



THE STATE OF WYOMING

RECEIVED

ED HERSCHLER
GOVERNOR

In reply refer to:

Attorney General

CHEYENNE, WYOMING 82002

April 2, 1979

JOHN D. TROUGHTON
ATTORNEY GENERAL

Mr. Larry Bourret
Commissioner, Department of Agriculture
Chairman, Conservation Commission
2219 Carey Avenue
Cheyenne, WY 82002

Dear Mr. Bourret:

Governor Herschler has committed the State to retaining regulatory control over surface mining in Wyoming, as provided in Federal law. To reach this objective, the Department of Environmental Quality must submit a program proposal, which meets minimum national standards, to the Federal Office of Surface Mining for approval. These standards have recently been promulgated in final form. In order to prepare an acceptable State program proposal within the limited time available to us, the Governor has asked me to take a personal interest in all legal aspects of the program.

One necessary part of the State program is a process for designating areas as unsuitable for surface coal mining. At the State level, there are two major components of this process. The first is a procedure which relies upon petitions to establish such designations. The second is the establishment and maintenance of a data base and inventory system, available to the public, which will provide support for the petition system. The Governor has determined that all State agencies with substantial data resources must participate in the designation process, both in reviewing petitions and providing information to the public. The alternative to this approach would be wasteful duplication of effort.

The information in question falls into a number of major categories which are the factual grounds for designation: state and local land use plans, fragile or historic lands, renewable resource lands, and natural hazard lands. These terms are defined in the regulations attached to this letter.

The petition system essentially weighs these concerns against coal production that is or would be affected. Data resources that would not fall under the four categories in

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question, such as demographic statistics, are of no interest for the designation process.

In the coming weeks, I will be supervising details of program design and drafting regulations for the implementation of the designation process. Your views would be helpful to me. In particular, I request the following information:

1. A concise but detailed description of the data resources available to your agency. For each separate data system, please explain the subject matter of the data base, how it is organized, your estimation of its reliability, ongoing research efforts, and approximate annual expenditures for establishment and/or maintenance of the system, broken out by cost category.

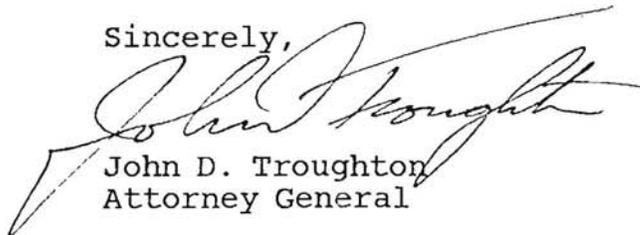
2. An explanation of your procedures for providing for public access to your data resources. Please indicate locations for public access, restrictions on public access, and records that you keep on public use.

3. Your views regarding how liaison between your agency and the Land Quality Division of the Department of Environmental Quality could best be established and maintained. In particular, indicate whether some formal agreement would be necessary or helpful.

Please return a response no later than April 10, 1979, addressed to E. Michael Weber, Assistant Attorney General, with a copy to Phil Dinsmore, Department of Environmental Quality, Land Quality Division.

Thank you for your assistance.

Sincerely,



John D. Troughton
Attorney General

JDT:gmv

cc: E. Michael Weber
Phil Dinsmore

ed by the State upon written notice to the Secretary, specifying the date upon which the cooperative agreement shall be terminated. The date of termination shall not be less than 90 days from the date of the notice.

(b) *Termination by the Secretary.* A cooperative agreement may be terminated by the Secretary after giving notice to the State regulatory authority and affording the State regulatory authority and the public an opportunity for a public hearing, and comment period, in accordance with the approved State-Federal cooperative agreement, if the Secretary finds that:

(1) The State regulatory authority has substantially failed to comply with the requirements of this Subchapter, the approved State program, or provisions of the approved cooperative agreement; or

(2) The State regulatory authority has failed to comply with any undertakings by the State in the cooperative agreement upon which approval of the State program, cooperative agreement, or grants by the Office for administration or enforcement of the State program or cooperative agreement were based.

(c) *Termination by operation of law.* Any cooperative agreement shall terminate—

(1) When no longer authorized by Federal law or the applicable State laws and regulations; or

(2) Upon termination or withdrawal of the Secretary's approval of the applicable State program.

§ 745.16 Reinstatement.

(a) A State may apply for reinstatement of the cooperative agreement by providing written evidence to the Director that the State has remedied all defects for which the agreement was terminated and is fully capable of complying with the requirements of the cooperative agreement. Any reinstatement shall be by Federal rule-making in accordance with 30 CFR 745.11.

(b) The Director may recommend approval of the reinstatement to the Secretary, if he or she finds that the State meets all the requirements for the initial approval of a cooperative agreement under this Subchapter.

(c) The Secretary may approve reinstatement of a cooperative agreement if the Secretary concurs in findings of the Director which recommended that approval.

SUBCHAPTER E—[Reserved]

SUBCHAPTER F—AREAS UNSUITABLE FOR MINING

PART 760—GENERAL

Sec.
760.1 Scope.

Sec.
760.2 Objectives.
760.3 Authority.
760.4 Responsibility.

AUTHORITY : Sections 102, 201, 501(b), 503, 504, 505, 510, 517(f), 522, and 523 of Pub. L. 95-87, 91 Stat. 448, 449, 468, 470, 471, 473, 480, 499, 507, and 510 (30 U.S.C. 1202, 1211, 1251, 1253, 1254, 1255, 1260, 1267(f), 1272, and 1273).

§ 760.1 Scope.

This Subchapter establishes procedures for implementing the requirements of the Act for designating lands unsuitable for all or certain types of surface coal mining operations, for terminating such designations, for identifying lands on which surface coal mining operations are limited or prohibited under Section 522(e) of the Act and for implementing those limits and prohibitions.

§ 760.2 Objectives.

The objectives of this Subchapter are to establish —

(a) Procedures for consideration of petitions for the designation of lands as unsuitable for all or certain types of surface coal mining operations, for the termination of these designations, and for public participation in petition proceedings;

(b) The minimum standards for obtaining, maintaining and analyzing information on the effects of coal development in areas covered by a petition in light of other potential uses and activities;

(c) Procedures for identifying lands on which mining is prohibited or limited by Section 522(e) of the Act (30 U.S.C. 1272(e)) and for implementing those prohibitions or limitations; and

(d) Criteria for determining if an area should be designated as unsuitable for all or certain types of surface coal mining operations.

§ 760.3 Authority.

(a) Each State regulatory authority is authorized, under Sections 522 (a) and (c) of the Act (30 U.S.C. 1272 (a) and (c)), to establish a data base and inventory system and a petition process to designate any non-Federal and non-Indian land areas of the State as unsuitable for all or certain types of surface coal mining operations.

(b) The Secretary is authorized, under Sections 522(b) and (c) of the Act (30 U.S.C. 1272 (b) and (c)), to:

(1) Conduct a review of Federal lands to determine whether any area on Federal lands is unsuitable for all or certain types of surface coal mining operations;

(2) Establish a process for the public to petition to have an area of Federal lands designated as unsuitable for all or certain types of surface coal mining operations; and

(3) Implement, as part of a Federal program for a State, a process for designation of areas unsuitable for surface coal mining operations on non-Federal lands within a State.

§ 760.4 Responsibility.

Section 522 of the Act (30 U.S.C. 1272) requires that:

(a) The Secretary shall conduct a review of Federal coal lands to determine whether there are areas which are unsuitable for surface coal mining operations;

(b) In order to be eligible to assume primary regulatory authority, a State shall establish a process that includes a data base and inventory system for designating lands unsuitable for surface coal mining operations which shall be available to the public;

(c) The regulatory authority shall integrate as closely as possible decisions to designate lands as unsuitable for surface coal mining operations with present and future land-use planning and regulatory processes at the Federal, State, and local levels;

(d) The regulatory authority shall establish a process that allows any person having an interest which is or may be adversely affected to petition to have an area designated as unsuitable for all or certain types of surface coal mining operations, or to have a designation terminated;

(e) The regulatory authority shall prohibit or limit surface coal mining operations on certain lands and in certain locations designated by Congress in Section 522(e) of the Act (30 U.S.C. 1272 (e)).

PART 761—AREAS DESIGNATED BY ACT OF CONGRESS

Sec.
761.1 Scope.
761.2 Objective.
761.3 Authority.
761.4 Responsibility.
761.5 Definitions.
761.11 Areas where mining is prohibited or limited.
761.12 Procedures.

AUTHORITY : Sections 102, 201, 501(b), 503, 504, 510, 512, 513, 514, 522, and 701 of Pub. L. 95-87, 91 Stat. 448, 449, 468, 470, 471, 480, 483, 484, 485, 507 and 518 (30 U.S.C. 1202, 1211, 1251, 1253, 1254, 1260, 1262, 1263, 1264, 1272 and 1291).

§ 761.1 Scope.

This Part establishes the procedures and standards to be followed in determining whether a proposed surface coal mining and reclamation operation can be permitted in light of the prohibitions and limitations in Section 522(e) of the Act for those types of operations on certain Federal, public and private lands.

§ 761.2 Objective.

The objective of this Part is to implement the prohibitions and limitations for surface coal mining operations on or near certain private, Federal, and other public lands under Section 522(e) of the Act.

§ 761.3 Authority.

The State regulatory authority or the Secretary is authorized by Section 522(e) of the Act (30 U.S.C. 1272(e)) to prohibit or limit surface coal mining operations on or near certain private, Federal, and other public lands, except for those operations which existed on August 3, 1977, or were subject to valid existing rights on that date.

§ 761.4 Responsibility.

(a) The Secretary shall —

(1) Determine whether any application for a permit for surface coal mining and reclamation operations on Federal lands must be denied, limited or conditioned because operations on those lands are prohibited or limited by Section 522(e) of the Act (30 U.S.C. 1272(e)) and this Part;

(2) Determine, based upon a showing by an applicant, whether an applicant for a permit covering Federal lands either —

(i) Had any valid existing rights on August 3, 1977; or

(ii) Was conducting an existing surface coal mining operation on those lands on August 3, 1977;

(3) Withdraw from leasing all lands designated unsuitable for all or certain types of surface coal mining operations.

(b) The State regulatory authority shall —

(1) Comply with this Part and Subchapter G; and

(2) Determine

(i) Whether an application for a permit must be denied because surface coal mining operations on those lands are prohibited or limited by Section 522(e) of the Act (30 U.S.C. 1272(e)) and this Part and

(ii) Whether an applicant for a permit covering such lands either had any valid existing rights on August 3, 1977, or was conducting a surface coal mining operation on those lands on August 3, 1977.

(c) In States where a complete Federal program or a partial Federal program including the designation process has been implemented, the Director shall determine—

(1) Whether any application for a permit for surface coal mining operations on non-Federal and non-Indian lands must be denied because the operations on those lands are prohibited or limited by Section 522(e) of the Act; and

(2) Whether an applicant for a permit covering non-Federal lands,

either had any valid existing rights on August 3, 1977, or was conducting an existing surface coal mining operation on those lands on August 3, 1977.

§ 761.5 Definitions.

For the purposes of this Part —

Valid existing rights means:

(a) Except for haul roads,

(1) Those property rights in existence on August 3, 1977, that were created by a legally binding conveyance, lease, deed, contract or other document which authorizes the applicant to produce coal by a surface coal mining operation; and

(2) The person proposing to conduct surface coal mining operations on such lands either

(i) Had been validly issued, on or before August 3, 1977, all State and Federal permits necessary to conduct such operations on those lands, or

(ii) Can demonstrate to the regulatory authority that the coal is both needed for, and immediately adjacent to, an on-going surface coal mining operation for which all permits were obtained prior to August 3, 1977;

(b) For haul roads, valid existing rights means:

(1) A recorded right of way, recorded easement or a permit for a coal haul road recorded as of August 3, 1977, or

(2) Any other road in existence as of August 3, 1977;

(c) Interpretation of the terms of the document relied upon to establish valid existing rights shall be based upon the usage and custom at the time and place where it came into existence and upon a showing by the applicant that the parties to the document actually contemplated a right to conduct the same underground or surface mining activities for which the applicant claims a valid existing right;

(d) "Valid existing rights" does not mean mere expectation of a right to conduct surface coal mining operations or the right to conduct underground coal mining. Examples of rights which alone do not constitute valid existing rights include, but are not limited to, coal exploration permits or licenses, applications or bids for leases, or where a person has only applied for a State or Federal permit.

No significant recreational, timber, economic or other values incompatible with surface coal mining operations means those significant values which could be damaged by, and are not capable of existing together with, surface coal mining operations because of the undesirable effects mining would have on those values, either on the area included in the permit application or on off-site areas which could be affected by mining. Those values to be evaluated for their importance include:

(a) Recreation, including hiking, boating, camping, skiing or other related outdoor activities;

(b) Timber management and silviculture;

(c) Agriculture, aquaculture or production of other natural, processed or manufactured products which enter commerce;

(d) Scenic, historic, archeologic, esthetic, fish, wildlife, plants or cultural interests.

Surface operations and impacts incident to an underground coal mine means all activities involved in or related to underground coal mining which are either conducted on the surface of the land, produce changes in the land surface or disturb the surface, air or water resources of the area, including all activities listed in Section 701(28) of the Act and the definition of surface coal mining operations appearing in 30 CFR 700.5.

Significant forest cover means an existing plant community consisting predominantly of trees and other woody vegetation. The Secretary of Agriculture shall decide on a case-by-case basis whether the forest cover is significant within those national forests west of the 100th meridian.

Occupied dwelling means any building that is currently being used on a regular or temporary basis for human habitation.

Public building means any structure that is owned by a public agency or used principally for public business, meetings or other group gatherings.

Community or institutional building means any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings or functions of local civic organizations or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental-health or physical health care facility; or is used for public services, including, but not limited to, water supply, power generation or sewage treatment.

Surface coal mining operations which exist on the date of enactment means all surface coal mining operations which were being conducted on August 3, 1977.

Public park means an area dedicated or designated by any Federal, State, or local agency for public recreational use, whether or not such use is limited to certain times or days, including any land leased, reserved or held open to the public because of that use.

Public road means any thoroughfare open to the public for passage of vehicles.

Cemetery means any area of land where human bodies are interred.

§ 761.11 Areas where mining is prohibited or limited.

Subject to valid existing rights, no surface coal mining operations shall be conducted after August 3, 1977, unless those operations existed on the date of enactment:

(a) On any lands within the boundaries of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)), and National Recreation Areas designated by Act of Congress;

(b) On any Federal lands within the boundaries of any national forest; *provided, however,* that surface coal mining operations may be permitted on such lands, if the Secretary finds that there are no significant recreational, timber, economic, or other values which may be incompatible with surface coal mining operations; and

(1) Surface operations and impacts are incident to an underground coal mine; or

(2) The Secretary of Agriculture determines, with respect to lands which do not have significant forest cover within those national forests west of the 100th meridian, that surface coal mining operations comply with the Multiple-Use Sustained Yield Act of 1960 (16 U.S.C. 528-531), the Federal Coal Leasing Amendments Act of 1975 (Pub. L. 94-377, 30 U.S.C. 201 et seq.), and the National Forest Management Act of 1976 (90 Stat. 2949), and the provisions of the Act. No surface coal mining operation may be permitted within the boundaries of the Custer National Forest;

(c) On any lands which will adversely affect any publicly owned park or any places included on, or eligible for listing on, the National Register of Historic Places, unless approved jointly by the regulatory authority and the Federal, State or local agency with jurisdiction over the park or places;

(d) Within 100 feet measured horizontally of the outside right-of-way line of any public road, except—

(1) Where mine access roads or haulage roads join such right-of-way line; or

(2) Where the regulatory authority allows the public road to be relocated or the area affected to be within 100 feet of such road, after—

(i) Public notice and opportunity for a public hearing in accordance with Section § 761.12(d); and,

(ii) Making a written finding that the interests of the affected public and landowners will be protected;

(e) Within 300 feet measured horizontally from any occupied dwelling,

unless the owner thereof has provided a written waiver consenting to surface coal mining operations closer than 300 feet;

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

(g) Within 100 feet measured horizontally of a cemetery.

§ 761.12 Procedures.

(a) Upon receipt of a complete application for a surface coal mining and reclamation operation permit, the regulatory authority shall review the application to determine whether surface coal mining operations are limited or prohibited under Section 761.11 on the lands which would be disturbed by the proposed operation.

(b)(1) Where the proposed operation would be located on any lands listed in Section 761.11 (a), (f) or (g), the regulatory authority shall reject the application if the applicant had no valid existing rights for the area on August 3, 1977, or if the operation did not exist on that date.

(2) If the regulatory authority is unable to determine whether the proposed operation is located within the boundaries of any of the lands in Section 761.11(a) or closer than the limits provided in Section 761.11 (f) and (g), the regulatory authority shall transmit a copy of the relevant portions of the permit application to the appropriate Federal, State or local government agency for a determination or clarification of the relevant boundaries or distances, with a notice to the appropriate agency that it must respond within 30 days of receipt of the request.

(c) Where the proposed operation would include Federal lands within the boundaries of any national forest, and the applicant seeks a determination that mining is permissible under Section 761.11(b) of this Part, the applicant shall submit a permit application to the Regional Director for processing under 30 CFR Subchapter D. Before acting on the permit application, the Director shall insure that the Secretary's determination has been received and the findings required by Section 522(e)(2) of the Act (30 U.S.C. 1272(e)(2)) have been made.

(d) Where the proposed mining operation is to be conducted within 100 feet measured horizontally of the outside right-of-way line of any public road (except where mine access roads or haulage roads join such right-of-way line) or where the applicant proposes to relocate any public road, the regulatory authority shall —

(1) Require the applicant to obtain necessary approvals of the authority with jurisdiction over the public road;

(2) Provide notice in a newspaper of general circulation in the affected locale of a public hearing at least 2 weeks before the hearing;

(3) Provide an opportunity for a public hearing at which any member of the public may participate in the locality of the proposed mining operations for the purpose of determining whether the interests of the public and affected landowners will be protected; and

(4) Make a written finding based upon information received at the public hearing within 30 days after completion of the hearing as to whether the interests of the public and affected landowners will be protected from the proposed mining operations.

(e) Where the proposed surface coal mining operations would be conducted within 300 feet measured horizontally of any occupied dwelling, the applicant shall submit with the application a written waiver from the owner of the dwelling, consenting to such operations within a closer distance of the dwelling as specified in the waiver. The waiver must be knowingly made and separate from a lease or deed unless the lease or deed contains an explicit waiver.

(f) (1) Where the proposed surface coal mining operation may adversely affect any public park or any places included on, or eligible for listing on, the National Register of Historic Places, the regulatory authority shall transmit to the Federal, State or local agencies with jurisdiction over or a statutory or regulatory responsibility for the park or historic place a copy of the completed permit application containing the following:

(i) A request for that agency's approval or disapproval of the operations;

(ii) A notice to the appropriate agency that it must respond within 30 days from receipt of the request.

(2) A permit for the operation shall not be issued unless jointly approved by all affected agencies.

(g) If the regulatory authority determines that the proposed surface coal mining operation is not prohibited under Section 522(e) of the Act (30 U.S.C. 1272(e)) and this Part, it may nevertheless, pursuant to appropriate petitions, designate such lands as unsuitable for all or certain types of surface coal mining operations pursuant to 30 CFR 762, 764, 765 or 769.

(h) A determination of a State regulatory authority that a person holds or does not hold a valid existing right or that surface coal mining operations did or did not exist on the date of enactment shall be subject to administrative and judicial review under 30 CFR 787.11(b) and 12(b)(1). A determination of these issues by the Director concerning any Federal lands or under

a Federal program shall be subject to administrative and judicial review under 30 CFR 787.11(q) and 12(b)(2).

PART 762—CRITERIA FOR DESIGNATING AREAS AS UNSUITABLE FOR SURFACE COAL MINING OPERATIONS

Sec.

762.1 Scope.

762.4 Responsibility.

762.5 Definitions.

762.11 Criteria for designating lands as unsuitable.

762.12 Additional criteria.

762.13 Land exempt from designation as unsuitable for surface coal mining operations.

762.14 Exploration of land designated as unsuitable for surface coal mining operations.

AUTHORITY. Sections 102, 201, 501(b), 503, 504, 512, and 522 of Pub. L. 95-87, 91 Stat. 448, 449, 468, 470, 471, 483, 507 (30 U.S.C. 1201, 1211, 1251, 1253, 1254, 1262, and 1272).

§ 762.1 Scope.

This Part establishes the minimum criteria to be used in determining whether lands should be designated as unsuitable for all or certain types of surface coal mining operations.

§ 762.4 Responsibility.

The regulatory authority shall use the criteria in this part for the evaluation of each petition for the designation of areas as unsuitable for surface coal mining operations.

§ 762.5 Definitions.

For purposes of this Part:

Fragile lands means geographic areas containing natural, ecologic, scientific or esthetic resources that could be damaged or destroyed by surface coal mining operations. Examples of fragile lands include valuable habitats for fish or wildlife, critical habitats for endangered or threatened species of animals or plants, uncommon geologic formations, National Natural Landmark sites, areas where mining may cause flooding, environmental corridors containing a concentration of ecologic and esthetic features, areas of recreational value due to high environmental quality, and buffer zones adjacent to the boundaries of areas where surface coal mining operations are prohibited under Section 522(e) of the Act and 30 CFR 761.

Historic lands means historic or cultural districts, places, structures or objects, including archeological and paleontological sites, National Historic Landmark sites, sites listed on or eligible for listing on a State or National Register of Historic Places, sites having religious or cultural significance to native Americans or religious

groups or sites for which historic designation is pending.

Natural hazard lands means geographic areas in which natural conditions exist which pose or, as a result of surface coal mining operations, may pose a threat to the health, safety or welfare of people, property or the environment, including areas subject to landslides, cave-ins, large or encroaching sand dunes, severe wind or soil erosion, frequent flooding, avalanches and areas of unstable geology.

Substantial legal and financial commitments in a surface coal mining operation means significant investments that have been made on the basis of a long-term coal contract in power plants, railroads, coal-handling, preparation, extraction or storage facilities and other capital-intensive activities. An example would be an existing mine, not actually producing coal, but in a substantial stage of development prior to production. Costs of acquiring the coal in place or of the right to mine it without an existing mine, as described in the above example, alone are not sufficient to constitute substantial legal and financial commitments.

§ 762.11 Criteria for designating lands as unsuitable.

(a) Upon petition an area shall be designated as unsuitable for all or certain types of surface coal mining operations, if the regulatory authority determines that reclamation is not technologically and economically feasible under the Act, this Chapter and an approved State program.

(b) Upon petition an area may be (but is not required to be) designated as unsuitable for certain types of surface coal mining operations, if the operations will —

(1) Be incompatible with existing State or local land use plans or programs;

(2) Affect fragile or historic lands in which the operations could result in significant damage to important historic, cultural, scientific, or esthetic values or natural systems;

(3) Affect renewable resource lands in which the operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products; or

(4) Affect natural hazard lands in which the operations could substantially endanger life and property, such lands to include areas subject to frequent flooding and areas of unstable geology.

§ 762.12 Additional criteria.

(a) A state regulatory authority may establish additional or more stringent criteria for determining whether lands within the state should be designated as unsuitable for surface coal mining

operations. Such criteria shall be approved pursuant to Subchapter C of this Chapter.

(b) The Secretary may establish additional criteria for determining whether Federal lands should be designated as unsuitable for surface mining operations.

(c) Additional criteria will be determined to be more stringent on the basis of whether they provide for greater protection of the public health, safety and welfare or the environment, such that areas beyond those specified in the criteria of this part would be designated as unsuitable for surface coal mining operations.

§ 762.13 Land exempt from designation as unsuitable for surface coal mining operations.

The requirements of this Part do not apply to —

(a) Lands on which surface coal mining operations were being conducted on the date of enactment;

(b) Lands covered by a permit issued under the Act; or

(c) Lands where substantial legal and financial commitments in surface coal mining operations were in existence prior to January 4, 1977.

§ 762.14 Exploration on land designated as unsuitable for surface coal mining operations.

Designation of any area as unsuitable for all or certain types of surface coal mining operations pursuant to Section 522 of the Act and regulations of this Subchapter does not prohibit coal exploration operations in the area, if conducted in accordance with the Act, this Chapter, any approved State or Federal program, and other applicable requirements. Exploration operations on any lands designated unsuitable for surface coal mining operations must be approved by the regulatory authority under 30 CFR 776, to insure that exploration does not interfere with any value for which the area has been designated unsuitable for surface coal mining.

PART 764—STATE PROCESSES FOR DESIGNATING AREAS UNSUITABLE FOR SURFACE COAL MINING OPERATIONS

Sec.

764.1 Scope.

764.2 Objective.

764.3 Authority.

764.11 Procedures: General process requirements.

764.13 Procedures: Petitions.

764.15 Procedures: Initial processing, recordkeeping, and notification requirements.

764.17 Procedures: Hearing requirements.

764.19 Procedures: Decision.

- Sec.
764.21 Data base and inventory system requirements.
764.23 Public information.
764.25 Regulatory authority responsibility for implementation.

AUTHORITY: Sections 102, 201, 503, 510 and 522 of Pub. L. 95-87, 91 Stat. 448, 449, 470 and 507 (30 U.S.C. 1202, 1211, 1253, 1260 and 1272).

§ 764.1 Scope.

This Part establishes minimum procedures and standards to be included in each approved State program for designating non-Federal and non-Indian lands in a State as unsuitable for all or certain types of surface coal mining operations and for terminating designations.

§ 764.2 Objective.

The objective of this Part is to insure that States administering the Act on non-Federal and non-Indian lands implement processes to designate lands unsuitable for all or certain types of surface coal mining operations and for terminating designations.

§ 764.3 Authority.

(a) The Secretary has authority to approve or disapprove the procedures and standards in State programs to designate lands as unsuitable for all or certain types of surface coal mining operations and for terminating such designations.

(b) The States have authority to develop and include in their State programs procedures and standards, consistent with this Part, to designate lands unsuitable for all or certain types of surface coal mining operations and to terminate such designations.

§ 764.11 Procedures: General process requirements.

Each State shall establish a process enabling objective decisions to be made on which, if any, land areas of the State are unsuitable for all or certain types of surface coal mining operations. These decisions shall be based on competent, scientifically sound data and other relevant information. This process shall include the requirements listed in Sections 764.13-764.25.

§ 764.13 Procedures: Petitions.

(a) *Right to petition.* Any person having an interest which is or may be adversely affected has the right to petition the regulatory authority to have an area designated as unsuitable for surface coal mining operations, or to have an existing designation terminated.

(b) *Designation.* The only information that a petitioner need provide is:

- (1) The location and size of the area covered by the petition;

(2) Allegations of facts and supporting evidence which would tend to establish that the area is unsuitable for all or certain types of surface coal mining operations;

(3) A description of how mining of the area has affected or may adversely affect people, land, air, water or other resources;

(4) The petitioner's name, address and telephone number; and

(5) Identification of the petitioner's interest which is or may be adversely affected.

(c) *Termination.* The only information that a petitioner need provide to terminate a designation is:

(1) The location and size of the area covered by the petition;

(2) Allegations of facts, with supporting evidence, not contained in the record of the proceeding in which the area was designated unsuitable, which would tend to establish the statements or allegations, and which statements or allegations indicate that the designation should be terminated based on:

(i) The nature or abundance of the protected resource or condition or other basis of the designation if the designation was based on criteria found in 30 CFR 762.11(b); or

(ii) Reclamation now being technologically and economically feasible, if the designation was based on the criteria found in 30 CFR 762.11(a); or

(iii) The resources or condition not being affected by surface coal mining operations, or in the case of land use plans, not being incompatible with surface coal mining operations during and after mining, if the designation was based on the criteria found in 30 CFR 762.11(b);

(3) The petitioner's name, address and telephone number; and

(4) Identification of the petitioner's interest which is or may be adversely affected by the continuation of the designation.

§ 764.15 Procedures: Initial processing, recordkeeping, and notification requirements.

(a) (1) Within 30 days of receipt of a petition, the regulatory authority shall notify the petitioner by certified mail whether or not the petition is complete under Section 764.13 (b) or (c).

(2) The regulatory authority shall determine whether any identified coal resources exist in the area covered by the petition, without requiring any showing from the petitioner. If the regulatory authority finds there are not any identified coal resources in that area, it shall return the petition to the petitioner with a statement of the findings.

(3) The regulatory authority may reject petitions for designations or terminations of designations which are

frivolous. Once the requirements of Section 764.13 are met, no party shall bear any burden of proof, but each accepted petition shall be considered and acted upon by the regulatory authority pursuant to the procedures of this Part.

(4) When considering a petition for an area which was previously and unsuccessfully proposed for designation, the regulatory authority shall determine if the new petition presents new allegations of facts. If the petition does not contain new allegations of facts, the regulatory authority shall not consider the petition and shall return the petition to the petitioner, with a statement of its findings and a reference to the record of the previous designation proceedings where the facts were considered.

(5) If the regulatory authority determines that the petition is incomplete or frivolous, it shall return the petition to the petitioner, with a written statement of the reasons for the determination and the categories of information needed to make the petition complete.

(6) The regulatory authority shall notify the person who submits a petition of any application for a permit received which proposes to include any area covered by the petition.

(7) Any petitions received after the close of the public comment period on a permit application relating to the same mine plan area shall not prevent the regulatory authority from issuing a decision on that permit application. The regulatory authority may return any petition received thereafter to the petitioner with a statement why the regulatory authority cannot consider the petition. For the purposes of this Section, close of the public comment period shall mean at the close of any informal conference held under 30 CFR 786.14, or, if no conference is requested, at the close of the period for filing written comments and objections under 30 CFR 786.12-13.

(b)(1) Within three weeks after the determination that a petition is complete, the regulatory authority shall circulate copies of the petition to, and request submissions of relevant information from, other interested governmental agencies, the petitioner, intervenors, persons with an ownership interest of record in the property, and other persons known to the regulatory authority to have an interest in the property.

(2) Within three weeks after the determination that a petition is complete, the regulatory authority shall notify the general public of the receipt of the petition and request submissions of relevant information by a newspaper advertisement placed once a week for two consecutive weeks in the locale of the area covered by the

petition, in the newspaper of largest circulation in the State, and in any official State register of public notices.

(c) Until three days before the regulatory authority holds a hearing under Section 764.17, any person may intervene in the proceeding by filing allegations of facts, supporting evidence, a short statement identifying the petition to which the allegations pertain, and the intervenor's name, address and telephone number.

(d) Beginning immediately after a complete petition is filed, the regulatory authority shall compile and maintain a record consisting of all documents relating to the petition filed with or prepared by the regulatory authority. The regulatory authority shall make the record available for public inspection, free of charge, and copying, at reasonable cost, during all normal business hours at a central location of the county or multi-county area in which the land petitioned is located, and at the main office of the regulatory authority.

§ 764.17 Procedures: Hearing requirements.

(a) Within 10 months after receipt of a complete petition, the regulatory authority shall hold a public hearing in the locality of the area covered by the petition. If all petitioners and intervenors agree, the hearing need not be held. The hearing shall be legislative and fact-finding in nature, without cross-examination of witnesses. The regulatory authority shall make a verbatim transcript of the hearing.

(b)(1) The regulatory authority shall give notice of the date, time, and location of the hearing to:

(i) Local, State, and Federal agencies which may have an interest in the decision on the petition;

(ii) The petitioner and the intervenors; and

(iii) Any person with an ownership or other interest known to the regulatory authority in the area covered by the petition.

(2) Notice of the hearing shall be sent by certified mail and postmarked not less than 30 days before the scheduled date of the hearing.

(c) The regulatory authority shall notify the general public of the date, time, and location of the hearing by placing a newspaper advertisement once a week for 2 consecutive weeks in the locale of the area covered by the petition and once during the week prior to the scheduled date of the public hearing. The consecutive weekly advertisement must begin between 4 and 5 weeks before the scheduled date of the public hearing.

(d) The regulatory authority may consolidate in a single hearing the hearings required for each of several

petitions which relate to areas in the same locale.

(e) Prior to designating any land areas as unsuitable for surface coal mining operations, the regulatory authority shall prepare a detailed statement, using existing and available information on the potential coal resources of the area, the demand for coal resources, and the impact of such designation on the environment, the economy, and the supply of coal.

(f) In the event that all petitioners and intervenors stipulate agreement prior to the hearing, the petition may be withdrawn from consideration.

§ 764.19 Procedures: Decision.

(a) In reaching its decision, the regulatory authority shall use —

(1) The information contained in the data base and inventory system;

(2) Information provided by other governmental agencies;

(3) The detailed statement prepared under Section 764.17(e); and

(4) Any other relevant information submitted during the comment period.

(b) A final written decision shall be issued by the regulatory authority, including a statement of reasons, within 60 days of completion of the public hearing, or, if no public hearing is held, then within 12 months after receipt of the complete petition. The regulatory authority shall simultaneously send the decision by certified mail to the petitioner, every other party to the proceeding, and to the Regional Director for the region in which the State is located.

(c) The decision of the State regulatory authority with respect to a petition, or the failure of the regulatory authority to act within the time limits set forth in this Section, shall be subject to judicial review by a court of competent jurisdiction in accordance with State law under Section 526(e) of the Act and 30 CFR 787.12.

§ 764.21 Data base and inventory system requirements.

(a) The regulatory authority shall develop a data base and inventory system which will permit evaluation of whether reclamation is feasible in areas covered by petitions.

(b) The regulatory authority shall include in the system information relevant to the criteria in 30 CFR 762.11, including, but not limited to, information received from the United States Fish and Wildlife Service, the State Historic Preservation Officer, and the agency administering Section 127 of the Clean Air Act, as amended (42 U.S.C. Section 7470 et seq.).

(c) The regulatory authority shall add to the data base and inventory system information—

(1) On potential coal resources of the State, demand for those resources,

the environment, the economy and the supply of coal, sufficient to enable the regulatory authority to prepare the statements required by Section 764.17(e); and,

(2) That becomes available from petitions, publications, experiments, permit applications, mining and reclamation operations, and other sources.

§ 764.23 Public information.

The regulatory authority shall:

(a) Make the information and data base system developed under Section 764.21 available to the public for inspection free of charge and for copying at reasonable cost;

(b) Provide information to the public on the petition procedures necessary to have an area designated as unsuitable for all or certain types of surface coal mining operations or to have designations terminated and describe how the inventory and data base system can be used.

§ 764.25 Regulatory authority responsibility for implementation.

(a) The regulatory authority shall not issue permits which are inconsistent with designations made pursuant to Parts 760, 761, 762, 764, or 765.

(b) The regulatory authority shall maintain a map of areas designated as unsuitable for all or certain types of surface coal mining operations.

(c) The regulatory authority shall make available to any person any information within its control regarding designations, including mineral or elemental content which is potentially toxic in the environment but excepting proprietary information on the chemical and physical properties of the coal.

PART 765—DESIGNATING LANDS AS UNSUITABLE FOR SURFACE COAL MINING OPERATIONS UNDER A FEDERAL PROGRAM FOR A STATE

Sec.

765.1 Scope.

765.11 Procedures.

765.12 State variations.

765.13 Effective date.

AUTHORITY: Sections 102, 201, 501, 503, 504, 510, 512, 517, and 522 of Pub. L. 95-87, 91 Stat. 448, 449, 468, 470, 471, 480, 483, 498, and 507 (30 U.S.C. 1202, 1211, 1251, 1253, 1254, 1260, 1262, 1267 and 1272).

§ 765.1 Scope.

This Part establishes minimum procedures to be included in each Federal program for the designation of lands in a State as unsuitable for all or certain types of surface coal mining operations and for terminating designations.

§ 765.11 Procedures.

At the time a complete Federal program is promulgated for a State, or a partial Federal program covering the designation process is implemented, the Director shall develop a process for designating lands unsuitable for all or certain types of surface coal mining operations and terminating designations consistent with the requirements of Parts 761, 762 and 764 of this Subchapter. The Director shall include in that process the procedures, data base, inventory system, and public information requirements of Part 764.

§ 765.12 State variations.

When developing the procedures and criteria for designation of lands unsuitable for all or certain types of surface coal mining operations under a Federal program for a State, the Director shall consider—

- (a) The nature of the State's terrain, climate, coal deposits, biological, chemical and other relevant physical characteristics;
- (b) The structure and responsibilities of the State government and local governments within the State, including State and local land-use plans; and
- (c) Standards adopted by a State which are more stringent than the standards of the Act or the requirements of Parts 761, 762, and 764.

§ 765.13 Effective date.

- (a) Except as provided in Paragraph (b) of this Section, the Director shall implement the procedures and criteria of a Federal program for a State for designating lands unsuitable for all or certain types of surface coal mining 1 year after a Federal program is made effective for a State.
- (b) When a Federal program is promulgated because of a State's failure to implement, maintain, or enforce adequately the portion of the State program for designating lands unsuitable for all or certain types of coal mining, the designation procedures and criteria of a Federal program for the State under this Part shall be effective immediately upon implementation of the Federal program.

PART 769—PETITION PROCESS FOR DESIGNATION OF FEDERAL LANDS AS UNSUITABLE FOR ALL OR CERTAIN TYPES OF SURFACE COAL MINING OPERATIONS AND FOR TERMINATION OF PREVIOUS DESIGNATIONS

- Sec.
- 769.1 Scope.
- 769.3 Authority.
- 769.4 Responsibility.
- 769.7 Regulatory policy.
- 769.11 Who may submit a petition.

- Sec.
- 769.12 Procedures: Where to submit petitions.
- 769.13 Procedures: Contents of petitions.
- 769.14 Procedures: Initial processing, recording, and notification requirements.
- 769.15 Procedures: Intervention.
- 769.16 Procedures: Public information.
- 769.17 Procedures: Hearing requirements.
- 769.18 Procedures: Decisions on petitions.

AUTHORITY: Sections 102, 201, 510, 517, 522, and 523 of Pub. L. 95-87, 91 Stat. 448, 449, 468, 480, 498, 507, 510 (30 U.S.C. 1202, 1211, 1260, 1267, 1272 and 1273).

§ 769.1 Scope.

This Part establishes minimum procedures and standards for designating Federal lands as unsuitable for all or certain types of surface coal mining operations and for terminating designations pursuant to petition.

§ 769.3 Authority.

Section 522(c) of the Act (30 U.S.C. 1272 (c)) authorizes the Secretary to establish a process for any person having an interest which is or may be adversely affected, to petition for the designation of Federal lands as unsuitable for all or certain types of surface coal mining operations or for the termination of those designations.

§ 769.4 Responsibility.

(a) The Regional Director for the region in which Federal land is subject to a petition for designation or termination of a designation shall receive, hold hearings on, act, and issue decisions on petitions under the criteria of 30 CFR 762. Prior to designation, the Regional Director shall consult with appropriate State and local agencies.

(b) The surface managing agency shall make recommendations for approval or disapproval of petitions based on present and future land use planning and management of public lands.

§ 769.7 Regulatory policy.

(a) The Regional Director shall maintain a map of areas designated as unsuitable for all or certain types of surface coal mining operations.

(b) Once an area of Federal lands is designated as unsuitable for all or certain types of surface coal mining operations, the authorized officer shall condition any permit or lease in a manner so as to limit or prohibit surface coal mining operations on the designated area.

(c) Review of applications for permits on Federal lands is subject to the provisions of 30 CFR 741 and 786.19(d)-(e).

§ 769.11 Who may submit a petition.

Any person having an interest which is or may be adversely affected by surface coal mining operations to be conducted on Federal lands may petition the Secretary to have an area desig-

nated as unsuitable for all or certain types of surface coal mining operations or to have an existing designation terminated. This right does not apply to areas set aside from surface coal mining operations under laws other than the Act.

§ 769.12 Procedures: Where to submit petitions.

Each petition to have an area of Federal lands designated as unsuitable or to terminate an existing designation shall be submitted to the Regional Director of the region in which the Federal lands are located.

§ 769.13 Procedures: Contents of petitions.

(a) *Designation.* The only information that a petitioner need provide to designate lands is that required under 30 CFR 764.13(b).

(b) *Termination.* The only information that a petitioner need provide to terminate a designation is that required by 30 CFR 764.13(c).

§ 769.14 Procedures: Initial processing, recordkeeping, and notification requirements.

(a) Within 30 days of receipt of a petition, the Regional Director shall notify the petitioner by certified mail whether or not the petition is complete under Section 769.13.

(b) If the Regional Director determines that the petition is incomplete or frivolous, he or she shall return the petition to the petitioner together with a written statement of the reasons for the determination and the categories of information needed to complete the petition.

(c) The Regional Director shall determine whether any identified coal deposits exist in the area covered by the petition, without requiring any showing from the petitioner. If the Regional Director finds that there are not any identified coal deposits in that area, he or she shall return the petition to the petitioner with a statement of the findings.

(d) The Regional Director may reject petitions for designations or terminations of designations which are frivolous. Once the requirements of Section 764.13 are met, no party shall bear any burden of proof, but each accepted petition shall be considered and acted upon by the Regional Director pursuant to this Part.

(e) (1) Within 2 weeks after the determination that the petition is complete, the Regional Director shall send a copy of the petition to the authorized officer of the surface managing agency by certified mail for the officer's recommendation on the petition.

(2) The authorized officer shall recommend approval or disapproval of the petition within 30 days of its receipt, if the area covered by the peti-

tion has been included in a completed Federal lands review, or within 9 months if the area has not been included in a Federal lands review.

(f) Within 3 weeks after the determination that a petition is complete, the Regional Director shall circulate copies of the petition to, and request submissions of relevant information from, other interested governmental agencies, the petitioner, intervenors, any person with an ownership interest of record in the property, and other persons known to the Regional Director to have an interest in the property.

(g) (1) The Regional Director shall forward to the surface managing agency petitions in areas covered by existing land use plans in which surface coal mining operations were specifically considered, to determine whether—

(i) The petitioner has presented significant new evidence not previously considered in formulating or revising the land use plan, and

(ii) All of the criteria set forth in 30 CFR 762 were considered.

(2) Where no new significant evidence is presented and the criteria set forth in 30 CFR 762 were considered, the authorized officer of the surface managing agency may recommend that the Regional Director reject the petition, and return the petition to the Regional Director with a statement of its findings and a reference to the text of the land use plan where the evidence and criteria were considered.

(h) Where lands administered by the Departments of the Interior and Agriculture are contiguous or intermingled or where one Department's resource management could affect resources or the other Department's land; the Regional Director shall refer a copy of the petition to the Department of Agriculture and shall consider that Department's recommendations about designating those lands unsuitable for all or certain types of surface coal mining, or terminating such designations.

(i) Any petitions received after the close of the public comment period on a permit application relating to the same mine plan area shall not prevent the Director from issuing a decision on a permit application. The Regional Director may return any petitions received thereafter to the petitioner with a statement why the Regional Director cannot consider the petition. For the purposes of this Section, close of the public comment period shall mean at the close of any informal conference held under 30 CFR 786.14 or, if no conference is requested, at the close of the period for filing written comments and objections under 30 CFR 786.12-13.

§ 769.15 Procedures: Intervention.

Up to 3 days before the Regional Director holds a hearing on a petition under Section 769.17, any person may intervene in the proceeding by filing allegations of facts, supporting evidence, a short statement identifying the petition to which the allegations pertain, and the intervenor's name, address and telephone number.

§ 769.16 Procedures: Public information.

(a) Within 3 weeks after determining that a petition is complete, the Regional Director shall notify the general public of the receipt of the petition and request submissions of relevant information by a newspaper advertisement placed once a week for 2 consecutive weeks in the locale of the area covered by the petition, in the newspaper of largest circulation in the State, and in the FEDERAL REGISTER.

(b) Beginning immediately after a complete petition is filed, the Regional Director shall compile and maintain a record consisting of all documents relating to the petition and filed with or prepared by the Regional Director. The Regional Director shall make the record available for public inspection free of charge and for copying at a reasonable cost, during all normal business hours at a central location of the county or multi-county area where the land petitioned is located, and at the Regional Office.

§ 769.17 Procedures: Hearing requirements.

(a) Within 10 months after receipt of a complete petition, the Regional Director shall hold a public hearing in the locality of the area covered by the petition. If all petitioners and intervenors agree, a hearing need not be held. The hearing shall be legislative and fact-finding in nature, without cross-examination of witnesses. The Regional Director shall make a verbatim transcript of the hearing.

(b) (1) The Regional Director shall give notice of the date, time, and location of the hearing to—

(i) The surface managing agency and local, State, and Federal agencies which may have an interest in the decision on the petition;

(ii) The petitioner and the intervenors; and

(iii) Any person with an ownership or other interest in the area covered by the petition known to the Regional Director.

(2) Notice of the hearing shall be sent by certified mail and postmarked not less than 30 days before the scheduled date of the hearing; and

(3) The Regional Director shall notify the general public of the date, time, and location of the hearing by placing an advertisement once a week for 2 consecutive weeks in the locale of

the area covered by the petition and once during the week prior to the scheduled date of the public hearing. The consecutive weekly advertisements must begin between 4 and 5 weeks prior to the scheduled date of the public hearing.

(c) The Regional Director may consolidate into a single hearing the hearings required for each of several petitions which relate to areas in the same locale.

(d) If any petition relates to an area of Federal lands which is the subject of a pending surface coal mining and reclamation operations permit application, the Regional Director may, with consent of all petitioners and intervenors, coordinate the hearing on the petition required under Paragraph (a) of this Section with any informal conference held in accordance with Section 513(b) of the Act and 30 CFR 741.18. Nothing in this paragraph shall relieve an applicant for a permit from the burden of establishing that his or her application is in compliance with the requirements of the Federal lands program.

(e) Prior to designating any land areas as unsuitable for surface coal mining operations, the Regional Director shall issue a detailed statement on the abundance of coal resources of the area, the demand for coal resources, and the impact of such designation on the environment, the economy, and the supply of coal.

§ 769.18 Procedures: Decisions on petitions.

(a) In reaching his or her decision, the Regional Director shall use the information and recommendation of the Federal surface managing agency, information provided by other governmental agencies, the detailed statement issued under Section 769.17(e), and any other relevant information submitted during the comment period.

(b) A final written decision shall be issued by the Regional Director, including a statement of reasons, within 60 days of completion of the public hearing, or if no public hearing is held, then within 12 months after receipt of the complete petition. The Regional Director shall simultaneously send the decision and statement by certified mail to the petitioner, the Secretary, the surface managing agency, and to every other party to the proceeding.

(c) If the Regional Director concurs with the recommendation of the surface managing agency, the Regional Director's decision becomes final. If the Regional Director does not concur with the recommendation of the Federal surface managing agency, he or she shall notify the appropriate Regional or State Director of the surface managing agency within 30 days after

the public hearing, if any. The decision will at the same time be referred to the Secretary through respective agency heads for resolution and issuance of a final decision within 60 days after the hearing, if any.

SUBCHAPTER G—SURFACE COAL MINING AND RECLAMATION OPERATIONS PERMITS AND COAL EXPLORATION PROCEDURES SYSTEMS

PART 770—GENERAL REQUIREMENTS FOR PERMIT AND EXPLORATION PROCEDURE SYSTEMS UNDER REGULATORY PROGRAMS

- Sec.
- 770.1 Scope.
- 770.2 Objectives.
- 770.4 Responsibilities.
- 770.5 Definitions.
- 770.6 Organization.
- 770.11 Applicability.
- 770.12 Coordination with requirements under other laws.

AUTHORITY : Sections 102, 201, 501, 503, 504, 506, 507, 508, 510, 512 and 522 Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1202, 1211, 1251, 1253, 1254, 1256, 1257, 1258, 1260, 1262 and 1272).

§ 770.1 Scope.

This Subchapter provides the minimum requirements for the Secretary's approval of the permit and exploration procedures system components of regulatory programs for coal exploration and surface coal mining and reclamation operations. These include —

- (a) Requirements for obtaining permits;
- (b) The timing, development and filing of permit applications;
- (c) Regulatory authority review of applications and approval or denial of permits;
- (d) Administrative review of regulatory authority decisions on permits;
- (e) The terms and conditions of permits;
- (f) Public participation in the permit process;
- (g) The renewal and revision of permits;
- (h) Requirements for permits for special categories of surface coal mining and reclamation operations; and
- (i) Procedures for coal exploration operations under regulatory programs.

§ 770.2 Objectives.

The objectives of this Subchapter are to ensure that surface coal mining and reclamation operations are conducted only after the regulatory authority has first determined that reclamation is feasible and that all approved coal explorations and permitted surface coal mining and reclamation operations are conducted so as to fully protect the environment.

§ 770.4 Responsibilities.

(a) Persons seeking to engage in surface coal mining and reclamation operations must submit an application for and obtain a permit for those operations in accordance with this Subchapter. Persons seeking to conduct coal exploration must first file the notice of intention or obtain approval of the regulatory authority as required under 30 CFR 776.

(b) The regulatory authority shall review each application for exploration approval and for a permit, approve or disapprove each permit application or exploration application, and issue, condition, suspend, or revoke exploration approval, permits, renewals, or revised permits under an approved regulatory program.

§ 770.5 Definitions.

As used throughout this Subchapter, except where otherwise indicated:

Applicant means a person who seeks to obtain exploration approval or a permit under this Subchapter G and the regulatory program.

Application means the documents and other information filed with the regulatory authority under this Subchapter and the regulatory program for the issuance of exploration approval or a permit.

Complete application means an application for exploration approval or permit, which contains all information required under the Act, this Subchapter, and the regulatory program.

General area means, with respect to hydrology, the topographic and ground water basin surrounding a mine plan area which is of sufficient size, including areal extent and depth, to include one or more watersheds containing perennial streams and ground water zones and to allow assessment of the probable cumulative impacts on the quality and quantity of surface and ground water systems in the basins.

Principal shareholder means any person who is the record or beneficial owner of 10 percent or more of any class of voting stock.

Property to be mined means both the surface and mineral estates on and underneath lands which are within the permit area.

Violation notice means any written notification from a governmental entity of a violation of law, whether by letter, memorandum, legal or administrative pleading, or other written communication.

§ 770.6 Organization.

This Subchapter is organized according to separate parts, as follows:

(a) Parts 770 and 771 establish introductory, definitional, and other general provisions applicable for all Parts of this Subchapter.

(b) Part 776 establishes procedures regarding coal exploration.

(c) Parts 778, 779, and 780 establish specific requirements for permit application contents for surface coal mining activities.

(d) Parts 782, 783, and 784 establish specific requirements for permit application contents for underground coal mining activities.

(e) Part 785 establishes requirements for permits for certain special categories of surface coal mining and reclamation operations.

(f) Part 786 establishes requirements for the review, issuance, or denial of permits, and for public participation in that process.

(g) Part 787 establishes requirements for administrative and judicial review of final regulatory authority decisions on permits and applications for exploration approval and permits.

(h) Part 788 establishes requirements for the review, revision, and renewal of permits, and for the transfer, sale, or assignment of rights granted under permits.

(i) Part 795 establishes requirements for providing assistance to small operators and qualifying laboratories to perform necessary hydrologic consequences determinations and boring or core sampling analyses for those operators.

§ 770.11 Applicability.

(a) This Subchapter applies to each person who applies for a permit for surface coal mining and reclamation operations or conducts surface coal mining and reclamation operations pursuant to a permit under regulatory programs and to persons who seek to conduct coal exploration under regulatory programs.

(b) This Subchapter applies to each regulatory authority under a regulatory program and, where specifically provided, to the Director.

§ 770.12 Coordination with requirements under other laws.

Each regulatory program shall, to avoid duplication, provide for the coordination of review and issuance of permits for surface coal mining and reclamation operations with—

(a) Any other Federal or State permit process applicable to those operations including, at a minimum, permits required under the—

- (1) Clean Water Act, as amended (33 U.S.C. Sec. 1251 et seq.);
- (2) Clean Air Act, as amended (42 U.S.C. Sec. 7401 et seq.);
- (3) Resource Conservation and Recovery Act (42 U.S.C. Sec. 3251 et seq.); and

(b) The requirements of any water quality management plans which have been approved by the Administrator of the United States Environmental



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(D.E.P.A.D.)

April 6, 1979

M E M O R A N D U M

TO: Larry J. Bourret, Chairman, Conservation Commission
FROM: Wayne A. Edgerton, Conservation Commission
State Executive *Wayne A. Edgerton*
SUBJECT: ATTORNEY GENERAL CORRESPONDENCE, April 2, 1979

STATE CONSERVATION COMMISSION

The Wyoming State Conservation Commission is not a research-oriented agency. We can, however, prepare and/or provide information such as river basin, watershed, and environmental studies, soil surveys, recreation inventories and data on land use, critically eroding areas, water management, vegetation, and animals. This information is generally acquired through the services of cooperating agencies and on a contract basis.

Assistance is normally requested from the State Conservation Commission by application, letter, resolution, or by meeting with the State Conservation Commission. Data supplied by the State Conservation Commission depends on the needs and objectives of those assisted. Priorities for assistance are set by the State Conservation Commission.

Cost of assistance is determined by the availability of data and personnel, and extensiveness of the request.

...2/

The following is a list of data available at the State Conservation Commission Office.

Soil Surveys:	Johnson County (South Part)	1975
	Kemmerer City Area	1970
	Gillette Development Area	1969
	Lovell Area	1969
	Washakie & Hot Springs County	1973
	Evanston City Area	1972
	Fossil Butte Nat'l Mt	1974
	Goshen County (South Part)	1971
	Teton Area	1969
	Riverton Area	1974
	Blue Rim Area-Sublette County	1973
	Casper City Area	1969
	Sage Creek Watershed of Carbon County	1972

Most soil surveys include the following data:

- estimated soil properties significant to engineering
- engineering interpretations of the soils
- physical and chemical data for soils
- temperature and ppt data
- evapotranspiration data
- general soils map
- detailed soils map
- general nature of the area geology and climate
- use and management of soils for crops, pasture, range, woodland and wildlife
- soils descriptions
- wetlands
- flood prone areas and frequency of flooding
- alluvial land

River Basin Studies:	Wind-Big Horn-	
	Clarks Fork River Basin	1974
	Green River Basin	1978
	Yellowstone Basin and Coal Area	1977

Most River Basin Studies include the following data:

- climate
- physiography
- geology
- minerals
- soils
- erosion
- vegetation
- forest land condition and production
- water resources
- wildlife
- wildlife habitat improvement potential

- fisheries
- recreation facilities and resources
- scenic stream corridors, lakes and other landscapes
- cultural resources
- paleontology
- resource use and potential

Liaison between the State Conservation Commission and the Department of Environmental Quality is established by a cooperative agreement at this time.

CONSERVATION DISTRICTS

Conservation Districts are not research-oriented agencies. They can, however, prepare and/or provide information such as river basin, watershed, and environmental studies, soil surveys, recreation inventories, and data on land use, critically eroding areas, water management, vegetation, and animals. This information is generally acquired through the services of the Soil Conservation Service and other cooperating agencies.

Assistance is normally requested from the Conservation District by application, letter, resolution or by meeting with the Conservation District Board of Supervisors. Data supplied by the Conservation District depends on the needs and objectives of those assisted. Priorities for assistance are set by the Conservation District Board of Supervisors.

Cost of assistance is determined by the availability of data and personnel, and extensiveness of the request.

The following is a list of planning data that may be available at Conservation District offices in varying degrees. The data may have been assembled by the Conservation District, Soil Conservation Service or other cooperating agencies and governmental bodies.

1. Soil interpretations. General farming, irrigation, prime agricultural lands, forestry, rangeland, wildlife, recreation, transportation, housing, industry, and other potential development.

2. Land use. The most common uses are cropland (dry and irrigated), woodland, pastureland, rangeland, wildlife land, recreation land, mined areas, transportation and utility land, industrial land, and other uses. Soil maps and inventory and monitoring information can be used to identify areas needing land use adjustments or to identify potential uses.

3. Geology. Influences on planning and implementation.

4. Mineral location. Present and potential areas of commercial production.

5. Topography. Influences on planning and implementation.
6. Ownership. Private, Federal, and State lands and local units of government.
7. Plant cover. The type or quality of plant cover for farming, forestry, wildlife habitat, and range areas.
8. Groundwater supply. Water quality and areas of abundant or short water supply.
9. Community sanitation and water supply. Community water supplies and sewage, garbage, and trash disposal problems.
10. Water impoundments. Existing water areas whose sizes fit local needs.
11. Potential water impoundment sites. Potential sites of sizes needed locally.
12. Drainage area. Hydrologic boundaries and major streams.
13. Flood plains. Areas likely to flood.
14. Irrigation water supply. Irrigation water supply sources such as wells, ponds, lakes, and streams, as well as quality of the supply.
15. Special-purpose districts. Drainage, irrigation, flood control, Watershed Improvement Districts, and other special-purpose districts.
16. Sediment sources. Critical areas including surface mining, roadside, streambank, ditches, beaches, and suburban and urban developments.
17. Pollution sources. Sources of water, soil, and air pollution.
18. Fish and wildlife habitat potential. The present and potential development of fish and wildlife habitat.
19. Natural, scenic, historical, archeological, and other cultural resources. (i) Historical districts, sites, buildings, structures, and objects as may be included in the National Register of Historic Places and Registry of National Landmarks.
20. Natural areas for scientific study. Those areas that are typical of local environments should be considered for study.
21. Unique land forms. Areas, formations, and locations that are unusual and offer developmental opportunities. Landform oddities such as "badlands," unique geological formations, unusually attractive ridges and valleys, "overlooks," and similar features.

22. Environmental quality. Open space potential and opportunities for landscape enhancement.

23. Developmental sites. Sites known to be planned for housing, schools, industry, shopping centers, outdoor recreation, and other private, commercial, and public developments.

24. Transportation and utility. Present and planned roads, parkways, airports, railroads, navigable streams and canals, pipelines, power lines, and other utilities.

25. Location of threatened and endangered species. Areas containing critical habitat of threatened and endangered animal and plant species. The known spatial distribution, population status, and geographical extent of habitat that exists or is required to support populations.

26. Wetlands. Location of important wetland areas.

27. Population. Trends, age groups, income, employment, farm, nonfarm, rural, and urban changes.

28. Agriculture. Number of farms and ranches, acreage, income, major crops and livestock enterprises, woodland, range, etc.

29. Plant materials. Guide to native and commercial plants suitable for erosion and sediment control, wildlife habitat, livestock range, outdoor recreation, beautification, road rights-of-way, areas disturbed by mining, and other uses.

30. Water quality. Water suitable for municipal, wildlife, recreation, industrial, and agricultural uses.

31. Outdoor recreation inventory. Up-to-date listing of private and public recreation facilities.

32. Outdoor recreation potential. Potential for development of the 12 kinds of recreation appraised according to the "Guide to Making Appraisals of Potentials for Outdoor Recreation Developments."

33. Climatic data. Rainfall distribution, growing season, snow cover, temperature range, and other climatic data important to planners dealing with soil, water, and related resources.

The following is a list of of the 38 Conservation Districts in Wyoming that can provide much of the above stated information:

BEAVER SKULL CONSERVATION DISTRICT
Box 549
Newcastle, Wyoming 82701 (307) 746-2528

CLEAR WATER CONSERVATION DISTRICT
Box 866
Sheridan, Wyoming 82801 (307) 672-5828

DEVIL'S TOWER CONSERVATION DISTRICT

Box 355
Sundance, Wyoming 82729 (307) 283-3737

INTERMOUNTAIN CONSERVATION DISTRICT

4th & Miller
Gillette, Wyoming 82716 (307) 756-3202

LAKE DE SMET CONSERVATION DISTRICT

Box 729
Buffalo, Wyoming 82834 (307) 684-5573

POWDER RIVER CONSERVATION DISTRICT

Box H
Kaycee, Wyoming 82639 (307) 738-2750

FRONTIER CONSERVATION DISTRICT

Box 971
Cheyenne, Wyoming 82001 (307) 778-2220 ext. 2316

LA PRELE-GLENROCK CONSERVATION DISTRICT

Box 688
Douglas, Wyoming 82633 (307) 358-4690

LARAMIE RIVERS CONSERVATION DISTRICT

Box 966
Laramie, Wyoming 82070 (307) 745-3278

LINGLE-FT. LARAMIE CONSERVATION DISTRICT

Box 308
Lingle, Wyoming 82223 (307) 837-2242

NIOBRARA CONSERVATION DISTRICT

Box 637
Lusk, Wyoming 82225 (307) 334-2827

NORTH PLATTE VALLEY CONSERVATION DISTRICT

Box DD
Torrington, WY 82240 (307) 532-4021

PLATTE COUNTY CONSERVATION DISTRICT

Box 457
Wheatland, Wyoming 82201 (307) 322-9060

SOUTH GOSHEN CONSERVATION DISTRICT

Box DD
Torrington, Wyoming 82240 (307) 532-4021

SOUTHEASTERN LARAMIE COUNTY CONSERVATION DISTRICT

Box 417
Pine Bluffs, Wyoming 82082 (307) 245-9214

UPPER CHEYENNE RIVER CONSERVATION DISTRICT

Box 688
Douglas, Wyoming 82633 (307) 358-4690

CODY CONSERVATION DISTRICT

Box 764
Cody, Wyoming 82414 (307) 587-3251

HOT SPRINGS CONSERVATION DISTRICT

619 Mondell
Thermopolis, Wyoming 82443 (307) 864-3488

MEETEETSE CONSERVATION DISTRICT

Box 764
Cody, Wyoming 82414 (307) 587-3251

NOWOOD CONSERVATION DISTRICT

Box 286
Worland, Wyoming 82401 (307) 347-2212

POWELL-CLARK'S FORK CONSERVATION DISTRICT

Box 430
Powell, Wyoming 82435 (307) 754-9301

SHOSHONE CONSERVATION DISTRICT

Box 545
Lovell, Wyoming 82431 (307) 548-7422

SOUTH BIG HORN CONSERVATION DISTRICT

Box 791
Greybull, Wyoming 82426 (307) 765-2483

WASHAKIE CONSERVATION DISTRICT

Box 286
Worland, Wyoming 82401 (307) 347-2212

CASPER-ALCOVA CONSERVATION DISTRICT

Box 2754
Casper, Wyoming 82602 (307) 265-5550 ext. 5402

DUBOIS-CROWHEART CONSERVATION DISTRICT

Box 27
Dubois, Wyoming 82513 (307) 455-2388

POPO AGIE CONSERVATION DISTRICT

Box S
Lander, Wyoming 82520 (307) 332-3114

RIVERTON CONSERVATION DISTRICT

320 E. Lincoln
Riverton, Wyoming 82501 (307) 856-4806

LITTLE SNAKE RIVER CONSERVATION DISTRICT
Box 217
Baggs, Wyoming 82321 (307) 383-2550

MEDICINE BOW CONSERVATION DISTRICT
Box 966
Laramie, Wyoming 82070 (307) 745-3698

SARATOGA-ENCAMPMENT-RAWLINS CONSERVATION DISTRICT
Box 633
Saratoga, Wyoming 82331 (307) 326-5657

BIG PINEY CONSERVATION DISTRICT
Box 519
Big Piney, Wyoming 83113 (307) 276-3374

BIG SANDY CONSERVATION DISTRICT
Box 730
Rock Springs, Wyoming 82901 (307) 362-8275

BRIDGER VALLEY CONSERVATION DISTRICT
Box 386
Evanston, Wyoming 82930 (307) 789-2442

LINCOLN CONSERVATION DISTRICT
Box 98
Cokeville, Wyoming 83114 (307) 279-3256

PINEDALE CONSERVATION DISTRICT
Box 36
Pinedale, Wyoming 82941 (307) 367-2257

STAR VALLEY CONSERVATION DISTRICT
Box 216
Afton, Wyoming 83110 (307) 886-3851

TETON COUNTY CONSERVATION DISTRICT
Box S
Jackson, Wyoming 83001 (307) 733-2110

Liaison between Conservation Districts and the Department of Environmental Quality could best be established and maintained through a cooperative agreement. Many Conservation Districts presently have such an agreement.