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WORKING RELATIONSHIP BETWEEN DEQ AND THE COAL INDUSTRY

The first environmental law regulating mining in Wyoming was the Open Cut Land Reclamation Act of 1969. The Wyoming Environmental Quality Act followed that in 1973. Wyoming was regulating coal mining long before the passage of the federal Surface Mine Control and Reclamation Act of 1977, commonly referred to as SMCRA. Wyoming has a long history of supporting the mining industry but on Wyoming terms. Wyoming has, to a large extent, avoided the negative impacts from mining experienced in other parts of the country. This has been possible by exercising a philosophy of achieving better and faster results through working cooperatively with industry. This cooperative attitude has not hampered the growth of the coal industry nor compromised environmental protection.

In 2002, Wyoming produced 373 million tons of coal accounting for 34 percent of the nation's coal production. Our yearly production is more than the next two highest producing states, Kentucky and West Virginia, combined. Add the next highest producing state, Pennsylvania, and Wyoming is approaching that figure. Individually, several mines in Wyoming produce more than any of the remaining 24 coal producing states. The Wyoming coal industry is a significant part of the states economy. On the reclamation side of the ledger, the amount of reclaimed land as a percentage of lands disturbed has improved from 39.8% in 1999 to 42% currently. Also, since 1999 while coal production has increased 14.8%, the reclaimed lands have increased 24.2%.

Wyoming has primacy over the coal-mining program at a very small cost to the citizens of the state. Thirty employees within the Land Quality Division are dedicated to the permitting, inspecting and enforcement of the coal industry. To illustrate the small size of Wyoming's coal program, the adjacent states of Utah and Colorado have twenty-three and twenty-four employees respectively and have about a tenth of the coal production of Wyoming. The cost to the citizens is further reduced by a grant from the federal government as part of our primacy and cooperative agreement with the Department of the Interior. Almost 90% of the coal program's \$2.28 million annual budget is in the form of a grant from the federal government. In essence, the citizens of the state pay for about three people to regulate the largest coal industry in the nation.

This is only possible because of the strong working relationship between the DEQ, OSM and the mining industry. While there are disagreements, there is an understanding that issues will be discussed and an honest attempt will be made for resolution. With an industry this large, there are many challenges. Some have been overcome and some are in the process of being resolved. I will summarize various examples, both in land quality and air quality, where we have found innovative solutions that work and protect the environment.

An example of cooperatively working together is demonstrated by jointly developing a system that avoids costly and time-consuming revisions to the permit. One important aspect of the reclamation plan is the final post mining contours or configuration of the land. Over the life of the permit, many factors can influence the exact shape of the reclaimed surface. The mining industry and the DEQ jointly developed a system that allows mines greater flexibility in constructing final topography without having to process a revision to the permit. The system, while being flexible and efficient for both the mines and DEQ, also includes constraints and protective measures that ensure a stable and productive topography.

Blasting at the coal mines often produce compounds of nitrogen gas or NOx. Some forms of this gas can be harmful or even fatal at certain levels. The DEQ has worked cooperatively with the coal mines to reduce the amount of NOx emissions. Where appropriate, certain mines have restrictions placed on their blasting practices to be protective of nearby citizens. Many other mines have instituted voluntary measures. While NOx remains a concern, the number and severity of occurrences have diminished. DEQ remains committed to working with industry to find better solutions. In many cases, industry has voluntarily developed best management practices that are more innovative and usually at a high level of performance.

We are currently working with the coal industry on several fronts to address the bonding crisis affecting the nation. The size of the mines in the state result in large reclamation bonds. Several are over one hundred million dollars. Historically, the DEQ has added third party and miscellaneous costs to the calculated reclamation costs in the form of a percentage of the total cost. These miscellaneous costs include such items as engineering and design, mobilization, overhead, and project management. The use of these percentages may be appropriate for smaller reclamation bonds. However, given the enormous size of some coal bonds it may be more appropriate to research the actual amount of these miscellaneous costs and include them as a line item as opposed to a percentage. The DEQ is willing to work with the coal mines and consider such proposals as long as the protection to the state is maintained. We are currently awaiting proposals from the Wyoming Mining Association that may have the right characteristics to help the industry while still protecting the state.

Another challenge is bond release. Thousands of acres of land have been reclaimed and are eligible for consideration of partial or full bond release. However, there are numerous performance standards that coal mines must achieve in order to gain bond release. Adding to the complexity are the numerous changes in the laws and regulations that have been enacted since the passage of the Open Cut Land Reclamation Act. Each of these changes has a different set of reclamation requirements. The coal mines and DEQ have worked together to develop a new guideline that outlines the different requirements for each of the different categories of law. This adds clarity to the bond release process and should facilitate bond release. Our standards remain the same but industry now is clear on their obligations under the various Acts and can now have their bonds released in a timelier manner.

There is a pilot project currently underway with the Land Quality Division, the Powder River Coal Company and the Office of Surface Mining to develop a Geographic Information System that will track approvals of various bond release requirements. Many of the approvals of a mine meeting the reclamation performance standards for a particular area occur years before the mine may have applied for a bond release on that area. The development of this system will be a significant challenge but will greatly enhance the efficiency of processing bond release requests in the future. This will ensure that the DEQ has better assurance of reclamation completion. The DEQ looks forward to working with other mines to develop the system statewide.

This pilot project spotlights the positive working relationship the state has with its federal partner, the Office of Surface Mining. The Office of Surface Mining was formed as a result of SMCRA. Initially, the relationship between the state and OSM was contentious. Many states, such as Wyoming, had been regulating coal mining before the federal law was passed. To be told how to do it by a new agency was not easy or welcomed. However, over the years, as the state has demonstrated its ability to conduct a successful coal mining program, this partnership has developed an understanding, trusting relationship. OSM recognizes that Wyoming has one of the most effective programs in the nation. The OSM has actively supported Wyoming's coal program through the purchase of technical equipment, software and technical training. OSM has become a strong supporter of the state and is committed to assisting the state to reach higher levels of effectiveness and efficiency. We have been actively engaged with the leadership of OSM to expand its technical support by transferring more of its resources to assisting the state's technical capabilities.

What does all this translate to: excellent reclamation. It is generally recognized that the reclaimed land is more productive than the native areas. However, excellent reclamation involves more than forage for livestock and coal operators regularly achieve more. In 1986, a national program was instituted to recognize those coal operators that had achieved excellence in meeting or exceeding the requirements of the coal program. Thirteen times Wyoming mines have won a national reclamation award. Considering that there are thousands of coal mines across the nation, this is truly a remarkable achievement. The awards have recognized such achievement as the Glenrock Coal Company's efforts to restore wildlife habitat. This includes the reestablishment of a sage grouse lek on reclaimed land that is being used. The Jacobs Ranch Mine has reclaimed land that has been designated by the Wyoming Game and Fish Department as crucial Elk habitat.

The DEQ and the coal mining industry also have a long history of working together to address the quality of Wyoming's air resource. Wyoming has long had primacy in terms of implementing the requirements of the Clean Air Act, and all coal mines in Wyoming operate under air quality permits implementing State as well as Federal requirements. In fact, some State requirements, developed in consultation with the coal industry, provide environmental protection not contemplated by Federal rules. For example, as early as 1985, state

rules have required and the mines have complied with Best Available Control Measures to control emissions of fugitive dust, such as paving access roads, regularly treating major and temporary haul roads and active work areas with dust suppressants, enclosing all coal storage facilities and equipping coal crushing and load-out facilities with technology to control dust generated by those activities.

In early discussions between the operators and DEQ during the permitting processes, both sides recognized the importance of monitoring for potential air quality impacts due to mining operations since the primary impact to the air resource would be fugitive emissions that are not easily quantified. This early recognition has led to the current situation in which it is often remarked that Campbell County is the most heavily monitored area for particulate matter in the entire country. Today, there are about 40 particulate monitoring sites in the Powder River Basin, most of which are funded and operated by the mines. This early recognition of the importance of monitoring proved extremely beneficial to the continued development of Wyoming's coal resource. In the late 1980's, the Department became embroiled in a dispute with EPA over the definition of ambient air (air to which the public is exposed) and the requirement in federal rules to model short-term impacts of mining development during the permitting process. DEQ and the coal industry collectively were able to demonstrate that existing modeling technology was not adequate to perform that type of analysis. Because of the extensive monitoring network already in place, we could adequately manage the air resource using monitored data rather than computer predictions. This agreement has worked well for nearly 15 years.

In recent years, Wyoming has been plagued with a severe drought and we have seen particulate levels increase as a result. The DEQ and the coal operators are cooperating to address this issue. The operators have employed aggressive measures to mitigate impacts to the environment and the public as a result of this situation. Looking forward to the need for the mines to begin and continue extensive reclamation work as mining progresses, we have begun a process to define additional Best Available Control Measures that may be employed during reclamation activities.

As already mentioned, monitoring to obtain real data has become the watchword for cooperatively working together to address environmental impacts from mining operations. When EPA began the process of promulgating the new PM fine particulate standards, the coal mining industry proactively and voluntarily instituted a PM fine particulate monitoring network in the PRB to address issues raised by promulgation of this standard. Partially as a result of public concerns about emissions of nitrogen oxides as a result of blasting, but also as a general concern of the DEQ about levels of nitrogen oxides due to development of all types in the area. The industry instituted a monitoring network focused on gathering real data on that pollutant. In establishing those networks, industry collaborated closely with DEQ to identify site locations, monitoring standards, and quality assurance requirements to insure the data obtained would be valid. Both networks were funded and operated by the industry for approximately three years. The State now funds and is responsible for the continued operation of both networks. The mines have committed to the ongoing use of the site locations and continue to provide electrical power. In addition, ownership of the monitoring equipment itself was voluntarily transferred to DEQ by the mines.

As Wyoming moves into the future, I am confident that Wyoming's coal will continue to be a vital component of the nation's energy strategy and the state's economic strength. More importantly, by working together, Wyoming will remain a great place, and the public and the environment will be protected. These achievements are only possible through the collaborative process that has been a characteristic of our relationship for many years.