

FEDERAL REGISTER: 44 FR 33655 (June 11, 1979)

DEPARTMENT OF THE INTERIOR

AGENCY: Office of Surface Mining Reclamation and Enforcement and Geological Survey (OSM)

30 CFR Part 211

Regulation of Coal Mining on Federal Lands in Wyoming; Federal/State Cooperative Agreement

ACTION: Final rule.

SUMMARY: This final rule completes the approval and promulgation of a Federal/State cooperative agreement between the Department of the Interior and the State of Wyoming for the regulation of surface coal mining and reclamation operations on Federal lands in Wyoming.

EFFECTIVE DATE: June 11, 1979.

FOR FURTHER INFORMATION CONTACT: Donald Crane, Regional Director, Region V, Office of Surface Mining, 1823 Stout Street, Denver, Colorado 80202, (303) 837-5421.

SUPPLEMENTARY INFORMATION:

This cooperative agreement modifies the prior cooperative agreement (30 CFR 211.77(a)) in accordance with the requirements of section 523(c) of the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95-87), "Surface Mining Act," and Section 211.74(b) and (c) of Title 30 CFR. This cooperative agreement was published as a proposed rule on March 5, 1979 (44 FR 12052). This agreement establishes conditions for State regulation of surface coal mining and reclamation operations on Federal lands, and requirements for such operations on Federal lands including but not limited to (1) the adoption of State statutes and amended regulations containing new environmental protection standards and reclamation requirements applicable to surface coal mining and reclamation operations as substantive Federal law enforceable by the State and the United States; (2) the requirement that the State Regulatory authority exercise State enforcement powers on Federal lands so as to achieve results consistent with those which would be achieved by Federal enforcement pursuant to section 521 of the Surface Mining Act; (3) the creation of procedures for the cooperative review and approval of integrated mining and reclamation plans for surface coal mining and reclamation operations on federal lands or on commingled State and/or private lands and Federal lands; (4) the termination of such agreement in the event the State does not implement the permanent Federal lands program or receive approval of a permanent regulatory program under section 503 of the Surface Mining Act; and (5) the creation of requirements for joint Federal and State approval and release of performance bonds for surface coal mining and reclamation operations which include Federal lands.

Three comments were received in response to the proposed rulemaking. Two of the comments raised a similar issue:

The commenters object to the provision of Article IX that allows the proposed interim program agreement to become the permanent program agreement without any action by the Secretary. The commenters argue that the provision is inconsistent with Section 523(c) of the Surface Mining Act and Part 745 of 30 CFR. One of the commenters suggested alternate language for the agreement that would provide for automatic termination 120 days after the approval of a permanent State program unless the Secretary does not notify the State of inadequacies in the proposed permanent State program.

The objections appear to be grounded in a concern that the interim program agreement will become the permanent program agreement following approval of a permanent State program for Wyoming without the benefit of Secretarial and public review as set forth in 30 CFR Part 745.

The Secretary believes that the agreement is consistent with Section 523 of the Act. The commenters choose to read the first sentence of Section 523(c) as calling for creation of a new cooperative agreement following approval of a State program, starting with a tabula rasa regardless of whether a cooperative agreement was in existence in that State for the initial regulatory program. An yet the language of the first sentence merely states that a "State with an approved State program may elect to enter into a cooperative agreement * * *" (emphasis added). This is a general sentence which is silent as to how the election is to be implemented.

Assuming that under the more specific language of the second sentence in section 523(c), a cooperative agreement could be modified in such a fashion as to comply fully with not only the initial program requirements, but also the permanent program requirements, the commenters reading of Section 523(c), would attribute to Congress the imposition of a superfluous requirement, i.e., that an adequate agreement be terminated and a new one negotiated. Rather than attribute such a result to Congress, the Secretary has interpreted Section 523(c) in a more pragmatic fashion.

The language of Section 523(c) is silent as to the consequences of State program approval on an existing cooperative agreement. Rather than starting as the commenters do, from the assumption that an existing cooperative agreement must automatically be discarded upon approval of a State program regardless of the adequacy of that existing agreement, the Secretary has chosen to reserve that determination until State program approval. If, at that time, a State with an existing cooperative agreement elects to continue regulation of surface coal mining operations on Federal lands, the Secretary will determine whether the existing cooperative agreement remains adequate. If he determines the existing cooperative agreement is inadequate, the provisions of Article IX and XI will apply, as will 30 CFR Part 745. Should the Secretary determine that the agreement remains adequate, its termination consistent with the commenter's reading of Section 523(c) would be contrary to principles of good management and administrative efficiency.

Although the Secretary appreciates the commenter's concerns on this issue, for the reasons given, he believes the language of the cooperative agreement is consistent with Section 523(c) of the Act.

The third commenter states the proposed agreement is unacceptable because it:

- a. will perpetuate the interim regulatory program;
- b. was initiated prematurely;
- c. Fails to comply with Section 523(c) of SMCRA;
- d. lacks correspondence (sic) with Section 521 (Enforcement);
- e. is not supported by evidence of compliance with or capacity to comply with assurances upon which the agreement depends, including adequate State funding of the State Regulatory Agency.

As pointed out in the response to the first comment, the cooperative agreement will be reexamined when the permanent State program is approved. It will be revised or continued as appropriate for the permanent program. The interim program will not be perpetuated as suggested by the commenter's first argument. With regard to argument "b," the commenter appears to be confused between the modification of an existing agreement and the development of a permanent program agreement. Modification of existing agreements prior to the permanent program is clearly authorized by Section 523(c). Point "c" is covered by the response to the first comment and by the reply to "b."

Argument "d" appears to refer to the delegation of Federal authority to State inspectors to issue notices and orders. The Office believes that the Secretary has legal authority to delegate Federal enforcement responsibility to State inspectors. Through the cooperative agreement, the State agency responsible for administering and enforcing the terms of the agreement is acting as an authorized representative of the Secretary to regulate surface coal mining operations on Federal lands. This includes mine inspections. Section 521(a)(3) of the Act clearly states, "when, on the basis of a Federal inspection * * * the Secretary or his authorized representative determines * * * the Secretary or his authorized representative shall issue a notice to the permittee * * *." (emphasis added). If the authorized representative issues a notice or order consistent with an pursuant to Section 521(a)(3) and the permittee fails to comply, under the terms of Article VI (E) of the agreement the State shall report the failure to comply to the Secretary, and under Article VI (F) the Secretary may take appropriate legal action to correct conditions that violate Federal law or to suspend the right to conduct surface coal mining and reclamation operations. For these reasons, the Office believes that delegation of inspection and enforcement responsibilities to State inspectors is in full compliance with the Act, and the authority in Article VI (F) provides an effective enforcement tool to require compliance with State inspector's orders.

Finally, with regard to point "e," through the award of grants to the State, OSM has determined that the State has adequate capacity and funds to comply with the agreement.

OTHER INFORMATION:

1. Significance. The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14. This "Determination of Significance" document prepared by the Office of Surface Mining concludes that because a State/Federal cooperative agreement between the State of Wyoming and the Department has been in effect for quite some time, the modified agreement in question does not incorporate any changes or revisions which would impose a major social, economic, or recordkeeping burden on any level of Federal, State, or local government or upon industry. This document is available for public inspection in the Director's Office, Office of Surface Mining, Room 223, South Interior Building, 1951 Constitution Ave., NW., Washington, D.C. 20240.
2. Pursuant to Section 702(d) of the Surface Mining Act, adoption of this rule is part of the Secretary's implementation of the Federal Lands Program and is therefore exempt from the requirement to prepare a detailed statement pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).
3. Because of the delay in the publication of this rule and the necessity to implement the provisions of the cooperative agreement, the Department has determined that good cause exists to make the rule effective upon the date of publication.

Dated: June 6, 1979.

Cecil D. Andrus, Secretary. {33656}

1. Accordingly, Title 30 CFR 211.10(e)(1) is amended as follows:

SECTION 211.10 EXPLORATION AND MINING PLANS.

* * *

- (e) States with Section 211.75(c) agreements.

* * *

(1) Wyoming. A federal coal lessee in the State of Wyoming who must submit a mining plan under both State and Federal law shall submit to both the State Regulatory Authority and the Denver Regional Office, Office of Surface Mining, in lieu of the submission required in this Section, a mining plan or revision or modification to an approved plan containing the information required by or necessary for the State Regulatory Authority and the Secretary to determine compliance with the statutory, regulatory and other requirements identified in paragraph B1 of Article IV of the modified Cooperative Agreement, the statement required by paragraph B2 of Article VI of the modified Cooperative Agreement and the requirements of 30 CFR 211.10(c).

* * * {33657}

SECTION 211.76 [DELETED]

2. Title 30 CFR 211.76 is deleted in its entirety.
3. Title 30 CFR 211.77 is amended as follows:

SECTION 211.77 STATES WITH COOPERATIVE AGREEMENTS.

(a) Wyoming. The administration and enforcement of reclamation requirements of Federal coal leases in Wyoming, subject to this Part, shall be done according to the cooperative agreement between the State of Wyoming and the Department which became effective February 1, 1977, as modified on October 26, 1978, and published on June 11, 1979.

4. The State of Wyoming and the Department enter into a modified Cooperative Agreement to designate the State of Wyoming as the principal party to administer surface coal mine reclamation operations on Federal leases in Wyoming to read

as follows:

COOPERATIVE AGREEMENT BETWEEN THE U.S. DEPARTMENT OF THE INTERIOR AND THE STATE OF WYOMING under section 523(c) of the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95-87 (hereinafter referred to as the "Act") 30 U.S.C. 1273(c), between the State of Wyoming, acting by and through Ed Herschler, Governor (hereinafter referred to as the Governor) and the United States Department of the Interior, acting by and through the Secretary of the Interior (referred to as the Secretary).

ARTICLE I. PURPOSE

This Cooperative Agreement provides for a cooperative program between the United States Department of the Interior and the State of Wyoming with respect to regulation of surface coal mining and reclamation operations on Federal lands within the State of Wyoming. The basic purpose of this Agreement is to prevent duality of administration and enforcement of mining and reclamation requirements by providing for state regulation of surface coal mining and reclamation operations on Federal lands within the State.

ARTICLE II. EFFECTIVE DATE

This Cooperative Agreement is effective upon signing by the Secretary and the Governor and upon publication as rulemaking in the Federal Register, and shall remain in effect until terminated as provided in Article IX. This Cooperative Agreement constitutes a modification to, an extension of, and supersedes that Cooperative Agreement effective February 1, 1977, 42 FR 3644 (1977), 30 CFR 211.77(a).

ARTICLE III. REQUIREMENTS FOR COOPERATIVE AGREEMENT

The Governor and the Secretary affirm that they will comply with all of the provisions of this Cooperative Agreement and will continue to meet all the conditions and requirements specified in this Article.

A. Responsible Administrative Agency. The Wyoming Department of Environmental Quality and the Environmental Quality Council (hereinafter referred to together as the "State Regulatory Authority"), is, and shall continue to be, the sole agency responsible for administering this Cooperative Agreement on behalf of the Governor on Federal lands throughout the State.

B. Authority of State Agency. The State Regulatory Authority designated in paragraph A of this Article has, and shall continue to have, authority to carry out this Cooperative Agreement.

C. State Reclamation Law. Enforcement of the environmental performance standards and reclamation requirements of Wyoming listed in Appendix A, will provide protection of the environment at least as stringent as would occur under the exclusive application of the standards and procedures set forth in the Act, and the regulations promulgated thereunder.

D. Effectiveness of State Procedures. The procedures of the State for enforcing the requirements listed in Appendix A, are and shall continue to be as effective as the procedures of the Department of the Interior.

E. Inspection of Mines. This State Regulatory Authority agrees that the State will inspect all surface and mining operations on Federal lands located in the State, in accordance with the minimum schedules in Article V.

F. Enforcement. The State affirms that it will enforce the requirements contained in Appendix A, in a manner that ensures effective protection of the environment and public health and safety consistent with the requirements of Article VI of this Agreement.

G. Funds. The State has devoted and will continue to devote, adequate funds to the administration and enforcement of the requirements listed in Appendix A. If this Cooperative Agreement has been carried out to the satisfaction of the Secretary, and if necessary funds have been appropriated, the Secretary shall reimburse the State of Wyoming as provided in Section 705(c) of the Act, for costs associated with carrying out responsibilities under the Cooperative Agreement. Reimbursement shall be in the form of annual grants and applications for said grants shall be processed and awarded in a timely and prompt manner. The Secretary shall advise the State of Wyoming within a reasonable period of time after the effective date of this modification of this Cooperative Agreement of the amount the Federal Government would have expended if the State had not entered into this Cooperative Agreement.

H. Reports and Records. The State Regulatory Authority shall make reports to the Secretary containing information respecting its compliance with the terms of this Cooperative Agreement, as the Secretary shall from time to time require. The State Regulatory Authority and the Secretary shall exchange, upon request, information developed under this Cooperative Agreement.

I. Personnel. The State Regulatory Authority shall have the necessary personnel to fully implement this Cooperative Agreement in accordance with the provisions of the Act.

J. Equipment and Laboratories. The State Regulatory Authority shall have equipment, laboratories, and facilities with which all inspections, investigations studies, tests, and analyses can be performed or determined, and which are necessary to carry out the requirements of this Cooperative Agreement, or have access to such facilities and personnel.

K. Variances. In accordance with Section 35-11-112 of the Wyoming Environmental Quality Act, the State Regulatory Authority shall not grant any request for variances from any rule, regulation, standard, or permit if such variance would render any State requirement less stringent than a similar requirement contained in sections 502(c), 510(d), and 516 of the Act, and regulations promulgated thereunder or any environmental protection and regulation provision of 30 CFR Part 211. {33658}

ARTICLE IV. MINING AND RECLAMATION PLANS AND PERMIT APPLICATIONS

A. State and Federal laws and regulations require the operator on Federal lands leased, permitted, or licensed for coal mining to receive approval from the State Regulatory Authority and the Secretary of a mining and reclamation plan and permit application, or amendment to an existing plan or permit (hereinafter referred to as the "application"), prior to conducting operations.

B. Contents of Mining and Reclamation Plans and Permit Applications. The Governor, the State Regulatory Authority, and the Secretary agree, and hereby require that an operator on Federal lands must submit a single application, which application must be submitted in the form required by the State Regulatory Authority along with any supplemental forms required by the Secretary and must include the following information:

1. The information required by, or necessary for the State Regulatory Authority and the Secretary to make a determination of compliance with:
 - a. Wyoming State Statutes sections 35-11-406 (a), (b)(i)-(ix), and (xiii)-(xviii), and (c).
 - b. Wyoming Land Quality Rules and Regulations.
 - c. The Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.; 91 Stat. 445) and the regulations promulgated pursuant thereto.
 - d. The Mineral Leasing Act of 1920, as amended, 30 U.S.C. 181 et seq.
 - e. The environmental protection and regulation requirements, and resource conservation requirements of 30 CFR Part 211.
 - f. Applicable conditions of the lease or license unless such conditions would be contrary to the requirements of the Act.
 - g. The information required by applicable requirements of other federal laws.
2. A statement certifying that identical copies of the application have been given to both the State Regulatory Authority and the Secretary.
3. Upon receipt of each application the Office of Surface Mining shall designate a single contact person as its representative on all matters concerning that application and all communications concerning review of and final action on that application by either the State Regulatory Authority or the Secretary shall be conducted with or through this representative or with the Secretary.
4. If the State Regulatory Authority requires the operator to submit additional information, the operator shall submit the information to the State Regulatory Authority and to the Secretary. If the Secretary requires additional information, such request shall be directed to the operator through the State Regulatory Authority, and the operator shall submit the information to the State Regulatory Authority and the Secretary.
5. The State Regulatory Authority and the Secretary shall review the application concurrently and shall promptly notify each other of their proposed action on the application, including proposed conditions and stipulations if approval of the application is proposed. Upon receipt of notice of the proposed action of the Secretary, the State Regulatory Authority shall modify its proposed action on the application to include those matters and conditions in the Secretary's proposed action which were not included in the proposed action of the State Regulatory Authority, and shall consult with the Secretary's

contact person for the purpose of agreeing to the final actions to be taken by the Secretary and the State Regulatory Authority on the application.

6. Any final approval of an application, or modifications or revisions thereto, by the State Regulatory Authority or the Secretary which would create a right of appeal by an aggrieved person shall be mutually acceptable to the State Regulatory Authority and the Secretary, and shall be concurrent. The State Regulatory Authority and the Secretary agree that each of them will not take final action approving an application which fails to comply with the requirements of the laws and regulations listed in paragraph B of this Article. The Secretary agrees that he will not take final action approving an application which fails to comply with an environmental protection requirement of the State which is more stringent than the requirements of Federal law.

7. In the event the State Regulatory Authority and the Secretary's contact person cannot agree to the final actions to be taken by the State Regulatory Authority and the Secretary on the application, the matter shall be referred to the Governor and the Secretary for resolution.

8. When acting on a mine plan, the Secretary reserves the right to impose such additional conditions or requirements not required by the Act or Appendix A of this Cooperative Agreement which are authorized or required by law or by his general authority to supervise the activities of persons on Federal lands.

ARTICLE V. INSPECTIONS

A. The State Regulatory Authority shall inspect without prior notice to the operator, as authorities by Wyoming state law as frequently as necessary, but at least quarterly, the area of operations as defined by the approved mining plan and state permit, and any other areas outside the area of operations which are or may be affected by the surface coal mining and reclamation operations on Federal lands. Such inspections shall be conducted for the purpose of determining whether the operator has complied with all applicable requirements of the Act and Appendix A hereof, all environmental and reclamation requirements of the approved mining plans or permits, but not to determine compliance with the development, diligent production, and resource recovery requirements established under the Mineral Leasing Act, as amended, or to regulate other activities on Federal lands not subject to the Act.

B. The State Regulatory Authority shall, subsequent to conducting any inspection, file with the Secretary a report adequately describing (1) the general conditions of the lands under lease, permit and license; (2) the manner in which the operations are being conducted; and (3) whether the operator is complying with applicable performance and reclamation requirements. A copy of this inspection report shall be furnished to the Secretary in accordance with regulations adopted pursuant to the Surface Mining Control and Reclamation Act. A copy of this report shall be furnished to the operator upon request, and shall be made available for public inspection during normal business hours at the office of the State Regulatory Authority and the Office of Surface Mining.

C. For the purpose of evaluating the manner in which this Cooperative Agreement is being carried out and to insure that performance and reclamation standards are being met, the Secretary shall conduct inspections of surface coal mining and reclamation operations on Federal lands, and shall provide the State Regulatory Authority with a copy of the report. Inspections by the Secretary may be in association with regular inspections by the State.

D. The Secretary may also conduct inspections to determine whether the operator is complying with requirements that are unrelated to environmental protection and reclamation.

E. Personnel of the State and representatives of the Secretary shall be mutually available to serve as witnesses in enforcement actions taken by either party. {33659}

ARTICLE VI. ENFORCEMENT

A. If the State Regulatory Authority finds any conditions or practices, or violations of the requirements of Appendix A hereof or of an approved mining plan or permit which would authorize the issuance of an order of cessation under section 521(a)(2) of the Act, the State Regulatory Authority shall immediately exercise the discretion authorized by section 35-11-412 of the Wyoming Environmental Quality Act to suspend or revoke the license of an operator.

B. 1. When, during any inspection, any representative of the State Regulatory Authority who has been designated an authorized representative of the Secretary determines that any operator is in violation of the Act, any requirement of Appendix A, or any requirement of an approved mining plan or permit, but such violation would not require an action in accordance with paragraph A of this Article, the representative shall:

a. Report such (violations) to the Administrator of the Land Quality Division, Wyoming Department of Environmental Quality (DEQ) and to the Director of the DEQ, who shall issue an order and Notice of Violation pursuant to W.S. 35-11-701; and

b. Issue a notice and abatement schedule to the operator consistent with and pursuant to section 521(a)(3) of the Act. Nothing in this Agreement prohibits the issuance of an order and Notice of Violation under Wyoming law concurrent with the action required by this paragraph.

2. When a notice and abatement schedule have been issued under B(1)(b) of this Article and a representative of the State Regulatory Authority who has been designated an authorized representative of the Secretary determines that the operator has failed to abate the violation within the time fixed or subsequently extended consistent with section 521(a)(3) of the Act, the representative shall immediately issue an order consistent with and pursuant to section 521(a)(3) of the Act.

C. For the purposes of implementing paragraphs B (1) and (2) of this Article, the Secretary delegates his authority to issue notices and orders pursuant to section 521(a)(3) of the Act to representatives of the State Regulatory Authority who shall each be identified by a letter of authorization signed by the Director of the Office of Surface Mining. Such letters of authorization shall be rendered null and void upon the termination of this Agreement or upon revocation by the Director.

D. The State shall promptly notify the Secretary of all violations of applicable laws, regulations, orders, approved mining and reclamation plans and permits subject to the Agreement and of all actions taken with respect to such violations.

E. Appeals or requests for relief from any action taken by an authorized representative of the Secretary acting in his capacity as the Secretary's representative pursuant to paragraphs B (1) and (2) of this Article shall be filed in accordance with the rules of procedures adopted by the Secretary (43 CFR Part 4).

F. This Agreement does not limit the Secretary's authority to seek cancellation of a federal coal lease under federal laws and regulations, or prevent the Secretary from taking appropriate legal or the actions to correct conditions or practices that violate federal law or Appendix A incorporated into federal law as a part of this Cooperative Agreement, or to suspend or revoke the right to conduct surface coal mining operations on federal lands in accordance with 30 CFR 211.72 or assess civil penalties in accordance with 30 CFR 211.78.

G. Failure of the State Regulatory Authority to enforce approved mining and reclamation plans, permits, and applicable laws and standards and regulations in accordance with this Agreement, shall be grounds for termination of this Cooperative Agreement.

ARTICLE VII. BONDS

A. Amount and Responsibility. The State Regulatory Authority and the Secretary shall require all operators on federal lands to submit a single bond payable to both the United States and the State Regulatory Authority. Such bond shall be of sufficient amount to comply with the requirements of both state and federal law and shall be conditioned upon compliance with all applicable requirements of federal law and Appendix A hereof.

B. Notification. Prior to releasing the operator from his obligations under the bond required by State law for federal lands, the State Regulatory Authority shall consult with and obtain the advice and consent of the Secretary.

C. Release of Bond. The State Regulatory Authority shall hold the operator responsible and liable for successful reclamation as required by State law.

D. Either the State Regulatory Authority or the Secretary may forfeit the bond under state or federal law.

ARTICLE VIII. OPPORTUNITY TO COMPLY WITH COOPERATIVE AGREEMENT

The Secretary may, in his sole discretion, and without instituting or commencing proceedings for withdrawal of approval of the Cooperative Agreement, notify the State Regulatory Authority that it has failed to comply with the provisions of the Cooperative Agreement. The Secretary shall specify how the State has failed to comply and shall specify and state the period of time within which the defects in administration shall be remedied and satisfactory evidence presented to him that the State remedied the defects in administration and is in compliance with and has met the requirements of the Secretary. The period of time specified shall not be less than 30 days. Upon failure of the State Regulatory Authority to meet the requirements of the Secretary within the time specified, the Secretary may institute proceedings for withdrawal of approval of the Cooperative Agreement as set forth in Article IX.

ARTICLE IX. TERMINATION OF COOPERATIVE AGREEMENT

This Cooperative Agreement may be terminated as follows:

A. Termination by the State. The Cooperative Agreement may be terminated by the State upon written notice to the Secretary, specifying the date upon which the Cooperative Agreement shall be terminated, but which date of termination shall not be less than 90 days from the date of the notice.

B. Termination by the Secretary. The Cooperative Agreement may be terminated by the Secretary pursuant to paragraphs D, E, and F of this Article whenever the Secretary finds, after giving due notice to the State Regulatory Authority and affording the State Regulatory Authority an opportunity for a hearing:

1. That the State Regulatory Authority has failed to comply substantially with a provision of this Cooperative Agreement; or
2. That the State Regulatory Authority has failed to comply with any assurance given by the State upon which this Cooperative Agreement is based, or any condition or requirement which is specified in Article III. {33660}

C. Termination by Operation of Law. This Cooperative Agreement shall terminate by operation of law under any of the following circumstances:

1. When no longer authorized by Federal laws and regulations or Wyoming laws and regulations;
2. When a State program is finally disapproved, pursuant to Section 503 of this Act, or an approved State program is suspended or revoked pursuant to the Act or regulations promulgated pursuant thereto. Provided further that upon suspension of an approved State Program this Cooperative Agreement shall be suspended for the same period of time and shall be deemed reinstated upon reinstatement of the State Program.
3. If the Secretary determines that this Cooperative Agreement is not adequate for the purpose of implementing the permanent regulatory program requirements after approval of a State Program pursuant to Section 503 of the Act. Notice of this determination shall be given in writing to the State Regulatory Authority and shall specify the inadequacies of this Agreement. This Cooperative Agreement shall terminate within 120 days of said notice unless amended by mutual agreement of the State Regulatory Authority and the Secretary to remedy the inadequacies identified by the Secretary in his notice.
4. Following promulgation of a federal lands program pursuant to Section 523(a) of the Act in the event the Secretary determines in writing that Wyoming lacks the necessary personnel, legal authority, or funding to fully implement the federal lands program in accordance with the provisions of the Act.

D. Notice of Proposed Termination. Whenever the Secretary proposes to terminate the Cooperative Agreement he shall:

1. Give written notice to the Governor and to the State Regulatory Authority specified in Article III.
2. Specify and set out in the written notice the grounds upon which he proposes to terminate this Cooperative Agreement.
3. The Secretary shall also publish a notice in the Federal Register containing items 1 and 2 of this paragraph, and specifying a minimum 30 days for comment by interested persons.

E. Opportunity for Hearing. Whenever the Secretary proposes to terminate this Cooperative Agreement pursuant to paragraph B hereof, in addition to the notice required by paragraph D, he shall:

1. Specify in the notices required by paragraph D the date and place where the State will be afforded an opportunity for hearing and to show cause why this Cooperative Agreement should not be terminated by the Secretary. The date of such hearing shall be not less than 30 days from the date of the publication in the Federal Register, and the place shall be in the State.
2. Within thirty (30) days of the date of the written notice specifying the date of the hearing, the State shall file a written notice with the Secretary stating whether or not it will appear and participate in the hearing. The notice shall specify the issues and grounds specified by the Secretary for termination which the State will oppose or contest and a statement of its reasons and grounds for opposing or contesting. Failure to file a written notice in the Office of the Secretary within thirty (30) days shall constitute a waiver of the opportunity for hearing, but the State may present or submit before the time fixed for the hearing written arguments and reasons why the Cooperative Agreement should not be terminated, and within the discretion of the Secretary may be permitted to appear and confer in person and present oral or written statements, and other documents relative to the proposed termination.
3. The hearing will be conducted by the Secretary. A record shall be made of the hearing and the State shall be entitled to obtain a copy of the transcript. The State shall be entitled to have legal and technical and other representatives present at the hearing or conference, and may present, either orally or in writing, evidence, information, testimony, documents, records, and materials as may be relevant and material to the issues involved.

F. Notice of Withdrawal of Approval of Cooperative Agreement.

1. After a hearing has been held with respect to a proposed termination of this Agreement under paragraph B of this Article, or the right to a hearing has been waived or forfeited by the State, the Secretary, after consideration of the evidence, information, testimony, and arguments presented to him shall advise the State of his decision. If the Secretary determines to withdraw approval of this Cooperative Agreement, he shall notify the State Regulatory Authority of his intended withdrawal of approval of the Cooperative Agreement, and afford the State an opportunity to present evidence satisfactory to the Secretary that the State has remedied the specified defects in its administration of this Cooperative Agreement. The Secretary shall state the period of time within which the defects in administration shall be remedied and satisfactory evidence presented to him, and upon failure of the State to do so within the time stated, the Secretary may thereupon withdraw his approval of the Cooperative Agreement without any further opportunity afforded to the State for a hearing.

2. After the close of the comment period required by paragraph D. 3. of this Article with respect to a proposal to terminate this Cooperative Agreement pursuant to paragraph C of this Article, the Secretary shall consider the comments received and after a review of the questions of law presented, shall publish notice of final action, either terminating the Cooperative Agreement or withdrawing the proposed termination, and stating his reasons therefor.

G. Nothing in this Article shall be construed as a waiver of any right the State Regulatory Authority may have to seek judicial review of any decision by the Secretary to terminate this Cooperative Agreement.

ARTICLE X. REINSTATEMENT OF COOPERATIVE AGREEMENT

If this Cooperative Agreement has been terminated, it may be reinstated upon application by the State and upon giving evidence satisfactory to the Secretary that the State can and will comply with all the provisions of the Cooperative Agreement, and has remedied all defects in administration or law for which this cooperative Agreement was terminated.

ARTICLE IX. AMENDMENTS OF COOPERATIVE AGREEMENT

This Cooperative Agreement may be amended by mutual agreement of the Governor and Secretary. An amendment proposed by one party shall be submitted to the other with a statement of the reasons for such proposed amendment. The amendment shall be adopted after rulemaking and the party to whom the proposed amendment is submitted shall signify its acceptance or rejection of the proposed amendment, and if rejected shall state the reasons for rejection.

ARTICLE XII. CHANGES IN STATE OR FEDERAL STANDARDS

The Secretary of the Interior and/or the State of Wyoming may from time to time revise and promulgate new or revised performance or reclamation requirements or enforcement and administration procedures. The Secretary and the Governor shall immediately inform the other of any final changes in their respective laws or regulations. Each party shall, if it determines it to be necessary to keep this Cooperative Agreement in force, change or revise its respective laws or regulations. For changes which may be accomplished by rulemaking, each party shall have six months in which to make such changes. For changes which require legislative authorization, the State has until the close of its next legislative session at which such legislation can be considered in which to make the changes. If changes which are necessary for the State to have authority to administer and enforce Federal requirements are not made, then the termination provision of Article IX may be invoked. {33661}

ARTICLE XIII. CONFLICT OF INTEREST

The State Regulatory Authority shall require its employees to comply with the requirements of 30 CFR 705.

ARTICLE XIV. EXCHANGE OF INFORMATION

A. Organizational and Functional Statement. The State Regulatory Authority and the Secretary shall advise each other of the organization, structure, functions, and duties of the offices, departments, divisions, and persons within their organizations. Each shall promptly advise the other in writing of changes in personnel, officials, heads of a department or division, or a change in the functions or duties of persons occupying the principal offices within the organization. The State Regulatory Authority and the Secretary shall advise each other in writing of the location of its various offices, addresses, telephone numbers, and the names, location and telephone numbers of their respective mine inspectors and the area within the State for which such inspectors are responsible, and of any changes in such.

B. Laws, Rules, and Regulations. The State Regulatory Authority and the Secretary shall provide each other with copies of their respective laws, rules and regulations and standards pertaining to the enforcement and administration of this Cooperative Agreement and promptly furnish copies of any final revision of such laws, rules, regulations, and standards when the revision becomes effective.

ARTICLE XV. RESERVATION OF RIGHTS

This Cooperative Agreement shall not be construed as waiving or preventing the assertion of any rights the Governor and the Secretary may have under the Mineral Leasing Act, as amended, the Mineral Leasing Act for Acquired Lands, the Surface Mining Control and Reclamation Act of 1977, the Federal Land Policy and Management Act, the Constitution of the United States, the Constitution of the State or State laws, nor shall this Agreement be construed so as to result in the transfer of the Secretary's duties under sections 2(a), 2(b), and 2(a)(3) of the Federal Mineral Leasing Act, as amended, or his responsibilities for designation of Federal lands as unsuitable for mining in accordance with Section 522(b) of the Act, or to regulate other activities taking place on Federal lands.

ARTICLE XVI. DEFINITIONS

Terms and phrases used in this agreement which are defined in 30 CFR Part 700 or Part 710 shall be given the meanings set forth in said definitions.

Dated: October 26, 1978.

Ed Herschler, Governor of Wyoming.

Dated: October 26, 1978.

Robert E. Sundin, Director, Department of Environmental Quality.

Dated: October 26, 1978.

Cecil D. Andrus, Secretary of the Interior.

APPENDIX A

This Appendix A identifies the laws of the State of Wyoming and the regulations of the State Regulatory Authority which are incorporated into the 1978 Federal-State Cooperative Agreement between the State of Wyoming and the Secretary of the Interior pursuant to Article III. C. of said Cooperative Agreement. This Appendix is approved as part of the Cooperative Agreement. The requirements contained in the laws and regulations identified in this Appendix shall be applicable to surface coal mining and reclamation operations on federal lands in accordance with the terms of the Cooperative Agreement. Included in this Appendix are:

1. Laws of the State of Wyoming:

(a) The provisions of the Wyoming Environmental Quality Act, W.S. Section 35-11-101 to Section 35-11-1104 (1977), as amended, including Enrolled Act No. 31, House of Representatives, 44th Legislature of the State of Wyoming, 1978 Session, which are specifically identified in (i)-(xxx) hereof:

(i) Section 35-11-103(e)(i)-(xx).

(ii) Section 35-11-109.

(iii) Section 35-11-110.

(iv) Section 35-11-112, provided, however, that subsection (a)(v) is not included in this Appendix and shall not be applicable to federal lands.

(v) Section 35-11-402(a)(i)-(vi).

(vi) Section 35-11-403.

(vii) Section 35-11-405 (a), (d), (f), and (g).

(viii) Section 35-11-406 (a), (b)(i)-(ix), (xiii)-(xix), (c) and (h).

(ix) Section 35-11-407.

(x) Section 35-11-408.

(xi) Section 35-11-409.

(xii) Section 35-11-410.

(xiii) Section 35-11-411.

(xiv) Section 35-11-412.

(xv) Section 35-11-415.

(xvi) Section 35-11-416, except that this section shall not apply where the surface owner is the United States in which case the laws of the United States shall exclusively apply.

(xvii) Section 35-11-417, provided, however, that any bond applicable to the performance of duties on or affecting federal lands shall conform to the requirements of Article VII of this Cooperative Agreement in addition to the requirements of state laws.

(xviii) Section 35-11-418, provided, however, that any cash or securities posted in lieu of bond under this section conform to the requirements of Article VII of this Cooperative Agreement and applicable requirements of federal law.

(xix) Section 35-11-419.

(xx) Section 35-11-420.

(xxi) Section 35-11-421, provided, however, that the bond may also be forfeited by the Secretary under federal law pursuant to Article VII of this Cooperative Agreement.

(xxii) Section 35-11-422.

(xxiii) Section 35-11-423, provided, however, that any bond applicable to the performance of duties on or affecting federal lands may be released only on consent of the Secretary in accordance with Article VII of this Cooperative Agreement.

(xxiv) Section 35-11-601, provided, however, that this section shall not apply to permits and mining plans applicable to federal lands approved by the Secretary, but shall only apply to Wyoming rules, regulations, or standards incorporated into this Appendix A which are determined by the Secretary pursuant to 30 CFR Section 211.78(a) to be more stringent than the federal standard(s) which address the same subject matter. Any variance granted pursuant to this section with respect to such more stringent standards shall comply with the requirements of Article III. K. of this Cooperative Agreement.

(xxv) Section 35-11-801, provided, however, that this section shall be limited to actions taken by the State Regulatory Authority pursuant to this Cooperative Agreement and nothing in this section or in this Cooperative Agreement shall be construed so as to create jurisdiction in the Wyoming Quality Council over actions taken by the Secretary, including the denial or approval of mining plans. {33662}

(xxvi) Section 35-11-802.

(xxvii) Section 35-11-901, provided, however, that the imposition of a penalty by the State pursuant to this section shall not be construed as barring the Secretary from assessing a penalty pursuant to 30 CFR 211.78.

(xxviii) Section 35-11-902.

(xxix) Section 35-11-1001(a), provided, however, that this section shall be limited to actions taken by the State Regulatory Authority pursuant to this Cooperative Agreement and nothing in this section or in this Cooperative Agreement shall be construed so as to create jurisdiction in a state court over actions taken by the Secretary, including the denial or approval of mining plans.

(xxx) Section 35-11-1101.

2. Regulations of the Wyoming Department of Environmental Quality, Land Quality Division, including the amendments approved by the Environmental Quality Council and filed with the Wyoming Secretary of State on September 5, 1978, except:

(i) Section 2. Definitions.

(32) Subirrigation. The second sentence of the Wyoming definitions shall not be included in this Appendix

A. For the purposes of implementing this Cooperative Agreement only the first sentence shall apply on federal lands: "Irrigation of plants with water delivered to the roots from underneath."

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