

Certification Page Regular and Emergency Rules

Revised May 2014

Emergency Rules (After completing all of Sections 1 and 2, proceed to Section 5 below)

Regular Rules

a. Agency/Board Name Department of Enviro	nmental Quality - Land Quality D	livision				
b. Agency/Board Address 122 West 25th Street, Herschler Building - 3W		c. City Cheyenne			d. Zip Code 82002	
e. Name of Contact Person Craig Hults		f. Contact Telephone Number (307) 777-7066				
g. Contact Email Address craig.hults@wyo.gov			h. Adoption Date July 10, 2014			
. Program Land Quality - Coal						
2. Rule Type and Inform	nation: For each chapter listed, indicate if the	rule is New, Amended, or Repealed.				
If "New," provide the Enr	olled Act numbers and years enacted:					
c. Provide the Chapter Number (Please use the Additional Rule)	er, Short Title, and Rule Type of Each Chap e Information form for more than 10 chapters, an	ter being Created/Amended/Repeale d attach it to this certification)	d			
Chapter Number.	Chapter Name:			Amended	Repealed	
Chapter Number: 2	Chapter Name: Permit Application Requirements			Amended	Repealed	
Chapter Number: 6	Chapter Name Blasting for Surface Coal	Chapter Name: Blasting for Surface Coal Mining Operations		Amended	Repealed	
Chapter Number: 12	Chapter Name: Procedures Applicable to St	Chapter Name Procedures Applicable to Surface Coal Mining Operations		Amended	Repealed	
Chapter Number: 16	Chapter Name: Inspections, Enforcement and Penal	Chapter Name: Inspections, Enforcement and Penalties for Surface Coal Mining Operations		Amended	Repealed	
Chapter Number:	Chapter Name:	Chapter Name:		Amended	Repealed	
Chapter Number.	Chapter Name:	Chapter Name:		Amended	Repealed	
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Chapter Number:	Chapter Name:	Chapter Name:		Amended	Repealed	
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3. State Government Notice	of Intended Rulema	aking			
a. Date on which the Notice of Intent cont		May 23, 2014	1		
b Date on which the Notice of Intent and proceed rules in strike and underscore					
format and a clean copy were provided	to the Legislative Service O	ffice: May 23, 2014	1		
c. Date on which the Notice of Intent and format and a clean copy were provided		May 23, 2014	-		
4. Public Notice of intended					
		ely request for advance notice. 🗹 Yes	No N/A		
b. A public hearing was held on the propo	sed rules. 🗹 Yes 🚺 No				
If "Yes." Date: July 10, 20	14 ^{Time:} 10:00am	City: Laramie	Location: University of Wyoming School of Energy Resources, Encana Auditorium, 1000 E. University Drive		
5. Final Filing of Rules		and a serie which have been as a series of			
a. Date on which the Certification Page w	• •	I rules were sent to the July 18, 2	014		
Attorney General's Office for the Go b. Date on which final rules were sent to t		1997 and a standard and a standard and and a standard and and a standard a			
		July 18,	2014		
c. Date on which a PDF of the final rules i	was electronically sent to the S	Secretary of State: July 18,	2014		
6. Agency/Board Certificati	on				
The undersigned certifies that the for		.			
Signature of Authorized Individual (Blue ink as per Rules on Rules, Section 7)	1001				
Printed Name of Signatory	Todd Parfit	Todd Parfitt			
Signatory Title	natory Title Director, Department of Environmental Quality				
ate of Signature July 18, 2014					
7. Governor's Certification					
I have reviewed these rules and deter	mined that they:				
 Are within the scope of the Appear to be within the sci Are necessary and that I c Therefore, I approve the same.	ope of the legislative purpos	se of the statutory authority; and, if em	ergency rules,		
Governor's Signature					
Date of Signature					
	- A.B.				

Attorney General: 1. Statement of Reasons; 2. Original Certification Page; 3. Summary of Comments (regular rules); 4. Hard copy of rules: clean and strike/underscore; and 5. Memo to Governor documenting emergency (for emergency rules only).

LSO: 1. Statement of Reasons; 2. Copy of Certification Page; 3. Summary of Comments (regular rules); 4. Hard copy of rules: clean and strike/underscore; 5. Electronic copy of rules (PDFs) emailed to <u>Criss.Carlson@wyoleg.gov</u>: clean and strike/underscore; and 6. Memo to Governor documenting emergency (for emergency rules only).

SOS: 1. PDF of clean copy of rules; and 2. Hard copy of Certification Page as delivered by the AG.

BEFORE THE

ENVIRONMENTAL QUALITY COUNCIL

STATE OF WYOMING

July 10, 2014

IN THE MATTER OF THE)	
PROPOSED REVISION OF)	LAND QUALITY DIVISION
THE DEPARTMENT OF)	ANALYSIS OF COMMENTS
ENVIRONMENTAL QUALITY)	
LAND QUALITY DIVISION)	DOCKET NO. 14- 4101
COAL RULES AND REGULATIONS)	

COAL – CHAPTERS 1, 2, 6, 12 and 16

Coal Rule Package – Blasting, Valid Existing Rights, Ownership & Control, Transfers

The following is an analysis of the comments received on the Coal Rule Package for Chapters 1, 2, 6, 12 and 16. The Land Quality Division (LQD) received one comment on the proposed rules during the public comment period which ran from May 23, 2014 until July 8, 2014. All comments are discussed in more detail below.

Wyoming Game & Fish Department

The Game and Fish Department commented that they did not have any terrestrial wildlife or aquatic resource concerns. The Game and Fish Department did not offer any substantive comments.

The LQD did not make any changes to the proposed rules based on comments received during the comment period.

BEFORE THE

ENVIRONMENTAL QUALITY COUNCIL

STATE OF WYOMING

July 10, 2014

IN THE MATTER OF THE) PROPOSED REVISION OF) LAND QUALITY DIVISION) RULES RELATED TO THE) REGULATION OF COAL) MINING)

STATEMENT OF PRINCIPAL REASONS (SOPR) FOR ADOPTION

DOCKET #: 14-4101

Coal Rules and Regulations, Chapters 1, 2, 6, 12 and 16

Blasting, Valid Existing Rights, Ownership & Control, Transfers

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Introduction to Rule Package

The proposed rules presented in this rule package are intended to address concerns related to the effectiveness of the Land Quality Division's Coal Rules and Regulations. These concerns were identified by the Office of Surface Mining (OSM) during their review of previously submitted rule packages and during their annual oversight of Wyoming's program. The proposed rules address OSM concerns related to blasting, valid existing rights, ownership and control and transfer, assignment or sale of permit rights for coal mining operations. The LQD has revised Chapters 1, 2, 6, 12 and 16 to address the OSM's concerns regarding the effectiveness of Wyoming's program.



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The proposed rules in this rule package come from four distinct sources. First, the OSM sent the LQD a Concern Letter on April 9, 2013. This concern letter addressed issues related to the OSM's review of Wyoming's January 8, 2013 formally proposed amendment which proposed changes to Wyoming's Coal Rules and Regulations. The concern letter identified seven areas of concern with the January 8, 2013 formal amendment. These concerns are detailed in the Statement or Reasons that follows below. The proposed rules are intended to address those seven concerns.

Second, the OSM sent the LQD a Concern Letter on June 24, 2013. This concern letter addressed issues related to the OSM's review of Wyoming's January 4, 2013 formally proposed amendment which proposed changes to Wyoming's Coal Rules and Regulations. The concern letter identified three areas of concern with the January 4, 2013 formal amendment. These concerns are detailed in the Statement of Reasons that follows. The proposed rules are intended to address those three concerns.

Third, during the OSM's 2013 review of the LQD's blasting program, the OSM concluded that in one instance the blasting rules were less effective than the corresponding Federal regulations. In particular, the OSM had a concern regarding periodic monitoring of blasting operations. The LQD has addressed that concern in this rule package by removing the language that was the source of the OSM's concern.

Fourth, the proposed draft rules were submitted informally to the OSM for a final review prior to the February 2014 Advisory Board meeting and the OSM responded with additional concerns. Draft rule language was presented to the Advisory Board which was intended to address the OSM's concerns as outlined in their response to the informal submittal.

The proposed rules in this rule package are intended to address concerns that the LQD's rules were less effective than the corresponding Federal regulations in those instances that were identified in the two concern letters, 2013 oversight and response to the LQD's informal submittal. The proposed rules were drafted to be consistent with the Federal regulations in order to ensure that the LQD's rules are as effective as the OSM's rules.

Summary of Proposed Amendments

Chapter 1 Rules

Revisions were made to the definition of "Control or controller" and "Notice of violation". Control or controller was revised to add the term "surface" when referring to coal mining operations. Notice of violations was revised to correct a grammatical error.

Chapter 2 Rules

The title to Chapter to was revised to include "for Surface Coal Mining Operations".

Chapter 2 was also revised to include clarifying language regarding the identification of interests and to address grammatical errors.

Chapter 6 Rules

The title of Chapter 6 was revised to be consistent with other recently revised chapters and to remove Administrator discretion to require periodic monitoring of blasting to address the OSM's concern that the regulations was less effective than the corresponding Federal regulation.

Chapter 12 Rules

Chapter 12 was revised to correct several grammatical errors, add minimum requirements for retaining records related to ownership and control findings, clarify language regarding exhausting administrative remedies before seeking judicial review, add the requirement that the Division update AVS following any findings regarding ownership and control and to add specific requirements for the transfer, assignment or sale of permit rights.

Chapter 16 Rules

Chapter 16 was revised to correct two grammatical errors and add the term "coal" to a section that referred to surface mining operations.

Summary of February 24, 2014 Advisory Board Meeting

The Land Quality Advisory Board met on February 24, 2014 to review the proposed rules presented in this rule package. Revisions to the rule package were made prior to the Advisory Board meeting in order to address comments from the OSM on the draft proposed rules that were submitted to the OSM informally for review on January 28, 2014. These revisions were presented as a response to comments and discussed during the meeting.

The Advisory Board concluded that the rules should move forward to formal rulemaking as presented with one exception. An additional citation to the Federal rules was added to Chapter 12, Section 1(a)(vii)(F) as discussed during the Advisory Board meeting (2/24/14 Meeting Transcript, pgs. 24-34). The change is intended to address the Board's concern that the term "conveniently" as used in subsection (F) could be open to interpretation and should therefore be further clarified. The Board concluded that the best approach would be to cite to the Federal regulations found at 30 CFR 840.14(b)-(d) in order to clarify that the LQD would be administering these rules using the Federal method to determine compliance with what "conveniently" would mean in the context of availability of public records related to Valid Existing Rights determinations.

The authority to amend these rules is provided by Wyoming Statute (W.S.) §§ 35-11-112(a)(i), 35-11-114(b), 35-11-402(a), 35-11-406, 35-11-408, 35-11-415(xi) and 35-11-902.

DEPARTMENT OF ENVIRONMENTAL QUALITY

LAND QUALITY DIVISION

CHAPTER 1

AUTHORITIES AND DEFINITIONS FOR SURFACE COAL MINING OPERATIONS

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Section 2. **Definitions.** The definitions included in the Wyoming Environmental Quality Act, are hereby adopted by this reference. All references to the "Act" herein refer to the Wyoming Environmental Quality Act, as amended.

(aa) "Control or controller" as used in Chapters 1, 2, 12 and 16 means or refers to:

(i) A permittee of a <u>surface</u> coal mining operation;

(ii) An operator of a <u>surface</u> coal mining operation; or

(iii) Any person who has the ability to determine the manner in which a <u>surface</u> coal mining operation is conducted.

The addition of the word surface was in response to the Office of Surface Mining's (OSM), April 9, 2013 Concern Letter that stated that "Wyoming did not include the word surface in its newly proposed definition of Control or Controller" and was therefore less stringent than the Surface Mining Control and Reclamation Act (SMCRA) and less effective than the corresponding Federal regulations at 30 CFR §701.5 (4/9/13 Concern Letter, Section 2).

•••

(co) "Notice of violation" means a written notification from <u>the</u> Department of Environmental Quality or other governmental entity as specified in the definition of "violation" in Chapter 1, Section 2 and the procedures outlined in Chapter 16 of the Land Quality Division, Rules and Regulations.

The above revision was made to correct a typographical error as indicated in the OSM's, April 9, 2013 Concern Letter (4/9/13 Concern Letter, Section 1.a.)

DEPARTMENT OF ENVIRONMENTAL QUALITY

LAND QUALITY DIVISION

CHAPTER 2

PERMIT APPLICATION REQUIREMENTS

FOR SURFACE COAL MINING OPERATIONS

The phrase "for surface coal mining operations" was added back into the title of Chapter 2 in response to the OSM's, April 9, 2013 Concern Letter (4/9/13 Concern Letter, Section 2).

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Section 2. Adjudication Requirements.

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

- (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 person performing a function similar to a director and person 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 shareholder, officers and director or other person performing a function similar to a director, and resident agent(s) of the applicant. This shall also include <u>a list of all</u> the names under which the applicant, <u>the applicant's partners</u> or principal shareholder<u>s</u>, and the operator and the operator's partners or principal shareholders operates or previously operated a surface coal mining operation in the United States within the five years <u>period</u> preceding the date of <u>submission of the</u> application;

The revised language above is intended to address the OSM's concern the existing language in Subsection (B) warranted the inclusion of the revised language in order to be consistent with and no less effective than both the Federal counterpart rule at 30 CFR §778.12(a) and rule language in Chapter 12, Section 2(a)(i)(F) (4/9/13 Concern Letter, Section 3). Subsection (B) was further revised in response to the OSM's comments on the draft package which stated that additional grammatical changes were

required to address the potential for multiple partners and shareholders of the applicant and to make the proposed rule language in Chapter 2, Section 2(a)(i)(B) consistent with and no less effective than the corresponding Federal regulations at 30 CFR §778.12(a) (2/10/14 Review Letter, Section 2).

(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:

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

The term "surface" was added in response to the OSM's April 9, 2013 Concern Letter (4/9/13 Concern Letter, Section 2). Grammatical revisions were also made to address the OSM's comments on the proposed rules as they were originally drafted in the LQD's informal submittal (2/10/14 Review Letter, Section 1).

(II) Forfeited a Federal or State $\frac{\text{coal} - \text{mining}}{\text{mining}}$ 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; $\frac{1}{100}$

(III) For each suspension, revocation, or forfeiture identified in subsections (I) and (II) above, the applicant shall provide a brief statement of the facts involved including the permit number, date of action and amount of forfeiture if applicable, responsible regulatory authority and stated reasons for action, current status and identifying information regarding any judicial or administrative proceedings related to the action.

The proposed revision above removes redundant language that became unnecessary when Wyoming last revised this section to include "in connection with surface coal mining and reclamation operations" (4/9/13 Concern Letter, Section 1.b.). The word "or" was removed in order to be consistent with the Federal regulations and address the OSM's comment on the proposed revisions (2/10/14 Review Letter, Section 1).

...

(B) A list of notices of violation required by W. S. § 35-11-406(a)(xiv) that describe or identify the violation, a list of all unabated or uncorrected violation notices incurred in connection with any surface coal mining and reclamation operation that the applicant or operator owns or controls on that date, identify the associated permit and MSHA numbers, the name of <u>the</u> person to whom the violation notice was issued, when it occurred, any abatement action taken and if the abatement period has not expired a certification that the violation is being abated or corrected to the satisfaction of the agency with jurisdiction over the violation. This listing shall include only notices issued to the applicant or operator and any subsidiaries, affiliates, or persons owned or controlled by or under common control with the applicant or operator.

In response to Section 1.c., of the OSM's April 9, 2013 Concern Letter the LQD has revised Subsection (B) above to correct the typographical error (4/9/13 Concern Letter, Section 1.c.).

DEPARTMENT OF ENVIRONMENTAL QUALITY

LAND QUALITY DIVISION

CHAPTER 6

BLASTING FOR SURFACE COAL MINING OPERATIONS

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Section 4. Blasting Standards.

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(b) Limitations.

(i) Airblast shall not exceed the values specified below at any dwelling, public building, school, church, and community or institutional building outside the permit area, unless the building is owned by the operator and not leased to another, or, if leased, the lessee signs a waiver relieving the operator from meeting the limitations. If necessary to prevent damage, the Administrator shall specify lower maximum allowable airblast levels.

Lower frequency limit of measuring system, Hz (+3dB)	Maximum level in dB	
0.1 Hz or lower-flat response ¹	134 peak	
2 Hz or lower-flat response	133 peak	
6 Hz or lower-flat response	129 peak	
C-weighted, slow response ¹	105 peak dBC	

¹ Only if approved by the Administrator.

(A) At the request of the Administrator, t<u>T</u>he operator shall conduct periodic monitoring to ensure compliance with the airblast standards. The Administrator shall request monitoring in certain instances, including but not limited to complaints, blasting in sensitive areas, and in areas where there is reason to believe airblast limits may be exceeded. The measuring systems shall have an upper-end flat frequency response of at least 200 Hz.

The proposed revision above was made to address an OSM concern that Subsection (A) was less effective than the corresponding Federal regulation at 30 CFR 816.67(b)(2)(i) for surface mines and 30 CFR 817.67(b)(2)(i) for underground mines. The OSM identified this concern as part of its EY2013 Annual Oversight Report for the blasting program.

DEPARTMENT OF ENVIRONMENTAL QUALITY

LAND QUALITY DIVISION

CHAPTER 12

PROCEDURES APPLICABLE TO SURFACE COAL MINING OPERATIONS

Section 1. Permitting Procedures.

(a) In addition to the permitting procedures described in the Act, the following shall be applicable to applications for a permit for a surface coal mine operation:

•••

(vii) VER submission requirements and procedures.

(A) A request for a VER determination shall be submitted to the appropriate agency identified in subsection (vi) above if the applicants intends to conduct surface coal mining operations on the basis of valid existing rights under 30 C.F.R. §761.11 (2009), (http://www.gpoaccess.gov/cfr/retrieve.html), or wishes to confirm the right to do so. Requests may be submitted prior to submitting an application for a permit or boundary revision for the land.

The proposed revision above corrects a grammatical error that was identified in the June 24, 2013 Concern Letter (6/24/13 Concern Letter, Section 1.a.). That letter detailed several concerns the OSM had identified related to the LQD's January 4, 2013 formal amendment that addressed rules related to valid existing rights and individual civil penalties.

(B) Initial review of request.

...

(IV) If the information requested in (II) above is not submitted within the time specified or amended the responsible agency shall issue a determination that the VER has not been demonstrated as discussed in Section 1(a)(vii)(D)(IV) below.

The above revision corrects a grammatical error identified by the OSM during its review of the LQD's, January 4. 2013 formal amendment (6/24/13 Concern Letter, Section 1.b.).

(E) Administrative and judicial review. A determination that the VER requestor does or does not have VER is subject to administrative and judicial review under the Wyoming Administrative Procedures Act, W.S. 16-3-101 through 16-3-115 (2011).

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Subsection (E) is revised to remove the "s" at the end of the word "procedure" in order to correct the typographical error (6/24/2013 Concern Letter, Section 1.c.).

(F) Availability of records. When the Land Quality Division is the agency responsible for processing a request subject to notice and comment under subsection (C) above the Division shall make a copy of that request and related materials available to the public in the same manner as public availability of permit applications under these Rules and Regulations. In addition, the Division shall make records associated with that request, and any subsequent determination under subsection (D) above available to the public in accordance with the requirements and procedures of W.S. §35-11-1101 (2011), the Wyoming Public Records Act (W.S. §§ 16-4-201 thru 16-4-205 (2013)), W.S. §35-11-406(d) (2013) and the Division's rules and regulations related to public review and participation, and shall at a minimum make copies of those records immediately available to the public in the area of mining until at least five years after the expiration of the period during which the operation is active or is covered by any portion of a reclamation bond so that they are conveniently available to residents of that area in compliance with 30 CFR 840.14(b), (c) and (d), (2013) (http://www.gpo.gov/fdsys/).

Subsection (F) was revised to address the OSM's concerns regarding revisions that were part of the January 4, 2013 formal amendment. The OSM stated that the revised language presented in the formal amendment only met some of the requirements of 30 CFR 840.14 as referenced in 30 CFR 761.16(g). In most instances records related to mining operations are considered permanent records and would therefore be retained longer than the five years referenced above. Additional statutory and regulatory citations were made to clarify that VER related documents are subject to the same requirements as those for public participation in permit applications. The additional clarifying language is a mirror of the Federal language, except for the references to State requirements, and is intended to assure that the minimum Federal requirements in 30 CFR 840.14 are met (6/24/2013 Concern Letter, Section 3).

(viii) Final Compliance Review. After finding the application administratively complete and suitable for publication but prior to permit issuance, the Department of Environmental Quality shall conduct a review of the following before making a permit eligibility determination under (x) of this section:

...

(B) The information the applicant submitted regarding applicant permit history, AVS information and any other available information to review the applicant and operator's permit history. In addition, the regulatory authority Division shall determine if the applicant and operator have previous mining experience and if the applicant or operator does not have any previous mining experience additional ownership or control investigations may be conducted <u>under subsection (ix)(E) below to determine if someone else with mining experience controls the mining operation; and</u>

The proposed revisions are intended to address the OSM's concern that Subsection (B) warranted "the inclusion of additional clarifying language with respect to conducting additional ownership and control investigations to be consistent with and no less effective than the Federal counterpart rule at 30 CFR 773.10(c)" (4/9/13 Concern Letter, Section 5). The proposed revision above adds the additional clarifying language. In addition the OSM pointed out that "regulatory authority" should be changed to "Division" to be consistent with the remainder of the rules (4/9/13 Concern Letter, Section 5).

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...

(x) In addition to the specific findings required by W.S. § 35-11-406(n) and based on the reviews required in subsection (viii) above, the Land Quality Division (LQD) shall determine whether the applicant is eligible for a coal mining permit. An applicant is not eligible for a permit if the LQD determines that for any surface coal mining operation that:

The proposed revision above addresses a grammatical error as pointed out in the OSM's, April 9, 2013 Concern Letter (4/9/13 Concern Letter, Section 1.d.).

(D) Exceptions

...

(I) An applicant is eligible for a permit if an unabated violation occurred after October 24, 1992 and resulted from an unanticipated <u>event or</u> condition at a surface coal mining and reclamation operation on lands that are eligible for remining under a permit that was held by the person applying for the new permit.

The LQD revised Subsection (D)(I) above in its January 8, 2013 formal amendment to the OSM. The OSM noted that additional language was necessary to make the rule as effective as the Federal counterpart at 30

CFR 773.13(*a*) (4/9/13 Concern Letter, Section 4) during its review of the formal amendment. The proposed revision above addresses that concern.

(xiv) In order to challenge an ownership or control listing or finding a written explanation shall be submitted to the Department of Environmental Quality regarding the basis of the challenge along with any evidence or explanatory materials outlined in subsection (E) below. If the challenge concerns a pending permit application the written explanation shall be submitted to the regulatory authority with jurisdiction over the application. If the challenge concerns the applicant's ownership or control of a surface coal mining operation and the applicant is not currently seeking a permit the written explanation shall be submitted to the regulatory authority with jurisdiction over the surface coal mining operation. The provisions of this section and of subsections D through F below apply only to challenges to ownership or control listings or findings and may not be used to challenge liability or responsibility under any other section of the Wyoming Environmental Quality Act or the Land Quality Division, Coal Rules and Regulations.

(C) At any time a person listed in AVS as an owner or controller of a surface coal mining operation may request an informal explanation from the AVS Office as to the reason they are shown in the AVS in an ownership or control capacity. <u>The AVS Office will provide a response describing why the person is listed in AVS in accordance with 30 C.F.R. §773.26(e) (2013) (http://www.gpo.gov/fdsys/).</u>

Subsection (C) was revised in order to include how the AVS Office will provide a response to the request. 30 C.F.R. §773.26(e) requires the AVS Office to respond to the request within fourteen (14) days. The decision was made to include a citation to the Federal regulations to account for the many variables that may affect the timing of the response if the State were to provide a response. The AVS Office noted that Wyoming may not have access to documents that cause an entry into AVS if the operator has operations in multiple jurisdictions. This deficiency was noted during conversations with OSM regarding the LQD's informal submittal, but was not however noted in the 2/10/14 Review Letter.

(D) When a challenge is made to a listing of ownership or control, or a finding of ownership or control, the challenger must prove by a preponderance of the evidence that they either:

(I) Do not own or control the entire surface coal mining operation or relevant portion or aspect thereof; or

...

...

(II) Did not own or control the entire surface coal mining operation or relevant portion or aspect <u>thereof</u> during the relevant time period.

The revised rule above is intended to clarify Subsection (II) in response to the OSM's April 9, 2013 Concern Letter (4/9/13 Concern Letter, Section 1.e.).

...

(F) Within sixty (60) days of receipt of a challenge as described above, the Division will review and investigate the evidence and explanatory materials submitted and any other reasonable available information bearing on the challenge and issue a written decision. The decision shall state whether the challenger owns or controls the relevant surface coal mining operation, or owned or controlled the operation during the relevant time period. Decisions regarding the challenge will be promptly provided to the challenger by either certified mail, return receipt requested or by any alternative means consistent with rules governing service under the Wyoming Rules of Civil Procedure. Service of the decision will be complete upon delivery and is not incomplete if acceptance of delivery is refused. The Division will post all decisions made under this section on AVS. Appeals of the written decision will be administered under the Department's Rules of Practice and Procedure. Any person who receives a written decision under this section, and who wishes to appeal that decision shall exhaust all administrative remedies under the procedures of the Wyoming Environmental Quality Act, the Department's Rules of Practice and Procedure, the Wyoming Administrative Procedure Act, W.S. 16-3-101 through 16-3-115 (2013) and Chapter 12 of these Rules and Regulations before seeking judicial review. AVS shall be revised as necessary to reflect these decisions. Following the Division's written decision or any decision by a reviewing administrative or judicial tribunal, the Division must review the information in AVS to determine if it is consistent with the decision. If it is not, the Division shall promptly revise the information to reflect the decision.

The proposed revisions above are intended to address the OSM's concern that Subsection (F) above was written to generally in those areas that have been struck out as indicated (4/9/13 Concern Letter, Section 6). The OSM concluded that Subsection (F) rendered Wyoming's program less effective than the corresponding Federal rules at 30 CFR §773.28(e) and (f) (4/9/13 Concern Letter, Section 6). Subsection (F) was revised to require that all administrative remedies be exhausted before seeking judicial review of an ownership and control decision and adds the requirement that the Division update AVS as appropriate in order to be consistent with 30 CFR 773.28(e) and (f).

Subsection (F) was also revised to address the OSM's comment that the proposed revisions removed the requirement that AVS be revised to reflect any decisions on ownership or control (2/10/14 Review Letter, Section 3).

The LQD added language that is consistent with 30 CFR §773.28(d) in place of the second sentence that was struck from the current rule.

(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 permit transfer, assignment or sale of permit rights. In addition, the following requirements are applicable.

(ii) All requirements imposed by W.S. § 35-11-408 and this <u>section</u> provision for <u>shall be applicable to a</u> permit transfer, assignment or sale of permit rights. These requirements shall be met, as evidenced by the written approval of the statement of qualifications by the Administrator and Director, prior to any permit transfer, assignment or sale of permit rights. <u>For purposes of this section</u>, potential transferee, means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.

Subsection (b)(ii) was revised to address the OSM's concern that previous revisions to this section rendered it awkward and lacking specifics related to application approval requirements for a transfer, assignment or sale of permits rights found in the Federal rule at 30 CFR §774.17 (4/913 Concern Letter, Section 7). The OSM indicated that the LQD needed to provide counterparts to the Federal regulations for advertising requirements for new applications (30 CFR 774.17(b)(2)), approval criteria (30 CFR 774.17(d)) and notification requirements (30 CFR 774.17(e)). In addition to the lack of Federal counterparts, the OSM stated that Wyoming's rules all refer to an undefined term, "potential transferee", and did not include a definition for "potential transferee" (4/9/13 Concern Letter, Section 7). The proposed revision above defines "potential transferee" for purposes of transfers, sales or assignment of permit rights as the OSM defines "successor in interest" at 30 CFR §701.5. Grammatical changes were made to improve the readability of Subsection (b)(ii) and specific requirements were added below to address the additional concerns.

(A) The potential transferee shall obtain a renewal bond by either transfer of the permit holder's bond, written agreement with the permit holder, or providing other sufficient bond or equivalent guarantee.

(B) The statement of qualifications shall contain all legal, financial, compliance and related information required by Chapter 2, Section 2(a)(i) through (iii) which would be required if the potential transferee were the original

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applicant for the permit and, in addition, the name, address and permit number of the existing permit holder.

(C) The applicant for a transfer, assignment or sale of permit rights shall advertise the filing of the application in a newspaper of general circulation in the locality of the operations involved once a week for four (4) consecutive weeks, indicating the name and address of the applicant, the permittee, the permit number, the geographic location of the permit and the address to which written comments may be sent.

The revision above is intended to provide a counterpart to 30 CFR 774.17(b)(2) to address the OSM's concern regarding advertisement requirements for newly-filed applications (4/9/13 Concern Letter, Section 7).

(D) Public Participation. Any person having an interest which is or may be adversely affected by a decision on the transfer, assignment or sale of permit rights, including an official of any Federal, State, or local government agency, may submit written comments on the application to the Division within a time specified by the Division.

The revision above is intended to provide a counterpart to 30 CFR 774.17(c) to address the OSM's concern regarding the lack of specific requirements for the transfer, assignment or sale of permits rights in Wyoming's rules and regulations (4/9/13 Concern Letter, Section 7).

(E) Criteria for Approval. The Division may allow a permittee to transfer, assign or sell permit rights to a potential transferee, if the Administrator finds in writing that the potential transferee:

(I) Is eligible to receive a permit in accordance with Chapter 12, Section 1(a)(x), (xi) and (xii);

<u>(II)</u> <u>Has submitted a performance bond or other</u> guarantee, or obtained the bond coverage of the original permittee as required in <u>Subsection (A) above; and</u>

(III) Meets any other requirements specified by the

Division.

The revision above is intended to provide a counterpart to 30 CFR 774.17(d) to address the OSM's concern regarding the lack of criteria for approval by the LQD that allows a permittee to transfer, assign or sell permit rights to a potential transferee (4/9/13 Concern Letter, Section 7). Subsection (I) was revised to include citations to Chapter 12, Section

1(a)(x) through (xii) in response to the OSM's comment on the draft language (2/10/14 Review Letter, Section 4).

(F) <u>Notification.</u>

(I) <u>The Administrator shall notify the permittee</u>, potential transferee, commenters and the Office of Surface Mining of its findings.

(II) <u>The potential transferee shall immediately provide</u> notice to the Division of the consummation of the transfer, assignment or sale of permit rights.

The revision above is intended to provide a counterpart to 30 CFR 774.17(e) to address the OSM's concern regarding notification requirements (4/9/13 Concern Letter, Section 7).

(G) Continued operation under existing permit. The potential transferee shall assume the liability and reclamation responsibilities of the existing permit and shall conduct the surface coal mining and reclamation operations in full compliance with the Environmental Quality Act, the Division's rules and regulations, and the terms and conditions of the existing permit, unless the applicant has obtained a new or revised permit under the Environmental Quality Act and the Division's rules and regulations.

The revision above is intended to provide a counterpart to 30 CFR 774.17(f) to address the OSM's concern regarding the lack of specific requirements for the transfer, assignment or sale of permit rights (4/9/13 Concern Letter, Section 7). Subsection (G) was also revised to state that operations must be conducted in full compliance with the EQA and LQD's rules and regulations as well as the terms and conditions of the existing permit (2/10/14 Review Letter, Section 4).

DEPARTMENT OF ENVIRONMENTAL QUALITY

LAND QUALITY DIVISION

CHAPTER 16

INSPECTIONS, ENFORCEMENT AND PENALTIES FOR

SURFACE COAL MINING OPERATIONS

Section 2. Enforcement.

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(h) Within sixty (60) days after issuing a cessation order, the DEQ will notify in writing the permittee, the operator, and any person who has been listed or identified by the applicant, permittee, or OSM as an owner or controller of the operation as defined in Chapter 1 of these rules and regulations. All cessation orders remain in effect and, unless otherwise ordered, do not affect continuing reclamation operations, until the condition, practice or violation has been abated, or until vacated, modified or terminated in writing by the designated representative, Administrator, Director, or Council. Within 30 days after the issuance of a cessation order the permittee must provide or update all the information required under Chapter 2 related to ownership and or control. Information does not need to be provided if a court of competent jurisdiction granted a stay of the cessation order and that stay remains in effect. Within sixty (60) days of any addition, departure, or change in position of any person identified in Chapter 2, Section 2(a)(i)(E), the applicant or permittee shall provide the information required by that section and the date of any departure.

The proposed revision is intended to correct a typographical error as noted in the OSM's April 9, 2013 Concern Letter (4/9/13 Concern Letter, Section 1.f.).

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Section 4. Individual Civil Penalties

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(c) Amount of Civil Penalty.

(i) In determining the amount of an individual civil penalty assessed under this Section, <u>T</u>the Director shall consider the criteria specified in Section 3 of this Chapter, including: Subsection 4(c)(i) was revised to correct a grammatical error that was identified by the OSM (6/24/13 Concern Letter, Section 1.d.).

(A) The individual's history of authorizing, ordering or carrying out previous violations, failures or refusals at the particular surface <u>coal</u> mining operation;

The term "coal" was added to address a previous disapproval of Subsection (A). The OSM noted that the rules was originally disapproved because "the Federal counterpart provision at 30 CFR §846.14(a)(1) as well as the remainder of Wyoming's rules refer to "surface <u>coal</u> mining operations" (78 FR 10512, 10518, 2/14/2013). The addition of the word "coal" addresses the OSM's concern (6/24/13 Concern Letter, Section 2).

CONCLUSION

The Environmental Quality Council, in accordance with the authority granted to it by W.S. § 35-11-112 As Amended, and having complied with the provision of the Wyoming Administrative Procedures Act, find as follows:

- These rules provide for the regulation of noncoal mining and reclamation operations in accordance with the requirements of W.S. § 35-11-101 through W.S. § 35-11-1803, As Amended (Wyoming Environmental Quality Act), and the requirements of the Surface Mining Control and Reclamation Act, (P.L. 95-87, As Amended).
- 2. These rules and regulations are as effective as those promulgated by the Secretary of the Interior pursuant to P.L. 95-87, As Amended.
- 3. The Department of Environmental Quality, Land Quality Division, Coal Rules and 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.
- These Land Quality Division Coal Rules and Regulations are reasonable and necessary for the effectuation of the Wyoming Environmental Quality Act, W.S. § 35-11-101 through W.S. § 35-11-1803, As Amended.
- 5. These Land Quality Division Coal Rules and Regulations are necessary and appropriate to protect the public health, safety, welfare, and environment of the State of Wyoming.

Dated this 10 th day of July Environmental Quality Council

DEPARTMENT OF ENVIRONMENTAL QUALITY

LAND QUALITY DIVISION

CHAPTER 1

AUTHORITIES AND DEFINITIONS FOR SURFACE COAL MINING OPERATIONS

Section 1. **Authority.** These rules and regulations are adopted by the Environmental Quality Council and the Administrator of the Land Quality Division pursuant to the authority granted the Council and the Administrator by the Wyoming Environmental Quality Act, Sections 35-11-101 through 35-11-1104, Wyoming Statutes, 1977, as amended. These rules and regulations are effective upon filing with the Secretary of State. They become an official part of Wyoming's coal regulatory program when approved by the U.S. Secretary of the Interior or his designee.

Section 2. **Definitions.** The definitions included in the Wyoming Environmental Quality Act, are hereby adopted by this reference. All references to the "Act" herein refer to the Wyoming Environmental Quality Act, as amended.

(a) "Acid drainage" means water with a pH of less than 6.0 and in which total acidity exceeds total alkalinity, discharged from an active or inactive mine or from an area affected by mining and reclamation operations.

(b) "Acid-forming materials" means earth materials that contain sulfide minerals or other minerals which exist in a natural state or if exposed to air, water or weathering processes, will cause acid conditions that may hinder plant establishment or create acid drainage.

(c) "Adjacent areas" means land located outside the permit area upon which air, surface water, groundwater, fish, wildlife, or other resources protected by the Act may reasonably be expected to be adversely impacted by mining or reclamation operations. Unless otherwise specified by the Administrator, this area shall be presumptively limited to lands within one-half mile of the proposed permit area.

(d) "Administrator" means the Administrator of the Division of Land Quality.

(e) "Amendment" means the addition of new lands to a previously approved permit area, as allowed by W. S. § 35-11-406(a)(xii).

(f) "Annual" means a plant which completes its life cycle in 12 months or fewer.

(g) "Applicant" means any "person" seeking a permit, permit revision, renewal, transfer, or other approval from the Administrator to conduct mining and

reclamation operations, or "person" seeking a license to explore, but does not include subsidiaries or parents of the "person", as "person" is defined in W.S. § 35-11-103(a)(vi).

(h) "Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined areas so that the reclaimed land surface closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain.

(i) "Applicant violator system or AVS" means an automated information system of applicant, permittee, operator, violation and related data the Office of Surface Mining Reclamation and Enforcement maintains to assist in implementing the Surface Mining Control and Reclamation Act of 1977, as amended.

(j) "Aquifer" is a zone, stratum or group of strata that stores and transmits water in sufficient quantities for a specific use.

(k) "Augmented seeding" means reseeding in response to the unsuccessful germination, establishment or permanence of revegetation efforts. Augmented seeding resets the applicable liability period. A synonym is reseeding.

(1) "Barren" means any land unit devoid of vegetation, or practically so.

(m) "Baseline vegetation inventory" means a vegetation sampling program executed prior to any significant surface disturbance cause by proposed mining activities. The inventory will quantitatively and qualitatively classify the different plant communities to the specification of Wyoming State Law.

(n) "Belt transect" means a rectangular sampling plot used for the estimation of shrub density (premining and postmining) and postmining species diversity and species composition, each belt transect shall be at least 100 square meters and a minimum of 50 meters in length.

(o) "Best practicable Technology" means a technology based on methods and processes that are both practicable and reasonably economic and is justifiable in terms of existing performance and achievability in relation to the establishment of shrubs in the required density, aerial extent and species.

(p) "Best technology currently available" means equipment, devices, systems, methods, or techniques which, as determined by the Administrator, are currently available and practicable, and will:

(i) Prevent, to the extent possible, additional contributions of suspended solids to streamflow or runoff outside the affected land or permit area. But in no case shall contributions exceed requirements set by applicable State or Federal laws, and

(ii) Minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife and related environmental values, and achieve enhancement of those resources where practicable.

(q) "Biennial" means a plant that lives for two years, producing vegetative growth the first year and usually blooming and fruiting and senescing in the second year and then dying.

(r) "Bond" means a surety or self-bond instrument by which the permit applicant assures faithful performance of all requirements of the Act, all rules and regulations promulgated thereunder, and the provisions of the permit and license to mine. This term shall also include the following, which the operator has deposited with the Department of Environmental Quality in lieu of a Surety Bond or Self-Bond Instrument:

- (i) Federal insured certificates of deposit;
- (ii) Cash;
- (iii) Government securities;
- (iv) Irrevocable letters of credit;

(v) An alternative method of financial assurance that is acceptable to the Administrator and provides for a comparable level of assurance for performance of reclamation obligations. The alternative method of financial assurance must first be approved by the Office of Surface Mining; or

(vi) A combination of any of these bonding methods.

(s) "Bond responsibility period" means the minimum 10 year period during which the bond, in part or wholly, remains in effect.

(t) "Cactus" means any member of the Cactaceae plant family. Members of the Cactaceae plant family are in the lifeform category of succulent.

(u) "Coal exploration" means either:

(i) The field gathering of surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical or other techniques necessary to determine the quality and quantity of overburden and coal of an area. If this activity results in the extraction of coal, the coal shall not be offered for commercial sale (except for test burns); or

(ii) The gathering of environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations.

(v) "Coal mine waste" means coal-processing waste and underground development waste.

(w) "Coal preparation plant" means a facility where coal is subjected to chemical or physical processing or cleaning, concentrating, or other processing or preparation. It includes facilities associated with coal preparation activities, including, but not limited to the following: loading facilities; storage and stockpile facilities; sheds, shops, and other buildings; water treatment and water storage facilities; settling basins and impoundments; and coal-processing and other waste disposal areas.

(x) "Coal-processing waste" means earthen materials which are wasted or otherwise separated from product coal during cleaning, concentrating or other processing or preparation of coal.

(y) "Combustible material" means organic material that is capable of burning.

(z) "Compaction" means the reduction of pore spaces among particles of soil or rock, generally done by controlled placement and running heavy equipment over the earthen material.

(aa) "Control or controller" as used in Chapters 1, 2, 12 and 16 means or refers to:

- (i) A permittee of a <u>surface</u> coal mining operation;
- (ii) An operator of a <u>surface</u> coal mining operation; or

(iii) Any person who has the ability to determine the manner in which a <u>surface</u> coal mining operation is conducted.

(ab) "Cool season" means a plant which generally makes the major portion of its growth during late fall, winter, and early spring. Cool season species generally exhibit the C3 photosynthetic pathway.

(ac) "Cover" means the percent of the ground surface which is covered by the vertical projection of objects on or above that ground surface. The objects may include standing plant material and cryptogams, litter or rock. "Absolute cover" means the percent cover of a given category independent of other categories. The following cover categories or descriptions used are:

(i) "Absolute cover of litter" means the percent of the ground surface which is overlain by litter;

(ii) "Absolute cover of rock" means the percent of the ground surface which is covered by rock;

(iii) "Absolute cover of vegetation" means the percent of the ground surface which is covered by the vertical projections of all live vascular plants;

(iv) "Absolute cover of vegetation by species" means the percent of the ground surface covered by individual live vascular plants;

(v) "Absolute cover of cryptogams" means the percent of the ground surface which is covered by cryptogams.

(vi) "Absolute cover of total ground cover" means the sum of vegetation, cryptogams, litter and rock cover.

(vii) "Absolute cover of bare ground" means the percent of the ground surface which is not covered by the vertical projection of vascular plants and cryptogams, litter or rock.

(viii) "Relative cover" means the expression of any number of cover categories in relation to each other such that the sum of the chosen relative cover values total 100 percent.

(ad) "Cover crop" means a preparatory crop of one or more species seeded and grown prior to the seeding of the permanent seed mixture, for the chief purpose of protecting the soil from erosion and also for improving the soil fertility and structure. The term is synonymous with stubble crop and is considered a type of mulch.

(ae) "Critical habitat" means those areas essential to the survival and recovery of species listed by the Secretary of the Interior as threatened or endangered under the authority of 50 CFR, Part 17.

(af) "Crucial habitat" means those areas, designated as such by the Wyoming Game and Fish Department, which determine a population's ability to maintain and reproduce itself at a certain level over the long term.

(ag) "Cryptogam" means a plant (vascular or non-vascular) that reproduces by spores rather than seeds. A plant in any of these groups: Lichens, Bryophytes (mosses, liverworts, hornworts), Pteridophytes (ferns, moonworts, horsetail, club mosses, spike mosses, quillworts, pepperwort) will be considered cryptogams.

(ah) "Density means the number of individuals per unit area.

(ai) "Designated authorized representative" means, for the purposes of issuing a cessation order, either the Administrator, the district engineer, or other qualified inspector designated by the Director.

(aj) "Developmental drilling" means drilling down to and including the lowest

coal seam to be mined which occurs in or within 500 feet of an active mine pit.

(ak) "Discoverer" means any person conducting or intending to conduct any exploration by drilling. This includes locator, owner or agent thereof who will drill or has drilled the hole.

(al) "Diversion" means a channel, embankment, device, or other man-made structure constructed for the purpose of diverting water from one area to another.

(i) "Permanent diversion" means a diversion remaining after bond release.

(ii) "Temporary diversion" means a diversion utilized during mining or reclamation operations, which must be removed and reclaimed prior to bond release.

(am) "Dominant" means for the purpose of calculating Chapter 4 shrub restoration performance standard, the full shrub or subshrub species with the greatest relative density.

(an) "Drill site" means all areas of land that are or will be disturbed or utilized by exploration drilling. This area includes drill holes or other drilled excavations, drilling pads, and areas disturbed by mud pits, and any land over which drilling mud mixtures overflow or may disturb.

(ao) "Eligible land" means all land to be affected by a mining operation after August 6, 1996 which carries the grazingland land use designation and all affected pastureland land use units which have a full shrub density greater than one full shrub per square meter. Pastureland is eligible only if the surface owner requests that the pastureland be eligible and only if the land units are included in a new permit or permit amendment application which is submitted to the Administrator after approval of this rule by the Office of Surface Mining.

(ap) "Embankment" means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or other similar purposes.

(aq) "Endangered species" means any species which is in danger of extinction throughout all or a significant portion of its range and which has been listed under the federal Endangered Species Act.

(ar) "Enhancement wetland" means a reclaimed postmining wetland which exceeds the minimum required mitigation wetlands acreage required by the Army Corps of Engineers under Section 404 of the Federal Clean Water Act.

(as) "Ephemeral stream" means a stream which flows only in direct response

to precipitation in the immediate watershed or in response to snow melt, and which has a channel bottom that is always above the prevailing water table.

(at) "Essential hydrologic functions" means with respect to alluvial valley floors, those conditions of surface and groundwater hydrology that make water of a suitable quality and quantity usefully available for subirrigation or flood irrigation agricultural activities. These conditions may include, but are not limited to, the erosional state of the stream, the surface water balance, the groundwater balance, the physical and chemical properties of the soils, water and substrata, and topographic configuration.

(au) "Establishment practices" means practices used to facilitate actual establishment of targeted plants and are not intended to continue throughout the bond responsibility period. These practices are acceptable practices, but delay the start of the bond responsibility period until they are discontinued.

(av) "Excess spoil" means spoil material disposed in a location other than the mined-out area, except that spoil material used to achieve the approximate original contour or to blend the mined-out area with the surrounding terrain.

(aw) "Existing structure" means a structure or facility used in connection with or to facilitate surface coal mining and reclamation operations for which construction begins prior to the approval of a State program pursuant to Section 503 of P.L. 95-87.

(ax) "Exploration area" means, for bonding purposes, one or more drill sites, comprising an integrated project conducted by a discoverer within one of the three districts presently established by the Land Quality Division of the Department of Environmental Quality.

(ay) "Exploration by drilling" means any exploration drilling for the purpose of gathering subsurface geologic, physical or chemical data to determine the location, quantity or quality of the natural mineral deposit of an area, excluding holes drilled for use as water wells.

(az) "Farm" means, with respect to alluvial valley floors, one or more land units on which agricultural activities are conducted. A farm is generally considered to be the combination of land units with acreage and boundaries in existence prior to August 3, 1977, or, if established after August 3, 1977, with those boundaries based on enhancement of the farm's agricultural productivity and not related to surface coal mining operations.

(ba) "Flood irrigation" means, with respect to alluvial valley floors, supplying water to plants by natural overflow or the diversion of flows, so that the irrigated surface is largely covered by a sheet of water.

(bb) "Forb" means any herbaceous plant species other than the members of the

grass (Poaceae [Gramineae]), sedge (Cyperaceae) or rush (Juncaceae) plant families.

(bc) "Full shrub" means a perennial woody plant which differs from a tree by normally being shorter in height and by often having several stems arising near the base.

(bd) "Gel strength" means the minimum shear stress which results in permanent deformation of a gel.

(be) "General area" means, with respect to hydrology, the topographic and groundwater basin surrounding a permit area which is of sufficient size, including areal extent and depth, to allow assessment of the impacts resulting from the mining operation on the quality and quantity of surface water and groundwater systems in the basins, including consideration of the interaction of the impacts with adjacent mines.

(bf) "Graminoid" means a plant species of the grass (Poaceae [Gramineae]), sedge (Cyperaceae) or rush (Juncaceae) plant families.

(bg) "Grass" means a plant species of the Poaceae (Gramineae) plant family.

(bh) "Grass-like" means a plant species of the sedge (Cyperaceae) or rush (Juncaceae) plant families that vegetatively resemble members of the grass family Poaceae (Gramineae).

(bi) "Grazing exclosure" means a land unit surrounded and/or covered by fencing or other materials which prevents livestock grazing in order to more accurately estimate the current year's herbaceous production on the land unit.

(bj) "Groundwater" means subsurface water that fills available openings in rock or soil materials such that they may be considered water-saturated.

(bk) "Hazardous materials" means any material or substance which results from or is encountered in a mining operation which could reasonably be expected to cause physical harm if not controlled in an approved manner.

(bl) "Highest previous use" means a sustainable use of the land which has the greatest economic and social values to the people of the area prior to the commencement of the mining operation.

(bm) "Highwall" means the face of exposed overburden or coal in an open cut of a surface mine or entry to an underground mine.

(bn) "History of intensive agricultural use" means those lands which, if nonirrigated, have had a cultivated crop, small grains or hay crops harvested for five out of any ten year period, or if irrigated has water of sufficient quantity to sustain production of cultivated crops, small grain, or hay crops for eight out of ten years and have had a cultivated crop, small grain, or hay crop harvested for any one year.

(bo) "Husbandry practice" means, when preceded by the word "normal", those management practices that may be used to achieve revegetation success without restarting the bond responsibility period. Normal husbandry practices are sound management techniques which are commonly practiced on native lands in the area of the mine and, if discontinued after the area is bond released, shall not reduce the probability of permanent vegetation success.

(bp) "Hydrologic balance" means the relationship between the quality and quantity of inflow to, outflow from, and storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake or reservoir. It encompasses the quantity and quality relationships between precipitation, runoff, evaporation, and the change in ground and surface water storage.

(bq) "Hydrologic regime" means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form and falls as precipitation, moves thence along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

(br) "Imminent danger to the public" means the existence of any condition or practice, or any violation of a permit or other requirements of the Act in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

(bs) "Important habitat" means that habitat which, in limited availability, supports or encourages a maximum diversity of wildlife species or fulfills one or more living requirements of a wildlife species. Examples of important habitat include, but are not limited to, wetlands, riparian areas, rimrocks, areas offering special shelter or protection, reproduction and nursery areas, and wintering areas.

(bt) "Impoundment" means a closed basin formed naturally or artificially built which is dammed or excavated for the retention of water, slurry or other liquid or semiliquid material. A permanent impoundment is a structure that will remain after final bond release.

(bu) "Inclusion" means, with respect to vegetation, an area no more than two acres in size, which is distinctly different from the surrounding vegetation community due to substantial, visible differences in species composition, cover, or production. (bv) "Intermittent stream" means a stream or part of a stream that is below the local water table for some part of the year, but is not a perennial stream.

(bw) "Interseed" means a secondary seeding into established vegetation in order to improve composition, diversity or seasonality. Interseeding is done to enhance revegetation rather than to augment the revegetation that is unsuccessful in terms of germination, establishment, or permanence.

(bx) "Introduced" means a plant species that is not a component of the original flora of North America.

(by) "Irreparable harm to the environment" means, for the purpose of W.S. § 35-11-406(o), any damage to the environment in violation of the Act or regulations, that cannot be corrected by actions of the applicant.

(bz) "Joint agency approval" means, for surface coal mining operations, the approval of mining or reclamation plans that would adversely affect any publicly owned park or any place included in the National Register of Historic Places by the federal, state, or local agency with jurisdiction over the park or place.

(ca) "Land use" means for surface coal mining operations, specific uses or management-related activities, rather than the vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal uses occur. Changes of land use or uses from one of the following categories to another shall be considered as a change to an alternative land use which is subject to approval by the Administrator. Land used for mine facilities in support of the operations which are adjacent to or an integral part of these operations are also included. Support facilities include, but are not limited to, parking, storage or shipping facilities.

(i) "Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small-grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops.

(ii) "Pastureland" means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed. In addition, for the purpose of determining premining land use, the relative cover of introduced perennial forage species must be greater than 40% of the relative cover of total vegetation in order for the land to be pastureland. If the full shrub density is greater than one shrub per square meter on those lands and the surface owner requests the lands to be eligible, the land use is still pastureland but the land is also "eligible land" in terms of shrub reclamation.

(iii) "Grazingland" means rangelands and forest lands where the indigenous native vegetation is actively managed for grazing, browsing, and occasional

hay production, and occasional use by wildlife.

(iv) "Forestry" means land used or managed for the long-term production of wood, wood fiber, or wood-derived products.

(v) "Residential" means land used for single and multiple-family housing, mobile-home parks, and other residential lodgings.

(vi) "Industrial commercial" means land used for:

(A) Extraction or transformation of materials for fabrication of products, wholesaling of products or for long-term storage of products. This includes all heavy and light manufacturing facilities and such short-term uses as petroleum refining and oil and gas production.

(B) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.

(vii) "Recreational" means land used for public or private leisure activities, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

(viii) "Fish and wildlife habitat" means land dedicated wholly or partially to the production, protection or management of species of fish or wildlife.

(ix) "Developed water resources" means land used for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control, and water supply.

(x) "Undeveloped land of no current use or land management" means land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.

(xi) "Treated grazingland" means grazingland which has been altered to reduce or eliminate shrubs provided such treatment was applied at least five years prior to submission of the state program permit application. However, grazingland altered more than five years prior to submission of the state program permit application on which full shrubs have reestablished to a density of at least one per nine square meters does not qualify as treated grazingland.

(cb) "Lichen" means those organisms formed by the symbiotic relationship between fungal and algal species. For the purpose of estimating ground cover lichens are cryptogams. (cc) "Life form" means the structure, form, habit, life history and physiology of an organism that display an obvious relationship to important environmental factors in its native or current habitat. For data presentation the preferred life form categories are: annual/biennial forb, annual grass, cryptogam, grass-like, native cool season perennial grass, native warm season perennial grass, introduced perennial grass, perennial forb, shrub, subshrub, succulent and tree.

(cd) "Litter" means, for the purposes of estimating ground cover, the uppermost layer of organic debris, usually considered to be the standing dead, freshly fallen or slightly decomposed vegetal material on the soil surface. Decomposing plant material which has lost its structural integrity or which is no longer recognizable as plant tissue is not litter.

(ce) "Major species" means a plant species whose relative cover value equals or exceeds two percent as estimated by a quantitative sampling program.

(cf) "Material damage to the hydrologic balance" means a significant long-term or permanent adverse change to the hydrologic regime.

(cg) "Materially damage the quantity or quality of water" means, with respect to alluvial valley floors, changes in the quality or quantity of the water supply to any portion of an alluvial valley floor where such changes are caused by surface coal mining and reclamation operations and result in changes that significantly decrease the capability of the alluvial valley floor to support subirrigation or flood irrigation agricultural activities.

(ch) "Mine facilities" means those structures and areas incidental to the operation of the mine, including mine offices, processing facilities, mineral stockpiles, storage facilities, shipping, loadout and repair facilities, and utility corridors.

(ci) "Mitigation wetland" means a type of reclaimed, postmining wetland authorized and approved by the Army Corps of Engineers as replacement for jurisdictional wetlands whose disturbance was authorized by the Army Corps of Engineers under Section 404 of the Federal Clean Water Act.

(cj) "Monitor well" means a well constructed or utilized to measure static water levels or to obtain liquid, solid, or gaseous analytical samples or other physical data that would be used for controlling the operations or to indicate potential circumstances that could affect the environment.

(ck) "Monitoring" means the collection of environmental and hydrological data by either continuous or periodic sampling methods.

(cl) "Moss" means a member of the Bryophyte plant group, including liverworts and hornworts, which have a comparatively small, simple growth form and

which lack true xylem and phloem tissue. For the purposes of estimating ground cover, mosses are cryptogams.

(cm) "Mulch" means plant residue or other suitable materials placed upon the soil surface to aid in soil stabilization and soil moisture conservation.

(cn) "Native" means a plant species which is a component of the original flora of North America.

(co) "Notice of violation" means a written notification from <u>the</u> Department of Environmental Quality or other governmental entity as specified in the definition of "violation" in Chapter 1, Section 2 and the procedures outlined in Chapter 16 of the Land Quality Division, Rules and Regulations.

(cp) "Noxious weed" means an undesirable, troublesome, aggressive or difficult to control plant species whose seeds are severely limited in or totally excluded from commercial seed sales. The Wyoming Department of Agriculture exclusively makes the noxious weed designation, which includes both "designated" and "prohibited" noxious weeds, under the Wyoming Weed and Pest Control Act. This definition does not include "declared weeds" published by individual Wyoming counties.

(cq) "Outslope" means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

(cr) "Own, owner or ownership" as used in Chapters 1, 2, 12 and 16 and excluding the context of real property ownership means being a sole proprietor or owning of record in excess of 50 percent of the voting securities or other instruments of ownership of an entity.

(cs) "Perennial" means a plant which takes at least three years to complete its life cycle and usually persists after flowering and producing seed.

(ct) "Perennial stream" means a stream or part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface runoff.

(cu) "Permit area" means the area of land and water within the boundaries of the approved permit or permits during the entire life of the operation and includes all affected lands and water.

(cv) "Permit transfer, assignment or sale of permit rights" means a change of a permittee.

(cw) "Plant species inventory" means a list of plant species, organized by life form and scientific binomial, obtained by conducting a field reconnaissance of a specific land unit.

(cx) "Plotless Sampling" means estimation of vegetation without the use of two-dimensional areal reference units.

(cy) "Point intercept" means a cover estimation method based upon the vertical projection of a point through the vegetation. The point may be an ocular sighting device, a sharpened rod or a series of sharpened rods on a point frame or a handheld sharpened rod. The ocular sighting devices may be either crosshairs or a laser source and shall be mounted on a frame which ensures that each estimation point is projected from above the canopy (maximum of one meter) to the ground surface without bias. Each pin shall be a rod with a sufficiently small or sharpened point which ensures unbiased visual determination of each object intercepted by the pin's vertical movement from above the canopy to the ground surface. Under the point intercept method, absolute cover at each sample point is determined as follows:

% absolute cover of A =<u>number of hits on A</u> x 100 total number of hits

(cz) "Potentiometric surface" means the surface that coincides with the static level of water in an aquifer. The surface is represented by the levels to which water from a given aquifer will rise under its full head.

(da) "Precipitation event" means a quantity of water resulting from drizzle, rain, snow, sleet, or hail in a limited period of time. It may be expressed in terms of recurrence interval and duration.

(db) "Primary shrub species" means, in relation to the shrub standard Option IV, each full shrub and each subshrub species which has a relative density equal to or greater than 0.1 (10 percent). Furthermore, under Option IV, the relative density of fringed sagewort (*Artemisia frigida*) must be equal to or exceed 0.2 (20 percent) of the relative density to qualify as a primary shrub species. Under shrub stand Options I, II, and III, a primary shrub species means each full shrub species which has a relative density equal to or greater than 0.1 (10 percent).

(dc) "Principal shareholder" means any person who is the owner of record of ten percent or more of any class of voting stock.

(dd) "Probable hydrologic consequences" means the projected impacts or changes to the hydrologic regime caused by the proposed surface coal mining and reclamation operation including the effects of adjacent mining operations.

(de) "Production" means an estimate of the total quantity of herbaceous matter produced within a growing season. The estimate includes all plant parts which remain attached to the current growing season plant and includes only above ground herbaceous
material.

and

(df) "Property to be mined" means, for surface coal mining operations, both the surface estates and mineral estates within the area covered under the term of the permit and the area covered by underground workings.

(dg) "Public building" means any structure that is owned or leased, and principally used by a governmental agency for business or meetings.

(dh) "Public Parks" means an area designated by a federal, state or local agency for public recreational use.

(di) "Public road" means a road:

(i) Which has been designated as a public road pursuant to the laws of the jurisdiction in which it is located;

(ii) Which is maintained with public funds in a manner similar to other public roads of the same classification within the jurisdiction;

(iii) For which there is substantial (more than incidental) public use;

(iv) Which meets road construction standards for other public roads of the same classification in the local jurisdiction.

(dj) "Quadrat" means a two-dimensional, rectangular, square or circular unit which is superimposed on the ground surface for the purpose of estimating cover or production. The quadrat shall be sized appropriately for the sampled vegetation community and shall be at least one half square meter but no larger than one square meter.

(dk) "Qualitative" means, in the context of a vegetation sampling program and/or evaluation of sampling data, that the program and/or evaluation process are conducted using non-numerical information derived from defined sources and/or defined field reconnaissance regimes.

(dl) "Quantitative" means, in the context of a vegetation sampling program and/or evaluation of sampling data, that the program and/or evaluation processes are conducted using statistical analyses of numerical data derived from defined sampling regimes.

(dm) "Random" means every point or location in an area has an equal chance of being chosen for sampling as any other point in that area.

(dn) "Recharge capacity" means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

(do) "Reclaimed land surface" means affected land which has been backfilled, graded, contoured, and revegetated in accordance with an approved reclamation plan.

(dp) "Reference area" means a land unit established to evaluate revegetation success. A "Reference area" is representative of a vegetation community or communities that will be affected by mining activities, in terms of physiography, soils, vegetation and land use history. The "Reference area" and its corresponding postmine vegetation community (or communities) must be approved by LQD and shall be defined in the approved Reclamation Plan. All "Reference areas" shall be managed to not cause significant changes in the vegetation parameters which will be used to evaluate Chapter 4 revegetation success performance standards. A "Reference area" can be a "Comparison area", "Control area", "Extended reference area", or "Limited reference area", depending on how it is established and used, in accordance with the following provisions:

(i) "Comparison area" means a type of "Reference area" that is established after a vegetation community has been affected. A qualitative determination shall be used to evaluate if the proposed "Comparison area" adequately represents the affected vegetation community. A "Comparison area" may be used when other types of "Reference areas" are not available for measuring revegetation success or when other types of "Reference areas" will not be representative of revegetation success. "Comparison areas" shall be approved by the Administrator prior to their establishment. When evaluating Chapter 4 revegetation success performance standards, data from the "Comparison areas" are directly compared by statistical procedures to data from the reclaimed area.

(ii) "Control area" means a type of "Reference area" that is established during baseline sampling. Quantitative comparisons of vegetation cover, total ground cover, and production between the proposed "Control area" and the vegetation community to be affected are used to demonstrate the representative nature of the "Control area". When evaluating revegetation success, baseline data are climatically adjusted using equations. These adjusted data are directly compared by statistical procedures to vegetation data from the reclaimed area. The Administrator may determine to make a direct comparison without the climatic adjustment between the "Control area" and the reclaimed area. Each "Control area" shall be at least two acres.

(iii) "Extended reference area" means a type of a "Reference area" that includes a major portion of one or more premine vegetation communities within the permit area. During baseline sampling, the "Extended reference area" includes areas proposed to be affected and areas that will be unaffected. Postmine, the unaffected areas constitute the "Reference area" for revegetation success evaluation. "Extended reference areas" should be established during baseline sampling, but in some circumstances, may be established after mining begins. The representative nature of the vegetation community within the "Extended reference area" is demonstrated by vegetation community mapping procedures, sampling data, soil data, physiography and land use history. To evaluate revegetation success, data from the "Extended reference area" are directly compared by the statistical procedures to data from the reclaimed area. Each "Extended reference area" will be as large as possible.

(iv) "Limited reference area" is one type of a "Reference area" that is established during baseline sampling to represent one vegetation community to be reestablished. The representative nature of the "Limited reference area" is determined by quantitative comparisons of vegetation cover, and production between the "Limited reference area" and proposed affected areas at the 90 percent confidence level. To evaluate revegetation success, data from the "Limited reference area" are directly compared by statistical procedures to data from the reclaimed area. Each "Limited reference area" shall be at least five acres.

(dq) "Regulatory categories" means the following time frames that encompass the major regulatory periods from which the different performance standards and reclamation standards for specified lands within the permit area are established:

(i) "Category 1" means those lands which were affected to conduct and/or support mining operations and were completed or substantially completed prior to May 24, 1969 (the implementation date of the Open Cut Land Reclamation Act).

(ii) "Category 2" means those lands which were affected on or after May 24, 1969 (the implementation date of the Open Cut Land Reclamation Act) in order to conduct and/or support mining operations and were completed or substantially completed prior to or on June 30, 1973 (day prior to the effective date of the Wyoming Environmental Quality Act).

(iii) "Category 3" means those affected lands and support facilities if those lands supported operations which were not completed or substantially completed prior to July 1, 1973 (the effective date of the Wyoming Environmental Quality Act) and any affected lands or support facilities taken out of use on or after July 1, 1973 and before May 25, 1975 (the effective date of the Division's 1975 Rules and Regulations).

(iv) "Category 4" means those affected lands if coal was removed from those land prior to May 3, 1978 and which do not qualify for any of the previous categories. It also means those affected lands and support facilities if they were taken out of use on or after May 25, 1975 (the effective date of the Division's 1975 Rules and Regulations) and before May 3, 1978 (the effective date of the Office of Surface Mining's (OSM) Initial Regulatory Program).

(v) "Category 5" means those affected lands and support facilities if coal was not removed from those lands prior to May 3, 1978 (the effective date of OSM's Initial Regulatory Program) or those lands were used on or after May 3, 1978 to facilitate mining (including support facilities and associated lands constructed before May 3, 1978 but still in use on or after May 3, 1978.)

(dr) "Revised mining or reclamation operations" means 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.

(ds) "Road(s)" means a surface corridor of affected land associated with travel by land vehicles used in surface coal mining and reclamation operations or coal exploration. A road consists of the roadbed, shoulders, parking and side areas, approaches, structures, ditches, and surface. The term includes access and haulroads constructed, used, reconstructed, improved, or maintained for use in surface coal mining and reclamation operations or coal exploration, including use by coal hauling vehicles to and from transfer, processing, or storage areas. The term does not include ramps and routes of travel within the immediate mining area or within spoil or coal mine waste disposal areas. Immediate mining area refers to areas subject to frequent surface changes. This includes areas where topsoil and overburden are being moved and areas undergoing active reclamation.

(dt) "Rock" means, for the purposes of estimating ground cover, mineral or rock fragments which are one square centimeter in size or larger and occur on or in the soil. A synonym is coarse fragments.

(du) "Rough Backfilling" means replacement of sufficient material in the pit or pits including special disposal practices for toxic and acid-forming materials, special handling and placement of materials for stream reconstruction or alluvial valley floors, and compaction as required so as to render the affected area in a condition whereby the reclaimed land surface generally resembles the approved postmining contours.

(dv) "Safety factor" means the ratio of the available shear strength to the developed shear stress on a potential surface of sliding determined by accepted engineering practice.

(dw) "Sample unit" means for the purposes of verifying certain Chapter 4 performance standards and applying for Chapter 15 incremental bond release, a permanently reclaimed land unit established by mutual agreement between the permittee and the Administrator. The unit constitutes the fundamental unit for revegetation success verification. The unit may contain portions of one or more vegetation communities.

(dx) "Seasonal variety" means the characteristic or normal season of growth of a plant species where season of growth is described as cool-season or warm-season.

(dy) "Sedimentation pond" means a sediment control structure designed, constructed, and maintained to slow down or impound precipitation runoff to reduce

sediment concentrations in a point source discharge, including dams or excavated depressions. The term does not include straw dikes, riprap, check dams, mulches, collection ditches, toe ditches, vegetative buffers, gabions, contour furrows and other traditional soil conservation techniques and non-point source runoff controls.

(dz) "Self-renewing" means a plant species which has a demonstrated capacity to germinate, establish, grow, flower and produce viable seed and/or mature and produce vegetative reproductive structures under the climatic regime which prevails on the reclaimed lands.

(ea) "Semi-quantitative" means, in the context of a vegetation sampling program and/or evaluation of sampling data that the program and/or evaluation process is/are conducted using a non-statistical assessment of numerical data derived from a defined field reconnaissance regime.

(eb) "Shrub" means a perennial plant with persistent, woody stems and which produces several basal shoots instead of a single main stem. Shrubs have a relatively low growth form and differ from trees by their low stature and lack of arborescent form. A synonym is full shrub.

(ec) "Shrub mosaic" means a pattern of shrub patches. The boundary of a mosaic unit encompasses the areal extent of the individual shrub patches and the reclaimed community occupying the land among the shrub patches.

(ed) "Shrub patch" means a mapable concentration of postmining shrubs which is at least 0.05 acres in extent and which intends to fulfill the shrub density and shrub composition required by Chapter 4 shrub restoration performance standard.

(ee) "Significant, imminent environmental harm to land, air or water resources" means:

(i) An environmental harm is an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life.

(ii) An environmental harm is imminent, if a condition, practice, or violation exists which:

(A) Is causing such harm; or

(B) May reasonably be expected to cause such harm at any time before the end of the reasonable abatement time.

(iii) An environmental harm is significant if the harm is appreciable, not contemplated in the approved permit application, and not immediately repairable.

(ef) "Soil Horizons" means contrasting layers of soil material approximately parallel to the land surface and differing from adjacent layers in physical, chemical and biological properties or characteristics.

(i) "A Horizon" means the uppermost mineral or organic layer, often referred to as the surface soil. It is the part of the soil in which organic matter is most abundant and leaching of soluble or suspended particles is typically the greatest.

(ii) "E Horizon" means the layer commonly near the surface below the A Horizon and above the B Horizon. An E Horizon is the most commonly differentiated from an overlying A Horizon by lighter color and generally, has measurably less organic matter, and from the underlying B Horizon in the same sequum by color of higher value or lower chroma, by coarser texture, or by a combination of these properties.

(iii) "B Horizon" means the layer that typically is immediately beneath the E Horizon and often called the subsoil. This middle layer commonly contains more clay, iron, and aluminum than the A, E or C Horizons.

(iv) "C Horizon" means the deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biological activity, and is often called the subsoil.

(eg) "Soil survey" means a field and other investigation which results in a map showing the geographic distribution of different kinds of soils based on taxonomic characteristics and includes a report that describes, classifies and interprets such soils for use in reclamation.

- (eh) "Species composition" means number, kinds and amount of species.
- (ei) "Species diversity" means number of species per unit area.

(ej) "Species lacking creditable value" means the cover and production of these species will be estimated but will not be credited or counted towards meeting the revegetation success standards for cover, production or species diversity and composition. Species lacking creditable value include noxious weeds listed under the Wyoming Weed and Pest Control Act, Bromus japonicus, Bromus tectorum, Taeniatherum caput-medusae, Halogeton glomeratus, Kochia scoparia and Salsola tragus and all synonyms for these species as listed in the Natural Resources Conservation Service's Plants Database.

(ek) "Species of Special Concern" means those plant species required to be surveyed by the U.S. Fish and Wildlife Service, U.S. Forest Service, and Bureau of Land Management.

(el) "Spoil" means overburden removed during the mining operation to expose

the mineral and does not include the marketable mineral, subsoil or topsoil.

(em) "Stabilize" means to control movement of spoil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, adding control structures, or by otherwise modifying physical or chemical properties.

(en) "Stagnant water" means naturally or artificially impounded water which, because of its poor quality or shallow depth, is unusable for livestock or wildlife watering, wildlife habitat, or recreational uses.

(eo) "Steep slope" means any slope of more than 20 degrees or such lesser slope as may be designated by the Administrator after consideration of soil, climate, and other characteristics of the area.

(ep) "Study area" means the land surface area which was mapped and quantitatively sampled during the baseline vegetation inventory. The study area generally coincides with the permit area (or amendment area) but may exceed those boundaries with prior approval from the Administrator.

(eq) "Subirrigation" means, with respect to alluvial valley floors, the supplying of water to plants from underneath or from a semi-saturated or saturated subsurface zone where water is available for use by vegetation.

(er) "Subirrigation or flood irrigation agricultural activities" means the past and present use of any tract of land for the successful production of animal or vegetable life, based on regional agricultural practices, where the use is enhanced or facilitated by subirrigation or flood irrigation. These uses include, but are not limited to, the pasturing, grazing, and the cropping, cultivation, or harvesting of agriculturally useful plants whose production is enhanced or facilitated by the availability of water from subirrigation or flood irrigation. These uses do not include agricultural practices which do not benefit from the availability of water from subirrigation or flood irrigation.

(es) "Subshrub" means a perennial plant with a persistent, woody base and which produces several basal shoots or stems. The upper stems die back at the end of each growing season. Half-shrub is a synonym.

(et) "Subsidence" means the measurable lowering of a portion of the earth's surface or substrata.

(eu) "Subsoil" means the B and C Horizons excluding consolidated bedrock material.

(ev) "Substantially affect" means to conduct activity which, in the determination of the Administrator will significantly impact land, air or water resources so as to disturb the natural land surface.

(ew) "Substantially complete" means, for the purposes of determining the appropriate regulatory category of affected lands, the overburden was removed above the coal and some recoverable tons were removed from those lands.

(ex) "Substantially disturb" means, for purposes of coal exploration, to significantly impact land or water resources by blasting; by destruction of the vegetative cover or removal of topsoil, subsoil or overburden; by drilling coal exploratory holes; by digging pits; by construction of roads or other access routes; by placement of excavated earthen or waste material on the natural land surface or by other such activities; or to remove more than 250 tons of coal.

(ey) "Succulent" means a plant species with one or more of its morphological parts exhibiting fleshy or juicy characteristics.

(ez) "Surface coal mining and reclamation operations" means surface coal mining operations and all activities necessary or incidental to the reclamation of such operations.

(fa) "Surface water" means water, either flowing or standing, on the surface of the earth.

(fb) "Suspended solids" means organic or inorganic material carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by Environmental Protection Agency's regulations for waste water analyses (40 CFR 136).

(fc) "Systematic sampling" means a sampling design where sample locations are selected using uniform spatial pattern, such as a grid, that covers the entire sample population area, and where all locations are sampled. The first sample point is randomly selected, and the locations of all other sample points are determined by the initial location. Calculations for systematic sampling may be done by assuming the sample is random.

(fd) "Technical revegetation success standard" means a set of quantitative data which are representative of the absolute cover of total vegetation and annual herbaceous production of one or more premining vegetation communities affected by the mining operation. Each technical standard shall be assembled from quantitative data collected from vegetation communities within a permit area and/or from adjacent lands and shall be based upon a minimum of five independent sampling programs executed over a minimum of five years. The Administrator shall approve the specific data sets and the quantitative treatment of the data sets used to establish each technical standard.

(fe) "Threatened species" means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range and which has been listed under the Federal Endangered Species Act.

(ff) "Topsoil" means the A and E Horizons or any combination thereof.

(fg) "Toxic materials" means earthen materials or refuse which, if acted upon by air, water, weather, or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or would restrict the common uses of water.

(fh) "Toxic mine drainage" means water that is discharged from active or abandoned mines and other areas affected by coal mining operations and which contains a substance which through chemical action or physical effects is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

(fi) "Trade secret" means, for purposes of surface coal mining or exploration operations:

(i) Information pertaining to the analyses of the chemical and physical properties of the coal (excepting information regarding such mineral or elemental content which is potentially toxic in the environment) may be kept confidential in accordance with W.S. § 35-11-1101(a);

(ii) Information pertaining to the coal seam itself, except as to any person who demonstrates to the satisfaction of the Director an interest which is or may be adversely affected by the decision to hold such information confidential; and

(iii) Information relating to coal exploration operations which concerns privileged commercial or financial information relating to the competitive rights of the person intending to conduct the coal exploration operations.

(fj) "Transect" means a sampling method which involves the establishment of a long, continuous line or strip. The starting point and orientation of the line should be randomly established.

(fk) "Tree" means a woody, perennial plant which usually has a single trunk or stem and a defined crown shape and which has the potential to reach a mature height of at least four meters in optimal conditions.

(fl) "Unconsolidated streamlaid deposits" means earthen material transported and deposited within a body of water flowing downslope along a definite path. Flood plains and terraces located in the lower portions of topographic valleys are generally composed of unconsolidated streamlaid deposits.

(fm) "Underground development waste" means earthen materials excavated, moved, and disposed of from underground workings in connection with mining activities.

(fn) "Underground mining activities" means a combination of:

(i) Underground operations necessary for the extraction of solid minerals by man-made excavations underneath the surface of the earth; and

(ii) For the extraction of coal, surface operations incident to the underground operation such as construction, use, maintenance, and reclamation of roads, surface repair shops, storage areas, etc., and areas on which materials incident to underground operations are placed.

(fo) "Undeveloped rangeland" means unimproved land, the use of which is generally limited to grazing of livestock. Undeveloped rangeland does not include areas within the alluvial valley floor where cultivated crops, small grains, and hay crops have been successfully grown, the land has been improved by the introduction of certain vegetation for enhanced agricultural utility, or native vegetation on the alluvial valley floor contributes substantially to the carrying capacity of a specifically controlled or managed grazing unit.

(fp) "Upland areas" means those geomorphic features located outside the area of unconsolidated streamlaid deposits and may include isolated higher terraces, alluvial fans, pediment surfaces, landslide deposits, and surfaces covered with residuum, mud flows or debris flows, as well as highland areas underlain by bedrock and covered by residual weathered material or debris deposited by sheetwash, rillwash, or windblown material.

"Valid existing rights (VER)" means a set of circumstances under which a (fq)person may, subject to regulatory authority approval, conduct surface coal mining operations on lands where Section 522(e) of P.L. 95-87 (2009)(http://www.gpoaccess.gov/uscode/) (2009)and 30 C.F.R. §761.11 (http://www.gpoaccess.gov/cfr/retrieve.html) would otherwise prohibit or limit such operations. Possession of valid existing rights only confers an exception from the prohibitions of 30 C.F.R. §761.11 and Section 522(e) of P.L. 95-87. A person seeking to exercise VER shall comply with all other applicable requirements of the Act and rules and regulations promulgated thereunder and meet the standards below.

(i) Except as provided in subsection (iii) below, a person claiming VER shall demonstrate that a legally binding conveyance, lease, deed, contract, or other document vests that person, or a predecessor in interest, with the right to conduct the type of surface coal mining operations intended and that this right existed at the time the land came under protection of Section 522(e) of P.L. 95-87 (2009) or 30 C.F.R. §761.11 (2009).

(ii) Except as provided in subsection (iii) below, a person claiming VER shall also demonstrate compliance with one of the following standards. Procedures and requirements related to the demonstration are detailed in Chapter 12 of the Division's Coal Rules and Regulations.

(A) "Good faith/all permits standard" means all permits and other authorizations required to conduct surface coal mining operations had been obtained, or a good faith effort to obtain all necessary permits and authorizations had been made, before the land came under the protection of Section 522(e) of P.L. 95-87 (2009) or 30 C.F.R. §761.11 (2009). At a minimum, a permit application was submitted as required in Chapter 2 of these regulations.

(B) "Needed for and adjacent standard" means the land is needed for and immediately adjacent to a surface coal mining operation for which all permits and other authorizations required to conduct surface coal mining operations had been obtained or a good faith attempt to obtain all permits and authorizations has been made, before the land came under the protection of Section 522(e) of P.L. 95-87 (2009) or 30 C.F.R. §761.11 (2009). To meet this standard a person shall demonstrate that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of 522(e) of P.L. 95-87 (2009) or 30 C.F.R. §761.11(2009). Except for operations in existence before August 3, 1977, or for which a good faith effort to obtain all necessary permits had been made before August 3, 1977, this standard does not apply to lands already under the protection of 522(e) of P.L. 95-87 (2009) or 30 C.F.R. §761.11 (2009) when the Department approved the permit for the original operation or when the good faith effort to obtain all necessary permits for the original operation was made. In evaluating whether a person meets this standard, the agency making the determination may consider factors such as:

(I) The extent to which coal supply contracts or other legal and business commitments that predate the time the land came under the protection of 522(e) of P.L. 95-87 (2009) or 30 C.F.R. §761.11 (2009) depend upon the use of that land for surface coal mining operations;

(II) The extent to which plans used to obtain financing for the operation before the land came under the protection of 522(e) of P.L. 95-87 (2009) or 30 C.F.R. §761.11 (2009) rely upon use of that land for surface coal mining operations;

(III) The extent to which investments in the operation before the land came under the protection of 522(e) of P.L. 95-87 (2009) or 30 C.F.R. §761.11 (2009) rely upon use of that land for surface coal mining operations; and

(IV) Whether the land lies within the area identified on the life-of-mine map submitted under Chapter 2, Section 5(a)(i)(B) of the Land Quality Division Coal Rules and Regulations before the land came under the protection of 30 C.F.R. §761.11 (2009).

(iii) Roads. A person who claims valid existing rights to use or construct a road across the surface of lands protected by 522(e) of P.L. 95-87 (2009) or

30 C.F.R. §761.11 (2009) must demonstrate that one or more of the following circumstances exist if the road is included within a surface coal mining operation:

(A) The road existed when the land upon which it is located came under the protection of 522(e) of P.L. 95-87 (2009) or 30 C.F.R. §761.11 (2009) and the person has a legal right to use the road for surface coal mining operations;

(B) A properly recorded right of way or easement for a road in that location existed when the land came under the protection of 522(e) of P.L. 95-87 (2009) or 30 C.F.R. §761.11 (2009) and under the document creating the right of way or easement, and under subsequent conveyances, the person has a legal right to use or construct a road across the right of way or easement for surface coal mining operations;

(C) A valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of 522(e) of P.L. 95-87 (2009) or 30 C.F.R. §761.11 (2009); or

(D) VER exist under subsections (i) and (ii) above.

(iv) The prohibitions and limitations of Chapter 12, Section 1(a)(v) do not apply to surface coal mining operations for which a valid permit issued by the Department exists when the land comes under the protection of 30 C.F.R. §761.11 (2009). This exception applies only to lands within the permit area as it exists when the land comes under the protection of 30 C.F.R. §761.11 (2009).

(v) Interpretation of the terms of the document relied upon to establish valid existing rights shall be based either upon applicable Wyoming case law concerning interpretation of documents conveying mineral rights or, where no applicable case law exists, upon the usage and custom at the time and place where it came into existence.

(fr) "Vegetation community" means a recognizable group of species growing together.

(fs) "Violation", when used in the context of the permit application information required in Chapter 2 of these rules and regulations or permit eligibility requirements detailed in Chapter 12 of these rules and regulations means:

(i) A failure to comply with an applicable provision of a Federal or State law or regulation pertaining to air or water environmental protection, as evidenced by a written notification from a governmental entity to the responsible person; or

(ii) A noncompliance for which the Office of Surface Mining has provided one or more of the following types of notice or the Department of Environmental Quality has provided equivalent notice under its corresponding statutory and/or regulatory provisions: (A) A "notice of violation" as defined above;

(B) A cessation order under W.S. 35-11-437 (2011) and/or Chapter 16 of the Land Quality Coal Rules and Regulations;

(C) A final order, bill or demand letter pertaining to a delinquent civil penalty assessed under Chapter 16 of the Land Quality Coal Rules and Regulations;

(D) A bill or demand letter pertaining to delinquent reclamation fees owed under 30 C.F.R. part 870 (Abandoned Mine Lands); or

(E) A order of bond forfeiture under W.S. 35-11-421 (2011) when:

(I) One or more violations upon which the forfeiture was based have not been abated or corrected; or

(II) The forfeited bond is inadequate to cover the cost of the final reclamation under W.S. 35-11-421 and 422 (2011);

(ft) "Warm season" means a plant, which makes most or all its growth during the spring, summer, or fall and is usually dormant during the winter. Warm season plants usually exhibit the C-4 photosynthetic pathway.

(fu) "Water table" means the upper surface of a zone of saturation, where the body of groundwater is not confined by an overlying impermeable zone.

Section 3. Applicability.

(a) All mining operations or operations by which solid minerals are intended to be extracted from the earth, which are commenced or conducted after the effective date of these rules and regulations, shall comply with the requirements hereof, except as specific exemptions are allowed by the Act.

(b) The discretionary exemptions shall be limited as follows:

(i) W.S. § 35-11-401(g), (h) and (j) shall not apply to surface coal mining operations.

(ii) In order to qualify for the exemption provided for in W.S. § 35-11-401(e)(ii), approval must be obtained from the Administrator for the extraction of any coal after a finding that:

(A) The extraction is necessary to enable the construction to be

accomplished and occurs within the right-of-way or boundary of the area directly affected by the construction;

(B) The construction is funded 50 percent or more by funds appropriated or obtained from a government financing agency's budget or general revenue bonds; and

(C) The person agrees to possess on-site documents which show a description of the project, its exact location, and information showing the source, kind and amount of public financing, including the percentage of the entire construction costs represented by the government financing.

(c) If any provision of these regulations or the applicability thereof to any person or circumstances related to surface coal mining operations is held invalid, the provision or its applicability to other mining operations or circumstances shall not be affected thereby.

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.

(b) Information set forth in the application shall be current, presented clearly and concisely, and supported or authenticated, when appropriate, by references to technical material, persons, or public or private organizations which were used, consulted, or were responsible for collecting and analyzing the data.

(c) Maps submitted with the application shall be, or be the equivalent of a U.S. Geological Survey topographic map at a scale determined by the Administrator, but in no event smaller than 1:24,000. All maps shall contain a title relative to the subject matter of the map, a map number, legend, and show the limits of the permit area. The maps shall distinguish among the following phases of the operation:

- (i) Prior to August 3, 1977;
- (ii) After August 3, 1977 and prior to May 3, 1978;
- (iii) After May 3, 1978 and prior to approval of the State Program;
- (iv) After the estimated date of issuance of the permit; and
- (v) The five "regulatory categories" as defined in Chapter 1, Section 2.

(d) Applicants may reference materials. If used in the application, referenced materials shall either be provided to the Division or be readily available to the Division. Relevant portions of referenced materials shall be presented briefly and concisely in the

application by photocopying or abstracting and with explicit citations.

(e) The applicant may consult with the local conservation district during preparation of the reclamation plan for conformance with technical standards.

Section 2. Adjudication Requirements.

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

(i) A complete identification of interests, which shall include:

(A) All owners of record of the property to be mined including legal and equitable owners, holders of record of any leasehold interest, and any purchaser of record under a real estate contract for the property to be mined;

(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 person performing a function similar to a director and person 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 shareholder, officers and director or other person 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's partners or principal shareholders operates or previously operated a surface coal mining operation in the United States within the five years 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;

(F) A list of any pending, current or previous surface coal mining permit applications filed in in the United States held by the applicant, partner or principal shareholder and the operator and operator's partners, principal shareholders who operate or previously operated a surface coal mining operation during the five year period preceding the date of the application. The list must identify each application by its application number and jurisdiction, or by other identifying information when necessary. For any surface coal mining operations that the applicant or the operator owned and controlled within the five year period preceding the application that the application submission date and for any surface coal mining operation that the applicant or operator owned and controlled on that date, the applicant shall provide:

(II)

(III)

(I) Permittee's and operator's name and address;

numbers;

Permittee's and operator's taxpayer identification

Federal or State permit number and corresponding

MSHA number;

(IV) Regulatory authority with jurisdiction over the

permit; and

(V) Permittee's and operator's relationship to the operation, including percentage of ownership and location in the organizational structure.

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

(I) If all or part of the information already in AVS is accurate and complete then the applicant shall certify to the LQD by swearing or affirming under oath and in writing that the relevant information in AVS is accurate, complete and up to date;

(II) If part of the information in AVS is missing or incorrect then the applicant shall submit to the LQD the necessary information or corrections and swear or affirm under oath and in writing that the information to be submitted is accurate and complete; or

(III) If the applicant can neither certify that the data in AVS is accurate and complete nor make corrections then the applicant shall include in the permit application the information required in subsections (B) - (F).

(H) A statement of all lands, interests in lands, options, or pending bids on interests held or made by the applicant for lands which are contiguous to the proposed permit area; and

(I) Legal ownership - if the operator includes roads or spur lines within the permit area but does not possess the mineral rights or the right-to-mine for these lands, the legal land description shall then be listed in the application as a separate subsection in Appendix "C". The heading of the subsection shall make it clear that the right-to-mine is not claimed on the described lands. Surface owners shall be listed for all lands crossed by spur lines and roads.

(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:

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

(II) Forfeited a Federal or State coal mining 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; or

(III) For each suspension, revocation, or forfeiture identified in subsections (I) and (II) above, the applicant shall provide a brief statement of the facts involved including the permit number, date of action and amount of forfeiture if applicable, responsible regulatory authority and stated reasons for action, current status and identifying information regarding any judicial or administrative proceedings related to the action.

(B) A list of notices of violation required by W. S. § 35-11-406(a)(xiv) that describe or identify the violation, a list of all unabated or uncorrected violation notices incurred in connection with any surface coal mining and reclamation operation that the applicant or operator owns or controls on that date, identify the associated permit and MSHA numbers, the name of <u>the</u> person to whom the violation notice was issued, when it occurred, any abatement action taken and if the abatement period has not expired a certification that the violation is being abated or corrected to the satisfaction of the agency with jurisdiction over the violation. This listing shall include only notices issued to the applicant or operator and any subsidiaries, affiliates, or

persons owned or controlled by or under common control with the applicant or operator.

(iii) The right of entry statements and documents required by W.S. § 35-11-406(a)(ii) and (b)(xi) 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), Land Quality 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;

(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 division of the Department, including the Solid and Hazardous Waste Management Division, together with the following:

(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 III and XI, and as applicable Chapter X, of the 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 II, Section 12, Water Quality 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.

(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, State Engineer 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.

(B) For any permits or approvals which have not been obtained, the information required by (A) above which has been or will be submitted to the agencies involved, including a description of the steps to be taken to comply with the relevant requirements.

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

(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 acres 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 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;

(iii) The vegetation community map shall identify:

(A) Sample locations for cover and shrub density;

(B) Reference Areas unless a technical success standard is proposed for evaluation of revegetation;

(C) Areas to be affected by mining and associated activities:

(D) The locations and orientations of all photographs provided with the descriptions of the vegetation communities and Reference Areas, as required in Chapter 2, Section 3(j);

(E) The general location of trees;

(F) The location and extent of designated and/or prohibited noxious weeds per Chapter 2, Section 3(k); and

(G) Extent of existing disturbance.

(iv) The vegetation communities in the study area may be mapped any time the ground is clear of snow, but must be field checked and verified prior to the sampling.

(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 shall be:

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

(e) If the applicant intends to propose a technical success standard, annual herbaceous production, by community, shall be estimated using quantitative methods. Annual herbaceous production shall also be quantitatively estimated when the Administrator determines that previously collected baseline vegetation data inadequately describes the proposed permit area. If semi-quantitative methods are approved for baseline, no production for baseline is necessary.

(f) A "Reference area", 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.

(g) Shrub density sampling shall use the quantitative methods as approved by the Administrator unless the applicant commits to the maximum shrub reestablishment performance standard of one full shrub per square meter within shrub patches distributed over 20 percent of the eligible land for Option II. If the applicant accepts this maximum shrub reestablishment performance standard, the applicant shall use the following provisions to complete the calculations in Appendix 4A, Tables 1 and 2.

(i) For Option II, the full shrub with the highest baseline relative cover value across all premining vegetation communities shall be listed as the dominant premine full shrub species and the target postmine species. No calculations for Appendix 4A, Table 1 or Table 2, shall be performed. In Table 2, the Density of the Dominant Postmining (Full) Shrub shall be 0.5 per square meter, and the Density of Residual (Full) Shrubs shall be 0.25 per square meter and the Density of Approved Subshrubs shall be 0.25 per square meter.

(h) If trees are present within the proposed permit area, then the description shall include the number, general distribution, and species.

(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" as defined in Chapter 1, Section 2;
used);	(B)	By scientific binomial (with reference to the botanic key
	(C)	By common name; and
introduced species.	(D)	Identified as a native (native to North America) or
(ii)	The plant inventory shall be field checked and undated at least	

(ii) The plant inventory shall be field checked and updated at least three times from April through September during the baseline sampling year to capture the phenological expression of species that do not express themselves every month. The plant inventory shall not be compared to any qualitative, semi-quantitative or quantitative criteria.

(iii) The plant inventory shall note the names and field locations of:

(A) Any herbarium samples collected;

(B) Any Designated Noxious Weeds or Prohibited Noxious Weeds defined by the State of Wyoming;

(C) Any plant species or habitat of special concern at the time of sampling; and

(D) Any species not previously recorded in Wyoming or outside its known range.

(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:

- (i) The general vegetation composition;
- (ii) The major species in each life form;

(iii) The characteristic topography, including overall slope and aspect;

(iv) The characteristic soil types;

- (v) The number, sizes, and types of inclusions;
- (vi) The degree of interspersion between communities;

(vii) A summary of the quantitative, semi-quantitative, and qualitative vegetation information for each community;

(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

(iv) 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".

(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.

(i) If any Designated Noxious Weeds or Prohibited Noxious Weeds are present within the proposed permit area, the description shall include a list of their names, either common or scientific, and a visual estimate of their relative cover.

(ii) If any Designated Noxious Weeds or Prohibited Noxious Weeds are estimated to comprise more than 25% of the relative vegetation cover on two or more contiguous acres, that acreage shall be identified on the vegetation community map.

(1) If any State or Federally listed endangered or threatened plant species are known to exist within the permit area or in adjacent areas, their location shall be described and an evaluation provided on potential habitats within the permit area and in adjacent areas.

(m) Cropland, either as a vegetation community and/or a land use category, is exempt from Chapter 2, Sections 3 (d) through (g), (i) and (j).

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 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.

(ii) The capability of the land prior to mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover, and the land's history of previous mining, if any, and the uses of the land preceding mining; as well as the land use classification under local law, if any, of the proposed permit area and adjacent areas.

(iii) Annual precipitation - the operator shall submit an estimated total annual precipitation for the proposed permit area. Data from the nearest official weather reporting station may be used. Operations more than 50 miles from an official weather station that are permanently staffed may be required to keep precipitation records.

(iv) Average wind direction and velocity - the operator shall submit the average wind direction and velocity recorded at the nearest official weather station or as measured at the site.

(v) Prime farmland information, which shall include, after a preapplication investigation of the proposed permit area, either:

(A) A request for a determination that the land not be considered prime farmland on the basis that either the land has not had a history of intensive agricultural use; or there are no soil map units that have been designated prime farmland by the Natural Resource Conservation Service in accordance with 7 CFR 657 (Federal Register Vol. 43, No. 21) and the Memorandum of Understanding between the Conservation Districts and the Soil Conservation Service, or

(B) Where prime farmland occurs on proposed affected land, an application which shall be submitted in accordance with Chapter 3.

(vi) Studies of fish, wildlife, and their habitats, in the level of detail and for those areas as determined by the Administrator, after consultation with the Wyoming Game and Fish Department in accordance with the Memorandum of Understanding between the two agencies; and Federal agencies having responsibilities for the management or conservation of such environmental values, including:

(A) A list of indigenous vertebrate wildlife species within and

adjacent to the permit area by common and scientific names. The area of survey for the possible presence of threatened or endangered species shall be on or within one mile of the permit area.

(B) If critical habitat disruption is likely, the U.S. Fish and Wildlife Service and Wyoming Game and Fish Department shall be contacted by the Administrator. If crucial or important habitat or migration route disruption is likely, the Wyoming Game and Fish Department shall be contacted by the Administrator. Contacting the appropriate agency(ies) is required in order to determine the types and numbers of wildlife likely to be disturbed or displaced.

(vii) A detailed description, prepared or certified by a licensed professional geologist, or other qualified professional (as required by W.S. § 33-41-101 through 121), of the geology within the proposed permit area down to and including any aquifer to be adversely affected by mining below the lowest coal seam to be mined. The description shall include the aerial and structural geology of the permit area and, by extrapolation, adjacent areas, including geologic parameters which influence the required reclamation, and the occurrence, availability, movement, quantity, and quality of potentially affected surface and groundwaters.

(viii) For the proposed permit area and, by extrapolation, adjacent areas, characterization of the geologic strata down to and including the deeper of either the stratum immediately below the lowest coal seam to be mined, or any aquifer below the lowest coal seam to be mined which may be adversely impacted by mining. This information shall include a statement of the results of test borings or core samples which have been collected and analyzed to show:

- (A) Location of any groundwater;
- (B) Lithologic characteristics and thickness of each stratum and

each coal seam;

(C) Physical and chemical properties including the toxic and acid-forming properties of each stratum within the overburden; and

(D) Chemical analyses for acid or toxic-forming substances of the coal seam, including the total sulphur and pyritic sulphur content. The Administrator may waive in whole or in part the requirements of these paragraphs if he makes a written finding that the testing is unnecessary because other equivalent information is available to him in a satisfactory form.

(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 and 33-41-101 through 121), showing:

(A) Nature, depth and thickness of any coal seams to be mined or above those to be mined, each stratum of the overburden, and the stratum below the lowest coal seam to be mined;

(B) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area;

(C) Location and extent of existing or previously surface mined or underground mined areas within the proposed permit area and adjacent areas;

(D) Sufficient slope measurements of the proposed permit area measured and recorded at such distances as the Administrator determines to be representative of the premining configuration and reflect geomorphic differences of the land to be mined;

(E) The location of water supply intakes for current users of surface water flowing into, out of and within a hydrologic area defined by the Administrator, and those surface waters which will receive discharges from affected areas in the proposed permit area;

(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 Rules and Regulations;

(G) Elevations and locations of test borings and core samplings;

(H) Elevations and locations of monitoring stations used to gather data for water quality and quantity, fish and wildlife, and air quality in preparation of the application; and

(I) Other relevant information required by the Administrator.

(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 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.

(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:

(A) The operator shall list and describe the name and location for the present surface waters in and adjacent to the proposed permit area. The list shall include, but not be limited to, rivers, creeks, lakes, reservoirs, springs and marshes. Streams shall be classified as ephemeral, intermittent or perennial;

(B) The operator shall submit a description of the immediate drainage area which includes the proposed permit area. Surface water use shall be identified as to domestic, municipal, industrial, agricultural, and wildlife;

(C) Baseline monitoring information of surface water quantity within the permit area which is representative of the surface hydrologic system. Water quantity descriptions shall include, at a minimum, baseline information on seasonal flow rates, and identification of drainage area acreage; and

(D) Water quality data sufficient to identify seasonal variation. All surface water-quality sampling and analyses performed to meet the requirements of this Section shall be conducted according to the methodology in the 20th edition of "Standard Methods for the Examination of Water and Wastewater," or the methodology in 40 CFR Part 136 - "Guidelines Establishing Test Procedures for the Analysis of Pollutants," as amended on January 16, 2001. Contact the Land Quality Division for information on how to obtain a copy of either reference materials. The data shall include at a minimum:

(I) Total dissolved solids (mg/l);

(II) Total suspended solids (mg/l);

(III) pH (standards units);

(IV) Total and dissolved iron (mg/l); and

(V) Total manganese (mg/l).

(E) Baseline alkalinity and acidity information shall be provided if there is a potential for acid drainage from the proposed mining operation.

(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 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;

(B) The lithology and thickness of all known aquifers;

(C) All water-quality sampling and analyses performed to meet the requirements of this Section shall be conducted according to the methodology in the 20th edition of "Standard Methods for the Examination of Water and Wastewater" or the methodology in 40 CFR Part 136 - "Guidelines Establishing Test Procedures for the Analysis of Pollutants," as amended on January 16, 2001. Contact the Land Quality Division for information on how to obtain a copy of either reference materials. The data shall include at a minimum:

- (I) Total dissolved solids (mg/l);
- (II) Total and dissolved iron (mg/l);
- (III) Total manganese (mg/l); and
- (IV) pH (standard units).

(D) According to the parameters and in the detail required by the Administrator, the recharge, storage, and discharge characteristics of the groundwater.

(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 three miles or less from the proposed permit area. A survey of the premining water levels in the above wells may be required.

(xiv) A description of the surface water and groundwater and related geology in the permit area and general area sufficient to assess the probable hydrologic consequences (PHC). If the determination of the PHC required by Chapter 19, Section 2(a)(i) indicates that adverse impacts on or off the proposed permit area may occur to the hydrologic balance, or that acid-forming or toxic material is present that may result in the contamination of groundwater or surface water supplies, then information supplemental to that required under (a)(xi) and (a)(xii) of this Section shall be provided to evaluate such PHC and to plan remedial and reclamation activities. Such supplemental information may be based upon drilling, aquifer tests, hydrogeologic analysis of the water-bearing strata, flood flows, or analysis of other water-quality or quantity characteristics.

(xv) Information concerning the presence or absence of an alluvial valley floor within the permit area or on adjacent areas in accordance with Chapter 3.

(xvi) The location of existing man-made features to include roads, railroads, reservoirs, public or private rights-of-way and easements, utility lines, pipelines, oil wells, gas wells, and water wells.

(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 of Environmental Quality, Rules of Practice and Procedure, the Wyoming Public Records Act (W.S. §§ 16-4-201 thru 16-4-205 (2007)) and the Wyoming Environmental Quality Act (2007).

(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:

(A) A narrative description of the type and method of mining, the number of acres that will be affected annually, overburden and mineral removal and transport, anticipated annual and total production by tonnage, and the major equipment to be used for all aspects of the operations.

(B) A map showing the estimated orderly progression of mining and reclamation on all proposed affected lands.

(C) The size, sequence and timing of the areas for which it is anticipated that renewed permits for mining will be requested over the estimated total life of the proposed operation.

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

monitoring facilities;

(I) Location of proposed water treatment control and

handling facility;

(II) Location of each proposed explosive storage and

(III) Location and construction of each proposed waste disposal facility relating to coal processing or pollution control;

(IV) Location of and typical design for surface water and groundwater hydrologic control methods including proposed temporary impoundments, sedimentation ponds, diversions, stream channels, erosion control methods, and water treatment, water storage, water collection and discharge facilities. The location and typical design of permanent impoundments and general location of the above described hydrologic control methods shall be provided for the permit area;

(V) The location, construction and maintenance of coal stockpiles, 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

(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).

(ii) A narrative and a map of the permit area identifying the location of existing structures, a description of their use and maintenance, and an explanation of whether they meet the requirements of Chapter 4 or the plan for removal, if required, or modification to comply with those standards in a manner which protects the environment and public health and safety.

(iii) A description of the measures to be used to maximize the use and conservation of the coal resource as required in Chapter 4, Section 2(v).

(iv) A description of the contingency plans which have been developed to preclude sustained combustion of any materials constituting a fire hazard.

(v) A description, plans, and drawings for each mine facility to be constructed, used, or maintained within the proposed permit area. The plans and drawings shall include a map, appropriate cross-sections, design drawings, and specifications sufficient to demonstrate compliance with section 2(n) of Chapter 4 for each facility.

(vi) A map of the permit area which clearly shows that a railroad spur(s) which provides exclusive service to that particular permit is being included within the permit boundary from the point that it provides such service. This spur(s) shall be covered by a reclamation bond.

(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 also include:

(I) A blasting plan which depicts the worst-case scenario (i.e., the maximum probable amount of explosives to be detonated in any eight millisecond period).

(II) The identification, direction and distance, in feet to the nearest dwelling, public building, school, church, and community or institutional building from any blasting area during the term of the permit. This paragraph shall not apply if the building is owned by the operator and not leased to another or, if leased, the lessee signs a waiver relieving the operator from meeting the limitations in Chapter 6.

(B) If blasting operations will be conducted within 1,000 feet of

any building used as a dwelling, public building, school, church, and community or institutional building outside the permit area, or within 500 feet of an active or abandoned underground mine, an anticipated blast design, prepared and signed by a certified blaster. The design shall contain sketches of the drill patterns, delay periods, and decking and shall indicate the type and amount of explosives to be used, critical dimensions, and the location and general description of structures to be protected, as well as a discussion of design factors to be used which protect the public and meet the applicable airblast, flyrock and ground vibration standards in Chapter 6. This paragraph shall not apply if the building is owned by the operator and not leased to another or, if leased, the lessee signs a waiver relieving the operator from meeting the limitations in Chapter 6.

(C) Description and location of blasting monitoring, warning and site access control equipment and procedures proposed to be used pursuant to Chapter 6, Section 4.

(D) Description of procedures and plans for recording and retaining information required by Chapter 6, Section 5.

Section 3.

(E) A sample copy of the public notices required by Chapter 6,

(F) Other information requested by the Administrator which he determines necessary to ensure compliance with Chapter 6.

(viii) A plan for minimizing adverse impacts to fish, wildlife and related environmental values within and adjacent to the permit area during the operation and how enhancement of these resources will be achieved where practicable. Where a plan does not include enhancement measures, the applicant shall affirmatively demonstrate why such measures are not practicable. The plan shall include:

(A) Whether such resources will be enhanced through successful revegetation and other enhancement measures in accordance with Chapter 4, Section 2(r);

(B) A statement of how the applicant will utilize monitoring methods as specified in Appendix B of these rules and regulations, and impact control measures and management techniques to protect or enhance the following, if they are likely to be affected by the proposed operation:

(I) Threatened or endangered species of plants or animals listed by the Secretary under the Endangered Species Act of 1973, as amended (16 U.S.C. Section 1531 et seq.) and their critical habitats;

(II) Species identified through the consultation process described in Section 4(a)(vi); and

(III) Important habitats for fish and wildlife, such as wetlands, riparian areas, rimrocks, areas offering special shelter or protection, reproduction and nursery areas, and wintering areas.

(C) Upon request, the Administrator shall provide the resource information required under paragraph (B) of this Section and that required by Section 4(a)(vi) of this Chapter to the U.S. Department of the Interior, Fish and Wildlife Service regional or field office for their review. This information shall be provided within 10 days of receipt of the request from the Service.

(ix) A plan to ensure the protection of the quantity and quality of, and rights to, surface water and groundwater both within and adjacent to the permit area, which shall include:

(A) A plan and timetable for control and treatment of surface water and groundwater in accordance with Chapter 4, Section 2(e)-(h);

(B) A plan for sediment removal and disposal;

(C) A plan to restore the approximate recharge capacity of the permit area in accordance with Chapter 4, Section 2(h);

(D) A plan to collect, record and report water quantity and quality data according to Chapter 4, Section 2(i); and

(I) Surface water monitoring plan.

(1.) The application shall include a monitoring plan based upon the PHC determination required under subsection 5(a)(x) of this Chapter and the analysis of all baseline hydrologic, geologic, and other information in the permit application. The plan shall provide for the monitoring of parameters that relate to the suitability of the surface water for current and approved postmining land uses and to the objectives for protection of the hydrologic balance as set forth in subsection 5(a)(ix) of this Chapter.

(2.) The plan shall identify the surface water quantity and quality parameters to be monitored, sampling frequency, and site locations. At a minimum, the parameters specified in Section 4(a)(xi)(C) and (D) of this Chapter shall be measured. Results of monitoring shall be available for inspection at the mine and available to the Director's designated authorized representative, and shall be reasonably current. Surface water monitoring shall be conducted quarterly unless an alternate frequency, appropriate to the monitored site, is approved by the Administrator. Results of monitoring shall be submitted in the annual report for each monitoring location.

(3.) The plan shall describe how the data may be

used to determine the impacts of the operation upon the hydrologic balance.

(II) Groundwater monitoring plan.

(1.) The application shall include a groundwater monitoring plan based upon the PHC determination required under subsection 5(a)(x) of this Chapter and the analysis of all baseline hydrologic, geologic, and other information in the permit application. The plan shall provide for the monitoring of parameters that relate to the suitability of the groundwater for current and approved postmining land uses and to the objectives for protection of the hydrologic balance set forth in subsection 5(a)(x) of this Chapter.

(2.) The plan shall identify the quantity and quality parameters to be monitored, sampling frequency, and site locations. It shall describe how the data may be used to determine the impacts of the operation upon the hydrologic balance. At a minimum, the parameters specified in Section 4(a)(xii)(C) of this Chapter and water levels shall be measured. Groundwater monitoring shall be conducted quarterly unless an alternate frequency, appropriate to the monitored site, is approved by the Administrator. Results of monitoring shall be available for inspection at the mine and available to the Director's designated authorized representative, and shall be reasonably current. Results of monitoring shall be submitted in the annual report for each monitoring location.

(E) A plan to provide alternative sources of water in accordance with W.S. 35-11-415(b)(xii), where the protection of quantity or quality cannot be ensured as determined under the requirements of (x) below.

(x) Probable hydrologic consequences determination (PHC). A determination of the PHC of the proposed operation on the hydrologic regime and the quantity and quality of surface water and groundwater systems within the permit area and the general area consistent with the information required in Chapter 19, Section 2 of these regulations. The PHC determination shall be based on baseline hydrologic, geologic and other information collected for the permit application and may include data statistically representative of the site. This determination shall specifically address potential adverse hydrologic consequences and describe preventive and remedial measures.

(xi) An evaluation of the impact of the proposed mining activities that may result in contamination, diminution, or interruption of the quality and quantity of groundwater or surface water within the proposed mine permit area or adjacent areas that are used for domestic, agricultural, industrial, or other legitimate purposes. If contamination, diminution, or interruption may result, then the application shall identify the alternative sources of water supply that could be developed to replace the existing sources in accordance with State law.

(xii) A general plan for each coal-processing waste bank. It shall

contain a description, map, and cross-section of the structure and its location, preliminary hydrologic information required to assess the hydrologic impact of the bank, and any additional information the Administrator may deem necessary to show compliance with Chapter 4, Section 2(c). Where the applicant proposes to return coal-processing waste to abandoned underground workings, the application shall:

(A) Describe the design, operation and maintenance of any proposed coal-processing waste disposal facility, including flow diagrams and any other necessary drawings and maps, for the approval of the Administrator and the Mine Safety and Health Administration;

(B) Describe the sources and quality of waste to be stowed, area to be backfilled, percent of the mine void to be filled, method of constructing underground retaining walls, influence of the backfilling operation on active underground mine operations, surface area to be supported by the backfill and the anticipated occurrence of surface effects following backfilling;

(C) Describe the source of the hydraulic transport mediums, method of dewatering the placed backfill, retainment of water underground, treatment of water if released to surface streams, and the effect on the hydrologic regime;

(D) Describe each permanent monitoring well to be located in the backfilled area, the stratum underlying the mined coal, and gradient from the backfilled area except where pneumatic backfilling operations are exempted from hydrologic monitoring; and

(E) Be approved by MSHA as well as the Administrator prior to implementation.

(xiii) For surface mining activities to be conducted within 500 feet of an underground mine, measures to be used to comply with Chapter 4, Section 2(t).

(xiv) Plans describing the measures to be taken to obtain permit approval regarding areas where mining would be otherwise limited or prohibited pursuant to Chapter 12, Section 1(a)(v).

(xv) Descriptions, including appropriate maps and cross-sections of any proposed excess spoil disposal site and design of the spoil piles in accordance with the requirements of Chapter 4, Section 2(c). This shall contain the results of a geotechnical investigation of the proposed excess spoil disposal site, including the following:

(A) The character of bedrock and any adverse geologic conditions in the disposal area;

(B) A survey identifying all springs, seepage, and groundwater
flow observed or anticipated during wet periods in the area of the disposal site;

(C) Where applicable, an evaluation of the potential effects of subsidence of the subsurface strata due to past and future mining operations;

(D) A stability analysis including, but not limited to, strength parameters, pore pressures and long-term seepage conditions. These data shall be accompanied by a description of all engineering design assumptions and calculations and the alternatives considered in selecting the specific design specifications and methods; and

(E) If, under Chapter 4, Section 2(c)(xi)(F), special structural provisions are required for spoil disposal on overall slopes greater than 20 degrees, information on:

(I) The number, location and depth of borings or test pits which shall be determined with respect to the size of the spoil disposal structure and subsurface conditions; and

(II) The engineering designs, design rationale and design calculations for the special structural provisions, which are based on the information required in paragraph (D) above.

(xvi) Road Systems.

(A) Each applicant shall submit plans and drawings for each road as defined in Chapter 1 to be constructed, used, or maintained within the proposed permit area. The plans and drawings shall:

(I) Include a map, appropriate cross-sections, design drawings and specifications for road widths, gradients, surfacing materials, cuts, fill embankments, culverts, bridges, drainage ditches, drainage structures and low-water crossings;

(II) Contain the drawings and specifications of each proposed road that is located in the channel of an ephemeral stream that has the potential for sufficient flow to cause substantial environmental harm unless a downstream sediment control structure exists within the permit boundaries, any intermittent or any perennial stream, as necessary for approval of the road by the Administrator in accordance with Chapter 4, Section 2(j)(iv)(A);

(III) Contain the drawings and specifications for each proposed ford of intermittent or perennial streams that is used as a temporary route, as necessary for approval of the ford by the Administrator in accordance with Chapter 4, Section 2(j)(vii)(C)(II);

(IV) Contain a description of measures to be taken to obtain approval from the Administrator for alteration or relocation of a natural stream channel under Chapter 4 Section 2(j)(vii)(D)(V);

(V) Contain the drawings and specifications for each low-water crossing of an ephemeral stream channel that has the potential for sufficient flow to cause substantial environmental harm unless a downstream sediment control structure exists within the permit boundaries, any intermittent stream channel or any perennial stream channel so that the Administrator can maximize the protection of the stream in accordance with Chapter 4, Section 2(j)(vii)(D)(VI); and

(VI) Describe the plans to remove and reclaim each road that would not be retained under an approved postmining land use, and the schedule for this removal and reclamation.

(B) The plans and drawings for each primary road (as defined in Chapter 4, Section 2(j)(i)(B)) shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer as meeting the requirements of this Chapter and current, prudent engineering practices.

(xvii) Plans for compliance with the temporary and permanent cessation of operations requirements contained in Chapter 4, Section 2(k) and (u).

(xviii) Plans of mine facilities (including overstrip areas) that are to be shared by two or more separately permitted mining operations may be included in one permit application and referenced in the other application(s). Each permittee shall bond the mine facilities unless the permittees sharing it agree to another arrangement for assuming their respective responsibilities. If such agreement is reached, the application shall include a copy of the agreement between or among the parties setting forth the respective bonding responsibilities of each party for the mine facilities. The agreement shall demonstrate to the satisfaction of the Administrator that all responsibilities under the Act and regulations for the mine facilities will be met.

(xix) A Cultural Resources Management Plan which:

(A) Describes the measures to be used to prevent impacts to public parks or places listed on the National Register of Historic Places or, in cases of valid existing rights or where joint agency approval has been obtained, to minimize impacts to such parks or places;

(B) Provides for the mitigation of adverse effects to historic or archaeological properties eligible for listing on the National Register of Historic Places; and

(C) Ensures that the appropriate treatment measures or

mitigation will be undertaken prior to the commencement of any specific mining operation that would affect such parks, places or properties.

(xx) A plan for the management and disposal of noncoal mine waste, including any noncoal wastes generated by a mine mouth electric power plant, coal drier or coal preparation plant within the proposed permit area in accordance with Chapter 4, Section 2(c)(xiii)(C).

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 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). The plan shall include:

(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.

(iii) A plan to assure revegetation of all affected land in accordance with Chapter 4, Section 2(d). The plan shall include:

(A) The method and schedule of revegetation, including but not limited to species of plants, seeding rates, seeding techniques, mulching requirements and other erosion control techniques, and seeding times to be used in a given area for reclamation purposes.

(B) For crucial habitat and critical habitat, consultation with and approval obtained from the Wyoming Game and Fish Department for tree and shrub species composition and ground cover for minimum stocking and planting arrangements of trees and shrubs. Crucial habitat must be declared as such prior to the submittal of a permit application or any subsequent amendment.

(C) For important habitat, consultation with and recommendations obtained from the Wyoming Game and Fish Department for tree and shrub species composition and ground cover for minimum stocking and planting arrangements.

(D) The tree species, the number per species, and the location of tree plantings.

(E) A separate seed mix(es) shall be developed for each approved postmining land use, considering the dominant postmining topographic features and landowner desires.

(I) The species shall be described in the reclamation plan indicating the composition of seed mixtures and the amount of seed to be distributed on the area on a per acre basis.

(II) The species and varieties shall depend upon the climatic and soil conditions prevailing in the permit area and the proposed postmining landuses.

- (III) The species shall be self-renewing;
- (IV) Seeding rates shall depend upon seed types, climatic

conditions and the techniques to be used in seeding;

(V) The seed mix shall contain introduced species only

if:

(1.) Additional herbaceous species are needed;

or

- (2.) Suitable, native species are unavailable; or
- (3.) For cropland or pastureland or;
- (4.) Needed to achieve a quick, temporary,

stabilizing cover to control erosion; or

(5.) Conducive to achieve a postmining land use

approved by the Administrator.

(VI) The operator shall document, unless otherwise authorized by the Administrator, the suitability of introduced species using data from published literature, from experimental test plots, from on-site experience, or from other information sources.

(VII) For grazingland, the seed mix shall contain full shrub and/or subshrub species when these species will support the postmining land uses. To increase postmining species diversity and establish shrub mosaics, shrub mixtures shall be developed and seeded separately from the herbaceous mixtures.

(VIII) For federally owned surface, the federal land managing agency shall be consulted for mulching requirements and seeding requirements for cover crops, temporary and permanent reclamation.

(IX) The proposed postmining location of each seed mix shall be illustrated on a post mining contour map.

(F) Locations and/or conditions where the operator specifically requests approval not to use mulch.

(G) A weed control plan for State of Wyoming Designated Noxious and Designated Prohibited Weeds and, on federal surface, any additional weeds listed by the federal land managing agency.

- (H) An explanation of any plans for irrigation.
- (I) An explanation of pest and disease control measures, if

appropriate;

(J) A plan for monitoring permanent revegetation on reclaimed areas, specifically including quantitative sampling, as required by Chapter 4, Section 2(d)(i)(J).

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

(A) How a "Reference area" 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.

(B) The methods to be used for measuring the shrub density standard as approved by the Administrator.

(C) The methods to be used for evaluating the shrub density goal as approved by the Administrator, where applicable.

(D) The procedures to be used for measuring species diversity and composition as approved by the Administrator.

(E) If proposed, a technical success standard for a specified vegetation parameter. The technical success standard:

(I) Is derived from a sufficient number of years of baseline data so the standard value can be considered representative over a range of climatic conditions or a relationship between the parameter and climatic variables can be determined. For technical standards for cover and production, a minimum of five years of baseline data is necessary; and

(II) May be extended to an amendment area if the baseline information indicates the standard is applicable in that area.

(F) The procedures to be used as approved by the Administrator for the evaluation of restored postmining vegetation communities which carry the Cropland or Pastureland land use designation.

(G) If reforestation for commercial harvest is the method of revegetation, reforestation shall be deemed to be complete when a reasonable population density as established in the reclamation plan has been achieved, the trees have shown themselves capable of continued growth for a minimum period of five years following planting, and the understory vegetation is adequate to control erosion and is appropriate for the land use goal.

(v) Descriptions, including maps and cross-sections, of the surface

water diversion systems which meet the requirements of Chapter 4, Section 2(e). Monitoring of surface and groundwater conditions may be required during the course of the operation based on the existing water conditions and the nature of the proposed operation. If so required, the application shall include a description of the location, construction, maintenance, and removal, where necessary, of such monitoring stations.

(vi) Where a permanent water impoundment is proposed as final reclamation, the application shall include:

(A) Written consent from the surface landowner if different than the mineral owner.

(B) A description of the proposed use of the impoundment.

(C) A statement of the source, quality and quantity of water available for impoundment and a statement regarding its suitability for recreational, irrigation, livestock or wildlife watering. If, upon review of this information, water quality and quantity are not reasonably demonstrated to be suitable for the postmining use, the applicant shall be so notified in writing and shall be allowed to submit further documentation in support of the proposed impoundment to reasonably satisfy the Administrator. If the applicant is unable to demonstrate to the satisfaction of the Administrator that the water quality and quantity will be suitable for the postmining land use, the applicant shall provide an alternate plan.

(D) The operator may be required to monitor surface and groundwaters in order to determine that upon completion of the operation, the water quality and quantity will be consistent with the approved postmining use.

(E) A description of the construction of the impoundment so as to meet the requirements of Chapter 4, Section 2(g)(ii).

(vii) A plan to assure proper construction and reclamation of any tailings impoundments in accordance with the Act and these regulations.

(viii) A plan for the disposal of mine facilities, erected, used or modified by the applicant in accordance with the requirements of Chapter 4, Section 2(m).

(ix) A description of the measures to be used to seal or manage mine openings in accordance with Chapter 4, Section 2(p), and to cap, plug and seal all exploration holes, bore holes, wells and other openings, excepting developmental drill holes which will be mined through within one year, within the area to be mined during the term of the permit in accordance with Chapter 14. For developmental drilling the application shall contain general descriptions relating to spacing, data collection, and techniques which will be employed, including those which may be needed to comply with the plugging and sealing requirements of W.S. § 35-11-404. (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 land use is proposed different from the premining land use:

(I) A discussion of the utility and capacity of the reclaimed land to support a variety of uses and the relationship of the proposed use to existing land use policies and plans; and

(II) A comparison of the premining and postmining land uses. The premining uses of land to which the postmining land use is compared shall be those uses which the land previously supported, if the land has not been previously mined and has been properly managed.

(1.) The postmining land use for land that has been mined and not reclaimed shall be judged on the basis of the highest and best use that can be achieved and is compatible with surrounding areas without requiring unreasonable disturbance of areas previously unaffected by mining.

(2.) The postmining land use for land that has received improper management shall be judged on the basis of the premining use of surrounding lands that have received proper management.

(3.) If the premining use of the land was changed within five years of the beginning of the mining, the comparison of postmining use to premining use shall include a comparison with the historic use of the land as well as its use immediately preceding mining.

(C) Approval of alternative land uses shall require a demonstration that:

(I) The alternative land use is equal to or greater than

the highest previous use;

(II) There is reasonable likelihood for achievement of

the use;

(III) The use does not present any actual or probable hazard to public health or safety, or threat of water diminution or pollution; and

(IV) The use will not:

- (1.) Be impractical or unreasonable;
- (2.) Be inconsistent with applicable land use

policies or plans;

(3.) Involve unreasonable delay in

implementation; or

State, or local law.

(4.) Cause or contribute to violation of Federal,

DEPARTMENT OF ENVIRONMENTAL QUALITY

LAND QUALITY DIVISION

CHAPTER 6

BLASTING FOR SURFACE COAL MINING OPERATIONS

Section 1. General.

(a) The permittee shall comply with all applicable State, local and Federal laws and regulations and the requirements of this Chapter in the use of explosives.

(b) Blasts that use more than five pounds of explosives or blasting agent shall be conducted according to the schedule required under Section 3.

(c) All persons working with explosive material shall be, or be under the direct supervision of, an experienced, trained, and competent person who understands the hazards involved and who:

(i) Possesses current knowledge of the local, State and Federal laws and regulations applicable to this work; and

(ii) Has obtained a certificate of completion of training and qualification as required by State law.

(d) Blasting operations within 500 feet of active underground mines require approval of the State and Federal regulatory authorities concerned with the health and safety of underground miners.

(e) Blasting signs clearly warning that explosives are in use in particular areas, explaining blast-warning and all-clear signals, and explaining the marking of blast areas, shall be posted at all public entrances to the permit area. Signs containing "blasting area" shall be posted along the edge of any blasting area that comes within 100 feet of any public road right-of-way and at the point where any other road provides access to the blasting area.

Section 2. Preblasting Survey.

(a) On the request of a resident or owner of a man-made dwelling or structure that is located within one-half mile of any part of the area covered under the term of the permit, the applicant or permittee shall conduct a preblasting survey. The request may be made either directly to the applicant or permittee with confirming documents forwarded to the Administrator, or to the Administrator with confirming documents forwarded to the applicant or permittee. The operator shall promptly conduct a preblasting survey of the dwelling or structure and promptly prepare a written report of the survey. An updated survey of any additions, modifications, or renovations shall be performed by the operator if requested by the resident or owner. The operator shall determine the condition of the dwelling(s) and structure(s) and document any preblasting damage and other physical factors that could reasonably be affected by the blasting. Assessments of structures such as pipes, cables, transmission lines, and wells and other water systems shall be limited to surface condition and other readily available data. Special attention shall be given to the preblasting condition of wells and other water systems used for human, animal, or agricultural purposes and to the quantity and quality of the water.

(b) A written report of the survey shall be prepared and signed by the person who conducted the survey. The report shall include recommendations of any special conditions or proposed adjustments to the blasting procedures outlined in this Section which should be incorporated into the blasting plan to prevent damage. Copies of the report shall be provided to the person requesting the survey and to the Administrator. The person requesting the survey to the permittee and the Administrator.

(c) Any surveys requested more than three days before the planned initiation of blasting shall be completed by the operator before the initiation of blasting.

Section 3. Public Notice of Blasting Schedule.

(a) At least 30 days, but not more than 60 days before beginning a blasting program in which more than five pounds of explosives or blasting agent are detonated, the permittee shall publish a blasting schedule in a newspaper of general circulation in the locality of the proposed site. Copies of the schedule shall be distributed by mail to local governments, public utilities and to each residence or owner of a man-made dwelling or structure within one-half mile of the blasting sites described in the schedule. The residents or owners within one-half mile shall also be notified of the manner for requesting a preblasting survey. The permittee shall republish and redistribute the schedule by mail at least every 12 months. The permittee also shall revise and republish the schedule at least 30 days, but not more than 60 days, prior to blasting whenever the area covered by the schedule changes or time periods significantly differ from the prior announcement. Blasting schedules shall identify as accurately as possible the location of the blasting sites and the time periods when blasting will occur. The blasting schedule shall contain at a minimum:

- (i) Name, address and telephone number of the operator;
- (ii) Identification of the specific areas in which blasting will take place;
- (iii) Dates and time periods when explosives are to be detonated;
- (iv) Methods to be used to control access to the blasting area; and

(v) Types and patterns of audible warnings and all-clear signals to be used before and after blasting.

Section 4. Blasting Standards.

(a) General.

(i) Blasting shall be conducted to prevent injury to persons, damage to public or private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or availability of ground or surface waters outside the permit area.

(ii) All blasting shall be conducted during time approved by the Administrator and announced on the blasting schedule. Based on public requests or other considerations, including the proximity to residential areas, the Administrator may limit the area covered, timing and sequence of blasting. Blasting shall be conducted between sunrise and sunset unless night-time blasting is approved by the Administrator based on public protection and annoyance considerations.

(iii) Blasting may not be conducted at times different from those announced in the blasting schedule except in conditions where operator or public safety requires unscheduled detonation or for emergency blasting actions. Reasons for unscheduled detonation shall be documented.

(iv) Warning and all-clear signals of different character that are audible within a range of one-half mile from the point of the blast shall be given. All persons within the area covered under the term of permit and those who reside or regularly work within onehalf mile of this same area shall be notified of the meanings of the signals in the blasting schedule.

(v) Area of control. Access to the blasting area shall be controlled to protect the public and livestock from the effects of blasting and to prevent unauthorized entry. Access control shall continue until the permittee's authorized representative has determined that no unusual circumstances such as imminent slides or undetonated charges exist and access to and travel in or through the area can safely resume.

(vi) Areas in which charged (loaded) holes are awaiting firing shall be guarded against unauthorized entry.

(b) Limitations.

(i) Airblast shall not exceed the values specified below at any dwelling, public building, school, church, and community or institutional building outside the permit

area, unless the building is owned by the operator and not leased to another, or, if leased, the lessee signs a waiver relieving the operator from meeting the limitations. If necessary to prevent damage, the Administrator shall specify lower maximum allowable airblast levels.

Lower frequency limit of measuring system, Hz (+3dB)	Maximum level in dB
0.1 Hz or lower-flat response ¹	134 peak
2 Hz or lower-flat response	133 peak
6 Hz or lower-flat response	129 peak
C-weighted, slow response ¹	105 peak dBC

¹ Only if approved by the Administrator.

(A) At the request of the Administrator, $t\underline{T}$ he operator shall conduct periodic monitoring to ensure compliance with the airblast standards. The Administrator shall request monitoring in certain instances, including but not limited to complaints, blasting in sensitive areas, and in areas where there is reason to believe airblast limits may be exceeded. The measuring systems shall have an upper-end flat frequency response of at least 200 Hz.

(ii) Flyrock shall not be cast from the blasting site more than half the distance to the nearest occupied structure or beyond either the permit boundary or the area of control required under (a)(v) above.

(iii) In all blasting operations except as specified below, the maximum ground vibration shall not exceed the values approved in the blasting plan. The maximum ground vibration at the location of any dwelling, public building, school, church, and community or institutional building outside the permit area shall not exceed the values established by paragraph (iv), the scaled-distance equation of paragraph (v), the blasting level chart of paragraph (vi), or by the Administrator under paragraph (vii). All other structures such as water towers, pipelines, tunnels, dams, impoundments, and underground mines, shall be protected from damage by establishment of a maximum allowable limit on ground vibration, submitted by the operator in the blasting plan and approved by the Administrator. The ground vibration standards do not apply at structures owned by the operator from meeting the limitations.

Distance (D) from the Blasting Site in feet	Maximum allowable peak particle velocity (Vmax) for ground vibration in inches/second ¹	Scaled distance factor to be applied without seismic monitoring ²
0 to 300	1.25	50
301 to 5000	1.00	55
5001 and beyond	0.75	65

¹ Ground vibration shall be measured as the particle velocity. Particle velocity shall be recorded in three mutually perpendicular directions. The maximum allowable peak particle velocity shall apply to each of the three measurements.

² Applicable to the scaled-distance equation of Paragraph (v).

(iv) Maximum peak particle velocity applicable when seismograph records are provided for each blast:

(v) An operator may use the scaled-distance equation, $W=(D/Ds)^2$ to determine the allowable charge weight of explosives to be detonated in any eight millisecond period, without seismic monitoring; where W = the maximum weight of explosives, in pounds; D = the distance, in feet, from the blasting site to the nearest protected structure; and Ds = the scaled-distance factor, which may initially be approved by the Administrator using the values for scaled-distance factor listed in paragraph (iv) above.

(A) Upon written request by the operator with seismographic records, the Administrator may authorize a modified scaled-distance factor. The modified scaled-distance factor shall be determined such that particle velocity of the predicted ground vibration will not exceed the prescribed maximum allowable peak particle velocity of paragraph (iv) above, at a 95 percent confidence level.

(vi) An operator may use the ground vibration limits in Figure 1 (blastinglevel chart) to determine the maximum allowable ground vibration. A seismograph record including both particle velocity and vibration frequency levels shall be provided for each blast. The method for the analysis of the predominant frequency contained in the blasting records shall be approved by the Administrator before application of this alternative blasting criterion.



(vii) The maximum allowable ground vibration shall be reduced by the Administrator beyond the limits otherwise provided by paragraphs (iv)-(vi), if necessary to provide damage protection. The Administrator may require an operator to conduct seismic monitoring of any or all blasts or may specify the location at which the measurements are taken and the degree of detail necessary in the measurements.

(c) Blast Design. Permit requirements pertaining to blasting are located in Chapter 2, Section 2(b)(v).

(i) Anticipated blast design(s) shall be submitted if blasting operations will be conducted within:

(A) 1,000 feet of any building used as a dwelling, public building, school, church, or community or institutional building outside the permit area; or

(B) 500 feet of an active or abandoned underground mine.

(ii) The blast design may be presented as part of a permit application or at a time, before the blast, approved by the Administrator.

(iii) The blast design shall contain sketches of the drill patterns, delay periods, and decking and shall indicate the type and amount of explosives to be used, critical dimensions, and the location and general description of structures to be protected, as well as a discussion of design factors to be used, which protect the public and meet the applicable airblast, flyrock, and ground-vibration standards in (b) above.

- (iv) The blast design shall be prepared and signed by a certified blaster.
- (v) The Administrator may require changes to the design submitted.

Section 5. Records of Blasting Operations.

(a) A record of each blast, including seismograph reports, shall be retained for at least three years and shall be available for inspection by the Administrator and the public on request. The record shall contain the following data:

- (i) Name of permittee, operator, or other person conducting the blast;
- (ii) Location, date and time of blast;
- (iii) Name, signature, and certification number of blaster conducting the

blast;

(iv) Identification, direction and distance, in feet, from the nearest blast hole to the nearest dwelling, public building, school, church, and community or institutional building outside the permit area neither owned nor leased by the permittee;

- (v) Weather condition;
- (vi) Type of material blasted;

(vii) Sketches of the blast pattern including number of holes, burden, spacing, decks and delay pattern;

- (viii) Diameter and depth of holes;
- (ix) Types of explosives used;
- (x) Total weight of explosives used per hole;

(xi) Maximum weight of explosives detonated within any eight millisecond period;

- (xii) Initiation system;
- (xiii) Type and length of stemming;
- (xiv) Mats or other protections used;
- (xv) Seismograph and airblast records, where required, including:

(A) Type of instrument, sensitivity, and calibration signal or certification of annual calibration;

(B) Exact location of instrument and the date, time, and distance

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from the blast;

(C)	Name of person	and firm taking	the seismograph	reading;

(D) Name of person and firm analyzing the seismograph record;

and

(E) The vibration and/or airblast level recorded.

(xvi) Reasons and conditions for each unscheduled blast.

Section 6. Blaster Certification.

(a) General.

(i) The Department of Environmental Quality, Land Quality Division and the State Inspector of Mines will jointly administer this Section by Memorandum of Understanding.

(b) Definition.

(i) A blaster or shot-firer is a person directly responsible for the use of explosives in surface coal mining operations or surface blasting operations incident to underground coal mining operations.

(c) Requirements.

(i) All blasting operations shall be conducted under the direction of a certified blaster having a minimum of two years of blasting experience.

(ii) Certificates of blaster certification shall be carried by blasters or shall be on file at the mine site during blasting operations and shall be exhibited to any authorized State or Federal inspector upon request.

(iii) A blaster and at least one other person shall be present in the blasting area at the firing of a blast.

(iv) Persons responsible for blasting operations at a blasting site shall be familiar with the operator's blasting plan and site-specific performance standards.

(d) Training.

(i) The Department of Environmental Quality, Land Quality Division, shall establish or approve training programs for persons seeking to become certified as

blasters. These training programs shall include:

(A) Selection of the type of explosives to be used;

(B) Determination of the properties of explosives which will produce desired results at an acceptable level of risk;

- (C) Handling, transportation, and storage of explosives;
- (D) Geologic and topographic considerations of blast designs;
- (E) Design of a blast hole with critical dimensions;
- (F) Pattern design, field layout, and timing of blast holes;
- (G) Field applications of blast designs;
- (H) Loading blast holes, including priming and boostering;
- (I) Initiation systems and blasting machines;

(J) Blasting vibrations, airblast, and flyrock, including monitoring techniques and methods to control adverse affects;

- (K) Secondary blasting applications;
- (L) Current Federal and State rules applicable to the use of

explosives;

- (M) Blast records;(N) Schedules;
- (O) Preblasting surveys, including availability, coverage, and the use of in-blast designs;
 - (P) Blast plan requirements;
 - (Q) Certification and training;
 - (R) Signs, warning signals, and site control; and

(S) Unpredictable hazards, including lightning, stray currents, radio waves, and misfires.

(ii) Reciprocity of blaster's certificates from other approved State or Federal programs will require approval of the Administrator and the State Mine Inspector and at a minimum, knowledge of site-specific performance standards and blasting plan.

(e) Examination.

(i) To attain certification, a candidate must receive a passing score on the written and oral examinations which are prepared and approved by the Administrator.

(ii) The written examination for candidates for blaster certification shall test their competence in and practical application of the topics set forth in Section 6(d).

(iii) The oral examination for candidates for blaster certification shall test the use of explosives in relation to site-specific performance standards and the blasting plan under which they will be operating.

(f) Issuance of Certification.

(i) Certificates will be issued to those candidates receiving a passing score on the certification examination. The certification will expire five years from the issuance date.

(g) Renewal.

(i) Certificates may be renewed upon completion of the training, examination and certification program as required by the Administrator.

(h) Revocation.

(i) Following written notice and opportunity for hearing, the blasting certification will be revoked or suspended upon finding of:

(A) Noncompliance with any blasting-related order of Land Quality Division or the State Inspector of Mines;

(B) Unlawful use in the workplace of, or current addiction to, alcohol, narcotics, or other dangerous drugs;

(C) Violation of any provision of the State or Federal explosives laws or regulations; and

(D) Providing false information or a misrepresentation to obtain certification.

(ii) If advance notice and opportunity for hearing cannot be provided, an

opportunity for a hearing shall be provided as soon as practical following the suspension or revocation.

(iii) Upon notice of revocation, the blaster shall immediately surrender to the Land Quality Division the revoked certification.

(i) Maintenance of Certificates.

(i) Certificates will be protected from loss, theft, or unauthorized duplication and any such occurrence shall be reported to the Land Quality Division immediately.

(ii) Certificates shall not be assigned or transferred.

(iii) The blasters shall not delegate their responsibilities to any individual who is not a certified blaster.

DEPARTMENT OF ENVIRONMENTAL QUALITY

LAND QUALITY DIVISION

CHAPTER 12

PROCEDURES APPLICABLE TO SURFACE COAL MINING OPERATIONS

Section 1. Permitting Procedures.

(a) In addition to the permitting procedures described in the Act, the following shall be applicable to applications for a permit for a surface coal mine operation:

(i) For the purposes of alluvial valley floors, prior to determining that an application is suitable for publication in accordance with W.S. § 35-11-406(j) and upon the basis of sufficient information, the Administrator shall make a determination in writing as to the existence and extent of an alluvial valley floor within the permit area or on adjacent areas where the mining operation may affect surface water or groundwater that supply an alluvial valley floor unless the preapplication determination in Chapter 3, Section 2(a) has already been made. Any preapplication determination and all information submitted for this determination shall be included in the permit application and shall be available for public notice, opportunity for comment and any conference or hearing. The Administrator shall determine that an alluvial valley floor exists when, in accordance with W.S. § 35-11-103(e)(xviii), it is found that:

present; and

(A) Unconsolidated streamlaid deposits holding streams are

(B) There is sufficient water to support subirrigation or flood irrigation agricultural activities.

(ii) The public notice required by W.S. § 35-11-406(j) shall:

(A) Contain detailed information which identifies a USGS map(s) and appropriate landmarks locating and allowing local residents to readily identify the proposed permit area.

(B) Be sent by the Administrator to Federal, State, and local governmental agencies, including planning agencies, with jurisdiction over or an interest in the proposed operation or permit area, and local sewage and water treatment authorities. At a minimum this shall include the U.S. Department of Agriculture Soil Conservation Service District office, the local U.S. Army Corps of Engineers District Engineer, the National Park Service if NPS lands are adjacent, State and Federal fish and wildlife agencies, and the State Historic Preservation Officer. Such entities and any person who filed a comment or objection

shall also receive the final decision on the application. In addition, the Administrator will publish a summary of his decision in a newspaper of general circulation in the general area of the proposed operation.

(iii) Any subsequent revision of the application, or objections or comments to the application, shall be filed in the offices of the county clerks of the counties in which the proposed permit area is located. Copies of comments and objections shall also be transmitted to the applicant.

(iv) In addition to the specific findings required by W.S. § 35-11-406(n), no permit shall be approved unless the Administrator also finds in writing that:

(A) The proposed operation will not be inconsistent with other surface coal mining and reclamation operations proposed or contemplated in pending or approved mining permits;

(B) The effect of the proposed operation on properties listed on and properties eligible for listing on the National Register of Historic Places has been taken into account; and

(I) Mining has been prohibited within 100 feet of any such properties by permit condition; or

(II) The applicant has provided for the protection of such properties in the approved mining and reclamation plan; or

(III) The Administrator has determined, in consultation with the State Historic Preservation Officer, that no additional protection measures are necessary.

(v) The criteria contained in W.S. § 35-11-406(n)(iv) regarding Section 522(e) of P.L. 95-87 shall mean that, prior to approval of any complete application for a surface coal mining permit, the applicant must demonstrate and the Administrator determine, utilizing the assistance of the appropriate Federal, State or local government agency, if necessary, that the application does not propose a surface coal mining operation on those lands where such operation is prohibited or limited by Section 522(e) of P.L. 95-87; or if one is so proposed, that the applicant either has valid existing rights or was conducting a surface coal mining operation on those lands on August 3, 1977. Subject to the above stated limitations, surface coal mining operations are prohibited or limited:

(A) On any lands within the boundaries of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act or study rivers or study river corridors as established in any guidelines pursuant to that Act and National Recreation Areas designated by Act of Congress;

(B) On any federal lands within the boundaries of any national forest unless the applicant demonstrates compliance with 30 CFR §761.11(b) and submits a finding by the Secretary in his favor using the procedures at 30 C.F.R. §761.13 (2009) (http://www.gpoaccess.gov/cfr/retrieve.html);

(C) On any lands where mining will adversely affect any publicly owned park or any properties listed on and any properties eligible for listing on the National Register of Historic Places, unless jointly approved by the Administrator and the Federal, State or local agency with jurisdiction over the park or place;

(D) Within 100 feet, measured horizontally, of the outside right-ofway line of any public road, except where mine primary roads join such right-of-way line. Provided, however, the Administrator may specifically authorize operations where the road is to be relocated, closed, or where the area affected lies within 100 feet of a public road. Such specific authorization shall provide a public comment period and an opportunity to request a public hearing in the locality of the proposed operation together with a written finding on whether the interests of the public and the affected landowners will be protected from the proposed operation. If a hearing is requested, a public notice shall be published at least two weeks prior to the hearing in a local newspaper of general circulation. If a hearing is held, the Administrator shall make this finding within 30 days after the hearing or if a hearing is not held the Administrator must make this finding within 30 days after the end of the public comment period. The Administrator may rely upon findings of the public road authority with jurisdiction over the road in specifically authorizing road relocations or closures;

(E) Within 300 feet from any occupied dwelling except when the owner has provided a written waiver consenting to operations within a closer distance, clarifying that the owner and signator had the legal right to deny mining and knowingly waived that right. Such a waiver shall remain effective, regardless of when it was obtained, against subsequent purchasers who had actual or constructive knowledge of the existing waiver at the time of purchase. Subsequent purchasers shall be deemed to have constructive knowledge if the waiver has been properly filed in the public property records or if the mining has proceeded to within the 300-foot limit prior to the date of purchase;

(F) Within 300 feet, measured horizontally, of any public building, school, church, community, or institutional building, or public park; or

(G) Within 100 feet, measured horizontally, of a cemetery.

(vi) For Federal lands described in subsections (v)(A) and (v)(B) above the Office of Surface Mining Reclamation and Enforcement shall be the responsible agency for making valid existing rights (VER) determinations. For Non-Federal lands described in subsection (v)(A) above the Division is the responsible agency for making VER

determinations and shall make evaluations using the Federal VER definition.

(vii) VER submission requirements and procedures.

(A) A request for a VER determination shall be submitted to the appropriate agency identified in subsection (vi) above if the applicants intends to conduct surface coal mining operations on the basis of valid existing rights under 30 C.F.R. §761.11 (2009), (http://www.gpoaccess.gov/cfr/retrieve.html), or wishes to confirm the right to do so. Requests may be submitted prior to submitting an application for a permit or boundary revision for the land.

(I) Property rights demonstrations required under the VER definition at Chapter 1, Section 2(fq)(i) for requests that rely on the good faith/all permits standard or the needed for and adjacent standard detailed in the VER definition at Chapter 1, Section 2(fq)(ii)(A) and (B) respectively shall include the following:

(1.) A legal description of the land to which the

request pertains;

(2.) Complete documentation of the character and extent of the current interests in the surface and mineral estates of the land to which the request pertains;

(3.) A complete chain of title for the surface and mineral estates of the land to which the request pertains;

(4.) A description of the nature and effect of each title instrument that forms the basis of the request, including any provision pertaining to the type or method of mining or mining related surface disturbances and facilities;

(5.) A description of the type and extent of surface coal mining operations that the requestor claims the right to conduct, including the method of mining, any mining related surface activities and facilities, and an explanation of how those operations would be consistent with State property law;

(6.) Complete documentation of the nature and ownership, as of the date that the land came under the protection of 522(e) of P.L. 95-87 (2009), (http://www.gpoaccess.gov/uscode/) or 30 C.F.R. §761.11 (2009), (http://www.gpoaccess.gov/cfr/retrieve.html), of all property rights for the surface and mineral estates of the land to which the request pertains;

(7.) Names and addresses of the current owners of the surface and mineral estates of the land to which the request pertains;

(8.) If the coal interests have been severed from

other property interests, documentation that the requestor has notified and provided reasonable opportunity for the owner of other property interests in the land to which the request pertains to comment on the validity of the property rights claims made; and

(9.) Any comments that are received in response to the notification discussed in (8.) above.

(II) If the VER determination request relies on the good faith/all permits standard, the request shall include the documentation discussed in (I) above, and:

(1.) Approval and issuance dates and identification numbers for any permits, licenses and authorizations that the person seeking the request or a predecessor in interest obtained before the land came under the protection of 522(e) of P.L. 95-87 (2009) or 30 C.F.R. §761.11 (2009);

(2.) Application dates and identification numbers for any permits, licenses and authorizations that the person seeking the request or a predecessor in interest submitted an application before the land came under the protection of 522(e) of P.L. 95-87 (2009) or 30 C.F.R. §761.11 (2009); and

(3.) An explanation of any other good faith effort that was made by the person seeking the request or a predecessor in interest made to obtain the necessary permits, licenses and authorizations as of the date that the land came under the protection of 522(e) of P.L. 95-87 (2009) or 30 C.F.R. §761.11 (2009).

(III) If the request relies on the needed for and adjacent standard, the request shall include the documentation discussed in (I) above and shall also explain how and why the land is needed for and immediately adjacent to the operation on which the request is based including a demonstration that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of 522(e) of P.L. 95-87 (2009) or 30 C.F.R. §761.11 (2009).

(IV) If the request relies on one of the standards for roads detailed in the definition of VER at Chapter 1, Section 2(fq)(iii)(A) through (C), the request shall include documentation that:

(1.) The road existed when the land on which it is located came under the protection of 522(e) of P.L. 95-87 (2009) or 30 C.F.R. §761.11 (2009) and that the person making the request has a legal right to use the road for surface coal mining operations;

(2.) A properly recorded right of way or easement

for a road in that location existed when the land came under the protection of 522(e) of P.L. 95-87 (2009) or 30 C.F.R. §761.11 (2009) and under the document creating the right of way or easement, and under any subsequent conveyances the person making the request has a legal right to use or construct a road across the right of way or easement to conduct surface coal mining operations; or

(3.) A valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of 522(e) of P.L. 95-87 (2009) or 30 C.F.R. §761.11 (2009).

(B) Initial review of request.

(I) The responsible agency shall conduct an initial review to determine whether the request includes all applicable components of the submission requirements discussed in subsection (A) above. This review only examines completeness of the request not the legal or technical adequacy of the materials submitted.

(II) If the request does not include all applicable components of the submission requirements, the responsible agency shall notify the requestor and establish a reasonable time for submitting the missing components.

(III) When the request contains all applicable submission requirements the responsible agency shall implement the notice and comment requirements discussed in subsection (C) below.

(IV) If the information requested in (II) above is not submitted within the time specified or amended the responsible agency shall issue a determination that the VER has not been demonstrated as discussed in Section 1(a)(vii)(D)(IV) below.

(C) Notice and comment requirements and procedures.

(I) When the VER request satisfies the completeness requirements of (B) above, the VER applicant must publish a notice in a newspaper of general circulation in the county in which the land is located. This notice must invite comment on the merits of the request. The applicant must provide the Division with a proof of publication. Each notice shall include:

(1.) Location of land to which the VER request

pertains;

(2.) A description of the type of surface coal mining

operations planned;

(3.) A reference to and brief description of the applicable standards, found in the definition of VER at Chapter 1, Section 2(fq) of these rules;

a. If the request relies upon the good faith/all permits standard or the needed for and adjacent standard found in Chapter 1, Section 2(fq)(ii)(A) and (B), the notice shall also contain a description of the property rights claimed and the basis for the claim.

b. If the request relies upon the standard in subsection (A)(IV)(1.) above, the notice shall also include a description of the basis for the claim that the road existed when the land came under the protection of 522(e) of P.L. 95-87 (2009) or 30 C.F.R. §761.11 (2009). In addition the notice shall include a description of the basis for your claim that the VER requestor has a legal right to use that road for surface coal mining operations.

c. If the request relies upon the standard in subsection (A)(IV)(2.) above, the notice shall also include a description of the basis for the claim that a properly recorded right-of-way or easement for a road in that location existed when the land came under the protection of 522(e) of P.L. 95-87 (2009) or 30 C.F.R. §761.11 (2009). In addition the notice shall include a description of the basis for the claim that, under the document creating the right of way or easement, and under any subsequent conveyances, the VER requestor has a legal right to use or construct a road across the right of way or easement to conduct surface coal mining operations.

d. If the request relies upon one or more of the standards in Chapter 1, Section 2(fq)(ii), (iii)(A) and (iii)(B) of the VER definition, a statement that the Division will not make a decision on the merits of the request if, by the close of the comment period under this notice or the notice required below, a person with a legal interest in the land initiates appropriate legal action in the proper venue to resolve any differences concerning the validity or interpretation of the deed, lease, easement or other documents that form the basis of the VER claim.

e. A description of the procedures that the agency will follow to process a VER request.

f. The closing date of the comment period, which must be a minimum of 30 days after the publication date of the notice.

g. A statement that interested persons may obtain a 30-day extension of the comment period on request.

h. The name and address of the agency office where a copy of the request is available for a public inspection and to which comments

and requests for extension of the comment period should be sent.

(II) The Division shall promptly provide a copy of the notice required under this Section to:

(1.) All reasonably locatable owners of surface and mineral estates in the land included in the VER request.

(2.) The owner of the feature causing the land to come under the protection of 522(e) of P.L. 95-87 (2009) or 30 C.F.R. §761.11 (2009) and, when applicable, the agency with primary jurisdiction over the feature with respect to the values causing the land to come under the protection of 522(e) of P.L. 95-87 (2009) or 30 C.F.R. §761.11 (2009). For example, both the landowner and the State Historic Preservation Officer must be notified if surface coal mining operations would adversely impact any site listed on the National Register of Historic Places. As another example, both the surface owner and the National Park Service must be notified if the request includes non-Federal lands within the authorized boundaries of a unit of the National Park System.

(III) The letter transmitting the notice required under subsection (II) above shall provide a 30-day comment period, starting from the date of service of the letter, and specify that another 30 days is available upon request. At its discretion, the Division, as the agency responsible for the determination of VER may grant additional time for good cause upon request. The Division need not necessarily consider comments received after the closing date of the comment period.

(D) How a VER decision will be made.

(I) The Division shall review the materials submitted under Subsection (A) above, any comments received under Subsection (C) above and any other relevant reasonably available information to determine whether the record is sufficiently complete and adequate to support a decision on the merits of the request. If not, the Division shall notify the requestor in writing, explaining the inadequacy of the record and requesting submittal, within a specified reasonable time, of any additional information that the agency deems necessary to remedy the inadequacy.

(II) Once the record is complete and adequate, the Division shall determine whether the requestor has demonstrated VER. The decision document shall explain how the requestor has or has not satisfied all the applicable elements, shall contain findings of fact and conclusions and shall specify the reasons for the conclusions.

(III) Impact of property rights disagreements. This subsection only applies when the request relies upon on or more of the standards in the Chapter 1, VER definition.

(1.) The Division shall issue a determination that the requestor has not demonstrated VER if the property rights claims are the subject of pending litigation in a court or administrative body with jurisdiction over the property rights in question. A requestor may refile the request once the property rights dispute is finally adjudicated. This subsection only applies if the legal action has been initiated as of the closing date of the comment periods discussed under Subsections (C)(I) and (C)(III) above.

(2.) If the record indicates disagreement as to the accuracy of the requestor's property rights claims, but the disagreement is not the subject of pending litigation in a court or administrative agency of competent jurisdiction, the Land Quality Division shall evaluate the merits of the information in the record and determine whether the requestor has demonstrated that the requisite property rights exist under Subsections (i), (iii)(A) or (iii)(B) of the VER definition in Chapter 1 of these Rules and Regulations, as appropriate. The Division shall then proceed to subsection (D)(II) above.

(IV) The Division must issue a determination that the requestor has not demonstrated VER if the requestor has not submitted the information requested under subsections (B)(II) and (D)(I) above within the time specified or as subsequently extended. A requestor may submit a revised request at any time after that determination has been made.

(V) After making a VER determination, the Division shall:

(1.) Provide a copy of the determination, together with an explanation of appeal rights and procedures to the VER requestor, the owner or owners of the land to which the determination applies, the owner of the feature causing the land to come under the protection of 522(e) of P.L. 95-87 (2009) or 30 C.F.R. §761.11(2009) and when applicable, to the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of 522(e) of S22(e) of S22(e)

(2.) Require the VER requestor to publish notice of the determination in a newspaper of general circulation in the county in which the land is located and provide the Division with proof of publication. If the initial VER request contained Federal lands with an area listed in subsections (v)(A) and (B) above, the OSM will publish the determination, together with an explanation of appeal rights and procedure in the Federal Register.

(E) Administrative and judicial review. A determination that the VER requestor does or does not have VER is subject to administrative and judicial review under the Wyoming Administrative Procedures Act, W.S. 16-3-101 through 16-3-115 (2011).

(F) Availability of records. When the Land Quality Division is the

agency responsible for processing a request subject to notice and comment under subsection (C) above the Division shall make a copy of that request and related materials available to the public in the same manner as public availability of permit applications under these Rules and Regulations. In addition, the Division shall make records associated with that request, and any subsequent determination under subsection (D) above available to the public in accordance with the requirements and procedures of W.S. §35-11-1101 (2011), the Wyoming Public Records Act (W.S. §§ 16-4-201 thru 16-4-205 (2013)), W.S. §35-11-406(d) (2013) and the Division's rules and regulations related to public review and participation, and shall at a minimum make copies of those records immediately available to the public in the area of mining until at least five years after the expiration of the period during which the operation is active or is covered by any portion of a reclamation bond so that they are conveniently available to residents of that area in compliance with 30 CFR 840.14(b), (c) and (d), (2013) (http://www.gpo.gov/fdsys/).

(G) Procedures for joint approval of surface coal mining operations that will adversely affect publicly owned parks or historic places.

(I) If the regulatory authority determines that the proposed surface coal mining operation will adversely affect any publicly owned park or any place included in the National Register of Historic Places, the regulatory authority must request that the Federal, State, or local agency with jurisdiction over the park or place either approve or object to the proposed operation. The request shall:

(1.) Include a copy of applicable parts of the permit

application.

(2.) Provide the agency with 30 days after receipt to respond, with a notice that another 30 days is available upon request.

(3.) State that failure to interpose an objection within the time specified under subsection (2.) above will constitute approval of the proposed operation.

(II) The regulatory authority may not issue a permit for a proposed operation subject to subsection (I) above unless all affected agencies jointly approve.

(III) Subsections (I) and (II) above do not apply to:

(1.) Lands for which a person has VER, as determined under Section 1(a)(vi) and (vii) of this Chapter;

(2.) Lands within the scope of the exception for existing operations contained in the Chapter 1, Section 2(fq)(iv) "valid existing rights"

definition.

(viii) Final Compliance Review. After finding the application administratively complete and suitable for publication but prior to permit issuance, the Department of Environmental Quality shall conduct a review of the following before making a permit eligibility determination under (x) of this section:

(A) The information the applicant submitted regarding applicant, operator and ownership or control information AVS information and any other available information to review the applicants and operators organizational structure and ownership or control relationships;

(B) The information the applicant submitted regarding applicant permit history, AVS information and any other available information to review the applicant and operator's permit history. In addition, the regulatory authority Division shall determine if the applicant and operator have previous mining experience and if the applicant or operator does not have any previous mining experience additional ownership or control investigations may be conducted <u>under subsection (ix)(E) below to determine if someone else with mining experience controls the mining operation;</u> and

(C) The information the applicant submitted regarding compliance history, AVS compliance report and any other available information to review histories of compliance with the Wyoming Environmental Quality Act and regulations promulgated thereunder and any other air or water quality laws for the applicant, operator, operations owned or controlled by the applicant and operations the operator owns or controls.

(ix) The Division shall enter into AVS:

(A) The information submitted in the application in compliance with Chapter 2, Section 2(a)(i)(B)-(F);

(B) The information submitted pertaining to violations which are unabated or uncorrected after the abatement or correction period has expired; and

(C) The Division shall update the information above upon verification of any additional information submitted or discovered during Division's permit application review.

(D) For the purposes of future permit eligibility determinations and enforcement actions:

(I) All permit records within 30 days after the permit is issued or subsequent changes are made;

(II) All unabated or uncorrected violations within 30 days after the abatement or correction period for a violation expires;

(III) All changes to information initially required to be provided by the applicant as part of the application process within 30 days after receiving notice of a change; and

(IV) All changes in violation status within 30 days after abatement, correction, or termination of a violation or a decision from an administrative or judicial tribunal.

(E) At any time, the Division may identify any person who owns or controls an entire surface coal mining operation or any relevant portion or aspect thereof. If the Division identifies such a person, the Division must issue a written preliminary finding to the person and the applicant or permittee describing the nature and extent of ownership or control. The written preliminary finding must be based on evidence sufficient to establish a prima facie case of ownership or control. After the Division issues a written preliminary finding under this section, the Division will allow, the person subject to the preliminary finding, thirty (30) days in which to submit any information tending to demonstrate that persons lack of ownership or control. If, after reviewing any information submitted, the Division is persuaded that the person is not an owner or controller, the Division will serve a written notice to that effect to the person identified. If, after reviewing any information submitted, the Division still finds that the person identified is an owner or controller, or if the person identified does not submit any information within the 30-day period, the Division will issue a written finding and enter the Division's finding into AVS. If the Division identifies a person as an owner or controller under this section, that person may challenge the finding using the provisions of Chapter 12, Section 1(a)(xiii) and (xiv)(A)-(E). If a hearing is not requested regarding preliminary findings of permanent permit ineligibility and the time for seeking a hearing has expired, the Division will enter our finding into AVS. If a hearing is requested, the Division will enter the finding into AVS only if that finding is upheld on administrative appeal.

(F) The Land Quality Division need not make a finding as provided for under (E) above before entering into AVS the information required to be disclosed in compliance with Chapter 2, Section 2(a)(i)(B) - (E); however, the mere listing in AVS of a person identified in Chapter 2, Section 2(a)(i)(B) - (E) does not create a presumption or constitute a determination that such person owns or controls a surface coal mining operation.

(x) In addition to the specific findings required by W.S. § 35-11-406(n) and based on the reviews required in subsection (viii) above, the Land Quality Division (LQD) shall determine whether the applicant is eligible for a coal mining permit. An applicant is not eligible for a permit if the LQD determines that for any surface coal mining operation that:

(A) The applicant directly owns or controls has an unabated or uncorrected violation;

(B) The applicant or his operator indirectly controls has an unabated or uncorrected violation and the applicant's control was established or the violation was cited after November 2, 1988; or

(C) The applicant or his operator controls or has controlled mining operations with a demonstrated pattern of willful violations as outlined in W.S. 35-11-406(o).

(D) Exceptions

(I) An applicant is eligible for a permit if an unabated violation occurred after October 24, 1992 and resulted from an unanticipated <u>event or</u> condition at a surface coal mining and reclamation operation on lands that are eligible for remining under a permit that was held by the person applying for the new permit.

(II) An applicant may be eligible for a provisionally issued permit if the applicant owns or controls a surface coal mining and reclamation operation with a notice of violation issued under Chapter 16 of these rules and regulations for which the abatement period has not yet expired or a violation that is unabated or uncorrected beyond the abatement or correction period.

(III) An applicant is eligible for a provisionally issued permit if the applicant is pursuing a good faith challenge to all pertinent ownership or control listings or findings under Chapter 12, Section 1 or administrative or judicial appeal of all pertinent ownership or control listings or findings or contesting the validity of a violation unless there is an initial judicial decision affirming the listing or finding or the violation, and those decisions remains in force.

(IV) A provisionally issued permit will be considered improvidently issued and the Division will begin procedures to suspend or rescind the permit as described in Section 1(a)(xiv)(G) if the violations are not abated within the specified abatement period, or the applicant, operator or operations that the operator or applicant own or control do not comply with the terms of an abatement plan or payment schedule for fees or penalties assessed. Suspension or rescission proceedings will also be initiated if, in the absence of a request for judicial review, the disposition of a challenge and any subsequent administrative review as discussed above affirms the validity of the violation or the ownership or control listing or finding or if the initial judicial review decision discussed above affirms the validity of the violation or finding.

(xi) Following the Director's approval of a permit but prior to issuance of that permit, the applicant shall update, correct or indicate that no change has occurred in the

information provided in Chapter 2, Section 2.

(xii) After the applicant completes the above requirements, the DEQ shall request a compliance history report from AVS to determine if there are any unabated or uncorrected violations that affect the applicant's permit eligibility in subsection (x) above. The DEQ shall request this report no more than five business days before a permit is issued. If the applicant is ineligible for a permit the DEQ shall send you written notification of the decision and will detail the reasons for ineligibility and include notice of appeal rights.

(xiii) A person may challenge a listing or finding of ownership or control using the procedures detailed below if that person is:

(A) Listed in a permit application or in AVS as an owner or controller of an entire surface coal mining operation, or any portion or aspect thereof; or

(B) Found to be an owner or controller of an entire surface coal mining operation, or any portion or aspect thereof, under Chapter 12, Section 1(a)(xiv)(G) or Section 1(a)(ix)(E); or

listing or finding.

(C) An applicant or permittee affected by an ownership or control

(xiv) In order to challenge an ownership or control listing or finding a written explanation shall be submitted to the Department of Environmental Quality regarding the basis of the challenge along with any evidence or explanatory materials outlined in subsection (E) below. If the challenge concerns a pending permit application the written explanation shall be submitted to the regulatory authority with jurisdiction over the application. If the challenge concerns the applicant's ownership or control of a surface coal mining operation and the applicant is not currently seeking a permit the written explanation shall be submitted to the regulatory authority with jurisdiction over the surface coal mining operation. The provisions of this section and of subsections D through F below apply only to challenges to ownership or control listings or findings and may not be used to challenge liability or responsibility under any other section of the Wyoming Environmental Quality Act or the Land Quality Division, Coal Rules and Regulations.

(A) When a challenge concerns a violation under the jurisdiction of a different regulatory authority, the regulatory authority with jurisdiction over the permit application or permit shall consult the regulatory authority with jurisdiction over the violation and the AVS Office to obtain additional information.

(B) The regulatory authority responsible for deciding a challenge under this section may request an investigation by the AVS Office.

(C) At any time a person listed in AVS as an owner or controller of

a surface coal mining operation may request an informal explanation from the AVS Office as to the reason they are shown in the AVS in an ownership or control capacity. <u>The AVS</u> <u>Office will provide a response describing why the person is listed in AVS in accordance with 30 C.F.R. §773.26(e) (2013) (http://www.gpo.gov/fdsys/).</u>

(D) When a challenge is made to a listing of ownership or control, or a finding of ownership or control, the challenger must prove by a preponderance of the evidence that they either:

(I) Do not own or control the entire surface coal mining operation or relevant portion or aspect thereof; or

(II) Did not own or control the entire surface coal mining operation or relevant portion or aspect <u>thereof</u> during the relevant time period.

(E) In order to meet the burden of proof in subsection (D) above, the challenger must present reliable, credible, and substantial evidence and any explanatory materials to the regulatory authority. The materials presented in connection with your challenge will become part of the permit file, an investigation file or another public file. A request to hold materials submitted under this Section confidential may be made to the Administrator subject to Land Quality Division Rules and Regulations and the Wyoming Public Records Act. Acceptable materials include, but are not limited to:

(I) Notarized affidavits containing specific facts concerning the duties that were performed for the relevant operation, the beginning and ending dates pertaining to ownership or control of the operation, and the nature and details of any transaction creating or severing ownership or control of the operation in question;

(II) Certified copies of corporate minutes, stock ledgers, contracts, purchase and sale agreements, leases, correspondence, or other relevant company records;

(III) Certified copies of documents filed with or issued by any State; municipal, or Federal government agency;

(IV) An opinion of counsel, when supported by evidentiary materials, a statement by counsel that they are qualified to render the opinion and a statement that counsel has personally and diligently investigated the facts of the matter.

(F) Within sixty (60) days of receipt of a challenge as described above, the Division will review and investigate the evidence and explanatory materials submitted and any other reasonable available information bearing on the challenge and issue a written decision. The decision shall state whether the challenger owns or controls the relevant surface coal mining operation, or owned or controlled the operation during the relevant time period. Decisions regarding the challenge will be promptly provided to the challenger by either certified mail, return receipt requested or by any alternative means consistent with rules governing service under the Wyoming Rules of Civil Procedure. Service of the decision will be complete upon delivery and is not incomplete if acceptance of delivery is refused. The Division will post all decisions made under this section on AVS. Appeals of the written decision will be administered under the Department's Rules of Practice and Procedure. Any person who receives a written decision under this section, and who wishes to appeal that decision shall exhaust all administrative remedies under the procedures of the Wyoming Environmental Quality Act, the Department's Rules of Practice and Procedure, the Wyoming Administrative Procedure Act, W.S. 16-3-101 through 16-3-115 (2013) and Chapter 12 of these Rules and Regulations before seeking judicial review. AVS shall be revised as necessary to reflect these decisions. Following the Division's written decision or any decision by a reviewing administrative or judicial tribunal, the Division must review the information in AVS to determine if it is consistent with the decision. If it is not, the Division shall promptly revise the information to reflect the decision.

(G) Improvidently issued coal mining permits.

(I) If the Administrator has reason to believe that a permit was improvidently issued to the permittee a review shall be conducted of the circumstances under which the permit was issued. The Administrator shall make a preliminary finding that the permit was improvidently issued if under the permit eligibility requirements in effect at the time of permit issuance the permit should not have been issued because the applicant or operator owned or controlled a surface coal mining and reclamation operation with an unabated or uncorrected violation.

(II) The Administrator will make a finding under subsection (I) above only if the applicant or operator:

(1.) Continue to own or control the operation with the unabated or uncorrected violation;

(2.) The violation remains unabated or uncorrected;

and

(3.) The violation would cause the permittee to be ineligible under the permit eligibility criteria under the current rules and regulations.

(III) When a preliminary finding under subsection (I) above is made, a written notice shall be served on the permittee which must be based on evidence sufficient to establish a prima facie case that the permit was improvidently issued. Within thirty (30) days of receiving a written notice the permittee may challenge the preliminary finding by providing the Administrator with evidence as to why the permit was not
improvidently issued under the criteria of subsections (I) and (II) above. Challenges under subsections (I) and (II)(1.) above shall use the procedures outlined in subsections (xiii) and (xiv)(A) through (E) above when the challenge is related to whether the permittee or operator currently own or control, or owned or controlled, a surface coal mining operation.

(IV) The Administrator shall serve the permittee with written notice of a proposed suspension or rescission together with a statement of the reasons for the proposed suspension or rescission, if after considering any evidence submitted under subsection (III) above the Administrator finds that a permit was improvidently issued under the criteria of subsections (I) and (II) above or the permit was provisionally issued under Chapter 12, Section 1(a)(x)(D)(II) and one or more of the conditions in Chapter 12, Section 1(a)(x)(D)(III) exists. If a permit suspension is proposed, sixty (60) days notice shall be provided and if a permit rescission is proposed one hundred twenty (120) days notice shall be provided. If the permittee wishes to appeal the notice, the permittee must exhaust administrative remedies under the procedures of the Wyoming Environmental Quality Act, the Department's Rules of Practice and Procedure, the Wyoming Administrative Procedure Act and Chapter 12 of these Rules and Regulations.

(V) Appeals regarding the notice shall be governed by the Wyoming Environmental Quality Act, Department's Rules of Practice and Procedure, the Wyoming Administrative Procedure Act and Chapter 12 of these Rules and Regulations. All administrative remedies shall be exhausted if a permittee wishes to appeal the notice under the above statutes and regulations. The times specified in subsection (IV) above shall be applicable unless the Environmental Quality Council has granted a stay for temporary relief to provide the administrative review in subsection (VII) below.

(VI) Service. For purposes of this Section, service of the notice shall be performed on the permittee by certified mail, or by any alternative means consistent with the rules governing service of a summons and complaint under Rule 4 of the Wyoming Rules of Civil Procedure. Service shall be complete upon tender of the notice of proposed suspension or recession and any attached information or of the certified mail and shall not be deemed incomplete because of refusal to accept. Except as provided in subsection (VII) below, the Administrator shall suspend or rescind the permit upon expiration of the notice periods provided in subsection (IV) above unless the permittee has submitted evidence and the Administrator finds that:

(1.) The violation has been abated or corrected to the satisfaction of the agency with jurisdiction over the violation;

the relevant operation:

(2.) The permittee or operator no longer owns or

controls the relevant operation;

(3.) The Administrator's finding for suspension or

rescission was in error;

(4.) The violation is the subject of a good faith administrative or judicial appeal, unless there is an initial judicial decision affirming the violation and that decision remains in force;

(5.) The violation is the subject of an abatement plan or payment schedule that is being met to the satisfaction of the agency with jurisdiction over the violation; or

(6.) The permittee is pursuing a good faith challenge or administrative or judicial appeal of the relevant ownership or control listing or finding unless there is an initial judicial decision affirming the listing or finding and that decision remains in force.

(VII) If an administrative review is requested of a notice of proposed suspension or rescission, the DEQ will not suspend or rescind the permit unless and until the finding is affirmed that the permit was improvidently issued.

(VIII) When a permit is suspended or rescinded under this

(1.) Issue a written notice requiring that the permittee and operator shall cease all surface coal mining operations under the permit; and

(2.) Post the notice in the District office closest to

the permit area.

section, the DEQ shall:

(IX) If the Administrator suspends or rescinds your permit under this section, you may request administrative review of the notice under the procedures of the Wyoming Environmental Quality Act, the Department's Rules of Practice and Procedure, the Wyoming Administrative Procedure Act and Chapter 12 of these Rules and Regulations, or alternatively you may request judicial review of the notice provided all other administrative remedies have been exhausted.

(xv) If the Administrator is unable to determine whether or not the proposed operation is on lands where surface coal mining operations are prohibited, lands described in (v) immediately above, then a copy of relevant portions of the application shall be sent to appropriate State, Federal and local government agencies with an interest or jurisdiction in the lands in question. Along with the copy a notice shall be sent asking for clarification or determination of relevant boundaries or distances, and stating that the agency has 60 days from receipt of the notice to respond. If no response is received, the Administrator may make a determination based on the information available.

(xvi) The criteria for permit approval where prime farmland will be affected by the mining operation shall be that, upon the basis of the complete application:

(A) The postmining land use of the prime farmland will be capable of supporting crop yields equivalent to the surrounding nonmined prime farmland under equivalent levels of management.

(B) Adequate consideration has been given to any soil reconstruction revisions recommended by the local conservation district and Soil Conservation Service.

(C) The applicant has the technological capability to restore the prime farmland.

(xvii) In addition to the specific findings required by W.S. § 35-11-406(n), no permit authorizing a delay in the contemporaneous reclamation requirements for a proposed combined surface and underground mining operation shall be approved unless the Administrator finds that:

(A) The proposed underground mining activities will assure maximum practical recovery of the resource and avoid multiple future disturbances of surface land or waters.

(B) The permit for the surface mining activities contains specific conditions:

(I) Delineating the particular surface area for which a delay in reclamation is authorized; and

(II) Identifying the alternative reclamation standards in lieu of those otherwise applicable, together with a detailed schedule for timely compliance.

(xviii) In granting surface coal mining permits, the Director shall impose the following conditions on the operation:

(A) All operations shall be conducted in accordance with the approved mining and reclamation plan and any conditions of the permit or license;

(B) The rights of entry shall be provided as described by the Act and any regulations promulgated pursuant thereto;

(C) The operation shall be conducted in a manner which prevents violation of any other applicable State or Federal law;

(D) All possible steps shall be taken to minimize any adverse impact to the environment or public health and safety resulting from noncompliance with the approved mining and reclamation plan and other terms and conditions of any permit or license, including monitoring to define the nature of the noncompliance and warning of any potentially dangerous condition; and

(E) All reclamation fees shall be paid as required by Title IV, P.L. 95-87, for coal produced under the permit for sale, transfer or use.

(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 permit transfer, assignment or sale of permit rights. In addition, the following requirements are applicable.

(i) All requirements imposed by W.S. § 35-11-405(e) for permit renewals. The application shall be filed at least 120 days before the expiration of the permit term and shall include at a minimum:

(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;

(B) A copy of the public notice and proof of publication;

- provided; and
- (C) Evidence that the bond and a liability insurance policy will be

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(D) Additional revised or updated information required by the

Administrator.

(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.

(ii) All requirements imposed by W.S. § 35-11-408 and this <u>section</u> provision for <u>shall be applicable to a</u> permit transfer, assignment or sale of permit rights. These requirements shall be met, as evidenced by the written approval of the statement of qualifications by the Administrator and Director, prior to any permit transfer, assignment or sale of permit rights. For purposes of this section, potential transferee, means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those <u>rights.</u>

(A) The potential transferee shall obtain a renewal bond by either

transfer of the permit holder's bond, written agreement with the permit holder, or providing other sufficient bond or equivalent guarantee.

(B) The statement of qualifications shall contain all legal, financial, compliance and related information required by Chapter 2, Section 2(a)(i) through (iii) which would be required if the potential transferee were the original applicant for the permit and, in addition, the name, address and permit number of the existing permit holder.

(C) The applicant for a transfer, assignment or sale of permit rights shall advertise the filing of the application in a newspaper of general circulation in the locality of the operations involved once a week for four (4) consecutive weeks, indicating the name and address of the applicant, the permittee, the permit number, the geographic location of the permit and the address to which written comments may be sent.

(D) Public Participation. Any person having an interest which is or may be adversely affected by a decision on the transfer, assignment or sale of permit rights, including an official of any Federal, State, or local government agency, may submit written comments on the application to the Division within a time specified by the Division.

(E) Criteria for Approval. The Division may allow a permittee to transfer, assign or sell permit rights to a potential transferee, if the Administrator finds in writing that the potential transferee:

(I) Is eligible to receive a permit in accordance with Chapter 12, Section 1(a)(x), (xi) and (xii);

(II) Has submitted a performance bond or other guarantee, or obtained the bond coverage of the original permittee as required in Subsection (A) above; and

(III) Meets any other requirements specified by the Division.

(F) Notification.

(I) <u>The Administrator shall notify the permittee, potential</u> transferee, commenters and the Office of Surface Mining of its findings.

(II) <u>The potential transferee shall immediately provide</u> notice to the Division of the consummation of the transfer, assignment or sale of permit rights.

(G) Continued operation under existing permit. The potential transferee shall assume the liability and reclamation responsibilities of the existing permit and shall conduct the surface coal mining and reclamation operations in full compliance with

the Environmental Quality Act, the Division's rules and regulations, and the terms and conditions of the existing permit, unless the applicant has obtained a new or revised permit under the Environmental Quality Act and the Division's rules and regulations.

Section 2. Bonding and Insurance Procedures.

(a) For surface coal mining operations, the following two types of bond calculations shall be required for setting a single bond amount:

(i) Area Bond: This bond calculation shall be no less than the estimated cost of completing the maximum amount of rough backfilling during the annual bonding period set forth in W.S. §§ 35-11-411 and 35-11-417(c), in order to meet the applicable rough backfilling standards in Chapter 4 of these regulations and any other rough backfilling requirements of the approved permit.

(ii) Incremental Bond: This bond calculation shall be no less than the estimated cost of performing all reclamation requirements other than those covered by (a)(i) above, during the annual bonding period in order to meet the standards of the Act, the regulations, and the provisions of the permit.

(b) For purposes of determining bond amounts, the estimated cost shall include all costs necessary, expedient or incidental to achieve required rough backfilling and reclamation. This shall reflect the probable difficulty of reclaiming the affected lands, giving consideration, as applicable, to such factors as topography, geology of the site, hydrology and revegetation potential. The estimated cost shall be based on the operator's cost estimate submitted with the permit, plus the Administrator's estimate of the additional cost to the State of bringing in personnel and equipment should the operation fail or the site be abandoned, plus an additional amount covering reclamation cost for any land which may reasonably be expected to be affected, as determined by the Administrator's assessment of the applicant's mine plan, prior to filing the renewal bond. All bonds shall be calculated on, and never fall below, the amount necessary to assure that the operator shall faithfully perform all requirements of the Act and comply with all rules and regulations and any provisions of the approved permit.

(c) Upon receipt of the annual report required by W.S. § 35-11-411, the Administrator shall publish a notice in a newspaper of general circulation in the locality of the mining operation, notifying all interested persons that the annual report is available for review, and that the renewal area and incremental bond calculations will be determined. Interested persons may submit information relating to the bond amounts within 30 days of the notice. This information, together with information submitted by the operator and developed by the Division, shall be considered by the Administrator and Director in setting bond amounts.

(d) Liability.

(i) Liability under the bond(s) shall be for the entire permit area.

(ii) Liability under the area bond shall be for a duration sufficient to assure that all rough backfilling has been achieved pursuant to the applicable standards of Chapter 4, Section 2.(b) and the approved permit.

(iii) Liability under the incremental bond shall be for the entire duration of the operation and for the ten-year period of revegetation responsibility described in Chapter 4, Section 2(d). The liability period and area for an incremental bond may be limited if it is posted and approved to guarantee only specific increments of reclamation within the permit. Actions of third persons to implement an approved alternative postmining land use, which are beyond the control of the permittee or operator need not be covered by the bond.

(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 of sufficient size and configuration and not constitute a scattered, intermittent, or checkerboard pattern 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 isolated areas for remedial work may be included in the area under extended liability if deemed necessary by the Administrator.

(e) A permittee may request reduction of the amount of either the area or incremental bond upon submission of evidence to the Administrator proving that the permittee's method of operation or other circumstances will reduce the estimated cost to the State for reclamation. This reduction of bond shall be deemed a bond adjustment if the reduction is based on a change in method of operation or a decrease in the number of acres projected to be disturbed. If the reduction is due to a decrease in the number of acres that have already been disturbed to account for areas partially reclaimed, then the request for reduction will be considered a request for partial bond release in accordance with the procedures of Chapter 15.

(f) A corporate surety shall not be considered good and sufficient for purposes of W.S. § 35-11-417(b) unless:

(i) It is licensed to do business in the State;

(ii) The estimated bond amount does not exceed the limit of risk as provided for in W.S. § 26-5-110, nor raise the total of all bonds held by the applicant under that surety above three times the limit of risk;

(iii) The surety agrees:

(A) Not to cancel bond, except as provided for in W.S. § 35-11-419 or where the Administrator approves a good and sufficient replacement surety with transfer of the liability that has accrued against the permittee on the permit area;

(B) To be jointly and severally liable with the permittee; and

(C) To provide notice to the Administrator and operator once it becomes unable or may become unable due to any action filed against it to fulfill its obligations under the bond.

(g) The provisions applicable to cancellation of the surety's license in W.S. § 35-11-420 shall also apply if for any other reason the surety becomes unable to fulfill its obligations under the bond. Upon such occurrence the operator shall provide the required notice. Failure to comply with this provision shall result in suspension of the permit.

(h) The Administrator shall not accept an individual certificate of deposit in an amount in excess of \$100,000 or the maximum insurable amount as determined by the FDIC or the Federal Savings and Loan Insurance Corporation. Such certificates of deposit shall be made payable to the Department both in writing and upon the records of the bank issuing these certificates. The Administrator shall require the banks issuing these certificates to waive all rights of setoff or liens against the certificates. The bond amount may be calculated to include any amount which would be deducted as a penalty for payment before maturity.

(i) Minimum insurance coverages for the public liability insurance policy required in W.S. § 35-11-406(a)(xiii) shall be \$300,000 for each occurrence of bodily injury or property damage, and \$500,000 aggregate.

(j) The public insurance liability policy shall include a rider requiring that the insurer notify the Administrator whenever substantive changes are made in the policy, including any termination or failure to renew. The policy shall be maintained in full force during the life of the permit or any renewal thereof, including the liability period necessary to complete all reclamation operations.

DEPARTMENT OF ENVIRONMENTAL QUALITY

LAND QUALITY DIVISION

CHAPTER 16

INSPECTIONS, ENFORCEMENT AND PENALTIES FOR

SURFACE COAL MINING OPERATIONS

Section 1. Inspections.

(a) Frequency and extent of inspection: The Director's designated authorized representative shall inspect:

(i) On an irregular basis active surface coal mining and reclamation operations and any other areas outside the permit area which are or may be affected by the surface coal mining and reclamation operation every month, averaging at least one quarterly review of the operator's compliance with all conditions and requirements of the permit, Article IV, and these regulations within the entire affected land. Inspections of coal exploration operations and inactive surface coal mining operations shall occur periodically so as to determine compliance or noncompliance with the permit conditions, Article IV and these regulations; provided that a complete inspection shall occur each calendar quarter for inactive coal mines. All inspections shall occur without prior notice, except as the representative deems necessary, to the person being inspected. The representative shall promptly submit all inspection records, reports or other materials to the head of the district office and the Director for public inspection and enforcement action purposes.

(ii) Immediately to enforce the Act, the regulations, or any condition of a permit or an exploration approval when he has reason to believe that enforcement action under W.S. 35-11-437(a) or (b) is required.

(b) Aerial inspections may satisfy the monthly/partial inspection requirement if:

(i) It is conducted in a manner which reasonably ensures the identification and documentation of conditions at the coal mining and reclamation site inspected, and

(ii) Any potential violation observed is investigated on site within three days, and any potential condition, practice or violation constituting cause for a cessation order is investigated on site immediately.

(c) Inactive surface coal mining operations are ones for which the Administrator has received a request for temporary cessation under Chapter 4, Section 2(1)(ii) and (u), or ones which have completed the reclamation requirements of Chapter 15, Section 5(a)(ii) and

the liability of the permittee has been reduced in accordance with Chapter 15.

(d) Any person who is or may be adversely affected by a surface coal mining or coal exploration operation may notify the Administrator in writing, alleging sufficient information to create a reasonable belief that the Division has failed to comply with the requirements of (a) above. Within 15 days of the receipt of such notification the Administrator shall determine whether there has been compliance and, if not, order an inspection to correct the noncompliance. The Administrator shall furnish a written statement explaining his determination and actions, if any, to the complainant. The identity of the person providing the information shall be held confidential, if requested by that person unless disclosure is required under the Freedom of Information Act.

If an inspection results from a person's written complaint, only the person who (e) submitted the written complaint or, in case of hardship, his designee, has a right of entry to, upon and through the exploration or surface coal mining operation about which he supplied the information, and only if he is in the presence of and is under the control, direction and supervision of the designated authorized representative while on the permit area. In the event that a group submitted the written complaint, only a designated representative of that group may accompany the inspector. The right of entry does not include a right to enter buildings without a search warrant or the consent of the person in control of the building. All persons supplying the complaint shall promptly receive from the Division copies of any inspection report and a description of any enforcement action taken, or reasons why an inspection was not conducted or enforcement action was not taken. The Division shall also inform the person of his right to informal review of the action on the complaint by the Director. If requested, the Director shall review and inform the complainant of the results of the review within 30 days of the request. The Director's decision is final action for purposes of any appeal to the Council.

Section 2. Enforcement.

(a) All violations or minor violations that are observed must be identified in the inspection report, including comments on the abatement of all previously noted minor violations or violations. The enforcement options available to the Department range from the least severe, notation in an inspection report, to the most severe, criminal sanctions.

(b) Formal notices of violation for abatement shall direct the correction of a cited violation. Formal notices of violation will be routinely issued where site conditions constitute an existing or potential danger to the health and safety of the public, or cause or can be expected to cause environmental degradation. Formal notices of violation will be issued where minor violations previously identified in an inspection report are not satisfactorily resolved within the time frame specified in the inspection report as long as the failure to resolve the minor violation is not due to lack of diligence. If the reason is lack of diligence, a failure to abate cessation order will be issued. The total abatement time where a minor violation has been modified to a formal notice of violation shall not exceed 90 days

unless allowed by Section 2(j) of this Chapter.

(c) Violations noted only in inspection reports shall be limited only to minor violations as noted in (f)(i) through (f)(ix). A formal notice of violation will be issued to all other violations. The required abatement measures and a reasonable abatement time not to exceed 35 days shall be included in the inspection report. Minor violations will not be tracked for withholding permit approvals, and other permit actions. A handwritten description of the minor violation will be given to the operator on site and will contain the information listed under item (g) of this Section. The operator has the right to appeal any minor violation as outlined in W.S. § 35-11-901.

(d) Civil penalties will not be issued to minor violations. They will, however, be reviewed to determine if a civil penalty would be appropriate. If it is found a civil penalty is appropriate, the minor violation will be upgraded to a formal notice of violation and a formal assessment issued.

(e) Failure to abate a minor violation will result in the issuance of a formal notice of violation and assessment of a civil penalty. Operators who consistently receive minor violations for similar infractions (more than two in a 12 month period) will be issued a formal notice of violation for subsequent similar violations for the remainder of the period. Once an operator receives two similar minor violations within a 12 month period, any subsequent similar violations will be counted toward a pattern of violations.

(f) Examples of minor violations which will be identified in the inspection report but may or may not be subject to a formal notice of violation are the following:

(i) Failure to provide or maintain signs or perimeter markers;

(ii) Reclamation deficiencies such as inadequate topsoil replacement depth, incorrect seeding practices, or improper sampling technique where there is no immediate potential for adverse environmental impact;

(iii) Failure to perform necessary routine maintenance of surface water diversions or erosion control facilities where there is no immediate potential for adverse environmental impact;

(iv) Failure to perform necessary routine maintenance on treatment facilities provided that the matter is referred to the Water Quality Division (WQD) and the WQD finds that effluent limits are being met and there is no immediate potential for adverse water quality impacts;

(v) Required record keeping is unsatisfactory, except where there is a deliberate falsification of records or results;

(vi) Minor construction deficiencies where there is no threat of structural failure or serious harm;

(vii) Noted necessary corrections to maps, plans or other permit materials;

(viii) Failure to comply with other laws applicable to the mine through permit conditions, where the agency with primary jurisdiction has instituted action to obtain compliance pursuant to its laws and regulations; and

(ix) Rills on reclaimed lands or partially blocked culverts which are the result of a recent storm or runoff event.

(g) Any cessation order, notice for abatement or order to show cause issued under the Act shall be signed by the Director or authorized representative and shall contain:

(i) The nature of the violation;

(ii) All affirmative obligations necessary to completely abate the violation or imminent danger or harm in the most expeditious manner possible;

- (iii) The time established for abatement, if appropriate; and
- (iv) A reasonable description of that portion of the operation to which it

applies.

(h) Within sixty (60) days after issuing a cessation order, the DEQ will notify in writing the permittee, the operator, and any person who has been listed or identified by the applicant, permittee, or OSM as an owner or controller of the operation as defined in Chapter 1 of these rules and regulations. All cessation orders remain in effect and, unless otherwise ordered, do not affect continuing reclamation operations, until the condition, practice or violation has been abated, or until vacated, modified or terminated in writing by the designated representative, Administrator, Director, or Council. Within 30 days after the issuance of a cessation order the permittee must provide or update all the information required under Chapter 2 related to ownership and or control. Information does not need to be provided if a court of competent jurisdiction granted a stay of the cessation order and that stay remains in effect. Within sixty (60) days of any addition, departure, or change in position of any person identified in Chapter 2, Section 2(a)(i)(E), the applicant or permittee shall provide the information required by that section and the date of any departure.

(i) Any notice or order shall be terminated by written notice to the person to whom it was issued, when it is determined that all violations or conditions listed in the notice or order have been abated. This determination may be made by conducting an investigation to confirm the abatement, by accepting the information obtained from a government agency or by accepting a signed statement from a permittee that the violation in a notice of violation

has been abated. The Division reserves the right to confirm the information included in a signed statement. Termination shall not affect the right to assess civil penalties.

(j) If at any time, the DEQ discovers that any person owns or controls an operation with an unabated or uncorrected violation, the LQD will determine whether enforcement action is appropriate under this Chapter. Results of each enforcement action, including administrative and judicial decisions, shall be entered into AVS.

(k) The specified time for abatement of the violation may be extended up to 90 days from issuance of the notice, if the failure to meet the time previously set was not caused by lack of diligence on the part of the person to whom it was issued (W.S. § 35-11-409(c)).

(i) The total time for abatement shall not exceed 90 days from the date of issuance, except upon establishing by clear and convincing proof that the permittee cannot feasibly abate the violation within 90 days due to one or more of the following:

(A) The permittee of an ongoing permitted operation has timely applied for and diligently pursued a permit renewal or other necessary approval of designs or plans but such permit or approval has not been or will not be issued within 90 days after his valid permit expires or is required, for reasons not within the control of the permittee;

(B) There is a valid judicial order precluding abatement within 90 days as to which the permittee has diligently pursued all rights of appeal and as to which he or she has no other effective legal remedy;

(C) The permittee cannot abate within 90 days due to a labor strike;

(D) Climatic conditions preclude abatement within 90 days, or where due to climatic conditions abatement within 90 days clearly would cause more environmental harm than it would prevent; or

(E) Abatement would require the operator to violate a requirement or regulation established under the Mine Safety and Health Act of 1977.

(ii) Whenever an abatement time in excess of 90 days is permitted, interim abatement measures shall be imposed to the extent necessary to minimize harm to the public or the environment.

(iii) An extension beyond 90 days may not be authorized without the concurrence of the Administrator or person acting in this capacity, and the abatement period granted shall not exceed the shortest possible time necessary to abate the violation. The authorized representative shall promptly and fully document in the file the reasons for granting or denying the request. The Administrator or designee shall review that document before concurring in or disapproving the extended abatement period and shall promptly and

fully document the reasons for concurrence or disapproval in the file. An extended abatement date shall not be granted when the permittee's failure to abate within 90 days has been caused by a lack of diligence or intentional delay.

(iv) No extension granted under this provision may exceed 90 days in length. Where the condition or circumstance which prevented abatement within 90 days exists at the expiration of any such extension, the permittee may request a further extension in accordance with the procedures of this subsection.

(1) Order to show cause for the suspension or revocation of a permit pursuant to W.S. 35-11-409(c):

(i) For the purpose of this subsection:

(A) Willful violation means an act or omission which violates this Act or any regulation, and which is committed or omitted with knowledge or reason to know of its unlawfulness.

(B) Unwarranted failure to comply means the failure to prevent or abate the occurrence of any violation due to indifference, lack of diligence, or lack of reasonable care.

(C) Pattern of violations means the occurrence of similar violations not appearing to be isolated departures from lawful conduct as determined during two or more inspections of the permit area within any 12 month period, unless exceptional factors present in the particular case otherwise account for such violations.

(ii) The Director shall make a written explanation for declining to issue an order to show cause or vacating an outstanding order, once he determines that there were violations of the same or related requirements of the Act, regulations, or the permit during three or more inspections within any 12 month period. The explanation shall include that, after taking into account exceptional factors present in the particular case, it would be demonstrably unjust to issue or fail to vacate the show cause order. This shall be included and documented in the records of the case.

(iii) Notice, hearing and any decision by the Council on whether to suspend or revoke the permit shall be the equivalent of that required for permit applications. If the Council suspends or revokes the permit, the operator shall cease operations, continue reclamation, and complete all affirmative obligations as specified in the order.

(m) All cessation orders, notices for abatement and orders to show cause shall be served on the operator either by tendering a copy at the operation or sending it by certified mail or by hand to the operator. All orders to show cause shall issue forthwith upon a determination that the factors exist which justify its issuance.

(n) Pending completion of the investigation and hearing on any enforcement action taken by the Department, the operator may file with the Council a request for temporary relief. The Council shall expeditiously issue an order or decision granting or denying such relief, which shall be within five days from any request for relief from a cessation order. The Council may grant such relief, under such conditions as it may prescribe, if:

(i) A hearing has been held in the locality of the permit area on the request for temporary relief in which all parties were given an opportunity to be heard;

(ii) The operator shows that there is a substantial likelihood that the findings of the Council will be favorable to him; and

(iii) Such relief will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources.

(o) Inability to comply shall not be a proper factor for consideration in any decision to vacate, or terminate any notice or order under this subsection or to determine whether a pattern of violation exists. It may only be a factor for the duration of the suspension of a permit and in mitigation of the amount of civil penalty, when not caused by lack of diligence.

(p) Surface coal mining operations conducted by any person without a valid permit constitute a condition or practice which causes or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources. For those operations which are an integral, uninterrupted extension of previously permitted operations, and where the person conducting such operations has filed a timely and complete application for a permit to conduct such operations, the cessation order shall be limited to the unpermitted operation.

Section 3. Civil Penalties.

(a) Amount - In determining the amount of the penalty, if any, to be assessed, consideration shall be given to:

(i) The operator's history of previous violations at the particular surface coal mining operation, regardless of whether any led to a civil penalty assessment. Special consideration shall be given to violations contained in or leading to a cessation order. However, a violation shall not be considered if the notice or order containing the violation:

(A) Is or may become the subject of pending administrative or judicial review; or

(B) Has been vacated.

(ii) The seriousness of the violation based on the likelihood and extent of the potential or actual impact on the public or environment, both within and outside the permit or exploration area.

(iii) The degree of fault of the operator in causing or failing to correct the violation, either through act or omission. Such degree shall range from inadvertent action causing an event which was unavoidable by the exercise of reasonable care to reckless, knowing or intentional conduct.

(iv) The operator's demonstrated good faith, by considering whether he took extraordinary measures to abate the violation in the shortest possible time, or merely abated the violation within the time given for abatement. Consideration shall also be given to whether the operator gained any economic benefit as a result of a failure to comply.

(v) Inability to comply, unless caused by lack of diligence.

(vi) Any information submitted to the Director by the operator within 15 days of the service of the notice or order relating to the facts surrounding the violation or the amount of penalty.

(b) In determining the amount of the penalty, consideration shall not be given to whether a reduction in the amount of a penalty could be used to abate violations of the Act or regulations.

(c) The procedure for any requested assessment conference, as provided for in W.S. § 35-11-902(d) shall be the equivalent of the informal conference procedure described by the Act and regulations applicable to permit applications excepting that the Director, not the Administrator, shall conduct the conference.

(d) If the operator requests and receives the review proceeding provided for by W.S. § 35-11-437(c), the fact of the violation may not be further contested under this Section.

(e) If any party requests judicial review of a final order of the Council on the penalty, the proposed penalty shall continue to be held in bond or escrow until completion of the review. If any review results in an order increasing the penalty, the person to whom the notice or order was issued shall pay the difference within 15 days after notification.

(f) The civil penalty prescribed by W.S. § 35-11-902(n) shall be assessed for a maximum of 30 days, except that, if the person to whom the notice or order was issued initiated review proceedings with respect to the violation, the abatement period shall be extended as follows:

(i) If suspension of the abatement requirements of the notice or order is

ordered in a temporary relief proceeding, the period permitted for abatement shall not end until the date on which the Council issues a final order with respect to the violation in question; and

(ii) If the persons to whom the notice or order was issued initiate judicial review proceedings with respect to the violation, in which the obligations to abate are stayed by the court pending full review, the daily assessment of a penalty shall not be made for any period before entry of a final order by the court.

Section 4. Individual Civil Penalties

(a) For purposes of this section:

(i) "Knowingly" means that a person who authorized, ordered, or carried out an act or omission knew or had reason to know that the act or omission would result in either a violation or a failure to abate or correct a violation;

> "Violation, failure or refusal" means: (ii)

(A) A violation of a condition of a permit issued pursuant to the State program or Federal lands program; or

(B) A failure or refusal to comply with any order issued under Section 2 of this Chapter, or any order incorporated in a final decision issued by the Director under the Act, except for failure to pay a civil penalty.

"Willfully" means that a person who authorized, ordered or carried out (iii) an act or omission that resulted in either a violation or the failure to abate or correct a violation acted:

> (A) Intentionally, voluntarily or consciously; and

requirements.

With intentional disregard or plain indifference to legal (B)

(b) An individual civil penalty may be assessed when:

(i) The Director may assess an individual civil penalty as outlined in W.S. §35-11-902(b), against any corporate director, officer or agent of a corporate permittee who knowingly and willfully authorized, ordered or carried out a violation, failure or refusal, except as provided in subsection (ii) below.

(ii) The Director shall not assess an individual civil penalty in situations resulting from a permit violation by a corporate permittee until a cessation order has been issued by the Department to the corporate permittee for the violation, and the cessation order has remained unabated for thirty (30) days and the procedures for assessment in subsection (d) below have been complied with.

(c) Amount of Civil Penalty.

(i) In determining the amount of an individual civil penalty assessed under this Section, <u>T</u>the Director shall consider the criteria specified in Section 3 of this Chapter, including:

(A) The individual's history of authorizing, ordering or carrying out previous violations, failures or refusals at the particular surface <u>coal</u> mining operation;

(B) The seriousness of the violation, failure or refusal (as indicated by the extent of damage and/or the cost of reclamation), including any irreparable harm to the environment and any hazard to the health or safety of the public; and

(C) The demonstrated good faith of the individual charged in attempting to achieve rapid compliance after notice of the violation, failure or refusal.

(ii) The penalty shall not exceed the limits prescribed in W.S. 35-11-902(b) for each day during which a violation, failure or refusal continues, or, for multiple violations, a penalty not to exceed the limits prescribed in W.S. 35-11-902(b) for each violation for each day during which a violation, failure or refusal continues from the date of service of the underlying notice of violation, cessation order or other order incorporated into a final decision issued by the Director, until abatement or compliance is achieved.

(d) Procedure for assessment of individual civil penalty.

(i) Notice. The Director shall serve on each individual to be assessed an individual civil penalty a notice of proposed individual civil penalty assessment, including a narrative explanation of the reasons for the penalty, the amount to be assessed and a copy of any underlying notice of violation and cessation order.

(ii) Final order and opportunity for review. The notice of proposed individual civil penalty assessment shall become a final order of the Director thirty (30) days after service upon the individual unless:

(A) The individual files within 15 days of service of the notice of proposed individual civil penalty assessment a petition for review with the Environmental Quality Council, or

(B) The Department and the individual or responsible corporate permittee agree, within thirty (30) days of service of the notice of proposed individual civil

penalty assessment, to a schedule or plan for the abatement or correction of the violation, failure or refusal.

(iii) Service. For purposes of this Section, service shall be performed on the individual to be assessed an individual civil penalty, by certified mail, or by any alternative means consistent with the rules governing service of a summons and complaint under Rule 4 of the Wyoming Rules of Civil Procedure. Service shall be complete upon tender of the notice of proposed assessment and any attached information or of the certified mail and shall not be deemed incomplete because of refusal to accept.

(e) Payment of Penalty

(i) No abatement or appeal. If a notice of proposed individual civil penalty assessment becomes a final order in the absence of a petition for review or abatement agreement, the penalty shall be due upon issuance of the final order.

(ii) Appeal. If an individual named in a notice of proposed individual civil penalty assessment files a petition for review in accordance with the Environmental Quality Council, the penalty shall be due upon issuance of a final administrative order affirming, increasing or decreasing the proposed penalty.

(iii) Abatement agreement. Where the Department and the corporate permittee or individual have agreed in writing on a plan for the abatement of or compliance with the unabated order, an individual named in a notice of proposed individual civil penalty assessment may postpone payment until receiving either a final order from the Department stating that the penalty is due on the date of such final order, or written notice that abatement or compliance is satisfactory and the penalty has been withdrawn.

DEPARTMENT OF ENVIRONMENTAL QUALITY

LAND QUALITY DIVISION

CHAPTER 1

AUTHORITIES AND DEFINITIONS FOR SURFACE COAL MINING OPERATIONS

Section 1. **Authority.** These rules and regulations are adopted by the Environmental Quality Council and the Administrator of the Land Quality Division pursuant to the authority granted the Council and the Administrator by the Wyoming Environmental Quality Act, Sections 35-11-101 through 35-11-1104, Wyoming Statutes, 1977, as amended. These rules and regulations are effective upon filing with the Secretary of State. They become an official part of Wyoming's coal regulatory program when approved by the U.S. Secretary of the Interior or his designee.

Section 2. **Definitions.** The definitions included in the Wyoming Environmental Quality Act, are hereby adopted by this reference. All references to the "Act" herein refer to the Wyoming Environmental Quality Act, as amended.

(a) "Acid drainage" means water with a pH of less than 6.0 and in which total acidity exceeds total alkalinity, discharged from an active or inactive mine or from an area affected by mining and reclamation operations.

(b) "Acid-forming materials" means earth materials that contain sulfide minerals or other minerals which exist in a natural state or if exposed to air, water or weathering processes, will cause acid conditions that may hinder plant establishment or create acid drainage.

(c) "Adjacent areas" means land located outside the permit area upon which air, surface water, groundwater, fish, wildlife, or other resources protected by the Act may reasonably be expected to be adversely impacted by mining or reclamation operations. Unless otherwise specified by the Administrator, this area shall be presumptively limited to lands within one-half mile of the proposed permit area.

(d) "Administrator" means the Administrator of the Division of Land Quality.

(e) "Amendment" means the addition of new lands to a previously approved permit area, as allowed by W. S. § 35-11-406(a)(xii).

(f) "Annual" means a plant which completes its life cycle in 12 months or fewer.

(g) "Applicant" means any "person" seeking a permit, permit revision, renewal, transfer, or other approval from the Administrator to conduct mining and

reclamation operations, or "person" seeking a license to explore, but does not include subsidiaries or parents of the "person", as "person" is defined in W.S. § 35-11-103(a)(vi).

(h) "Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined areas so that the reclaimed land surface closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain.

(i) "Applicant violator system or AVS" means an automated information system of applicant, permittee, operator, violation and related data the Office of Surface Mining Reclamation and Enforcement maintains to assist in implementing the Surface Mining Control and Reclamation Act of 1977, as amended.

(j) "Aquifer" is a zone, stratum or group of strata that stores and transmits water in sufficient quantities for a specific use.

(k) "Augmented seeding" means reseeding in response to the unsuccessful germination, establishment or permanence of revegetation efforts. Augmented seeding resets the applicable liability period. A synonym is reseeding.

(1) "Barren" means any land unit devoid of vegetation, or practically so.

(m) "Baseline vegetation inventory" means a vegetation sampling program executed prior to any significant surface disturbance cause by proposed mining activities. The inventory will quantitatively and qualitatively classify the different plant communities to the specification of Wyoming State Law.

(n) "Belt transect" means a rectangular sampling plot used for the estimation of shrub density (premining and postmining) and postmining species diversity and species composition, each belt transect shall be at least 100 square meters and a minimum of 50 meters in length.

(o) "Best practicable Technology" means a technology based on methods and processes that are both practicable and reasonably economic and is justifiable in terms of existing performance and achievability in relation to the establishment of shrubs in the required density, aerial extent and species.

(p) "Best technology currently available" means equipment, devices, systems, methods, or techniques which, as determined by the Administrator, are currently available and practicable, and will:

(i) Prevent, to the extent possible, additional contributions of suspended solids to streamflow or runoff outside the affected land or permit area. But in no case shall contributions exceed requirements set by applicable State or Federal laws, and

(ii) Minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife and related environmental values, and achieve enhancement of those resources where practicable.

(q) "Biennial" means a plant that lives for two years, producing vegetative growth the first year and usually blooming and fruiting and senescing in the second year and then dying.

(r) "Bond" means a surety or self-bond instrument by which the permit applicant assures faithful performance of all requirements of the Act, all rules and regulations promulgated thereunder, and the provisions of the permit and license to mine. This term shall also include the following, which the operator has deposited with the Department of Environmental Quality in lieu of a Surety Bond or Self-Bond Instrument:

- (i) Federal insured certificates of deposit;
- (ii) Cash;
- (iii) Government securities;
- (iv) Irrevocable letters of credit;

(v) An alternative method of financial assurance that is acceptable to the Administrator and provides for a comparable level of assurance for performance of reclamation obligations. The alternative method of financial assurance must first be approved by the Office of Surface Mining; or

(vi) A combination of any of these bonding methods.

(s) "Bond responsibility period" means the minimum 10 year period during which the bond, in part or wholly, remains in effect.

(t) "Cactus" means any member of the Cactaceae plant family. Members of the Cactaceae plant family are in the lifeform category of succulent.

(u) "Coal exploration" means either:

(i) The field gathering of surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical or other techniques necessary to determine the quality and quantity of overburden and coal of an area. If this activity results in the extraction of coal, the coal shall not be offered for commercial sale (except for test burns); or

(ii) The gathering of environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations.

(v) "Coal mine waste" means coal-processing waste and underground development waste.

(w) "Coal preparation plant" means a facility where coal is subjected to chemical or physical processing or cleaning, concentrating, or other processing or preparation. It includes facilities associated with coal preparation activities, including, but not limited to the following: loading facilities; storage and stockpile facilities; sheds, shops, and other buildings; water treatment and water storage facilities; settling basins and impoundments; and coal-processing and other waste disposal areas.

(x) "Coal-processing waste" means earthen materials which are wasted or otherwise separated from product coal during cleaning, concentrating or other processing or preparation of coal.

(y) "Combustible material" means organic material that is capable of burning.

(z) "Compaction" means the reduction of pore spaces among particles of soil or rock, generally done by controlled placement and running heavy equipment over the earthen material.

(aa) "Control or controller" as used in Chapters 1, 2, 12 and 16 means or refers to:

- (i) A permittee of a surface coal mining operation;
- (ii) An operator of a surface coal mining operation; or

(iii) Any person who has the ability to determine the manner in which a surface coal mining operation is conducted.

(ab) "Cool season" means a plant which generally makes the major portion of its growth during late fall, winter, and early spring. Cool season species generally exhibit the C3 photosynthetic pathway.

(ac) "Cover" means the percent of the ground surface which is covered by the vertical projection of objects on or above that ground surface. The objects may include standing plant material and cryptogams, litter or rock. "Absolute cover" means the percent cover of a given category independent of other categories. The following cover categories or descriptions used are:

(i) "Absolute cover of litter" means the percent of the ground surface which is overlain by litter;

(ii) "Absolute cover of rock" means the percent of the ground surface which is covered by rock;

(iii) "Absolute cover of vegetation" means the percent of the ground surface which is covered by the vertical projections of all live vascular plants;

(iv) "Absolute cover of vegetation by species" means the percent of the ground surface covered by individual live vascular plants;

(v) "Absolute cover of cryptogams" means the percent of the ground surface which is covered by cryptogams.

(vi) "Absolute cover of total ground cover" means the sum of vegetation, cryptogams, litter and rock cover.

(vii) "Absolute cover of bare ground" means the percent of the ground surface which is not covered by the vertical projection of vascular plants and cryptogams, litter or rock.

(viii) "Relative cover" means the expression of any number of cover categories in relation to each other such that the sum of the chosen relative cover values total 100 percent.

(ad) "Cover crop" means a preparatory crop of one or more species seeded and grown prior to the seeding of the permanent seed mixture, for the chief purpose of protecting the soil from erosion and also for improving the soil fertility and structure. The term is synonymous with stubble crop and is considered a type of mulch.

(ae) "Critical habitat" means those areas essential to the survival and recovery of species listed by the Secretary of the Interior as threatened or endangered under the authority of 50 CFR, Part 17.

(af) "Crucial habitat" means those areas, designated as such by the Wyoming Game and Fish Department, which determine a population's ability to maintain and reproduce itself at a certain level over the long term.

(ag) "Cryptogam" means a plant (vascular or non-vascular) that reproduces by spores rather than seeds. A plant in any of these groups: Lichens, Bryophytes (mosses, liverworts, hornworts), Pteridophytes (ferns, moonworts, horsetail, club mosses, spike mosses, quillworts, pepperwort) will be considered cryptogams.

(ah) "Density means the number of individuals per unit area.

(ai) "Designated authorized representative" means, for the purposes of issuing a cessation order, either the Administrator, the district engineer, or other qualified inspector designated by the Director.

(aj) "Developmental drilling" means drilling down to and including the lowest

coal seam to be mined which occurs in or within 500 feet of an active mine pit.

(ak) "Discoverer" means any person conducting or intending to conduct any exploration by drilling. This includes locator, owner or agent thereof who will drill or has drilled the hole.

(al) "Diversion" means a channel, embankment, device, or other man-made structure constructed for the purpose of diverting water from one area to another.

(i) "Permanent diversion" means a diversion remaining after bond release.

(ii) "Temporary diversion" means a diversion utilized during mining or reclamation operations, which must be removed and reclaimed prior to bond release.

(am) "Dominant" means for the purpose of calculating Chapter 4 shrub restoration performance standard, the full shrub or subshrub species with the greatest relative density.

(an) "Drill site" means all areas of land that are or will be disturbed or utilized by exploration drilling. This area includes drill holes or other drilled excavations, drilling pads, and areas disturbed by mud pits, and any land over which drilling mud mixtures overflow or may disturb.

(ao) "Eligible land" means all land to be affected by a mining operation after August 6, 1996 which carries the grazingland land use designation and all affected pastureland land use units which have a full shrub density greater than one full shrub per square meter. Pastureland is eligible only if the surface owner requests that the pastureland be eligible and only if the land units are included in a new permit or permit amendment application which is submitted to the Administrator after approval of this rule by the Office of Surface Mining.

(ap) "Embankment" means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or other similar purposes.

(aq) "Endangered species" means any species which is in danger of extinction throughout all or a significant portion of its range and which has been listed under the federal Endangered Species Act.

(ar) "Enhancement wetland" means a reclaimed postmining wetland which exceeds the minimum required mitigation wetlands acreage required by the Army Corps of Engineers under Section 404 of the Federal Clean Water Act.

(as) "Ephemeral stream" means a stream which flows only in direct response

to precipitation in the immediate watershed or in response to snow melt, and which has a channel bottom that is always above the prevailing water table.

(at) "Essential hydrologic functions" means with respect to alluvial valley floors, those conditions of surface and groundwater hydrology that make water of a suitable quality and quantity usefully available for subirrigation or flood irrigation agricultural activities. These conditions may include, but are not limited to, the erosional state of the stream, the surface water balance, the groundwater balance, the physical and chemical properties of the soils, water and substrata, and topographic configuration.

(au) "Establishment practices" means practices used to facilitate actual establishment of targeted plants and are not intended to continue throughout the bond responsibility period. These practices are acceptable practices, but delay the start of the bond responsibility period until they are discontinued.

(av) "Excess spoil" means spoil material disposed in a location other than the mined-out area, except that spoil material used to achieve the approximate original contour or to blend the mined-out area with the surrounding terrain.

(aw) "Existing structure" means a structure or facility used in connection with or to facilitate surface coal mining and reclamation operations for which construction begins prior to the approval of a State program pursuant to Section 503 of P.L. 95-87.

(ax) "Exploration area" means, for bonding purposes, one or more drill sites, comprising an integrated project conducted by a discoverer within one of the three districts presently established by the Land Quality Division of the Department of Environmental Quality.

(ay) "Exploration by drilling" means any exploration drilling for the purpose of gathering subsurface geologic, physical or chemical data to determine the location, quantity or quality of the natural mineral deposit of an area, excluding holes drilled for use as water wells.

(az) "Farm" means, with respect to alluvial valley floors, one or more land units on which agricultural activities are conducted. A farm is generally considered to be the combination of land units with acreage and boundaries in existence prior to August 3, 1977, or, if established after August 3, 1977, with those boundaries based on enhancement of the farm's agricultural productivity and not related to surface coal mining operations.

(ba) "Flood irrigation" means, with respect to alluvial valley floors, supplying water to plants by natural overflow or the diversion of flows, so that the irrigated surface is largely covered by a sheet of water.

(bb) "Forb" means any herbaceous plant species other than the members of the

grass (Poaceae [Gramineae]), sedge (Cyperaceae) or rush (Juncaceae) plant families.

(bc) "Full shrub" means a perennial woody plant which differs from a tree by normally being shorter in height and by often having several stems arising near the base.

(bd) "Gel strength" means the minimum shear stress which results in permanent deformation of a gel.

(be) "General area" means, with respect to hydrology, the topographic and groundwater basin surrounding a permit area which is of sufficient size, including areal extent and depth, to allow assessment of the impacts resulting from the mining operation on the quality and quantity of surface water and groundwater systems in the basins, including consideration of the interaction of the impacts with adjacent mines.

(bf) "Graminoid" means a plant species of the grass (Poaceae [Gramineae]), sedge (Cyperaceae) or rush (Juncaceae) plant families.

(bg) "Grass" means a plant species of the Poaceae (Gramineae) plant family.

(bh) "Grass-like" means a plant species of the sedge (Cyperaceae) or rush (Juncaceae) plant families that vegetatively resemble members of the grass family Poaceae (Gramineae).

(bi) "Grazing exclosure" means a land unit surrounded and/or covered by fencing or other materials which prevents livestock grazing in order to more accurately estimate the current year's herbaceous production on the land unit.

(bj) "Groundwater" means subsurface water that fills available openings in rock or soil materials such that they may be considered water-saturated.

(bk) "Hazardous materials" means any material or substance which results from or is encountered in a mining operation which could reasonably be expected to cause physical harm if not controlled in an approved manner.

(bl) "Highest previous use" means a sustainable use of the land which has the greatest economic and social values to the people of the area prior to the commencement of the mining operation.

(bm) "Highwall" means the face of exposed overburden or coal in an open cut of a surface mine or entry to an underground mine.

(bn) "History of intensive agricultural use" means those lands which, if nonirrigated, have had a cultivated crop, small grains or hay crops harvested for five out of any ten year period, or if irrigated has water of sufficient quantity to sustain production of cultivated crops, small grain, or hay crops for eight out of ten years and have had a cultivated crop, small grain, or hay crop harvested for any one year.

(bo) "Husbandry practice" means, when preceded by the word "normal", those management practices that may be used to achieve revegetation success without restarting the bond responsibility period. Normal husbandry practices are sound management techniques which are commonly practiced on native lands in the area of the mine and, if discontinued after the area is bond released, shall not reduce the probability of permanent vegetation success.

(bp) "Hydrologic balance" means the relationship between the quality and quantity of inflow to, outflow from, and storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake or reservoir. It encompasses the quantity and quality relationships between precipitation, runoff, evaporation, and the change in ground and surface water storage.

(bq) "Hydrologic regime" means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form and falls as precipitation, moves thence along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

(br) "Imminent danger to the public" means the existence of any condition or practice, or any violation of a permit or other requirements of the Act in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

(bs) "Important habitat" means that habitat which, in limited availability, supports or encourages a maximum diversity of wildlife species or fulfills one or more living requirements of a wildlife species. Examples of important habitat include, but are not limited to, wetlands, riparian areas, rimrocks, areas offering special shelter or protection, reproduction and nursery areas, and wintering areas.

(bt) "Impoundment" means a closed basin formed naturally or artificially built which is dammed or excavated for the retention of water, slurry or other liquid or semiliquid material. A permanent impoundment is a structure that will remain after final bond release.

(bu) "Inclusion" means, with respect to vegetation, an area no more than two acres in size, which is distinctly different from the surrounding vegetation community due to substantial, visible differences in species composition, cover, or production. (bv) "Intermittent stream" means a stream or part of a stream that is below the local water table for some part of the year, but is not a perennial stream.

(bw) "Interseed" means a secondary seeding into established vegetation in order to improve composition, diversity or seasonality. Interseeding is done to enhance revegetation rather than to augment the revegetation that is unsuccessful in terms of germination, establishment, or permanence.

(bx) "Introduced" means a plant species that is not a component of the original flora of North America.

(by) "Irreparable harm to the environment" means, for the purpose of W.S. § 35-11-406(o), any damage to the environment in violation of the Act or regulations, that cannot be corrected by actions of the applicant.

(bz) "Joint agency approval" means, for surface coal mining operations, the approval of mining or reclamation plans that would adversely affect any publicly owned park or any place included in the National Register of Historic Places by the federal, state, or local agency with jurisdiction over the park or place.

(ca) "Land use" means for surface coal mining operations, specific uses or management-related activities, rather than the vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal uses occur. Changes of land use or uses from one of the following categories to another shall be considered as a change to an alternative land use which is subject to approval by the Administrator. Land used for mine facilities in support of the operations which are adjacent to or an integral part of these operations are also included. Support facilities include, but are not limited to, parking, storage or shipping facilities.

(i) "Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small-grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops.

(ii) "Pastureland" means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed. In addition, for the purpose of determining premining land use, the relative cover of introduced perennial forage species must be greater than 40% of the relative cover of total vegetation in order for the land to be pastureland. If the full shrub density is greater than one shrub per square meter on those lands and the surface owner requests the lands to be eligible, the land use is still pastureland but the land is also "eligible land" in terms of shrub reclamation.

(iii) "Grazingland" means rangelands and forest lands where the indigenous native vegetation is actively managed for grazing, browsing, and occasional

hay production, and occasional use by wildlife.

(iv) "Forestry" means land used or managed for the long-term production of wood, wood fiber, or wood-derived products.

(v) "Residential" means land used for single and multiple-family housing, mobile-home parks, and other residential lodgings.

(vi) "Industrial commercial" means land used for:

(A) Extraction or transformation of materials for fabrication of products, wholesaling of products or for long-term storage of products. This includes all heavy and light manufacturing facilities and such short-term uses as petroleum refining and oil and gas production.

(B) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.

(vii) "Recreational" means land used for public or private leisure activities, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

(viii) "Fish and wildlife habitat" means land dedicated wholly or partially to the production, protection or management of species of fish or wildlife.

(ix) "Developed water resources" means land used for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control, and water supply.

(x) "Undeveloped land of no current use or land management" means land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.

(xi) "Treated grazingland" means grazingland which has been altered to reduce or eliminate shrubs provided such treatment was applied at least five years prior to submission of the state program permit application. However, grazingland altered more than five years prior to submission of the state program permit application on which full shrubs have reestablished to a density of at least one per nine square meters does not qualify as treated grazingland.

(cb) "Lichen" means those organisms formed by the symbiotic relationship between fungal and algal species. For the purpose of estimating ground cover lichens are cryptogams. (cc) "Life form" means the structure, form, habit, life history and physiology of an organism that display an obvious relationship to important environmental factors in its native or current habitat. For data presentation the preferred life form categories are: annual/biennial forb, annual grass, cryptogam, grass-like, native cool season perennial grass, native warm season perennial grass, introduced perennial grass, perennial forb, shrub, subshrub, succulent and tree.

(cd) "Litter" means, for the purposes of estimating ground cover, the uppermost layer of organic debris, usually considered to be the standing dead, freshly fallen or slightly decomposed vegetal material on the soil surface. Decomposing plant material which has lost its structural integrity or which is no longer recognizable as plant tissue is not litter.

(ce) "Major species" means a plant species whose relative cover value equals or exceeds two percent as estimated by a quantitative sampling program.

(cf) "Material damage to the hydrologic balance" means a significant long-term or permanent adverse change to the hydrologic regime.

(cg) "Materially damage the quantity or quality of water" means, with respect to alluvial valley floors, changes in the quality or quantity of the water supply to any portion of an alluvial valley floor where such changes are caused by surface coal mining and reclamation operations and result in changes that significantly decrease the capability of the alluvial valley floor to support subirrigation or flood irrigation agricultural activities.

(ch) "Mine facilities" means those structures and areas incidental to the operation of the mine, including mine offices, processing facilities, mineral stockpiles, storage facilities, shipping, loadout and repair facilities, and utility corridors.

(ci) "Mitigation wetland" means a type of reclaimed, postmining wetland authorized and approved by the Army Corps of Engineers as replacement for jurisdictional wetlands whose disturbance was authorized by the Army Corps of Engineers under Section 404 of the Federal Clean Water Act.

(cj) "Monitor well" means a well constructed or utilized to measure static water levels or to obtain liquid, solid, or gaseous analytical samples or other physical data that would be used for controlling the operations or to indicate potential circumstances that could affect the environment.

(ck) "Monitoring" means the collection of environmental and hydrological data by either continuous or periodic sampling methods.

(cl) "Moss" means a member of the Bryophyte plant group, including liverworts and hornworts, which have a comparatively small, simple growth form and

which lack true xylem and phloem tissue. For the purposes of estimating ground cover, mosses are cryptogams.

(cm) "Mulch" means plant residue or other suitable materials placed upon the soil surface to aid in soil stabilization and soil moisture conservation.

(cn) "Native" means a plant species which is a component of the original flora of North America.

(co) "Notice of violation" means a written notification from the Department of Environmental Quality or other governmental entity as specified in the definition of "violation" in Chapter 1, Section 2 and the procedures outlined in Chapter 16 of the Land Quality Division, Rules and Regulations.

(cp) "Noxious weed" means an undesirable, troublesome, aggressive or difficult to control plant species whose seeds are severely limited in or totally excluded from commercial seed sales. The Wyoming Department of Agriculture exclusively makes the noxious weed designation, which includes both "designated" and "prohibited" noxious weeds, under the Wyoming Weed and Pest Control Act. This definition does not include "declared weeds" published by individual Wyoming counties.

(cq) "Outslope" means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

(cr) "Own, owner or ownership" as used in Chapters 1, 2, 12 and 16 and excluding the context of real property ownership means being a sole proprietor or owning of record in excess of 50 percent of the voting securities or other instruments of ownership of an entity.

(cs) "Perennial" means a plant which takes at least three years to complete its life cycle and usually persists after flowering and producing seed.

(ct) "Perennial stream" means a stream or part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface runoff.

(cu) "Permit area" means the area of land and water within the boundaries of the approved permit or permits during the entire life of the operation and includes all affected lands and water.

(cv) "Permit transfer, assignment or sale of permit rights" means a change of a permittee.

(cw) "Plant species inventory" means a list of plant species, organized by life form and scientific binomial, obtained by conducting a field reconnaissance of a specific land unit.

(cx) "Plotless Sampling" means estimation of vegetation without the use of two-dimensional areal reference units.

(cy) "Point intercept" means a cover estimation method based upon the vertical projection of a point through the vegetation. The point may be an ocular sighting device, a sharpened rod or a series of sharpened rods on a point frame or a handheld sharpened rod. The ocular sighting devices may be either crosshairs or a laser source and shall be mounted on a frame which ensures that each estimation point is projected from above the canopy (maximum of one meter) to the ground surface without bias. Each pin shall be a rod with a sufficiently small or sharpened point which ensures unbiased visual determination of each object intercepted by the pin's vertical movement from above the canopy to the ground surface. Under the point intercept method, absolute cover at each sample point is determined as follows:

% absolute cover of A =<u>number of hits on A</u> x 100 total number of hits

(cz) "Potentiometric surface" means the surface that coincides with the static level of water in an aquifer. The surface is represented by the levels to which water from a given aquifer will rise under its full head.

(da) "Precipitation event" means a quantity of water resulting from drizzle, rain, snow, sleet, or hail in a limited period of time. It may be expressed in terms of recurrence interval and duration.

(db) "Primary shrub species" means, in relation to the shrub standard Option IV, each full shrub and each subshrub species which has a relative density equal to or greater than 0.1 (10 percent). Furthermore, under Option IV, the relative density of fringed sagewort (*Artemisia frigida*) must be equal to or exceed 0.2 (20 percent) of the relative density to qualify as a primary shrub species. Under shrub stand Options I, II, and III, a primary shrub species means each full shrub species which has a relative density equal to or greater than 0.1 (10 percent).

(dc) "Principal shareholder" means any person who is the owner of record of ten percent or more of any class of voting stock.

(dd) "Probable hydrologic consequences" means the projected impacts or changes to the hydrologic regime caused by the proposed surface coal mining and reclamation operation including the effects of adjacent mining operations.

(de) "Production" means an estimate of the total quantity of herbaceous matter produced within a growing season. The estimate includes all plant parts which remain attached to the current growing season plant and includes only above ground herbaceous material.

and

(df) "Property to be mined" means, for surface coal mining operations, both the surface estates and mineral estates within the area covered under the term of the permit and the area covered by underground workings.

(dg) "Public building" means any structure that is owned or leased, and principally used by a governmental agency for business or meetings.

(dh) "Public Parks" means an area designated by a federal, state or local agency for public recreational use.

(di) "Public road" means a road:

(i) Which has been designated as a public road pursuant to the laws of the jurisdiction in which it is located;

(ii) Which is maintained with public funds in a manner similar to other public roads of the same classification within the jurisdiction;

(iii) For which there is substantial (more than incidental) public use;

(iv) Which meets road construction standards for other public roads of the same classification in the local jurisdiction.

(dj) "Quadrat" means a two-dimensional, rectangular, square or circular unit which is superimposed on the ground surface for the purpose of estimating cover or production. The quadrat shall be sized appropriately for the sampled vegetation community and shall be at least one half square meter but no larger than one square meter.

(dk) "Qualitative" means, in the context of a vegetation sampling program and/or evaluation of sampling data, that the program and/or evaluation process are conducted using non-numerical information derived from defined sources and/or defined field reconnaissance regimes.

(dl) "Quantitative" means, in the context of a vegetation sampling program and/or evaluation of sampling data, that the program and/or evaluation processes are conducted using statistical analyses of numerical data derived from defined sampling regimes.

(dm) "Random" means every point or location in an area has an equal chance of being chosen for sampling as any other point in that area.

(dn) "Recharge capacity" means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

(do) "Reclaimed land surface" means affected land which has been backfilled, graded, contoured, and revegetated in accordance with an approved reclamation plan.

(dp) "Reference area" means a land unit established to evaluate revegetation success. A "Reference area" is representative of a vegetation community or communities that will be affected by mining activities, in terms of physiography, soils, vegetation and land use history. The "Reference area" and its corresponding postmine vegetation community (or communities) must be approved by LQD and shall be defined in the approved Reclamation Plan. All "Reference areas" shall be managed to not cause significant changes in the vegetation parameters which will be used to evaluate Chapter 4 revegetation success performance standards. A "Reference area" can be a "Comparison area", "Control area", "Extended reference area", or "Limited reference area", depending on how it is established and used, in accordance with the following provisions:

(i) "Comparison area" means a type of "Reference area" that is established after a vegetation community has been affected. A qualitative determination shall be used to evaluate if the proposed "Comparison area" adequately represents the affected vegetation community. A "Comparison area" may be used when other types of "Reference areas" are not available for measuring revegetation success or when other types of "Reference areas" will not be representative of revegetation success. "Comparison areas" shall be approved by the Administrator prior to their establishment. When evaluating Chapter 4 revegetation success performance standards, data from the "Comparison areas" are directly compared by statistical procedures to data from the reclaimed area.

(ii) "Control area" means a type of "Reference area" that is established during baseline sampling. Quantitative comparisons of vegetation cover, total ground cover, and production between the proposed "Control area" and the vegetation community to be affected are used to demonstrate the representative nature of the "Control area". When evaluating revegetation success, baseline data are climatically adjusted using equations. These adjusted data are directly compared by statistical procedures to vegetation data from the reclaimed area. The Administrator may determine to make a direct comparison without the climatic adjustment between the "Control area" and the reclaimed area. Each "Control area" shall be at least two acres.

(iii) "Extended reference area" means a type of a "Reference area" that includes a major portion of one or more premine vegetation communities within the permit area. During baseline sampling, the "Extended reference area" includes areas proposed to be affected and areas that will be unaffected. Postmine, the unaffected areas constitute the "Reference area" for revegetation success evaluation. "Extended reference areas" should be established during baseline sampling, but in some circumstances, may be established after mining begins. The representative nature of the vegetation community within the "Extended reference area" is demonstrated by vegetation community mapping procedures, sampling data, soil data, physiography and land use history. To evaluate revegetation success, data from the "Extended reference area" are directly compared by the statistical procedures to data from the reclaimed area. Each "Extended reference area" will be as large as possible.

(iv) "Limited reference area" is one type of a "Reference area" that is established during baseline sampling to represent one vegetation community to be reestablished. The representative nature of the "Limited reference area" is determined by quantitative comparisons of vegetation cover, and production between the "Limited reference area" and proposed affected areas at the 90 percent confidence level. To evaluate revegetation success, data from the "Limited reference area" are directly compared by statistical procedures to data from the reclaimed area. Each "Limited reference area" shall be at least five acres.

(dq) "Regulatory categories" means the following time frames that encompass the major regulatory periods from which the different performance standards and reclamation standards for specified lands within the permit area are established:

(i) "Category 1" means those lands which were affected to conduct and/or support mining operations and were completed or substantially completed prior to May 24, 1969 (the implementation date of the Open Cut Land Reclamation Act).

(ii) "Category 2" means those lands which were affected on or after May 24, 1969 (the implementation date of the Open Cut Land Reclamation Act) in order to conduct and/or support mining operations and were completed or substantially completed prior to or on June 30, 1973 (day prior to the effective date of the Wyoming Environmental Quality Act).

(iii) "Category 3" means those affected lands and support facilities if those lands supported operations which were not completed or substantially completed prior to July 1, 1973 (the effective date of the Wyoming Environmental Quality Act) and any affected lands or support facilities taken out of use on or after July 1, 1973 and before May 25, 1975 (the effective date of the Division's 1975 Rules and Regulations).

(iv) "Category 4" means those affected lands if coal was removed from those land prior to May 3, 1978 and which do not qualify for any of the previous categories. It also means those affected lands and support facilities if they were taken out of use on or after May 25, 1975 (the effective date of the Division's 1975 Rules and Regulations) and before May 3, 1978 (the effective date of the Office of Surface Mining's (OSM) Initial Regulatory Program).

(v) "Category 5" means those affected lands and support facilities if coal was not removed from those lands prior to May 3, 1978 (the effective date of OSM's Initial Regulatory Program) or those lands were used on or after May 3, 1978 to facilitate
mining (including support facilities and associated lands constructed before May 3, 1978 but still in use on or after May 3, 1978.)

(dr) "Revised mining or reclamation operations" means 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.

(ds) "Road(s)" means a surface corridor of affected land associated with travel by land vehicles used in surface coal mining and reclamation operations or coal exploration. A road consists of the roadbed, shoulders, parking and side areas, approaches, structures, ditches, and surface. The term includes access and haulroads constructed, used, reconstructed, improved, or maintained for use in surface coal mining and reclamation operations or coal exploration, including use by coal hauling vehicles to and from transfer, processing, or storage areas. The term does not include ramps and routes of travel within the immediate mining area or within spoil or coal mine waste disposal areas. Immediate mining area refers to areas subject to frequent surface changes. This includes areas where topsoil and overburden are being moved and areas undergoing active reclamation.

(dt) "Rock" means, for the purposes of estimating ground cover, mineral or rock fragments which are one square centimeter in size or larger and occur on or in the soil. A synonym is coarse fragments.

(du) "Rough Backfilling" means replacement of sufficient material in the pit or pits including special disposal practices for toxic and acid-forming materials, special handling and placement of materials for stream reconstruction or alluvial valley floors, and compaction as required so as to render the affected area in a condition whereby the reclaimed land surface generally resembles the approved postmining contours.

(dv) "Safety factor" means the ratio of the available shear strength to the developed shear stress on a potential surface of sliding determined by accepted engineering practice.

(dw) "Sample unit" means for the purposes of verifying certain Chapter 4 performance standards and applying for Chapter 15 incremental bond release, a permanently reclaimed land unit established by mutual agreement between the permittee and the Administrator. The unit constitutes the fundamental unit for revegetation success verification. The unit may contain portions of one or more vegetation communities.

(dx) "Seasonal variety" means the characteristic or normal season of growth of a plant species where season of growth is described as cool-season or warm-season.

(dy) "Sedimentation pond" means a sediment control structure designed, constructed, and maintained to slow down or impound precipitation runoff to reduce

sediment concentrations in a point source discharge, including dams or excavated depressions. The term does not include straw dikes, riprap, check dams, mulches, collection ditches, toe ditches, vegetative buffers, gabions, contour furrows and other traditional soil conservation techniques and non-point source runoff controls.

(dz) "Self-renewing" means a plant species which has a demonstrated capacity to germinate, establish, grow, flower and produce viable seed and/or mature and produce vegetative reproductive structures under the climatic regime which prevails on the reclaimed lands.

(ea) "Semi-quantitative" means, in the context of a vegetation sampling program and/or evaluation of sampling data that the program and/or evaluation process is/are conducted using a non-statistical assessment of numerical data derived from a defined field reconnaissance regime.

(eb) "Shrub" means a perennial plant with persistent, woody stems and which produces several basal shoots instead of a single main stem. Shrubs have a relatively low growth form and differ from trees by their low stature and lack of arborescent form. A synonym is full shrub.

(ec) "Shrub mosaic" means a pattern of shrub patches. The boundary of a mosaic unit encompasses the areal extent of the individual shrub patches and the reclaimed community occupying the land among the shrub patches.

(ed) "Shrub patch" means a mapable concentration of postmining shrubs which is at least 0.05 acres in extent and which intends to fulfill the shrub density and shrub composition required by Chapter 4 shrub restoration performance standard.

(ee) "Significant, imminent environmental harm to land, air or water resources" means:

(i) An environmental harm is an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life.

(ii) An environmental harm is imminent, if a condition, practice, or violation exists which:

(A) Is causing such harm; or

(B) May reasonably be expected to cause such harm at any time before the end of the reasonable abatement time.

(iii) An environmental harm is significant if the harm is appreciable, not contemplated in the approved permit application, and not immediately repairable.

(ef) "Soil Horizons" means contrasting layers of soil material approximately parallel to the land surface and differing from adjacent layers in physical, chemical and biological properties or characteristics.

(i) "A Horizon" means the uppermost mineral or organic layer, often referred to as the surface soil. It is the part of the soil in which organic matter is most abundant and leaching of soluble or suspended particles is typically the greatest.

(ii) "E Horizon" means the layer commonly near the surface below the A Horizon and above the B Horizon. An E Horizon is the most commonly differentiated from an overlying A Horizon by lighter color and generally, has measurably less organic matter, and from the underlying B Horizon in the same sequum by color of higher value or lower chroma, by coarser texture, or by a combination of these properties.

(iii) "B Horizon" means the layer that typically is immediately beneath the E Horizon and often called the subsoil. This middle layer commonly contains more clay, iron, and aluminum than the A, E or C Horizons.

(iv) "C Horizon" means the deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biological activity, and is often called the subsoil.

(eg) "Soil survey" means a field and other investigation which results in a map showing the geographic distribution of different kinds of soils based on taxonomic characteristics and includes a report that describes, classifies and interprets such soils for use in reclamation.

- (eh) "Species composition" means number, kinds and amount of species.
- (ei) "Species diversity" means number of species per unit area.

(ej) "Species lacking creditable value" means the cover and production of these species will be estimated but will not be credited or counted towards meeting the revegetation success standards for cover, production or species diversity and composition. Species lacking creditable value include noxious weeds listed under the Wyoming Weed and Pest Control Act, Bromus japonicus, Bromus tectorum, Taeniatherum caput-medusae, Halogeton glomeratus, Kochia scoparia and Salsola tragus and all synonyms for these species as listed in the Natural Resources Conservation Service's Plants Database.

(ek) "Species of Special Concern" means those plant species required to be surveyed by the U.S. Fish and Wildlife Service, U.S. Forest Service, and Bureau of Land Management.

(el) "Spoil" means overburden removed during the mining operation to expose

the mineral and does not include the marketable mineral, subsoil or topsoil.

(em) "Stabilize" means to control movement of spoil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, adding control structures, or by otherwise modifying physical or chemical properties.

(en) "Stagnant water" means naturally or artificially impounded water which, because of its poor quality or shallow depth, is unusable for livestock or wildlife watering, wildlife habitat, or recreational uses.

(eo) "Steep slope" means any slope of more than 20 degrees or such lesser slope as may be designated by the Administrator after consideration of soil, climate, and other characteristics of the area.

(ep) "Study area" means the land surface area which was mapped and quantitatively sampled during the baseline vegetation inventory. The study area generally coincides with the permit area (or amendment area) but may exceed those boundaries with prior approval from the Administrator.

(eq) "Subirrigation" means, with respect to alluvial valley floors, the supplying of water to plants from underneath or from a semi-saturated or saturated subsurface zone where water is available for use by vegetation.

(er) "Subirrigation or flood irrigation agricultural activities" means the past and present use of any tract of land for the successful production of animal or vegetable life, based on regional agricultural practices, where the use is enhanced or facilitated by subirrigation or flood irrigation. These uses include, but are not limited to, the pasturing, grazing, and the cropping, cultivation, or harvesting of agriculturally useful plants whose production is enhanced or facilitated by the availability of water from subirrigation or flood irrigation. These uses do not include agricultural practices which do not benefit from the availability of water from subirrigation or flood irrigation.

(es) "Subshrub" means a perennial plant with a persistent, woody base and which produces several basal shoots or stems. The upper stems die back at the end of each growing season. Half-shrub is a synonym.

(et) "Subsidence" means the measurable lowering of a portion of the earth's surface or substrata.

(eu) "Subsoil" means the B and C Horizons excluding consolidated bedrock material.

(ev) "Substantially affect" means to conduct activity which, in the determination of the Administrator will significantly impact land, air or water resources so as to disturb the natural land surface.

(ew) "Substantially complete" means, for the purposes of determining the appropriate regulatory category of affected lands, the overburden was removed above the coal and some recoverable tons were removed from those lands.

(ex) "Substantially disturb" means, for purposes of coal exploration, to significantly impact land or water resources by blasting; by destruction of the vegetative cover or removal of topsoil, subsoil or overburden; by drilling coal exploratory holes; by digging pits; by construction of roads or other access routes; by placement of excavated earthen or waste material on the natural land surface or by other such activities; or to remove more than 250 tons of coal.

(ey) "Succulent" means a plant species with one or more of its morphological parts exhibiting fleshy or juicy characteristics.

(ez) "Surface coal mining and reclamation operations" means surface coal mining operations and all activities necessary or incidental to the reclamation of such operations.

(fa) "Surface water" means water, either flowing or standing, on the surface of the earth.

(fb) "Suspended solids" means organic or inorganic material carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by Environmental Protection Agency's regulations for waste water analyses (40 CFR 136).

(fc) "Systematic sampling" means a sampling design where sample locations are selected using uniform spatial pattern, such as a grid, that covers the entire sample population area, and where all locations are sampled. The first sample point is randomly selected, and the locations of all other sample points are determined by the initial location. Calculations for systematic sampling may be done by assuming the sample is random.

(fd) "Technical revegetation success standard" means a set of quantitative data which are representative of the absolute cover of total vegetation and annual herbaceous production of one or more premining vegetation communities affected by the mining operation. Each technical standard shall be assembled from quantitative data collected from vegetation communities within a permit area and/or from adjacent lands and shall be based upon a minimum of five independent sampling programs executed over a minimum of five years. The Administrator shall approve the specific data sets and the quantitative treatment of the data sets used to establish each technical standard.

(fe) "Threatened species" means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range and which has been listed under the Federal Endangered Species Act.

(ff) "Topsoil" means the A and E Horizons or any combination thereof.

(fg) "Toxic materials" means earthen materials or refuse which, if acted upon by air, water, weather, or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or would restrict the common uses of water.

(fh) "Toxic mine drainage" means water that is discharged from active or abandoned mines and other areas affected by coal mining operations and which contains a substance which through chemical action or physical effects is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

(fi) "Trade secret" means, for purposes of surface coal mining or exploration operations:

(i) Information pertaining to the analyses of the chemical and physical properties of the coal (excepting information regarding such mineral or elemental content which is potentially toxic in the environment) may be kept confidential in accordance with W.S. § 35-11-1101(a);

(ii) Information pertaining to the coal seam itself, except as to any person who demonstrates to the satisfaction of the Director an interest which is or may be adversely affected by the decision to hold such information confidential; and

(iii) Information relating to coal exploration operations which concerns privileged commercial or financial information relating to the competitive rights of the person intending to conduct the coal exploration operations.

(fj) "Transect" means a sampling method which involves the establishment of a long, continuous line or strip. The starting point and orientation of the line should be randomly established.

(fk) "Tree" means a woody, perennial plant which usually has a single trunk or stem and a defined crown shape and which has the potential to reach a mature height of at least four meters in optimal conditions.

(fl) "Unconsolidated streamlaid deposits" means earthen material transported and deposited within a body of water flowing downslope along a definite path. Flood plains and terraces located in the lower portions of topographic valleys are generally composed of unconsolidated streamlaid deposits.

(fm) "Underground development waste" means earthen materials excavated, moved, and disposed of from underground workings in connection with mining activities.

(fn) "Underground mining activities" means a combination of:

(i) Underground operations necessary for the extraction of solid minerals by man-made excavations underneath the surface of the earth; and

(ii) For the extraction of coal, surface operations incident to the underground operation such as construction, use, maintenance, and reclamation of roads, surface repair shops, storage areas, etc., and areas on which materials incident to underground operations are placed.

(fo) "Undeveloped rangeland" means unimproved land, the use of which is generally limited to grazing of livestock. Undeveloped rangeland does not include areas within the alluvial valley floor where cultivated crops, small grains, and hay crops have been successfully grown, the land has been improved by the introduction of certain vegetation for enhanced agricultural utility, or native vegetation on the alluvial valley floor contributes substantially to the carrying capacity of a specifically controlled or managed grazing unit.

(fp) "Upland areas" means those geomorphic features located outside the area of unconsolidated streamlaid deposits and may include isolated higher terraces, alluvial fans, pediment surfaces, landslide deposits, and surfaces covered with residuum, mud flows or debris flows, as well as highland areas underlain by bedrock and covered by residual weathered material or debris deposited by sheetwash, rillwash, or windblown material.

"Valid existing rights (VER)" means a set of circumstances under which a (fq)person may, subject to regulatory authority approval, conduct surface coal mining operations on lands where Section 522(e) of P.L. 95-87 (2009)(http://www.gpoaccess.gov/uscode/) (2009)and 30 C.F.R. §761.11 (http://www.gpoaccess.gov/cfr/retrieve.html) would otherwise prohibit or limit such operations. Possession of valid existing rights only confers an exception from the prohibitions of 30 C.F.R. §761.11 and Section 522(e) of P.L. 95-87. A person seeking to exercise VER shall comply with all other applicable requirements of the Act and rules and regulations promulgated thereunder and meet the standards below.

(i) Except as provided in subsection (iii) below, a person claiming VER shall demonstrate that a legally binding conveyance, lease, deed, contract, or other document vests that person, or a predecessor in interest, with the right to conduct the type of surface coal mining operations intended and that this right existed at the time the land came under protection of Section 522(e) of P.L. 95-87 (2009) or 30 C.F.R. §761.11 (2009).

(ii) Except as provided in subsection (iii) below, a person claiming VER shall also demonstrate compliance with one of the following standards. Procedures and requirements related to the demonstration are detailed in Chapter 12 of the Division's Coal Rules and Regulations.

(A) "Good faith/all permits standard" means all permits and other authorizations required to conduct surface coal mining operations had been obtained, or a good faith effort to obtain all necessary permits and authorizations had been made, before the land came under the protection of Section 522(e) of P.L. 95-87 (2009) or 30 C.F.R. §761.11 (2009). At a minimum, a permit application was submitted as required in Chapter 2 of these regulations.

(B) "Needed for and adjacent standard" means the land is needed for and immediately adjacent to a surface coal mining operation for which all permits and other authorizations required to conduct surface coal mining operations had been obtained or a good faith attempt to obtain all permits and authorizations has been made, before the land came under the protection of Section 522(e) of P.L. 95-87 (2009) or 30 C.F.R. §761.11 (2009). To meet this standard a person shall demonstrate that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of 522(e) of P.L. 95-87 (2009) or 30 C.F.R. §761.11(2009). Except for operations in existence before August 3, 1977, or for which a good faith effort to obtain all necessary permits had been made before August 3, 1977, this standard does not apply to lands already under the protection of 522(e) of P.L. 95-87 (2009) or 30 C.F.R. §761.11 (2009) when the Department approved the permit for the original operation or when the good faith effort to obtain all necessary permits for the original operation was made. In evaluating whether a person meets this standard, the agency making the determination may consider factors such as:

(I) The extent to which coal supply contracts or other legal and business commitments that predate the time the land came under the protection of 522(e) of P.L. 95-87 (2009) or 30 C.F.R. §761.11 (2009) depend upon the use of that land for surface coal mining operations;

(II) The extent to which plans used to obtain financing for the operation before the land came under the protection of 522(e) of P.L. 95-87 (2009) or 30 C.F.R. §761.11 (2009) rely upon use of that land for surface coal mining operations;

(III) The extent to which investments in the operation before the land came under the protection of 522(e) of P.L. 95-87 (2009) or 30 C.F.R. §761.11 (2009) rely upon use of that land for surface coal mining operations; and

(IV) Whether the land lies within the area identified on the life-of-mine map submitted under Chapter 2, Section 5(a)(i)(B) of the Land Quality Division Coal Rules and Regulations before the land came under the protection of 30 C.F.R. §761.11 (2009).

(iii) Roads. A person who claims valid existing rights to use or construct a road across the surface of lands protected by 522(e) of P.L. 95-87 (2009) or

30 C.F.R. §761.11 (2009) must demonstrate that one or more of the following circumstances exist if the road is included within a surface coal mining operation:

(A) The road existed when the land upon which it is located came under the protection of 522(e) of P.L. 95-87 (2009) or 30 C.F.R. §761.11 (2009) and the person has a legal right to use the road for surface coal mining operations;

(B) A properly recorded right of way or easement for a road in that location existed when the land came under the protection of 522(e) of P.L. 95-87 (2009) or 30 C.F.R. §761.11 (2009) and under the document creating the right of way or easement, and under subsequent conveyances, the person has a legal right to use or construct a road across the right of way or easement for surface coal mining operations;

(C) A valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of 522(e) of P.L. 95-87 (2009) or 30 C.F.R. §761.11 (2009); or

(D) VER exist under subsections (i) and (ii) above.

(iv) The prohibitions and limitations of Chapter 12, Section 1(a)(v) do not apply to surface coal mining operations for which a valid permit issued by the Department exists when the land comes under the protection of 30 C.F.R. §761.11 (2009). This exception applies only to lands within the permit area as it exists when the land comes under the protection of 30 C.F.R. §761.11 (2009).

(v) Interpretation of the terms of the document relied upon to establish valid existing rights shall be based either upon applicable Wyoming case law concerning interpretation of documents conveying mineral rights or, where no applicable case law exists, upon the usage and custom at the time and place where it came into existence.

(fr) "Vegetation community" means a recognizable group of species growing together.

(fs) "Violation", when used in the context of the permit application information required in Chapter 2 of these rules and regulations or permit eligibility requirements detailed in Chapter 12 of these rules and regulations means:

(i) A failure to comply with an applicable provision of a Federal or State law or regulation pertaining to air or water environmental protection, as evidenced by a written notification from a governmental entity to the responsible person; or

(ii) A noncompliance for which the Office of Surface Mining has provided one or more of the following types of notice or the Department of Environmental Quality has provided equivalent notice under its corresponding statutory and/or regulatory provisions: (A) A "notice of violation" as defined above;

(B) A cessation order under W.S. 35-11-437 (2011) and/or Chapter 16 of the Land Quality Coal Rules and Regulations;

(C) A final order, bill or demand letter pertaining to a delinquent civil penalty assessed under Chapter 16 of the Land Quality Coal Rules and Regulations;

(D) A bill or demand letter pertaining to delinquent reclamation fees owed under 30 C.F.R. part 870 (Abandoned Mine Lands); or

(E) A order of bond forfeiture under W.S. 35-11-421 (2011) when:

(I) One or more violations upon which the forfeiture was based have not been abated or corrected; or

(II) The forfeited bond is inadequate to cover the cost of the final reclamation under W.S. 35-11-421 and 422 (2011);

(ft) "Warm season" means a plant, which makes most or all its growth during the spring, summer, or fall and is usually dormant during the winter. Warm season plants usually exhibit the C-4 photosynthetic pathway.

(fu) "Water table" means the upper surface of a zone of saturation, where the body of groundwater is not confined by an overlying impermeable zone.

Section 3. Applicability.

(a) All mining operations or operations by which solid minerals are intended to be extracted from the earth, which are commenced or conducted after the effective date of these rules and regulations, shall comply with the requirements hereof, except as specific exemptions are allowed by the Act.

(b) The discretionary exemptions shall be limited as follows:

(i) W.S. § 35-11-401(g), (h) and (j) shall not apply to surface coal mining operations.

(ii) In order to qualify for the exemption provided for in W.S. 35-11-401(e)(ii), approval must be obtained from the Administrator for the extraction of any coal after a finding that:

(A) The extraction is necessary to enable the construction to be

accomplished and occurs within the right-of-way or boundary of the area directly affected by the construction;

(B) The construction is funded 50 percent or more by funds appropriated or obtained from a government financing agency's budget or general revenue bonds; and

(C) The person agrees to possess on-site documents which show a description of the project, its exact location, and information showing the source, kind and amount of public financing, including the percentage of the entire construction costs represented by the government financing.

(c) If any provision of these regulations or the applicability thereof to any person or circumstances related to surface coal mining operations is held invalid, the provision or its applicability to other mining operations or circumstances shall not be affected thereby.

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.

(b) Information set forth in the application shall be current, presented clearly and concisely, and supported or authenticated, when appropriate, by references to technical material, persons, or public or private organizations which were used, consulted, or were responsible for collecting and analyzing the data.

(c) Maps submitted with the application shall be, or be the equivalent of a U.S. Geological Survey topographic map at a scale determined by the Administrator, but in no event smaller than 1:24,000. All maps shall contain a title relative to the subject matter of the map, a map number, legend, and show the limits of the permit area. The maps shall distinguish among the following phases of the operation:

- (i) Prior to August 3, 1977;
- (ii) After August 3, 1977 and prior to May 3, 1978;
- (iii) After May 3, 1978 and prior to approval of the State Program;
- (iv) After the estimated date of issuance of the permit; and
- (v) The five "regulatory categories" as defined in Chapter 1, Section 2.

(d) Applicants may reference materials. If used in the application, referenced materials shall either be provided to the Division or be readily available to the Division. Relevant portions of referenced materials shall be presented briefly and concisely in the

application by photocopying or abstracting and with explicit citations.

(e) The applicant may consult with the local conservation district during preparation of the reclamation plan for conformance with technical standards.

Section 2. Adjudication Requirements.

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

(i) A complete identification of interests, which shall include:

(A) All owners of record of the property to be mined including legal and equitable owners, holders of record of any leasehold interest, and any purchaser of record under a real estate contract for the property to be mined;

(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 person performing a function similar to a director and person 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 shareholder, officers and director or other person 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;

(F) A list of any pending, current or previous surface coal mining permit applications filed in in the United States held by the applicant, partner or principal shareholder and the operator and operator's partners, principal shareholders who operate or previously operated a surface coal mining operation during the five year period preceding the date of the application. The list must identify each application by its application number and jurisdiction, or by other identifying information when necessary. For any surface coal mining operations that the applicant or the operator owned and controlled within the five year period preceding the application that the application submission date and for any surface coal mining operation that the applicant or operator owned and controlled on that date, the applicant shall provide:

(II)

(III)

(I) Permittee's and operator's name and address;

numbers;

Permittee's and operator's taxpayer identification

Federal or State permit number and corresponding

MSHA number;

(IV) Regulatory authority with jurisdiction over the

permit; and

(V) Permittee's and operator's relationship to the operation, including percentage of ownership and location in the organizational structure.

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

(I) If all or part of the information already in AVS is accurate and complete then the applicant shall certify to the LQD by swearing or affirming under oath and in writing that the relevant information in AVS is accurate, complete and up to date;

(II) If part of the information in AVS is missing or incorrect then the applicant shall submit to the LQD the necessary information or corrections and swear or affirm under oath and in writing that the information to be submitted is accurate and complete; or

(III) If the applicant can neither certify that the data in AVS is accurate and complete nor make corrections then the applicant shall include in the permit application the information required in subsections (B) - (F).

(H) A statement of all lands, interests in lands, options, or pending bids on interests held or made by the applicant for lands which are contiguous to the proposed permit area; and

(I) Legal ownership - if the operator includes roads or spur lines within the permit area but does not possess the mineral rights or the right-to-mine for these lands, the legal land description shall then be listed in the application as a separate subsection in Appendix "C". The heading of the subsection shall make it clear that the right-to-mine is not claimed on the described lands. Surface owners shall be listed for all lands crossed by spur lines and roads.

(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:

(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;

(III) For each suspension, revocation, or forfeiture identified in subsections (I) and (II) above, the applicant shall provide a brief statement of the facts involved including the permit number, date of action and amount of forfeiture if applicable, responsible regulatory authority and stated reasons for action, current status and identifying information regarding any judicial or administrative proceedings related to the action.

(B) A list of notices of violation required by W. S. § 35-11-406(a)(xiv) that describe or identify the violation, a list of all unabated or uncorrected violation notices incurred in connection with any surface coal mining and reclamation operation that the applicant or operator owns or controls on that date, identify the associated permit and MSHA numbers, the name of the person to whom the violation notice was issued, when it occurred, any abatement action taken and if the abatement period has not expired a certification that the violation is being abated or corrected to the satisfaction of the agency with jurisdiction over the violation. This listing shall include only notices issued to the applicant or operator and any subsidiaries, affiliates, or

persons owned or controlled by or under common control with the applicant or operator.

(iii) The right of entry statements and documents required by W.S. § 35-11-406(a)(ii) and (b)(xi) 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), Land Quality 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;

(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 division of the Department, including the Solid and Hazardous Waste Management Division, together with the following:

(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 III and XI, and as applicable Chapter X, of the 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 II, Section 12, Water Quality 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.

(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, State Engineer 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.

(B) For any permits or approvals which have not been obtained, the information required by (A) above which has been or will be submitted to the agencies involved, including a description of the steps to be taken to comply with the relevant requirements.

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

(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 acres 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 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;

(iii) The vegetation community map shall identify:

(A) Sample locations for cover and shrub density;

(B) Reference Areas unless a technical success standard is proposed for evaluation of revegetation;

(C) Areas to be affected by mining and associated activities:

(D) The locations and orientations of all photographs provided with the descriptions of the vegetation communities and Reference Areas, as required in Chapter 2, Section 3(j);

(E) The general location of trees;

(F) The location and extent of designated and/or prohibited noxious weeds per Chapter 2, Section 3(k); and

(G) Extent of existing disturbance.

(iv) The vegetation communities in the study area may be mapped any time the ground is clear of snow, but must be field checked and verified prior to the sampling.

(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 shall be:

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

(e) If the applicant intends to propose a technical success standard, annual herbaceous production, by community, shall be estimated using quantitative methods. Annual herbaceous production shall also be quantitatively estimated when the Administrator determines that previously collected baseline vegetation data inadequately describes the proposed permit area. If semi-quantitative methods are approved for baseline, no production for baseline is necessary.

(f) A "Reference area", 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.

(g) Shrub density sampling shall use the quantitative methods as approved by the Administrator unless the applicant commits to the maximum shrub reestablishment performance standard of one full shrub per square meter within shrub patches distributed over 20 percent of the eligible land for Option II. If the applicant accepts this maximum shrub reestablishment performance standard, the applicant shall use the following provisions to complete the calculations in Appendix 4A, Tables 1 and 2.

(i) For Option II, the full shrub with the highest baseline relative cover value across all premining vegetation communities shall be listed as the dominant premine full shrub species and the target postmine species. No calculations for Appendix 4A, Table 1 or Table 2, shall be performed. In Table 2, the Density of the Dominant Postmining (Full) Shrub shall be 0.5 per square meter, and the Density of Residual (Full) Shrubs shall be 0.25 per square meter and the Density of Approved Subshrubs shall be 0.25 per square meter.

(h) If trees are present within the proposed permit area, then the description shall include the number, general distribution, and species.

(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" as defined in Chapter 1, Section 2;
used);	(B)	By scientific binomial (with reference to the botanic key
	(C)	By common name; and
introduced species.	(D)	Identified as a native (native to North America) or
(ii)	The plant inventory shall be field checked and undated at least	

(ii) The plant inventory shall be field checked and updated at least three times from April through September during the baseline sampling year to capture the phenological expression of species that do not express themselves every month. The plant inventory shall not be compared to any qualitative, semi-quantitative or quantitative criteria.

(iii) The plant inventory shall note the names and field locations of:

(A) Any herbarium samples collected;

(B) Any Designated Noxious Weeds or Prohibited Noxious Weeds defined by the State of Wyoming;

(C) Any plant species or habitat of special concern at the time of sampling; and

(D) Any species not previously recorded in Wyoming or outside its known range.

(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:

- (i) The general vegetation composition;
- (ii) The major species in each life form;

(iii) The characteristic topography, including overall slope and aspect;

(iv) The characteristic soil types;

- (v) The number, sizes, and types of inclusions;
- (vi) The degree of interspersion between communities;

(vii) A summary of the quantitative, semi-quantitative, and qualitative vegetation information for each community;

(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

(iv) 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".

(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.

(i) If any Designated Noxious Weeds or Prohibited Noxious Weeds are present within the proposed permit area, the description shall include a list of their names, either common or scientific, and a visual estimate of their relative cover.

(ii) If any Designated Noxious Weeds or Prohibited Noxious Weeds are estimated to comprise more than 25% of the relative vegetation cover on two or more contiguous acres, that acreage shall be identified on the vegetation community map.

(1) If any State or Federally listed endangered or threatened plant species are known to exist within the permit area or in adjacent areas, their location shall be described and an evaluation provided on potential habitats within the permit area and in adjacent areas.

(m) Cropland, either as a vegetation community and/or a land use category, is exempt from Chapter 2, Sections 3 (d) through (g), (i) and (j).

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 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.

(ii) The capability of the land prior to mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover, and the land's history of previous mining, if any, and the uses of the land preceding mining; as well as the land use classification under local law, if any, of the proposed permit area and adjacent areas.

(iii) Annual precipitation - the operator shall submit an estimated total annual precipitation for the proposed permit area. Data from the nearest official weather reporting station may be used. Operations more than 50 miles from an official weather station that are permanently staffed may be required to keep precipitation records.

(iv) Average wind direction and velocity - the operator shall submit the average wind direction and velocity recorded at the nearest official weather station or as measured at the site.

(v) Prime farmland information, which shall include, after a preapplication investigation of the proposed permit area, either:

(A) A request for a determination that the land not be considered prime farmland on the basis that either the land has not had a history of intensive agricultural use; or there are no soil map units that have been designated prime farmland by the Natural Resource Conservation Service in accordance with 7 CFR 657 (Federal Register Vol. 43, No. 21) and the Memorandum of Understanding between the Conservation Districts and the Soil Conservation Service, or

(B) Where prime farmland occurs on proposed affected land, an application which shall be submitted in accordance with Chapter 3.

(vi) Studies of fish, wildlife, and their habitats, in the level of detail and for those areas as determined by the Administrator, after consultation with the Wyoming Game and Fish Department in accordance with the Memorandum of Understanding between the two agencies; and Federal agencies having responsibilities for the management or conservation of such environmental values, including:

(A) A list of indigenous vertebrate wildlife species within and

adjacent to the permit area by common and scientific names. The area of survey for the possible presence of threatened or endangered species shall be on or within one mile of the permit area.

(B) If critical habitat disruption is likely, the U.S. Fish and Wildlife Service and Wyoming Game and Fish Department shall be contacted by the Administrator. If crucial or important habitat or migration route disruption is likely, the Wyoming Game and Fish Department shall be contacted by the Administrator. Contacting the appropriate agency(ies) is required in order to determine the types and numbers of wildlife likely to be disturbed or displaced.

(vii) A detailed description, prepared or certified by a licensed professional geologist, or other qualified professional (as required by W.S. § 33-41-101 through 121), of the geology within the proposed permit area down to and including any aquifer to be adversely affected by mining below the lowest coal seam to be mined. The description shall include the aerial and structural geology of the permit area and, by extrapolation, adjacent areas, including geologic parameters which influence the required reclamation, and the occurrence, availability, movement, quantity, and quality of potentially affected surface and groundwaters.

(viii) For the proposed permit area and, by extrapolation, adjacent areas, characterization of the geologic strata down to and including the deeper of either the stratum immediately below the lowest coal seam to be mined, or any aquifer below the lowest coal seam to be mined which may be adversely impacted by mining. This information shall include a statement of the results of test borings or core samples which have been collected and analyzed to show:

- (A) Location of any groundwater;
- (B) Lithologic characteristics and thickness of each stratum and

each coal seam;

(C) Physical and chemical properties including the toxic and acid-forming properties of each stratum within the overburden; and

(D) Chemical analyses for acid or toxic-forming substances of the coal seam, including the total sulphur and pyritic sulphur content. The Administrator may waive in whole or in part the requirements of these paragraphs if he makes a written finding that the testing is unnecessary because other equivalent information is available to him in a satisfactory form.

(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 and 33-41-101 through 121), showing:

(A) Nature, depth and thickness of any coal seams to be mined or above those to be mined, each stratum of the overburden, and the stratum below the lowest coal seam to be mined;

(B) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area;

(C) Location and extent of existing or previously surface mined or underground mined areas within the proposed permit area and adjacent areas;

(D) Sufficient slope measurements of the proposed permit area measured and recorded at such distances as the Administrator determines to be representative of the premining configuration and reflect geomorphic differences of the land to be mined;

(E) The location of water supply intakes for current users of surface water flowing into, out of and within a hydrologic area defined by the Administrator, and those surface waters which will receive discharges from affected areas in the proposed permit area;

(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 Rules and Regulations;

(G) Elevations and locations of test borings and core samplings;

(H) Elevations and locations of monitoring stations used to gather data for water quality and quantity, fish and wildlife, and air quality in preparation of the application; and

(I) Other relevant information required by the Administrator.

(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 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.

(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:

(A) The operator shall list and describe the name and location for the present surface waters in and adjacent to the proposed permit area. The list shall include, but not be limited to, rivers, creeks, lakes, reservoirs, springs and marshes. Streams shall be classified as ephemeral, intermittent or perennial;

(B) The operator shall submit a description of the immediate drainage area which includes the proposed permit area. Surface water use shall be identified as to domestic, municipal, industrial, agricultural, and wildlife;

(C) Baseline monitoring information of surface water quantity within the permit area which is representative of the surface hydrologic system. Water quantity descriptions shall include, at a minimum, baseline information on seasonal flow rates, and identification of drainage area acreage; and

(D) Water quality data sufficient to identify seasonal variation. All surface water-quality sampling and analyses performed to meet the requirements of this Section shall be conducted according to the methodology in the 20th edition of "Standard Methods for the Examination of Water and Wastewater," or the methodology in 40 CFR Part 136 - "Guidelines Establishing Test Procedures for the Analysis of Pollutants," as amended on January 16, 2001. Contact the Land Quality Division for information on how to obtain a copy of either reference materials. The data shall include at a minimum:

(I) Total dissolved solids (mg/l);

(II) Total suspended solids (mg/l);

(III) pH (standards units);

(IV) Total and dissolved iron (mg/l); and

(V) Total manganese (mg/l).

(E) Baseline alkalinity and acidity information shall be provided if there is a potential for acid drainage from the proposed mining operation.

(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 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;

(B) The lithology and thickness of all known aquifers;

(C) All water-quality sampling and analyses performed to meet the requirements of this Section shall be conducted according to the methodology in the 20th edition of "Standard Methods for the Examination of Water and Wastewater" or the methodology in 40 CFR Part 136 - "Guidelines Establishing Test Procedures for the Analysis of Pollutants," as amended on January 16, 2001. Contact the Land Quality Division for information on how to obtain a copy of either reference materials. The data shall include at a minimum:

- (I) Total dissolved solids (mg/l);
- (II) Total and dissolved iron (mg/l);
- (III) Total manganese (mg/l); and
- (IV) pH (standard units).

(D) According to the parameters and in the detail required by the Administrator, the recharge, storage, and discharge characteristics of the groundwater.

(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 three miles or less from the proposed permit area. A survey of the premining water levels in the above wells may be required.

(xiv) A description of the surface water and groundwater and related geology in the permit area and general area sufficient to assess the probable hydrologic consequences (PHC). If the determination of the PHC required by Chapter 19, Section 2(a)(i) indicates that adverse impacts on or off the proposed permit area may occur to the hydrologic balance, or that acid-forming or toxic material is present that may result in the contamination of groundwater or surface water supplies, then information supplemental to that required under (a)(xi) and (a)(xii) of this Section shall be provided to evaluate such PHC and to plan remedial and reclamation activities. Such supplemental information may be based upon drilling, aquifer tests, hydrogeologic analysis of the water-bearing strata, flood flows, or analysis of other water-quality or quantity characteristics.

(xv) Information concerning the presence or absence of an alluvial valley floor within the permit area or on adjacent areas in accordance with Chapter 3.

(xvi) The location of existing man-made features to include roads, railroads, reservoirs, public or private rights-of-way and easements, utility lines, pipelines, oil wells, gas wells, and water wells.

(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 of Environmental Quality, Rules of Practice and Procedure, the Wyoming Public Records Act (W.S. §§ 16-4-201 thru 16-4-205 (2007)) and the Wyoming Environmental Quality Act (2007).

(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:

(A) A narrative description of the type and method of mining, the number of acres that will be affected annually, overburden and mineral removal and transport, anticipated annual and total production by tonnage, and the major equipment to be used for all aspects of the operations.

(B) A map showing the estimated orderly progression of mining and reclamation on all proposed affected lands.

(C) The size, sequence and timing of the areas for which it is anticipated that renewed permits for mining will be requested over the estimated total life of the proposed operation.

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

monitoring facilities;

(I) Location of proposed water treatment control and

handling facility;

(II) Location of each proposed explosive storage and

(III) Location and construction of each proposed waste disposal facility relating to coal processing or pollution control;

(IV) Location of and typical design for surface water and groundwater hydrologic control methods including proposed temporary impoundments, sedimentation ponds, diversions, stream channels, erosion control methods, and water treatment, water storage, water collection and discharge facilities. The location and typical design of permanent impoundments and general location of the above described hydrologic control methods shall be provided for the permit area;

(V) The location, construction and maintenance of coal stockpiles, 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

(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).

(ii) A narrative and a map of the permit area identifying the location of existing structures, a description of their use and maintenance, and an explanation of whether they meet the requirements of Chapter 4 or the plan for removal, if required, or modification to comply with those standards in a manner which protects the environment and public health and safety.

(iii) A description of the measures to be used to maximize the use and conservation of the coal resource as required in Chapter 4, Section 2(v).

(iv) A description of the contingency plans which have been developed to preclude sustained combustion of any materials constituting a fire hazard.

(v) A description, plans, and drawings for each mine facility to be constructed, used, or maintained within the proposed permit area. The plans and drawings shall include a map, appropriate cross-sections, design drawings, and specifications sufficient to demonstrate compliance with section 2(n) of Chapter 4 for each facility.

(vi) A map of the permit area which clearly shows that a railroad spur(s) which provides exclusive service to that particular permit is being included within the permit boundary from the point that it provides such service. This spur(s) shall be covered by a reclamation bond.

(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 also include:

(I) A blasting plan which depicts the worst-case scenario (i.e., the maximum probable amount of explosives to be detonated in any eight millisecond period).

(II) The identification, direction and distance, in feet to the nearest dwelling, public building, school, church, and community or institutional building from any blasting area during the term of the permit. This paragraph shall not apply if the building is owned by the operator and not leased to another or, if leased, the lessee signs a waiver relieving the operator from meeting the limitations in Chapter 6.

(B) If blasting operations will be conducted within 1,000 feet of

any building used as a dwelling, public building, school, church, and community or institutional building outside the permit area, or within 500 feet of an active or abandoned underground mine, an anticipated blast design, prepared and signed by a certified blaster. The design shall contain sketches of the drill patterns, delay periods, and decking and shall indicate the type and amount of explosives to be used, critical dimensions, and the location and general description of structures to be protected, as well as a discussion of design factors to be used which protect the public and meet the applicable airblast, flyrock and ground vibration standards in Chapter 6. This paragraph shall not apply if the building is owned by the operator and not leased to another or, if leased, the lessee signs a waiver relieving the operator from meeting the limitations in Chapter 6.

(C) Description and location of blasting monitoring, warning and site access control equipment and procedures proposed to be used pursuant to Chapter 6, Section 4.

(D) Description of procedures and plans for recording and retaining information required by Chapter 6, Section 5.

Section 3.

(E) A sample copy of the public notices required by Chapter 6,

(F) Other information requested by the Administrator which he determines necessary to ensure compliance with Chapter 6.

(viii) A plan for minimizing adverse impacts to fish, wildlife and related environmental values within and adjacent to the permit area during the operation and how enhancement of these resources will be achieved where practicable. Where a plan does not include enhancement measures, the applicant shall affirmatively demonstrate why such measures are not practicable. The plan shall include:

(A) Whether such resources will be enhanced through successful revegetation and other enhancement measures in accordance with Chapter 4, Section 2(r);

(B) A statement of how the applicant will utilize monitoring methods as specified in Appendix B of these rules and regulations, and impact control measures and management techniques to protect or enhance the following, if they are likely to be affected by the proposed operation:

(I) Threatened or endangered species of plants or animals listed by the Secretary under the Endangered Species Act of 1973, as amended (16 U.S.C. Section 1531 et seq.) and their critical habitats;

(II) Species identified through the consultation process described in Section 4(a)(vi); and

(III) Important habitats for fish and wildlife, such as wetlands, riparian areas, rimrocks, areas offering special shelter or protection, reproduction and nursery areas, and wintering areas.

(C) Upon request, the Administrator shall provide the resource information required under paragraph (B) of this Section and that required by Section 4(a)(vi) of this Chapter to the U.S. Department of the Interior, Fish and Wildlife Service regional or field office for their review. This information shall be provided within 10 days of receipt of the request from the Service.

(ix) A plan to ensure the protection of the quantity and quality of, and rights to, surface water and groundwater both within and adjacent to the permit area, which shall include:

(A) A plan and timetable for control and treatment of surface water and groundwater in accordance with Chapter 4, Section 2(e)-(h);

(B) A plan for sediment removal and disposal;

(C) A plan to restore the approximate recharge capacity of the permit area in accordance with Chapter 4, Section 2(h);

(D) A plan to collect, record and report water quantity and quality data according to Chapter 4, Section 2(i); and

(I) Surface water monitoring plan.

(1.) The application shall include a monitoring plan based upon the PHC determination required under subsection 5(a)(x) of this Chapter and the analysis of all baseline hydrologic, geologic, and other information in the permit application. The plan shall provide for the monitoring of parameters that relate to the suitability of the surface water for current and approved postmining land uses and to the objectives for protection of the hydrologic balance as set forth in subsection 5(a)(ix) of this Chapter.

(2.) The plan shall identify the surface water quantity and quality parameters to be monitored, sampling frequency, and site locations. At a minimum, the parameters specified in Section 4(a)(xi)(C) and (D) of this Chapter shall be measured. Results of monitoring shall be available for inspection at the mine and available to the Director's designated authorized representative, and shall be reasonably current. Surface water monitoring shall be conducted quarterly unless an alternate frequency, appropriate to the monitored site, is approved by the Administrator. Results of monitoring shall be submitted in the annual report for each monitoring location.

(3.) The plan shall describe how the data may be

used to determine the impacts of the operation upon the hydrologic balance.

(II) Groundwater monitoring plan.

(1.) The application shall include a groundwater monitoring plan based upon the PHC determination required under subsection 5(a)(x) of this Chapter and the analysis of all baseline hydrologic, geologic, and other information in the permit application. The plan shall provide for the monitoring of parameters that relate to the suitability of the groundwater for current and approved postmining land uses and to the objectives for protection of the hydrologic balance set forth in subsection 5(a)(x) of this Chapter.

(2.) The plan shall identify the quantity and quality parameters to be monitored, sampling frequency, and site locations. It shall describe how the data may be used to determine the impacts of the operation upon the hydrologic balance. At a minimum, the parameters specified in Section 4(a)(xii)(C) of this Chapter and water levels shall be measured. Groundwater monitoring shall be conducted quarterly unless an alternate frequency, appropriate to the monitored site, is approved by the Administrator. Results of monitoring shall be available for inspection at the mine and available to the Director's designated authorized representative, and shall be reasonably current. Results of monitoring shall be submitted in the annual report for each monitoring location.

(E) A plan to provide alternative sources of water in accordance with W.S. 35-11-415(b)(xii), where the protection of quantity or quality cannot be ensured as determined under the requirements of (x) below.

(x) Probable hydrologic consequences determination (PHC). A determination of the PHC of the proposed operation on the hydrologic regime and the quantity and quality of surface water and groundwater systems within the permit area and the general area consistent with the information required in Chapter 19, Section 2 of these regulations. The PHC determination shall be based on baseline hydrologic, geologic and other information collected for the permit application and may include data statistically representative of the site. This determination shall specifically address potential adverse hydrologic consequences and describe preventive and remedial measures.

(xi) An evaluation of the impact of the proposed mining activities that may result in contamination, diminution, or interruption of the quality and quantity of groundwater or surface water within the proposed mine permit area or adjacent areas that are used for domestic, agricultural, industrial, or other legitimate purposes. If contamination, diminution, or interruption may result, then the application shall identify the alternative sources of water supply that could be developed to replace the existing sources in accordance with State law.

(xii) A general plan for each coal-processing waste bank. It shall

contain a description, map, and cross-section of the structure and its location, preliminary hydrologic information required to assess the hydrologic impact of the bank, and any additional information the Administrator may deem necessary to show compliance with Chapter 4, Section 2(c). Where the applicant proposes to return coal-processing waste to abandoned underground workings, the application shall:

(A) Describe the design, operation and maintenance of any proposed coal-processing waste disposal facility, including flow diagrams and any other necessary drawings and maps, for the approval of the Administrator and the Mine Safety and Health Administration;

(B) Describe the sources and quality of waste to be stowed, area to be backfilled, percent of the mine void to be filled, method of constructing underground retaining walls, influence of the backfilling operation on active underground mine operations, surface area to be supported by the backfill and the anticipated occurrence of surface effects following backfilling;

(C) Describe the source of the hydraulic transport mediums, method of dewatering the placed backfill, retainment of water underground, treatment of water if released to surface streams, and the effect on the hydrologic regime;

(D) Describe each permanent monitoring well to be located in the backfilled area, the stratum underlying the mined coal, and gradient from the backfilled area except where pneumatic backfilling operations are exempted from hydrologic monitoring; and

(E) Be approved by MSHA as well as the Administrator prior to implementation.

(xiii) For surface mining activities to be conducted within 500 feet of an underground mine, measures to be used to comply with Chapter 4, Section 2(t).

(xiv) Plans describing the measures to be taken to obtain permit approval regarding areas where mining would be otherwise limited or prohibited pursuant to Chapter 12, Section 1(a)(v).

(xv) Descriptions, including appropriate maps and cross-sections of any proposed excess spoil disposal site and design of the spoil piles in accordance with the requirements of Chapter 4, Section 2(c). This shall contain the results of a geotechnical investigation of the proposed excess spoil disposal site, including the following:

(A) The character of bedrock and any adverse geologic conditions in the disposal area;

(B) A survey identifying all springs, seepage, and groundwater

flow observed or anticipated during wet periods in the area of the disposal site;

(C) Where applicable, an evaluation of the potential effects of subsidence of the subsurface strata due to past and future mining operations;

(D) A stability analysis including, but not limited to, strength parameters, pore pressures and long-term seepage conditions. These data shall be accompanied by a description of all engineering design assumptions and calculations and the alternatives considered in selecting the specific design specifications and methods; and

(E) If, under Chapter 4, Section 2(c)(xi)(F), special structural provisions are required for spoil disposal on overall slopes greater than 20 degrees, information on:

(I) The number, location and depth of borings or test pits which shall be determined with respect to the size of the spoil disposal structure and subsurface conditions; and

(II) The engineering designs, design rationale and design calculations for the special structural provisions, which are based on the information required in paragraph (D) above.

(xvi) Road Systems.

(A) Each applicant shall submit plans and drawings for each road as defined in Chapter 1 to be constructed, used, or maintained within the proposed permit area. The plans and drawings shall:

(I) Include a map, appropriate cross-sections, design drawings and specifications for road widths, gradients, surfacing materials, cuts, fill embankments, culverts, bridges, drainage ditches, drainage structures and low-water crossings;

(II) Contain the drawings and specifications of each proposed road that is located in the channel of an ephemeral stream that has the potential for sufficient flow to cause substantial environmental harm unless a downstream sediment control structure exists within the permit boundaries, any intermittent or any perennial stream, as necessary for approval of the road by the Administrator in accordance with Chapter 4, Section 2(j)(iv)(A);

(III) Contain the drawings and specifications for each proposed ford of intermittent or perennial streams that is used as a temporary route, as necessary for approval of the ford by the Administrator in accordance with Chapter 4, Section 2(j)(vii)(C)(II);

(IV) Contain a description of measures to be taken to obtain approval from the Administrator for alteration or relocation of a natural stream channel under Chapter 4 Section 2(j)(vii)(D)(V);

(V) Contain the drawings and specifications for each low-water crossing of an ephemeral stream channel that has the potential for sufficient flow to cause substantial environmental harm unless a downstream sediment control structure exists within the permit boundaries, any intermittent stream channel or any perennial stream channel so that the Administrator can maximize the protection of the stream in accordance with Chapter 4, Section 2(j)(vii)(D)(VI); and

(VI) Describe the plans to remove and reclaim each road that would not be retained under an approved postmining land use, and the schedule for this removal and reclamation.

(B) The plans and drawings for each primary road (as defined in Chapter 4, Section 2(j)(i)(B)) shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer as meeting the requirements of this Chapter and current, prudent engineering practices.

(xvii) Plans for compliance with the temporary and permanent cessation of operations requirements contained in Chapter 4, Section 2(k) and (u).

(xviii) Plans of mine facilities (including overstrip areas) that are to be shared by two or more separately permitted mining operations may be included in one permit application and referenced in the other application(s). Each permittee shall bond the mine facilities unless the permittees sharing it agree to another arrangement for assuming their respective responsibilities. If such agreement is reached, the application shall include a copy of the agreement between or among the parties setting forth the respective bonding responsibilities of each party for the mine facilities. The agreement shall demonstrate to the satisfaction of the Administrator that all responsibilities under the Act and regulations for the mine facilities will be met.

(xix) A Cultural Resources Management Plan which:

(A) Describes the measures to be used to prevent impacts to public parks or places listed on the National Register of Historic Places or, in cases of valid existing rights or where joint agency approval has been obtained, to minimize impacts to such parks or places;

(B) Provides for the mitigation of adverse effects to historic or archaeological properties eligible for listing on the National Register of Historic Places; and

(C) Ensures that the appropriate treatment measures or

mitigation will be undertaken prior to the commencement of any specific mining operation that would affect such parks, places or properties.

(xx) A plan for the management and disposal of noncoal mine waste, including any noncoal wastes generated by a mine mouth electric power plant, coal drier or coal preparation plant within the proposed permit area in accordance with Chapter 4, Section 2(c)(xiii)(C).

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 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). The plan shall include:

(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.

(iii) A plan to assure revegetation of all affected land in accordance with Chapter 4, Section 2(d). The plan shall include:

(A) The method and schedule of revegetation, including but not limited to species of plants, seeding rates, seeding techniques, mulching requirements and other erosion control techniques, and seeding times to be used in a given area for reclamation purposes.

(B) For crucial habitat and critical habitat, consultation with and approval obtained from the Wyoming Game and Fish Department for tree and shrub species composition and ground cover for minimum stocking and planting arrangements of trees and shrubs. Crucial habitat must be declared as such prior to the submittal of a permit application or any subsequent amendment.

(C) For important habitat, consultation with and recommendations obtained from the Wyoming Game and Fish Department for tree and shrub species composition and ground cover for minimum stocking and planting arrangements.

(D) The tree species, the number per species, and the location of tree plantings.

(E) A separate seed mix(es) shall be developed for each approved postmining land use, considering the dominant postmining topographic features and landowner desires.

(I) The species shall be described in the reclamation plan indicating the composition of seed mixtures and the amount of seed to be distributed on the area on a per acre basis.

(II) The species and varieties shall depend upon the climatic and soil conditions prevailing in the permit area and the proposed postmining landuses.

- (III) The species shall be self-renewing;
- (IV) Seeding rates shall depend upon seed types, climatic

conditions and the techniques to be used in seeding;

(V) The seed mix shall contain introduced species only

if:

(1.) Additional herbaceous species are needed;

or

- (2.) Suitable, native species are unavailable; or
- (3.) For cropland or pastureland or;
- (4.) Needed to achieve a quick, temporary,

stabilizing cover to control erosion; or

(5.) Conducive to achieve a postmining land use

approved by the Administrator.

(VI) The operator shall document, unless otherwise authorized by the Administrator, the suitability of introduced species using data from published literature, from experimental test plots, from on-site experience, or from other information sources.

(VII) For grazingland, the seed mix shall contain full shrub and/or subshrub species when these species will support the postmining land uses. To increase postmining species diversity and establish shrub mosaics, shrub mixtures shall be developed and seeded separately from the herbaceous mixtures.

(VIII) For federally owned surface, the federal land managing agency shall be consulted for mulching requirements and seeding requirements for cover crops, temporary and permanent reclamation.

(IX) The proposed postmining location of each seed mix shall be illustrated on a post mining contour map.

(F) Locations and/or conditions where the operator specifically requests approval not to use mulch.

(G) A weed control plan for State of Wyoming Designated Noxious and Designated Prohibited Weeds and, on federal surface, any additional weeds listed by the federal land managing agency.

- (H) An explanation of any plans for irrigation.
- (I) An explanation of pest and disease control measures, if

appropriate;

(J) A plan for monitoring permanent revegetation on reclaimed areas, specifically including quantitative sampling, as required by Chapter 4, Section 2(d)(i)(J).

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

(A) How a "Reference area" 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.

(B) The methods to be used for measuring the shrub density standard as approved by the Administrator.

(C) The methods to be used for evaluating the shrub density goal as approved by the Administrator, where applicable.

(D) The procedures to be used for measuring species diversity and composition as approved by the Administrator.

(E) If proposed, a technical success standard for a specified vegetation parameter. The technical success standard:

(I) Is derived from a sufficient number of years of baseline data so the standard value can be considered representative over a range of climatic conditions or a relationship between the parameter and climatic variables can be determined. For technical standards for cover and production, a minimum of five years of baseline data is necessary; and

(II) May be extended to an amendment area if the baseline information indicates the standard is applicable in that area.

(F) The procedures to be used as approved by the Administrator for the evaluation of restored postmining vegetation communities which carry the Cropland or Pastureland land use designation.

(G) If reforestation for commercial harvest is the method of revegetation, reforestation shall be deemed to be complete when a reasonable population density as established in the reclamation plan has been achieved, the trees have shown themselves capable of continued growth for a minimum period of five years following planting, and the understory vegetation is adequate to control erosion and is appropriate for the land use goal.

(v) Descriptions, including maps and cross-sections, of the surface

water diversion systems which meet the requirements of Chapter 4, Section 2(e). Monitoring of surface and groundwater conditions may be required during the course of the operation based on the existing water conditions and the nature of the proposed operation. If so required, the application shall include a description of the location, construction, maintenance, and removal, where necessary, of such monitoring stations.

(vi) Where a permanent water impoundment is proposed as final reclamation, the application shall include:

(A) Written consent from the surface landowner if different than the mineral owner.

(B) A description of the proposed use of the impoundment.

(C) A statement of the source, quality and quantity of water available for impoundment and a statement regarding its suitability for recreational, irrigation, livestock or wildlife watering. If, upon review of this information, water quality and quantity are not reasonably demonstrated to be suitable for the postmining use, the applicant shall be so notified in writing and shall be allowed to submit further documentation in support of the proposed impoundment to reasonably satisfy the Administrator. If the applicant is unable to demonstrate to the satisfaction of the Administrator that the water quality and quantity will be suitable for the postmining land use, the applicant shall provide an alternate plan.

(D) The operator may be required to monitor surface and groundwaters in order to determine that upon completion of the operation, the water quality and quantity will be consistent with the approved postmining use.

(E) A description of the construction of the impoundment so as to meet the requirements of Chapter 4, Section 2(g)(ii).

(vii) A plan to assure proper construction and reclamation of any tailings impoundments in accordance with the Act and these regulations.

(viii) A plan for the disposal of mine facilities, erected, used or modified by the applicant in accordance with the requirements of Chapter 4, Section 2(m).

(ix) A description of the measures to be used to seal or manage mine openings in accordance with Chapter 4, Section 2(p), and to cap, plug and seal all exploration holes, bore holes, wells and other openings, excepting developmental drill holes which will be mined through within one year, within the area to be mined during the term of the permit in accordance with Chapter 14. For developmental drilling the application shall contain general descriptions relating to spacing, data collection, and techniques which will be employed, including those which may be needed to comply with the plugging and sealing requirements of W.S. § 35-11-404. (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 land use is proposed different from the premining land use:

(I) A discussion of the utility and capacity of the reclaimed land to support a variety of uses and the relationship of the proposed use to existing land use policies and plans; and

(II) A comparison of the premining and postmining land uses. The premining uses of land to which the postmining land use is compared shall be those uses which the land previously supported, if the land has not been previously mined and has been properly managed.

(1.) The postmining land use for land that has been mined and not reclaimed shall be judged on the basis of the highest and best use that can be achieved and is compatible with surrounding areas without requiring unreasonable disturbance of areas previously unaffected by mining.

(2.) The postmining land use for land that has received improper management shall be judged on the basis of the premining use of surrounding lands that have received proper management.

(3.) If the premining use of the land was changed within five years of the beginning of the mining, the comparison of postmining use to premining use shall include a comparison with the historic use of the land as well as its use immediately preceding mining.

(C) Approval of alternative land uses shall require a demonstration that:

(I) The alternative land use is equal to or greater than

the highest previous use;

(II) There is reasonable likelihood for achievement of

the use;

(III) The use does not present any actual or probable hazard to public health or safety, or threat of water diminution or pollution; and

(IV) The use will not:

- (1.) Be impractical or unreasonable;
- (2.) Be inconsistent with applicable land use

policies or plans;

(3.) Involve unreasonable delay in

implementation; or

State, or local law.

(4.) Cause or contribute to violation of Federal,

DEPARTMENT OF ENVIRONMENTAL QUALITY

LAND QUALITY DIVISION

CHAPTER 6

BLASTING FOR SURFACE COAL MINING OPERATIONS

Section 1. General.

(a) The permittee shall comply with all applicable State, local and Federal laws and regulations and the requirements of this Chapter in the use of explosives.

(b) Blasts that use more than five pounds of explosives or blasting agent shall be conducted according to the schedule required under Section 3.

(c) All persons working with explosive material shall be, or be under the direct supervision of, an experienced, trained, and competent person who understands the hazards involved and who:

(i) Possesses current knowledge of the local, State and Federal laws and regulations applicable to this work; and

(ii) Has obtained a certificate of completion of training and qualification as required by State law.

(d) Blasting operations within 500 feet of active underground mines require approval of the State and Federal regulatory authorities concerned with the health and safety of underground miners.

(e) Blasting signs clearly warning that explosives are in use in particular areas, explaining blast-warning and all-clear signals, and explaining the marking of blast areas, shall be posted at all public entrances to the permit area. Signs containing "blasting area" shall be posted along the edge of any blasting area that comes within 100 feet of any public road right-of-way and at the point where any other road provides access to the blasting area.

Section 2. Preblasting Survey.

(a) On the request of a resident or owner of a man-made dwelling or structure that is located within one-half mile of any part of the area covered under the term of the permit, the applicant or permittee shall conduct a preblasting survey. The request may be made either directly to the applicant or permittee with confirming documents forwarded to the Administrator, or to the Administrator with confirming documents forwarded to the applicant or permittee. The operator shall promptly conduct a preblasting survey of the dwelling or structure and promptly prepare a written report of the survey. An updated survey of any additions, modifications, or renovations shall be performed by the operator if requested by the resident or owner. The operator shall determine the condition of the dwelling(s) and structure(s) and document any preblasting damage and other physical factors that could reasonably be affected by the blasting. Assessments of structures such as pipes, cables, transmission lines, and wells and other water systems shall be limited to surface condition and other readily available data. Special attention shall be given to the preblasting condition of wells and other water systems used for human, animal, or agricultural purposes and to the quantity and quality of the water.

(b) A written report of the survey shall be prepared and signed by the person who conducted the survey. The report shall include recommendations of any special conditions or proposed adjustments to the blasting procedures outlined in this Section which should be incorporated into the blasting plan to prevent damage. Copies of the report shall be provided to the person requesting the survey and to the Administrator. The person requesting the survey to the permittee and the Administrator.

(c) Any surveys requested more than three days before the planned initiation of blasting shall be completed by the operator before the initiation of blasting.

Section 3. Public Notice of Blasting Schedule.

(a) At least 30 days, but not more than 60 days before beginning a blasting program in which more than five pounds of explosives or blasting agent are detonated, the permittee shall publish a blasting schedule in a newspaper of general circulation in the locality of the proposed site. Copies of the schedule shall be distributed by mail to local governments, public utilities and to each residence or owner of a man-made dwelling or structure within one-half mile of the blasting sites described in the schedule. The residents or owners within one-half mile shall also be notified of the manner for requesting a preblasting survey. The permittee shall republish and redistribute the schedule by mail at least every 12 months. The permittee also shall revise and republish the schedule at least 30 days, but not more than 60 days, prior to blasting whenever the area covered by the schedule changes or time periods significantly differ from the prior announcement. Blasting schedules shall identify as accurately as possible the location of the blasting sites and the time periods when blasting will occur. The blasting schedule shall contain at a minimum:

- (i) Name, address and telephone number of the operator;
- (ii) Identification of the specific areas in which blasting will take place;
- (iii) Dates and time periods when explosives are to be detonated;
- (iv) Methods to be used to control access to the blasting area; and

(v) Types and patterns of audible warnings and all-clear signals to be used before and after blasting.

Section 4. Blasting Standards.

(a) General.

(i) Blasting shall be conducted to prevent injury to persons, damage to public or private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or availability of ground or surface waters outside the permit area.

(ii) All blasting shall be conducted during time approved by the Administrator and announced on the blasting schedule. Based on public requests or other considerations, including the proximity to residential areas, the Administrator may limit the area covered, timing and sequence of blasting. Blasting shall be conducted between sunrise and sunset unless night-time blasting is approved by the Administrator based on public protection and annoyance considerations.

(iii) Blasting may not be conducted at times different from those announced in the blasting schedule except in conditions where operator or public safety requires unscheduled detonation or for emergency blasting actions. Reasons for unscheduled detonation shall be documented.

(iv) Warning and all-clear signals of different character that are audible within a range of one-half mile from the point of the blast shall be given. All persons within the area covered under the term of permit and those who reside or regularly work within onehalf mile of this same area shall be notified of the meanings of the signals in the blasting schedule.

(v) Area of control. Access to the blasting area shall be controlled to protect the public and livestock from the effects of blasting and to prevent unauthorized entry. Access control shall continue until the permittee's authorized representative has determined that no unusual circumstances such as imminent slides or undetonated charges exist and access to and travel in or through the area can safely resume.

(vi) Areas in which charged (loaded) holes are awaiting firing shall be guarded against unauthorized entry.

(b) Limitations.

(i) Airblast shall not exceed the values specified below at any dwelling, public building, school, church, and community or institutional building outside the permit

area, unless the building is owned by the operator and not leased to another, or, if leased, the lessee signs a waiver relieving the operator from meeting the limitations. If necessary to prevent damage, the Administrator shall specify lower maximum allowable airblast levels.

Lower frequency limit of measuring system, Hz (+3dB)	Maximum level in dB
0.1 Hz or lower-flat response ¹	134 peak
2 Hz or lower-flat response	133 peak
6 Hz or lower-flat response	129 peak
C-weighted, slow response ¹	105 peak dBC

¹ Only if approved by the Administrator.

(A) The operator shall conduct periodic monitoring to ensure compliance with the airblast standards. The Administrator shall request monitoring in certain instances, including but not limited to complaints, blasting in sensitive areas, and in areas where there is reason to believe airblast limits may be exceeded. The measuring systems shall have an upper-end flat frequency response of at least 200 Hz.

(ii) Flyrock shall not be cast from the blasting site more than half the distance to the nearest occupied structure or beyond either the permit boundary or the area of control required under (a)(v) above.

(iii) In all blasting operations except as specified below, the maximum ground vibration shall not exceed the values approved in the blasting plan. The maximum ground vibration at the location of any dwelling, public building, school, church, and community or institutional building outside the permit area shall not exceed the values established by paragraph (iv), the scaled-distance equation of paragraph (v), the blasting level chart of paragraph (vi), or by the Administrator under paragraph (vii). All other structures such as water towers, pipelines, tunnels, dams, impoundments, and underground mines, shall be protected from damage by establishment of a maximum allowable limit on ground vibration, submitted by the operator in the blasting plan and approved by the Administrator. The ground vibration standards do not apply at structures owned by the operator from meeting the limitations.

Distance (D) from the Blasting Site in feet	Maximum allowable peak particle velocity (Vmax) for ground vibration in inches/second ¹	Scaled distance factor to be applied without seismic monitoring ²
0 to 300	1.25	50
301 to 5000	1.00	55
5001 and beyond	0.75	65

¹ Ground vibration shall be measured as the particle velocity. Particle velocity shall be recorded in three mutually perpendicular directions. The maximum allowable peak particle velocity shall apply to each of the three measurements.

² Applicable to the scaled-distance equation of Paragraph (v).

(iv) Maximum peak particle velocity applicable when seismograph records are provided for each blast:

(v) An operator may use the scaled-distance equation, $W=(D/Ds)^2$ to determine the allowable charge weight of explosives to be detonated in any eight millisecond period, without seismic monitoring; where W = the maximum weight of explosives, in pounds; D = the distance, in feet, from the blasting site to the nearest protected structure; and Ds = the scaled-distance factor, which may initially be approved by the Administrator using the values for scaled-distance factor listed in paragraph (iv) above.

(A) Upon written request by the operator with seismographic records, the Administrator may authorize a modified scaled-distance factor. The modified scaled-distance factor shall be determined such that particle velocity of the predicted ground vibration will not exceed the prescribed maximum allowable peak particle velocity of paragraph (iv) above, at a 95 percent confidence level.

(vi) An operator may use the ground vibration limits in Figure 1 (blastinglevel chart) to determine the maximum allowable ground vibration. A seismograph record including both particle velocity and vibration frequency levels shall be provided for each blast. The method for the analysis of the predominant frequency contained in the blasting records shall be approved by the Administrator before application of this alternative blasting criterion.



(vii) The maximum allowable ground vibration shall be reduced by the Administrator beyond the limits otherwise provided by paragraphs (iv)-(vi), if necessary to provide damage protection. The Administrator may require an operator to conduct seismic monitoring of any or all blasts or may specify the location at which the measurements are taken and the degree of detail necessary in the measurements.

(c) Blast Design. Permit requirements pertaining to blasting are located in Chapter 2, Section 2(b)(v).

(i) Anticipated blast design(s) shall be submitted if blasting operations will be conducted within:

(A) 1,000 feet of any building used as a dwelling, public building, school, church, or community or institutional building outside the permit area; or

(B) 500 feet of an active or abandoned underground mine.

(ii) The blast design may be presented as part of a permit application or at a time, before the blast, approved by the Administrator.

(iii) The blast design shall contain sketches of the drill patterns, delay periods, and decking and shall indicate the type and amount of explosives to be used, critical dimensions, and the location and general description of structures to be protected, as well as a discussion of design factors to be used, which protect the public and meet the applicable airblast, flyrock, and ground-vibration standards in (b) above.

- (iv) The blast design shall be prepared and signed by a certified blaster.
- (v) The Administrator may require changes to the design submitted.

Section 5. Records of Blasting Operations.

(a) A record of each blast, including seismograph reports, shall be retained for at least three years and shall be available for inspection by the Administrator and the public on request. The record shall contain the following data:

- (i) Name of permittee, operator, or other person conducting the blast;
- (ii) Location, date and time of blast;
- (iii) Name, signature, and certification number of blaster conducting the

blast;

(iv) Identification, direction and distance, in feet, from the nearest blast hole to the nearest dwelling, public building, school, church, and community or institutional building outside the permit area neither owned nor leased by the permittee;

- (v) Weather condition;
- (vi) Type of material blasted;

(vii) Sketches of the blast pattern including number of holes, burden, spacing, decks and delay pattern;

- (viii) Diameter and depth of holes;
- (ix) Types of explosives used;
- (x) Total weight of explosives used per hole;

(xi) Maximum weight of explosives detonated within any eight millisecond period;

- (xii) Initiation system;
- (xiii) Type and length of stemming;
- (xiv) Mats or other protections used;
- (xv) Seismograph and airblast records, where required, including:

(A) Type of instrument, sensitivity, and calibration signal or certification of annual calibration;

(B) Exact location of instrument and the date, time, and distance

from the blast;

(C)	Name of person	and firm taking	the seismograph	reading;

(D) Name of person and firm analyzing the seismograph record;

and

(E) The vibration and/or airblast level recorded.

(xvi) Reasons and conditions for each unscheduled blast.

Section 6. Blaster Certification.

(a) General.

(i) The Department of Environmental Quality, Land Quality Division and the State Inspector of Mines will jointly administer this Section by Memorandum of Understanding.

(b) Definition.

(i) A blaster or shot-firer is a person directly responsible for the use of explosives in surface coal mining operations or surface blasting operations incident to underground coal mining operations.

(c) Requirements.

(i) All blasting operations shall be conducted under the direction of a certified blaster having a minimum of two years of blasting experience.

(ii) Certificates of blaster certification shall be carried by blasters or shall be on file at the mine site during blasting operations and shall be exhibited to any authorized State or Federal inspector upon request.

(iii) A blaster and at least one other person shall be present in the blasting area at the firing of a blast.

(iv) Persons responsible for blasting operations at a blasting site shall be familiar with the operator's blasting plan and site-specific performance standards.

(d) Training.

(i) The Department of Environmental Quality, Land Quality Division, shall establish or approve training programs for persons seeking to become certified as

blasters. These training programs shall include:

(A) Selection of the type of explosives to be used;

(B) Determination of the properties of explosives which will produce desired results at an acceptable level of risk;

- (C) Handling, transportation, and storage of explosives;
- (D) Geologic and topographic considerations of blast designs;
- (E) Design of a blast hole with critical dimensions;
- (F) Pattern design, field layout, and timing of blast holes;
- (G) Field applications of blast designs;
- (H) Loading blast holes, including priming and boostering;
- (I) Initiation systems and blasting machines;

(J) Blasting vibrations, airblast, and flyrock, including monitoring techniques and methods to control adverse affects;

- (K) Secondary blasting applications;
- (L) Current Federal and State rules applicable to the use of

explosives;

(M) Blast records: Schedules: (N) (\mathbf{O}) Preblasting surveys, including availability, coverage, and the use of in-blast designs; (P) Blast plan requirements; (Q) Certification and training; (R) Signs, warning signals, and site control; and Unpredictable hazards, including lightning, stray currents, **(S)** radio waves, and misfires.

(ii) Reciprocity of blaster's certificates from other approved State or Federal programs will require approval of the Administrator and the State Mine Inspector and at a minimum, knowledge of site-specific performance standards and blasting plan.

(e) Examination.

(i) To attain certification, a candidate must receive a passing score on the written and oral examinations which are prepared and approved by the Administrator.

(ii) The written examination for candidates for blaster certification shall test their competence in and practical application of the topics set forth in Section 6(d).

(iii) The oral examination for candidates for blaster certification shall test the use of explosives in relation to site-specific performance standards and the blasting plan under which they will be operating.

(f) Issuance of Certification.

(i) Certificates will be issued to those candidates receiving a passing score on the certification examination. The certification will expire five years from the issuance date.

(g) Renewal.

(i) Certificates may be renewed upon completion of the training, examination and certification program as required by the Administrator.

(h) Revocation.

(i) Following written notice and opportunity for hearing, the blasting certification will be revoked or suspended upon finding of:

(A) Noncompliance with any blasting-related order of Land Quality Division or the State Inspector of Mines;

(B) Unlawful use in the workplace of, or current addiction to, alcohol, narcotics, or other dangerous drugs;

(C) Violation of any provision of the State or Federal explosives laws or regulations; and

(D) Providing false information or a misrepresentation to obtain certification.

(ii) If advance notice and opportunity for hearing cannot be provided, an

opportunity for a hearing shall be provided as soon as practical following the suspension or revocation.

(iii) Upon notice of revocation, the blaster shall immediately surrender to the Land Quality Division the revoked certification.

(i) Maintenance of Certificates.

(i) Certificates will be protected from loss, theft, or unauthorized duplication and any such occurrence shall be reported to the Land Quality Division immediately.

(ii) Certificates shall not be assigned or transferred.

(iii) The blasters shall not delegate their responsibilities to any individual who is not a certified blaster.

DEPARTMENT OF ENVIRONMENTAL QUALITY

LAND QUALITY DIVISION

CHAPTER 12

PROCEDURES APPLICABLE TO SURFACE COAL MINING OPERATIONS

Section 1. Permitting Procedures.

(a) In addition to the permitting procedures described in the Act, the following shall be applicable to applications for a permit for a surface coal mine operation:

(i) For the purposes of alluvial valley floors, prior to determining that an application is suitable for publication in accordance with W.S. § 35-11-406(j) and upon the basis of sufficient information, the Administrator shall make a determination in writing as to the existence and extent of an alluvial valley floor within the permit area or on adjacent areas where the mining operation may affect surface water or groundwater that supply an alluvial valley floor unless the preapplication determination in Chapter 3, Section 2(a) has already been made. Any preapplication determination and all information submitted for this determination shall be included in the permit application and shall be available for public notice, opportunity for comment and any conference or hearing. The Administrator shall determine that an alluvial valley floor exists when, in accordance with W.S. § 35-11-103(e)(xviii), it is found that:

present; and

(A) Unconsolidated streamlaid deposits holding streams are

(B) There is sufficient water to support subirrigation or flood irrigation agricultural activities.

(ii) The public notice required by W.S. § 35-11-406(j) shall:

(A) Contain detailed information which identifies a USGS map(s) and appropriate landmarks locating and allowing local residents to readily identify the proposed permit area.

(B) Be sent by the Administrator to Federal, State, and local governmental agencies, including planning agencies, with jurisdiction over or an interest in the proposed operation or permit area, and local sewage and water treatment authorities. At a minimum this shall include the U.S. Department of Agriculture Soil Conservation Service District office, the local U.S. Army Corps of Engineers District Engineer, the National Park Service if NPS lands are adjacent, State and Federal fish and wildlife agencies, and the State Historic Preservation Officer. Such entities and any person who filed a comment or objection

shall also receive the final decision on the application. In addition, the Administrator will publish a summary of his decision in a newspaper of general circulation in the general area of the proposed operation.

(iii) Any subsequent revision of the application, or objections or comments to the application, shall be filed in the offices of the county clerks of the counties in which the proposed permit area is located. Copies of comments and objections shall also be transmitted to the applicant.

(iv) In addition to the specific findings required by W.S. § 35-11-406(n), no permit shall be approved unless the Administrator also finds in writing that:

(A) The proposed operation will not be inconsistent with other surface coal mining and reclamation operations proposed or contemplated in pending or approved mining permits;

(B) The effect of the proposed operation on properties listed on and properties eligible for listing on the National Register of Historic Places has been taken into account; and

(I) Mining has been prohibited within 100 feet of any such properties by permit condition; or

(II) The applicant has provided for the protection of such properties in the approved mining and reclamation plan; or

(III) The Administrator has determined, in consultation with the State Historic Preservation Officer, that no additional protection measures are necessary.

(v) The criteria contained in W.S. § 35-11-406(n)(iv) regarding Section 522(e) of P.L. 95-87 shall mean that, prior to approval of any complete application for a surface coal mining permit, the applicant must demonstrate and the Administrator determine, utilizing the assistance of the appropriate Federal, State or local government agency, if necessary, that the application does not propose a surface coal mining operation on those lands where such operation is prohibited or limited by Section 522(e) of P.L. 95-87; or if one is so proposed, that the applicant either has valid existing rights or was conducting a surface coal mining operation on those lands on August 3, 1977. Subject to the above stated limitations, surface coal mining operations are prohibited or limited:

(A) On any lands within the boundaries of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act or study rivers or study river corridors as established in any guidelines pursuant to that Act and National Recreation Areas designated by Act of Congress;

(B) On any federal lands within the boundaries of any national forest unless the applicant demonstrates compliance with 30 CFR §761.11(b) and submits a finding by the Secretary in his favor using the procedures at 30 C.F.R. §761.13 (2009) (http://www.gpoaccess.gov/cfr/retrieve.html);

(C) On any lands where mining will adversely affect any publicly owned park or any properties listed on and any properties eligible for listing on the National Register of Historic Places, unless jointly approved by the Administrator and the Federal, State or local agency with jurisdiction over the park or place;

(D) Within 100 feet, measured horizontally, of the outside right-ofway line of any public road, except where mine primary roads join such right-of-way line. Provided, however, the Administrator may specifically authorize operations where the road is to be relocated, closed, or where the area affected lies within 100 feet of a public road. Such specific authorization shall provide a public comment period and an opportunity to request a public hearing in the locality of the proposed operation together with a written finding on whether the interests of the public and the affected landowners will be protected from the proposed operation. If a hearing is requested, a public notice shall be published at least two weeks prior to the hearing in a local newspaper of general circulation. If a hearing is held, the Administrator shall make this finding within 30 days after the hearing or if a hearing is not held the Administrator must make this finding within 30 days after the end of the public comment period. The Administrator may rely upon findings of the public road authority with jurisdiction over the road in specifically authorizing road relocations or closures;

(E) Within 300 feet from any occupied dwelling except when the owner has provided a written waiver consenting to operations within a closer distance, clarifying that the owner and signator had the legal right to deny mining and knowingly waived that right. Such a waiver shall remain effective, regardless of when it was obtained, against subsequent purchasers who had actual or constructive knowledge of the existing waiver at the time of purchase. Subsequent purchasers shall be deemed to have constructive knowledge if the waiver has been properly filed in the public property records or if the mining has proceeded to within the 300-foot limit prior to the date of purchase;

(F) Within 300 feet, measured horizontally, of any public building, school, church, community, or institutional building, or public park; or

(G) Within 100 feet, measured horizontally, of a cemetery.

(vi) For Federal lands described in subsections (v)(A) and (v)(B) above the Office of Surface Mining Reclamation and Enforcement shall be the responsible agency for making valid existing rights (VER) determinations. For Non-Federal lands described in subsection (v)(A) above the Division is the responsible agency for making VER

determinations and shall make evaluations using the Federal VER definition.

(vii) VER submission requirements and procedures.

(A) A request for a VER determination shall be submitted to the appropriate agency identified in subsection (vi) above if the applicant intends to conduct surface coal mining operations on the basis of valid existing rights under 30 C.F.R. §761.11 (2009), (http://www.gpoaccess.gov/cfr/retrieve.html), or wishes to confirm the right to do so. Requests may be submitted prior to submitting an application for a permit or boundary revision for the land.

(I) Property rights demonstrations required under the VER definition at Chapter 1, Section 2(fq)(i) for requests that rely on the good faith/all permits standard or the needed for and adjacent standard detailed in the VER definition at Chapter 1, Section 2(fq)(ii)(A) and (B) respectively shall include the following:

(1.) A legal description of the land to which the

request pertains;

(2.) Complete documentation of the character and extent of the current interests in the surface and mineral estates of the land to which the request pertains;

(3.) A complete chain of title for the surface and mineral estates of the land to which the request pertains;

(4.) A description of the nature and effect of each title instrument that forms the basis of the request, including any provision pertaining to the type or method of mining or mining related surface disturbances and facilities;

(5.) A description of the type and extent of surface coal mining operations that the requestor claims the right to conduct, including the method of mining, any mining related surface activities and facilities, and an explanation of how those operations would be consistent with State property law;

(6.) Complete documentation of the nature and ownership, as of the date that the land came under the protection of 522(e) of P.L. 95-87 (2009), (http://www.gpoaccess.gov/uscode/) or 30 C.F.R. §761.11 (2009), (http://www.gpoaccess.gov/cfr/retrieve.html), of all property rights for the surface and mineral estates of the land to which the request pertains;

(7.) Names and addresses of the current owners of the surface and mineral estates of the land to which the request pertains;

(8.) If the coal interests have been severed from

other property interests, documentation that the requestor has notified and provided reasonable opportunity for the owner of other property interests in the land to which the request pertains to comment on the validity of the property rights claims made; and

(9.) Any comments that are received in response to the notification discussed in (8.) above.

(II) If the VER determination request relies on the good faith/all permits standard, the request shall include the documentation discussed in (I) above, and:

(1.) Approval and issuance dates and identification numbers for any permits, licenses and authorizations that the person seeking the request or a predecessor in interest obtained before the land came under the protection of 522(e) of P.L. 95-87 (2009) or 30 C.F.R. §761.11 (2009);

(2.) Application dates and identification numbers for any permits, licenses and authorizations that the person seeking the request or a predecessor in interest submitted an application before the land came under the protection of 522(e) of P.L. 95-87 (2009) or 30 C.F.R. §761.11 (2009); and

(3.) An explanation of any other good faith effort that was made by the person seeking the request or a predecessor in interest made to obtain the necessary permits, licenses and authorizations as of the date that the land came under the protection of 522(e) of P.L. 95-87 (2009) or 30 C.F.R. §761.11 (2009).

(III) If the request relies on the needed for and adjacent standard, the request shall include the documentation discussed in (I) above and shall also explain how and why the land is needed for and immediately adjacent to the operation on which the request is based including a demonstration that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of 522(e) of P.L. 95-87 (2009) or 30 C.F.R. §761.11 (2009).

(IV) If the request relies on one of the standards for roads detailed in the definition of VER at Chapter 1, Section 2(fq)(iii)(A) through (C), the request shall include documentation that:

(1.) The road existed when the land on which it is located came under the protection of 522(e) of P.L. 95-87 (2009) or 30 C.F.R. §761.11 (2009) and that the person making the request has a legal right to use the road for surface coal mining operations;

(2.) A properly recorded right of way or easement

for a road in that location existed when the land came under the protection of 522(e) of P.L. 95-87 (2009) or 30 C.F.R. §761.11 (2009) and under the document creating the right of way or easement, and under any subsequent conveyances the person making the request has a legal right to use or construct a road across the right of way or easement to conduct surface coal mining operations; or

(3.) A valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of 522(e) of P.L. 95-87 (2009) or 30 C.F.R. §761.11 (2009).

(B) Initial review of request.

(I) The responsible agency shall conduct an initial review to determine whether the request includes all applicable components of the submission requirements discussed in subsection (A) above. This review only examines completeness of the request not the legal or technical adequacy of the materials submitted.

(II) If the request does not include all applicable components of the submission requirements, the responsible agency shall notify the requestor and establish a reasonable time for submitting the missing components.

(III) When the request contains all applicable submission requirements the responsible agency shall implement the notice and comment requirements discussed in subsection (C) below.

(IV) If the information requested in (II) above is not submitted within the time specified or amended the responsible agency shall issue a determination that VER has not been demonstrated as discussed in Section 1(a)(vii)(D)(IV) below.

(C) Notice and comment requirements and procedures.

(I) When the VER request satisfies the completeness requirements of (B) above, the VER applicant must publish a notice in a newspaper of general circulation in the county in which the land is located. This notice must invite comment on the merits of the request. The applicant must provide the Division with a proof of publication. Each notice shall include:

(1.) Location of land to which the VER request

pertains;

(2.) A description of the type of surface coal mining

operations planned;

(3.) A reference to and brief description of the applicable standards, found in the definition of VER at Chapter 1, Section 2(fq) of these rules;

a. If the request relies upon the good faith/all permits standard or the needed for and adjacent standard found in Chapter 1, Section 2(fq)(ii)(A) and (B), the notice shall also contain a description of the property rights claimed and the basis for the claim.

b. If the request relies upon the standard in subsection (A)(IV)(1.) above, the notice shall also include a description of the basis for the claim that the road existed when the land came under the protection of 522(e) of P.L. 95-87 (2009) or 30 C.F.R. §761.11 (2009). In addition the notice shall include a description of the basis for your claim that the VER requestor has a legal right to use that road for surface coal mining operations.

c. If the request relies upon the standard in subsection (A)(IV)(2.) above, the notice shall also include a description of the basis for the claim that a properly recorded right-of-way or easement for a road in that location existed when the land came under the protection of 522(e) of P.L. 95-87 (2009) or 30 C.F.R. §761.11 (2009). In addition the notice shall include a description of the basis for the claim that, under the document creating the right of way or easement, and under any subsequent conveyances, the VER requestor has a legal right to use or construct a road across the right of way or easement to conduct surface coal mining operations.

d. If the request relies upon one or more of the standards in Chapter 1, Section 2(fq)(ii), (iii)(A) and (iii)(B) of the VER definition, a statement that the Division will not make a decision on the merits of the request if, by the close of the comment period under this notice or the notice required below, a person with a legal interest in the land initiates appropriate legal action in the proper venue to resolve any differences concerning the validity or interpretation of the deed, lease, easement or other documents that form the basis of the VER claim.

e. A description of the procedures that the agency will follow to process a VER request.

f. The closing date of the comment period, which must be a minimum of 30 days after the publication date of the notice.

g. A statement that interested persons may obtain a 30-day extension of the comment period on request.

h. The name and address of the agency office where a copy of the request is available for a public inspection and to which comments

and requests for extension of the comment period should be sent.

(II) The Division shall promptly provide a copy of the notice required under this Section to:

(1.) All reasonably locatable owners of surface and mineral estates in the land included in the VER request.

(2.) The owner of the feature causing the land to come under the protection of 522(e) of P.L. 95-87 (2009) or 30 C.F.R. §761.11 (2009) and, when applicable, the agency with primary jurisdiction over the feature with respect to the values causing the land to come under the protection of 522(e) of P.L. 95-87 (2009) or 30 C.F.R. §761.11 (2009). For example, both the landowner and the State Historic Preservation Officer must be notified if surface coal mining operations would adversely impact any site listed on the National Register of Historic Places. As another example, both the surface owner and the National Park Service must be notified if the request includes non-Federal lands within the authorized boundaries of a unit of the National Park System.

(III) The letter transmitting the notice required under subsection (II) above shall provide a 30-day comment period, starting from the date of service of the letter, and specify that another 30 days is available upon request. At its discretion, the Division, as the agency responsible for the determination of VER may grant additional time for good cause upon request. The Division need not necessarily consider comments received after the closing date of the comment period.

(D) How a VER decision will be made.

(I) The Division shall review the materials submitted under Subsection (A) above, any comments received under Subsection (C) above and any other relevant reasonably available information to determine whether the record is sufficiently complete and adequate to support a decision on the merits of the request. If not, the Division shall notify the requestor in writing, explaining the inadequacy of the record and requesting submittal, within a specified reasonable time, of any additional information that the agency deems necessary to remedy the inadequacy.

(II) Once the record is complete and adequate, the Division shall determine whether the requestor has demonstrated VER. The decision document shall explain how the requestor has or has not satisfied all the applicable elements, shall contain findings of fact and conclusions and shall specify the reasons for the conclusions.

(III) Impact of property rights disagreements. This subsection only applies when the request relies upon on or more of the standards in the Chapter 1, VER definition.

(1.) The Division shall issue a determination that the requestor has not demonstrated VER if the property rights claims are the subject of pending litigation in a court or administrative body with jurisdiction over the property rights in question. A requestor may refile the request once the property rights dispute is finally adjudicated. This subsection only applies if the legal action has been initiated as of the closing date of the comment periods discussed under Subsections (C)(I) and (C)(III) above.

(2.) If the record indicates disagreement as to the accuracy of the requestor's property rights claims, but the disagreement is not the subject of pending litigation in a court or administrative agency of competent jurisdiction, the Land Quality Division shall evaluate the merits of the information in the record and determine whether the requestor has demonstrated that the requisite property rights exist under Subsections (i), (iii)(A) or (iii)(B) of the VER definition in Chapter 1 of these Rules and Regulations, as appropriate. The Division shall then proceed to subsection (D)(II) above.

(IV) The Division must issue a determination that the requestor has not demonstrated VER if the requestor has not submitted the information requested under subsections (B)(II) and (D)(I) above within the time specified or as subsequently extended. A requestor may submit a revised request at any time after that determination has been made.

(V) After making a VER determination, the Division shall:

(1.) Provide a copy of the determination, together with an explanation of appeal rights and procedures to the VER requestor, the owner or owners of the land to which the determination applies, the owner of the feature causing the land to come under the protection of 522(e) of P.L. 95-87 (2009) or 30 C.F.R. §761.11(2009) and when applicable, to the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of 522(e) of S22(e) of S22(e)

(2.) Require the VER requestor to publish notice of the determination in a newspaper of general circulation in the county in which the land is located and provide the Division with proof of publication. If the initial VER request contained Federal lands with an area listed in subsections (v)(A) and (B) above, the OSM will publish the determination, together with an explanation of appeal rights and procedure in the Federal Register.

(E) Administrative and judicial review. A determination that the VER requestor does or does not have VER is subject to administrative and judicial review under the Wyoming Administrative Procedure Act, W.S. 16-3-101 through 16-3-115 (2011).

(F) Availability of records. When the Land Quality Division is the agency responsible for processing a request subject to notice and comment under subsection

(C) above the Division shall make a copy of that request and related materials available to the public in the same manner as public availability of permit applications under these Rules and Regulations. In addition, the Division shall make records associated with that request, and any subsequent determination under subsection (D) above available to the public in accordance with the requirements and procedures of W.S. §35-11-1101 (2011), the Wyoming Public Records Act (W.S. §§ 16-4-201 thru 16-4-205 (2013)), W.S. §35-11-406(d) (2013) and the Division's rules and regulations related to public review and participation, and shall at a minimum make copies of those records immediately available to the public in the area of mining until at least five years after the expiration of the period during which the operation is active or is covered by any portion of a reclamation bond so that they are conveniently available to residents of that area in compliance with 30 CFR 840.14(b), (c) and (d), (2013) (http://www.gpo.gov/fdsys/).

(G) Procedures for joint approval of surface coal mining operations that will adversely affect publicly owned parks or historic places.

(I) If the regulatory authority determines that the proposed surface coal mining operation will adversely affect any publicly owned park or any place included in the National Register of Historic Places, the regulatory authority must request that the Federal, State, or local agency with jurisdiction over the park or place either approve or object to the proposed operation. The request shall:

(1.) Include a copy of applicable parts of the permit

application.

(2.) Provide the agency with 30 days after receipt to respond, with a notice that another 30 days is available upon request.

(3.) State that failure to interpose an objection within the time specified under subsection (2.) above will constitute approval of the proposed operation.

(II) The regulatory authority may not issue a permit for a proposed operation subject to subsection (I) above unless all affected agencies jointly approve.

(III) Subsections (I) and (II) above do not apply to:

(1.) Lands for which a person has VER, as determined under Section 1(a)(vi) and (vii) of this Chapter;

(2.) Lands within the scope of the exception for existing operations contained in the Chapter 1, Section 2(fq)(iv) "valid existing rights" definition.

(viii) Final Compliance Review. After finding the application administratively complete and suitable for publication but prior to permit issuance, the Department of Environmental Quality shall conduct a review of the following before making a permit eligibility determination under (x) of this section:

(A) The information the applicant submitted regarding applicant, operator and ownership or control information AVS information and any other available information to review the applicants and operators organizational structure and ownership or control relationships;

(B) The information the applicant submitted regarding applicant permit history, AVS information and any other available information to review the applicant and operator's permit history. In addition, the Division shall determine if the applicant and operator have previous mining experience and if the applicant or operator does not have any previous mining experience additional ownership or control investigations may be conducted under subsection (ix)(E) below to determine if someone else with mining experience controls the mining operation; and

(C) The information the applicant submitted regarding compliance history, AVS compliance report and any other available information to review histories of compliance with the Wyoming Environmental Quality Act and regulations promulgated thereunder and any other air or water quality laws for the applicant, operator, operations owned or controlled by the applicant and operations the operator owns or controls.

(ix) The Division shall enter into AVS:

(A) The information submitted in the application in compliance with Chapter 2, Section 2(a)(i)(B)-(F);

(B) The information submitted pertaining to violations which are unabated or uncorrected after the abatement or correction period has expired; and

(C) The Division shall update the information above upon verification of any additional information submitted or discovered during Division's permit application review.

(D) For the purposes of future permit eligibility determinations and enforcement actions:

(I) All permit records within 30 days after the permit is issued or subsequent changes are made;

(II) All unabated or uncorrected violations within 30 days

after the abatement or correction period for a violation expires;

(III) All changes to information initially required to be provided by the applicant as part of the application process within 30 days after receiving notice of a change; and

(IV) All changes in violation status within 30 days after abatement, correction, or termination of a violation or a decision from an administrative or judicial tribunal.

(E) At any time, the Division may identify any person who owns or controls an entire surface coal mining operation or any relevant portion or aspect thereof. If the Division identifies such a person, the Division must issue a written preliminary finding to the person and the applicant or permittee describing the nature and extent of ownership or control. The written preliminary finding must be based on evidence sufficient to establish a prima facie case of ownership or control. After the Division issues a written preliminary finding under this section, the Division will allow, the person subject to the preliminary finding, thirty (30) days in which to submit any information tending to demonstrate that persons lack of ownership or control. If, after reviewing any information submitted, the Division is persuaded that the person is not an owner or controller, the Division will serve a written notice to that effect to the person identified. If, after reviewing any information submitted, the Division still finds that the person identified is an owner or controller, or if the person identified does not submit any information within the 30-day period, the Division will issue a written finding and enter the Division's finding into AVS. If the Division identifies a person as an owner or controller under this section, that person may challenge the finding using the provisions of Chapter 12, Section 1(a)(xiii) and (xiv)(A)-(E). If a hearing is not requested regarding preliminary findings of permanent permit ineligibility and the time for seeking a hearing has expired, the Division will enter our finding into AVS. If a hearing is requested, the Division will enter the finding into AVS only if that finding is upheld on administrative appeal.

(F) The Land Quality Division need not make a finding as provided for under (E) above before entering into AVS the information required to be disclosed in compliance with Chapter 2, Section 2(a)(i)(B) - (E); however, the mere listing in AVS of a person identified in Chapter 2, Section 2(a)(i)(B) - (E) does not create a presumption or constitute a determination that such person owns or controls a surface coal mining operation.

(x) In addition to the specific findings required by W.S. § 35-11-406(n) and based on the reviews required in subsection (viii) above, the Land Quality Division (LQD) shall determine whether the applicant is eligible for a coal mining permit. An applicant is not eligible for a permit if the LQD determines for any surface coal mining operation that:

(A) The applicant directly owns or controls has an unabated or uncorrected violation;

(B) The applicant or his operator indirectly controls has an unabated or uncorrected violation and the applicant's control was established or the violation was cited after November 2, 1988; or

(C) The applicant or his operator controls or has controlled mining operations with a demonstrated pattern of willful violations as outlined in W.S. § 35-11-406(o).

(D) Exceptions

(I) An applicant is eligible for a permit if an unabated violation occurred after October 24, 1992 and resulted from an unanticipated event or condition at a surface coal mining and reclamation operation on lands that are eligible for remining under a permit that was held by the person applying for the new permit.

(II) An applicant may be eligible for a provisionally issued permit if the applicant owns or controls a surface coal mining and reclamation operation with a notice of violation issued under Chapter 16 of these rules and regulations for which the abatement period has not yet expired or a violation that is unabated or uncorrected beyond the abatement or correction period.

(III) An applicant is eligible for a provisionally issued permit if the applicant is pursuing a good faith challenge to all pertinent ownership or control listings or findings under Chapter 12, Section 1 or administrative or judicial appeal of all pertinent ownership or control listings or findings or contesting the validity of a violation unless there is an initial judicial decision affirming the listing or finding or the violation, and those decisions remains in force.

(IV) A provisionally issued permit will be considered improvidently issued and the Division will begin procedures to suspend or rescind the permit as described in Section 1(a)(xiv)(G) if the violations are not abated within the specified abatement period, or the applicant, operator or operations that the operator or applicant own or control do not comply with the terms of an abatement plan or payment schedule for fees or penalties assessed. Suspension or rescission proceedings will also be initiated if, in the absence of a request for judicial review, the disposition of a challenge and any subsequent administrative review as discussed above affirms the validity of the violation or the ownership or control listing or finding or if the initial judicial review decision discussed above affirms the validity of the violation or the ownership or control listing or finding.

(xi) Following the Director's approval of a permit but prior to issuance of that permit, the applicant shall update, correct or indicate that no change has occurred in the information provided in Chapter 2, Section 2.

(xii) After the applicant completes the above requirements, the DEQ shall request a compliance history report from AVS to determine if there are any unabated or uncorrected violations that affect the applicant's permit eligibility in subsection (x) above. The DEQ shall request this report no more than five business days before a permit is issued. If the applicant is ineligible for a permit the DEQ shall send you written notification of the decision and will detail the reasons for ineligibility and include notice of appeal rights.

(xiii) A person may challenge a listing or finding of ownership or control using the procedures detailed below if that person is:

(A) Listed in a permit application or in AVS as an owner or controller of an entire surface coal mining operation, or any portion or aspect thereof; or

(B) Found to be an owner or controller of an entire surface coal mining operation, or any portion or aspect thereof, under Chapter 12, Section 1(a)(xiv)(G) or Section 1(a)(ix)(E); or

listing or finding.

(C) An applicant or permittee affected by an ownership or control

(xiv) In order to challenge an ownership or control listing or finding a written explanation shall be submitted to the Department of Environmental Quality regarding the basis of the challenge along with any evidence or explanatory materials outlined in subsection (E) below. If the challenge concerns a pending permit application the written explanation shall be submitted to the regulatory authority with jurisdiction over the application. If the challenge concerns the applicant's ownership or control of a surface coal mining operation and the applicant is not currently seeking a permit the written explanation shall be submitted to the regulatory authority with jurisdiction over the surface coal mining operation. The provisions of this section and of subsections D through F below apply only to challenges to ownership or control listings or findings and may not be used to challenge liability or responsibility under any other section of the Wyoming Environmental Quality Act or the Land Quality Division, Coal Rules and Regulations.

(A) When a challenge concerns a violation under the jurisdiction of a different regulatory authority, the regulatory authority with jurisdiction over the permit application or permit shall consult the regulatory authority with jurisdiction over the violation and the AVS Office to obtain additional information.

(B) The regulatory authority responsible for deciding a challenge under this section may request an investigation by the AVS Office.

(C) At any time a person listed in AVS as an owner or controller of a surface coal mining operation may request an informal explanation from the AVS Office as

to the reason they are shown in the AVS in an ownership or control capacity. The AVS Office will provide a response describing why the person is listed in AVS in accordance with 30 C.F.R. §773.26(e) (2013) (http://www.gpo.gov/fdsys/).

(D) When a challenge is made to a listing of ownership or control, or a finding of ownership or control, the challenger must prove by a preponderance of the evidence that they either:

(I) Do not own or control the entire surface coal mining operation or relevant portion or aspect thereof; or

(II) Did not own or control the entire surface coal mining operation or relevant portion or aspect thereof during the relevant time period.

(E) In order to meet the burden of proof in subsection (D) above, the challenger must present reliable, credible, and substantial evidence and any explanatory materials to the regulatory authority. The materials presented in connection with your challenge will become part of the permit file, an investigation file or another public file. A request to hold materials submitted under this Section confidential may be made to the Administrator subject to Land Quality Division Rules and Regulations and the Wyoming Public Records Act. Acceptable materials include, but are not limited to:

(I) Notarized affidavits containing specific facts concerning the duties that were performed for the relevant operation, the beginning and ending dates pertaining to ownership or control of the operation, and the nature and details of any transaction creating or severing ownership or control of the operation in question;

(II) Certified copies of corporate minutes, stock ledgers, contracts, purchase and sale agreements, leases, correspondence, or other relevant company records;

(III) Certified copies of documents filed with or issued by any State; municipal, or Federal government agency;

(IV) An opinion of counsel, when supported by evidentiary materials, a statement by counsel that they are qualified to render the opinion and a statement that counsel has personally and diligently investigated the facts of the matter.

(F) Within sixty (60) days of receipt of a challenge as described above, the Division will review and investigate the evidence and explanatory materials submitted and any other reasonable available information bearing on the challenge and issue a written decision. The decision shall state whether the challenger owns or controls the relevant surface coal mining operation, or owned or controlled the operation during the relevant time period. Decisions regarding the challenge will be promptly provided to the challenger by either certified mail, return receipt requested or by any alternative means consistent with rules governing service under the Wyoming Rules of Civil Procedure. Service of the decision will be complete upon delivery and is not incomplete if acceptance of delivery is refused. The Division will post all decisions made under this section on AVS. Any person who receives a written decision under this section, and who wishes to appeal that decision shall exhaust all administrative remedies under the procedures of the Wyoming Environmental Quality Act, the Department's Rules of Practice and Procedure, the Wyoming Administrative Procedure Act, W.S. 16-3-101 through 16-3-115 (2013) and Chapter 12 of these Rules and Regulations before seeking judicial review. Following the Division's written decision or any decision by a reviewing administrative or judicial tribunal, the Division must review the information in AVS to determine if it is consistent with the decision. If it is not, the Division shall promptly revise the information to reflect the decision.

(G) Improvidently issued coal mining permits.

(I) If the Administrator has reason to believe that a permit was improvidently issued to the permittee a review shall be conducted of the circumstances under which the permit was issued. The Administrator shall make a preliminary finding that the permit was improvidently issued if under the permit eligibility requirements in effect at the time of permit issuance the permit should not have been issued because the applicant or operator owned or controlled a surface coal mining and reclamation operation with an unabated or uncorrected violation.

(II) The Administrator will make a finding under subsection (I) above only if the applicant or operator:

(1.) Continue to own or control the operation with the unabated or uncorrected violation;

(2.) The violation remains unabated or uncorrected;

(3.) The violation would cause the permittee to be ineligible under the permit eligibility criteria under the current rules and regulations.

(III) When a preliminary finding under subsection (I) above is made, a written notice shall be served on the permittee which must be based on evidence sufficient to establish a prima facie case that the permit was improvidently issued. Within thirty (30) days of receiving a written notice the permittee may challenge the preliminary finding by providing the Administrator with evidence as to why the permit was not improvidently issued under the criteria of subsections (I) and (II) above. Challenges under subsections (I) and (II)(1.) above shall use the procedures outlined in subsections (xiii) and (xiv)(A) through (E) above when the challenge is related to whether the permittee or operator currently own or control, or owned or controlled, a surface coal mining operation.

and

(IV) The Administrator shall serve the permittee with written notice of a proposed suspension or rescission together with a statement of the reasons for the proposed suspension or rescission, if after considering any evidence submitted under subsection (III) above the Administrator finds that a permit was improvidently issued under the criteria of subsections (I) and (II) above or the permit was provisionally issued under Chapter 12, Section 1(a)(x)(D)(II) and one or more of the conditions in Chapter 12, Section 1(a)(x)(D)(III) exists. If a permit suspension is proposed, sixty (60) days notice shall be provided and if a permit rescission is proposed one hundred twenty (120) days notice shall be provided. If the permittee wishes to appeal the notice, the permittee must exhaust administrative remedies under the procedures of the Wyoming Environmental Quality Act, the Department's Rules of Practice and Procedure, the Wyoming Administrative Procedure Act and Chapter 12 of these Rules and Regulations.

(V) Appeals regarding the notice shall be governed by the Wyoming Environmental Quality Act, Department's Rules of Practice and Procedure, the Wyoming Administrative Procedure Act and Chapter 12 of these Rules and Regulations. All administrative remedies shall be exhausted if a permittee wishes to appeal the notice under the above statutes and regulations. The times specified in subsection (IV) above shall be applicable unless the Environmental Quality Council has granted a stay for temporary relief to provide the administrative review in subsection (VII) below.

(VI) Service. For purposes of this Section, service of the notice shall be performed on the permittee by certified mail, or by any alternative means consistent with the rules governing service of a summons and complaint under Rule 4 of the Wyoming Rules of Civil Procedure. Service shall be complete upon tender of the notice of proposed suspension or recession and any attached information or of the certified mail and shall not be deemed incomplete because of refusal to accept. Except as provided in subsection (VII) below, the Administrator shall suspend or rescind the permit upon expiration of the notice periods provided in subsection (IV) above unless the permittee has submitted evidence and the Administrator finds that:

(1.) The violation has been abated or corrected to the satisfaction of the agency with jurisdiction over the violation;

(2.) The permittee or operator no longer owns or

controls the relevant operation;

(3.) The Administrator's finding for suspension or

rescission was in error;

(4.) The violation is the subject of a good faith administrative or judicial appeal, unless there is an initial judicial decision affirming the violation and that decision remains in force;

(5.) The violation is the subject of an abatement plan or payment schedule that is being met to the satisfaction of the agency with jurisdiction over the violation; or

(6.) The permittee is pursuing a good faith challenge or administrative or judicial appeal of the relevant ownership or control listing or finding unless there is an initial judicial decision affirming the listing or finding and that decision remains in force.

(VII) If an administrative review is requested of a notice of proposed suspension or rescission, the DEQ will not suspend or rescind the permit unless and until the finding is affirmed that the permit was improvidently issued.

(VIII) When a permit is suspended or rescinded under this section, the DEQ shall:

(1.) Issue a written notice requiring that the permittee and operator shall cease all surface coal mining operations under the permit; and

(2.) Post the notice in the District office closest to

the permit area.

(IX) If the Administrator suspends or rescinds your permit under this section, you may request administrative review of the notice under the procedures of the Wyoming Environmental Quality Act, the Department's Rules of Practice and Procedure, the Wyoming Administrative Procedure Act and Chapter 12 of these Rules and Regulations, or alternatively you may request judicial review of the notice provided all other administrative remedies have been exhausted.

(xv) If the Administrator is unable to determine whether or not the proposed operation is on lands where surface coal mining operations are prohibited, lands described in (v) immediately above, then a copy of relevant portions of the application shall be sent to appropriate State, Federal and local government agencies with an interest or jurisdiction in the lands in question. Along with the copy a notice shall be sent asking for clarification or determination of relevant boundaries or distances, and stating that the agency has 60 days from receipt of the notice to respond. If no response is received, the Administrator may make a determination based on the information available.

(xvi) The criteria for permit approval where prime farmland will be affected by the mining operation shall be that, upon the basis of the complete application:

(A) The postmining land use of the prime farmland will be capable of supporting crop yields equivalent to the surrounding nonmined prime farmland under

equivalent levels of management.

(B) Adequate consideration has been given to any soil reconstruction revisions recommended by the local conservation district and Soil Conservation Service.

(C) The applicant has the technological capability to restore the prime farmland.

(xvii) In addition to the specific findings required by W.S. § 35-11-406(n), no permit authorizing a delay in the contemporaneous reclamation requirements for a proposed combined surface and underground mining operation shall be approved unless the Administrator finds that:

(A) The proposed underground mining activities will assure maximum practical recovery of the resource and avoid multiple future disturbances of surface land or waters.

(B) The permit for the surface mining activities contains specific conditions:

(I) Delineating the particular surface area for which a delay in reclamation is authorized; and

(II) Identifying the alternative reclamation standards in lieu of those otherwise applicable, together with a detailed schedule for timely compliance.

(xviii) In granting surface coal mining permits, the Director shall impose the following conditions on the operation:

(A) All operations shall be conducted in accordance with the approved mining and reclamation plan and any conditions of the permit or license;

(B) The rights of entry shall be provided as described by the Act and any regulations promulgated pursuant thereto;

(C) The operation shall be conducted in a manner which prevents violation of any other applicable State or Federal law;

(D) All possible steps shall be taken to minimize any adverse impact to the environment or public health and safety resulting from noncompliance with the approved mining and reclamation plan and other terms and conditions of any permit or license, including monitoring to define the nature of the noncompliance and warning of any potentially dangerous condition; and
(E) All reclamation fees shall be paid as required by Title IV, P.L. 95-87, for coal produced under the permit for sale, transfer or use.

(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 permit transfer, assignment or sale of permit rights. In addition, the following requirements are applicable.

(i) All requirements imposed by W.S. § 35-11-405(e) for permit renewals. The application shall be filed at least 120 days before the expiration of the permit term and shall include at a minimum:

(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;

- (B) A copy of the public notice and proof of publication;
- (C) Evidence that the bond and a liability insurance policy will be

provided; and

(D) Additional revised or updated information required by the

Administrator.

(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.

(ii) All requirements imposed by W.S. § 35-11-408 and this section shall be applicable to a permit transfer, assignment or sale of permit rights. These requirements shall be met, as evidenced by the written approval of the statement of qualifications by the Administrator and Director, prior to any permit transfer, assignment or sale of permit rights. For purposes of this section, potential transferee, means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.

(A) The potential transferee shall obtain a renewal bond by either transfer of the permit holder's bond, written agreement with the permit holder, or providing other sufficient bond or equivalent guarantee.

(B) The statement of qualifications shall contain all legal, financial, compliance and related information required by Chapter 2, Section 2(a)(i) through (iii) which would be required if the potential transferee were the original applicant for the permit and, in addition, the name, address and permit number of the existing permit holder.

(C) The applicant for a transfer, assignment or sale of permit rights shall advertise the filing of the application in a newspaper of general circulation in the locality of the operations involved once a week for four (4) consecutive weeks, indicating the name and address of the applicant, the permittee, the permit number, the geographic location of the permit and the address to which written comments may be sent.

(D) Public Participation. Any person having an interest which is or may be adversely affected by a decision on the transfer, assignment or sale of permit rights, including an official of any Federal, State, or local government agency, may submit written comments on the application to the Division within a time specified by the Division.

(E) Criteria for Approval. The Division may allow a permittee to transfer, assign or sell permit rights to a potential transferee, if the Administrator finds in writing that the potential transferee:

(I) Is eligible to receive a permit in accordance with Chapter 12, Section 1(a)(x), (xi) and (xii);

(II) Has submitted a performance bond or other guarantee, or obtained the bond coverage of the original permittee as required in Subsection (A) above; and

(III) Meets any other requirements specified by the Division.

(F) Notification.

(I) The Administrator shall notify the permittee, potential transferee, commenters and the Office of Surface Mining of its findings.

(II) The potential transferee shall immediately provide notice to the Division of the consummation of the transfer, assignment or sale of permit rights.

(G) Continued operation under existing permit. The potential transferee shall assume the liability and reclamation responsibilities of the existing permit and shall conduct the surface coal mining and reclamation operations in full compliance with the Environmental Quality Act, the Division's rules and regulations, and the terms and conditions of the existing permit, unless the applicant has obtained a new or revised permit under the Environmental Quality Act and the Division's rules and regulations.

Section 2. Bonding and Insurance Procedures.

(a) For surface coal mining operations, the following two types of bond calculations shall be required for setting a single bond amount:

(i) Area Bond: This bond calculation shall be no less than the estimated cost of completing the maximum amount of rough backfilling during the annual bonding period set forth in W.S. §§ 35-11-411 and 35-11-417(c), in order to meet the applicable rough backfilling standards in Chapter 4 of these regulations and any other rough backfilling requirements of the approved permit.

(ii) Incremental Bond: This bond calculation shall be no less than the estimated cost of performing all reclamation requirements other than those covered by (a)(i) above, during the annual bonding period in order to meet the standards of the Act, the regulations, and the provisions of the permit.

(b) For purposes of determining bond amounts, the estimated cost shall include all costs necessary, expedient or incidental to achieve required rough backfilling and reclamation. This shall reflect the probable difficulty of reclaiming the affected lands, giving consideration, as applicable, to such factors as topography, geology of the site, hydrology and revegetation potential. The estimated cost shall be based on the operator's cost estimate submitted with the permit, plus the Administrator's estimate of the additional cost to the State of bringing in personnel and equipment should the operation fail or the site be abandoned, plus an additional amount covering reclamation cost for any land which may reasonably be expected to be affected, as determined by the Administrator's assessment of the applicant's mine plan, prior to filing the renewal bond. All bonds shall be calculated on, and never fall below, the amount necessary to assure that the operator shall faithfully perform all requirements of the Act and comply with all rules and regulations and any provisions of the approved permit.

(c) Upon receipt of the annual report required by W.S. § 35-11-411, the Administrator shall publish a notice in a newspaper of general circulation in the locality of the mining operation, notifying all interested persons that the annual report is available for review, and that the renewal area and incremental bond calculations will be determined. Interested persons may submit information relating to the bond amounts within 30 days of the notice. This information, together with information submitted by the operator and developed by the Division, shall be considered by the Administrator and Director in setting bond amounts.

- (d) Liability.
 - (i) Liability under the bond(s) shall be for the entire permit area.

(ii) Liability under the area bond shall be for a duration sufficient to assure that all rough backfilling has been achieved pursuant to the applicable standards of Chapter 4, Section 2.(b) and the approved permit.

(iii) Liability under the incremental bond shall be for the entire duration of the operation and for the ten-year period of revegetation responsibility described in Chapter

4, Section 2(d). The liability period and area for an incremental bond may be limited if it is posted and approved to guarantee only specific increments of reclamation within the permit. Actions of third persons to implement an approved alternative postmining land use, which are beyond the control of the permittee or operator need not be covered by the bond.

(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 of sufficient size and configuration and not constitute a scattered, intermittent, or checkerboard pattern 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 isolated areas for remedial work may be included in the area under extended liability if deemed necessary by the Administrator.

(e) A permittee may request reduction of the amount of either the area or incremental bond upon submission of evidence to the Administrator proving that the permittee's method of operation or other circumstances will reduce the estimated cost to the State for reclamation. This reduction of bond shall be deemed a bond adjustment if the reduction is based on a change in method of operation or a decrease in the number of acress projected to be disturbed. If the reduction is due to a decrease in the number of acres that have already been disturbed to account for areas partially reclaimed, then the request for reduction will be considered a request for partial bond release in accordance with the procedures of Chapter 15.

(f) A corporate surety shall not be considered good and sufficient for purposes of W.S. § 35-11-417(b) unless:

(i) It is licensed to do business in the State;

(ii) The estimated bond amount does not exceed the limit of risk as provided for in W.S. § 26-5-110, nor raise the total of all bonds held by the applicant under that surety above three times the limit of risk;

(iii) The surety agrees:

(A) Not to cancel bond, except as provided for in W.S. § 35-11-419 or where the Administrator approves a good and sufficient replacement surety with transfer of the liability that has accrued against the permittee on the permit area;

(B) To be jointly and severally liable with the permittee; and

(C) To provide notice to the Administrator and operator once it becomes unable or may become unable due to any action filed against it to fulfill its obligations under the bond.

(g) The provisions applicable to cancellation of the surety's license in W.S. § 35-11-420 shall also apply if for any other reason the surety becomes unable to fulfill its obligations under the bond. Upon such occurrence the operator shall provide the required notice. Failure to comply with this provision shall result in suspension of the permit.

(h) The Administrator shall not accept an individual certificate of deposit in an amount in excess of \$100,000 or the maximum insurable amount as determined by the FDIC or the Federal Savings and Loan Insurance Corporation. Such certificates of deposit shall be made payable to the Department both in writing and upon the records of the bank issuing these certificates. The Administrator shall require the banks issuing these certificates to waive all rights of setoff or liens against the certificates. The bond amount may be calculated to include any amount which would be deducted as a penalty for payment before maturity.

(i) Minimum insurance coverages for the public liability insurance policy required in W.S. § 35-11-406(a)(xiii) shall be \$300,000 for each occurrence of bodily injury or property damage, and \$500,000 aggregate.

(j) The public insurance liability policy shall include a rider requiring that the insurer notify the Administrator whenever substantive changes are made in the policy, including any termination or failure to renew. The policy shall be maintained in full force during the life of the permit or any renewal thereof, including the liability period necessary to complete all reclamation operations.

DEPARTMENT OF ENVIRONMENTAL QUALITY

LAND QUALITY DIVISION

CHAPTER 16

INSPECTIONS, ENFORCEMENT AND PENALTIES FOR

SURFACE COAL MINING OPERATIONS

Section 1. Inspections.

(a) Frequency and extent of inspection: The Director's designated authorized representative shall inspect:

(i) On an irregular basis active surface coal mining and reclamation operations and any other areas outside the permit area which are or may be affected by the surface coal mining and reclamation operation every month, averaging at least one quarterly review of the operator's compliance with all conditions and requirements of the permit, Article IV, and these regulations within the entire affected land. Inspections of coal exploration operations and inactive surface coal mining operations shall occur periodically so as to determine compliance or noncompliance with the permit conditions, Article IV and these regulations; provided that a complete inspection shall occur each calendar quarter for inactive coal mines. All inspections shall occur without prior notice, except as the representative deems necessary, to the person being inspected. The representative shall promptly submit all inspection records, reports or other materials to the head of the district office and the Director for public inspection and enforcement action purposes.

(ii) Immediately to enforce the Act, the regulations, or any condition of a permit or an exploration approval when he has reason to believe that enforcement action under W.S. 35-11-437(a) or (b) is required.

(b) Aerial inspections may satisfy the monthly/partial inspection requirement if:

(i) It is conducted in a manner which reasonably ensures the identification and documentation of conditions at the coal mining and reclamation site inspected, and

(ii) Any potential violation observed is investigated on site within three days, and any potential condition, practice or violation constituting cause for a cessation order is investigated on site immediately.

(c) Inactive surface coal mining operations are ones for which the Administrator has received a request for temporary cessation under Chapter 4, Section 2(1)(ii) and (u), or ones which have completed the reclamation requirements of Chapter 15, Section 5(a)(ii) and

the liability of the permittee has been reduced in accordance with Chapter 15.

(d) Any person who is or may be adversely affected by a surface coal mining or coal exploration operation may notify the Administrator in writing, alleging sufficient information to create a reasonable belief that the Division has failed to comply with the requirements of (a) above. Within 15 days of the receipt of such notification the Administrator shall determine whether there has been compliance and, if not, order an inspection to correct the noncompliance. The Administrator shall furnish a written statement explaining his determination and actions, if any, to the complainant. The identity of the person providing the information shall be held confidential, if requested by that person unless disclosure is required under the Freedom of Information Act.

If an inspection results from a person's written complaint, only the person who (e) submitted the written complaint or, in case of hardship, his designee, has a right of entry to, upon and through the exploration or surface coal mining operation about which he supplied the information, and only if he is in the presence of and is under the control, direction and supervision of the designated authorized representative while on the permit area. In the event that a group submitted the written complaint, only a designated representative of that group may accompany the inspector. The right of entry does not include a right to enter buildings without a search warrant or the consent of the person in control of the building. All persons supplying the complaint shall promptly receive from the Division copies of any inspection report and a description of any enforcement action taken, or reasons why an inspection was not conducted or enforcement action was not taken. The Division shall also inform the person of his right to informal review of the action on the complaint by the Director. If requested, the Director shall review and inform the complainant of the results of the review within 30 days of the request. The Director's decision is final action for purposes of any appeal to the Council.

Section 2. Enforcement.

(a) All violations or minor violations that are observed must be identified in the inspection report, including comments on the abatement of all previously noted minor violations or violations. The enforcement options available to the Department range from the least severe, notation in an inspection report, to the most severe, criminal sanctions.

(b) Formal notices of violation for abatement shall direct the correction of a cited violation. Formal notices of violation will be routinely issued where site conditions constitute an existing or potential danger to the health and safety of the public, or cause or can be expected to cause environmental degradation. Formal notices of violation will be issued where minor violations previously identified in an inspection report are not satisfactorily resolved within the time frame specified in the inspection report as long as the failure to resolve the minor violation is not due to lack of diligence. If the reason is lack of diligence, a failure to abate cessation order will be issued. The total abatement time where a minor violation has been modified to a formal notice of violation shall not exceed 90 days

unless allowed by Section 2(j) of this Chapter.

(c) Violations noted only in inspection reports shall be limited only to minor violations as noted in (f)(i) through (f)(ix). A formal notice of violation will be issued to all other violations. The required abatement measures and a reasonable abatement time not to exceed 35 days shall be included in the inspection report. Minor violations will not be tracked for withholding permit approvals, and other permit actions. A handwritten description of the minor violation will be given to the operator on site and will contain the information listed under item (g) of this Section. The operator has the right to appeal any minor violation as outlined in W.S. § 35-11-901.

(d) Civil penalties will not be issued to minor violations. They will, however, be reviewed to determine if a civil penalty would be appropriate. If it is found a civil penalty is appropriate, the minor violation will be upgraded to a formal notice of violation and a formal assessment issued.

(e) Failure to abate a minor violation will result in the issuance of a formal notice of violation and assessment of a civil penalty. Operators who consistently receive minor violations for similar infractions (more than two in a 12 month period) will be issued a formal notice of violation for subsequent similar violations for the remainder of the period. Once an operator receives two similar minor violations within a 12 month period, any subsequent similar violations will be counted toward a pattern of violations.

(f) Examples of minor violations which will be identified in the inspection report but may or may not be subject to a formal notice of violation are the following:

(i) Failure to provide or maintain signs or perimeter markers;

(ii) Reclamation deficiencies such as inadequate topsoil replacement depth, incorrect seeding practices, or improper sampling technique where there is no immediate potential for adverse environmental impact;

(iii) Failure to perform necessary routine maintenance of surface water diversions or erosion control facilities where there is no immediate potential for adverse environmental impact;

(iv) Failure to perform necessary routine maintenance on treatment facilities provided that the matter is referred to the Water Quality Division (WQD) and the WQD finds that effluent limits are being met and there is no immediate potential for adverse water quality impacts;

(v) Required record keeping is unsatisfactory, except where there is a deliberate falsification of records or results;

(vi) Minor construction deficiencies where there is no threat of structural failure or serious harm;

(vii) Noted necessary corrections to maps, plans or other permit materials;

(viii) Failure to comply with other laws applicable to the mine through permit conditions, where the agency with primary jurisdiction has instituted action to obtain compliance pursuant to its laws and regulations; and

(ix) Rills on reclaimed lands or partially blocked culverts which are the result of a recent storm or runoff event.

(g) Any cessation order, notice for abatement or order to show cause issued under the Act shall be signed by the Director or authorized representative and shall contain:

(i) The nature of the violation;

(ii) All affirmative obligations necessary to completely abate the violation or imminent danger or harm in the most expeditious manner possible;

- (iii) The time established for abatement, if appropriate; and
- (iv) A reasonable description of that portion of the operation to which it

applies.

(h) Within sixty (60) days after issuing a cessation order, the DEQ will notify in writing the permittee, the operator, and any person who has been listed or identified by the applicant, permittee, or OSM as an owner or controller of the operation as defined in Chapter 1 of these rules and regulations. All cessation orders remain in effect and, unless otherwise ordered, do not affect continuing reclamation operations, until the condition, practice or violation has been abated, or until vacated, modified or terminated in writing by the designated representative, Administrator, Director, or Council. Within 30 days after the issuance of a cessation order the permittee must provide or update all the information required under Chapter 2 related to ownership or control. Information does not need to be provided if a court of competent jurisdiction granted a stay of the cessation order and that stay remains in effect. Within sixty (60) days of any addition, departure, or change in position of any person identified in Chapter 2, Section 2(a)(i)(E), the applicant or permittee shall provide the information required by that section and the date of any departure.

(i) Any notice or order shall be terminated by written notice to the person to whom it was issued, when it is determined that all violations or conditions listed in the notice or order have been abated. This determination may be made by conducting an investigation to confirm the abatement, by accepting the information obtained from a government agency or by accepting a signed statement from a permittee that the violation in a notice of violation

has been abated. The Division reserves the right to confirm the information included in a signed statement. Termination shall not affect the right to assess civil penalties.

(j) If at any time, the DEQ discovers that any person owns or controls an operation with an unabated or uncorrected violation, the LQD will determine whether enforcement action is appropriate under this Chapter. Results of each enforcement action, including administrative and judicial decisions, shall be entered into AVS.

(k) The specified time for abatement of the violation may be extended up to 90 days from issuance of the notice, if the failure to meet the time previously set was not caused by lack of diligence on the part of the person to whom it was issued (W.S. 35-11-409(c)).

(i) The total time for abatement shall not exceed 90 days from the date of issuance, except upon establishing by clear and convincing proof that the permittee cannot feasibly abate the violation within 90 days due to one or more of the following:

(A) The permittee of an ongoing permitted operation has timely applied for and diligently pursued a permit renewal or other necessary approval of designs or plans but such permit or approval has not been or will not be issued within 90 days after his valid permit expires or is required, for reasons not within the control of the permittee;

(B) There is a valid judicial order precluding abatement within 90 days as to which the permittee has diligently pursued all rights of appeal and as to which he or she has no other effective legal remedy;

(C) The permittee cannot abate within 90 days due to a labor strike;

(D) Climatic conditions preclude abatement within 90 days, or where due to climatic conditions abatement within 90 days clearly would cause more environmental harm than it would prevent; or

(E) Abatement would require the operator to violate a requirement or regulation established under the Mine Safety and Health Act of 1977.

(ii) Whenever an abatement time in excess of 90 days is permitted, interim abatement measures shall be imposed to the extent necessary to minimize harm to the public or the environment.

(iii) An extension beyond 90 days may not be authorized without the concurrence of the Administrator or person acting in this capacity, and the abatement period granted shall not exceed the shortest possible time necessary to abate the violation. The authorized representative shall promptly and fully document in the file the reasons for granting or denying the request. The Administrator or designee shall review that document before concurring in or disapproving the extended abatement period and shall promptly and

fully document the reasons for concurrence or disapproval in the file. An extended abatement date shall not be granted when the permittee's failure to abate within 90 days has been caused by a lack of diligence or intentional delay.

(iv) No extension granted under this provision may exceed 90 days in length. Where the condition or circumstance which prevented abatement within 90 days exists at the expiration of any such extension, the permittee may request a further extension in accordance with the procedures of this subsection.

(1) Order to show cause for the suspension or revocation of a permit pursuant to W.S. 35-11-409(c):

(i) For the purpose of this subsection:

(A) Willful violation means an act or omission which violates this Act or any regulation, and which is committed or omitted with knowledge or reason to know of its unlawfulness.

(B) Unwarranted failure to comply means the failure to prevent or abate the occurrence of any violation due to indifference, lack of diligence, or lack of reasonable care.

(C) Pattern of violations means the occurrence of similar violations not appearing to be isolated departures from lawful conduct as determined during two or more inspections of the permit area within any 12 month period, unless exceptional factors present in the particular case otherwise account for such violations.

(ii) The Director shall make a written explanation for declining to issue an order to show cause or vacating an outstanding order, once he determines that there were violations of the same or related requirements of the Act, regulations, or the permit during three or more inspections within any 12 month period. The explanation shall include that, after taking into account exceptional factors present in the particular case, it would be demonstrably unjust to issue or fail to vacate the show cause order. This shall be included and documented in the records of the case.

(iii) Notice, hearing and any decision by the Council on whether to suspend or revoke the permit shall be the equivalent of that required for permit applications. If the Council suspends or revokes the permit, the operator shall cease operations, continue reclamation, and complete all affirmative obligations as specified in the order.

(m) All cessation orders, notices for abatement and orders to show cause shall be served on the operator either by tendering a copy at the operation or sending it by certified mail or by hand to the operator. All orders to show cause shall issue forthwith upon a determination that the factors exist which justify its issuance.

(n) Pending completion of the investigation and hearing on any enforcement action taken by the Department, the operator may file with the Council a request for temporary relief. The Council shall expeditiously issue an order or decision granting or denying such relief, which shall be within five days from any request for relief from a cessation order. The Council may grant such relief, under such conditions as it may prescribe, if:

(i) A hearing has been held in the locality of the permit area on the request for temporary relief in which all parties were given an opportunity to be heard;

(ii) The operator shows that there is a substantial likelihood that the findings of the Council will be favorable to him; and

(iii) Such relief will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources.

(o) Inability to comply shall not be a proper factor for consideration in any decision to vacate, or terminate any notice or order under this subsection or to determine whether a pattern of violation exists. It may only be a factor for the duration of the suspension of a permit and in mitigation of the amount of civil penalty, when not caused by lack of diligence.

(p) Surface coal mining operations conducted by any person without a valid permit constitute a condition or practice which causes or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources. For those operations which are an integral, uninterrupted extension of previously permitted operations, and where the person conducting such operations has filed a timely and complete application for a permit to conduct such operations, the cessation order shall be limited to the unpermitted operation.

Section 3. Civil Penalties.

(a) Amount - In determining the amount of the penalty, if any, to be assessed, consideration shall be given to:

(i) The operator's history of previous violations at the particular surface coal mining operation, regardless of whether any led to a civil penalty assessment. Special consideration shall be given to violations contained in or leading to a cessation order. However, a violation shall not be considered if the notice or order containing the violation:

(A) Is or may become the subject of pending administrative or judicial review; or

(B) Has been vacated.

(ii) The seriousness of the violation based on the likelihood and extent of the potential or actual impact on the public or environment, both within and outside the permit or exploration area.

(iii) The degree of fault of the operator in causing or failing to correct the violation, either through act or omission. Such degree shall range from inadvertent action causing an event which was unavoidable by the exercise of reasonable care to reckless, knowing or intentional conduct.

(iv) The operator's demonstrated good faith, by considering whether he took extraordinary measures to abate the violation in the shortest possible time, or merely abated the violation within the time given for abatement. Consideration shall also be given to whether the operator gained any economic benefit as a result of a failure to comply.

(v) Inability to comply, unless caused by lack of diligence.

(vi) Any information submitted to the Director by the operator within 15 days of the service of the notice or order relating to the facts surrounding the violation or the amount of penalty.

(b) In determining the amount of the penalty, consideration shall not be given to whether a reduction in the amount of a penalty could be used to abate violations of the Act or regulations.

(c) The procedure for any requested assessment conference, as provided for in W.S. § 35-11-902(d) shall be the equivalent of the informal conference procedure described by the Act and regulations applicable to permit applications excepting that the Director, not the Administrator, shall conduct the conference.

(d) If the operator requests and receives the review proceeding provided for by W.S. § 35-11-437(c), the fact of the violation may not be further contested under this Section.

(e) If any party requests judicial review of a final order of the Council on the penalty, the proposed penalty shall continue to be held in bond or escrow until completion of the review. If any review results in an order increasing the penalty, the person to whom the notice or order was issued shall pay the difference within 15 days after notification.

(f) The civil penalty prescribed by W.S. § 35-11-902(n) shall be assessed for a maximum of 30 days, except that, if the person to whom the notice or order was issued initiated review proceedings with respect to the violation, the abatement period shall be extended as follows:

(i) If suspension of the abatement requirements of the notice or order is

ordered in a temporary relief proceeding, the period permitted for abatement shall not end until the date on which the Council issues a final order with respect to the violation in question; and

(ii) If the persons to whom the notice or order was issued initiate judicial review proceedings with respect to the violation, in which the obligations to abate are stayed by the court pending full review, the daily assessment of a penalty shall not be made for any period before entry of a final order by the court.

Section 4. Individual Civil Penalties

(a) For purposes of this section:

(B)

(i) "Knowingly" means that a person who authorized, ordered, or carried out an act or omission knew or had reason to know that the act or omission would result in either a violation or a failure to abate or correct a violation;

(ii) "Violation, failure or refusal" means:

(A) A violation of a condition of a permit issued pursuant to the State program or Federal lands program; or

(B) A failure or refusal to comply with any order issued under Section 2 of this Chapter, or any order incorporated in a final decision issued by the Director under the Act, except for failure to pay a civil penalty.

(iii) "Willfully" means that a person who authorized, ordered or carried out an act or omission that resulted in either a violation or the failure to abate or correct a violation acted:

(A) Intentionally, voluntarily or consciously; and

requirements.

With intentional disregard or plain indifference to legal

(b) An individual civil penalty may be assessed when:

(i) The Director may assess an individual civil penalty as outlined in W.S. \$35-11-902(b), against any corporate director, officer or agent of a corporate permittee who knowingly and willfully authorized, ordered or carried out a violation, failure or refusal, except as provided in subsection (ii) below.

(ii) The Director shall not assess an individual civil penalty in situations resulting from a permit violation by a corporate permittee until a cessation order has been

issued by the Department to the corporate permittee for the violation, and the cessation order has remained unabated for thirty (30) days and the procedures for assessment in subsection (d) below have been complied with.

(c) Amount of Civil Penalty.

(i) In determining the amount of an individual civil penalty assessed under this Section, the Director shall consider the criteria specified in Section 3 of this Chapter, including:

(A) The individual's history of authorizing, ordering or carrying out previous violations, failures or refusals at the particular surface coal mining operation;

(B) The seriousness of the violation, failure or refusal (as indicated by the extent of damage and/or the cost of reclamation), including any irreparable harm to the environment and any hazard to the health or safety of the public; and

(C) The demonstrated good faith of the individual charged in attempting to achieve rapid compliance after notice of the violation, failure or refusal.

(ii) The penalty shall not exceed the limits prescribed in W.S. 35-11-902(b) for each day during which a violation, failure or refusal continues, or, for multiple violations, a penalty not to exceed the limits prescribed in W.S. 35-11-902(b) for each violation for each day during which a violation, failure or refusal continues from the date of service of the underlying notice of violation, cessation order or other order incorporated into a final decision issued by the Director, until abatement or compliance is achieved.

(d) Procedure for assessment of individual civil penalty.

(i) Notice. The Director shall serve on each individual to be assessed an individual civil penalty a notice of proposed individual civil penalty assessment, including a narrative explanation of the reasons for the penalty, the amount to be assessed and a copy of any underlying notice of violation and cessation order.

(ii) Final order and opportunity for review. The notice of proposed individual civil penalty assessment shall become a final order of the Director thirty (30) days after service upon the individual unless:

(A) The individual files within 15 days of service of the notice of proposed individual civil penalty assessment a petition for review with the Environmental Quality Council, or

(B) The Department and the individual or responsible corporate permittee agree, within thirty (30) days of service of the notice of proposed individual civil

penalty assessment, to a schedule or plan for the abatement or correction of the violation, failure or refusal.

(iii) Service. For purposes of this Section, service shall be performed on the individual to be assessed an individual civil penalty, by certified mail, or by any alternative means consistent with the rules governing service of a summons and complaint under Rule 4 of the Wyoming Rules of Civil Procedure. Service shall be complete upon tender of the notice of proposed assessment and any attached information or of the certified mail and shall not be deemed incomplete because of refusal to accept.

(e) Payment of Penalty

(i) No abatement or appeal. If a notice of proposed individual civil penalty assessment becomes a final order in the absence of a petition for review or abatement agreement, the penalty shall be due upon issuance of the final order.

(ii) Appeal. If an individual named in a notice of proposed individual civil penalty assessment files a petition for review in accordance with the Environmental Quality Council, the penalty shall be due upon issuance of a final administrative order affirming, increasing or decreasing the proposed penalty.

(iii) Abatement agreement. Where the Department and the corporate permittee or individual have agreed in writing on a plan for the abatement of or compliance with the unabated order, an individual named in a notice of proposed individual civil penalty assessment may postpone payment until receiving either a final order from the Department stating that the penalty is due on the date of such final order, or written notice that abatement or compliance is satisfactory and the penalty has been withdrawn.