Certification Page
Regular and Emergency Rules

Revised June 2020

☐ **Emergency Rules** *(Complete Sections 1-3 and 5-6)* ■ **Regular Rules**

1. General Information

a. Agency/Board Name*	Department of Environmental Quality - Land Quality Division		
b. Agency/Board Address	200 W. 17th Street, Suite 10	c. City: Cheyenne	d. Zip Code: 82002
e. Name of Agency Liaison	Craig Hults	f. Agency Liaison Telephone Number	(307) 777-7066
g. Agency Liaison Email Address	craig.hults@wyo.gov	h. Adoption Date	February 22, 2023
i. Program	Land Quality - Coal		

Amended Program Name (*if applicable*):

* ☐ *By checking this box, the agency is indicating it is exempt from certain sections of the Administrative Procedure Act including public comment period requirements. Please contact the agency for details regarding these rules.*

2. Legislative Enactment

For purposes of this Section 2, "new" only applies to regular (non-emergency) rules promulgated in response to a Wyoming legislative enactment not previously addressed in whole or in part by prior rulemaking and does not include rules adopted in response to a federal mandate.

a. Are these non-emergency or regular rules new as per the above description and the definition of "new" in Chapter 1 of the Rules on Rules?

☐ **No.** ■ **Yes.** If the rules are new, please provide the Legislative Chapter Numbers and Years Enacted (e.g. 2015 Session Laws Chapter 154): 2022 Session Laws, Chapter 19

3. Rule Type and Information

For purposes of this Section 3, "New" means an emergency or regular rule that has never been previously created.

a. Provide the Chapter Number, Title* and Proposed Action for Each Chapter. *Please use the "Additional Rule Information" form to identify additional rule chapters.*

Chapter Number:	Chapter Name:			
11	Financial Asssurance	■ New	■ Amended	☐ Repealed
	Amended Chapter Name (*if applicable*):			
Chapter Number:	Chapter Name:			
14	Exploration for Coal by Drilling	☐ New	■ Amended	☐ Repealed
	Amended Chapter Name (*if applicable*):			
Chapter Number:	Chapter Name:	☐ New	☐ Amended	☐ Repealed
	Amended Chapter Name (*if applicable*):			
Chapter Number:	Chapter Name:	☐ New	☐ Amended	☐ Repealed
	Amended Chapter Name (*if applicable*):			
Chapter Number:	Chapter Name:	☐ New	☐ Amended	☐ Repealed
	Amended Chapter Name (*if applicable*):			
Chapter Number:	Chapter Name:	☐ New	☐ Amended	☐ Repealed
	Amended Chapter Name (*if applicable*):			

4. Public Notice of Intended Rulemaking

a. Notice was mailed 45 days in advance to all persons who made a timely request for advance notice. ☐ No. ☑ Yes. ☐ N/A

b. A public hearing was held on the proposed rules. ☐ No. ■ Yes. Please complete the boxes below.

Date:	Time:	City:	Location:
February 22, 2023	9:00 a.m. (MST)	Cheyenne	Via video conference due to inclement weather.

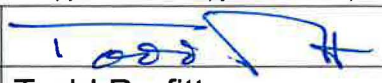
5. Checklist

a. ☑ For regular rules, the Statement of Principal Reasons is attached to this Certification and, in compliance with Tri-State Generation and Transmission Association, Inc. v. Environmental Quality Council, 590 P.2d 1324 (Wyo. 1979), includes a brief statement of the substance or terms of the rule and the basis and purpose of the rule

b. ☐ For emergency rules, the Memorandum to the Governor documenting the emergency, which requires promulgation of these rules without providing notice or an opportunity for a public hearing, is attached to this Certification.

6. Agency/Board Certification

The undersigned certifies that the foregoing information is correct. By electronically submitting the emergency or regular rules into the Wyoming Administrative Rules System, the undersigned acknowledges that the Registrar of Rules will review the rules as to form and, if approved, the electronic filing system will electronically notify the Governor's Office, Attorney General's Office, and Legislative Service Office of the approval and electronically provide them with a copy of the complete rule packet on the date approved by the Registrar of Rules. The complete rules packet includes this signed certification page; the Statement of Principal Reasons or, if emergency rules, the Memorandum to the Governor documenting the emergency; and a strike and underscore copy and clean copy of each chapter of rules.

Signature of Authorized Individual	
Printed Name of Signatory	Todd Parfitt
Signatory Title	Director, Department of Environmental Quality
Date of Signature	March 2, 2023

7. Governor's Certification

I have reviewed these rules and determined that they:

1. Are within the scope of the statutory authority delegated to the adopting agency;
2. Appear to be within the scope of the legislative purpose of the statutory authority; and, if emergency rules,
3. Are necessary and that I concur in the finding that they are an emergency.

Therefore, I approve the same.

Governor's Signature	
Date of Signature	

BEFORE THE

ENVIRONMENTAL QUALITY COUNCIL

STATE OF WYOMING

February 22, 2023

IN THE MATTER OF THE PROPOSED REVISION OF THE LAND QUALITY DIVISION RULES RELATED TO THE REGULATION OF COAL MINING	**)**	**STATEMENT OF PRINCIPAL REASONS (SOPR) FOR ADOPTON** **DOCKET #: 23-4101**

Coal Rules

Chapter 11 – Financial Assurance

Chapter 14 – Exploration for Coal by Drilling

Table of Contents

Introduction to Rule Package

Chapter 11 – Financial Assurance

During the 2022 WY Legislative session, the legislature passed House Bill 0045 (HB0045). HB0045 authorized and required the Department of Environmental Quality (DEQ) and the Environmental Quality Council (EQC) to establish a voluntary assigned trust option for reclamation bonds. The legislation further provided that DEQ and EQC shall specify the requirements for voluntary assigned trusts, that any proceeds held in the voluntary assigned trust are held in trust by the state on behalf of the operator's permit or license for fulfilling all or a portion of reclamation requirements and required rulemaking by the DEQ and EQC.

HB0045 was signed by the Governor and became effective on July 1, 2022. Wyoming Statute (W.S.) § 35-11-417(h) was revised to state that rules for the program shall apply to coal, bentonite,

trona and uranium permits or licenses. Subsection (h) shall only become operative once rules have been promulgated and signed by the Governor. Subsection (h) also stated that any rules promulgated under that subsection would be subject to the requirements of W.S. § 35-11-417(h)(i) through (xi). The proposed rule changes to LQD's Coal Chapter 11 in this rule package are intended to comply with those requirements.

Chapter 14 – Exploration for Coal by Drilling

LQD submitted a formal amendment to the Office of Surface Mining Reclamation and Enforcement (OSMRE) on June 4, 2021 which contained revisions to LQD Coal Chapter 14. OSMRE reviewed the formal amendment and noted one deficiency that would need to be addressed through a future rulemaking in their August 12, 2022 review letter. The letter noted that Chapter 14, Section 2(i) had a reference wildlife that did not include the word "fish" from the term "fish and wildlife". That term has been added to Subsection 2(i). In addition, a formatting change was made to the header for the chapter to comply with the Wyoming Secretary of State's, Rules on Rules for State Agencies.

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The authority to amend these rules is provided by Wyoming Statute (W.S.) §§ 35-11-112(a)(i), 35-11-114(b), 35-11-401(j), 35-11-402(a), and 35-11-417.

Chapter 11

Financial Assurance

Section 1. Definitions

…

(i) "Voluntary irrevocable assigned trust" means a permit specific trust account established with the state treasurer for all or a portion of the full cost of reclamation for permits or licenses as determined by the annual Director's bond letter and funded by the operator through payments to the assigned trust to the permit or license for the benefit of the Department.

A new definition for the assigned trust that makes clear that the full cost of reclamation will be determined annually in the Director's bond letter and also contains elements of the statutory language found in HB0045 (2022) that requires DEQ and EQC to promulgate rules for the program.

Section 2. Acceptable Financial Instruments.

The following bond instruments are accepted by the Division: corporate surety, irrevocable letters of credit, self-bond, federally insured certificates of deposit, cash, government securities, ~~and~~ real property collateral, and voluntary irrevocable assigned trust.

Section 2 was revised to include voluntary irrevocable assigned trusts to the list of acceptable financial instruments that can be acceptable by the Division for the purposes of reclamation bonds. No additional changes are proposed for Section 2.

Section 3. Irrevocable Letters of Credit.

(a) Letters of credit as authorized by W.S. § 35-11-418, shall be subject to the following conditions and submitted on forms provided by the Administrator:

Section 3 was revised to clarify that irrevocable letters of credit shall be submitted on forms provided by the Administrator. This is consistent with other types of bonds like sureties. No other changes are proposed for Section 3 of this chapter.

…

No changes are proposed for Sections 4 or 5 of Chapter 11.

Section 6. Voluntary Irrevocable Assigned Trusts

(a) All coal permits and licenses are eligible for a voluntary irrevocable assigned trust.

Coal permits and licenses are eligible to use assigned trusts in accordance with W.S. § 35-11-417(h) and is voluntary on the part of the operator under W.S. § 35-11-417(h)(i).

(b) An operator may file an application with the Department for a permit or license specific voluntary irrevocable assigned trust managed by the state treasurer for the benefit of the Department. Funds from the assigned trust shall only be available to the Department to cover the cost of completing reclamation in the event of forfeiture.

Assigned trusts will be managed by the state treasurer for the benefit of the Department and funds in the assigned trust may only be used by the Department in the event of forfeiture in accordance with W.S. § 35-11-417(h)(vii).

(c) The assigned trust may bond all or a portion of the full cost of reclamation of a permit or license as determined by the annual Director's Bond Letter (DBL). The operator shall provide other acceptable bonding instruments for any portion of the approved reclamation cost estimate that is not covered by the assigned trust.

Assigned trusts can be funded up to the total cost of an operations reclamation cost as will be determined annually in the DBL under W.S. § 35-11-417(h). Any portion of the reclamation cost not covered by the assigned trust shall be provided through other bond instruments acceptable to the Department under W.S. § 35-11-417(h)(iii)(C). Acceptable instruments are listed in Section 2 above.

(d) Voluntary irrevocable assigned trusts shall be in accordance with the following:

(i) Application forms will be provided by the Department for enrollment and shall include:

(A) A reclamation cost estimate for the permit or license. The estimate shall be determined by the current Director's Bond Letter. Permits or licenses with Underground Injection Control (UIC) bond requirements that are pledged to the Water Quality Division shall be bonded with an alternative acceptable bond instrument;

Applications for participation in the assigned trust will require a reclamation cost estimate as provided in the DBL. This section also clarifies that when a permit or license requires UIC bonding, that portion of the reclamation cost estimate will need to be covered by another acceptable type of bond instrument. The assigned trust option is only available to LQD permits or licenses.

(B) An estimate of the remaining life of mine and reclamation operations as disclosed in the current annual report for the permit or license;

The payment plan under W.S. § 35-11-417(h)(iii)(A) requires that the department provide the treasurer a copy of the annual DBL that discloses the reclamation cost

estimate and life of mine and reclamation timeline. This information is provided by the operator in the annual report and will be incorporated in to the annual DBL templates for operations with an assigned trust.

(C) A proposed amount of the initial deposit to the trust. In no case shall the initial and subsequent deposits in the first year be less than one percent of the total annual reclamation cost estimate as disclosed in the current DBL;

W.S. § 35-11-417(h)(iii)(B) requires annual payments of not less than one percent of the total annual reclamation cost.

(D) A proposed schedule of annual payments;

(E) Approval from federal agencies for permits or licenses that include federal lands with a federal bonding requirement.

Federal agency approval and acceptance of the use of assigned trusts will be required for permits and licenses that have federal lands as required by W.S. § 35-11-417(h)(xi).

(ii) For each approved voluntary assigned trust:

(A) The Department shall provide the state treasurer with a copy of the DBL that discloses the reclamation cost estimate and the estimated remaining life of mine and reclamation operations annually;

(B) Participants shall provide annual payments of not less than one percent of the total annual reclamation cost estimate until the assigned trust is fully funded;

(C) Participants shall provide other acceptable bonding instruments as noted in Section 2 of this chapter to cover the remaining full cost of reclamation until such time as the voluntary assigned trust is fully funded;

(D) Funds received by the Department shall be invested by the state treasurer as authorized by law. The funds shall be invested in a manner that preserves one hundred percent of the corpus;

Subsections (A) through (D) are intended to comply with the requirements of W.S. § 35-11-417(h)(iii) and (iv). Assigned trusts for coal permits and licenses must preserve 100% of the corpus of the trust.

(E) Earnings from investment of the corpus of the assigned trust shall be credited by the state treasurer to the balance of each voluntary assigned trust;

Subsection (E) is intended to comply with the requirement in W.S. 35-11-417(h)(v).

(F) The Department shall provide a statement of account as defined by the treasurer annually at the end of the fiscal year; and

(G) Bond reductions to the permit or license shall be made from any other bond instruments first until the assigned trust is fully funded.

When the reclamation bond estimate is reduced or lands are reclaimed and bond release is approved any reduction in the bond amount held by the Department shall be made from any other acceptable bond instruments when the assigned trust is not fully funded in accordance with W.S. § 35-11-417(h)(viii).

(e) Assigned trust withdrawals.

(i) No funds shall be withdrawn by the participant from the assigned trust account during the first year after the date of establishment of the assigned trust;

(ii) Assets from the assigned trust may only be withdrawn after complete funding of the trust;

(iii) Funds from the assigned trust shall be withdrawn last after any approved alternative reclamation bonding instruments have been released by the Department;

(iv) The assigned trust may not be substituted by another bonding instrument;

(v) Funds from the assigned trust shall only be released following certification of the requested bond release by the director per the provisions of W.S. 35-11-423 or in the event of bond forfeiture under W.S. § 35-11-421;

(vi) The assets of each assigned trust shall only be available to the Department to cover the cost of completing reclamation in the event of forfeiture; and

(vii) Once the assigned trust fully funded and the balance is in excess of the reclamation costs the operator may request a release of the excess funds using forms provided by the Department and state treasurer.

Subsection (e) above is intended to comply with the requirements of W.S. § 35-11-417(h)(vi), (viii), (ix), and (x)(A).

(f) Assigned trust transfers.

W.S. § 35-11-417(h)(x)(B) requires that any rules promulgated under the statute must provide provisions for the transfer of assigned trusts to a new owner when a permit or license transfer takes place. Subsection (f) details the requirements for assigned trust transfers.

(i) Assets from the assigned trust may be transferred to a new eligible

operator upon approval of a permit or license transfer in accordance with W.S. § 35-11-408.

(ii) Assigned trust transfer requirements shall include:

(A) The assigned trust may not be substituted and shall be transferred along with the permit transfer if the estimated life of mine is equal to five years or less; and

(B) All expenses and penalties associated with the transfer of the assigned trust are the responsibility of the license or permit holder.

(iii) Upon the application for a permit or license transfer no funds in the assigned trust shall be released to either the transferor or transferee until a final decision on the transfer application is made by Department.

(iv) Double bonding shall not be required for any reclamation costs of the permit or license covered by assigned trust funds, however the proposed transferee shall provide additional acceptable bond instruments for that portion of the reclamation costs not covered by the assigned trust prior to the transfer of the permit or license. Bond instruments shall be released to the transferor at the time of acceptance of the transferee's bond instruments and approval of the permit or license transfer.

When transfer applications are processed by the Department the applicant for the transfer will submit the required bond amount with acceptable bond instruments prior to the approval of the transfer. The current permit holder will also have bonds in place that will not be released until the time of approval of the transfer. This can result in an operation being double bonded for a period of time. If a permit or license is bonded by an assigned trust the operation is covered by a cash bond and therefore the new applicant will not be required to post a bond for the amount covered by the trust because that amount will be transferred when the permit or license transfer is approved.

Section ~~6~~ 7. Requirements for Forfeiture and Release.

(a) All requirements as to bond forfeiture proceedings and the release of bonds shall be consistent with W.S. § 35-11-417(e) and W.S. §§ 35-11-421 through 424 of the Act, excepting the requirements as to notification to the surety.

(b) The Department shall retain the full value of the real property until the bond liability equal to the value of the real property is released or substituted with another financial instrument.

(c) Forfeitures with reclamation bonds held in an assigned trust shall be processed in accordance with Section 6(e) above.

~~DEPARTMENT OF ENVIRONMENTAL QUALITY~~

~~LAND QUALITY DIVISION~~

Chapter 14

Exploration for Coal by Drilling

The header for Coal Chapter 14 has been edited to comply with the requirements of the Secretary of State's Rules on Rules for State Agencies. No changes are proposed for Section 1 of Chapter 14.

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Section 2. General Drill Hole Abandonment Requirements.

…

(i) All drill holes shall be backfilled to the surface with dry nonslurry materials or capped with a concreted cap set at least two (2) feet below the ground surface and then backfilled to the surface with native earthen materials to ensure the safety of people, livestock, fish and wildlife, and machinery in the area.

Section 2(i) above was revised in accordance with the OSMRE August 12, 2022 Review letter in response to the LQD's June 4, 2021 submittal of the formal amendment for Coal Chapter 14. The OSMRE stated that the text of the Endangered Species Act and Surface Mining Control and Reclamation Act (SMCRA) consistently demonstrated Congress' intent to use the two words together in reference to fish and wildlife, even though wildlife could include all fauna. Therefore, the section above was considered less effective than the federal regulations at 30 CFR 816.13 and less stringent than SMCRA. LQD has made the correction as requested by OSMRE. No additional changes are proposed to the rest of the chapter.

Proposed Revisions to Department of Environmental Quality, Land Quality Division, Coal Rules, Chapters 11 – Financial Assurance, and 14 – Exploration for Coal by Drilling.

Analysis of Comments Received for Docket #23-4101

February 22, 2023

On January 6, 2023, the Department of Environmental Quality, Land Quality Division (LQD) submitted a Notice of Intent to adopt rules in accordance with Wyoming Statute § 16-3-103 and the Secretary of State's Rules on Rules for State Agencies, which initiated a 45-day public comment period for the LQD's Coal rules.

The LQD also notified interested parties electronically through the GovDelivery system on January 6, 2023 and published a public notice in the Casper Star-Tribune on January 7, 2023.

The LQD did not receive any comments on the proposed rules during the notice period which ended at the close of business on February 20, 2023.

Chapter 11

Financial Assurance

Section 1. Definitions

(a) "Irrevocable letter of credit" is a negotiated financial instrument that is used to pay a beneficiary issued by a banking institution to guarantee payment.

(b) "Liabilities" means obligations to transfer assets or provide services to other entities in the future as a result of past transactions including off-balance sheet liabilities.

(c) "Net worth" means total assets minus total liabilities including on and off-balance sheet liabilities.

(d) "Real property" means land and appurtenances as defined in Wyoming Statute (W.S.) §39-15-101(a)(v).

(e) "Real property collateral" means the actual or constructive deposit of a perfected, first lien security interest in real property located within the State of Wyoming, in favor of the Wyoming Department of Environmental Quality which meets the requirements of this Chapter. The property may include land which is part of the permit area; however, land pledged as collateral for a bond shall not be disturbed under any permit while it is serving as security.

(f) "Self-bond" means an indemnity agreement in a sum certain made payable to the State, with or without separate surety. The indemnity agreement is signed by the permittee and, if applicable, the ultimate parent entity guarantor.

(g) "Tangible net worth" means net worth minus intangibles such as goodwill, patents or royalties.

(h) "Ultimate parent entity" means an entity not controlled by any other entity and is the topmost responsible entity which owns or controls the applicant and is the guarantor for a self-bond.

(i) "Voluntary irrevocable assigned trust" means a permit specific trust account established with the state treasurer for all or a portion of the full cost of reclamation for permits or licenses as determined by the annual Director's bond letter and funded by the operator through payments to the assigned trust to the permit or license for the benefit of the Department.

Section 2. Acceptable Financial Instruments.

The following bond instruments are accepted by the Division: corporate surety, irrevocable letters of credit, self-bond, federally insured certificates of deposit, cash, government

securities, real property collateral, and voluntary irrevocable assigned trust.

Section 3. Irrevocable Letters of Credit.

(a) Letters of credit as authorized by W.S. § 35-11-418, shall be subject to the following conditions and submitted on forms provided by the Department:

(i) The letter must be payable to the Department in part or in full upon demand and receipt from the Director of a notice of forfeiture issued in accordance with W.S. § 35-11-421;

(ii) The letter shall not be in excess of ten percent of the issuing or supporting bank's capital surplus account as shown on a balance sheet liabilities certified by a certified public accountant;

(iii) The Administrator shall not accept standby letters of credit;

(iv) The Administrator shall not accept letters of credit from a bank for any person, on all permits held by that person, in excess of the limitations imposed by W.S. §13-3-402; and

(v) The letter of credit shall provide that:

(A) The bank will give prompt notice to the permittee and the Director of any notice received or action filed alleging the insolvency or bankruptcy of the bank, or alleging any violations of regulatory requirements which could result in suspension or revocation of the bank's charter or license to do business;

(B) In the event the bank becomes unable to fulfill its obligations under the letter of credit for any reason, notice shall be given immediately to the permittee and the Director; and

(C) Upon the incapacity of a bank by reason of bankruptcy, insolvency, or suspension or revocation of its charter or license, the permittee shall be deemed to be without performance bond coverage in violation of the Act. The Director shall issue a notice of violation against any operator who is without bond coverage, specifying a reasonable period to replace bond coverage, not to exceed 90 days. During this period the Director or his designated representative shall conduct weekly inspections to ensure continuing compliance with other permit requirements, the regulations and the Act. If the notice is not abated in accordance with the schedule, a cessation order shall be issued.

(D) The irrevocable letter of credit may be cancelled by the surety only after ninety (90) days notice to the Director, and upon receipt of the Director's written consent, which may be granted only when the requirements of the bond have been fulfilled.

(b) The letter may only be issued by a bank organized to do business in the U.S. which identifies by name, address, and telephone number an agent upon whom any process, notice or

demand required or permitted by law to be served upon the bank may be served.

(i) If the bank fails to appoint or maintain an agent in this State, or whenever any such agent cannot be reasonably found, then the Director shall be an agent for such bank upon whom any process, notice or demand may be served for the purpose of this Chapter. In the event of any such process, the Director shall immediately cause one copy of such process, notice or demand to be forwarded by registered mail to the bank at its principal place of business. The Director shall keep a record of all processes, notices, or demands served upon him under this paragraph, and shall record therein the time of such service and his action with reference thereto.

(ii) Nothing herein contained shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon the bank in any other manner now or hereafter permitted by law.

Section 4. Self-bonds.

(a) Application to Self-bond.

(i) Initial application to self-bond shall be made at the time the operator makes written application to the Administrator for a license to mine. An operator conducting an existing operation with greater than a five (5)-year life of mine remaining may submit an application to self-bond to the Administrator. The application shall be on forms furnished by the Administrator and shall contain:

(A) Identification of operator:

(I) For corporations, name, address, telephone number, state of incorporation, a description of the corporate structure, principal place of business and name, title and authority of person signing application, and statement of authority to do business in the State of Wyoming, or

(II) For all other forms of business enterprises, name, address and telephone number and statement of how the enterprise is organized, law of the state under which it is formed, place of business, and relationship and authority of the person signing the application.

(B) Amount of bond proposed to be under a self-bond in accordance with W.S. § 35-11-417(c)(i). The proposed self-bond maximum amount shall not exceed seventy-five percent (75%) of the required bond amount.

(C) Type of operation and anticipated dates performance is to be commenced and completed.

(D) Brief chronological history of business operations conducted within the last five years which would illustrate a continuous operation for five years immediately preceding the time of application. The Administrator may allow a joint venture or

syndicate with less than five years of continuous operation to qualify under this requirement, if each member of the joint venture or syndicate has been in continuous operation for at least five years immediately preceding the time of application.

(E) Information in sufficient detail to show good faith performance of past mining and reclamation obligations. The compliance information in the permit and/or annual reports may be referenced to satisfy part of this requirement.

(F) Financial information in sufficient detail to show that the operator and ultimate parent entity:

(I) Have a rating for all bond issuance actions and long term credit rating within the current year of "Aa3" or higher as issued by Moody's Investor Service, "AA-" or higher as issued by Standard and Poor's Corporation or "AA-" or higher as issued by Fitch Ratings. The operator is eligible for a maximum of seventy-five percent (75%) of the approved reclamation cost estimate in the most recent Director's bond letter.

(II) Have a rating for all bond issuance actions and long term credit rating within the current year of "A2" or higher as issued by Moody's Investor Service, "A" or higher as issued by Standard and Poor's Corporation or "A" or higher as issued by Fitch Ratings. The operator is eligible for a maximum of seventy percent (70%) of the approved reclamation cost estimate in the most recent Director's bond letter unless the requirements of subsection (I) are met above.

(III) Have a rating for all bond issuance actions and long term credit rating within the current year of "Baa2" or higher as issued by Moody's Investor Service, "BBB" or higher as issued by Standard and Poor's Corporation or "BBB" or higher as issued by Fitch Ratings. The operator is eligible for a maximum of fifty percent (50%) of the approved reclamation cost estimate in the most recent Director's bond letter unless the requirements of subsection (II) are met above.

(IV) In the event of a split rating, the Director has the discretion to determine which rating would be accepted and applied to (I), (II) or (III) of this subsection.

(G) A statement identifying by name, address and telephone number:

(I) A registered office which may be, but need not be, the same as the operator's place of business.

(II) A registered agent, which agent must be either an individual resident in this State, whose business office is identical with such registered office, a domestic corporation, or a foreign corporation authorized to transact business in this State, having a business office identical with such registered office. The registered agent so appointed by the operator shall be an agent to such operator upon whom any process, notice or demand required or permitted by law to be served upon the operator may be served.

(III) If the operator fails to appoint or maintain a registered agent in this State, or whenever any such registered agent cannot be reasonably found at the registered office, then the Director shall be an agent for such operator upon whom any process, notice or demand may be served. In the event of any such process, the Director shall immediately cause one copy of such process, notice or demand to be forwarded by registered mail, to the operator at his principal place of business. The Director shall keep a record of all processes, notices, or demands served upon him under this paragraph, and shall record therein the time of such service and his action with reference thereto.

(IV) Should the operator change the registered office or registered agent, or both, a statement indicating such change shall be filed immediately with the Land Quality Division.

(V) Nothing herein contained shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon an operator in any other manner now or hereafter permitted by law.

(H) A written guarantee for an operator's self-bond from the ultimate parent entity guarantor if the guarantor meets the conditions of subsections (a)(i)(D), (a)(i)(F) and (a)(i)(G) of this Section as if it were the operator. Such a written guarantee may be accepted by the Administrator and shall be referred to as an "ultimate parent entity guarantee." The terms of the ultimate parent entity guarantee shall provide for the following:

(I) If the operator fails to complete the reclamation plan, the ultimate parent entity guarantor shall do so or the ultimate parent entity guarantor shall be liable under the indemnity agreement to provide funds to the state sufficient to complete the reclamation, but not to exceed the actual reclamation costs.

(II) The ultimate parent entity guarantee shall remain in force unless the ultimate parent entity guarantor sends notice of cancellation by certified mail to the operator and to the Administrator at least 120 days in advance of the cancellation date, and the Administrator accepts the cancellation. The cancellation shall be accepted by the Administrator if the operator obtains a suitable replacement bond before the cancellation date, if the lands for which the self-bond, or portion thereof, was accepted have not been disturbed, or if the lands have been released under Chapter 15 or W.S. §§ 35-11-417(e) and 423.

(I) The Administrator shall require the operator to submit any information specified in subsection (a)(i)(F) of this Section in order to determine the financial capabilities of the operator.

(J) The following in order:

(I) For the Administrator to accept an operator's self-bond, the total amount of the outstanding self-bonds of the operator shall not exceed 25 percent of the operator's tangible net worth in the United States; and

(II) For the Administrator to accept an ultimate parent entity guarantee, the total amount of the ultimate parent entity guarantor's outstanding self-bonds and guaranteed self-bonds shall not exceed 25 percent of the ultimate parent entity guarantor's tangible net worth in the United States.

(b) Approval or Denial of Operator's Self-bond Application.

(i) The Administrator, within 60 days of operator's submission of all materials necessary to base a decision on the application shall:

(A) Approve or reject such application and declare in writing his reasons for such action to the operator or his registered agent. The decision shall be based on all the information submitted and shall be sufficient to meet the demonstrations required by W.S. § 35-11-417(d).

(B) If a rejection is based on inadequate information or failure of the operator to supply all necessary material, the Administrator shall allow the operator 30 days to remedy the deficiencies. Such corrections must be made to the satisfaction of the Administrator. The Administrator shall have an additional 60 days to approve or reject the corrected application.

(ii) If the Administrator accepts self-bond, an indemnity agreement shall be submitted subject to the following requirements:

(A) The indemnity agreement shall be executed by all persons and parties who are to be bound by it, including the ultimate parent entity guarantor, and shall bind each jointly and severally.

(B) Corporations applying for a self-bond or ultimate parent corporations guaranteeing an operator’s self-bond shall submit an indemnity agreement signed by two corporate officers who are authorized to bind their corporations. A copy of such authorization shall be provided to the Administrator along with an affidavit certifying that such an agreement is valid under all applicable Federal and State laws. In addition, all corporate guarantors shall provide a copy of the corporate authorization demonstrating that the corporation may guarantee the self-bond and execute the indemnity agreement.

(C) If the applicant is a partnership, joint venture or syndicate, the agreement shall bind each partner or party who has a beneficial interest directly or indirectly, in the operator.

(D) The indemnity agreement shall provide that the persons or parties bound shall pay all litigation costs incurred by the State in any successful effort to enforce the agreement against the operator.

(c) Self-Bond Renewal.

(i) Information for the self-bond renewal under the self-bonding program

which shall accompany the annual credit rating evaluation shall include:

(A) The amount of bond required which is determined by the reclamation cost estimate in accordance with W. S. § 35-11-417(c)(ii) and the amount which is proposed to be under a self-bond.

(B) Financial information in sufficient detail to show that the guarantor still meets one of the criteria in Section 4(a)(i)(F), and the limitation in Section 4(a)(i)(J). The guarantor shall submit the full report from the credit reporting agency or agencies supporting its rating for the current year. Additional information may be requested by the Director when a split rating occurs.

(ii) Any valid initial self-bond shall carry the right of successive renewal as long as the above listed information is submitted and demonstrates that the guarantor remains qualified under W.S. § 35-11-417(d) and there is a minimum five (5)-year life of mine remaining.

(iii) Renewal of self-bonds approved prior to the effective date of these rules shall require the bond and credit ratings described in Section 4(a)(i)(F) and shall meet the limitations in Section 4(a)(i)(J). Operators with self-bonds approved prior to the effective date of these rules shall submit a new application to self-bond within eighteen (18) months of the effective date of these rules.

(d) Self-bond Substitution.

(i) The Administrator may require the operator to substitute a good and sufficient bond instrument if the Administrator determines in writing that the self-bond of the operator fails to provide the protection consistent with the objectives and purposes of this Act. The Administrator shall require full or partial substitution if the financial information submitted or requested under Section 4(c)(i)(B) indicates that the operator and/or the ultimate parent entity no longer qualifies under the self-bonding program. Substitution of an alternate bond shall be made within 90 days. The operator may also request substitution. This request is contingent upon the operator meeting all the requirements of the bond provisions (W.S. §§ 35-11-417 through 424) of the Act. If these requirements are met, the Administrator shall accept substitution.

(ii) If the operator fails within 90 days to make a substitution for the revoked self-bond the Administrator shall suspend or revoke the license of the operator to conduct operations upon the land described in the permit until such substitution is made.

(iii) All methods of substitution shall be made in accordance with the bonding provisions (W.S. §§ 35-11-417 through 418) of the Act. The Administrator shall require substitution of a good and sufficient bond.

(e) Reporting Requirements.

(i) If a devaluation in the credit rating occurs, the Administrator shall be notified within thirty (30) days of the change and a copy of the rating report shall be provided to

the Administrator.

(ii) A statement listing any notices issued by the Securities and Exchange Commission or proceedings against the operator or the ultimate parent entity initiated by any party alleging a failure to comply with any public disclosure or reporting requirements under the securities laws of the United States. Such statement shall include a summary of each such allegation, including the date, the requirement alleged to be violated, the party making the allegation, and the disposition or current status thereof. The Administrator shall be notified within thirty (30) days of the filing.

Section 5. Collateral Bonds.

(a) Collateral bond means an indemnity agreement in a sum certain executed by the operator as principal which is supported by the deposit with the Department of one or more of the following:

(i) Cash directly deposited with the Department is exempt from the trust provisions;

(ii) Negotiable bonds of the United States, a State or a municipality, endorsed to the order of the Department and placed in possession of the Department. Possession may be in the form of the cash value of the irrevocable trust for the full amount of the reclamation obligation and payable to the Department and federally insured. An operator may satisfy the requirements of this subsection by establishing an irrevocable trust that conforms to the requirements below and submitting an originally signed duplicate of the trust agreement to the Administrator for consideration.

(A) The wording of the irrevocable trust must be identical to the wording specified on the Wyoming Department of Environmental Quality Irrevocable Trust for Coal Reclamation Form and be signed by the operator or guarantor as principal, the financial institution as Trustee and be made payable to the Department;

(B) The Trustee must be a bank organized to do business in the United States that has the authority to act as a trustee and whose trust operations is regulated and examined by a Federal or State Agency;

(C) The irrevocable trust must be cash funded for the full amount of the reclamation obligation to be provided in the irrevocable trust before it may be approved to satisfy the requirements of financial assurance in lieu of a bond. For purposes of this subsection, "the full amount of the reclamation obligation to be provided" means the amount of coverage for reclamation required to be provided for the permit, less the amount of financial assurance for reclamation obligation that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the operator or guarantor;

(D) Cancellation of an irrevocable trust shall follow the same procedures detailed in W.S. 35-11-419 for performance bonds; and

(E) Forfeiture proceeding for an irrevocable trust shall follow the same procedures detailed in W.S. 35-11-421 for performance bonds.

(iii) For any real property collateral, the following information shall be provided:

(A) The value of the real property. The property shall be valued at the difference between the fair market value and any reasonable expense anticipated by the Department in selling the property. The fair market value shall be determined by a market analysis that may be conducted by an appraiser or qualified agent proposed by the operator. The appraiser shall be selected by the Administrator. The Administrator has the option to reject any appraiser proposed by the operator. The expense of the appraisal shall be borne by the operator. The real property shall be appraised every three (3) years.

(B) A description of the property satisfactory for deposit to further assure that the operator shall faithfully perform all requirements of the Act. The Administrator shall have full discretion in accepting any such offer.

(I) Real property shall not include any lands in the process of being mined, reclaimed, or the subject of this application. The operator may offer any lands within the permit boundary which have received phase 3 bond release or which will not be disturbed while pledged as collateral. The acceptance of real property within the permit boundary shall be at the discretion of the Director.

(C) Evidence of ownership of the real property shall be in the form of a clear and unencumbered title.

(D) If the Administrator accepts any real property as collateral, the Administrator shall require possession by the Department of the mortgage agreement executed by the operator in favor of the Department of Environmental Quality. The requirement shall be sufficient to vest such interest in the property in the Department to secure the right and power to sell or otherwise dispose of the property by public or private proceedings so as to ensure reclamation of the affected lands in accordance with the Act. Any mortgage shall be executed and duly recorded as required by law so as to be first in time and constitute notice to any prospective subsequent purchaser of the same real property or any portion thereof.

(E) Any security interest created by a security agreement shall be perfected by filing a financing statement or taking possession of the collateral in accordance with W.S. §§ 34.1-9-401 through 406. The Department shall have all rights and duties set forth in W.S. § 34.1-9-207 when the collateral is in its possession as a secured party, as defined in W.S. § 34.1-9-102(a)(lxxv). Any money received from the collateral during this period of time shall be remitted to the operator. When the collateral is left in the possession of the operator, the security agreement shall require that, upon default, the operator shall assemble the collateral and make it available to the Department at a place to be designated by the Department which is reasonably convenient to both parties.

(F) The operator may, with written approval by the Administrator, substitute for any of the real property held hereunder other real property upon submittal of all information required under this section.

(G) All parties with a claim subordinate to the Department in property held as collateral under this section shall be notified by the operator of all actions affecting the collateral.

(iv) Securities.

(A) Securities that are unencumbered shall only include those which are United States government securities or State government securities which are acceptable to the Administrator. Certificates of deposit shall be insured by the Federal Deposit Insurance Corporation (FDIC).

(B) If the instrument offered for deposit is a security, the operator's interest must be evidenced by possession of the original or a notarized copy of the certificate or a certified statement of account from a brokerage house.

(C) If the Administrator accepts any government securities, the Administrator shall require possession by the Department of the security agreement executed by the operator in favor of the Department of Environmental Quality. The requirement shall be sufficient to vest such interest in the property in the Department to secure the right and power to sell or otherwise dispose of the property by public or private proceedings so as to ensure reclamation of the affected lands in accordance with the Act.

Section 6. Voluntary Irrevocable Assigned Trusts

(a) All coal permits and licenses are eligible for a voluntary irrevocable assigned trust.

(b) An operator may file an application with the Department for a permit or license specific voluntary irrevocable assigned trust managed by the state treasurer for the benefit of the Department. Funds from the assigned trust shall only be available to the department to cover the cost of completing reclamation in the event of forfeiture.

(c) The assigned trust may bond all or a portion of the full cost of reclamation of a permit or license as determined by the annual Director’s Bond Letter (DBL). The operator shall provide other acceptable bonding instruments for any portion of the approved reclamation cost estimate that is not covered by the assigned trust.

(d) Voluntary irrevocable assigned trusts shall be in accordance with the following:

(i) Application forms will be provided by the Department for enrollment and shall include:

(A) A reclamation cost estimate for the permit or license. The estimate shall be determined by the current Director's Bond Letter. Permits or licenses with Underground Injection Control (UIC) bond requirements that are pledged to the Water Quality Division shall be bonded with an alternative acceptable bond instrument;

(B) An estimate of the remaining life of mine and reclamation operations as disclosed in the current annual report for the permit or license;

(C) A proposed amount of the initial deposit to the trust. In no case shall the initial and subsequent deposits in the first year be less than one percent of the total annual reclamation cost estimate as disclosed in the current DBL;

(D) A proposed schedule of annual payments;

(E) Approval from federal agencies for permits or licenses that include federal lands with a federal bonding requirement.

(ii) For each approved voluntary assigned trust:

(A) The department shall provide the state treasurer with a copy of the DBL that discloses the reclamation cost estimate and the estimated remaining life of mine and reclamation operations annually;

(B) Participants shall provide annual payments of not less than one percent of the total annual reclamation cost estimate until the assigned trust is fully funded;

(C) Participants shall provide other acceptable bonding instruments as noted in Section 2 of this chapter to cover the remaining full cost of reclamation until such time as the voluntary assigned trust is fully funded;

(D) Funds received by the Department shall be invested by the state treasurer as authorized by law. The funds shall be invested in a manner that preserves one hundred percent of the corpus;

(E) Earnings from investment of the corpus of the assigned trust shall be credited by the state treasurer to the balance of each voluntary assigned trust;

(F) The Department shall provide a statement of account as defined by the treasurer annually at the end of the fiscal year; and

(G) Bond reductions to the permit or license shall be made from any other bond instruments first until the assigned trust is fully funded.

(e) Assigned trust withdrawals.

(i) No funds shall be withdrawn by the participant from the assigned trust account during the first year after the date of establishment of the assigned trust;

(ii) Assets from the assigned trust may only be withdrawn after complete funding of the trust;

(iii) Funds from the assigned trust shall be withdrawn last after any approved alternative reclamation bonding instruments have been released by the Department;

(iv) The assigned trust may not be substituted by another bonding instrument;

(v) Funds from the assigned trust shall only be released following certification of the requested bond release by the director per the provisions of W.S. 35-11-423 or in the event of bond forfeiture under W.S. § 35-11-421;

(vi) The assets of each assigned trust shall only be available to the Department to cover the cost of completing reclamation in the event of forfeiture; and

(vii) Once the assigned trust fully funded and the balance is in excess of the reclamation costs the operator may request a release of the excess funds using forms provided by the Department and state treasurer.

(f) Assigned trust transfers.

(i) Assets from the assigned trust may be transferred to a new eligible operator upon approval of a permit or license transfer in accordance with W.S. § 35-11-408.

(ii) Assigned trust transfer requirements shall include:

(A) The assigned trust may not be substituted and shall be transferred along with the permit transfer if the estimated life of mine is equal to five years or less; and

(B) All expenses and penalties associated with the transfer of the assigned trust are the responsibility of the license or permit holder.

(iii) Upon the application for a permit or license transfer no funds in the assigned trust shall be released to either the transferor or transferee until a final decision on the transfer application is made by Department.

(iv) Double bonding shall not be required for any reclamation costs of the permit or license covered by assigned trust funds, however the proposed transferee shall provide additional acceptable bond instruments for that portion of the reclamation costs not covered by the assigned trust prior to the transfer of the permit or license. Bond instruments shall be released to the transferor at the time of acceptance of the transferee's bond instruments and approval of the permit or license transfer.

Section 7. Requirements for Forfeiture and Release.

(a) All requirements as to bond forfeiture proceedings and the release of bonds shall be consistent with W.S. § 35-11-417(e) and W.S. §§ 35-11-421 through 424 of the Act, excepting the requirements as to notification to the surety.

(b) The Department shall retain the full value of the real property until the bond liability equal to the value of the real property is released or substituted with another financial instrument.

(c) Forfeitures with reclamation bonds held in an assigned trust shall be processed in accordance with Section 6(e) above.

Chapter 14

Exploration for Coal by Drilling

Section 1. Conducting Exploration by Drilling.

(a) Any discoverer conducting exploration by drilling within this State, shall do so in strict compliance with all the provisions of W.S. § 35-11-404 (2015) and this Chapter.

(b) The requirements of this Chapter shall apply to exploration by drilling within and outside of the permit area of a surface coal mining and reclamation operation. The requirements of this Chapter shall not apply to backfill wells or coal developmental drilling conducted within five hundred (500) feet of the active mine area.

(c) Prior to any coal exploration by drilling inside a permit area where the drilling is located five hundred (500) feet or more from the active mine area, the developer shall notify the Administrator and adjust the reclamation bond for the coal permit.

(d) Prior to any coal exploration by drilling outside of the permit area of a surface coal mining and reclamation operation, the discoverer shall provide a Drilling Notification and a reclamation bond acceptable to the Administrator.

(e) The Drilling Notification shall be in a form as specified by the Administrator and shall include:

(i) The approximate number and depth of holes to be drilled; and

(ii) A map showing the approximate hole locations within the exploration area.

(f) The Administrator shall review the notification and the bond and shall notify the discoverer in a timely manner, not to exceed sixty (60) day from receipt, whether the drilling is approved or additional information is required.

(g) For the purpose of this Chapter, the discoverer's hole completion and surface restoration plan is a report or information which, if made public, would divulge trade secrets. Upon request by the discoverer, the Director and Administrator shall consider this report or information confidential pursuant to W.S. § 35-11-1101 (2015). This shall be deemed a request to hold the information confidential only for five years unless the discoverer justifies a longer period of time.

Section 2. General Drill Hole Abandonment Requirements.

(a) All drill holes sunk for the purpose of conducting exploration, including those drilled within the permit area of a surface coal mining and reclamation operation, by drilling

shall be capped, sealed or plugged in the manner described hereinafter.

(b) Drill holes that have artesian flow of groundwater to the surface shall be plugged with cement-based sealant material, as specified and in the manner described below, to prevent fluid communication and adverse changes in water quality or quantity.

(i) When the underground pressure head producing flow is such that a counter pressure must be applied to force a sealant into the drill hole, this counter pressure shall be maintained for the length of time required for the cementing mixture to set.

(ii) The minimum time that must be allowed for materials containing cement to "set" shall be in accordance with ASTM C150 or API RP 10B.

(c) Drill holes that have encountered any groundwater or saturated stratum shall be sealed utilizing sealant materials and emplacement methods as prescribed hereinafter to prevent fluid communication and adverse changes in water quality or quantity.

(d) "Sealant materials" are materials that are stable, have low permeability (1×10^{-7} cm/sec or less) and possesses minimum shrinking properties such that they are optimal sealing materials for well plugging and drill hole abandonment. Used drilling muds are not acceptable.

(e) Sealant materials shall meet the technical requirements for making a proper seal, shall meet applicable recognized industry standards and shall be prepared according to manufacturer's directions for specific site requirements. The following are approved sealant materials:

(i) Neat Cement Slurry must consist of a mixture of Portland Cement and more than six (6) gallons of clean water per bag of cement (one (1) cubic foot or ninety-four (94) pounds);

(ii) Sand Cement Slurry must consist of a mixture of Portland Cement, sand and water in the proportion of not more than one (1) part by weight of sand to one (1) part of cement with not more than six (6) gallons of clean water per bag of cement (one (1) cubic foot or ninety-four (94) pounds);

(iii) Concrete Slurry must consist of a mixture of Portland Cement, sand and gravel aggregate and water in a proportion of not more than one (1) peart by weight of aggregate to one (1) part of cement with not more than six (6) gallons of clean water per bag of cement (one (1) cubic foot or ninety-four (94) pounds);

(iv) Cement/Bentonite Slurry must consist of a mixture of cement and bentonite in the proportion of not more than six and a half (6.5) gallons of water and three (3) to five (5) pounds of powdered bentonite per bag of cement (one (1) cubic foot or ninety-four (94) pounds);

(v) High Solids Bentonite Slurry means an inorganic mixture with a slurry

density of nine and four tenths (9.4) pounds per gallon (lbs/gal) minimum twenty percent (20%) by weight of solids bentonite, with polymers, water or other additives for the yield/rate control, which forms a low permeability seal (not greater than one (1) x 10^{-7} cm/sec) and is mixed to the manufacturer's specifications;

(vi) Nonslurry Bentonite must consist of chipped or pelletized bentonite varieties specifically designed to be used to seal drill holes; and

(vii) Abandonment Gel means a mixture of bentonite with polymers and other additives and water in the proportion of one (1) barrel of water to fifteen (15) pounds of abandonment material with a minimum slurry density of eight and six tenths (8.6) pounds per gallon (lbs/gal). Abandonment Gel used to seal boreholes shall meet the following specifications when using American Petroleum Institute Standard Procedures for Testing Drilling Fluids:

(A) Ten minute gel strength of at least twenty (20) pounds per one hundred (100) square feet (20 lbs/100 sq. ft.);

(B) Filtrate volume not to exceed thirteen and one half (13.5) cubic centimeters (cc); and

(C) Minimum Marsh Funnel viscosity of sixty (60) seconds per quart.

(f) Sealant materials shall be emplaced in a manner that provides a water tight seal utilizing one of the following approved methods:

(i) By placing sealant materials by drill pipe, tremie pipe or similar device in an upward direction from the bottom of the drill hole to within approximately five (5) feet of the ground surface; or

(ii) By placing nonslurry bentonite from the bottom of the drill hole to within approximately five (5) feet of the ground surface. Nonslurry bentonite shall not be utilized unless the drill hole is four (4) inches or greater in diameter and less than five hundred (500) feet in depth and the material must be placed in such a manner that a bridge does not occur. Nonslurry bentonite may not be placed in more than three hundred (300) feet of standing liquid.

(g) For any drill hole that has been sealed with a sealant material, the discoverer responsible for sealing the drill hole shall;

(i) Measure the depth of the top of the sealant material column with the appropriate equipment after sufficient time (minimum of twenty-four (24) hours) has been allowed for the column of sealant materials to set up;

(ii) If the column of sealant material has dropped or fallen back, the discoverer shall continue to install sealant material until the top of the sealant material column remains at least fifty (50) feet above the top of the uppermost saturated groundwater stratum; and

(iii) Install uncontaminated fill material, drill cuttings or one of the approved sealant materials listed herein from the top of the sealant material column to within approximately five (5) feet of the ground surface.

(h) If a hole is drilled without the use of drilling fluids and the bottom of the hole is above the preexisting natural elevation of the uppermost saturated groundwater stratum, the drill hole shall be abandoned by completely backfilling from the bottom of the drill hole to the surface with uncontaminated earthen material or drill cuttings as a backfill material, this material should be emplaced in a manner to promote settling and compaction and to minimize voids caused by bridging. If the drill hole is backfilled to the natural ground surface with dry nonslurry materials, then no surface cap is necessary.

(i) All drill holes shall be backfilled to the surface with dry nonslurry materials or capped with a concreted cap set at least two (2) feet below the ground surface and then backfilled to the surface with native earthen materials to ensure the safety of people, livestock, fish and wildlife, and machinery in the area.

(j) Drill holes shall be capped or backfilled immediately after drilling and probing in accordance with W.S. §35-11-404(h) (2015). If it is necessary to temporarily delay the abandonment or keep the drill hole open for any reason, the drill hole must be securely covered with a temporary cap in a manner which will prevent injury to persons or animals. Drill holes shall not be left open for more than thirty (30) days without specific authorization from the Administrator.

(k) For inspection and verification purposes, each drill hole shall be marked with a temporary marker that clearly identifies the name of the discoverer and the hole number until bond release is authorized. Drill holes shall not be marked with rebar, metal pipe or metal posts which could pose a hazard to people, livestock, wildlife or machinery.

(l) The Administrator may approve other drill hole abandonment procedures and/or sealant materials at the request of the discoverer.

Section 3. Reclamation of Drill Sites and Affected Lands

(a) Drill sites and associated ancillary roads, as defined in Chapter 1 and 4 of these rules and regulations, shall be restored as nearly as possible to their original location.

(b) To the extent possible, all drilling fluids, drill cuttings and geologic samples shall be handled in the following manner:

(i) For those drill holes abandoned as per Subsection 2(h) of this chapter, remaining drill cuttings may be spread on the surface in such a manner as to prevent impairment of vegetation. Excess drilling mud and drill cuttings or any acid-forming or toxic materials uncovered during or created by exploration by drilling, including petroleum contaminated soils, shall be properly disposed of so as not to constitute a fire, health, or safety hazard during or after the exploration by drilling.

(ii) For all other drill holes: drilling fluids, drill cuttings and geologic samples shall be confined and buried below grade to the extent possible. Excess drilling mud and drill cuttings or any acid-forming or toxic materials uncovered during or created by exploration by drilling, including petroleum contaminated soils, shall be properly disposed of so as not to constitute a fire, health, or safety hazard during or after the exploration by drilling.

(c) To the extent possible, any surface preparation of the drill site shall be accomplished in a manner consistent with Chapter 4, Section 2(b), Land Quality Coal Rules and Regulations.

(d) To the extent possible, topsoil removal and stockpiling shall precede any excavation within the drill site and associated ancillary roads in a manner consistent with Chapter 4, Section 2(c) and 2(j), Land Quality Coal Rules and Regulations.

(e) To the extent possible, the discoverer shall reestablish the vegetative cover where vegetation has been removed or destroyed within the drill site and associated ancillary roads by seeding, planting, transplanting, or by other adequate methods in a manner consistent with Chapter 4, Section 2(d) and 2(i), Land Quality Coal Rules and Regulations.

(f) All lands, including ancillary roads or terrain damaged in gaining access to or clearing the site, or lands whose natural state has been substantially disturbed as a result of the exploration by drilling, shall be restored as nearly as possible to their original condition, including reseeding if grass or other crop was destroyed.

Section 4. Bond.

(a) In order to assure and secure performance of the discoverer's obligations, each discoverer shall agree to post a bond for each exploration area. The amount of the bond shall be computed in accordance with the established engineering principles, for accomplishing proper drill hole abandonment and surface restoration in accordance with the standards set out in this Chapter.

(b) The bond amount for any drill holes or any portion of the exploration area may be reduced when the discoverer demonstrates to the satisfaction of the Administrator that drill hole abandonment has been accomplished in accordance with the standards set out in this Chapter. The amount by which the bond is reduced may be returned to the discoverer or applied towards additional drilling. The bond for any drill sites or any portion of the exploration area may be released when reclamation has been completed and the Administrator finds that vegetation has been reestablished. All bonds shall be signed by the discoverer as principal, by a good and sufficient corporate surety licensed to do business in the State, and be made payable to the State of Wyoming.

(c) In lieu of a bond, the discoverer may deposit federally insured certificates of deposit payable to the Department of Environmental Quality, cash or government securities or all three.

(d) The Administrator may accept the bond of the discoverer itself without separate surety when the discoverer demonstrates to the satisfaction of the Administrator substantial compliance with the applicable provisions of Chapter 11, Land Quality Coal Rules and Regulations.

Section 5. Termination and Report of Operations.

(a) Within 12 months after compliance with 3(a) and sufficient compliance with 3(b) and (c) so that full compliance can be predicted by the Administrator, the discoverer shall comply with the reporting requirements of W.S. § 35-11-404(e) or (f) (2015). After receipt of such report, the Administrator shall have one year to inspect and evaluate the hole completion and surface restoration work and make a determination of whether to release the bond to the discoverer or institute forfeiture proceedings.

(b) Forfeiture proceedings and release of bonds shall be according to the procedure set forth in W.S. §§ 35-11-421 through 35-11-423 (2015); substituting therein "discoverer" for "operator"; "surface restoration" for "reclamation" and "exploration by drilling" for "surface mining".

(c) Failure to so inspect and evaluate shall constitute a decision by the Administrator that the discoverer has complied with this Chapter for release of bond purposes only. This one-year limitation shall not be construed to alter or affect W. S. § 35-11-404(k) - (n) (2015), or any other rights of action against the discoverer granted pursuant to the statutory provisions of the Wyoming Environmental Quality Act.

Section 6. Exceptions.

This Chapter shall not apply to holes drilled for the purpose of conducting oil and gas exploration operations. Specific exceptions from certain requirements of this Chapter shall also be preserved in accordance with W.S. § 35-11-404(g) and (h) (2015).

Section 7. Installation of Wells for Collection of Baseline Information.

(a) Construction of wells may be authorized by the Administrator under a Drilling Notification for the purpose of collecting groundwater baseline data in preparation of a mine permit application.

(b) Prior to installation, the discoverer is encouraged, but not required, to submit a plan for review by the Administrator that describes the location and completion details of each proposed well. The Administrator shall review the plan and respond within thirty (30) days.

(c) Wells shall be permitted in accordance with the requirements of the State Engineer's Office, in accordance with W. S. §35-11-404(c)(iv) (2015).

(d) Provisions shall be made such that each well is secured to prevent contaminant entry.

(e) Adequate bond shall be provided to assure that all wells are properly plugged and sealed and the sites restored.

(f) Well plugging and sealing and site reclamation shall follow the procedures outlined in Sections 2 and 3. Well casing shall be cut off at least two (2) feet below ground surface and any pump and associated appurtenances removed as applicable, before the well is plugged and sealed.

(g) Well abandonment reports shall be filed with the Administrator and the State Engineer's Office within twelve (12) months of abandonment.

Chapter 11

Financial Assurance

Section 1. Definitions

(a) "Irrevocable letter of credit" is a negotiated financial instrument that is used to pay a beneficiary issued by a banking institution to guarantee payment.

(b) "Liabilities" means obligations to transfer assets or provide services to other entities in the future as a result of past transactions including off-balance sheet liabilities.

(c) "Net worth" means total assets minus total liabilities including on and off-balance sheet liabilities.

(d) "Real property" means land and appurtenances as defined in Wyoming Statute (W.S.) §39-15-101(a)(v).

(e) "Real property collateral" means the actual or constructive deposit of a perfected, first lien security interest in real property located within the State of Wyoming, in favor of the Wyoming Department of Environmental Quality which meets the requirements of this Chapter. The property may include land which is part of the permit area; however, land pledged as collateral for a bond shall not be disturbed under any permit while it is serving as security.

(f) "Self-bond" means an indemnity agreement in a sum certain made payable to the State, with or without separate surety. The indemnity agreement is signed by the permittee and, if applicable, the ultimate parent entity guarantor.

(g) "Tangible net worth" means net worth minus intangibles such as goodwill, patents or royalties.

(h) "Ultimate parent entity" means an entity not controlled by any other entity and is the topmost responsible entity which owns or controls the applicant and is the guarantor for a self-bond.

(i) "Voluntary irrevocable assigned trust" means a permit specific trust account established with the state treasurer for all or a portion of the full cost of reclamation for permits or licenses as determined by the annual Director's bond letter and funded by the operator through payments to the assigned trust to the permit or license for the benefit of the Department.

Section 2. Acceptable Financial Instruments.

The following bond instruments are accepted by the Division: corporate surety, irrevocable letters of credit, self-bond, federally insured certificates of deposit, cash, government

securities, ~~and~~ real property collateral, and voluntary irrevocable assigned trust.

Section 3. Irrevocable Letters of Credit.

(a) Letters of credit as authorized by W.S. § 35-11-418, shall be subject to the following conditions and submitted on forms provided by the Department:

(i) The letter must be payable to the Department in part or in full upon demand and receipt from the Director of a notice of forfeiture issued in accordance with W.S. § 35-11-421;

(ii) The letter shall not be in excess of ten percent of the issuing or supporting bank's capital surplus account as shown on a balance sheet liabilities certified by a certified public accountant;

(iii) The Administrator shall not accept standby letters of credit;

(iv) The Administrator shall not accept letters of credit from a bank for any person, on all permits held by that person, in excess of the limitations imposed by W.S. §13-3-402; and

(v) The letter of credit shall provide that:

(A) The bank will give prompt notice to the permittee and the Director of any notice received or action filed alleging the insolvency or bankruptcy of the bank, or alleging any violations of regulatory requirements which could result in suspension or revocation of the bank's charter or license to do business;

(B) In the event the bank becomes unable to fulfill its obligations under the letter of credit for any reason, notice shall be given immediately to the permittee and the Director; and

(C) Upon the incapacity of a bank by reason of bankruptcy, insolvency, or suspension or revocation of its charter or license, the permittee shall be deemed to be without performance bond coverage in violation of the Act. The Director shall issue a notice of violation against any operator who is without bond coverage, specifying a reasonable period to replace bond coverage, not to exceed 90 days. During this period the Director or his designated representative shall conduct weekly inspections to ensure continuing compliance with other permit requirements, the regulations and the Act. If the notice is not abated in accordance with the schedule, a cessation order shall be issued.

(D) The irrevocable letter of credit may be cancelled by the surety only after ninety (90) days notice to the Director, and upon receipt of the Director's written consent, which may be granted only when the requirements of the bond have been fulfilled.

(b) The letter may only be issued by a bank organized to do business in the U.S. which identifies by name, address, and telephone number an agent upon whom any process, notice or

demand required or permitted by law to be served upon the bank may be served.

(i) If the bank fails to appoint or maintain an agent in this State, or whenever any such agent cannot be reasonably found, then the Director shall be an agent for such bank upon whom any process, notice or demand may be served for the purpose of this Chapter. In the event of any such process, the Director shall immediately cause one copy of such process, notice or demand to be forwarded by registered mail to the bank at its principal place of business. The Director shall keep a record of all processes, notices, or demands served upon him under this paragraph, and shall record therein the time of such service and his action with reference thereto.

(ii) Nothing herein contained shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon the bank in any other manner now or hereafter permitted by law.

Section 4. Self-bonds.

(a) Application to Self-bond.

(i) Initial application to self-bond shall be made at the time the operator makes written application to the Administrator for a license to mine. An operator conducting an existing operation with greater than a five (5)-year life of mine remaining may submit an application to self-bond to the Administrator. The application shall be on forms furnished by the Administrator and shall contain:

(A) Identification of operator:

(I) For corporations, name, address, telephone number, state of incorporation, a description of the corporate structure, principal place of business and name, title and authority of person signing application, and statement of authority to do business in the State of Wyoming, or

(II) For all other forms of business enterprises, name, address and telephone number and statement of how the enterprise is organized, law of the state under which it is formed, place of business, and relationship and authority of the person signing the application.

(B) Amount of bond proposed to be under a self-bond in accordance with W.S. § 35-11-417(c)(i). The proposed self-bond maximum amount shall not exceed seventy-five percent (75%) of the required bond amount.

(C) Type of operation and anticipated dates performance is to be commenced and completed.

(D) Brief chronological history of business operations conducted within the last five years which would illustrate a continuous operation for five years immediately preceding the time of application. The Administrator may allow a joint venture or

syndicate with less than five years of continuous operation to qualify under this requirement, if each member of the joint venture or syndicate has been in continuous operation for at least five years immediately preceding the time of application.

(E) Information in sufficient detail to show good faith performance of past mining and reclamation obligations. The compliance information in the permit and/or annual reports may be referenced to satisfy part of this requirement.

(F) Financial information in sufficient detail to show that the operator and ultimate parent entity:

(I) Have a rating for all bond issuance actions and long term credit rating within the current year of "Aa3" or higher as issued by Moody's Investor Service, "AA-" or higher as issued by Standard and Poor's Corporation or "AA-" or higher as issued by Fitch Ratings. The operator is eligible for a maximum of seventy-five percent (75%) of the approved reclamation cost estimate in the most recent Director's bond letter.

(II) Have a rating for all bond issuance actions and long term credit rating within the current year of "A2" or higher as issued by Moody's Investor Service, "A" or higher as issued by Standard and Poor's Corporation or "A" or higher as issued by Fitch Ratings. The operator is eligible for a maximum of seventy percent (70%) of the approved reclamation cost estimate in the most recent Director's bond letter unless the requirements of subsection (I) are met above.

(III) Have a rating for all bond issuance actions and long term credit rating within the current year of "Baa2" or higher as issued by Moody's Investor Service, "BBB" or higher as issued by Standard and Poor's Corporation or "BBB" or higher as issued by Fitch Ratings. The operator is eligible for a maximum of fifty percent (50%) of the approved reclamation cost estimate in the most recent Director's bond letter unless the requirements of subsection (II) are met above.

(IV) In the event of a split rating, the Director has the discretion to determine which rating would be accepted and applied to (I), (II) or (III) of this subsection.

(G) A statement identifying by name, address and telephone number:

(I) A registered office which may be, but need not be, the same as the operator's place of business.

(II) A registered agent, which agent must be either an individual resident in this State, whose business office is identical with such registered office, a domestic corporation, or a foreign corporation authorized to transact business in this State, having a business office identical with such registered office. The registered agent so appointed by the operator shall be an agent to such operator upon whom any process, notice or demand required or permitted by law to be served upon the operator may be served.

(III) If the operator fails to appoint or maintain a registered agent in this State, or whenever any such registered agent cannot be reasonably found at the registered office, then the Director shall be an agent for such operator upon whom any process, notice or demand may be served. In the event of any such process, the Director shall immediately cause one copy of such process, notice or demand to be forwarded by registered mail, to the operator at his principal place of business. The Director shall keep a record of all processes, notices, or demands served upon him under this paragraph, and shall record therein the time of such service and his action with reference thereto.

(IV) Should the operator change the registered office or registered agent, or both, a statement indicating such change shall be filed immediately with the Land Quality Division.

(V) Nothing herein contained shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon an operator in any other manner now or hereafter permitted by law.

(H) A written guarantee for an operator's self-bond from the ultimate parent entity guarantor if the guarantor meets the conditions of subsections (a)(i)(D), (a)(i)(F) and (a)(i)(G) of this Section as if it were the operator. Such a written guarantee may be accepted by the Administrator and shall be referred to as an "ultimate parent entity guarantee." The terms of the ultimate parent entity guarantee shall provide for the following:

(I) If the operator fails to complete the reclamation plan, the ultimate parent entity guarantor shall do so or the ultimate parent entity guarantor shall be liable under the indemnity agreement to provide funds to the state sufficient to complete the reclamation, but not to exceed the actual reclamation costs.

(II) The ultimate parent entity guarantee shall remain in force unless the ultimate parent entity guarantor sends notice of cancellation by certified mail to the operator and to the Administrator at least 120 days in advance of the cancellation date, and the Administrator accepts the cancellation. The cancellation shall be accepted by the Administrator if the operator obtains a suitable replacement bond before the cancellation date, if the lands for which the self-bond, or portion thereof, was accepted have not been disturbed, or if the lands have been released under Chapter 15 or W.S. §§ 35-11-417(e) and 423.

(I) The Administrator shall require the operator to submit any information specified in subsection (a)(i)(F) of this Section in order to determine the financial capabilities of the operator.

(J) The following in order:

(I) For the Administrator to accept an operator's self-bond, the total amount of the outstanding self-bonds of the operator shall not exceed 25 percent of the operator's tangible net worth in the United States; and

(II) For the Administrator to accept an ultimate parent entity guarantee, the total amount of the ultimate parent entity guarantor's outstanding self-bonds and guaranteed self-bonds shall not exceed 25 percent of the ultimate parent entity guarantor's tangible net worth in the United States.

(b) Approval or Denial of Operator's Self-bond Application.

(i) The Administrator, within 60 days of operator's submission of all materials necessary to base a decision on the application shall:

(A) Approve or reject such application and declare in writing his reasons for such action to the operator or his registered agent. The decision shall be based on all the information submitted and shall be sufficient to meet the demonstrations required by W.S. § 35-11-417(d).

(B) If a rejection is based on inadequate information or failure of the operator to supply all necessary material, the Administrator shall allow the operator 30 days to remedy the deficiencies. Such corrections must be made to the satisfaction of the Administrator. The Administrator shall have an additional 60 days to approve or reject the corrected application.

(ii) If the Administrator accepts self-bond, an indemnity agreement shall be submitted subject to the following requirements:

(A) The indemnity agreement shall be executed by all persons and parties who are to be bound by it, including the ultimate parent entity guarantor, and shall bind each jointly and severally.

(B) Corporations applying for a self-bond or ultimate parent corporations guaranteeing an operator’s self-bond shall submit an indemnity agreement signed by two corporate officers who are authorized to bind their corporations. A copy of such authorization shall be provided to the Administrator along with an affidavit certifying that such an agreement is valid under all applicable Federal and State laws. In addition, all corporate guarantors shall provide a copy of the corporate authorization demonstrating that the corporation may guarantee the self-bond and execute the indemnity agreement.

(C) If the applicant is a partnership, joint venture or syndicate, the agreement shall bind each partner or party who has a beneficial interest directly or indirectly, in the operator.

(D) The indemnity agreement shall provide that the persons or parties bound shall pay all litigation costs incurred by the State in any successful effort to enforce the agreement against the operator.

(c) Self-Bond Renewal.

(i) Information for the self-bond renewal under the self-bonding program

which shall accompany the annual credit rating evaluation shall include:

(A) The amount of bond required which is determined by the reclamation cost estimate in accordance with W. S. § 35-11-417(c)(ii) and the amount which is proposed to be under a self-bond.

(B) Financial information in sufficient detail to show that the guarantor still meets one of the criteria in Section 4(a)(i)(F), and the limitation in Section 4(a)(i)(J). The guarantor shall submit the full report from the credit reporting agency or agencies supporting its rating for the current year. Additional information may be requested by the Director when a split rating occurs.

(ii) Any valid initial self-bond shall carry the right of successive renewal as long as the above listed information is submitted and demonstrates that the guarantor remains qualified under W.S. § 35-11-417(d) and there is a minimum five (5)-year life of mine remaining.

(iii) Renewal of self-bonds approved prior to the effective date of these rules shall require the bond and credit ratings described in Section 4(a)(i)(F) and shall meet the limitations in Section 4(a)(i)(J). Operators with self-bonds approved prior to the effective date of these rules shall submit a new application to self-bond within eighteen (18) months of the effective date of these rules.

(d) Self-bond Substitution.

(i) The Administrator may require the operator to substitute a good and sufficient bond instrument if the Administrator determines in writing that the self-bond of the operator fails to provide the protection consistent with the objectives and purposes of this Act. The Administrator shall require full or partial substitution if the financial information submitted or requested under Section 4(c)(i)(B) indicates that the operator and/or the ultimate parent entity no longer qualifies under the self-bonding program. Substitution of an alternate bond shall be made within 90 days. The operator may also request substitution. This request is contingent upon the operator meeting all the requirements of the bond provisions (W.S. §§ 35-11-417 through 424) of the Act. If these requirements are met, the Administrator shall accept substitution.

(ii) If the operator fails within 90 days to make a substitution for the revoked self-bond the Administrator shall suspend or revoke the license of the operator to conduct operations upon the land described in the permit until such substitution is made.

(iii) All methods of substitution shall be made in accordance with the bonding provisions (W.S. §§ 35-11-417 through 418) of the Act. The Administrator shall require substitution of a good and sufficient bond.

(e) Reporting Requirements.

(i) If a devaluation in the credit rating occurs, the Administrator shall be notified within thirty (30) days of the change and a copy of the rating report shall be provided to

the Administrator.

(ii) A statement listing any notices issued by the Securities and Exchange Commission or proceedings against the operator or the ultimate parent entity initiated by any party alleging a failure to comply with any public disclosure or reporting requirements under the securities laws of the United States. Such statement shall include a summary of each such allegation, including the date, the requirement alleged to be violated, the party making the allegation, and the disposition or current status thereof. The Administrator shall be notified within thirty (30) days of the filing.

Section 5. Collateral Bonds.

(a) Collateral bond means an indemnity agreement in a sum certain executed by the operator as principal which is supported by the deposit with the Department of one or more of the following:

(i) Cash directly deposited with the Department is exempt from the trust provisions;

(ii) Negotiable bonds of the United States, a State or a municipality, endorsed to the order of the Department and placed in possession of the Department. Possession may be in the form of the cash value of the irrevocable trust for the full amount of the reclamation obligation and payable to the Department and federally insured. An operator may satisfy the requirements of this subsection by establishing an irrevocable trust that conforms to the requirements below and submitting an originally signed duplicate of the trust agreement to the Administrator for consideration.

(A) The wording of the irrevocable trust must be identical to the wording specified on the Wyoming Department of Environmental Quality Irrevocable Trust for Coal Reclamation Form and be signed by the operator or guarantor as principal, the financial institution as Trustee and be made payable to the Department;

(B) The Trustee must be a bank organized to do business in the United States that has the authority to act as a trustee and whose trust operations is regulated and examined by a Federal or State Agency;

(C) The irrevocable trust must be cash funded for the full amount of the reclamation obligation to be provided in the irrevocable trust before it may be approved to satisfy the requirements of financial assurance in lieu of a bond. For purposes of this subsection, "the full amount of the reclamation obligation to be provided" means the amount of coverage for reclamation required to be provided for the permit, less the amount of financial assurance for reclamation obligation that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the operator or guarantor;

(D) Cancellation of an irrevocable trust shall follow the same procedures detailed in W.S. 35-11-419 for performance bonds; and

(E) Forfeiture proceeding for an irrevocable trust shall follow the same procedures detailed in W.S. 35-11-421 for performance bonds.

(iii) For any real property collateral, the following information shall be provided:

(A) The value of the real property. The property shall be valued at the difference between the fair market value and any reasonable expense anticipated by the Department in selling the property. The fair market value shall be determined by a market analysis that may be conducted by an appraiser or qualified agent proposed by the operator. The appraiser shall be selected by the Administrator. The Administrator has the option to reject any appraiser proposed by the operator. The expense of the appraisal shall be borne by the operator. The real property shall be appraised every three (3) years.

(B) A description of the property satisfactory for deposit to further assure that the operator shall faithfully perform all requirements of the Act. The Administrator shall have full discretion in accepting any such offer.

(I) Real property shall not include any lands in the process of being mined, reclaimed, or the subject of this application. The operator may offer any lands within the permit boundary which have received phase 3 bond release or which will not be disturbed while pledged as collateral. The acceptance of real property within the permit boundary shall be at the discretion of the Director.

(C) Evidence of ownership of the real property shall be in the form of a clear and unencumbered title.

(D) If the Administrator accepts any real property as collateral, the Administrator shall require possession by the Department of the mortgage agreement executed by the operator in favor of the Department of Environmental Quality. The requirement shall be sufficient to vest such interest in the property in the Department to secure the right and power to sell or otherwise dispose of the property by public or private proceedings so as to ensure reclamation of the affected lands in accordance with the Act. Any mortgage shall be executed and duly recorded as required by law so as to be first in time and constitute notice to any prospective subsequent purchaser of the same real property or any portion thereof.

(E) Any security interest created by a security agreement shall be perfected by filing a financing statement or taking possession of the collateral in accordance with W.S. §§ 34.1-9-401 through 406. The Department shall have all rights and duties set forth in W.S. § 34.1-9-207 when the collateral is in its possession as a secured party, as defined in W.S. § 34.1-9-102(a)(lxxv). Any money received from the collateral during this period of time shall be remitted to the operator. When the collateral is left in the possession of the operator, the security agreement shall require that, upon default, the operator shall assemble the collateral and make it available to the Department at a place to be designated by the Department which is reasonably convenient to both parties.

(F) The operator may, with written approval by the Administrator, substitute for any of the real property held hereunder other real property upon submittal of all information required under this section.

(G) All parties with a claim subordinate to the Department in property held as collateral under this section shall be notified by the operator of all actions affecting the collateral.

(iv) Securities.

(A) Securities that are unencumbered shall only include those which are United States government securities or State government securities which are acceptable to the Administrator. Certificates of deposit shall be insured by the Federal Deposit Insurance Corporation (FDIC).

(B) If the instrument offered for deposit is a security, the operator's interest must be evidenced by possession of the original or a notarized copy of the certificate or a certified statement of account from a brokerage house.

(C) If the Administrator accepts any government securities, the Administrator shall require possession by the Department of the security agreement executed by the operator in favor of the Department of Environmental Quality. The requirement shall be sufficient to vest such interest in the property in the Department to secure the right and power to sell or otherwise dispose of the property by public or private proceedings so as to ensure reclamation of the affected lands in accordance with the Act.

Section 6. Voluntary Irrevocable Assigned Trusts

(a) All coal permits and licenses are eligible for a voluntary irrevocable assigned trust.

(b) An operator may file an application with the Department for a permit or license specific voluntary irrevocable assigned trust managed by the state treasurer for the benefit of the Department. Funds from the assigned trust shall only be available to the department to cover the cost of completing reclamation in the event of forfeiture.

(c) The assigned trust may bond all or a portion of the full cost of reclamation of a permit or license as determined by the annual Director's Bond Letter (DBL). The operator shall provide other acceptable bonding instruments for any portion of the approved reclamation cost estimate that is not covered by the assigned trust.

(d) Voluntary irrevocable assigned trusts shall be in accordance with the following:

(i) Application forms will be provided by the Department for enrollment and shall include:

(A) A reclamation cost estimate for the permit or license. The estimate shall be determined by the current Director's Bond Letter. Permits or licenses with Underground Injection Control (UIC) bond requirements that are pledged to the Water Quality Division shall be bonded with an alternative acceptable bond instrument;

(B) An estimate of the remaining life of mine and reclamation operations as disclosed in the current annual report for the permit or license;

(C) A proposed amount of the initial deposit to the trust. In no case shall the initial and subsequent deposits in the first year be less than one percent of the total annual reclamation cost estimate as disclosed in the current DBL;

(D) A proposed schedule of annual payments;

(E) Approval from federal agencies for permits or licenses that include federal lands with a federal bonding requirement.

(ii) For each approved voluntary assigned trust:

(A) The department shall provide the state treasurer with a copy of the DBL that discloses the reclamation cost estimate and the estimated remaining life of mine and reclamation operations annually;

(B) Participants shall provide annual payments of not less than one percent of the total annual reclamation cost estimate until the assigned trust is fully funded;

(C) Participants shall provide other acceptable bonding instruments as noted in Section 2 of this chapter to cover the remaining full cost of reclamation until such time as the voluntary assigned trust is fully funded;

(D) Funds received by the Department shall be invested by the state treasurer as authorized by law. The funds shall be invested in a manner that preserves one hundred percent of the corpus;

(E) Earnings from investment of the corpus of the assigned trust shall be credited by the state treasurer to the balance of each voluntary assigned trust;

(F) The Department shall provide a statement of account as defined by the treasurer annually at the end of the fiscal year; and

(G) Bond reductions to the permit or license shall be made from any other bond instruments first until the assigned trust is fully funded.

(e) Assigned trust withdrawals.

(i) No funds shall be withdrawn by the participant from the assigned trust account during the first year after the date of establishment of the assigned trust;

(ii) Assets from the assigned trust may only be withdrawn after complete funding of the trust;

(iii) Funds from the assigned trust shall be withdrawn last after any approved alternative reclamation bonding instruments have been released by the Department;

(iv) The assigned trust may not be substituted by another bonding instrument;

(v) Funds from the assigned trust shall only be released following certification of the requested bond release by the director per the provisions of W.S. 35-11-423 or in the event of bond forfeiture under W.S. § 35-11-421;

(vi) The assets of each assigned trust shall only be available to the Department to cover the cost of completing reclamation in the event of forfeiture; and

(vii) Once the assigned trust fully funded and the balance is in excess of the reclamation costs the operator may request a release of the excess funds using forms provided by the Department and state treasurer.

(f) Assigned trust transfers.

(i) Assets from the assigned trust may be transferred to a new eligible operator upon approval of a permit or license transfer in accordance with W.S. § 35-11-408.

(ii) Assigned trust transfer requirements shall include:

(A) The assigned trust may not be substituted and shall be transferred along with the permit transfer if the estimated life of mine is equal to five years or less; and

(B) All expenses and penalties associated with the transfer of the assigned trust are the responsibility of the license or permit holder.

(iii) Upon the application for a permit or license transfer no funds in the assigned trust shall be released to either the transferor or transferee until a final decision on the transfer application is made by Department.

(iv) Double bonding shall not be required for any reclamation costs of the permit or license covered by assigned trust funds, however the proposed transferee shall provide additional acceptable bond instruments for that portion of the reclamation costs not covered by the assigned trust prior to the transfer of the permit or license. Bond instruments shall be released to the transferor at the time of acceptance of the transferee's bond instruments and approval of the permit or license transfer.

Section ~~6~~ 7. Requirements for Forfeiture and Release.

(a) All requirements as to bond forfeiture proceedings and the release of bonds shall be consistent with W.S. § 35-11-417(e) and W.S. §§ 35-11-421 through 424 of the Act, excepting the requirements as to notification to the surety.

(b) The Department shall retain the full value of the real property until the bond liability equal to the value of the real property is released or substituted with another financial instrument.

(c) Forfeitures with reclamation bonds held in an assigned trust shall be processed in accordance with Section 6(e) above.

~~DEPARTMENT OF ENVIRONMENTAL QUALITY~~

~~LAND QUALITY DIVISION~~

Chapter 14

Exploration for Coal by Drilling

Section 1. Conducting Exploration by Drilling.

(a) Any discoverer conducting exploration by drilling within this State, shall do so in strict compliance with all the provisions of W.S. § 35-11-404 (2015) and this Chapter.

(b) The requirements of this Chapter shall apply to exploration by drilling within and outside of the permit area of a surface coal mining and reclamation operation. The requirements of this Chapter shall not apply to backfill wells or coal developmental drilling conducted within five hundred (500) feet of the active mine area.

(c) Prior to any coal exploration by drilling inside a permit area where the drilling is located five hundred (500) feet or more from the active mine area, the developer shall notify the Administrator and adjust the reclamation bond for the coal permit.

(d) Prior to any coal exploration by drilling outside of the permit area of a surface coal mining and reclamation operation, the discoverer shall provide a Drilling Notification and a reclamation bond acceptable to the Administrator.

(e) The Drilling Notification shall be in a form as specified by the Administrator and shall include:

(i) The approximate number and depth of holes to be drilled; and

(ii) A map showing the approximate hole locations within the exploration area.

(f) The Administrator shall review the notification and the bond and shall notify the discoverer in a timely manner, not to exceed sixty (60) day from receipt, whether the drilling is approved or additional information is required.

(g) For the purpose of this Chapter, the discoverer's hole completion and surface restoration plan is a report or information which, if made public, would divulge trade secrets. Upon request by the discoverer, the Director and Administrator shall consider this report or information confidential pursuant to W.S. § 35-11-1101 (2015). This shall be deemed a request to hold the information confidential only for five years unless the discoverer justifies a longer period of time.

Section 2. General Drill Hole Abandonment Requirements.

(a) All drill holes sunk for the purpose of conducting exploration, including those drilled within the permit area of a surface coal mining and reclamation operation, by drilling shall be capped, sealed or plugged in the manner described hereinafter.

(b) Drill holes that have artesian flow of groundwater to the surface shall be plugged with cement-based sealant material, as specified and in the manner described below, to prevent fluid communication and adverse changes in water quality or quantity.

(i) When the underground pressure head producing flow is such that a counter pressure must be applied to force a sealant into the drill hole, this counter pressure shall be maintained for the length of time required for the cementing mixture to set.

(ii) The minimum time that must be allowed for materials containing cement to "set" shall be in accordance with ASTM C150 or API RP 10B.

(c) Drill holes that have encountered any groundwater or saturated stratum shall be sealed utilizing sealant materials and emplacement methods as prescribed hereinafter to prevent fluid communication and adverse changes in water quality or quantity.

(d) "Sealant materials" are materials that are stable, have low permeability (1×10^{-7} cm/sec or less) and possesses minimum shrinking properties such that they are optimal sealing materials for well plugging and drill hole abandonment. Used drilling muds are not acceptable.

(e) Sealant materials shall meet the technical requirements for making a proper seal, shall meet applicable recognized industry standards and shall be prepared according to manufacturer's directions for specific site requirements. The following are approved sealant materials:

(i) Neat Cement Slurry must consist of a mixture of Portland Cement and more than six (6) gallons of clean water per bag of cement (one (1) cubic foot or ninety-four (94) pounds);

(ii) Sand Cement Slurry must consist of a mixture of Portland Cement, sand and water in the proportion of not more than one (1) part by weight of sand to one (1) part of cement with not more than six (6) gallons of clean water per bag of cement (one (1) cubic foot or ninety-four (94) pounds);

(iii) Concrete Slurry must consist of a mixture of Portland Cement, sand and gravel aggregate and water in a proportion of not more than one (1) peart by weight of aggregate to one (1) part of cement with not more than six (6) gallons of clean water per bag of cement (one (1) cubic foot or ninety-four (94) pounds);

(iv) Cement/Bentonite Slurry must consist of a mixture of cement and bentonite in the proportion of not more than six and a half (6.5) gallons of water and three (3) to

five (5) pounds of powdered bentonite per bag of cement (one (1) cubic foot or ninety-four (94) pounds);

(v) High Solids Bentonite Slurry means an inorganic mixture with a slurry density of nine and four tenths (9.4) pounds per gallon (lbs/gal) minimum twenty percent (20%) by weight of solids bentonite, with polymers, water or other additives for the yield/rate control, which forms a low permeability seal (not greater than one (1) x 10^{-7} cm/sec) and is mixed to the manufacturer's specifications;

(vi) Nonslurry Bentonite must consist of chipped or pelletized bentonite varieties specifically designed to be used to seal drill holes; and

(vii) Abandonment Gel means a mixture of bentonite with polymers and other additives and water in the proportion of one (1) barrel of water to fifteen (15) pounds of abandonment material with a minimum slurry density of eight and six tenths (8.6) pounds per gallon (lbs/gal). Abandonment Gel used to seal boreholes shall meet the following specifications when using American Petroleum Institute Standard Procedures for Testing Drilling Fluids:

(A) Ten minute gel strength of at least twenty (20) pounds per one hundred (100) square feet (20 lbs/100 sq. ft.);

(B) Filtrate volume not to exceed thirteen and one half (13.5) cubic centimeters (cc); and

(C) Minimum Marsh Funnel viscosity of sixty (60) seconds per quart.

(f) Sealant materials shall be emplaced in a manner that provides a water tight seal utilizing one of the following approved methods:

(i) By placing sealant materials by drill pipe, tremie pipe or similar device in an upward direction from the bottom of the drill hole to within approximately five (5) feet of the ground surface; or

(ii) By placing nonslurry bentonite from the bottom of the drill hole to within approximately five (5) feet of the ground surface. Nonslurry bentonite shall not be utilized unless the drill hole is four (4) inches or greater in diameter and less than five hundred (500) feet in depth and the material must be placed in such a manner that a bridge does not occur. Nonslurry bentonite may not be placed in more than three hundred (300) feet of standing liquid.

(g) For any drill hole that has been sealed with a sealant material, the discoverer responsible for sealing the drill hole shall;

(i) Measure the depth of the top of the sealant material column with the appropriate equipment after sufficient time (minimum of twenty-four (24) hours) has been allowed for the column of sealant materials to set up;

(ii) If the column of sealant material has dropped or fallen back, the discoverer shall continue to install sealant material until the top of the sealant material column remains at least fifty (50) feet above the top of the uppermost saturated groundwater stratum; and

(iii) Install uncontaminated fill material, drill cuttings or one of the approved sealant materials listed herein from the top of the sealant material column to within approximately five (5) feet of the ground surface.

(h) If a hole is drilled without the use of drilling fluids and the bottom of the hole is above the preexisting natural elevation of the uppermost saturated groundwater stratum, the drill hole shall be abandoned by completely backfilling from the bottom of the drill hole to the surface with uncontaminated earthen material or drill cuttings as a backfill material, this material should be emplaced in a manner to promote settling and compaction and to minimize voids caused by bridging. If the drill hole is backfilled to the natural ground surface with dry nonslurry materials, then no surface cap is necessary.

(i) All drill holes shall be backfilled to the surface with dry nonslurry materials or capped with a concreted cap set at least two (2) feet below the ground surface and then backfilled to the surface with native earthen materials to ensure the safety of people, livestock, fish and wildlife, and machinery in the area.

(j) Drill holes shall be capped or backfilled immediately after drilling and probing in accordance with W.S. §35-11-404(h) (2015). If it is necessary to temporarily delay the abandonment or keep the drill hole open for any reason, the drill hole must be securely covered with a temporary cap in a manner which will prevent injury to persons or animals. Drill holes shall not be left open for more than thirty (30) days without specific authorization from the Administrator.

(k) For inspection and verification purposes, each drill hole shall be marked with a temporary marker that clearly identifies the name of the discoverer and the hole number until bond release is authorized. Drill holes shall not be marked with rebar, metal pipe or metal posts which could pose a hazard to people, livestock, wildlife or machinery.

(l) The Administrator may approve other drill hole abandonment procedures and/or sealant materials at the request of the discoverer.

Section 3. Reclamation of Drill Sites and Affected Lands

(a) Drill sites and associated ancillary roads, as defined in Chapter 1 and 4 of these rules and regulations, shall be restored as nearly as possible to their original location.

(b) To the extent possible, all drilling fluids, drill cuttings and geologic samples shall be handled in the following manner:

(i) For those drill holes abandoned as per Subsection 2(h) of this chapter, remaining drill cuttings may be spread on the surface in such a manner as to prevent impairment

of vegetation. Excess drilling mud and drill cuttings or any acid-forming or toxic materials uncovered during or created by exploration by drilling, including petroleum contaminated soils, shall be properly disposed of so as not to constitute a fire, health, or safety hazard during or after the exploration by drilling.

(ii) For all other drill holes: drilling fluids, drill cuttings and geologic samples shall be confined and buried below grade to the extent possible. Excess drilling mud and drill cuttings or any acid-forming or toxic materials uncovered during or created by exploration by drilling, including petroleum contaminated soils, shall be properly disposed of so as not to constitute a fire, health, or safety hazard during or after the exploration by drilling.

(c) To the extent possible, any surface preparation of the drill site shall be accomplished in a manner consistent with Chapter 4, Section 2(b), Land Quality Coal Rules and Regulations.

(d) To the extent possible, topsoil removal and stockpiling shall precede any excavation within the drill site and associated ancillary roads in a manner consistent with Chapter 4, Section 2(c) and 2(j), Land Quality Coal Rules and Regulations.

(e) To the extent possible, the discoverer shall reestablish the vegetative cover where vegetation has been removed or destroyed within the drill site and associated ancillary roads by seeding, planting, transplanting, or by other adequate methods in a manner consistent with Chapter 4, Section 2(d) and 2(i), Land Quality Coal Rules and Regulations.

(f) All lands, including ancillary roads or terrain damaged in gaining access to or clearing the site, or lands whose natural state has been substantially disturbed as a result of the exploration by drilling, shall be restored as nearly as possible to their original condition, including reseeding if grass or other crop was destroyed.

Section 4. Bond.

(a) In order to assure and secure performance of the discoverer's obligations, each discoverer shall agree to post a bond for each exploration area. The amount of the bond shall be computed in accordance with the established engineering principles, for accomplishing proper drill hole abandonment and surface restoration in accordance with the standards set out in this Chapter.

(b) The bond amount for any drill holes or any portion of the exploration area may be reduced when the discoverer demonstrates to the satisfaction of the Administrator that drill hole abandonment has been accomplished in accordance with the standards set out in this Chapter. The amount by which the bond is reduced may be returned to the discoverer or applied towards additional drilling. The bond for any drill sites or any portion of the exploration area may be released when reclamation has been completed and the Administrator finds that vegetation has been reestablished. All bonds shall be signed by the discoverer as principal, by a good and sufficient corporate surety licensed to do business in the State, and be made payable to the State of Wyoming.

(c) In lieu of a bond, the discoverer may deposit federally insured certificates of deposit payable to the Department of Environmental Quality, cash or government securities or all three.

(d) The Administrator may accept the bond of the discoverer itself without separate surety when the discoverer demonstrates to the satisfaction of the Administrator substantial compliance with the applicable provisions of Chapter 11, Land Quality Coal Rules and Regulations.

Section 5. Termination and Report of Operations.

(a) Within 12 months after compliance with 3(a) and sufficient compliance with 3(b) and (c) so that full compliance can be predicted by the Administrator, the discoverer shall comply with the reporting requirements of W.S. § 35-11-404(e) or (f) (2015). After receipt of such report, the Administrator shall have one year to inspect and evaluate the hole completion and surface restoration work and make a determination of whether to release the bond to the discoverer or institute forfeiture proceedings.

(b) Forfeiture proceedings and release of bonds shall be according to the procedure set forth in W.S. §§ 35-11-421 through 35-11-423 (2015); substituting therein "discoverer" for "operator"; "surface restoration" for "reclamation" and "exploration by drilling" for "surface mining".

(c) Failure to so inspect and evaluate shall constitute a decision by the Administrator that the discoverer has complied with this Chapter for release of bond purposes only. This one-year limitation shall not be construed to alter or affect W. S. § 35-11-404(k) - (n) (2015), or any other rights of action against the discoverer granted pursuant to the statutory provisions of the Wyoming Environmental Quality Act.

Section 6. Exceptions.

This Chapter shall not apply to holes drilled for the purpose of conducting oil and gas exploration operations. Specific exceptions from certain requirements of this Chapter shall also be preserved in accordance with W.S. § 35-11-404(g) and (h) (2015).

Section 7. Installation of Wells for Collection of Baseline Information.

(a) Construction of wells may be authorized by the Administrator under a Drilling Notification for the purpose of collecting groundwater baseline data in preparation of a mine permit application.

(b) Prior to installation, the discoverer is encouraged, but not required, to submit a plan for review by the Administrator that describes the location and completion details of each proposed well. The Administrator shall review the plan and respond within thirty (30) days.

(c) Wells shall be permitted in accordance with the requirements of the State Engineer's Office, in accordance with W. S. §35-11-404(c)(iv) (2015).

(d) Provisions shall be made such that each well is secured to prevent contaminant entry.

(e) Adequate bond shall be provided to assure that all wells are properly plugged and sealed and the sites restored.

(f) Well plugging and sealing and site reclamation shall follow the procedures outlined in Sections 2 and 3. Well casing shall be cut off at least two (2) feet below ground surface and any pump and associated appurtenances removed as applicable, before the well is plugged and sealed.

(g) Well abandonment reports shall be filed with the Administrator and the State Engineer's Office within twelve (12) months of abandonment.