

WRITTEN QUESTIONS AND RESPONSES
TO TESTIMONY OF KYLE J. WENDTLAND

ADMINISTRATOR OF THE WYOMING DEPARTMENT OF
ENVIRONMENTAL QUALITY
LAND QUALITY DIVISION

BEFORE
THE HOUSE NATURAL RESOURCE COMMITTEE
SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

HEARING ON:
“Environmental Justice for Coal Country: Supporting Communities Through the
Energy Transition”

June 15, 2021

Questions from Rep. Lowenthal for Mr. Wendtland:

1. Mr. Wendtland, how does Wyoming's coal mining bonding regulations compare to those of other coal mining states like West Virginia?

Wyoming has not evaluated individual states financial assurance regulations such as West Virginia. As stated in my written and oral testimony, the focus on financial assurance rules and regulations has been to specifically protect Wyoming's interests.

2. Based on your understanding of other state's coal mining bonding regulations, are any other state's regulations as effective as Wyoming's?

We agree with you that Wyoming has effective bonding regulations. Wyoming has not done an evaluation of other state's coal mine bonding regulations to be able to answer your question. As stated in my written and oral testimony, the focus on financial assurance rules and regulations has been to specifically protect Wyoming's interests.

Questions from Rep. Stauber for Mr. Wendtland:

3. How do we ensure operations can be reclaimed as efficiently as possible while maintaining the highest standards for safety during contemporaneous reclamation?

The answer to this question is twofold; First, Wyoming mines continuously reclaim as they mine. This is why there are 93,000 acres of reclamation in one of three phases of bond release and only 46,000 acres in active disturbance. There are significant engineering and safety constraints regarding the proximity of reclamation activities to the active pit in order to prevent spoils failures and to eliminate safety risks to the mine workforce. It is imperative that these safety factors be maintained.

Secondly, Coal operators regrade spoils as soon as it is safe and practical to do so. This is why area surface mines recover coal and reclaim continuously. Operators in Wyoming often wait and combine the reclamation liability release periods (Phases I, II, and III). This is done for efficiency and achieving a Logical Bond Release Unit (LBRU) of sufficient size to support the approved post mining land use which is predominantly agriculture and wildlife. There is considerable Phase II reclamation that is in agricultural production until it can be merged with Phase III reclamation based on the ten year liability period to create a LBRU. This is why Phase III bond release is not the only metric to consider when making a determination regarding contemporaneous reclamation or its success.

4. We have heard today about the interest in creating job opportunities during the mine reclamation process. In your experience with large mine closures, what kind of workforce can be employed during mine reclamation?

Reclamation of surface coal mines in Wyoming will not offer additional long term job opportunities. Wyoming has considerable large mine closure experience. The closure process includes a reduction in existing workforce to a reclamation team. This team is approximately one fourth the size of the active operation workforce. The most intensive process of mass volume earth movement is completed within a three to five year period. At this point the remainder of the workforce is terminated and a few environmental staff, or environmental consultants are retained for ten to fifteen years to complete the ten year monitoring and liability period as required by SMCRA. Therefore, complete closure is a 15 to 20 year process and all but a handful of the potential jobs are terminated within the first three to five years depending on the size of the mine.

5. Former Director Pizarchik said in his testimony that Wyoming has allowed bankrupt companies to mine coal without a reclamation bond. Is this accurate?

The statement that Wyoming mines operated without a reclamation bond is incorrect and inconsistent with the facts. There was never a time that Wyoming was out of compliance, as the self-bond claims were in place, and the state additionally negotiated a priority position in the bankruptcies. In addition, the self-bond and the priority claims were not released until a suitable replacement bond was in place as part of the bankruptcy approved exit plans. The state worked with and complied with the respective court orders and the Department of Justice to resolve the bankruptcies and protect the interests of the state. All actions taken by Wyoming were found to be in compliance with the court, SMCRA, the Department of Justice, and the Wyoming Attorney General.

6. In your testimony you mention that Wyoming amended its self-bonding requirements recently. Why did the State of Wyoming choose to maintain the option for self-bond and what was the objective of these regulatory changes?

Financial Assurance instrument diversification is very important. Wyoming wanted to keep all viable bonding instruments on the table to be able to build diverse and protective reclamation bond portfolios. One of the primary issues that the new self-bond rules address is replacement prior to a company reaching a financial point where it cannot qualify for an alternative financial assurance instrument(s) such as surety bond(s) or letter(s) of credit. Wyoming's new regulations are more sophisticated and specifically address this issue and that is why a company cannot self-bond when it can no longer make an investment credit rating. With the adjustments Wyoming has made to self-bond, it remains a viable financial assurance instrument in the portfolio.

7. Former Director Pizarchik recommends in his testimony that self-bonds be replaced within 90 days. Would this timeframe even be feasible? What is required by law to make the needed alterations to a state program to accommodate this sort of change?

If the question is referencing substitution of a self-bond current Wyoming rules already have the 90 day replacement requirement and Wyoming complies with this requirement. If a rule change is suggested, large bond structures can and often are complex and 120 to 160 days would represent a more reasonable time frame.

If the question is suggesting that a rule change should be made to eliminate self-bonding, it could not be accomplished within the suggested 90 day time frame. Wyoming's process of rule development includes review by the Land Quality Advisory Board (with public notice and comment), Approval by the Environmental Quality Council (with public notice and comment), and signature by the Governor. This rule making process takes a minimum of 8 to 12 months to complete. Once approved by the state a Program Amendment must be submitted and processed by OSMRE. The last Wyoming program Amendment was submitted in 2014 and approved in 2019. As of last week, the OSMRE has 42 program amendments pending approval.