



Department of Environmental Quality

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



Mark Gordon, Governor

Todd Parfitt, Director

MEMORANDUM

To: Regulatory Reduction Task Force

From: Todd Parfitt, Director
 Nancy Vehr, AQD Administrator
 Kyle J. Wendtland, LQD Administrator
 Jennifer Zygmunt, WQD Administrator

Date: September 5, 2023

RE: Responses to the June 12, 2023, Wyoming Mining Association Letter to the Regulatory Reduction Task Force

Per the request of the Regulatory Reduction Task Force, the Department of Environmental Quality (DEQ) has compiled the following responses to items brought forth by the Wyoming Mining Association (WMA) in its June 12, 2023 letter.

- 1. Page 1, Paragraph 3, Agency Staffing, Section 1: Understaffing at agencies is a consistent theme when surveying WMA member companies on regulation and permitting issues. Lack of training, staff turnover, and lack of standard procedures seem to be issues with both the Office of State Lands (OSLI) and the Department of Environmental Quality (DEQ).**

Response: WDEQ agrees that hiring and retaining staff are current challenges, and the WDEQ is actively working internally and with the Governor's Office and the Legislature to find solutions to attract and hire qualified candidates as well as retain trained and experienced employees. Being able to offer competitive salaries when compared to private industry, other states and the federal government remains a key challenge for positions across the agency. The WDEQ has noted an increasing trend of the percentage of employees having five years or less experience with the agency, meaning we are seeing increased turnover rather than longevity with the agency. This creates a challenge to maintain a trained workforce, and supervisors spend significant time training staff that then leave the agency within a few years. Recognizing the importance of trained and experienced staff to efficient permitting and effective customer service, the WDEQ is specifically exploring options to encourage retention of existing staff to preserve institutional knowledge and historical continuity.

- 2. Page 1, Paragraph 5, Agency staffing, Section 1: One operator notes at least one case where responses to permit comments and responses to public records request from Land Quality Division (LQD) are in direct conflict with preference going to the public records request.**

Response: LQD has reviewed the workflow history and is not able to locate this specific case. The LQD has met its statutory deadlines regarding permit approvals and records requests. The number of records requests continues to increase over time and the LQD complies with the required statutory timeframes. For the 2023 fiscal year LQD received and processed 267 records requests that required 494 man hours to complete. The 494 man hours do not include the additional time necessary to process requests for confidentiality as these also require attorney review and time of the Administrator and Director.

3. **Page 1, Paragraph 6 through Page 2 Paragraph 1, Agency Staffing, Section 1: Operators are seeing long delays (>1 year) trying to get permits into the MIDAS system (the states electronic online permitting system).**

Response: The LQD moved the MIDAS platform to a new dot.net.core operating system in 2021. This was a major improvement to MIDAS and its functionality within the states ETS platform. One FTE was also added to the records section in 2022 in order to address the projected increasing demand to move permits to the upgraded MIDAS. The LQD approach has been to move coal permits onto MIDAS first, as the coal grant funded the majority of the expense in developing, improving and maintaining the MIDAS system. Currently 25 of the 29 coal permits are digital. The priority order has been coal permits, uranium permits, sand and gravel notifications, trona permits, and bentonite permits. This conversion requires substantial formatting changes to some permits in order to meet the MIDAS file structure. This also requires a time and resource commitment from the operators. It should also be noted that the permit history including correspondence, revisions, annual reports, compliance actions etc. are part of a permit conversion. These permits are large and complex in nature, as many have been in place since the establishment of the EQA and LQD in 1973 and SMCRA in 1977 and contain decades of information. In order to provide some scale and perspective on the scope of this project please find the following information:

- LQD has uploaded into MIDAS and performed QAQC on 304 (42%) electronic notifications, licenses, and permits.
- LQD converted 79 permits into the MIDAS system in the last fiscal year.
- The number of permit pages that have been scanned, loaded into MIDAS, and QAQC performed since January 1, 2022 is 112,626.
- The number of large format maps that have been scanned, loaded into MIDAS, and QAQC performed since January 1, 2022 is 4,401.

The permit conversion workload is in addition to the day to day activities requiring records management, MIDAS system training to operators, and responses to records requests.

LQD typically assigns a TFN to the electronic permit conversion process and classifies it as a non-significant permit revision. Because the conversion itself is considered a permit revision, statutory deadlines (W.S. 35-11-406(d0-(h); LQD coal R&R Chapter 13) are not being met, as the public records request and other more routine permitting actions appear to be given higher priority.

Permit conversions from paper to digital are assigned a TFN number for tracking and completion of the permit action. WMA is correct, LQD places a higher priority on processing new permit approvals, permit changes, annual report reviews, and permit term renewals than a permit paper to digital conversion. It is also important to consider that not all permits are in a direct convertible structure and take additional time from the operator and LQD to update and upload into MIDAS. The DEQ philosophy for these conversions, is to do it correct, accurate, and once.

Further, LQD has stated that permit revisions submitted during the conversion process need to be in paper format since the official version is in paper. This is beginning to cause delays in submitting permit revisions, as the time and material cost of preparing and submitting hard copy revisions, particularly those involving maps, has become significant.

WMA is correct, LQD has attempted to use a hybrid digital paper process during a permit conversion. This hybrid approach resulted in errors and time delays in approving the requested permit revision and the permit conversion. Based on this experience the Administrator made a policy decision that if the official permit is digital, revisions and changes are completed in digital format and if the official permit is paper, changes are completed in paper until the permit conversion process is complete. As recent as three years ago,

LQD was receiving pushback from some operators not wanting to convert to the digital system. As more permits have been loaded into the system, operators have become more comfortable with the digital permit process and, demand for these conversions has increased.

- 4. Page 2, Paragraph 2, Agency Staffing, Section 1: Statutory deadlines (W.S. 35-11-406(d)-(h) have always been an issue for LQD and in cases where the agency is the hold-up they often note they are understaffed.**

Response: The LQD has certainly not been immune to the issues related to staff recruitment and retention. Although challenging and impactful to work product outputs, unlike the AQD, the staffing challenges have not been as persistent as they have been in AQD. The DEQ appreciates the efforts of the Governor and the Legislature to address compensation and make state positions more competitive with other states and federal agencies and closing the gap with the private sector. DEQ is optimistic that these and future salary adjustments will help address some of the staffing recruitment and retention challenges. The DEQ has evaluated the current and projected workload over the next biennium and will be requesting additional staffing and resources, including one additional FTE in the LQD District 1 office (Cheyenne) to address increasing non-coal workload.

Industry is hesitant to see the deadlines extended for LQD, as WMA membership believes they are long enough as it is.

DEQ agrees and does not see a need to change the existing statutory deadlines for the LQD.

Perhaps there may be an opportunity for reform on the records request side.

There is an agency wide, upward trend in records requests. These requests are placing an increased demand on DEQ staff resources. Agency wide for FY23 there were 1,029 public records requests. As detailed above, for the 2023 fiscal year LQD received and processed 267 records requests that required 494 man hours to complete. The 494 man hours do not include the additional and substantial time required to process requests for confidentiality.

- 5. Page 2, Paragraph 3, Agency Staffing, Section 1: W.S. 16-4-202(c) states that available public records shall be released immediately as long as the release does not impair or impede the entity's ability to discharge its other duties, and goes on to say that all requests will be fulfilled within 30 days unless good cause preventing release exists and a later date can be agreed upon with the requestor. There is also a 7-day period for determining whether the record exists or is available. Looking through the WDEQ public records requests for LQD, it appears that most requests are being fulfilled within about a week. This makes sense because if a staff member needs to look up a record within 7 days, they may as well pull the information and provide it right away.**

Response: DEQ agrees with this comment.

- 6. Page 2, Paragraph 4, Agency Staffing, Section 1: The previous paragraphs describe three agency objectives that compete for the time and priority of agency staff. It appears that the review and issuance of permits, an original and enduring objective of the agency, is in third place. This issue need to be addressed.**

Response: The DEQ agrees that permit actions should be addressed in a timely manner. The LQD has met and continues to meet its statutory requirements for the issuance of new permits, permit revisions, exploration, annual reports, and compliance activities. There have been high staff turnover rates in LQD, industry, and in consulting which has had an adverse effect on institutional knowledge, particularly for the larger, more complex permits.

Opportunities for resolution may include rebalancing time spent on public records requests, electronic permitting, and records associated with routine permitting actions so all statutory deadlines can be met, and or increasing staff.

The LQD has met all statutory required permitting deadlines. That being said, the permit processing times would benefit from an updated LEAN Kaizen review, last done in LQD in 2018. The DEQ has placed this item as a budget exception request for this budget session.

Extending statutory deadlines for LQD would not be a preferred option: however, extending or eliminating the 7-day period for determining whether a record exists or is available under W.S. 16-4-202(c) and instead relying on the 30-day period for fulfilling the records request may be a possibility.

DEQ agrees that there is not a need to adjust the existing statutory deadlines for the LQD. The DEQ would not object to additional flexibility in the time for responding to public records, recognizing that the discussion around response time for public records requests would be a much broader discussion than just LQD or DEQ.

- 7. Page 2, Paragraph 5, Uranium Recovery Program – Staffing, Section 2: Uranium operators suggest a review of the pay scale for the Uranium Recovery Program. Industry has pointed out from the inception of the program that technical staff in this program must be highly qualified and have degrees that are sought after in the job market. Therefore, ensuring competitive wages and benefits is crucial to maintaining a successful program. Unfortunately, despite some improvement in wages, industry remains concerned that we are not where we need to be. This is evidenced by continued turnover in the program. The uranium industry strongly encourages the state to reconsider the pay scale for the technical positions. The industry reminds the task force that this is a cost recovery program and the cost of the wage increase is borne by the industry, not the taxpayer.**

Response: DEQ will continue to work with the Department of Administration and Information to explore options for salary adjustments within the existing state job classification and compensation system, particularly for Health Physicists.

- 8. Page 2 Paragraph 6 through Page 3, Paragraph 1, Federal Requirements/ Agency Staffing, Section 3: Operators are noticing federal requirements being promulgated with a lot of uncertainty, lack of understanding, and insufficient guidance. Generally, this is both a burden for industry and state regulatory agencies as both have to understand and adjust to the new requirements given that state primacy still requires that the state meet the minimum federal requirements. Despite the increase in federal requirements, operators continue to note the issue of state regulatory agency understaffing and lack of resources. A specific example given is given below. The Land Quality Division used to have a Natural Resource Analyst dedicated to a particular mining site and some additional small gravel pits but in essence this individual had a lot of time to dedicate to reviewing permit applications and providing feedback and then ultimately approving those permit applications. This individual left in the fall of 2021 and was just replaced last November.**

Response: There have been position vacancies in LQD and throughout the DEQ that have received no applicants, and applicants declining the agency offer following the selection process. This has resulted in extended vacancies. The DEQ appreciates the efforts of the Governor and the Legislature to address compensation and make state positions more competitive with other states and federal agencies and closing the gap with the private sector. DEQ is optimistic that these and future salary adjustments will help address some of the staffing recruitment and retention challenges.

- 9. Page 3, Paragraph 2, Dual Regulation/Permitting, Section 4: In order to accomplish meaningful regulatory reduction, it is imperative to evaluate areas that have dual regulation or dual permitting for similar activities. This is particularly important in today's permitting review structure where almost every permit will require some sort of additional consultation with Wyoming Game and Fish (WG&F) for the Sage Grouse Executive Order or US Fish and Wildlife Service, tribal consultation, NEPA (if Federal**

Action), and additional WDEQ staff review time for environmental protections that have essentially been addressed through the mine permit review.

Response: DEQ agrees that the DEQ and the mining industry should look for opportunities to eliminate duplication and simplify the permitting process while achieving the desired environmental outcomes.

10. Page 3, Paragraph 3, Dual Regulation/Permitting, Section 4: *For in-situ uranium recovery (ISR) operators for example, this dual permitting is evident with requirements for erosion and stormwater control. The Mine Permit Application must contain conservation during facility and wellfield construction and reclamation. Best management practices (BMPs) are provided in the permit and are reviewed and approved as adequate. Then, prior to construction of each mine unit, a general construction stormwater permit must be obtained including a Stormwater Pollution Prevention Plan, which provides for the same erosion and sediment control DMPs that are contained within the Mine Permit. We now have 2 permits with the same mitigations for the same activity, with no added environmental benefit. Additionally, once the mine unit is constructed, it now falls under the general industrial stormwater permit, which also requires a SWPPP providing site drainage, sediment and erosion control and BMPs that are covered by the Mine Permit. So now we have 3 permits covering the same activity, same environmental impact, and same controls.*

Response: WQD understands the concern that any mines with stormwater controls reviewed and inspected under an LQD mine plan have duplicated stormwater permit coverage under WYPDES. Because the LQD mine permit and WYPDES stormwater permit are implemented under different authorities, this duplication has occurred to ensure that both LQD and WQD meet respective state or federal requirements. In the case of WYPDES, stormwater permits are issued in accordance with requirements to maintain primacy of the Clean Water Act, Section 402 NPDES permitting program in Wyoming. The WQD is open to exploring options to reduce duplication; however, any option would need to meet WYPDES primacy program requirements as well as LQD requirements. While the WYPDES stormwater permit requirements could potentially be satisfied through equivalent measures in the LQD mine permit, doing so would provide EPA an oversight role for portions of the mine permit. EPA does not currently have any oversight role for LQD mine permits.

Pursuant to WWQRR Chapter 2, Section 6(g)(ii)(L), those mines designed and operated to prevent runoff and commingling of mine contact stormwater (routing clean stormwater around the mine and containing all mine contact stormwater onsite) do not require operational stormwater permits from WYPDES (IGP or MMGP). WQD and LQD will hold regular coordination meetings to inventory all such facilities on an ongoing basis, with a goal of discontinuing or foregoing WYPDES stormwater coverage where appropriate regulations are met.

11. Page 3, Paragraph 4, Dual Regulation/Permitting, Section 4: *During the Mine Permit Review, there are consultations that occur in regards to wildlife, cultural resources, etc. Protections for these are based on all of the different ISR mining activities for delineation drilling and hole abandonment, well construction standards, wellfield construction, to groundwater restoration, wellfield removal and reclamation, surface water protection, groundwater protection, erosion and sediment control, etc. These consultations cover all these activities for the entire project as a whole during the mine permit or amendment review. However, during the application process for the construction stormwater general permit, we were also required to consult with the Wyoming Game and Fish again in regards to the Sage Grouse Executive Order, and will need to consult again for every mine unit construction activity that is already authorized in our Mine Permit. At one point we had 2 separate consultations going with WG&F to construct the same mine unit (the State Engineers Office was also consulting with WG&F for well construction for groundwater appropriations while the company was requesting an exception). All of these activities are permitted and authorized in the Mine Permit and consultation for wildlife, including sage grouse, was already completed.*

Response: WYPDES does not require a second consultation with WGFD for construction stormwater permit coverage. In accordance with the Sage Grouse Executive Order, WYPDES simply requires confirmation that the consultation has been done for core areas. If WGFD clearance has already been provided for the LQD mine permit, WYPDES would simply need verification.

12. Page 4, Paragraph 1, Dual Regulation/Permitting, Section 4: *The situation described above is just one example of dual permitting, and more can be provided. Moreover, this situation is not limited to uranium, but is common to all mining permits issued by LQD to operators across the mining industry. An analysis should be conducted across all WDEQ programs and determine where duplicity can be eliminated. Permittees should not be subjected to endless consultations and reviews for mining activities that are authorized through Mine Permits. Agencies should be able to provide agreement if current permit controls also meet their requirements and additional permits should not be required if that condition is met. Cutting down on dual permitting would also help alleviate agency staffing issues by reducing workload.*

Response: DEQ agrees that dual or overlapping permit requirements should be eliminated where possible, provided those actions do not place the primacy of a program in jeopardy or expand the authority of a federal oversight agency. DEQ suggests working through WMA to develop solutions consistent with:

W.S. 35-11-803(a) “The director may grant a single permit for a facility or activity regulated under more than one (1) article of this act provided that there is compliance with all rules, standards and public participation requirements provided by the individual articles of this act.” and/or

W.S. 35-11-803(b) “The council may adopt unified rules which encompass activities covered by more than one (1) article of this act.”

13. Page 4, Paragraph 2, Drilling Notifications, Section 5: *WMA membership suggests a review of LQD review times for Drilling Notifications (DN). Operators report DNs that have taken in excess of 6 months to complete. These are just notifications and ultimately LQD only needs to ‘approve’ the reclamation cost estimate. Drilling Notifications are the “tip of the mineral sword,” and without timely review and considering weather and wildlife timing stipulations, projects can experience lengthy delays. Further, operators have experienced that even after LQD approves the reclamation cost estimate, it can take an additional month to get the surety instrument in place which seems like a longer duration than it should be.*

Response: The LQD tracks the time it takes to approve a Drilling Notification (DN). As noted by WMA, DNs are generally a straight forward process. These approvals can be complicated when federal lands (BLM and USFS surface and/or mineral), sage grouse core area, and wildlife corridors are involved. The demand for non-coal exploration has and continues to increase. This has also resulted in consulting companies **not** familiar with Wyoming’s process submitting applications for their clients. The 2023 fiscal year average approval time for all DNs by LQD was 62 days.

Of the seven DN bonding instruments received in 2023, two were sent back within 7 days with a communication detailing the deficiencies. Both were Surety instruments. The forms were not printed correctly and were missing areas of information. Processing can take up to 45 days, however, the DEQ bonding team has an internal stretch goal of 2 weeks. In 2023, the processing times remain ahead of that goal. Financial assurance can be submitted in tandem with filing for a DN. However, if an operator chooses to wait, then the processing time could take up to 45 days depending on the volume of bonds being processed when the instrument is received. Currently processing times for DN bonds in 2023 average 12 days.

DN Bonds Received and processed

Year	# Received	Avg Days to process	Longest processing time on DN	Shortest Processing time on DN
2021	25	22	41	1
2022	33	20	34	1
2023	7	12	28	5

14. Page 4, Paragraph 3, Drilling Notifications, Section 5: Neither Neighboring states South Dakota nor Montana require Drilling Notifications because exploration projects do not exceed a given threshold depth or require a threshold amount of surface disturbance. Both states recognize that certain commodity (bentonite) exploration activities do not generate enough disturbance or liability in their state to harbor concern. This approach allows certain operators to conduct exploratory investigations within their organizations extensive Health Safety and Environmental policies to generate resource and reserve estimates to determine if any given property would warrant obtaining a permit to mine. This approach requires significantly less resources from both the agency and operators. The current Wyoming process for an operator to obtain a drilling notice resembles the permitting process for a mining operation granted at a smaller scale. There are multiple rounds of comments, consultation with other agencies and operators are subject to review periods measured in months.

Response: Based on review of the comment, it appears the concern is largely but not exclusively related to bentonite exploration and mining given the comparisons to Montana and South Dakota. Wyoming mineral exploration and development encompasses multiple minerals across the state including bentonite reserves that cover not only northeastern Wyoming but also central Wyoming and the Bighorn Basin. The variability and intermingling of surface and mineral estate across the state also adds complexity to exploration activities. In addition, concerns regarding sage grouse core area, and migration corridors also factor into the mix. The process for approving a DN includes a demonstration of access consent, compliance with the Executive Orders, and approval of a reclamation bond to ensure the surface disturbance is mitigated. The 2023 fiscal year average approval time for all DNs by LQD was 62 days with 68 active DNs across all mineral categories. The LQD would also note that in cases where federal lands are involved, the federal approvals exceed the LQD process by a considerable margin and add additional time and complexity to exploration drilling activities.

15. Page 4, Paragraph 4 and Paragraph 5, Coal Reporting and Bonding, Section 6: Overall streamlining of the LQD permitting and reporting process will save both the state and industry valuable time and money. Some examples include:

Annual Reports-These documents are very large and take several months to both compile and review. For instance, one of our recent reports was 766 pages. We often start preparing our following years annual reports before the current year report is approved. An option suggested is moving towards submitting a comprehensive report like our current one once every third or fifth year with a smaller annual report that covers just the more critical monitoring items for the years between.

Response: The LQD agrees with the testimony provided by Mr. Phillip Dinsmoor on June 19, 2023, and had the DEQ not implemented the annual coal reporting requirement, it would have led to a reopening of the entire coal permit(s) every 2.5 years when the coal program was stood up in 1980. This would have essentially created an endless permitting review cycle and opening of the entire coal permit. The entire coal permit(s) would have been subject to the requirements of the public notice and objection process rather than just the annual report. It should also be noted that to change this requirement would require both rule making at the state level, and then the filing and approval of a program amendment by the Office of Surface Mining (OSM). The state rulemaking process would require between 8 to 12 months to complete, and OSM has not approved a Wyoming Coal Program Amendment in less than 4 years. Over the last 30 years the process has been streamlined substantially through the cooperative creation of the Coal Annual Report Format (CARF) and Guideline 12 (G12) with industry. The LQD continues to engage industry on streamlining and cost saving initiatives to these guidance documents annually through the industry working groups and WMA.

16. Page 5, Paragraph 1, Coal Reporting and Bonding, Section 6: Bond Calculations-Similar to the annual report, the bond calculations are very laborious and require significant resources to both generate and for the state to review. A suggested option is to move calculations to a once every other year or once every three-year time frame.

Response: The recent bankruptcies in the coal industry are a reminder as to why the state has placed such a high priority on accurate reclamation bonding and reporting. At the height of the coal bankruptcy proceedings the reclamation liability represented \$1.47 billion in potential third party cleanup costs. The size and scale of the operations in Wyoming are unique and offer unique challenges. The annual bond calculation has been the method Wyoming has chosen to address those challenges since 1980 for coal and 1973 for non-coal. The LQD oversees on average \$2.6 billion in reclamation liability on a rolling monthly average. In order to address the need for a consistent and standardized methodology for calculating a reclamation bond, Guideline 12 was developed in 1996 in cooperation with industry. Guideline 12 is considered a benchmark document on how to calculate a full cost reclamation bond and is updated, improved, and revised annually in cooperation with industry. The current annual bonding requirement has struck a balance between large scale industrial development, environmental protection, and reclamation liability protection.

17. Page 5, Paragraph 2, Coal Reporting and Bonding, Section 6: Bond Release-The LQD program includes additional administrative steps pertaining to rough backfill verifications, vegetative establishment verifications, permanent impoundment verifications, etc. that extend the overall bond release process. Coal operators are not suggesting that the site inspections/data required for these are unnecessary but believe the verification steps could be incorporated into the bond release submittal/approval as in other states.

Response: The comment appears to be focused on the coal industry. It is important to note that the bond release verification and release process is part of the primacy agreement with OSMRE. The process Wyoming chose when the coal program was stood up in 1980, was to separate the area bond from the three phases of incremental bond release required by OSM in order to provide financial relief “credit” for the mass movement of material for final reclamation. If the suggested change were made, the cost savings realized in the area bond would be lost and delayed until the later phases of incremental bond release. The system Wyoming chose at program standup is again tied to the large scale of the operations in Wyoming and was designed to provide financial relief and credit as early in the process as possible.

This would reduce the need to submit the information independently, conduct separate reviews, and develop separate comment and approval letters. For example, the typical timeframe to achieve bond release in Indiana, Kentucky, Ohio, Pennsylvania, West Virginia is about 150 days whereas the typical timeframe to complete the verification/bond release process in Wyoming is 260 days.

The comparison between the Midwestern and Appalachian states regarding bond release is not as simple as the text of the comment would indicate. For example bond release verifications in Wyoming requires State Engineer approval and appropriation of water in the event impoundments are retained for the benefit of livestock. Each state established their individual program based on specific statutory requirements relating to specific mineral, land, water, and vegetation requirements. Wyoming’s program reflects these specific requirements and nuances.

The LQD completed the following bond release actions between 2020 and 2022:

Year	Coal	Non Coal	Total
2020	14	30	44
2021	25	48	73
2022	19	36	55

Average	19	38	57
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18. Page 5, Paragraph 3, Coal Reporting and Bonding, Section 6: *It's been a long time since most of these processes were developed, and much more is known now that when they were originally adopted. Taking a commonsense approach towards streamlining some of these permitting and reporting processes will benefit the state as well as industry.*

Response: The LQD does not concur with this umbrella statement. The LQD continues to work on items listed in the text above through the Industry Working groups. Many of the items raised in the text above are updated annually through guidance in cooperation with industry. Examples include updates to the Coal Annual Report Format, Guideline 12 and 12A that have resulted in substantial cost savings to industry, and continuous discussion and adjustment to reclamation performance standards. Consideration is also given to items that would impact the states program primacy. Additionally, the impact to primacy of the coal and uranium programs has to be considered and is a governing factor.

19. Page 5, Paragraph 4, Coal Reporting and Bonding, Section 6: *Termination of Jurisdiction (TOJ) - The Federal Surface Mining Control and Reclamation Act (SMCRA) of 1977 regulations seem to allow for release of liability for the lands where Phase III is approved, even if those areas remain within the permit boundary. This is common practice in other states. However, Wyoming still requires a final and last step to terminate jurisdiction. Industry believes the current Wyoming regulation is written in a manner that would allow the Administrator to terminate jurisdiction upon receipt of Phase III if they decided to. It would be a benefit to further streamline the bond release process and terminate jurisdiction with the conclusion of Phase III bond release.*

Response: Wyoming chose at the standup of the coal program to separate these actions. Based on historical review, the two actions were separated in order to have one final administrative action as a final check to ensure all requirements were met and specifically address any outstanding mineral and land ownership control concerns. The history indicates final actions were separated to protect private landowners and address the complex mineral and surface ownership that exists in portions of the state and particularly in the checkerboard of the railroad corridor.

20. Page 5, Paragraph 5, Coal Reporting and Bonding, Section 6: *Coal Revegetation Success Standards- Revegetation success standards required for Phase III bond release and specific to shrub density are extremely onerous especially compared to federal shrub revegetation standards. The current Coal Rules and Regulations (R&R) require that at least 20 percent of the eligible lands impacted after August 6, 1996, shall be restored to shrub patches supporting an average density of one shrub per square meter. Industry has expressed concerns that this standard is excessive and should be reevaluated.*

Response: The shrub density standards were negotiated with industry, DEQ, WG&F, and the public in the 1990s to address the critical mule deer winter range within the coal mine permit boundaries. The critical habitat areas were defined in the baseline vegetation and wildlife documents of each coal permit. The LQD Administrator would add for context that these negotiations were contentious and lasted for a period of years prior to resolution and establishment of the 20% standard in 1996. Given the status of Mule Deer and Sage Grouse in Wyoming at this time, it is questionable that a standard of less than 20% would be appropriate. Notably, the coal permits that have received TOJ in Wyoming, have met these standards.

21. Page 5 Paragraph 6 and Page 6, Paragraph 1, Coal Reporting and Bonding, Section 6: Stormwater Permitting- *The new Industrial General Stormwater Permit (IGP) has recently been issued by WDEQ/WQD. New semi-annual coal mining benchmark sampling requirements and limits have been added in Section 9.3.2 on Page 30. These were not in the draft permit. Similar to the state IGP, the mining industry has historically had a lot of concerns with benchmark sampling requirements when it was incorporated into the federal Multi Sector General Permit (MSGP) for stormwater discharges. Mostly because the benchmark thresholds are not water quality standards but are being treated as such. One of the key provisions during the most recent renewal of the MGSP was the retention of the baseline exclusion, which gives operators an off-ramp to demonstrate that a TSS and aluminum exceedance may still be an improvement over baseline and that the existing stormwater BMP's are working. This provision is missing from the WY permit. The industry also has concerns with the inclusion of total recoverable aluminum as a benchmark until the bioavailable lab analytical method has been certified for use under 40 CFR Part 136 (currently being evaluated by EPA). The analytical method that is currently available leaches more aluminum from the suspended sediment in the water sample that would be bioavailable and thus overpredicts the toxicity and increases potential for an exceedance. Coal operators have expressed concern about a missed opportunity to provide feedback to ensure the permit addresses known issues.*

Response: WMA is correct that in Section 9.3.2 of the WYPDES Industrial General Stormwater Permit (IGP), WYPDES had initially omitted new benchmark sampling requirements for coal mines now required by EPA. EPA pointed this out during public notice, and the final issued IGP included new sampling requirements for TSS and Aluminum along with an explanation of the change. These are not effluent limits, however. These are sampling requirements during periods of stormwater discharge from coal mines. As explained in Sections 9.1.3, 9.3, and 9.3.10 of the WYPDES IGP, exceeding the threshold value listed in the permit does not constitute a permit violation. Rather, exceeding a benchmark threshold value on an annual average basis requires the stormwater permittee to review their own SWPPP and determine if the BMPs employed at the facility need adjustment or enhancement. Therefore, the benchmark thresholds are not being treated as water quality standards in the IGP.

Nothing in this section of the IGP relates to aquatic toxicity or bioavailability of aluminum. The test for total aluminum at coal mines is simply a surrogate test for presence of sediment in the discharge. The benchmark thresholds are not established to evaluate impacts to the quality of the receiving stream or to serve as enforceable effluent limits; they are used solely to determine if there is sediment in the discharge that would prompt the permittee to re-evaluate the SWPPP and BMPs used at the facility.

22. Page 6, Paragraph 2, Section 6: *As the Task Force addresses these, WMA suggests full historical discussions be included on past legislative and regulatory decisions (i.e. why a coal annual report is required) so a full understanding may be gained in order to best address these topics moving forward. Additionally, WMA members suggest caution in review of areas relating to state regulatory primacy. As federal entities often have the final say on regulatory changes, reform measures at the state level that would jeopardize state primacy agreements with these should be avoided.*

Response: DEQ agrees that historical context and primacy considerations are an important and essential part of this discussion moving forward. DEQ suggests that this type of research effort be conducted by LSO so as not to create further resource constraints or create permitting delays.