly and fairly it will interfere with the ability of Wyoming's largest businesses to do business in the State.

WMA membership has previously expressed concerns about other provisions of the LQD proposal. Please refer to comments in our letters of March 22 and February 26, 2018. Of particular concern, the proposed rule appears to constitute a taking from those companies in Wyoming that are currently self-bonded to varying levels up to 100% of the calculated bond amounts. The proposed rule should provide for retaining these existing self-bond levels until the financial ratio calculations would require a reduction or the corporate credit ratings begin to decline by more than two levels.

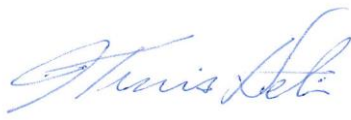
We note that the rule has evolved from the initial proposal in November 2017. WMA believes this evolution is the result of continued discussions between the agency and the various stakeholders. For example, the ten-year mine life provision has been revised into a much more realistic and workable part of the proposal. As noted by LQD early in the process, changes to the Wyoming bonding program are warranted, but the process should not be rushed. The proposed rule needs to be as effective as it can be, and at this time, WMA holds that it is not yet "right". The LQD should create a rule which will be no less effective for Wyoming than current bonding rules have been for the past several decades. If this means the process takes more time than originally scheduled, the agency should embrace the additional time in getting it right. Reiterating a message from our previous comment letters, the self-bonding program has,

“...proven effective for several decades [and it] should not be completely eliminated if there are some redeeming provisions. The vast majority of operators in Wyoming that have used the self-bonding program have been stable and productive. The self-bond program has allowed them to be cost effective. The

result has been world-class performance in meeting reclamation obligations and arguably the strongest mining industry in any of the fifty United States. We believe this performance supports the idea that while adjustments and improvements may be necessary, wholesale replacement of the self-bond program is unwarranted and unwise.”

Thank you for the opportunity to comment, and we encourage you to continue exploring additional and creative options for the reclamation performance bonding program.

Best regards,

A handwritten signature in blue ink, appearing to read "Travis Deti".

Travis Deti  
Executive Director

TD:pmj