

Foreword

The attached Standard Operating Procedure is the internal policy of the Land Quality Division of the Wyoming Department of Environmental Quality covering the topic of Information Dissemination to the Public/Copying Documents. Staff shall make no significant deviations from this policy without the prior approval of the District Supervisor and the Administrator.

Signed this _____ day of _____, 2000

Richard A. Chancellor
Administrator
Land Quality Division

COAL STANDARD OPERATING PROCEDURE NO. 8.2

Land Quality Division

**SUBJECT: Information Dissemination to the Public/Copying
Department Documents**

I. Introduction and Applicability

- A. This Standard Operating Procedure (SOP) outlines procedural guidance for Land Quality staff for Information Dissemination to the Public and Copying of Department Documents. Most of this document is based on Department of Environmental Quality Department Policy #10. A fee schedule for copying maps has been attached for reference purposes.
- B. Text in this document includes references to the Wyoming Environmental Quality Act, W.S. § 35-11-101 and the Wyoming Public Records Act, W. S. § 9-9-104, which serve as the statutory authorities for this SOP.

II. Face-to-face Communication with the Public about Businesses Regulated by the LQD

- A. When required to represent the Land Quality Division employees are to represent the Division in a professional and polite manner, expressing positions only on matters within their prescribed job duties. Employees are not to discuss litigation or personnel issues, but should be prepared to discuss other job related issues with the various "publics," including the news media.
- B. Employees expressing opinions not related to their job duties may not portray themselves as representatives of the Division. When expressing private/personal opinions, employees are representing only themselves and should not make references to the State or LQD in a manner which could be construed as an implied or perceived representation of the official State or Division position.
- C. Staff who communicate in their official capacity with members of the public about businesses regulated by the Division must ensure that the information provided is based upon matters of public record. LQD staff represent the Division, therefore, statements made and positions taken in a staff member's official capacity must accurately reflect the Division's position. Because the LQD is a regulatory division, staff are often contacted by the public to provide information about a particular regulated entity. It is critical that only matters of public record or formal Division positions are communicated in such conversations. Staff are advised to ensure that their communications with the public about businesses subject to LQD regulation conform to the following guidelines:
 - 1. When contacted by the public regarding a business subject to LQD regulation, communicate only that information that is within the public record. The best source of such information are LQD files on the business. Always inform requesting individuals of their right to inspect the Division's files and encourage them to come in and review applicable files.
 - 2. Volunteer and subjective statements to the public as to the character or suitability of a regulated business should **never** be made by LQD staff acting in their official capacity. Statements such as "company X has a poor compliance history" or "I would never personally do business with company X" are inappropriate and have great potential to cause problems. A staff member who makes those kinds of statements will be subject to disciplinary action and additionally, may be subject to individual civil liability for damage to the reputation of the affected business.
 - 3. Any request by the public for information regarding an operator who is under investigation for violations of law by the Division or against whom the Division is

actively taking enforcement action, should be immediately referred to your supervisor, the Division Administrator, or to the Attorney General's representative prior to providing any information to the requesting party.

4. In instances where the Division is taking a contested position on an issue, in an enforcement case, for example, and a staff member is asked to comment on the Division's position, any such communication should be based solely upon matters of public record, and should only be communicated through someone designated to speak for the Division.

III. Confidential Documents

A. The Division's records are governed by the Wyoming Public Records Act (PRA) and the Environmental Quality Act (EQA). The courts have interpreted these laws with the presumption that disclosure, not secrecy should prevail. However, there are exceptions that authorize the Division to hold certain records confidential. These exceptions are as follows:

1. Trade Secrets as Designated by the Director. W.S. § 35-11-1101(a) specifies that an operator may request that certain information be held confidential because it contains trade secrets. The Division must hold confidential any such information that has been designated by the Director as trade secrets. Likewise, the Division must hold confidential any information which has been submitted for trade secret review, but for which no decision has yet been made.
2. Hole Completion and Surface Restoration Plans. Chapter 14, section 2(b) of the Coal rules provides that a discoverer's hole completion and reclamation plan is a trade secret. The discoverer still must request that the record be held confidential; however, it must be held confidential for only a period of two years unless the discoverer can justify a longer period.
3. Drill Hole Records. Reports identifying the location and depth of each hole drilled during coal or noncoal exploration are confidential.
4. Financial Records. Comparative balance sheets and comparative income statements from self-bond applicants are confidential.
5. Complaint Records. The identity of a person who complains to the Division about the Division's failure to execute its responsibilities shall be held confidential if the complainant so requests.

6. Deliberative Memoranda. Memoranda that are part of the "deliberative process" warrant confidential treatment. Documents are deliberative if they contain opinions, recommendations, or advice offered to assist in the adoption of the Division's policies or decision. Examples of such memoranda would be a district staff member's request to a superior for enforcement action, or a staff member's recommendation on rule making.
 7. Attorney/Client Communications. All written communications between the Attorney General's Office and the Division staff should be labeled and kept confidential.
 8. Personnel Records. W.S. § 16-4-203(d)(iii) requires the Division to hold personnel records confidential. Applications, performance ratings, and scholastic achievement data are three examples listed in the statute, but this list does not appear to be exclusive.
 9. Cultural Resource Information. Cultural resource information, typically found in Appendix D-3, shall be held confidential by the Division unless the following is provided:
 - a. A letter of permission to view the information from the surface owner;
 - b. A description of the specific resource or area about which information is sought;
 - c. A description of the purpose for which the information is sought; and
 - d. A written commitment to protect the resource.
- B. Confidential records should be marked "Confidential" in order to avoid inadvertent disclosure. These records include all communications whether by electronic mail, handwritten message, memo, or letter.
- C. Once a record is properly designated, marked, and filed as confidential, the Division should not make it available for public inspection unless and until confidentiality is waived, or the designation has been determined to be a mistake, or a court orders the record released. Absent a written decision by an authorized official, all records not otherwise designated confidential should be considered available for public inspection.

IV. Electronic Records

- A. The PRA defines a "public record" to be the original and copies of any record, regardless of physical form or characteristic that have been made by the State or received by the State in any connection with the transaction of public business, except those designated as privileged or confidential by law. Therefore, any electronic record held by the Division that has not been designated as "confidential" may be accessed and/or obtained by the public.

V. Inspection, Copying, and Faxing of LQD Files and Documents:

- A. Any person is entitled to inspect the Division's files, unless the requested files are subject to withholding from inspection for reasons specified in the Public Records Act or the Environmental Quality Act. If you know, or have reason to suspect that a file or part of a file may be confidential or should be withheld from inspection, contact your supervisor prior to making the file available to the requesting individual.
- B. Any person having the right to inspect a Division file is also entitled to copy or have copied part or all of a file, at the requesting individual's expense of 15¢ per page. To make arrangements for copying files, contact one of the LQD secretaries.
1. As a rule of thumb, if the individual wants a few (5 pages or less) specific pieces of information, make the copies and send them. For more voluminous or less specific requests, advise the individual they will need to inspect the files. This policy must be adhered to consistently. We cannot be making large numbers of copies for one person and refusing another. Likewise, we do not have sufficient staff to spend large amounts of time searching out and copying files. The Division could also be culpable if a key piece of correspondence is omitted.
 2. In instances where the requesting party wants a large number of copies or wants copies that LQD does not have the capability to reproduce in-house, arrangements must be made to have copies made by an outside source and have an invoice and the copies delivered to the requesting party. If it is determined that the files are such they must never leave the custody of the Division, the documents must be accompanied by a Division representative at the requestor's cost. The attached form will be used for all documents sent out for copying.
- C. This Division will not FAX more than 5 pages of copies of files, documents, Rules and Regulations or Statutes; but will provide alternative ways of acquiring such information. As a rule of thumb, requests for faxing a few specific pieces of information (5 pages or less) may be filled. For more voluminous requests, advise the individual they will need to

make arrangements to have the documents copied, or use an alternative way of acquiring such information (i.e. electronically).

- D. If a person requests to inspect a file that is either presently being used by a staff member, or that will take some time to make available, inform the requesting individual of when the file will be made available for inspection. In such a case, the Division may have a reasonable time in which to provide the file.

- E. The LQD staff has a duty to the public to ensure that public records remain available for inspection, and to provide information to the public when requested. Similarly, the LQD has a responsibility to ensure that it provides objective and accurate information in response to public inquiry. Any staff member who has questions about a particular request for information, either in direct communication, or relating to a LQD file, should postpone answering the request until the staff member's supervisor can be contacted.

DEPARTMENT OF ENVIRONMENTAL QUALITY

- DOCUMENT CUSTODY FORM -

I, _____ representing the copy company of _____
 _____ have taken custody of the files/documents itemized below, for copy purposes. I will maintain the integrity of these files and ensure they are replaced in order and in their entirety. I will provide copies of these files to _____ and bill them for the cost of copying.

_____/_____/_____
 Signature Date

#	DESCRIPTION	TRTND
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I, _____ representing the Department of Environmental Quality have checked that the above files/documents have been returned by the copy company representative.

_____/_____/_____

MAP COSTS

11 x 17	\$1.10
12 x 18	1.15
18 x 22	1.20
18 X 24	1.25
22 X 34	1.30
24 X 36	1.35
30 X 42	1.40
34 X 44	1.45
36 X 48	1.50
36 X 54	1.55
36 X 61	1.60
36 X 67	1.65
36 X 74	1.70
36 X 80	1.75
36 X 87	1.80

If the size is not listed we will calculate costs to the nearest size.