CHAPTER 11

FINANCIAL ASSURANCE

Section 1. **Definitions**

(a) "Collateral" means the actual or constructive deposit of a perfected, first lien security interest in real property located within the State of Wyoming, in favor of the Wyoming Department of Environmental Quality which meets the requirements of this Chapter. The property may include land which is part of the permit area; however, land pledged as collateral for a bond shall not be disturbed under any permit while it is serving as security.

(b) "Irrevocable letter of credit" is a negotiated financial instrument that is used to pay a beneficiary issued by a banking institution to guarantee payment.

(c) "Liabilities" means obligations to transfer assets or provide services to other entities in the future as a result of past transactions including off-balance sheet liabilities.

(d) "Net worth" means total assets minus total liabilities including on and off-balance sheet liabilities.

(e) "Real property" means land and appurtenances as defined in Wyoming Statute (W.S.) §39-15-101(a)(v).

(f) "Self-bond" means an indemnity agreement in a sum certain made payable to the State, with or without separate surety. The indemnity agreement is signed by the permittee and, if applicable, the ultimate parent entity guarantor.

(g) "Tangible net worth" means net worth minus intangibles such as goodwill, patents or royalties.

(h) "Ultimate parent entity" means an entity not controlled by any other entity and is the topmost responsible entity which owns or controls the applicant and is the guarantor for a self-bond.

Section 2. **Acceptable Financial Instruments.**

The following bond instruments are accepted by the Division: corporate surety, irrevocable letters of credit, self-bond, federally insured certificates of deposit, cash, government securities, and real property collateral.

Section 3. **Irrevocable Letters of Credit.**

(a) Letters of credit as authorized by W.S. § 35-11-418, shall be subject to the following conditions:

(i) The letter must be payable to the Department in part or in full upon demand and receipt from the Director of a notice of forfeiture issued in accordance with W.S. § 35-11-421;

(ii) The letter shall not be in excess of ten percent of the issuing or supporting bank's capital surplus account as shown on a balance sheet liabilities certified by a certified public accountant;

(iii) The Administrator shall not accept standby letters of credit;

(iv) The Administrator shall not accept letters of credit from a bank for any person, on all permits held by that person, in excess of the limitations imposed by W.S. §13-3-402; and

(v) The letter of credit shall provide that:

(A) The bank will give prompt notice to the permittee and the Director of any notice received or action filed alleging the insolvency or bankruptcy of the bank, or alleging any violations of regulatory requirements which could result in suspension or revocation of the bank's charter or license to do business;

(B) In the event the bank becomes unable to fulfill its obligations under the letter of credit for any reason, notice shall be given immediately to the permittee and the Director; and

(C) Upon the incapacity of a bank by reason of bankruptcy, insolvency, or suspension or revocation of its charter or license, the permittee shall be deemed to be without performance bond coverage in violation of the Act. The Director shall issue a notice of violation against any operator who is without bond coverage, specifying a reasonable period to replace bond coverage, not to exceed 90 days. During this period the Director or his designated representative shall conduct weekly inspections to ensure continuing compliance with other permit requirements, the regulations and the Act. If the notice is not abated in accordance with the schedule, a cessation order shall be issued.

(D) The irrevocable letter of credit may be cancelled by the surety only after ninety (90) days notice to the Director, and upon receipt of the Director's written consent, which may be granted only when the requirements of the bond have been fulfilled.

(b) The letter may only be issued by a bank organized to do business in the U.S. which identifies by name, address, and telephone number an agent upon whom any process, notice or demand required or permitted by law to be served upon the bank may be served.

(i) If the bank fails to appoint or maintain an agent in this State, or whenever any such agent cannot be reasonably found, then the Director shall be an agent for such bank upon whom any process, notice or demand may be served for the purpose of this Chapter. In the event of any such process, the Director shall immediately cause one copy of such process, notice or demand to be forwarded by registered mail to the bank at its principal place of business. The

Director shall keep a record of all processes, notices, or demands served upon him under this paragraph, and shall record therein the time of such service and his action with reference thereto.

(ii) Nothing herein contained shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon the bank in any other manner now or hereafter permitted by law.

Section 4. **Self-bonds.**

(a) Application to Self-bond.

(i) Initial application to self-bond shall be made at the time the operator makes written application to the Administrator for a license to mine. An operator conducting an existing operation with greater than a 10-year life of mine remaining may submit an application to self-bond to the Administrator. The application shall be on forms furnished by the Administrator and shall contain:

(A) Identification of operator:

(I) For corporations, name, address, telephone number, state of incorporation, a description of the corporate structure, principal place of business and name, title and authority of person signing application, and statement of authority to do business in the State of Wyoming, or

(II) For all other forms of business enterprises, name, address and telephone number and statement of how the enterprise is organized, law of the state under which it is formed, place of business, and relationship and authority of the person signing the application.

(B) Amount of bond proposed to be under a self-bond in accordance with W.S. § 35-11-417(c)(i). The proposed self-bond maximum amount shall not exceed seventy-five percent (75%) of the required bond amount.

(C) Type of operation and anticipated dates performance is to be commenced and completed.

(D) Brief chronological history of business operations conducted within the last five years which would illustrate a continuous operation for five years immediately preceding the time of application. The Administrator may allow a joint venture or syndicate with less than five years of continuous operation to qualify under this requirement, if each member of the joint venture or syndicate has been in continuous operation for at least five years immediately preceding the time of application.

(E) Information in sufficient detail to show good faith performance of past mining and reclamation obligations. The compliance information in the permit and/or annual reports may be referenced to satisfy part of this requirement.

(F) Financial information in sufficient detail to show that the operator and ultimate parent entity:

(I) Have a rating for all bond issuance actions and long term credit rating within the current year of "Aa3" or higher as issued by Moody's Investor Service, "AA-" or higher as issued by Standard and Poor's Corporation or "AA-" or higher as issued by Fitch Ratings. The operator is eligible for a maximum of seventy-five percent (75%) of the approved reclamation cost estimate in the most recent Director's bond letter.

(II) Have a rating for all bond issuance actions and long term credit rating within the current year of "A2" or higher as issued by Moody's Investor Service, "A" or higher as issued by Standard and Poor's Corporation or "A" or higher as issued by Fitch Ratings. The operator is eligible for a maximum of seventy percent (70%) of the approved reclamation cost estimate in the most recent Director's bond letter.

(III) Have a rating for all bond issuance actions and long term credit rating within the current year of "Baa2" or higher as issued by Moody's Investor Service, "BBB" or higher as issued by Standard and Poor's Corporation or "BBB" or higher as issued by Fitch Ratings. The operator is eligible for a maximum of fifty percent (50%) of the approved reclamation cost estimate in the most recent Director's bond letter.

(IV) In the event of a split rating, the Administrator has the discretion to determine which rating would be accepted and applied to (I), (II) or (III) of this subsection.

(G) A statement identifying by name, address and telephone number:

(I) A registered office which may be, but need not be, the same as the operator's place of business.

(II) A registered agent, which agent must be either an individual resident in this State, whose business office is identical with such registered office, a domestic corporation, or a foreign corporation authorized to transact business in this State, having a business office identical with such registered office. The registered agent so appointed by the operator shall be an agent to such operator upon whom any process, notice or demand required or permitted by law to be served upon the operator may be served.

(III) If the operator fails to appoint or maintain a registered agent in this State, or whenever any such registered agent cannot be reasonably found at the registered office, then the Director shall be an agent for such operator upon whom any process, notice or demand may be served. In the event of any such process, the Director shall immediately cause one copy of such process, notice or demand to be forwarded by registered mail, to the operator at his principal place of business. The Director shall keep a record of all processes, notices, or demands served upon him under this paragraph, and shall record therein the time of such service and his action with reference thereto.

(IV) Should the operator change the registered office or registered agent, or both, a statement indicating such change shall be filed immediately with the Land Quality Division.

(V) Nothing herein contained shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon an operator in any other manner now or hereafter permitted by law.

(H) A written guarantee for an operator's self-bond from the ultimate parent entity guarantor if the guarantor meets the conditions of subsections (a)(i)(D), (a)(i)(F) and (a)(i)(G) of this Section as if it were the operator. Such a written guarantee may be accepted by the Administrator and shall be referred to as an "ultimate parent entity guarantee." The terms of the ultimate parent entity guarantee shall provide for the following:

(I) If the operator fails to complete the reclamation plan, the ultimate parent entity guarantor shall do so or the ultimate parent entity guarantor shall be liable under the indemnity agreement to provide funds to the state sufficient to complete the reclamation, but not to exceed the actual reclamation costs.

(II) The ultimate parent entity guarantee shall remain in force unless the ultimate parent entity guarantor sends notice of cancellation by certified mail to the operator and to the Administrator at least 120 days in advance of the cancellation date, and the Administrator accepts the cancellation. The cancellation shall be accepted by the Administrator if the operator obtains a suitable replacement bond before the cancellation date, if the lands for which the self-bond, or portion thereof, was accepted have not been disturbed, or if the lands have been released under Chapter 15 or W.S. §§ 35-11-417(e) and 423.

(I) The Administrator shall require the operator to submit any information specified in subsection (a)(i)(F) of this Section in order to determine the financial capabilities of the operator.

(J) The following in order:

(I) For the Administrator to accept an operator's self-bond, the total amount of the outstanding self-bonds of the operator shall not exceed 25 percent of the operator's tangible net worth in the United States; and

(II) For the Administrator to accept an ultimate parent entity guarantee, the total amount of the ultimate parent entity guarantor's outstanding self-bonds and guaranteed self-bonds shall not exceed 25 percent of the ultimate parent entity guarantor's tangible net worth in the United States.

(b) Approval or Denial of Operator's Self-bond Application.

(i) The Administrator, within 60 days of operator's submission of all materials necessary to base a decision on the application shall:

(A) Approve or reject such application and declare in writing his reasons for such action to the operator or his registered agent. The decision shall be based on all the information submitted and shall be sufficient to meet the demonstrations required by W.S. § 35-11-417(d).

(B) If a rejection is based on inadequate information or failure of the operator to supply all necessary material, the Administrator shall allow the operator 30 days to remedy the deficiencies. Such corrections must be made to the satisfaction of the Administrator. The Administrator shall have an additional 60 days to approve or reject the corrected application.

(ii) If the Administrator accepts self-bond, an indemnity agreement shall be submitted subject to the following requirements:

(A) The indemnity agreement shall be executed by all persons and parties who are to be bound by it, including the ultimate parent entity guarantor, and shall bind each jointly and severally.

(B) Corporations applying for a self-bond or ultimate parent corporations guaranteeing an operator's self-bond shall submit an indemnity agreement signed by two corporate officers who are authorized to bind their corporations. A copy of such authorization shall be provided to the Administrator along with an affidavit certifying that such an agreement is valid under all applicable Federal and State laws. In addition, all corporate guarantors shall provide a copy of the corporate authorization demonstrating that the corporation may guarantee the self-bond and execute the indemnity agreement.

(C) If the applicant is a partnership, joint venture or syndicate, the agreement shall bind each partner or party who has a beneficial interest directly or indirectly~~,~~ in the operator.

(D) The indemnity agreement shall provide that the persons or parties bound shall pay all litigation costs incurred by the State in any successful effort to enforce the agreement against the operator.

(c) Self-Bond Renewal.

(i) Information for the self-bond renewal under the self-bonding program which shall accompany the annual credit rating evaluation shall include:

(A) The amount of bond required which is determined by the reclamation cost estimate in accordance with W. S. § 35-11-417(c)(ii) and the amount which is proposed to be under a self-bond.

(B) Financial information in sufficient detail to show that the guarantor still meets one of the criteria in Section 4(a)(i)(F), and the limitation in Section 4(a)(i)(J). The guarantor shall submit the full report from the credit reporting agency or agencies supporting its

rating for the current year. Additional information may be requested by the Administrator when a split rating occurs.

(ii) Any valid initial self-bond shall carry the right of successive renewal as long as the above listed information is submitted and demonstrates that the guarantor remains qualified under W.S. § 35-11-417(d) and there is a minimum 10-year life of mine remaining.

(iii) Renewal of self-bonds approved prior to the effective date of these rules shall require the bond and credit ratings described in Section 4(a)(i)(F) and shall meet the limitations in Section 4(a)(i)(J). Operators with self-bonds approved prior to the effective date of these rules shall submit a new application to self-bond within eighteen (18) months of the effective date of these rules.

(d) Self-bond Substitution.

(i) The Administrator may require the operator to substitute a good and sufficient bond instrument if the Administrator determines in writing that the self-bond of the operator fails to provide the protection consistent with the objectives and purposes of this Act. The Administrator shall require full or partial substitution if the financial information submitted or requested under Section 4(c)(i)(B) indicates that the operator and/or the ultimate parent entity no longer qualifies under the self-bonding program. Substitution of an alternate bond shall be made within 90 days. The operator may also request substitution. This request is contingent upon the operator meeting all the requirements of the bond provisions (W.S. §§ 35-11-417 through 424) of the Act. If these requirements are met, the Administrator shall accept substitution.

(ii) If the operator fails within 90 days to make a substitution for the revoked self-bond the Administrator shall suspend or revoke the license of the operator to conduct operations upon the land described in the permit until such substitution is made.

(iii) All methods of substitution shall be made in accordance with the bonding provisions (W.S. §§ 35-11-417 through 418) of the Act. The Administrator shall require substitution of a good and sufficient bond.

(e) Reporting Requirements.

(i) If a devaluation in the credit rating occurs, the Administrator shall be notified within thirty (30) days of the change and a copy of the rating report shall be provided to the Administrator.

(ii) A statement listing any notices issued by the Securities and Exchange Commission or proceedings against the operator or the ultimate parent entity initiated by any party alleging a failure to comply with any public disclosure or reporting requirements under the securities laws of the United States. Such statement shall include a summary of each such allegation, including the date, the requirement alleged to be violated, the party making the allegation, and the disposition or current status thereof. The Administrator shall be notified

within thirty (30) days of the filing.

Section 5. **Collateral Bonds.**

(a) For any collateral, the following information shall be provided:

(i) The value of the real property. The property shall be valued at the difference between the fair market value and any reasonable expense anticipated by the Department in selling the property. The fair market value shall be determined by a market analysis that may be conducted by an appraiser or qualified agent proposed by the operator. The appraiser shall be selected by the Administrator. The Administrator has the option to reject any appraiser proposed by the operator. The expense of the appraisal shall be borne by the operator. The real property shall be appraised every three (3) years.

(ii) A description of the property satisfactory for deposit to further assure that the operator shall faithfully perform all requirements of the Act. The Administrator shall have full discretion in accepting any such offer.

(A) Real property shall not include any lands in the process of being mined, reclaimed, or the subject of this application. The operator may offer any lands within the permit boundary which have received phase 3 bond release or which will not be disturbed while pledged as collateral. The acceptance of real property within the permit boundary shall be at the discretion of the Administrator.

(iii) Evidence of ownership of the real property shall be in the form of a clear and unencumbered title.

(iv) If the Administrator accepts any real property as collateral, the Administrator shall require possession by the Department of the mortgage agreement executed by the operator in favor of the Department of Environmental Quality. The requirement shall be sufficient to vest such interest in the property in the Department to secure the right and power to sell or otherwise dispose of the property by public or private proceedings so as to ensure reclamation of the affected lands in accordance with the Act. Any mortgage shall be executed and duly recorded as required by law so as to be first in time and constitute notice to any prospective subsequent purchaser of the same real property or any portion thereof.

(v) Any security interest created by a security agreement shall be perfected by filing a financing statement or taking possession of the collateral in accordance with W.S. §§ 34.1-9-401 through 406. The Department shall have all rights and duties set forth in W.S. § 34.1-9-207 when the collateral is in its possession as a secured party, as defined in W.S. § 34.1-9-102(a)(lxxv). Any money received from the collateral during this period of time shall be remitted to the operator. When the collateral is left in the possession of the operator, the security agreement shall require that, upon default, the operator shall assemble the collateral and make it available to the Department at a place to be designated by the Department which is reasonably convenient to both parties.

(vi) The operator may, with written approval by the Administrator, substitute for any of the real property held hereunder other real property upon submittal of all information required under this section.

(vii) All parties with a claim subordinate to the Department in property held as collateral under this section shall be notified by the operator of all actions affecting the collateral.

Section 6. **Securities.**

(a) Securities that are unencumbered shall only include those which are United States government securities or State government securities which are acceptable to the Administrator. Certificates of deposit shall be insured by the Federal Deposit Insurance Corporation (FDIC).

(b) If the instrument offered for deposit is a security, the operator's interest must be evidenced by possession of the original or a notarized copy of the certificate or a certified statement of account from a brokerage house.

(c) If the Administrator accepts any government securities, the Administrator shall require possession by the Department of the security agreement executed by the operator in favor of the Department of Environmental Quality. The requirement shall be sufficient to vest such interest in the property in the Department to secure the right and power to sell or otherwise dispose of the property by public or private proceedings so as to ensure reclamation of the affected lands in accordance with the Act.

Section 7. **Requirements for Forfeiture and Release.**

(a) All requirements as to bond forfeiture proceedings and the release of bonds shall be consistent with W.S. § 35-11-417(e) and W.S. §§ 35-11-421 through 424 of the Act, excepting the requirements as to notification to the surety.

(b) The Department shall retain the full value of the real property until the bond liability equal to the value of the real property is released or substituted with another financial instrument.