



# Department of Environmental Quality

*To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.*



Mark Gordon, Governor

Todd Parfitt, Director

Travis Deti, Executive Director  
Wyoming Mining Association  
1401 Airport Parkway, Ste. 230  
Cheyenne, WY 82001

**RE: Response to December 8, 2021 Comments on Proposed Noncoal Chapter 7 – Mine Permit or Research and Development Testing License Revisions**

Dear Mr. Deti:

Thank you for submitting the December 8, 2021 comment letter on the proposed revisions to Noncoal Chapter 7 – Mine Permit or Research and Development Testing License Revisions during the Land Quality Division Advisory Board meeting held on December 9, 2021. After careful consideration of the comments provided, please accept the following responses to those comments.

Response to Wyoming Mining Association (WMA) Comments on Noncoal Chapter 7 – Mine Permit or Research and Development Testing License Revisions Rules

1. **WMA Comment** – Recommends adding definitions or clarifying distinctions for various types of permit revisions (as seen in Guideline 24): i.e. major, minor, non-significant (NSR) and incidental boundary (IBR) revisions.

**LQD Response** – The proposed changes to Noncoal Chapter 7 that were presented to the Advisory Board on 12/9/2021 were based on comments received from the Attorney General's Office (AGO). The comments the AGO provided were part of the required statutory compliance review. The statutes do not currently distinguish between the types of revisions requested and listed by WMA. The use of those terms reflects distinctions in internal record-keeping and tracking for the LQD, but are not contemplated in the statutory language of W.S. 35-11-402(x). Therefore, the LQD is not recommending further changes to Chapter 7, Section 1.

2. **WMA Comment** – Recommends leaving in place Sections 1(c) and (d) and to include a reasonable completeness review period of 30 days instead of including the 90-day review time frame in proposed Section 2(a).

Proposed Rule as Written

Section 1, (e) ~~Non-significant revisions shall be submitted in a format approved by the Administrator. Non-significant revisions to an in-situ mine permit or Research and Development~~

~~Testing License are those which constitute a change described in Chapter 11, Section 19(e). If promptly filed by the operator, and unless notified by the Administrator to delay, the operator may initiate the proposed change. All non-significant revisions shall include:~~

- ~~(i) A brief description of the change and why the change is being sought;~~
- ~~(ii) An outline or index indicating what pages, maps, tables, or other parts of the approved permit or Research and Development Testing License are affected by the revision; and~~
- ~~(iii) Additional information necessary to support or justify the change.~~
- ~~(d) Incidental changes which are not categorized under (b) or (c) of this Section shall be noted in the annual report.~~

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## Section 2. Criteria for Public Notice Requirements.

(a) ~~Within 90 ninety days after receiving a permit or license revision submission of the application for a permit or Research and Development Testing License revision, the Administrator shall notify the operator of whether or not the application is complete and whether the revision is determined to be significant, requiring notice and opportunity for interested person(s) to submit written objections public hearing is required. Unless otherwise instructed, an operator may begin implementing a non-significant permit or license revision upon receiving this determination from the Administrator.~~

**LQD Response** – The proposed rule changes treat each type of revision consistently and gives the LQD the ability to make a determination as to what type of revision each permit action should be classified. Prior to the proposed rule changes, the NSR determinations were left up to the operator at the time of submission. This resulted in inaccurate determinations. This can actually add time to the TFN review process. As proposed, the rules require the LQD to make a completeness review within 90 days of submitting a proposed revision. Current workflow metrics show that the full 90 days is typically not used by the LQD. For those revisions that propose minor changes to the mine and reclamation plan completeness reviews can be completed using less than the full 90 days and are often completed in the office at the time of submission. Therefore, the LQD is not recommending retaining current Sections 1(c) and 1(d) or modifying Section 2(a).

3. **WMA Comment** – Operators need to be able to continue to implement NSR’s unless notified by the Administrator to delay. Language in Section 1(b) has been removed.

### Proposed Rule as Written

~~Section 1(b) Significant revisions are those which constitute a change described in Section 2 of this Chapter, except significant revisions to an in-situ mine permit or Research and Development~~

~~Testing License are those which constitute a change described in Chapter 11, Section 19(b). Any permit may be revised by identifying alterations to the mining or reclamation plan in the annual report or addendum thereto, or by obtaining prior approval from the Department, at the none coal operator's discretion.~~

**LQD Response** – Based on Attorney General’s comments, the above section was removed. Again, this allows the LQD the ability to classify the correct type of revision and all components that will be necessary to implement the proposed revision. Operators should be using Guideline 24, Pre-Application Process in order to identify and define the necessary revision materials prior to the time of submission. This allows for a more complete package to be submitted. This will result in reduced review times necessary for LQD to make a completeness determination. Chapter 7, Section 2(a) also allows for an operator to begin implementation of non-significant revisions upon receiving a determination from the Administrator. Therefore, the LQD is not recommending further changes to Chapter 7, Section 1(b), 1(c) or 2(a).

4. **WMA Comment** – Recommends adding a threshold be identified in proposed Section 1(b)(vi)(B). Suggest that without such a threshold operator will lose flexibility to make needed permit changes quickly and that built in contingencies to the bond calculations are already included.

Proposed Rule as Written

(B C) Any ~~significant~~ changes in the estimate of the total cost of reclaiming the affected and proposed affected lands, computed in accordance with established engineering principles.

**LQD Response** – The term significant was removed based on an AGO’s comment, as the term is difficult to define accurately. Section 1(b)(vi)(B), is part of the initial application materials required. The operator will know best how the proposed change in operations may impact the amount of bond required. If an initial review reveals that a change is necessary to the required bond amount early, this will allow LQD to coordinate with the bonding section early in the process to reduce submittal and review times. This will actually improve permit approval times. Therefore, the LQD is not recommending further changes to Chapter 7, Section 1(b)(vi)(B).

5. **WMA Comment** – WMA membership recommends that Section 2 (a) include timeframes for the type of revision versus all revisions requiring a 90-day review, and incorporate a timeframe for subsequent reviews and/ or submittals by agency and operator. By moving all types of revisions to a 90-day review the overall permitting time frame is lengthened, even for simple changes (NSR).

**LQD Response** – The LQD does not have statutory authority to define review times for various types of revisions. The statute does not distinguish the revision types based on complexity. Further, there is no statutory basis that would provide for response time frame requirements by the operator. If a response time frame requirement were placed on operators, it would have the effect of removing flexibility in the revision and permitting process for the

operators. Therefore, the LQD is not recommending further changes to Chapter 7, Section 2(a). See the response to comments in 7 below also.


6. **WMA Comment** – WMA membership believes the use of non-significant revision in Sec 2(a) and Section 3(a) seems confusing and contradictory. We question how an NSR is defined and a completeness review done in 30 days or 90 days since Sec 2(a) provides for 90-days to determine that an application is complete while adding another 30 days for a decision. Clearer language is needed so that an operator can make a reasonable estimate of the time required to complete a permit revision, further lengthening the permitting time frame for nonsignificant revisions is not reasonable.

**LQD Response** – The LQD does not see the rules as conflicting. Each revision is given 90 days for a completeness review. If the review determines that the revision does not require public notice, the LQD must make a final decision on the application within 30 days. Current workflow metrics show that the full 90 days is not used by LQD. The LQD recommends that the Pre-Application guideline (Guideline 24) be followed by the Operators to streamline the NSR reviews. Therefore, the LQD is not recommending further changes to Chapter 7, Section 2(a) and 3.

7. **WMA Comment** – WMA membership recommends that there should also be reasonable time frames established in the rules for an operator to submit the required application for a permit or license revision once they have received electronic or verbal notification and written documentation outlining the basis for changes.

**LQD Response** – The LQD does not have the statutory authority to define response times from the operators. If a time frame requirement were placed on operators, it would have the effect of removing flexibility in the revision and permitting process for the operators. Operators are encouraged to respond at their earliest convenience. Therefore, the LQD is not recommending further changes to Chapter 7.

Sincerely,

  
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Kyle Wendtland, Administrator  
Land Quality Division  
Department of Environmental Quality

Date: March 3, 2022

cc: Muthu Kuchanur, DEQ Division Services  
Craig Hults, DEQ LQD