Coal and Non-Coal
Standard Operating Procedure
(SOP) No. 1.12
Supersedes IM No. 50

Land Quality Division
SUBJECT: Addressing Public Nuisance Issues (Endangering Public Safety, Property, Livestock, Wildlife, and Plant Life) in Mine Permit Applications

Note: Public nuisance provisions do not apply to Limited Mining Operations (LMO’s).

Forward

The attached Standard Operating Procedure is the policy of the Land Quality Division of the Wyoming Department of Environmental Quality covering the topic of Addressing Public Nuisance Issues in Coal and Non-Coal Mine Permit Applications. Staff shall make no significant deviations from this policy without the prior approval of the District Supervisor and the Administrator.

Signed this 30th day of May, 2013.

Nancy Nuttbrock
Administrator, Land Quality Division
Table of Contents

I. Introduction 3

II. Permit Application 4

A. Public Nuisance Concerns 4
   i. Proximity Concerns 4
   ii. Air Quality Concerns 4
   iii. Noise Concerns 5
   iv. Lighting Concerns 5
   v. Traffic Concerns 6

B. Endangering the Public Safety 6
   i. Unauthorized Access 6
   ii. Use of Explosives 6
   iii. Entering a Controlled Access Highway 8
   iv. Highwalls and Berms 8

C. Endangering Property 8
   i. Use of Explosives 8
   ii. County Zoning 8

D. Endangering Livestock, Wildlife, and Plant Life 8
   i. Livestock Protection 8
   ii. Wildlife Protection 8
   iii. Speed Limits 9
   iv. Sage Grouse 9
   v. Weed Control 9
I. Introduction

This Standard Operating Procedure serves to assist in the preparation of small and large mine permit applications for compliance with Wyoming Statute § 35-11-406 (b)(xiii) for avoidance of public nuisance. This Standard Operating Procedure gives procedural guidance to the Land Quality Division (LQD) staff. The actual requirements come from the statutes and regulations. Any violation for non-compliance cannot be based on this operating procedure, but must be based on the statutes and regulations or permit commitments.

Wyoming Statute § 35-11-406 (b)(xiii) states that proposed mining and reclamation plans shall include:

"The procedures proposed to avoid constituting a public nuisance, endangering the public safety, human or animal life, property, wildlife and plant life in or adjacent to the permit area including a program of fencing all stockpiles, roadways, pits and refuse or waste areas to protect the surface owner's ongoing operations; ".

Wyoming Statute § 35-11-103 (e)(vii) defines “adjacent” as lands within ½ mile of the permit area.

Wyoming Statute § 35-11-406 (m)(vii) provides that the Director can deny an application if:

"The proposed operation constitutes a public nuisance or endangers the public health and safety; ".

In order for DEQ to evaluate whether a proposed or expanded mining operation may constitute a public nuisance, the specifics of the particular mining operation (machinery used, period of operation, use of explosives, traffic, etc.) need to be discussed in the Mine Plan and addressed in the context of the adjacent land uses (dwellings, schools, parks, recreational areas, cropland, important wildlife habitat, etc.).

When the application involves the conversion of an existing limited mine operation to a small mine or large mine permit, or the addition of significant acreage into an existing mine permit, the applicant should consider past correspondences received from members of the surrounding community to identify any public complaints. Previous citizen's complaints can help identify potential problems that should be addressed in the permit application prior to public notice. In addition to a review of the WDEQ/LQD files, the local planning and zoning department, county road and bridge department and sheriff’s department should be contacted to determine if any complaints have been registered. If the application is for a new permit to be located in a potentially sensitive area (numerous adjacent landowners, near recreation areas, important wildlife habitat, etc.), the review of any citizen's complaints directed toward mine permits in the immediate
area may also provide insight in how the permit application needs to be prepared in order to avoid a potential public nuisance. The LQD does not have the authority to require some of the suggestions that address potential public nuisance concerns. If the applicant does not address these concerns during the application review, the application would be sent to Public Notice and any objections related to public nuisance would be addressed by the Environmental Quality Council.

II. Permit Application

The following items should be addressed by the applicant in a section of the Mine Plan entitled: "Avoidance of Public Nuisance"

A. Public Nuisance Concerns;

i. Proximity Concerns: Wyoming Statute § 35-11-406 (m)(viii) states the Director may deny a permit if the affected land lies within three hundred (300) feet of any existing occupied dwelling, home, public building, school, church, community or institutional building, park or cemetery, unless the landowner's consent has been obtained.

Documentation, including aerial photos if available, should be included in Appendices A, B, and E to determine whether the proposed affected land is within 300 feet of any of the above facilities. The applicant should identify all such landowners and provide a landowner's consent statement from each party for inclusion in the permit application. Landowner consent statements must contain the landowner's full name, address, phone number and original signature, as well as the following statements:

- a statement identifying the proposed operator and the general location of the proposed mining operation;
- a statement confirming that the landowner has reviewed the mine and reclamation plan;
- a statement that the landowner has no objection to the proposed mining operation.

If landowner consent cannot be obtained, the plans for the proposed mining operation must be modified to avoid affecting any lands within 300 feet of the respective facility.

ii. Air Quality Concerns: LQD Coal Rules and Regulations, Chapter 4, Section 2(j) states "(ii) General performance standards. Each road shall be located, designed,
constructed, reconstructed, used, maintained and reclaimed so as to: (A) Control or prevent erosion, siltation, and the air pollution attendant to erosion, including road dust as well as dust occurring on other exposed surfaces, by measures such as vegetating, watering, using chemical or other dust suppressants, or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices.” There are no similar rules in the LQD Noncoal Rules and Regulations.

Since the LQD’s jurisdiction over dust control is limited, it is standard practice that the LQD observes any excessive on site dust conditions and contacts the AQD to alert them of these dust problems. The AQD has much broader and specific rules that govern dust control on mine sites. While LQD’s jurisdiction is limited, AQD requires mining operators to control dust on the entire mine site, including access roads, stockpiles (product/saleable), equipment (crushers/conveyors) and the open pit area. AQD has qualified and trained staff to regulate permitting and enforcement processes related to air quality. It is the LQD policy to assist AQD by observing dust concerns as LQD inspectors are at the mines more often. The mine inspectors should alert the operators of any dust concerns or coal fires that are safety issues and recommend appropriate mitigation such as getting a water trucks to the appropriate locations. However, the LQD will contact the AQD to assess possible air quality problems at all mining sites as it is the AQD’s responsibility to enforce any compliance issues related to dust control.

The applicant for a mine permit must apply for a construction permit from the WDEQ Air Quality Division (AQD). An AQD construction permit is required for any mining operation greater than 10 acres in size. Smaller operations may be granted a waiver based upon site-specific circumstances.

iii. Noise Concerns: Excessive noise from the operation of equipment and machinery at all hours of the day can rise to the level of a public nuisance. Operators should consider including specific "hours of operation" and "days of operation" commitments in the Mine Plan. Noise can also be reduced to acceptable levels by locating equipment below grade or constructing berms around the pit.

The specific hours and days of operation necessary to avoid a public nuisance depend upon factors specific to the proposed area of mining. These may include: type of equipment being used; number of adjacent dwellings, distance to nearest dwelling; any type of noise screening between the equipment and the dwelling; and, the presence of any unique adjacent landowner, such as a church or recreation area that may necessitate weekend restrictions. The hours of operation should be posted in a conspicuous location near the mine entrance.
An example of a specific hours and days of operation commitment for a mining operation with adjacent, occupied dwellings is as follows:

*Operational hours will be between 7 a.m. and 5 p.m. from Monday through Saturday. The operator may operate beyond 5 p.m., but no later than 9 p.m., for no more than 20 days in a single calendar year. No operations will be conducted on Sundays. Operations on legal State and National Holidays shall be restricted to the hours between 12 noon to 5 p.m.*

iv. Lighting concerns: Lighting can also rise to the level of a public nuisance if the operation involves the use of excessive lighting. Lighting issues may be resolved with hoods over the lamps or by locating machinery and lighting below grade. Berms built around the perimeter may also aid in reducing fugitive light.

v. Traffic concerns: Operators should also consider the impacts of traffic as a result of loading trucks, the use of Jake brakes, and excessive speeds. Operators are encouraged to post signs both entering and leaving the permit area stating that “No Jake Brakes” are allowed and stating the speed limit on all applicable public roads.

B. Endangering the Public Safety.

i. Unauthorized Access: Wyoming Statute § 35-11-415 (b)(i) (Duties of the Operator) requires the operator to conspicuously post and maintain at each entrance to the operation, a sign which clearly shows the name, address and telephone number of the operator, the name of his local authorized agent, and the permit number of his operations. A permit entrance sign alone may be sufficient in controlling unauthorized access for those proposed permit areas not readily accessible by public roads and with no adjacent occupied dwellings.

Proposed permit areas that are readily accessible by frequently used public roads should generally be fenced and have a locked gate to control unauthorized vehicular access.

Proposed permit areas with adjacent occupied dwelling(s) should generally be fenced and have a locked gate.

Any potentially hazardous facilities, such as wash ponds or sumps, highwalls, electrical equipment, fuel storage, etc. should be secured to prevent endangerment.

ii. Use of Explosives. While LQD does not specifically regulate non-coal blasting, operations anticipating the use of explosives need to address how that use will not endanger property or the public safety. The degree of detail required in this plan depends upon adjacent land use and public access. W.S. § 35-11-406(b)(xiii)
(Public Nuisance statute) in combination with W.S. § 35-11-406(a)(xv) allows the Administrator to require a blasting plan for non-coal mines depending on the relevance of the plan to public safety....human or animal life, property, etc.

Blasting shall be conducted to prevent injury to persons, damage to public or private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or availability of ground or surface waters outside the permit area.

Permit requirements pertaining to blasting in coal mines are located in Wyoming DEQ/LQD Coal Rules and Regulations, Chapter 2, Section (b)(v). Blasting for surface coal mining operations is found in Wyoming DEQ/LQD Coal Rules and Regulations, Chapter 6. If blasting is proposed for noncoal operations, the applicants should consider using appropriate sections of these coal regulations to ensure the blasting will not endanger property or the public safety. Anticipated blast design(s) shall be submitted to be reviewed by the LQD blasting engineer if blasting operations will be conducted within:

- 1,000 feet of any building used as a dwelling, public building, school, church, or community or institutional building outside the permit area; or
- 500 feet of an active or abandoned underground mine.

Such a blasting plan should include the following:

- distance from blasting to nearest occupied dwelling;
- distance from blasting to nearest structure;
- Maximum amount of explosives detonated in any 8 millisecond (ms) delay period;
- frequency and time-of-day during which blasts will occur; and
- methods of making certain all unauthorized persons and livestock are clear of the blast area.

All permit entrances should have warning signs stating that blasting occurs on the property.

All explosives storage needs to be in compliance with State Mine Inspector rules and regulations. The applicant must contact the State Mine Inspector to ensure these regulations are met.
iii. Entering a Controlled Access Highway: If the proposed mine permit area includes a new access or haulroad that enters a controlled access highway (most State and Federal highways), the applicant should contact the local district office of the Wyoming Department of Transportation to obtain authorization to enter the controlled access highway and to determine any necessary construction requirements or traffic signs at the proposed intersection. A signed Department of Transportation Form M3, assumption of liability, may be necessary from that agency.

iv. Highwalls and Berms: Highwalls must be sloped and/or benched in accordance with MSHA requirements. No highwall may be overhanging and the operator should make a commitment in the Mine Plan to eliminate any overhanging highwalls or benches at the end of each working shift. Benches or safety berms must be placed above highwalls per MSHA requirements. The applicant must contact the State Mine Inspector to ensure that their safety regulations are met. The Mine Plan should discuss how the benching/berming will be maintained with the progression of the pit. The Reclamation Plan should address highwall stability and safety issues related to the post-mining land use.

C. Endangering Property:

i. Use of Explosives: Refer to Item No. II. B. Endangering the Public Safety, sub-item ii of this SOP.

ii. County Zoning: The applicant should provide documentation from the county that the proposed activity does not conflict with the county zoning regulations. Some counties require a conditional use permit for some mining operations. In these cases, the Planning and Zoning departments should be contacted to identify appropriate conditions or restrictions that should be applied to the permit.

D. Endangering Livestock, Wildlife, and Plant Life.

The applicant should provide a discussion on how they will minimize potential hazards to livestock, wildlife, and plant life by the proposed mining operation.

i. Livestock Protection: Livestock protection generally consists of fencing the perimeter of the operation to prevent livestock from entering

ii. Wildlife Protection: Wildlife protection concerns should be addressed in the Wyoming Game and Fish review of the permit application. Wildlife protection may involve the use of fences designed to keep wildlife out of hazardous areas or fences designed to allow the passage of migrating big game animals. A description of specific fence types is provided in the LQD Guideline No. 10. “Fencing”.

Page 8 of 9
iii. Speed Limits: The Wyoming Game and Fish generally requests a maximum speed limit on proposed haul and access roads to avoid wildlife collisions. A 30 mph speed limit has commonly been requested by that agency.

iv. Sage Grouse: The applicant must address sage grouse issues in accordance with the most current Governor’s Executive Order. Depending on the location of the proposed operation in relationship to designated core sage grouse breeding areas or sage grouse leks, there may be restrictions on new ground disturbance.

v. Weed Control: Plant life protection focuses primarily on the prevention of the spread of noxious weeds. All applications for small and large permits should contain a commitment to control designated and prohibited noxious weeds within the permit area. Control of noxious weeds may be required as directed by local county regulations.

Proposed permit areas immediately adjacent to croplands may require a commitment to also control restricted noxious weeds. Control commitments should include the use of certified, weed-free seed for reclamation purposes and the use of chemical herbicides when necessary.

If the applicant proposes the use of chemical herbicides to control noxious weeds, there should be a commitment in the permit that all herbicide application will to be conducted by a licensed applicator. The applicant may wish to commit to utilizing the local county weed and pest agency in the control of all noxious weeds.

The USFW or federal land management agency may identify endangered plant species that require protection/avoidance.