

**DEPARTMENT OF ENVIRONMENTAL QUALITY
LAND QUALITY DIVISION**



GUIDELINE 11

**REPORTING CULTURAL AND
PALEONTOLOGICAL RESOURCES WITHIN
MINE PERMIT AREAS**

A. Under authority of W.S. § 35-11-406(a)(xv) and Land Quality Division Rules and Regulations, (Coal Chapter II, Section 2.(a)(vi)(s), Coal Chapter IV, Section 2.(1)(ii)(E), Noncoal Chapter II, Section 2.(a)(i)(J) and Noncoal Chapter III, Section 2.(1)(ii)(E)) each application for a mining permit shall contain:

1. a description and map of any significant articles of cultural, historical, archeological, or paleontological value within the permit area;
2. a report describing the inventory for such articles including names of all persons consulted or responsible for the inventory; and
3. measures to be taken to salvage or to minimize or prevent adverse impacts to these resources.

The review of the Cultural and Paleontological Resources sections of the permit application, like the other sections, is a two (2) stage process: a completeness review followed by a technical analysis. During the completeness review, the application is evaluated in terms of the following criteria:

1. "Description" - The report should describe the cultural and paleontological resources within the permit area in relation to significant resources within the region. Site-specific descriptions should include the legal location, site type, environmental setting, artifact and feature inventory, proposed impacts to the site, and justifications for any further work necessary to avoid adverse impacts.
2. "Map" - the report should contain a plate map of appropriate scale indicating the location of all cultural and paleontological resources within the permit area, the permit area boundaries, the survey area boundaries, and the areas of proposed and present disturbance. Archeological and historic sites should be identified by their Smithsonian trinomial numbers.
3. "Significant Articles" - All Cultural remains and paleontological deposits within the permit area shall be inventoried (regardless of significance).
4. "Inventory" - The cultural resources inventory shall be accomplished by an intensive pedestrian survey of the entire permit area. Minimum spacing of surveyors should not exceed 100 feet (30m) except where terrain is prohibitive. All archeological and historic resources within the permit area must be evaluated in terms of their potential eligibility for the National Register of Historic Places before the application may be considered complete.

The paleontological inventory shall be accomplished by an intensive inspection of potential fossil-bearing deposits within the permit area.

5. "Report" - The report should contain all of the above information in the following format:
 - a. Appendix D-2 should contain:
 - 1) a historical overview of the permit area;

- 2) documentation that file search has been conducted with the State Historic Preservation Office for sites which may have been previously recorded within the permit area;
- 3) the descriptions and National Register evaluations of all of the historical resources within the permit area, and;
- 4) the name of the Principle Investigator responsible for the inventory and preparation of the report.

b. Appendix D-3A should contain:

- 1) a prehistoric overview of the permit area;
- 2) documentation that a file search has been conducted with the State Historic Preservation Office for sites which may have been previously recorded within the permit area;
- 3) the description and National Register evaluations of all of the archeological resources within the permit area, and
- 4) the name of the Principle Investigator responsible for the inventory and preparation of the report.

c. Appendix D-3B - should contain:

- 1) a paleontological overview of the permit area with a summary or previous studies done in the general vicinity;
- 2) a description of the paleontological resources within the permit area;
- 3) an assessment of the significance of all of the paleontological resources within the permit area that will be impacted by mining activities, and
- 4) the name of the Principle Investigator responsible for the inventory and preparation of the report.

d. Map - The map should be comparable to other mine application maps, i.e. it should be submitted as an exhibit, along with a separate 3-ring binder with the Archeology, history, and paleontology reports to comply with the Archeological Resources Protection Act of 1979.

After the applicant has satisfied all of the above requirements and the application is deemed complete, a technical analysis will be done of the mitigation plan. The mitigation plan should be placed in the Mine Plan as a legally binding set of "measures to be taken to salvage, or to minimize or prevent adverse impacts, to these (archeological, historical and paleontological) resources." Included among these measures shall be a statement acknowledging the applicant's responsibility to report unanticipated discoveries of archeological and paleontological resources.

Adverse Impacts are those which result in the destruction or alteration of all, or part, of any "significant articles of cultural, historical, archeological, or paleontological value within the permit area". Mitigation of adverse effects can take one of two forms:

1. Total Avoidance of the resource, in which case there is no adverse effect.
2. Data recovery commensurate with the extent and significance of the resource which will mitigate adverse effects by preserving the information embodied in the resource. Significance for cultural resources will be determined by National Register eligibility criteria (36 CFR 60.6). For paleontological resources, significance will be determined by the recommendations of a qualified professional paleontologist.

During the technical analysis, concurrence shall be sought on the adequacy of the inventory and mitigation plan from the State Historic Preservation Officer and the appropriate Federal land managing agency, if necessary. Copies of the archeology, history, and paleontology reports should be submitted to the state Historic Preservation Officer and the Federal land managing agency to facilitate the review process.

Those cultural resource reports which contain information on the location of archaeological sites on Federal lands should not be placed on file with the county clerk during the public notice period. This is confidential information protected by the Archaeological Resources Protection Act (See Section C of this guideline).

B. Wyoming Department of Environmental Quality/Land Quality Division Rules and Regulations pertaining to Cultural Resources

1. Wyoming Environmental Quality Act (W.S. § 35-11-406(a)(xv)): "Applications for mining permit shall be made in writing to the Administrator and shall contain . . . Such other information as the Administrator deems necessary or as good faith compliance and the provisions of this act require." (p. 23-24)
2. Land Quality Division Rules and Regulations (Coal Chapter II, Section 2.(a)(vi)(s), and Coal Chapter IV, Section 2.(l)(ii)(E) and Noncoal Chapter II, Section 2.(a)(i)(J) and Noncoal Chapter III, Section 2.(l)(ii)(E)): "In addition to that information required by W.S. § 35-11-406(a), each application for a mining permit shall contain . . . A detailed description of the lands to be affected within the permit area, how these lands will be affected, for what purpose these areas will be used during the course of the mining operation, and a time schedule for affecting these lands.

This detailed description shall include a description of . . . any significant artifacts, fossil or other article of cultural, historical, archeological, or paleontological value. Upon recommendation by a qualified archeologist or a qualified paleontologist, the Administrator may require an evaluation of the proposed permit area prior to the time that a permit or license is issued." (pp. 19, 22)

"An operator encountering unanticipated conditions shall notify the Administrator as soon as possible and in no event more than five (5) days after making the discovery. An unanticipated condition is any condition encountered in a mining operation and not

mentioned by the operator in his mining or reclamation plan which may seriously affect the procedures, timing, or outcome of mining or reclamation. Such unanticipated conditions include but are not limited to the following: . . . A discovery of significant archeological or paleontological importance." (pp. 57, 58)

C. Summary of Federal Cultural Resource Laws

The Antiquity Act of 1906

(Public Law 59-209, 24 STAT. 225; 16 U.S.C. 431-433): This act set forth the basic principle that the Federal government, acting for all the people, should work toward the protection, preservation, and public availability of the nation's historic and prehistoric archeological resources. With accompanying guidelines, the act provides for Federal control of all archeological resources on Federally owned or controlled land and establishes a permitting system for investigating them.

The Historic Sites Act of 1935

(Public Law 74-292, 49 STAT. 666, 16 U.S.C. 461-467): This act declares it to be National policy to preserve, for the public historic (including Prehistoric) sites, building, and objects of National significance. The National Park Service is directed to "Make necessary investigations and researches in the United States relating to particular sites. . . or objects, to obtain true and accurate historical and archeological facts and information concerning the same."

The Reservoir Salvage Act of 1960

(Public Law 86-523, 74 STAT. 220; 16 U.S.C. 468-469c): This act requires that before any agency of the United States shall undertake the construction of a dam or issue a license for construction of a dam (greater than 5000 acre feet or 40 surface acres of capacity), it shall provide written notice to the Secretary of the Interior. (The provisions of the act apply regardless of the size of the reservoir if the constructing agency finds, or is presented with evidence, that archeological resources are affected). The Secretary of the Interior shall cause a survey to be made and, if deemed necessary, shall cause the necessary research to be conducted as expeditiously as possible.

Congress presently is considering legislation amending this act to make it clear that every federal agency may fund the preservation or recovery of archeological resources being adversely affected by any of an agency's programs through using program monies directly, by contract with an archeological agency, or through the Secretary of the Interior.

The Historic Preservation Act of 1966

(Public Law 89-665, 80 STAT. 915; 16 U.S.C. 470): This act sets forth the basic concern of the Nation for the preservation of its heritage. It provides for an expanded National Register of districts, sites, buildings, structures, and objects significant in American History, Architecture, Archeology, and Culture and make provision for matching funds to help acquire and/or preserve them. It provides also for matching funds to conduct statewide surveys for locating sites to be placed on the National Register.

Under this law, if a site is in the National Register or eligible for listing in the National Register, this fact must be taken into consideration when any project utilizing Federal funds or under Federal permit adversely affect it. The sheer number of archeological sites and the fact that no survey can locate all significant sites (e.g., because of thick ground cover, or because sites are buried) means that in no case can the National Register be viewed as the sole source for information about the presence of potentially significant sites to be taken into consideration before or during land alteration or for the purpose of an adequate environmental impact statement.

Section 106 of this act requires that the State Historic Preservation Officer be afforded an opportunity to comment on any undertaking which adversely affects properties eligible for listing or listed in the National Register.

The National Environmental Policy Act of 1969

(Public Law 91-190, 31 STAT. 852; 42 U.S.C. 4321-4347): This act declares that it is the policy of the Federal government to use all practical means consistent with other essential consideration of National policy, to--among other things--improve and coordinate Federal plans, functions, programs, and resources to the end that the nation may preserve important historic, cultural, and natural aspects of our heritage. It directs that, to the fullest extent possible, the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the act and that all agencies shall utilize a systematic interdisciplinary approach that will insure the integrated use of the natural and social sciences and the environmental design arts in planning and decision making which may have an impact on man's environment. It further requires that on all Federally sponsored or licensed projects which significantly affect the environment, the responsible official submit an environmental impact statement which assesses the impact of the proposed action and any unavoidable adverse environmental affects (which consistently has been interpreted to include those on archeological and historic resources), and sets forth the alternatives to the project, the long and short-term results, and any irreversible and irretrievable commitment of resources.

This act also established the Council on Environmental Quality in the Executive Branch to advise and assist the President in carrying out the provisions of the act in reviewing environmental impact statements.

Executive Order 11593

In this Executive Order it is decreed that "The Federal Government shall provide leadership in preserving, restoring and maintaining the historic and cultural environment of the Nation. Agencies . . . shall (1) administer the cultural properties under their control in a spirit of stewardship and trusteeship for future generations, (2) initiate measures necessary to direct their policies, plans, and programs in such a way that Federally owned sites, structures, and objects of historical, architectural or archeological significance are preserved, restored, and maintained for the inspiration and benefit of the people, and (3) in consultation with the Advisory Council on Historic Preservation (16 U.S.C. 470i), institute procedures to assure that Federal plans and programs contribute to the preservation and enhancement of non-federally owned sites, structures and objects of historical, architectural or archeological significance."

The Executive Order further spells out that Federal agencies are to inventory archeological and historical resources under their control or affected by their programs, are to exercise due caution with respect to those resources, give them appropriate and adequate consideration during planning, and do whatever is possible with regard to protecting and, when necessary, recovering those resources.

The Secretary of the Interior is to provide technical and advisory assistance to other agencies in their accomplishment of these goals and is to review agency procedures.

Procedures for the Protection of Historic and Cultural Properties of 1974

(Code of Federal Regulations, Title 36, Chapter 8, Part 800. Also called 36 CFR 800): This act established procedures for compliance with the National Historic Preservation Act of 1966 and Executive Order 11593.

Archeological Conservation Act of 1974

(Public Law 93-291, 38 STAT. 174): This act specifically provides for the preservation of historical and archeological data (including relics and specimens) which might otherwise be irreparably lost or destroyed as a result of any alteration of the terrain caused as a result of any Federal construction project or Federally licensed activity or program. Under this act project funds are to be made available to cover the cost of survey, recovery, analysis and publication. For projects involving more than \$50,000, no more than 1% of the total figure will be provided for archaeology. For projects involving less than \$50,000 there is no established limit.

The Surface Mining Control and Reclamation Act of 1977

(Public Law 95-87, 30 U.S.C. 1201) Regulations concerning enforcement of this act (30 CFR 761.11) provide that . . ."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: . . . 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 . . ."

Archeological Resources Protection Act of 1979

(Public Law 96-95, 93 STAT. 721; 16 U.S.C. 470): Section 9 of the Archeological Resources Protection Act of 1979 requires that information concerning the nature and location of any archeological resource on public lands or Indian lands may not be made available to the public under the Freedom of Information Act (FOIA) unless the Federal land manager concerned determined that such disclosure would: (1) further the purpose of the Archeological Resources Protection Act or the Reservoir Salvage Act of 1960 (16 U.S.C. 469-469c,) (2) not create a risk of harm to such resources or to the site on which such resources are located. Notwithstanding the provisions above, a Governor of any State may request, in writing, to release the archeological resource information withheld if this request states: (1) the specific site or area for which information is sought; (2) the purpose for which the information is sought; and (3) a commitment by the Governor to adequately protect the confidentiality of such information to protect the resources from commercial exploitation. In order to implement the Archeological Resources Protection

Act, it is necessary to establish procedures that will insure adequate review of, and protection for, archeological resource information contained in mine plans and permit applications involving Federal lands.