

CHAPTER 11

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).

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).

(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.

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

(i) Publication 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) Provisions 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) Lands 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

(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.

~~(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)(j)~~ "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:

(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.~~

(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.~~

AML will:

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

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.

(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.

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) Enter 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.

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.

~~(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)~~~~(e)~~ 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) The 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) There are no unredeemed tax deeds outstanding against the interest offered; and

(E) There 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) The transfer is approved by the secretary of the interior, or his designated representative;

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

(iii) The 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

CHAPTER ~~VII~~ 5

ELIGIBILITY AND PRIORITY OF RECLAMATION PROJECTS

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).

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.

(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.

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.

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.~~

~~(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.

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.~~

CHAPTER VI 6

PROCEDURES FOR RANKING PUBLIC FACILITIES PROJECTS

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.

(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.~~

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 3 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.~~

~~(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 45.~~ **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 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 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:

~~(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 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:~~

~~(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.~~

~~(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.~~

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.

CHAPTER ~~V~~-7

MINE SUBSIDENCE INSURANCE PROGRAM

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.

~~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).~~

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.

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.

(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.

(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.

Section 5 8. **Premiums 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.

(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.

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).

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.

(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.

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.

(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.

(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.

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~~ the property owner can produce evidence that:

(i) ~~There~~ 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.

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 Ppolicyies shall be automatically cancelled if a claim exhausts the coverage limits have been exhausted as established in Section ~~6~~ 7.

(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.~~