

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING



February 25, 2021

IN THE MATTER OF THE)
PROPOSED REVISION OF) STATEMENT OF PRINCIPAL LAND
QUALITY DIVISION) REASONS (SOPR) FOR ADOPTON
RULES RELATED TO THE)
REGULATION OF) DOCKET #: 21-4101
NONCOAL MINING)

Coal Rules and Regulations, Chapter 2
Permit Application Requirements for Surface Coal Mining Operations

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Introduction to Rule Package

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

Summary of Proposed Amendments

Chapter 2 Proposed Changes

Chapter 2, Section 6(b)(ii) was revised to include rules regarding the disposal of decommissioned wind turbine blades and towers as backfill in response to the legislative changes made in Wyoming House Bill HB0129 during the 2020 legislative session in W.S. 35-11-402(a)(xiii). Additional revisions were made to correct grammatical errors and provide consistency with the Secretary of State’s Rules on Rules.

DEPARTMENT OF ENVIRONMENTAL QUALITY

LAND QUALITY DIVISION

CHAPTER 2

PERMIT APPLICATION REQUIREMENTS FOR SURFACE COAL MINING OPERATIONS

Section 1. General Requirements.

(a) All applications shall be filed in a format required by the Administrator and shall include, at a minimum, all information required by the Act and, ~~for surface coal mining operations,~~ all the applicable information required under Sections 2 through 5 of this Chapter. All applicants must swear or affirm, under oath and in writing, that all information you provide in an application is accurate and complete. The Division may establish a central file to house an applicant's identity information, rather than place duplicate information in each of an applicant's permit application files and this information will be made available to the public upon request.

Redundant language removed.

...

Section 2. Adjudication Requirements.

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

First instance of a reference to a statute should include the full reference per the Secretary of State's Rules on Rules.

(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 persons performing a function similar to a director and persons 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 shareholders, officers, and directors, or other persons 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 operate or previously operated a surface coal mining operation in the United States within the five year period preceding the date of submission of the application;

(C) Taxpayer identification numbers for the applicant and operator;

(D) The names, addresses, and telephone numbers for each business entity in the applicant's and operator's organizational structure, up to and including the ultimate parent entity of the applicant and operator. For each business entity identified, the applicant shall also provide the names, addresses, and telephone numbers for every president, chief executive officer, director, or other persons performing in similar roles and every person who owns, of record, ten (10) percent or more of the entity;

(E) The name, address, telephone number, position title, and relationship to the applicant and operator including percentage of ownership and location in the organizational structure and date the person began functioning in that position for every officer, partner, member, director, person performing a function similar to a director and person who owns, of record, ten (10) percent or more of the applicant or operator;

Grammatical corrections and removal of numbers based on comments from AG.

...

(G) If the applicant has previously applied for a coal mining permit and the information required in subsections (B) – (F) above is already in the Applicant Violator System (AVS), then the information may be updated as follows:

First instance of the use of the term prior to the use of the acronym.

...

(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, during the five year period preceding the date of submission of the application:

(I) Had a Federal or State permit for surface coal mining operations suspended or revoked ~~during the five (5) year period preceding the date of submission of the application~~; or

(II) Forfeited a Federal or State 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~~;

Removed duplicative language.

...

(iii) The right of entry statements and documents required by W.S. § 35-11-406(a)(ii) and (b)(xi), which shall clearly explain and support the legal rights claimed by the applicant and shall also include whether that right is the subject of pending litigation;

(iv) A statement on whether the proposed area to be mined during the term of the permit is within an area designated unsuitable for surface coal mining operations pursuant to W.S. § 35-11-425, under study for any designation, or within an area where mining is prohibited pursuant to Chapter 12, Section 1(a)(v), of the Land Quality - Coal Rules and Regulations. This shall also include the basis on which the applicant claims any available exemption so as to obtain the permit to mine;

Grammatical and formatting corrections.

(v) A list identifying the Mine Safety and Health Administration identification number for all mine facilities that require MSHA approval and licenses, permits or approvals needed by the applicant to conduct the proposed operation, whether and when they have been issued, the issuing authority, and the steps to be taken to comply with the requirements. To the extent possible, the Administrator and Director shall advise, consult, and cooperate with the identified authorities so as to provide for the coordination of review and issuance of these licenses, permits, or approvals with the permit to mine. This list shall contain:

(A) Copies or identifying numbers of all permits obtained from the State Engineer or from any other ~~d~~Division of the Department, ~~including the Solid and Hazardous Waste Management Division~~, together with the following:

Grammatical correction and clarification that permits from any Division shall be identified.

(I) Water Quality Information. The information from the application for the approved Water Quality permit which affirmatively demonstrates:

(1.) There is a detailed plan, with appropriate maps and cross-sections, for the construction and operation of any mine facility capable of causing or contributing to pollution of surface and groundwater. The plan shall be in accordance with Chapters ~~3 H~~ and ~~11 XI~~, and, as applicable, Chapter 10 ~~X~~, of the Department's Water Quality Division Rules and Regulations. As applicable, any plans shall include a copy of the NPDES permit granted by the Water Quality Division and quantitative limits on pollutants in discharges of water from all point sources.

(2.) There is a plan for the collection, recording, and reporting of groundwater quality and surface water quality according to Chapter ~~2 H~~, Section 12, of the Water Quality Division Rules and Regulations. This plan shall, at a minimum, be adequate to measure accurately and record water quantity and quality of the discharges from the

permit area in order to plan for modification of surface mining activities, if necessary, to minimize adverse effects on the water of the State.

(II) Solid Waste Information. The information from the application for the approved permit(s) for any Solid Waste Management Facility(ies) located within the proposed permit area. Note that a Solid Waste Management Facility, as defined by W.S. § 35-11-103(d)(ii), is a facility that receives solid waste which is generated outside the proposed permit area by any activity other than a mine mouth power plant or mine mouth coal drier. Solid Waste Management Facilities are subject to the permitting, bonding and performance standards of Article 5 of the Environmental Quality Act in addition to the performance standards in Chapter 4, Section 2(c)(xiii)(C) of these ~~Rules~~Rules.

(III) State Engineer Information. The information from the application for the approved permit to construct a reservoir to store or impound water which affirmatively demonstrates that the reservoirs will be constructed and maintained in accordance with the requirements set out in Chapter ~~V, Section 8, 5~~ of the State Engineer's Surface Water Rules and Regulations. In addition, if the application includes a proposed transfer of a well for use as a water well, the application shall contain information from the approved application for a permit to appropriate groundwater which affirmatively demonstrates a plan for construction, completion and removal of wells in accordance with requirements which are at least as stringent as those governing wells drilled in conjunction with surface coal mining or exploration operations.

Roman numeral chapter references updated to current format. Grammatical corrections and additional formatting changes.

...

Section 3 **Vegetation Baseline Requirements.**

(a) The plan for a baseline vegetation study to establish baseline conditions shall be submitted to the Administrator prior to the field sampling season for review and approval, prior to implementation, unless otherwise approved by the Administrator.

(b) If baseline information was previously collected in the area for a different permit or project, then the Administrator may require resampling. The Administrator's determination as to whether resampling is required, and to what extent, will be based upon:

- (i) Differences in scope between the permits or project;
- (ii) Differences in existing and historic conditions;
- (iii) Improvements in sample collection techniques;

(iv) The elapsed time since the last evaluation of the presence of threatened and endangered species; ~~or~~ and

(v) Concerns with sampling methodology.

(c) The applicant shall map the vegetation communities within the permit area and adjacent area and shall sample and describe the characteristics of vegetation communities within the permit area, ~~to include:~~

(i) The map shall show the vegetation communities in the permit and adjacent lands. Communities that are ~~2~~ two acres ~~or and~~ larger shall be mapped. Inclusions within larger communities do not need to be mapped as separate vegetation communities. The applicant may use the terminology used by the Natural Resources Conservation Service ~~NRCS~~ in naming vegetation communities.;

(ii) The map shall be of a scale approved by the Administrator and use an aerial mosaic, ~~or~~ USGS topographic, or equivalent, map as a base.;

Grammatical corrections and replaced acronym with full name. Acronym removed because it is not used again within the chapter.

...

(d) Percent cover, by vegetation community, shall be estimated using either:

(i) Quantitative methods, as approved by the Administrator, when the applicant intends to develop a technical standard or when the Administrator determines the study area is in a location that baseline vegetation has not been adequately described.

(ii) With approval of the Administrator, semi-quantitative methods as outlined below shall be used when the applicant does not intend to use a technical standard or those areas where the Administrator determines there is sufficient quantitative vegetation baseline in the general area.

(A) The quadrat or point intercept method shall be used except there is not a sample adequacy requirement. The number of samples per vegetation community and ~~reference area~~ Reference Area shall be:

<u>Vegetation Community size</u>	<u>No. of samples</u>
0 to 5 acres	3
>5 to 50 acres	5
>50 acres	10

Revised for consistency throughout the chapter.

...

(f) A “Reference Aarea”, ~~as defined in Chapter 1, Section 2,~~ shall be established for

each vegetation community which will be disturbed unless a technical success standard is proposed for evaluation of revegetation.

Revised for consistency throughout the chapter.

...

(i) The applicant shall compile an inventory, by vegetation community, of all plants species observed within the study area and corresponding Reference Areas, in accordance with the following requirements:

(i) The plant species shall be listed:

(A) By “Life Forms ~~life forms~~” as defined in Chapter 1, Section 2;

(B) By scientific binomial (with reference to the botanic key used);

(C) By common name; and

(D) Identified as a native (~~native to North America~~) or introduced species.

Revised for consistency throughout the chapter and grammatical correction.

...

(j) Each baseline vegetation study shall present descriptions of the vegetation communities and, unless a technical success standard is proposed for evaluation of revegetation, present descriptions of the Reference Areas/~~Unit~~. The descriptions shall include:

Language removed to be consistent with terms used throughout the chapter.

...

~~(viii) The presence of Designated Noxious Weeds or Prohibited Noxious Weeds identified in Chapter 2, Section 3(k), the description shall include information on the present and historical weed treatment; and~~

(~~viii~~) A three-inch by five-inch (or larger) color photograph, color copy or digital photograph panorama, showing the general features of each “Vegetation Community” and “Reference Area ~~area~~”.

(k) Each baseline vegetation study shall include documentation of the presence or absence of Designated Noxious Weeds or Prohibited Noxious Weeds as defined by the ~~State of Wyoming~~, Department of Agriculture and information on the present and historical weed treatment.

Redundant language removed and corrections made to provide consistency to references made throughout the chapter.

...

Section 4. Other Baseline Requirements.

(a) A description of the lands to be affected within the permit area, how these lands will be affected, for what purpose these areas will be used during the course of the mining operation, and a time schedule for affecting these lands. This description shall include a ~~description of:~~

(i) The major past and present uses of the proposed permit area and adjacent lands. Previous uses of affected lands must be ranked on an individual basis according to the overall economic or social value of the land use to the landowner, community, or area in which these lands are found. The Administrator ~~of the Land Quality Division~~ shall bear the responsibility of making the final decision on the ranking of land uses in a particular area. This decision must be based on information concerning the economy, historical use of the area, and the needs and desires of the landowner. The Administrator may consult the Land Quality Advisory Board ~~may be consulted~~ for suggestions or recommendations on the ranking of land uses in a given area. The present land uses shall be listed using the definitions of Chapter 1, and the vegetation communities which comprise each land use shall be presented.

Grammatical corrections.

...

(ix) Maps and cross-sections of the area, certified by a registered professional engineer, licensed professional geologist, or other qualified professional (as required by W.S. §§ ~~33-29-139~~ 401 through 406 and W.S. §§ 33-41-101 through 121), showing:

Statutory references updated.

...

(F) The location of areas on which mining is limited or prohibited within or adjacent to the permit area, pursuant to Chapter 12, Section 1(a)(v), Land Quality - Coal Rules and Regulations;

Revised for consistency.

...

(x) Overburden, topsoil, subsoil, mineral seams or other deposits.

(A) Overburden - the operator shall submit a description including the

thickness, geological nature (rock type, orientation, etc.), the presence of toxic, acid-forming, or vegetative-retarding substances, or any other factor that will influence the mining or reclamation activities.

(B) Topsoil and subsoil information including a soil survey of the affected lands conducted in accordance with the standards of the National Cooperative Soil Survey of the U.S. Department of Agriculture. If alternative materials are proposed to be used as a supplement to or substitute for topsoil, their suitability shall be demonstrated in accordance with Chapter 4, Section 2(c)(ix).

(I) Topsoil - the operator shall submit a description of the thickness and nature of the topsoil, if any, over the proposed affected lands. A soils survey and soil analyses conducted in accordance with standard methods acceptable to the Administrator, may be required to show variations in topsoil depth and suitability.

(II) Subsoil – the operator shall submit a description of the nature, thickness and distribution of the subsoil, if any, shall be described over the proposed affected lands. Detailed analyses of the subsoil may be required, if there is reason to suspect it may be of better quality for revegetation than the topsoil, or if it is to function as a topsoil supplement in reclamation efforts. If the subsoil is suspected of containing substances that might cause pollution or hinder reclamation, analyses will provide a basis for determining how to handle this material during reclamation.

Grammatical correction.

(C) Mineral seams or other deposits - the operator shall submit a description of the mineral seams in the proposed permit area, including, but not limited to, their depth, thickness, orientation (strike and dip), and rock or mineral type. Maps or geologic cross-sections may be used to illustrate the description of the mineral seams.

(xi) Complete information on surface water for the permit area and adjacent areas. This shall include the following:

...

(xii) Complete information on groundwater which may be affected in the permit area and adjacent areas. This shall include the following:

(A) The operator shall submit an estimate of the depth and quantity of any groundwater existing in the proposed permit area down to and including the strata immediately below the lowest mineral seam to be mined. The Administrator may require the operator ~~may be required~~ to conduct test drilling and monitoring in order to determine the exact depth, quantity and quality of groundwater in geological formations affected by the mining operations. Such drilling will require permits from the State Engineer's Office;

Grammatical correction.

...

(xiii) Water rights.

(A) The operator shall list by name and owner all known adjudicated and permitted water rights on the proposed permit area and adjacent lands.

(B) The operator shall submit a list by name and owner of all existing water wells on the proposed permit area and adjacent lands, including all wells filed with the State Engineer's Office within three miles ~~or less from~~ of the proposed permit area. ~~A The Administrator may require a survey of the premining water levels in the above wells may be required.~~

Grammatical corrections.

...

(xvii) Boundaries and descriptions of all cultural, historic and archaeological resources listed on, or eligible for listing on, the National Register of Historic Places. In compliance with the Archaeological Resources Protection Act of 1979 (P.L. 96-95), this information shall not be placed on display at the county clerk's office (as required by W.S. § 35-11-406(d)) where such resources occur on lands owned by the United States. This information shall be clearly labeled as "Confidential" and submitted separately from the remainder of the application materials. Requests to disclose confidential information shall be administered under the Department's ~~of Environmental Quality~~, Rules of Practice and Procedure, the Wyoming Public Records Act (W.S. §§ 16-4-201 ~~thru~~ through 16-4-205 ~~(2007)~~) and the ~~Wyoming~~ Environmental Quality Act ~~(2007)~~.

Statutory references updated.

(xviii) A description of any significant artifacts, fossil or other article of cultural, historical, archaeological or paleontological value. Upon recommendation by a qualified archaeologist or a qualified paleontologist, the Administrator may require an evaluation of the proposed permit area prior to the time that a permit or license is issued.

Section 5. Mine Plan.

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

(i) A complete operations plan proposed to be conducted during the life of the mine including:

...

(D) Cross-sections, ~~and/or~~ maps and plans of the area to be mined during the term of the permit, ~~unless required for or for the entire permit area if required by the Administrator or as specified below,~~ and certified by a registered professional engineer or professional geologist, showing:

Grammatical corrections.

...

(V) The location, construction, and maintenance of coal stockpiles, and temporary and excess spoil piles shall be provided for the permit area;

(VI) Location of permanently fixed signs and markers in accordance with ~~and meeting~~ the requirements of Chapter 4, Section 2(o); and

Grammatical corrections.

(VII) Location and description of any undisturbed natural barrier which is proposed to be provided to prevent slides and erosion, in accordance with the requirements of Chapter 4, Section 2(s).

...

(vii) A blasting plan for the area to be mined during the term of the permit, which shall include:

(A) Proposed compliance with limitations on ground vibration and airblast, the basis for those limitations, and methods to be applied in controlling the adverse effects of blasting operations. The applicant ~~should~~ shall also include:

Grammatical correction.

...

...

Section 6. Reclamation Plan.

(a) The reclamation plan shall include a time schedule for each major step in the reclamation which coordinates the operator's reclamation plan with the mining plan in such a manner so as to facilitate reclamation at the earliest possible time consistent with Chapter 4, Section 2(k) and the orderly development of the mining property.

(b) The reclamation plan shall also describe how the operator will reclaim the affected lands to the proposed postmining land use in accordance with Chapter 4, Section 2(a) ~~which~~ and shall include:

(i) A plan for topsoil and subsoil removal, storage, protection, and replacement; and for handling and disposal of all toxic, acid-forming, or otherwise hazardous materials, in accordance with Chapter 4, Section 2(c). This shall include a description with location maps and, where appropriate, typical topographic profiles of the mine facility area, mineral stockpiles, spoil piles, and topsoil and subsoil stockpiles. The location; and, where required, the capacity of each stockpile shall be described and shown on a map. The application shall also explain how the topsoil will be replaced on the affected land during reclamation, including a description of the thickness of topsoil to be replaced and procedures that will be followed to protect the topsoil from excessive compaction and wind and water erosion until vegetation has become adequately established.

(ii) A plan for backfilling, grading and contouring of all affected lands in accordance with Chapter 4, Section 2(b), including: ~~The plan shall include:~~

Grammatical corrections.

(A) A description of the reclaimed land surface with contour maps or cross-sections that show the final surface configuration of the affected lands.

(B) Where terraces or benches are proposed, detailed drawings shall be provided which show dimension and design of the terraces, check dams, any erosion prevention techniques and slopes of the terraces and their interval.

(C) Where permanent water impoundments are proposed, contour maps and cross-sections which show slope conditions around the impoundment and the anticipated high and low postmining water level. The plan shall contain a description of erosion control techniques and such other design criteria and water quality and quantity conditions to comply with Chapter 4, Section 2(g)(ii).

(D) Maps and descriptions necessary to demonstrate that the slopes of the reclaimed land surface do not exceed the approximate premining slopes.

(E) Procedures for assuring stability of the reclaimed land surface.

(F) Plans for disposal of inert decommissioned wind turbine blades and towers as backfill, subject to the following requirements:

(I) Disposable material shall be limited to only inert base material from decommissioned wind turbine blades and towers.

(II) Non-disposable material.

(1.) Nacelles and nacelle housings shall not be permitted for use as backfill.

(2.) All mechanical, electrical, and other materials shall be removed from the decommissioned wind turbine blades and towers prior to disposal.

(III) Approved backfill locations.

(1.) Inert decommissioned wind turbine blades and towers shall only be placed in the end walls or the final pit voids;

(2.) The approved materials shall be placed a minimum of twenty feet above the pre-mining potentiometric surface of the coal aquifer and a minimum of twenty feet below the final regraded spoils surface;

(3.) The approved backfill disposal location shall be mapped and a legal description of the location shall be provided. Backfill disposal location maps and groundwater monitoring locations shall be updated annually in the required annual report;

(4.) The approved backfill disposal location may be designated as a joint or alternative land use in the approved reclamation plan (Chapter 2, Section 6(b)(x)(B)). Approval of alternative land uses shall require a demonstration as required in Chapter 2, Section 6(b)(x)(C). The disposal of wind turbine blades and towers must support the postmining land use identified in accordance with the requirements of Section 6(x) of this Chapter.

(5.) Upon final reclamation, a disclosure must be placed on the real property deed for the described lands prior to final bond release.

(6.) The backfill disposal location approved by the Division shall comply with Chapter 4, Section 4 of the Solid and Hazardous Waste Division Rules.

(IV) Closure requirements.

(1.) The wind turbine blades and towers backfill material shall be placed in a lift not to exceed ten feet and covered by a minimum lift of at least fifteen feet of suitable backfill material in accordance with Chapter 4, Section 2(b) of the Division's Coal Rules in order to minimize potential future surface subsidence. Multiple lifts are permitted;

(2.) The groundwater monitoring plan required by Section 5(a)(ix)(D)(II) of this Chapter shall include monitoring wells to be installed and monitored in accordance with the Chapter 4, Section 8(b)(iv)(A) of the Solid and Hazardous Waste Division Rules. The monitoring results shall be reported in the coal annual report; and

(3.) The backfill site shall be released by the Division in accordance with the approved reclamation plan. The groundwater and vegetation monitoring shall continue until final bond release.

(V) Final surface reclamation requirements.

(1.) The final reclamation surface must blend with the surrounding mine reclamation and have a permanent vegetative cover in accordance with Chapter 4, Section 2(d) of the Division’s Coal Rules; and

(2.) Final reclamation must drain properly and not impound water in accordance with the Division’s Coal Chapter 4 requirements.

(VI) The operator shall remit fees quarterly to the Department in the amount of twenty-five percent of any revenues collected by the operator for the disposal of wind turbine blades and towers.

This section was added in response to HB0129 which allows for the disposal of decommissioned wind turbine blades and towers. This section was originally proposed for inclusion in the land use section of this chapter but based on Advisory Board comments that questioned the need for requiring a land use change it was moved to this section on backfilling requirements.

(iii) A plan to assure revegetation of all affected land in accordance with Chapter 4, Section 2(d) of the Division’s Coal Rules. ~~The plan shall include including:~~

Grammatical correction.

...

(iv) A plan for measurement of revegetation success to include:

(A) How a “Reference Aarea” shall be used for cover and production, unless technical standards for cover and production have been approved for a projected postmine community. ~~A “Reference area” is defined in Chapter 1, Section 2.~~

Revised for consistency with the rest of the chapter.

...

(x) A postmining land use plan, including:

(A) The necessary support and maintenance activities that may be needed to achieve the proposed land use.

(B) Where a proposed land use is ~~proposed~~ different from the premining land use:

Grammatical correction.