



Mark Gordon, Governor

# Department of Environmental Quality

To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.



Todd Parfitt, Director

WRITTEN QUESTIONS AND RESPONSES OF KYLE J. WENDTLAND  
WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY,  
LAND QUALITY DIVISION ADMINISTRATOR

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

HEARING ON:

*"Examining the Biden Administration's Abandoned Mine Lands and Active Mining Programs"*

COMMITTEE WRITTEN QUESTIONS AND RESPONSES

November 23, 2023

Chairman Stauber,

Wyoming appreciates the opportunity to respond to the Committees questions, please find the response to Ranking Member Ocasio-Cortez question received on November 17, 2023.

**Question:**

- Congress made its intention clear in the Infrastructure Investments and Jobs Act that the abandoned coal mine land and reclamation funding should create good paying jobs for displaced coal workers and incentivize union labor. (30 USC 1231a(f): "priority may also be given to reclamation projects described in subsection b(1) that provide employment for current and former employees of the coal industry"; 30 USC 1231a(b)(3): "applying for grants under paragraph (1), States and Indian Tribes may aggregate bids into larger statewide regional contracts," and 42 USC 18851: "all laborers and mechanics employed (...) on a project associated in whole or in part by funding made available under this division (...) shall be paid wages at rates not less than those prevailing on similar projects in locality".) How are you implementing the employment priorities included in the law, and are you in touch with the United Mine Workers of America and the AFL-CIO on how best to do so?*

**Response:** As stated in my written and oral testimony, I appeared before the committee to address the Wyoming Department of Environmental Quality (DEQ) Title V coal program. The question asked is related to the DEQ's Title IV Abandoned Mine Lands (AML) program. Wyoming DEQ offers the following response related to the Title IV program question:

The Title IV Wyoming program questions are best addressed by being broken into four key areas:

- 1) Priority “may” be given to reclamation projects that provide employment for current or former coal mine workers.

Wyoming’s State Statute W.S. 9-2-3006(a)(ii)(B) requires that the lowest responsible bidder be awarded the contract. This Wyoming Statute complies with the provisions of 2 CFR 200.320 Methods of procurement to be followed. Wyoming DEQ also offers the following factors to consider.

- a) How is a former employee of the coal industry defined? Wyoming has repeatedly requested OSMRE to define this category of employee but that definition has not been provided.
- b) A former employee of a coal mine is not a protected class of worker (e.g., minority) in Wyoming. Therefore, a former coal employee cannot be given any priority status over another worker.

- 2) Aggregation of bids into larger statewide or regional contracts.

Aggregation of bids presents several challenges to contracting requirements that the Wyoming DEQ AML Division must follow. For example:

- a) Wyoming procurement laws allow a 5% preference applied to in-state contractors over out-of-state contractors.
- b) Aggregating projects could disqualify Wyoming-based contractors who may not be able to qualify for bonding on large projects. It is not in the best interest of the State of Wyoming to disqualify Wyoming-based and highly experienced contractors in our bidding process by aggregating projects.

- 3) Employees paid prevailing wages on similar projects.

Following the Amendments to SMCRA in 2006, Wyoming has received its 50% fee-based AML coal share from the U.S. Treasury and not the AML Trust Fund. Consequently, the Davis-Bacon prevailing wage provisions have been applied to Wyoming contracts since that time to present.

- 4) Is Wyoming in touch with the United Mine Workers of America or AFL-CIO

The Wyoming AML Division has had no communications with the United Mine Workers of America nor the AFL-CIO.

**Supplemental Information:** Wyoming DEQ would also like to clarify that several blanket statements made in the written and oral testimony related to reclamation bonding are not applicable to the Wyoming DEQ Title V program. Wyoming is a full cost bonding state and does not use bond pools.

Further, Wyoming DEQ completed updates to its reclamation bonding program in 2018, modernizing and strengthening bonding requirements. In 2021, Wyoming also created a cash based and state backed instrument called an Assigned Trust to further strengthen Wyoming's reclamation bonding program. Wyoming has over 43 years of experience in the calculation of reclamation bonds and is very confident in the adequacy of the bond amounts and the state's ability to collect on those bonds if necessary.