



January 29, 2019

Wyoming Environmental Quality Council
c/o Wyoming Department of Environmental Quality
Land Quality Division
200 W. 17th St., Suite 10
Cheyenne, WY 82002
Submitted online via: <http://lq.wyomingdeq.commentinput.com>

RE: Comments on Proposed Amendments to Chapters 11 and 20 of the Coal Rules and Chapters 6 and 12 of the Noncoal Rules

Dear Chairman Lally & Council Members,

Thank you for the opportunity to submit comments on DEQ's proposed amendments to the coal and non-coal financial assurance rules.

For those of you who are not familiar with our organization, the Powder River Basin Resource Council was formed in 1973 by ranchers and concerned citizens of Wyoming to address the impacts of strip mining on rural people and communities. Today, we work for the preservation and enrichment of our agricultural heritage and rural lifestyle; the conservation of our unique land, mineral, water, and clean air resources, consistent with the responsible use of those resources to sustain the livelihood of present and future generations; and the education and empowerment of our citizens to raise a coherent voice in the decisions that will impact their environment and lifestyle. We work for our approximately 1,000 members and submit these comments on their behalf.

We know you have a substantial administrative record before you already, and we do not want to unnecessarily add to the paper to review before the February 19th hearing. We encourage you to review the comments provided to the DEQ land quality advisory board below, as well as the transcripts of the public hearings.

Since the record before you is large, it is worth emphasizing some main reasons we believe you must vote YES on DEQ's proposed rules:

- 1) Bonding is an effective common sense approach to protecting the state, taxpayers, nearby landowners, and the public. But the right bonding rules have to be in place in order to provide protections at the time the "worst-case scenario" comes to pass.
- 2) A 2016 report from Moody's found that "as the [coal] industry undergoes a restructuring in the face of a severe demand contraction, and utilities continue to shift to natural gas

consumption and away from coal, companies must shut mines amid drops in production, making reclamation liabilities a more pressing issue.”¹

- 3) While risk is growing, so is the opportunity to fix the historic shortcomings of our reclamation financial assurances structure. The time to reform Wyoming’s financial assurance regulations is now. Only several years ago, the coal industry posted over \$2 billion in self-bonds. Following the three large bankruptcies, coal companies have just under \$300 million in self-bonds today. In other words, the impact of the proposed rules on the industry will be small.
- 4) Under state and federal laws, self-bonding is a privilege, not a right, and DEQ has significant discretion to use its regulatory authority to limit or deny self-bonding.
- 5) We support DEQ’s proposal to require all self-bonds to be guaranteed by the ultimate parent entity – the top of the corporate ladder for a mining company subsidiary. This is important because when an ultimate parent entity files for bankruptcy, so will the mid-stream subsidiaries that are backing self-bonds. The mid-stream subsidiaries are pledged as collateral for the ultimate parent entity’s corporate debt, an arrangement known as an “upstream guarantee.” Therefore, the financial health of the mining operator is inextricably tied to the health of the parent entity, and self-bonding qualifications should be judged on the parent entity, not the subsidiary.
- 6) We strongly agree with DEQ’s proposal to limit the portion of a bond that can be covered by self-bonds. This will reduce the regulatory risk and ensure that at least a portion of the bond amount will be immediately available to regulators in the case of forfeiture.
- 7) We support DEQ’s proposed use of credit ratings to determine eligibility for self-bonding. As recent history clearly demonstrates, the financial fitness metrics in the current regulations do not properly ensure that only healthy, stable companies with low risk of bankruptcy can self-bond.
- 8) We support DEQ’s proposed elimination of personal property collateral bonds. Personal property of the mine – mining equipment and machinery – will not provide adequate funding for reclamation work. This equipment and machinery is difficult to value at any time, but it is particularly problematic in the “worst-case scenario” situation of mine closure or liquidation.

Thank you for your careful review and for your consideration of the public interest. We look forward to answering any questions and presenting more detailed information if needed during your upcoming meeting in Cheyenne.

Sincerely,



Shannon Anderson
Staff Attorney, Powder River Basin Resource Council

¹ Moody’s Investors Service, *Coal Mining - North America: Reclamation Obligations a Mounting Burden on Industry in Restructuring*, August 2016.