

## CHAPTER 1

*All chapter numbers have been changed from Roman Numeral to Arabic to comply with the Secretary of State's Rules on Rules*

### AUTHORITIES, DEFINITIONS AND GENERAL PROVISIONS

#### Section 1. **Authority.**

These rules and regulations are adopted by the Governor pursuant to the authority provided by W.S. 35-11-1207(A a) (West 2007).

*Throughout these regulations the latest edition of the statutes referenced has been added to indicate which version of the statute is being referenced.*

#### Section 2. **Definitions (applicable to AML Division).**

(a) "Adversely affected" means a harmful or unfavorable impact that can be directly connected to mining or mining practices.

(b) "Appraisal" means an appraisal which meets the quality of practices found in the handbook on "Uniform Appraisal Standards for Federal Land Acquisitions" (Interagency Land Acquisition Conference ~~1973~~ 2000).

*The reference to the handbook has been updated.*

(c) "Certified In Lieu Funds" means:

(i) Those moneys distributed to the state by the Office of Surface Mining from the general funds of the United States Treasury in lieu of moneys allocated to the state share of the Fund from AML fees collected after October 1 2007.

(ii) Certified In Lieu Funds are separate and distinct from the Prior Balance Replacement Funds that are distributed by the Office of Surface Mining from the balance owed the state from AML fees collected prior to October 1, 2007 but were not appropriated by Congress to be returned to the state.

(iii) Certified In Lieu Funds are not restricted in their use but priority shall be given to the eligible reclamation and remediation categories listed in Chapter 5 with eligible coal sites given priority over other projects.

*A new definition has been added to define Certified In Lieu Funds and to explain the difference between the two funding streams resulting from the*

*2006 Amendments to the federal Surface Mining Control and Reclamation law. A new definition has also been added to define Prior Balance Replacement Funds (see (k) below). The federal law specifies the Prior Balance Replacement funds are to be spent at the discretion of the legislature with preference given to addressing mineral related impacts. The federal law is silent on the Certified In Lieu funds and the federal regulations at 30 CFR 872.34 state there are no limitations or restrictions on the use of certified in lieu funds. It is assumed they are returned to the state to be used for reclamation just as the AML funds returned to the state prior to the amendments were. The Office of Surface Mining does require that eligible coal sites be given priority over any other project. The new definition requires the renumbering of the rest of the definitions in this section.*

~~(d)~~(e) “Competitive bidding” means, at a minimum:

(i) ~~P~~ublication of a notice once a week for four weeks in a local newspaper, describing the land to be sold and stating the appraised value, any applicable restrictive covenants, and the time and place of the sale; and

(ii) ~~P~~rovisions for sealed bids to be submitted prior to the sale date followed by an oral auction open to the public.

~~(e)~~(d) “Continuing reclamation responsibility” means responsibility for reclamation by the operator, permittee, or agent of the permittee, or by the state as a result of bond forfeiture. Bond forfeiture will render lands or water ineligible only if the amount forfeited is sufficient to pay the total cost of the necessary reclamation.

~~(f)~~(e) “Emergency” means a sudden danger or impairment that presents a high probability of substantial physical harm to the health, safety, or general welfare of the people before the danger can be abated under normal program operation procedures. This shall be supported by a written finding from the Director.

~~(g)~~(f) “Enhancement” means improvements necessary to meet local, state or federal public health, safety or standard operations requirements but does not include areal expansions, additions or substitutions.

~~(h)~~(g) “Left or abandoned in either an unreclaimed or inadequately reclaimed condition” means:

(i) ~~L~~ands where all mining processes ceased and no permit existed as of August 3, 1977, (lands and waters affected by mineral mining and processing practices and under the jurisdiction of the Forest Service shall utilize the effective date of August 28, 1974, whereas lands and waters under the jurisdiction of the Bureau of Land Management shall utilize the effective date of November 26, 1980) or as a result of bond

forfeiture where the forfeited bond is insufficient to pay the total cost of reclamation; and

*Federal regulations at 30CFR 875.14 include the above dates in determining eligibility for lands managed by the USFS and the BLM. Those dates have been added to be consistent with the federal regulations. The reference to bond forfeiture sites where the bond is determined to be inadequate has been added to the definition to mirror the federal definition that references Section 402(g) of SMCRA as amended in 2006 which includes bond forfeited sites which have inadequate bond coverage to complete reclamation.*

(ii) Lands or water which continue in their present condition to substantially degrade the environment, prevent or damage the beneficial use of land or water resources, or endanger the health or safety of the public.

~~(i)(h)~~ “Mineral” means clays, stone, sand, gravel, metalliferous and nonmetalliferous ores, and any solid material or substance extracted in solid form from natural deposits on or in the earth, excluding coal and those minerals which occur naturally in liquid or gaseous form, such as oil and gas development and production.

(j) “Prior Balance Replacement Funds” means:

(i) The state share of the AML Fees collected before October 1, 2007 but were not paid to the State because Congress did not appropriate them;

(ii) The moneys are distributed to the State in seven equal payments starting in the Federal fiscal year beginning October 1, 2007; and

(iii) The funds may only be used for those purposes the State legislature establishes giving priority to addressing the impacts of mineral development.

*A new definition has been added to define Prior Balance Replacement Funds and how they may be spent for the reasons explained above. It should be noted the language in SMCRA states the funds shall be distributed beginning with the 2008 federal fiscal year while the federal regulations at 30 CFR 872.29 states the distribution starts with the federal fiscal year beginning October 1, 2008 which is the beginning of the 2009 federal fiscal year. The federal statute contains the correct date and has been incorporated into this rule rather than the language in the federal regulations.*

~~(k)(i)~~ “Program” means the State Abandoned Mine Reclamation Program established in accordance with title IV of P.L. 95-87 by W.S. 35-11-1201 through 1207 (West 2007), including the State Reclamation Plan and annual projects to carry out the purposes of the program.

(1)(+) “Reclamation” means, for the purpose of the ~~program~~ division, restoration, reclamation, abatement, control or prevention of adverse effects of mining.

Section 3. Chapter V, Section 2. Definitions applicable to the Mine Subsidence Insurance Program.

In addition to the definitions contained in W.S. 35-11-1301 (West 2007) the following definitions apply to the program:

*Section 3 has been moved from existing Chapter 5 since they are all definitions and Chapter 1 contains the definitions for the regulations. Language has been added to clarify that Section 3 applies only to the mine subsidence insurance program.*

(a) "Aggregate" means the total amount of funds available in the Mine Subsidence Insurance Program at any given time to pay for claims of which the Mine Subsidence Insurance Program has been notified and which are in the process of settlement.

~~(b) "Estimated value" means the current fair value of the structure as determined by generally accepted professional standards which take into account local market conditions~~

(b) "Fair market" value means a value as determined by either the local tax assessor, an appraisal by a licensed appraiser, or a market analysis by a licensed realtor.

*The more common phrase 'fair market value' has replaced 'estimated value' and this new phrase has replaced the old throughout the regulations. The definition specifies how fair market value is determined as opposed to the general language in the former definition of estimated value.*

(c) "Fixture" means sidewalks, driveways, utilities and other physical improvements permanently affixed to the realty which enhance use and enjoyment of the realty which are either owned by or the responsibility of the insured, excluding land, trees, plants and crops.

(d) "Known subsidence areas" means lands beneath which mining has occurred and such mining has been documented in public records, or where there is physical evidence of subsidence.

(e) "Loss" means physical damage to a structure or the adverse effect to the utility of a structure as defined by W.S. 35-11-1301(a)(iii) (West 2007).

### Section 4 3. General Provisions.

~~(a) The authority provided by W.S. 35-11-1202(a)(ii) relating to noncoal activities shall be limited to acquisition or reclamation requested by the Governor for land and water resources which were mined or affected, and left or abandoned in an unreclaimed or inadequately reclaimed condition prior to August 3, 1977, for which there is no continuing reclamation responsibility under state or federal statutes.~~

*W.S. 35-11-1202(a)(ii) was repealed in 1991. It limited noncoal reclamation activities until the coal P1 thru P 3 priorities were completed or unless the governor certified and the Secretary approved that the reclamation was necessary. As a certified State, this is no longer applicable to Wyoming's program except for the condition OSM placed on Wyoming receiving funds concerning the completion of P1 and P2 coal sites. For these reasons, the rule has been deleted as no longer necessary.*

#### AML will:

~~(a)(b) Make A~~ all determinations and findings which are required under the program ~~shall be made~~ in writing.

*The sentence structure has been modified to fit with the new lead of the section.*

### Section 4. ~~Coordination With Mine Subsidence Insurance Program.~~

~~Upon the occasion or incidence of mine subsidence damage the program shall initiate and undertake in a manner which is coordinated fully with the State Mine Subsidence Insurance Program all reasonable and necessary steps to abate damage and reclaim the land including single family home lots together with improvements not covered by the Mine Subsidence Insurance Program to the extent that the land is fully repaired.~~

#### (b) When conducting mine subsidence mitigation:

(i) Coordinate activities with the Mine Subsidence Insurance Program and offer insurance to those properties identified under Chapter 7, Section 3 for the duration of the project in accordance with that Chapter. Failure of the property owner to accept the insurance will make them ineligible for consideration for repairs if in the event damage from subsidence occurs;

(ii) Undertake all reasonable and necessary steps to reclaim the land including single family lots; and

(iii) Repair any improvements to the land that AML has to remove or

otherwise impact in the process of reclaiming and/or mitigating the subsidence. This provision is restricted to repairs to the improvements on the land that is being mitigated for subsidence.

*The current Section 4 has been incorporated into the General Provisions Section of the chapter since it is a more appropriate location in the chapter. The previous language was difficult to understand so the paragraph was split into subsections for clarity. The language clarifies AML will only repair structures or improvements if those structures or improvements were removed or impacted by AML as part of the work necessary to mitigate the subsidence feature. The language also clarifies that repairs are limited to improvements on the land that is being mitigated and does not include adjacent properties as they will most likely be offered subsidence insurance. The previous language could have been interpreted that AML would repair any subsidence damage to any structure or other improvements not covered by the Mine Subsidence Insurance Program. Such an interpretation would be in error since it would eliminate the need for the insurance program. Language has also been added to clarify the coordination with the Mine Subsidence Insurance Program includes the offer of insurance to selected properties for the duration of the project.*

(c) Submit thru the Director to the Governor a reclamation plan. This plan shall be updated and resubmitted at a minimum of every five years. The plan shall include:

(i) The proposed reclamation and costs of coal and noncoal hazards;

(ii) The proposed reclamation and costs of orphan and brownfield sites; and

(iii) An estimate the availability of funds to be devoted to the Public Facilities Program described in Chapter 6.

*This new section has been added to keep the Governor apprised of AML reclamation requirements. While any coal reclamation work is required to be conducted by SMCRA and the federal regulations, funds to conduct noncoal reclamation, orphan and brownfield sites and public facilities will have to be approved as part of the Governor's budget proposal to the State Legislature. Doing a five year plan will allow the division adequate time to obtain the necessary clearances and designs for projects prior to actually conducting the work on the ground. This plan should not be confused with the State Reclamation Plan required by SMCRA and 30 CFR 884 as the purposes, information and level of detail are different.*

## CHAPTER # 2

### RIGHTS OF ENTRY FOR STUDIES, EXPLORATORY WORK, OR RECLAMATION

#### Section 1. **General.**

(a) All reasonable action shall be taken to obtain advance written consent, in the form required by the administrator, from the owner of record or lessee occupying the land, or their authorized agents, of the land or property to be entered.

(b) Written notice of the intent to enter shall be given at least 30 days before entry. The notice shall be mailed, return receipt requested, to the owner, if known, and shall include a statement of the reasons why entry is required by W.S. 35-11-1204(a) (West 2007). For studies or exploratory work, these reasons shall include the need to determine the existence of adverse effects of past mining practices and to determine the feasibility of reclamation. If the owner, or his current mailing address is not known, the notice shall be posted in one or more readily visible places on the property to be entered, and advertised once in a local newspaper.

#### Section 2. **Entry Without Consent.**

(a) The Director or his designated authorized representative shall have the right to enter without consent where:

(i) Following due care and deliberation, the Director has exhausted all reasonable possibilities of obtaining written consent pursuant to the notice requirements of Section 1-(b) above; or

(ii) Entry is required to investigate reported emergency conditions. All reasonable action consistent with the emergency shall be taken to notify the owner and obtain consent prior to the entry. Written notice pursuant to Section 1-(b) above shall be given as soon after entry as practical.

*Editorial changes to remove the period after the section number as they are not needed.*

#### Section 3. **Certification of Completion, Recording.**

The Director, upon completion of the reclamation work, shall execute and file with the county clerk and landowner a Certificate of Completion. The Certificate filed with the county clerk shall be for purposes of recordation. The Certificate shall include a brief factual summary of the reclamation work completed, a reference to the location of the complete file, the location of the lands reclaimed, and evidence showing that it was duly approved and executed by the Director.

## CHAPTER ~~III~~ 3

### LAND ACQUISITION, MANAGEMENT, AND DISPOSAL

#### Section 1. **Procedures for Acquisition.**

(a) The State shall acquire only such interests under W.S. 35-11-1205 (West 2007) as are necessary for the reclamation work or the post-reclamation use of the land.

(b) Interests in improvements on the land, mineral rights, or associated water rights may be acquired if:

(i) ~~N~~necessary and;

(ii) ~~I~~f adequate written assurances cannot be obtained from the owner of the severed interest that the future use thereof will not be in conflict with the reclamation work.

*Section (a) has been reformatted to make it easier to understand.  
Subsections (b) and (c) have been renumbered accordingly.*

(c)~~(b)~~ When practical, acquisition shall be by purchase from a willing seller. Where necessary, and following all reasonable efforts to purchase, land interests may be acquired by condemnation. Title to the interest shall be recorded as required by law so as to be first in time and constitute notice to any subsequent purchaser of the same interest.

(d)~~(c)~~ An appraisal of all land or interest in land to be acquired shall be obtained from a professional appraiser, stating the fair market value of the land as adversely affected by past mining.

#### Section 2. **Acceptance of gifts of land.**

(a) The State may accept donations of title to land or interest in land that is necessary for reclamation and consistent with the program. Offers to make such a gift include:

(i) ~~A~~a statement of the interest which is being offered;

(ii) ~~A~~a legal description of the land and a description of any improvements on it;

(iii) A description of any limitations on the title or conditions as to the use or disposition of the land existing or to be imposed by the donor;

(iv) ~~A~~a statement that:

(A) ~~T~~he offeror is the record owner of the interest being offered;

(B) ~~T~~he interest offered is free and clear of all encumbrances except as clearly stated in the offer;

(C) There are no adverse claims against the interest offered;

(D) ~~T~~here are no unredeemed tax deeds outstanding against the interest offered; and

*Editorial correction*

(E) ~~T~~here is no continuing responsibility by the operator under State or Federal statutory law for reclamation.

(v) An itemization of any unpaid taxes or assessments levied, assessed or due which could operate as a lien on the interest offered.

(b) If the offer is accepted, a deed of conveyance shall be executed, acknowledged, and recorded.

**Section 3. Management of Acquired Lands.**

(a) Land acquired under this Chapter may be used pending disposition for any lawful purpose that is not inconsistent with the reclamation activities and post-reclamation uses for which the land was acquired.

(b) Unless waived in writing by the Governor based on the public interest, any user of acquired land shall be charged a user fee reflecting the fair market value of the benefits received by the user, or the costs to the State for providing the benefit, whichever is appropriate. Such fees shall be deposited in the account established by W.S. 35-11-1203 (West 2007).

**Section 4. Disposition of Reclaimed Lands.**

(a) Prior to the disposition of any acquired land, the Director shall:

(i) Publish a notice in a local newspaper describing the proposed disposition for a minimum of 4 successive weeks. The notice shall provide at least 30 days for public comment, state where copies of the plan for disposition may be reviewed or obtained, specify the address for submission of comments, and state that a public hearing will be held if requested or appropriate.

(ii) Publish notice of the time and place for any public hearing in a local newspaper at least 30 days before the hearing. All comments received at the hearing shall be recorded.

(iii) Make a written recommendation to the Governor that the proposed disposition is appropriate or not, after considering all comments received and any local, State or Federal laws or regulations which apply. This recommendation shall not constitute a final decision until approved by the Governor.

(b) The State may transfer the administrative responsibility for acquired land to any agency or political subdivision of the State provided that:

(i) ~~T~~he transfer is approved by the secretary of the interior, or his designated representative;

(ii) ~~T~~he transfer specifies the purpose for which the land may be used consistent with the program; and

(iii) ~~T~~he transfer specifies that the responsibility shall revert to the State if the land is not used for the specified purposes.

(c) The disposal provisions of W.S. 35-11-1205(c) (West 2007) shall apply only if such development is consistent with local, State or Federal land use plans, and continued retention or disposal under other provisions is not in the public interest.

## CHAPTER IV 4

### LIENS FOR RECLAMATION ON PRIVATE LANDS

#### Section 1. **Appraisals.**

(a) In order to determine whether property value has increased from reclamation work, the Director shall obtain an appraisal from an independent professional appraiser before any reclamation activities are started, which states the fair market value of the land as adversely affected by past mining. If work must start because of an emergency, the appraisal shall be completed at the earliest practical time and before non-emergency work is commenced

(b) Where reclamation work will require more than 6 months to complete, the final appraisal shall not be started until actual completion of all reclamation activities. This appraisal shall state the market value of the land as reclaimed.

(c) The landowner is to be provided with a statement of the increase in market value (excluding increases due to normal appreciation which do not result from reclamation), an itemized statement of reclamation expenses, and a notice that a lien will or will not be filed in accordance with Section 2.

(d) The program may use abbreviated appraisal procedures or rely on existing and current independent appraisal information where liens will not apply or where they are waived under Section 2.

#### Section 2. **Liens.**

(a) Unless waived under (b) below, or prohibited by W.S. 35-11-1206 (West 2009), the Director shall file a lien against the land if the reclamation results in a substantial increase in the land's fair market value based on the appraisals obtained under Section 1.

(b) The Governor may waive the lien if all costs of filing it exceed the fair market value increase, or if the reclamation work primarily benefits health, safety or environmental values of the greater community or area in which the land is located. In addition, the lien may be waived if reclamation is necessitated by an unforeseen occurrence and the reclamation work will not result in a significant increase in the land's fair market value.

#### Section 3. **Satisfaction of Liens.**

(a) A lien placed on private property shall be satisfied, to the extent of the value of the consideration received, at the time of transfer of ownership. Any unsatisfied portion shall remain as a lien on the property.

(b) The State shall maintain or renew the lien as required by law. All money received from the satisfaction of liens shall be deposited in the account established by W.S. 35-11-1203 (West 2007).

## CHAPTER V

### ~~MINE SUBSIDENCE INSURANCE PROGRAM~~

*Currently, Chapter V is surrounded by chapters that address reclamation issues and Chapter V covers a topic that is a separate program under AML. To maintain a logical flow of the regulations concerning reclamation projects, the rules concerning the insurance program have been placed at the end of the regulations as Chapter 7.*

## CHAPTER ~~VII~~ 5

### ELIGIBILITY AND PRIORITY OF RECLAMATION PROJECTS

*The word 'reclamation' has been added to the chapter title to distinguish the regulations for reclamation projects as opposed to regulations for public facilities projects. Generally, eligibility and priority for the two are distinct and the reclamation of abandoned sites takes priority over public facility projects. The current chapter mixes the two different types of projects and is confusing. Additionally, former chapter 7 has been relocated to present a logical sequence of topics.*

#### Section 1. **General.**

This Chapter establishes criteria for determining eligible coal, noncoal, orphan, and brownfield ~~and public facility~~ projects and for prioritizing eligible projects for funding. Eligible projects shall be ranked for funding in accordance with the requirements established under this Chapter and W.S. 35-11-1202 (West 2007).

*Public facility projects have been removed from this chapter and placed in a chapter of their own and orphan and Brownfield sites have been added to enable the state to have a funding mechanism to address these types of environmental impacts. The date of the statute has been added to the reference.*

#### Section 2. **Eligible coal lands and waters.**

(a) Lands and water eligible for reclamation are those which were adversely affected by coal mining and processing practices prior to August 3, 1977; and

(b) The lands and waters were left in an unreclaimed or inadequate state of reclamation for which there is no continuing reclamation responsibility under state or federal law or as a result of bond forfeiture where the forfeited bond is insufficient to pay the total cost of reclamation.

#### Section 3. **Eligible noncoal lands and waters.**

(a) Lands and waters eligible for reclamation are those which were adversely affected by mineral mining and processing practices prior to August 3, 1977; and

(b) The lands and waters were left in an unreclaimed or inadequate state of reclamation for which there is no continuing reclamation responsibility under state or federal law or as a result of bond forfeiture where the forfeited bond is insufficient to pay

the total cost of reclamation.

*The language describing eligible coal and noncoal lands has been expanded to include bond forfeiture sites where the bond is insufficient to complete reclamation as allowed in the federal rules. This language is similar to that found in the federal regulations at 30 CFR 874.12.*

(c) In determining eligibility under subsection (a), lands and waters affected by mineral mining and processing practices and under the jurisdiction of the Forest Service shall utilize the effective date of August 28, 1974, whereas lands and waters under the jurisdiction of the Bureau of Land Management shall utilize the effective date of November , 1980.

*The date in the federal rule is November 26 not the 28<sup>th</sup>.*

#### **Section 4. Eligible orphan and Brownfield sites.**

The division shall coordinate with the Solid and Hazardous Waste Division regarding the eligibility and prioritization of sites to be funded and shall at a minimum consider the following criteria:

(a) Lands and water eligible for reclamation and/or remediation are those which there is no identifiable responsible party; or

(b) The cost to reclaim or remediate the lands or waters exceeds the resources of the landowner or responsible party.

*A new Section 4 has been added to clarify that AML Certified In Lieu funds may be used to reclaim or remediate environmental impacts at other sites under the jurisdiction of DEQ that are not mine related but meet the criteria above. The types of sites that are eligible were provided by the SHWD and is in line with their program.*

#### **Section 5. Prioritization of reclamation projects.**

~~Section 6(a) Lands, waters, and public facilities or utilities which are eligible under Section 2. and Section 4(a)(i) of this Chapter shall have the highest priority for funding. Eligible projects shall include and be ranked for funding as follows~~ The following priority shall be used to determine the expenditure of AML funds:

(a) Eligible coal lands and waters given the following ranking for funding:

(i) Protection of public health, safety, general welfare and property from the extreme danger of the adverse effects of coal mining and processing practices; and

(ii) Protection of the public health, safety and general welfare from adverse effects of coal mining and processing practices.

~~(iii) Restoration of land and water resources and the environment previously degraded by the adverse effects of coal mining and processing practices.~~

~~(iv) Protection, repair, replacement, or enhancement of existing public facilities or utilities adversely affected by coal mining and processing practices.~~

*The introduction has been changed to reflect the removal of public facilities from the chapter and to clarify the priority given to coal. Subpart (iii) has been removed from this part of the priority list since the 2006 Federal amendments to SMCRA only requires subparts (i) and (ii) to be completed before other projects. Subpart (iii) has been included in the new part (b) below. Subpart (iv) has been removed from this chapter since it addresses public facilities which has been given a separate chapter.*

~~(b) Funding for lands, waters, and facilities eligible under Section 3. and Section 4.(a)(ii) and (iii) of this Chapter shall reflect the following priorities, in the order stated:~~

(b) Eligible noncoal lands and waters, eligible orphan sites, and Brownfields, and restoration of eligible coal land and water resources and the environment previously degraded by the adverse effects of coal mining and processing practices. Eligible noncoal lands and waters given the following ranking for funding:

(i) ~~The p~~Protection of public health, safety, general welfare and property from the extreme danger of the adverse effects of noncoal ~~mineral~~ mining and processing practices;:-

(ii) ~~The p~~Protection of the public health, safety and general welfare from adverse effects of noncoal ~~mineral~~ mining and processing practices;:- and

(iii) ~~The r~~Restoration of land and water resources and the environment previously degraded by the adverse effects of noncoal ~~mineral~~ mining and processing practices.

*A new Section five has been added to clarify that reclamation of coal mine land and water has the highest priority of the expenditure of the AML funds with the exception of restoration of the environmental impacts of coal mining where the public health, safety, general welfare and property are not at extreme danger or needs protection from the adverse impacts of coal mining and processing practices. In these cases, they are on the*

*same level as noncoal and orphan and Brownfield sites. The section also includes the criteria for ranking of individual projects related to coal and noncoal mining impacts. Complete criteria for prioritizing orphan and brownfield sites are not included since that is the responsibility of the SHWD.*

**Section 4. ~~Eligible Facilities and Utilities.~~**

~~(a) Eligible public facilities and utilities projects include:~~

~~(i) Existing public facilities or utilities adversely affected by coal mining and processing practices which occurred prior to August 3, 1977.~~

~~(ii) Existing facilities and utilities serving the public and adversely affected by mineral mining and processing practices which occurred prior to August 3, 1977.~~

~~(iii) The construction of new public facilities or utilities in communities impacted by coal or mineral mining and processing practices.~~

~~(b) Eligible "communities" under subsection (a)(iii) of this section include incorporated cities and towns, counties, special districts or joint powers boards which have relied on the coal or mineral mining industries for a significant portion of their economic base prior to and since August 3, 1977, or for this same time period can demonstrate significant impact upon their tax revenues and services as a result of these industries.~~

**Section 5. ~~Eligible Coal and Mineral Industry Projects.~~**

~~(a) Eligible projects include:~~

~~(i) The construction of specific public facilities which have a relationship to the coal or mineral industries.~~

~~(ii) Activities of public benefit which are related to impacts from the coal or mineral industries.~~

**Section 6. ~~Ranking Eligible Projects for Funding.~~**

~~The Program, considering the recommendations of the Abandoned Mine Land Advisory Board, shall develop eligible projects and establish funding priorities in the order listed in this section:~~

~~(a) Lands, waters and public facilities or utilities which are eligible under Section 2. and Section 4.(a)(i) of this Chapter shall have the highest priority for funding. Eligible projects shall include and be ranked for funding as follows:~~

~~(i) Protection of public health, safety, general welfare and property from the extreme danger of the adverse effects of coal mining and processing practices.~~

~~(ii) Protection of the public health, safety and general welfare from adverse effects of coal mining and processing practices.~~

~~(iii) Restoration of land and water resources and the environment previously degraded by the adverse effects of coal mining and processing practices.~~

~~(iv) Protection, repair, replacement, or enhancement of existing public facilities or utilities adversely affected by coal mining and processing practices.~~

~~(b) Funding for lands, waters, and facilities eligible under Section 3. and Section 4.(a)(ii) and (iii) of this Chapter shall reflect the following priorities, in the order stated:~~

~~(i) The protection of public health, safety, general welfare and property from the extreme danger of adverse effects of mineral mining and processing practices.~~

~~(ii) The protection of public health, safety, and general welfare from the adverse effects of mineral mining and processing practices.~~

~~(iii) The restoration of land and water resources and the environment previously degraded by the adverse effects of mineral mining and processing practices.~~

~~(iv) The protection, repair, replacement, or enhancement of existing facilities or utilities serving the public and adversely affected by mineral mining and processing practices, or the construction of new public facilities or utilities in communities impacted by coal or mineral mining and processing practices. Projects qualifying under this subsection shall be ranked for funding considering the following criteria:~~

~~(A) Availability of funds from other local, state or federal sources and the commitment of the impacted community to provide financial support, considering the local tax base and the ability of local governments to provide this support.~~

~~(B) The extent to which the project will mitigate the impacts of coal or mineral mining and processing practices, giving first priority to projects which address public health and safety and second priority to providing basic public services and infrastructure.~~

~~(C) The need and cost effectiveness of the project to the community and state. Except for projects involving threats to public health and safety,~~

~~higher priority shall be given to those projects demonstrating a higher benefit to cost ratio.~~

~~(e) The Governor may seek funding for projects eligible under section 5. of this chapter prior to the projects ranked for funding under Section 6. (b) of this Chapter. The Governor may certify his support for a project considering the following:~~

~~(i) That the project has a direct relationship to the State's coal and mineral industries.~~

~~(ii) That the project provides significant benefit to the State's coal and mineral industries, or mitigates impacts resulting from these industries to local economies, basic public services, infrastructure, or the environment.~~

~~(iii) That the cost of the project is commensurate with the benefits received by the industry, affected communities and state.~~

~~(iv) Funding from other sources is limited or unavailable, and local governments, state or federal agencies are unable to commit financial support considering their revenues and tax bases.~~

~~(v) There is a demonstrated need and urgency for funding this project prior to projects which qualify for funding under Section 6.b. of this Chapter.~~

~~(d) Nothing in this Section shall affect the status of projects that have already been developed and submitted in a grant for federal funding prior to July 1, 1992.~~

*As stated previously, public facilities have been given their own chapter for clarity and existing Sections 4 through 6 have been moved to that consolidated chapter.*

## CHAPTER VI 6

### PROCEDURES FOR RANKING PUBLIC FACILITIES PROJECTS

*Information concerning public facilities is currently contained in three chapters. This revision consolidates that information into one chapter. The phrases 'public facility' and 'public facilities' have been added to numerous rules for readability and clarity. Likewise numerous references to other former chapters have been replaced with references to other sections of this revised chapter.*

#### Section 1. **General.**

(a) This Chapter establishes the funding, eligibility, nomination, and procedures to rank and approve public facilities projects which are eligible for AML F funding.

*Section 1 of the existing Chapter VI contains the general purpose rules of that chapter and this information has been retained for the general purpose statement of this new chapter. For the past few years, the AML division has only received funds to conduct coal reclamation work. This chapter concerning public facilities is retained and revised in the event the approved budget for AML includes provision for public facility projects. Section 1 is taken from the current Chapter VI.*

(b) If the certified in lieu funds received from the Office of Surface Mining is in excess of the annual amount required to execute the state's reclamation plan and the priorities listed in Chapter 5, the administrator may make the excess funds available for public facilities projects with priority given to those projects meeting the criteria in Section 6(b) of this chapter.

(c) ~~Section 2.(a)~~ If funds are made available, the department division shall solicit proposals for public facilities projects to be considered for selection funding by the Program.

*Additional language has been added to subpart (a) since the chapter now covers all aspects of public facilities projects. A new subpart (b) has been added to clarify that public facility projects shall only be considered if there are enough funds to address the reclamation and environmental remediation of the department since that is a primary mission of the department. The word 'may' is used to give the division discretion whether or not to make excess funds available. The amount of excess funds may be such a small amount that it would not be practicable to fund a public facility project. The intent is to allow funding for public facilities projects to occur based on an annual evaluation of the reclamation*

requirements. DEQ staff can currently oversee only so many reclamation/remediation projects each year. Any funds in excess of the amount required for reclamation/remediation projects each year would be available for public facilities. Subpart (c) has been moved from Section 2 of Chapter VI since it is a general statement which fits Section 1 better than Section 2. Department has been changed to division as the division is the appropriate level of responsibility for the requirement to solicit applications.

Section 2. **Public Facility Project Eligibility and Ranking.**

(a) ~~The Department shall solicit proposals for projects to be considered for funding by the program.~~

(a)(b) Upon receipt of a proposed public facility project, the Department division shall conduct an initial evaluation of the proposal to determine eligibility in accordance with the requirements of this Chapter VII of these regulations.

(b)(e) All public facilities proposals which are eligible for consideration under this Chapter VII shall be reviewed and ranked by the division in accordance with this chapter. The division shall present its recommendations to the State Lands and Investment Board for review and approval in accordance with Executive Order #1997-3 evaluated by the Abandoned Mine Land Advisory Board, created by Executive Order #1991-3 for purposes of assisting the Department with ranking the proposal for funding in accordance with Chapter VII, Section 6 of these regulations. The board's evaluation review shall include consideration of public comment; for public facility projects, the interest of the public body supporting the project and the recommendations of the Program division. Following analysis of all comments and recommendations, the board shall submit their recommendations and findings to the Department division for implementation. the board's recommendations shall be advisory only.

*Section 2 is currently in Chapter VI of the AML regulations. It has been retained for this consolidated chapter. Executive Order 1997-3 replaced Executive Order 1991-3. This current Executive Order replaces the Abandoned Mine Land Advisory Board with the State Lands and Investment Board. The text has been modified to reflect the process that has been actually followed between the SLIB and the Division. The word 'program' has been changed to 'division' to reflect the change enumerated in §W.S. 35-11-105 which changed AML from a program within the Land Quality Division to a separate division within DEQ. The reference to the previous Board's recommendations as being advisory only has been stricken as no longer appropriate under the current Executive Order.*

Section ~~3~~ 4. **Eligible Facilities and Utilities.**

*Section 3 is taken from Section 4 of the current Chapter VII and has been moved to this location as part of the consolidation of rules concerning public facilities projects into one chapter.*

(a) Eligible public facilities and utilities projects include:

~~(i) Existing public facilities or utilities adversely affected by coal mining and processing practices which occurred prior to August 3, 1977.~~

*There is no longer a need to separate coal from noncoal for public facilities given the 2006 amendments to SMCRA and the current (i) and (ii) have been consolidated. There are no restrictions in SMCRA or OSM regulations that require a certified state to place coal related public facilities projects ahead of noncoal related public facilities projects. The only requirement currently from OSM on Wyoming is to commit \$30 million a year on coal sites until those sites are mitigated. Funding for these projects will either come from prior balance replacement funds which are at the discretion of the legislature or certified in lieu funds which have no restrictions. The consolidation of (i) and (ii) also allows the consolidation of the current Section 6(b) and (c) of Chapter VII which is reflected later in this consolidated Chapter.*

~~(i)(ii)~~ Existing public facilities and utilities serving the public and adversely affected by ~~mineral~~ mining and processing practices which occurred prior to August 3, 1977; and

~~(ii)(iii)~~ The construction of new public facilities or utilities in communities impacted by ~~coal or mineral~~ mining and processing practices.

(b) Eligible “communities” under subsection (a)(~~iii~~) of this section include incorporated cities and towns, counties, special districts or joint powers boards which have relied on the ~~coal or mineral~~ mining industries for a significant portion of their economic base prior to and since August 3, 1977, or for this same time period can demonstrate significant impact upon their tax revenues and services as a result of these industries.

*Section 3 is currently Section 4 of Chapter VII. The entire section has been moved to this new chapter with minimal changes except removing the distinction between coal and noncoal mentioned above.*

Section 4~~5~~. **Eligible ~~Coal and Mineral~~ Mining Industry Projects**

(a) Eligible projects include:

(i) The construction of specific public facilities which have a relationship to the ~~coal or mineral~~ mining industries.

(ii) Activities of public benefit which are related to impacts from the ~~coal or mineral~~ mining industries.

*Section 4 is currently Section 5 of Chapter VII. The entire section has been moved to this new chapter with no changes except the section number and removal of the distinction between coal and mineral mining.*

**Section 5. Chapter VIII Nomination of Public Facility Projects.**

~~(a) Section 1. General.~~ This ~~Chapter~~ Section establishes procedure and application requirements whereby interested persons may seek abandoned mine land funding for public facility projects or activities in accordance with the requirements of W.S. 35-11-1202(a)(v), (c) and ~~Chapter VII~~, Sections 3, 4 5 and 6 of this chapter.

~~(b) Section 2. Eligible Applicants.~~ Only incorporated cities and towns, counties, special districts or joint powers boards who own or would own the new facility or sponsor the activity may submit applications for funding.

~~(c) Section 3. Eligible Costs.~~ Applicants may seek abandoned mine land funding for costs associated with the site evaluation, engineering and design, site preparation, construction, equipment purchase, furnishings and maintenance of the facility. The costs to prepare an application in accordance with these requirements must be borne by the applicant.

~~(d) Section 4. Citizen Participation.~~ All applications must be accompanied by a resolution passed by the elected officials representing the applicant and must certify that the proposal contained in the application included public notice and opportunity for citizen input.

~~(e) Section 5. Minimum contents of Application.~~ All applications filed with the Department shall contain the following minimum information to be considered complete:

~~(i)(a)~~ Transmittal cover letter signed by a proper authority of the applicant.

~~(ii)(b)~~ Resolution of governing body supporting the project with documentation of public notice and opportunity for citizen input.

~~(iii)(c)~~ Description of the project, estimated total cost of project, and if the project involves construction of facilities or utilities, a schedule for design and construction with an annual budget breakdown.

~~(iv)(d)~~ Information to demonstrate eligibility of the project in accordance with requirements of ~~Chapter VII~~, Sections ~~3 or 4 or 5~~ of this chapter.

~~(v)(e)~~ Information to demonstrate need and importance of the project in accordance with the requirements of ~~Chapter VII~~, Section 6 (b) or (c) of this chapter.

*Section 5 of this consolidated Chapter is Sections 1 through 5 of Chapter VIII of the current regulations. The entire chapter (Section 6 is located later in this Chapter) has been moved to this new chapter with no changes except the numbering of sections and subsections. References have also been corrected to fit the new chapter.*

### Section 6. **Ranking Eligible Projects for Funding.**

~~(a) The division Program, considering the recommendations of the Abandoned Mine Land Advisory Board, shall develop review eligible projects and establish recommend funding priorities in the order listed in this section:~~

*This language was moved from Section 6 of Chapter VII and references have been corrected. The word 'program' has been changed to 'division' due to the reason stated previously. The language concerning the advisory board has been struck because the Executive Order setting up the board has been replaced by the Executive Order changing the process to use the SLIB as discussed above. In addition, the division does not develop public facilities projects but reviews submittals from local governments. Likewise the division recommends funding priorities while the Board establishes funding priorities.*

~~(a) Lands, waters, and public facilities or utilities which are eligible under Section 2. and Section 4(a)(i) of this Chapter shall have the highest priority for funding. Eligible projects shall include and be ranked for funding as follows:~~

~~(i) Protection of public health, safety, general welfare and property from the extreme danger of the adverse effects of coal mining and processing practices.~~

~~(ii) Protection of the public health, safety and general welfare from adverse effects of coal mining and processing practices.~~

~~(iii) Restoration of land and water resources and the environment previously degraded by the adverse effects of coal mining and processing practices.~~

~~(iv) Protection, repair, replacement, or enhancement of existing public facilities or utilities adversely affected by coal mining and processing practices.~~

*Former subsection (a) has been deleted to remove the distinction between coal related public facilities and noncoal related public facilities as the 2006 amendments to the Act give certified states greater discretion concerning the expenditure of funds. Subparts (a)(i) through (iii) have been deleted as they apply to reclamation projects and not public facilities projects. Subpart (iv) is adequately covered by Section 3 of this consolidated chapter.*

(b) Priority for Funding for lands, waters, and facilities eligible under ~~Section 3 and Section 4 3(a)(ii) and (iii)~~ of this Chapter shall ~~reflect the following priorities, in the order stated:~~ be for ~~(iv)~~ ~~The protection, repair, replacement, or enhancement of existing facilities or utilities serving the public and adversely affected by mineral mining and processing practices, or the construction of new public facilities or utilities in communities impacted by coal or mineral mining and processing practices. Projects qualifying under this subsection shall be ranked for funding considering the following criteria:~~

*The reference to Section 3 which was referenced in the original subsection (b) has been removed. The original Section 3 is no longer a part of this chapter since it was related to noncoal reclamation. This new chapter only relates to public facilities. Likewise the words 'lands and waters' have been deleted since they refer to mine reclamation and are covered under Chapter 5. The new Section 3(a) only contains (i) and (ii) which were previously (ii) and (iii) so there is no need to include those in the reference. As discussed below subparts (i) thru (iii) have been deleted, so subpart (iv) has been incorporated into (b).*

~~(i) The protection of public health, safety, general welfare and property from the extreme danger of adverse effects of mineral mining and processing practices.~~

~~(ii) The protection of public health, safety, and general welfare from the adverse effects of mineral mining and processing practices.~~

~~(iii) The restoration of land and water resources and the environment previously degraded by the adverse effects of mineral mining and processing practices.~~

*Subparts (i),(ii) and (iii) in the original rules of this section have been deleted since they apply to reclamation projects which have been removed from this chapter. With the deletion of those three subsections, only subpart (iv) remained so it has been incorporated into the language of (b) itself and the rest of the subpart renumbered accordingly.*

~~(i)(A)~~ Availability of funds from other local, state or federal sources and the commitment of the impacted community to provide financial support, considering the

local tax base and the ability of local governments to provide this support.

~~(ii)(B)~~ The extent to which the project will mitigate the impacts of coal or mineral mining and processing practices, giving first priority to projects which address public health and safety and second priority to providing basic public services and infrastructure.

~~(iii)(C)~~ The need and cost effectiveness of the project to the community and state. Except for projects involving threats to public health and safety, higher priority shall be given to those projects demonstrating a higher benefit to cost ratio.

(c) Notwithstanding Section 1 of this chapter, ¶ the Governor may seek funding for projects eligible under Section 3 and ~~5. 4~~ of this chapter prior to the projects ranked for funding under Section ~~6. 5~~(b) and (c) of ~~this~~ Chapter 5. The Governor may certify his support for a project considering the following:

(i) That the project has a direct relationship to the State's coal and mineral industries.

(ii) That the project provides significant benefit to the State's coal and mineral industries, or mitigates impacts resulting from these industries to local economies, basic public services, infrastructure, or the environment.

(iii) That the cost of the project is commensurate with the benefits received by the industry, affected communities and state.

(iv) Funding from other sources is limited or unavailable, and local governments, state or federal agencies are unable to commit financial support considering their revenues and tax bases.

(v) There is a demonstrated need and urgency for funding this project prior to projects which qualify for funding under Section 6(b) of this Chapter.

~~(d) Nothing in this Section shall affect the status of projects that have already been developed and submitted in a grant for federal funding prior to July 1, 1992.~~

*Although the new OSM regulations no longer require certification for such projects for certified states, the option the Governor may 'certify' public facility projects has been retained. This will allow the Governor to redirect priorities for reasons specified in the rules. Governor certification is only required if in the event there were no funds available in a given year to devote to public facilities projects and the Governor determined that a public facility project required funding. The type of public facilities projects that the Governor may certify has also been expanded to include all types and not only those mining industry projects. As a certified state,*

*there is no reason to limit the certification capabilities. If funds were made available for public facilities in a given year, Governor certification would not be required because the division would have determined there was more than adequate funding for reclamation/restoration projects. The legislature may also approve projects from the Prior Balance Replacement Funds as long as coal issues are addressed. In those instances, no certification would be required. Subsection (d) has been deleted as no longer necessary as there are no longer any projects that meet this criteria.*

**Section 7 6. Funding Requirements.**

Projects funded with abandoned mine land funds shall receive financial support in accordance with federal grant requirements. All contract services shall be procured through an open and free competitive process, in accordance with W.S. 9-2-1027 et seq. and W.S. 9-2-1016. Expenditure of abandoned mine land funds shall be on a cost reimbursement basis for costs allowable under the grant and federal grant regulations. The Department may enter into agreements with local governments to facilitate project planning, implementation and coordination, provided that such agreements do not increase the costs of the project to the Program nor delegate the responsibility of the Department to fulfill its grant recipient duties and oversight functions.

*Section 7 has been moved from the current Chapter VIII with no changes except renumbering.*

## CHAPTER ~~V~~-7

### MINE SUBSIDENCE INSURANCE PROGRAM

*The current Chapter V has been moved to the end of the AML regulations as a logical location in the rules since it is not related to reclamation projects and is a special program under AML.*

#### Section 1. **General.**

This chapter establishes rules and regulations for a program of insurance administered by the ~~Land Quality~~ Abandoned Mine Land Division to insure structures in Wyoming from damage resulting from mine subsidence.

*At the time this chapter was originally promulgated, the Abandoned Mine Land Division was a program within the Land Quality Division. This has been corrected.*

~~Section 2. **Definitions.** In addition to the definitions contained in W.S. 35-11-1301 the following definitions apply:~~

~~(a) "Aggregate" means the total amount of funds available in the Mine Subsidence Insurance Program at any given time to pay for claims of which the Mine Subsidence Insurance Program has been notified and which are in the process of settlement.~~

~~(b) "Estimated value" means the current fair value of the structure as determined by generally accepted professional standards which take into account local market conditions~~

~~(c) "Fixture" means sidewalks, driveways, utilities and other physical improvements permanently affixed to the realty which enhance use and enjoyment of the realty which are either owned by or the responsibility of the insured, excluding land, trees, plants and crops.~~

~~(d) "Known subsidence areas" means lands beneath which mining has occurred and such mining has been documented in public records, or where there is physical evidence of subsidence.~~

~~(e) "Loss" means physical damage to a structure or the adverse effect to the utility of a structure as defined by W.S. 35-11-1301(a)(iii).~~

*This section of definitions has been moved to Chapter 1 along with the other definitions. The remaining sections have been renumbered accordingly.*

**Section 2 3. Rights of Subrogation.**

In the event of a loss, an insured person's rights to recover from another become the rights of the State up to the amount of the covered loss and the insured person must protect these rights and assist representatives of the State in enforcing them.

**Section 3. Notice to Property Owners.**

(a) The division and their consultants, using best engineering and professional judgment based on analysis of the potential impact, shall identify surrounding properties that may reasonably be at risk from subsidence damage due to AML mitigation work.

(b) Prior to initiating subsidence mitigation work, the division's contractor shall notify the owner of all property identified in (a) and offer to purchase subsidence insurance for the property for the duration of the project.

(c) If accepted, the property owner must allow the property to be inspected to establish baseline conditions and allow the property to be inspected at any reasonable time during the project.

(d) This offer will be made to protect the state from subsidence damage claims for the duration of the project.

*This section was added to require AML to offer free subsidence insurance to residents that may potentially be impacted by an AML project in the area. The free insurance is to protect the state in the event AML mitigation work results in subsidence damage to surrounding property. This has been the policy of AML and this addition makes it a rule.*

**Section 4. Contract Terms and Conditions.**

(a) Coverage shall be for a term of one year and shall renew upon payment of the premium unless cancelled or non-renewed pursuant to Section 11.

(b) Excluded from coverage are:

(i) Existing and unrepaired mine subsidence loss, except that structures damaged prior to June 11, 1986 shall be covered under the conditions enumerated in W.S. 35-11-1302 (a) (i) through (v).

(ii) Any damage not due to mine subsidence.

(iii) Bodily injury or death.

(iv) Damage to contents not attached to and part of the structure, personal property or automobiles (owned or non-owned) or motorized vehicles whether

used to service the premises or not.

(v) Except as provided in this paragraph, additional living expenses or the interruption of rental income incurred by an insured person. Reasonable additional living expenses can be covered where a residential structure will be unliveable during a reasonable repair period, or a professional engineer or engineer in a public office having authority to make such decisions finds that there is imminent threat to life as a result of a loss.

(vi) Loss to land, trees, plants and crops.

(vii) Loss to structures vacant or unoccupied for more than 180 days unless the owner has made arrangements for the upkeep and inspection of the structure on a monthly basis.

(viii) Loss to mobile homes except as covered in Section 9 10.

(ix) Loss to structures excluded under Section ~~40~~ 11.

(x) Loss to structures that were not constructed according to local building codes in effect at the time the structure was built or placed into service.

*If structures are not built in accordance with appropriate building codes, the structure is more likely to experience damage that is very similar to damage caused by but unrelated to subsidence. Likewise, some jurisdictions may have building codes for structures built in subsidence prone areas. Failure to construct structure according to those codes may make the structure more susceptible to damage from subsidence.*

(c) In order to be accepted for insurance the property owner shall allow inspections of the insured structure. The purpose of the inspections shall be to determine structural integrity and to document the extent of any existing damage from mine subsidence. Failure by the property owner to allow an inspection of the structure or structures, both external and internal, will result in the division rejecting the property owner's request for insurance. Cost of the inspection shall be borne by the division.

*The additional language was added to clarify that if a property owner does not allow his structure to be inspected the property will not be granted insurance. There would be no baseline to which to compare to new claims and determine if additional damage had been caused by the mitigation project. Language was also added to clarify that the cost of the inspection will be borne by the division.*

(d) Insured structures shall be subject to reinspection. All reasonable attempts to notify the property owner shall be made prior to a reinspection. Cost of the reinspection shall be borne by the division.

*Language was added to clarify that the cost of the inspection will be borne by the division.*

**Section 5 8. Premiums Rates.**

*This section was relocated from later in the chapter to a more logical sequence in the Chapter. The title was changed since the section covers more than premium rates.*

(a) Premium rates ~~shall~~ may be established by an actuarial evaluation of the mine subsidence risk in Wyoming. Premiums shall be calculated to cover the expenses of administration, the cost of anticipated claims and establishment of a reserve to cover catastrophic losses and ensure solvency of the Mine Subsidence Insurance Program.

*The word 'shall' has been changed to 'may' to give the division some flexibility concerning the actuarial evaluation. The word 'shall' could be interpreted to require an actuarial evaluation every year which is unnecessary.*

(b) Based upon actuarial evaluation premium rates for residential structures shall be set by the Governor within the range of \$1.75 and \$2.25 per thousand of coverage, and \$2.75 and \$3.25 per thousand for coverage on commercial structures.

(c) Premiums shall be payable on an annual basis.

(d) Premiums shall be paid by the State of Wyoming or its contractors if the property has been identified, in accordance with Section 3 of this Chapter, as in an area that may reasonably be at risk from subsidence due to AML mitigation work.

*This rule has been added to clarify that the state will pay the premiums for those properties that have been identified as being at risk from an AML project. The providing of insurance gives protection to the state in the event the project induces subsidence and results in damage to property.*

**Section 6 5. Deductibles.**

The deductible per loss on residential structures shall be 1 percent of the amount of the coverage purchased but in no event shall the deductible be less than \$250 ~~nor~~ more than \$500. The deductible per loss on commercial structures shall be 1 percent of the amount of coverage purchased but in no event shall the deductible be less than \$250 ~~nor~~ more than \$1,000. After a deductible has been met in any calendar year, no further deductibles shall be charged to any subsequent losses occurring during the remainder of that calendar year. No deductible shall be assessed for property owners who qualify for retroactive coverage under W.S. 35-11-1302(a).

*The word 'nor' has been changed to 'or' as a grammatical correction.*

**Section 7-6. Coverage Limits.**

(a) Except as provided by this Section, the maximum amount of insurance available for all losses to an insured residential or commercial structure shall be ~~\$150,000~~ \$275,000.00 per loss.

*The \$150,000.00 limit was set in 1987 and has adjusted upward to account for inflation.*

(b) Structures shall not be insured for more than their estimated fair market value.

(c) Structures shall not be insured ~~nor~~ for less than 75 percent of estimated fair market value unless limited by (a) above. ~~as limited by this Section.~~

(d) ~~Detached~~ Each structures which occupies a portion of the realty on which a residential structure is situated may be separately insured at the rate established in Section 5 for an amount not to exceed their estimated fair market value but not more than the amount in (a) above nor less than the amount in (c) above.

*The current subsection (b) has been divided into subsections for clarity. The term fair market value has been added for consistency. Subpart (d) has additional language to clarify all structures may not be insured more than fair market value or the limits placed on the main residence. Subpart (d) also clarifies that each structure on the property may be insured but at additional cost.*

**Section 8 7. Claims Adjustment Procedures.**

(a) Losses shall be reported to the Administrator within ninety days from the time loss occurs but no claims will be accepted after the date a policy has been canceled or terminated. The Administrator will verify that the coverage is in force and assign an adjuster to determine the cause and extent of the loss, document the damage, and assist the insured in obtaining repair cost estimates and in completing the proof of loss.

*Subsidence often occurs over time and it is difficult to establish exactly when an event took place. If a claim is filed after the date of cancellation, it is extremely difficult if not impossible to determine if damage caused by subsidence occurred prior to cancellation of a policy. To avoid disputes, the above language has been added at the suggestion of a consulting firm that conducted an actuarial study for the subsidence insurance program.*

(b) The authority and limits for settling losses after payment of the deductible shall be:

(i) ~~Claims adjusters up to \$2,000.~~

(ii) The Subsidence Insurance Program Manager with the concurrence of the Abandoned Mine Land ~~Program Manager~~ Administrator up to ~~\$10,000~~ \$25,000.

(iii) The Administrator with the concurrence of the ~~Governor~~ Director, over ~~\$10,000~~ \$25,000 up to the policy maximum.

*Additional language has been added to (b) to clarify that the subsection is establishing the authority and respective limits for settling losses. The current limit of \$10,000.00 has been adjusted upward to account for inflation and to allow greater discretion at the agency level. The concurrence of the Governor has been replaced with the concurrence of the director as the logical level of authority to make such decisions. When the AML Program was part of the Land Quality Division, the Subsidence Insurance Program Manager and the AML Program Manager were separate individuals. Now that AML is a separate division, they are the same individual so the concurrence of AML Program Manager has been replaced with the AML Administrator*

(c) Drafts or checks used to pay for losses shall be in such form that endorsement by the insured will constitute a full release to the Mine Subsidence Insurance Program and the State.

(d) Losses shall be settled for the cost to repair the structure to its condition prior to subsidence damage or the amount of insurance on the structure, whichever is less.

#### Section 9. **Mobile Homes.**

Mobile homes shall be eligible for coverage provided they are anchored to the ground ~~with tie-downs~~ or are mounted upon a foundation and are connected to water, sewer, and electrical utilities and the home was installed according to local codes in effect at the time the structure was installed and/or constructed.

(a) The anchorage's capacity must prevent uplifting and overturning due to wind or seismic activity. Screw-in soil anchors are not considered a permanent anchorage.

(b) The anchorage must be attached to a footing sufficiently sized to prevent overloading of the soil-bearing capacity and which also avoids soil settlement. The footing shall be reinforced concrete to be considered permanent.

(c) The base of the footing must extend below the maximum frost penetration depth for the area.

(d) The foundation must enclose a crawl space with a continuous wall (whether bearing or non-bearing) that separates the crawl space from the backfill, and prohibits vermin and water from entering the enclosed area.

(e) The anchorage must have sufficient capacity in both the transverse and longitudinal directions to prevent sliding due to wind and/or seismic activity.

*The Environmental Quality Act at §35-11-1301(a)(iii) requires structures to be permanently affixed to realty. The phrase 'with tie downs' has been struck as different individuals may have different interpretations of what a tie down means. The added language is taken from AML guidance which is more in line with the statutory language requiring the mobile home to be permanently affixed to the realty. The reference to local codes has been included as discussed in Section 5(b).*

#### **Section 10. Structures ~~and Areas~~ to be Excluded.**

Structures for which construction begins in known subsidence areas after the effective date of the mine subsidence insurance program ~~these regulations~~ are excluded from the Mine Subsidence Insurance Program, unless:

(a) The structure has been constructed in accordance with local codes specific for subsidence prone areas; or

(b)(a) If there are no local codes specific for subsidence prone areas ~~the~~ property owner can produce evidence that:

(i) ~~the~~ There is a reduced risk that the structure will sustain a loss due to mine subsidence; or

(ii)(b) The ~~S~~structures are constructed to tolerate the anticipated effects of subsidence.

*Some cities such as Rock Springs have special building codes that structures must comply with if they are built in a known subsidence area. If this is the case, the property owner must demonstrate that the structure has met those special requirements. If there are no local codes, the homeowner may still qualify for insurance if he can produce evidence that the structure may withstand the affects of subsidence. This may be accomplished by providing geologic information that his area is not likely to experience subsidence of the magnitude that will result in damage or special construction techniques were used that will allow the structure to withstand subsidence impacts.*

#### **Section 11. Cancellation and Non-Renewal of Coverage.**

(a) The insured may cancel coverage by providing the Administrator a thirty day written notice.

(b) The Administrator after providing an insured thirty days written notice may cancel or refuse to renew coverage under one or more of the following conditions:

(i) Misrepresentation, concealment or fraud: any material fact or circumstance which a person intentionally conceals or misrepresents, either in an effort to obtain insurance coverage or as a result of a loss.

(ii) Exhaustion of the coverage amount appearing on the certificate of insurance.

(iii) Exhaustion of the total amount of funds available to the mine subsidence insurance program.

(iv) Refusal to permit re-inspection of an insured structure.

(c) A policy shall be cancelled if the full renewal premium is not paid within thirty days of the premium due date as it appears on the renewal premium notice.

(d) Policies shall be automatically cancelled if the aggregate becomes exhausted. Losses that have been reported will be settled on a pro-rata basis.

(e) An individual Ppolicies shall be automatically cancelled if a claim exhausts the coverage limits ~~have been exhausted~~ as established in Section 6 7.

*The wording of the rule has been modified to clarify that exhaustion of coverage means per policy per claim. The original wording could have been interpreted to mean the exhaustion was base on cumulative claims against a policy. A home could have had numerous claims and the insurance repaired all the damages but at some point it would have exhausted the coverage and no longer be eligible for insurance. Normally AML will have mitigated the subsidence risk to prevent numerous claims by the same home owner.*

(f) Any refund of premium due an insured upon cancellation shall be paid on a pro-rata basis.

(g) Notice of a refusal to renew shall be furnished the insured person by mail at least thirty days prior to the renewal date.

#### Section 12. **Limit of Liability.**

The liability of the State of Wyoming is limited to the amount of funds available for the Mine Subsidence Insurance Program.

## CHAPTER VIII

### NOMINATION OF PUBLIC FACILITY PROJECTS

#### **Section 1. General.**

~~This Chapter establishes procedure and application requirements whereby interested persons may seek abandoned mine land funding for public facility projects or activities in accordance with the requirements of W.S. 35-11-1202(a)(v), (c) and Chapter VII, Sections 4., 5. and 6.~~

#### **Section 2. Eligible Applicants.**

~~Only incorporated cities and towns, counties, special districts or joint powers boards who own or would own the new facility or sponsor the activity may submit applications for funding.~~

#### **Section 3. Eligible Costs.**

~~Applicants may seek abandoned mine land funding for costs associated with the site evaluation, engineering and design, site preparation, construction, equipment purchase, furnishings and maintenance of the facility. The costs to prepare an application in accordance with these requirements must be borne by the applicant.~~

#### **Section 4. Citizen Participation.**

~~All applications must be accompanied by a resolution passed by the elected officials representing the applicant and must certify that the proposal contained in the application included public notice and opportunity for citizen input.~~

#### **Section 5. Minimum Contents of Application.**

~~All applications filed with the Department shall contain the following minimum information to be considered complete:~~

- ~~(a) Transmittal cover letter signed by a proper authority of the applicant.~~
- ~~(b) Resolution of governing body supporting the project with documentation of public notice and opportunity for citizen input.~~
- ~~(c) Description of the project, estimated total cost of project, and if the project involves construction of facilities or utilities, a schedule for design and construction with an annual budget breakdown.~~
- ~~(d) Information to demonstrate eligibility of the project in accordance with~~

~~requirements of Chapter VII, Sections 4. or 5.~~

~~(e) Information to demonstrate need and importance of the project in accordance with the requirements of Chapter VII, Section 6 (b) or (c).~~

~~Section 6. **Funding Requirements.**~~

~~Projects funded with abandoned mine land funds shall receive financial support in accordance with federal grant requirements. All contract services shall be procured through an open and free competitive process, in accordance with W.S. 9-2-1027 et seq. and W.S. 9-2-1016. Expenditure of abandoned mine land funds shall be on a cost reimbursement basis for costs allowable under the grant and federal grant regulations. The Department may enter into agreements with local governments to facilitate project planning, implementation and coordination, provided that such agreements do not increase the costs of the project to the Program nor delegate the responsibility of the Department to fulfill its grant recipient duties and oversight functions.~~

*This Chapter is deleted since the information concerning public facilities projects has been consolidated into Chapter 6.*