THE GEOLOGICAL SURVEY OF WYOMING Daniel N. Miller, Jr., State Geologist

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MINING LAWS OF WYOMING 1980

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LARAMIE, WYOMING



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PREFACE TO THE 1981 EDITION

This publication has been compiled as a condensed reference to the mineral and mining laws of Wyoming. It has been published to aid industry, federal and state agencies, and the public in matters pertaining to the development of Wyoming's mineral resources. However, it is not a comprehensive source of mining and mineral laws. For a thorough understanding of the laws, the full Wyoming Statutes must be consulted.

The applicable 1980 cummulative supplements follow the main 1977 statutory part: material in the Constitution and Statutes to which the supplements apply are flagged with one, two, or three marginal lines:

One line means that the text or notes are changed in the supplement;

Two lines mean that a new subsection or note is added in the supplement;

Three lines mean that a new section or sections are added in the supplement.

These supplements correct, add to, supersede, or repeal the flagged sections. Where whole titles have been revised since 1977, these are included in the main Statutes. This publication will be updated periodically by issuing replacement supplements and revised titles.

Questions concerning interpretation of the Constitution and Statutes should be directed to the Attorney General's Office. Other questions may be directed to certain State agencies; these are listed in the Appendix.

We hope that this publication will provide a convenient source of reference to Wyoming's mineral and mining laws.

The State of Wyoming's Department of Economic Planning and Development in cooperation with The Geological Survey of Wyoming

* * *

Three asterisks stand for material deleted from the full Constitution and Statutes.



Constitution of the

State of Wyoming

(FRAMED BY A CONSTITUTIONAL CONVENTION WHICH MET IN CHEYENNE, WYOMING, FROM SEPTEMBER 2, 1889 TO SEPTEMBER 30, 1889, AND RATIFIED BY THE VOTERS NOVEMBER 5, 1889. THE CONSTITUTION BECAME EFFECTIVE ON JULY 10, 1890, ON WHICH DATE WYOMING WAS ADMITTED AS A STATE IN THE UNION.

THE CONSTITUTION IS PRINTED HEREIN AS SUBSEQUENTLY AMENDED.)

ARTICLE 1. DECLARATION OF RIGHTS

* * *

§ 32. Eminent domain.

Private property shall not be taken for private use unless by consent of the owner, except for private ways of necessity, and for reservoirs, drains, flumes or ditches on or across the lands of others for agricultural, mining, milling, domestic or sanitary purposes, nor in any case without due compensation.

Cross reference. — See also art. 10, § 9, Wyo. Const., and ch. 26 of title 1.

Section 33 of this article supplements this section. Snell v. Ruppert, 541 P.2d 1042 (Wyo. 1975).

Notice. — Statutes authorizing the taking of property under the power of eminent domain must provide for legal notice, and where none is provided, it should not be implied by the court. Sterritt v. Young, 14 Wyo. 146, 82 P. 946 (1905).

Indirect benefit to people of Wyoming insufficient to justify condemnation. — That condemnation of land in Wyoming for irrigation headgate and ditch to be used in reclamation of land immediately across the border in Colorado would indirectly benefit neighboring property in Wyoming and inhabitants of neighboring Wyoming city is insufficient to justify conclusion that proceeding was for benefit of people of Wyoming. Grover Irrigation & Land Co. v. Lovella Ditch, Reservoir & Irrigation Co., 21 Wyo. 204, 131 P. 43 (1913).

But direct benefit will justify taking. — That the people of another state will be benefited by a particular improvement or use for which private property is sought to econdemned will not prevent the taking if the use will also be a direct benefit to the people of the state. Grover Irrigation & Land Co. v. Lovella Ditch, Reservoir & Irrigation Co., 21 Wyo. 204, 131 P. 43 (1913).

Taking fee in land for way of necessity. — Statute permitting fee in land to be taken for way of necessity does not deny due process of law or take property without compensation. Meyer v. Colorado Cent. Coal Co., 39 Wyo. 355, 271 P. 212 (1928), rehearing denied, 274 P. 1074 (1929).

Right-of-way for flume to transport seepage water. — Where waters seeped from a water association canal onto the land of a farmer, he was entitled to condemn a right-of-way over the canal for a flume to transport water to other lands owned by him for irrigation purposes, even though he had no right to compel continuance of the source of the water. Bower v. Big Horn Canal Ass'n, 77 Wyo. 80, 307 P.2d 593 (1957).

When license to construct flume irrevocable.

— A license to construct a flume having been acted upon when grantee had a right to condemn a way was irrevocable. Gustin v. Harting, 20 Wyo. 1, 121 P. 522 (1912).

Special assessments for drainage districts did not contravene this section. In re Organization of Bench Canal Drainage Dist., 24 Wyo. 143, 156 P. 610 (1916).

Revolving local improvement fund. - This

section is not violated by ch. 155, Laws 1953, authorizing a municipality to set up a revolving local improvement fund from the proceeds of city or state gasoline or state cigarette license taxes, from which fund the city may annually deposit in the local improvement district fund a sum sufficient to meet the difference between the principal amount of assessments due that year and the amount of assessments actually

collected that year. Banner v. City of Laramie, 74 Wyo. 429, 289 P.2d 922 (1955).

Unemployment Compensation Act, in taking money of employer and giving it to persons who have never been in his employ, serves a public purpose for welfare of all and does not violate this section. Unemployment Comp. Comm'n v. Renner, 59 Wyo. 487, 143 P.2d 181 (1943).

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ARTICLE 7. EDUCATION; STATE INSTITUTIONS; PROMOTION OF HEALTH AND MORALS; PUBLIC BUILDINGS

* * *

§ 2. School revenues.

The following are declared to be perpetual funds for school purposes, of which the annual income only can be appropriated, to wit: Such per centum as has been or may hereafter be granted by congress on the sale of lands in this state; all moneys arising from the sale or lease of sections number sixteen and thirty-six in each township in the state, and the lands selected or that may be selected in lieu thereof; the proceeds of all lands that have been or may hereafter be granted to this state, where by the terms and conditions of the grant, the same are not to be otherwise appropriated; the net proceeds of lands and other property and effects that may come to the state by escheat or forfeiture, or from unclaimed dividends or distributive shares of the estates of deceased persons; all moneys, stocks, bonds, lands and other property now belonging to the common school funds. Provided, that the rents for the ordinary use of said lands shall be applied to the support of public schools and, when authorized by general law, not to exceed thirty-three and one-third (331/3) per centum of oil, gas, coal, or other mineral royalties arising from the lease of any said school lands may be so applied. (As amended by Laws 1923, Senate Joint Resolution No. 7, p. 225.)

Cross references. — As to state tax to support schools, see art. 15, § 15, Wyo. Const. For provision that unexpended income or interest shall be added to and become part of perpetual school fund, see art. 18, § 6, Wyo. Const.

Amendment. — Laws 1923, Senate Joint Resolution No. 7, p. 225, authorized the submission of a proposed amendment of this section, which was adopted by vote of the people at the general election held November 4, 1924, and was proclaimed in effect December 10, 1924.

The 1924 amendment added the second sentence.

Bequests to state. — Where property is bequeathed to the state with an annual income payable to a legatee out of income, the property cannot be considered "not otherwise appropriated" and must be added to the common school fund. Bond v. State ex rel. Wilson, 45 Wyo. 133. 16 P.2d 53 (1932).

Contract with an expert to investigate leases of state lands and ascertain if correct accounting was being made, and if not, to assist in recovering amount due state, on contingent basis, is not violative of constitution as depleting

school funds, as moneys so recovered are a new fund brought into existence through the investigation. Bourne v. Cole, 53 Wyo. 31, 77 P.2d 617 (1938).

Supreme court's duty. — It is bounden duty of supreme court, insofar as possible, to carry provisions that permanent school funds shall remain forever inviolate and undiminished into force and effect. Alamo Drainage Dist. v. Board of County Comm'rs, 60 Wyo. 177, 148 P.2d 229 (1944)

Quoted in Oregon Basin Oil & Gas Co. v. Ohio Oil Co., 70 Wyo. 263, 248 P.2d 198 (1952).

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ARTICLE 8. IRRIGATION AND WATER RIGHTS

Sec.

1. Water is state property.

2. Board of control.

3. Priority of appropriation.

Sec.

4. Water divisions.

5. State engineer.

§ 1. Water is state property.

The water of all natural streams, springs, lakes or other collections of still water, within the boundaries of the state, are hereby declared to be the property of the state.

Cross references. — As to control of water, see art. 1, § 31, Wyo. Const. As to acquisition of water rights by municipalities, see art. 13, § 5, Wyo. Const. As to water and water rights generally, see title 41.

Effect of Act of Admission. — The provisions of the Act of Admission, accepting and approving the state constitution, had the same effect as an independent act of congress enacting the provisions of the constitution, including this section. Merrill v. Bishop, 74 Wyo. 298, 287 P.2d 620 (1955); Day v. Armstrong, 362 P.2d 137 (Wyo. 1961).

Consent of United States. — This section is not void on the ground that the United States is primarily possessed of title to the waters of the stream flowing across the public lands, since the act of congress admitting the state into the union accepted, ratified, and confirmed the constitution the people had formed, and thereby, and by the several desert-land acts, congress consented to such appropriation by the state. Farm Inv. Co. v. Carpenter, 9 Wyo. 110, 61 P. 258 (1900)

Constitutionality of section. — This section is not in conflict with the federal constitution, as divesting those who had appropriated parts of waters prior to the adoption of the constitution of their property, since they never acquired any title to the water in the natural channels before it was diverted into the private ditches or laterals, and only the running water in the natural channel was appropriated to the state. Farm Inv. Co. v. Carpenter, 9 Wyo. 110, 61 P. 258

(1900).

Supervision and control. — The legislature has power to authorize by statute the supervision and control of the appropriation and distribution of the public waters of the state by administrative officers, pursuant to adjudicated priorities. Hamp v. State, 19 Wyo. 377, 118 P. 653 (1911).

State ownership of water is subject to a trust. Willey v. Decker, 11 Wyo. 496, 73 P. 210 (1903); Lake DeSmet Reservoir Co. v. Kaufmann, 75 Wyo. 87, 292 P.2d 482 (1956); Day v. Armstrong, 362 P.2d 137 (Wyo. 1961).

The state holds the water merely as trustee for the public and not in a proprietary capacity. Merrill v. Bishop, 74 Wyo. 298, 287 P.2d 620 (1955).

Waters subject to appropriation and abandonment. — Waters from sources within the constitutional classifications of this section are subject to appropriation and, likewise, abandonment. Bruegman v. Johnson Ranches, Inc., 520 P.2d 489 (Wyo. 1974).

What waters appropriable. — Water which would naturally reach a stream if not intercepted is appropriable. Bower v. Big Horn Canal Ass'n, 77 Wyo. 80, 307 P.2d 593 (1957).

In view of this section, only waters of natural streams, springs or lakes are subject to appropriation. Binning v. Miller, 55 Wyo. 451, 102 P.2d 54 (1940).

Where during course of 30 years seepage water flowing down a draw finally made a regular, natural stream with definite channels and banks, waters thereof are subject to appropriation. Binning v. Miller, 55 Wyo. 451, 102 P.2d 54 (1940).

Condition precedent to appropriation. — Appropriation permit and application therefor to state engineer was condition precedent to lawful appropriation, notwithstanding that this article does not require such permit. Wyoming Hereford Ranch v. Hammond Packing Co., 33 Wyo. 14, 236 P. 764 (1925).

Watercourse defined. — A watercourse is a stream of water usually flowing in a particular direction, with well defined banks and channels, but the water need not flow throughout the year. State v. Hiber, 48 Wyo. 172, 44 P.2d 1005 (1935).

Natural stream. — Fact that, before irrigation of lands under a federal reclamation project commenced, a wash or channel within the lands covered by the project carried water only as the run-off from rain or melting snow and was generally dry during all the irrigating season showed that the wash was not a natural stream within this section. United States v. Ide, 277 F. 373 (8th Cir. 1921), aff'd, 263 U.S. 497, 44 S. Ct. 182, 68 L. Ed. 407 (1924).

Where draw was dry most of the time, was covered with grass, had no banks and evidence showed no natural outlet, evidence failed to sustain state's contention that draw was natural stream. State v. Hiber, 48 Wyo. 172, 44 P.2d 1005 (1935).

Title to water in natural streams in Wyoming is in state, but water is subject to withdrawal or appropriation for irrigation or other beneficial use. Mitchell Irrigation Dist. v. Sharp, 121 F.2d 964 (10th Cir.), cert. denied, 314 U.S. 667, 62 S. Ct. 129, 86 L. Ed. 534 (1941).

Seepage water. — In accordance with the constitutional provisions of this state, and, in line with previous holdings of the supreme court, seepage water arising on a farmer's land is subject to appropriation by him (subject to prescribed procedures) for lands other than those upon which the seepage arises. Bower v. Big Horn Canal Ass'n, 77 Wyo. 80, 307 P.2d 593 (1957).

Percolating waters developed artificially by excavations and other artificial means belong to the owner of the land upon which they are developed, and are not waters of the state which may be appropriated. Hunt v. City of Laramie, 26 Wyo. 160, 181 P. 137 (1919).

Private waters. — An attempted appropriation of waste and seepage waters, being private waters, is void. Binning v. Miller, 55 Wyo. 451, 102 P.2d 54 (1940).

Seepage and waste water is private water so long as it is on the lands from which it originates and such water cannot be appropriated by adjoining landowners. Binning v. Miller, 55 Wyo. 451, 102 P.2d 54 (1940).

Reservoirs. - Water may, in this state, be impounded in a reservoir by anyone who is neither the owner or in possession of any land. The owner of such reservoir may sell, lease, transfer, and use such water in such manner and upon such lands as the owner may desire. In other words, one man may divert and impound water, under an application to, and permit by, the state engineer, for the ultimate use of it by another. The only material difference between such case and diversion by direct flow from a stream seems to be that in the former case the water is not required to be attached to land, while in the latter case it is. Kearney Lake, Land & Reservoir Co. v. Lake DeSmet Reservoir Co., 475 P.2d 548 (Wyo. 1970).

Reservoir rights are subject to abandonment. Kearney Lake, Land & Reservoir Co. v. Lake DeSmet Reservoir Co., 475 P.2d 548 (Wyo. 1970).

Priority of right. — A priority of right in water includes the quality as well as the quantity so that an oil producer has no right to deteriorate the quality of the water in a stream as against persons lower down on the stream having priority. Sussex Land & Live Stock Co. v. Midwest Ref. Co., 294 F. 597 (8th Cir. 1923).

Public right to use waters for floating usable craft not to be interfered with. — Irrespective of the ownership of the bed or channel of waters, and irrespective of their navigability, the public has the right to use public waters of Wyoming for floating usable craft and that use may not be interfered with or curtailed by any landowner. Day v. Armstrong, 362 P.2d 137 (Wyo. 1961).

Extent of public easement in nonnavigable river. - In a dispute over a river which is nonnavigable, the supreme court held that its riparian owners have title to the bed and channel of the river, but that this title is subject to an easement for a right-of-way of the river's waters in their natural channel through, over and across the owner's lands; that the waters of the river are the property of the state and are held by it in trust for the equal use and benefit of the public; that the waters of the river may be used by the public for floating usable craft therein or thereon and for transporting in such usable craft persons or property; that as an incident to the full enjoyment and use of the state's easement for its waters over and across the lands held in private ownership, persons so floating in usable craft may, when necessary, disembark and walk, or wade upon submerged lands in order to pull, push, or carry craft over or across shallows. riffles, rapids or obstructions; that while so floating in usable craft, the public may fish or hunt or do any and all other things which are not otherwise made unlawful, but that the state is without power to authorize the violation of any property rights of riparian or other owners except as incident to the full exercise of

easement to which property may be subject; that the waters of the river, if capable thereof, may also be used for transporting logs, ties, timber and other material when permitted by state law; that riparian owners of lands bordering upon or through which the river flows may not in any manner obstruct the flow of the river's waters so as to interfere with or prevent the free passage of any craft used commercially or for recreation or for floating ties, logs or timber. Day v. Armstrong, 362 P.2d 137 (Wyo. 1961).

Abatement of dam as nuisance. — A dam more than 10 feet high may be abated as nuisance though it is not in natural stream, but only to extent that it is above 10 feet high and without inflicting unnecessary injury. State v. Hiber, 48 Wyo. 172, 44 P.2d 1005 (1935).

Suit against state. — Nebraska irrigation district action to restrain Wyoming water officials from unlawfully permitting junior appropriators to take water and to compel distribution in proper order is not suit against state. Mitchell Irrigation Dist. v. Sharp, 121 F.2d 964 (10th Cir.), cert. denied, 314 U.S. 667, 62 S. Ct. 129, 86 L. Ed. 534 (1941).

Cited in State v. Kelley, 17 Wyo. 335, 98 P. 886 (1909); State ex rel. Mitchell Irrigation Dist. v. Parshall, 22 Wyo. 318, 140 P. 830 (1914); California-Oregon Power Co. v. Beaver Portland Cement Co., 73 F.2d 555 (9th Cir. 1934), aff'd, 295 U.S. 142, 55 S. Ct. 725, 76 L. Ed. 1356 (1935).

Law reviews. - For article, "Rights of

Wyoming Appropriators in Underground Water," see 1 Wyo. L.J. 111.

For article, "Constitutionality of the Wyoming Underground Water Statute," see 3 Wyo. L.J.

For article, "Record Title to Water and Ditch Rights," see 6 Wyo. L.J. 200.

For article, "Water Rights of Various Levels of Government — States' Rights v. National Powers," see 19 Wyo. L.J. 189 (1965).

For comment, "Water Appropriation for Recreation," see 1 Land & Water L. Rev. 209 (1966).

For article, "Legal Aspects of Weather Modification Snowpack Augmentation in Wyoming," see 2 Land & Water L. Rev. 273 (1967).

For article, "Transfer of Water Rights — Errata and Addenda — Sales for Recreational Purposes and to Districts," see 2 Land & Water L. Rev. 321 (1967).

For article, "Public Rights in Navigable State Waters — Some Statutory Approaches," see 6 Land & Water L. Rev. 459 (1971).

For comment, "'It's Our Water!" — Can Wyoming Constitutionally Prohibit the Exportation of State Waters," 10 Land & Water L. Rev. 119 (1975).

For comment, "Water Saved or Water Lost: The Consequences of Individual Conservation Measures in the Appropriation States," see 11 Land & Water L. Rev. 435 (1976).

§ 2. Board of control.

There shall be constituted a board of control, to be composed of the state engineer and superintendents of the water divisions; which shall, under such regulations as may be prescribed by law, have the supervision of the waters of the state and of their appropriation, distribution and diversion, and of the various officers connected therewith. Its decisions to be subject to review by the courts of the state.

Cross reference. — As to board of control, see §§ 41-4-201 to 41-4-211.

Police power. — The state may regulate, control the appropriation, and distribution of the public waters through the board of control, in the exercise of the state's police power. Hamp v. State, 19 Wyo. 377, 118 P. 653 (1911).

Board has broad powers, direct and implied. White v. Wheatland Irrigation Dist., 413 P.2d 252 (Wyo. 1966).

And its orders establishing water rights are clothed with the dignity of court decrees. White v. Wheatland Irrigation Dist., 413 P.2d 252 (Wyo. 1966).

Discretion of board. - Board of control,

charged with duty of determining priorities on streams, has discretion in deciding meaning of "stream." Laramie Irrigation & Power Co. v. Grant, 44 Wyo. 392, 13 P.2d 235 (1932).

Adjudication of water right. — Upon application to adjudicate water right, it is duty of board in first instance to determine under law whether applicant has water right, and board's finding thereon may properly become basis of an appeal to district court. State ex rel. Mitchell Irrigation Dist. v. Parshall, 22 Wyo. 318, 140 P. 830 (1914).

Pursuant to this section and the statutes adopted by the Wyoming legislature, water rights are perfected by the filing of an application for a water permit which then is adjudicated to the applicant by the board of control after the board has determined that the applicant does have such a right by beneficial use. Budd v. Bishop, 543 P.2d 368 (Wyo. 1975).

Decision of the board is a final determination of the question before it for consideration in the absence of a review by the district court upon objections filed thereto. Horse Creek Conservation Dist. v. Lincoln Land Co., 50 Wyo. 229, 59 P.2d 763 (1936).

Board's adjudication of water priorities is prima facie evidence of correctness even as to those not party to the proceedings. Laramie Irrigation Power Co. v. Grant, 44 Wyo. 392, 13 P.2d 235 (1932).

In action to quiet title to water right, notice of adjudication of Big Laramie River having been appropriately given and established, evidence was sufficient to show that board of control had jurisdiction to adjudicate rights in that stream, thus giving defendants and all similarly situated prima facie right to water therefrom adjudicated them, and also showing their interest in controversy. Campbell v. Wyoming Dev. Co., 55 Wyo. 347, 100 P.2d 124, rehearing denied, 102 P.2d 745 (1940).

Presumptions of regularity. — If any tribunal has unlimited jurisdiction over a class of cases, it stands on same footing as courts of general jurisdiction respecting presumptions of regularity, including the presumption that due notice was given. Campbell v. Wyoming Dev. Co., 55 Wyo. 347, 100 P.2d 124, rehearing denied, 102 P.2d 745 (1940).

Recital in water adjudication decree by state board of control that due notice had been given to interested parties raises same presumption in favor of such inferior tribunal as obtains with respect of courts of general jurisdiction to show jurisdiction of the parties. Campbell v. Wyoming Dev. Co., 55 Wyo. 347, 100 P.2d 124, rehearing denied, 102 P.2d 745 (1940).

In action to quiet title to water right prescriptively claimed by plaintiffs in Little Laramie River, allegation in answer of defendant that board of control had adjudicated a water right to predecessor of plaintiff, which was admitted, carried with it presumption of appearance and also of regularity, and all objections to pleadings must be overruled. Campbell v. Wyoming Dev. Co., 55 Wyo. 347, 100 P.2d 124, rehearing denied, 102 P.2d 745 (1940).

Decree by state board of control relating to water rights on Little Laramie River, though failing to recite notice to interested parties, was entered nearly 50 years ago, and courts indulge presumption the more readily when proceedings are ancient, attack is collateral, and it is admitted that decree adjudicated rights in favor of plaintiff's predecessors in interest, that it was

entered after appearance, whether with or without notice. Campbell v. Wyoming Dev. Co., 55 Wyo. 347, 100 P.2d 124, rehearing denied, 102 P.2d 745 (1940).

Opportunity to present claims. — Original appropriators, predecessors of plaintiffs, having been afforded full opportunity to present their claims for adjudication of water rights were not deprived of any constitutional right, and plaintiffs are in no better position. Campbell v. Wyoming Dev. Co., 55 Wyo. 347, 100 P.2d 124, rehearing denied, 102 P.2d 745 (1940).

Admissibility of decree. — A copy of the record of the decree of adjudication, certified by the clerk of the board of control as true and correct copy of original decree, is admissible as against contention that record of decrees lacked authentication. Campbell v. Wyoming Dev. Co., 55 Wyo. 347, 100 P.2d 124, rehearing denied, 102 P.2d 745 (1940).

Where photostatic copies of pen and ink records of decrees by board of control show nothing more suspicious than interlineations, interlineations will not render them inadmissible, especially where decrees were ancient documents. Campbell v. Wyoming Dev. Co., 55 Wyo. 347, 100 P.2d 124, rehearing denied, 102 P.2d 745 (1940).

In action by plaintiffs to quiet title, claimed by prescription, to water right in Little Laramie River watershed, and to which defendants set up decrees in that and Big Laramie rivers, the determination or adjudication in connection with Little Laramie was relevant to show plaintiffs' claim is unfounded, and determination in Big Laramie was relevant to show defendants' interest in the controversy. Campbell v. Wyoming Dev. Co., 55 Wyo. 347, 100 P.2d 124, rehearing denied, 102 P.2d 745 (1940).

In suit to quiet title to water rights in the Little Laramie River, claimed by prescription, answer setting up defense of decrees by board of control respecting water rights in Big Laramie River, plaintiff admitting that board had instituted proceedings and decreed rights in latter river and its tributaries, but denying other allegations, effect is that decree itself only is questioned, and defendant was not required to anticipate attack on its appropriation on ground it was smaller or of different priority than that shown by decree. Campbell v. Wyoming Dev. Co., 55 Wyo. 347, 100 P.2d 124, rehearing denied, 102 P.2d 745 (1940).

Laches. — Where suits to quiet title to water rights in Little Laramie River were started in 1932 attacking appropriation claimed by defendant under an adjudication of board of control in 1903, the attack was, at least upon largest part of defendant's appropriation, barred by "laches." Campbell v. Wyoming Dev. Co., 55 Wyo. 347, 100 P.2d 124, rehearing denied,

102 P.2d 745 (1940).

Section is not mandate for review. — Although this section states that the board's decisions are subject to review by the court, this is not a mandate for review. Yentzer v. Hemenway, 440 P.2d 7 (Wyo. 1968).

Jurisdiction of courts. — State board of control is not vested with exclusive jurisdiction of actions to determine priority of water rights, and such actions may be brought in courts. Simmons v. Ramsbottom, 51 Wyo. 419, 68 P.2d 153 (1937).

Jurisdiction of courts, in matters of water adjudications, is, aside from appeals, confined to determine rights in individual cases, to the extent that the board of control has not acted. Campbell v. Wyoming Dev. Co., 55 Wyo. 347, 100 P.2d 124, rehearing denied, 102 P.2d 745 (1940).

Cited in Farm Inv. Co. v. Carpenter, 9 Wyo. 110, 61 P. 258 (1900); State v. Kelley, 17 Wyo. 335, 98 P. 886 (1909); People v. Shawver, 30 Wyo. 366, 222 P. 11 (1924).

Law reviews. — For article, "Constitutionality of the Wyoming Underground Water Statute," see 3 Wyo. L.J.

For article, "Priority and Progress — Case Studies in the Transfer of Water Rights," see 1 Land & Water L. Rev. 1 (1966).

For article, "The Disparity Between State Water Rights Records and Actual Water Use Patterns," see 5 Land & Water L. Rev. 23 (1970).

§ 3. Priority of appropriation.

Priority of appropriation for beneficial uses shall give the better right. No appropriation shall be denied except when such denial is demanded by the public interests.

Cross reference. — As to determination of priority, see § 41-4-317.

Effect of section on rights reserved in prior Indian treaty. — Since the Act of Admission, approving the state constitution, had the same effect as an independent act of congress enacting the constitution, including this section, water rights reserved in a prior Indian treaty must be construed in the light of, and as limited by, the Act of Admission and this section as enacted thereby. Merrill v. Bishop, 74 Wyo. 298, 287 P.2d 620 (1955), holding that water rights reserved in a prior Indian treaty were not superior to those claimed by appropriation under this section.

Intrastate operation of laws. — The laws of the state regulating the distribution of water cannot operate beyond its borders, Willey v. Decker, 11. Wyo. 496, 73 P. 210 (1903).

Rule of priority of appropriation. — Wyoming has the rule of priority of water appropriation as distinguished from the rule of riparian rights. Nebraska v. Wyoming, 325 U.S. 589, 65 S. Ct. 1332, 89 L. Ed. 1815 (1945), modified, 345 U.S. 981, 73 S. Ct. 1041, 97 L. Ed. 1394 (1953).

Appropriation required. — The right to use the water of a stream for beneficial purposes depends on a prior appropriation thereof. Willey v. Decker, 11 Wyo, 496, 73 P. 210 (1903).

Appropriations can only be made by securing a permit as required by statute. Wyoming Hereford Ranch v. Hammond Packing Co., 33 Wyo. 14, 236 P. 764 (1925).

Property right in water. - Perfected right of

an appropriator to withdraw water and apply it to beneficial use is valuable property right. Mitchell Irrigation Dist. v. Sharp, 121 F.2d 964 (10th Cir.), cert. denied, 314 U.S. 667, 62 S. Ct. 129, 86 L. Ed. 534 (1941).

Title to water in natural streams in Wyoming is in state but water is subject to withdrawal or appropriation for irrigation or other beneficial use. Mitchell Irrigation Dist. v. Sharp. 121 F.2d 964 (10th Cir.), cert. denied, 314 U.S. 667, 62 S. Ct. 129, 86 L. Ed. 534 (1941).

Seepage water. — In accordance with the constitutional provisions of Wyoming, and in line with previous holdings of the supreme court, seepage water arising on a farmer's land is subject to appropriation by him (subject to prescribed procedures) for lands other than those upon which the seepage arises. Bower v. Big Horn Canal Ass'n, 77 Wyo. 80, 307 P.2d 593 (1957).

Reservoirs. — See Kearney Lake, Land & Reservoir Co. v. Lake DeSmet Reservoir Co., 475 P.2d 548 (Wyo. 1970).

Suit against state. — Nebraska irrigation district action to restrain Wyoming water officials from unlawfully permitting junior appropriators to take water and to compel distribution in proper order is not suit against state. Mitchell Irrigation Dist. v. Sharp, 121 F.2d 964 (10th Cir.), cert. denied, 314 U.S. 667, 62 S. Ct. 129, 86 L. Ed, 534 (1941).

Cited in Farm Inv. Co. v. Carpenter, 9 Wyo. 110, 61 P. 258 (1900); State ex rel. Mitchell Irr. Dist. v. Parshall, 22 Wyo. 318, 140 P. 830 (1914); Budd v. Bishop, 543 P.2d 368 (Wyo. 1975).

Law reviews. — For address, "Decrees in Interstate Water Suits," see 1 Wyo. L.J. 13.

For article, "Rights of Wyoming Appropriators in Underground Water," see 1 Wyo. L.J. 111,

For note, "The Right to Use Waste Water Before It Re-enters the Stream," see 12 Wyo. L.J. 47.

For comment, "Improvement of Existing Water Rights Through Unification — A Case Study on the Consolidation of Appropriations," see 2 Land & Water L. Rev. 327 (1967).

For article, "Water Law's Double Environment," see 5 Land & Water L. Rev. 259 (1970).

For comment, "The Idaho and Montana Procedures for Obtaining Water Use Permits — Possible Sources for Improvement of Wyoming Law," see 10 Land & Water L. Rev. 435 (1975).

For comment, "Water Saved or Water Lost: The Consequences of Individual Conservation Measures in the Appropriation States," see 11 Land & Water L. Rev. 435 (1976).

§ 4. Water divisions.

The legislature shall by law divide the state into four (4) water divisions, and provide for the appointment of superintendents thereof.

Cross reference. — As to water divisions generally, see §§ 41-3-501 to 41-3-506.

Diversion and distribution of water. — Diversion superintendents and water commissioners are charged exclusively with administrative duties in superintending diversion and distribution of water in strict conformity with adjudicated or determined priorities. Mitchell Irrigation Dist. v. Sharp, 121 F.2d 964 (10th Cir.), cert. denied, 314 U.S. 667, 62 S. Ct. 129, 86 L. Ed. 534 (1941).

Suit against state. — Nebraska irrigation district action to restrain Wyoming water officials from unlawfully permitting junior appropriators to take water and to compel distribution in proper order is not suit against state. Mitchell Irrigation Dist. v. Sharp, 121 F.2d 964 (10th Cir.), cert. denied, 314 U.S. 667, 62 S. Ct. 129, 86 L. Ed. 534 (1941).

Cited in Farm Inv. Co. v. Carpenter, 9 Wyo. 110, 61 P. 258 (1900); People v. Shawver, 30 Wyo. 366, 222 P. 11 (1924).

§ 5. State engineer.

There shall be a state engineer who shall be appointed by the governor of the state and confirmed by the senate; he shall hold his office for the term of six (6) years, or until his successor shall have been appointed and shall have qualified. He shall be president of the board of control, and shall have general supervision of the waters of the state and of the officers connected with its distribution. No person shall be appointed to this position who has not such theoretical knowledge and such practical experience and skill as shall fit him for the position.

Cross reference. — For other provisions concerning state engineer, see §§ 9-2-601 to 9-2-608.

Appointment and confirmation need not be concurrent. — Appointment of state engineer by governor and confirmation by senate need not be concurrent in point of time. People v. Shawver, 30 Wyo. 366, 222 P. 11 (1924).

Confirmation after expiration of governor's term permitted. — Appointment of state engineer could be confirmed by senate after expiration of governor's term without executive request. People v. Shawver, 30 Wyo. 366, 222 P. 11 (1924).

The approval of governor's appointment may be made by the senate after the expiration of the term of office of the governor. People v. Shawver, 30 Wyo, 366, 222 P. 11 (1924).

Term of engineer appointed to fill vacancy.

— A state engineer appointed to fill vacancy is entitled to hold office until the appointment and qualification of a successor. People v. Shawver, 30 Wyo. 366, 222 P. 11 (1924).

Cited in Farm Inv. Co. v. Carpenter, 9 Wyo. 110, 61 P. 258 (1900); State v. Kelley, 17 Wyo. 335, 98 P. 886 (1909).

ARTICLE 9. MINES AND MINING

Sec.

- 1. Inspector of mines.
- 2. Legislature to enact regulatory laws.
- 3. Restrictions on employment in mines.

Soc

- 4. Right of action for injuries.
- 5. School of mines.
- 6. State geologist.

§ 1. Inspector of mines.

There shall be established and maintained the office of inspector of mines, the duties and salary of which shall be prescribed by law. When said office shall be established, the governor shall, with the advice and consent of the senate, appoint thereto a person proven in the manner provided by law to be competent and practical, whose term of office shall be two years.

Cross references. — As to inspector of mines generally, see §§ 30-2-301 to 30-2-318 and 30-3-220 to 30-3-225. As to inspector of mines other than coal mines, see §§ 30-4-201 to 30-4-207.

Cited in Albany Mut. Bldg. Ass'n v. City of Laramie, 10 Wyo. 54, 65 P. 1011 (1901); State v. Hall, 27 Wyo. 224, 194 P. 476 (1921).

§ 2. Legislature to enact regulatory laws.

The legislature shall provide by law for the proper development, ventilation, drainage and operation of all mines in this state.

Cross references. — For provision that 8 hours constitute lawful day's work in mines, see art. 19, § 2, Wyo. Const. As to regulatory laws, see title 30.

Cited in Burton v. Union Pac. Coal Co., 18 Wyo. 362, 107 P. 391 (1910), rehearing denied, 112 P. 841 (1911).

§ 3. Restrictions on employment in mines.

No boy under the age of fourteen years and no woman or girl of any age shall be employed or permitted to be in or about any coal, iron or other dangerous mines for the purpose of employment therein; provided, however, this provision shall not affect the employment of a boy or female of suitable age in an office or in the performance of clerical work at such mine or colliery.

Cross reference. — As to employment of women and children generally, see §§ 27-6-101 to 27-6-116.

§ 4. Right of action for injuries.

For any injury to person or property caused by wilful failure to comply with the provisions of this article, or laws passed in pursuance hereof, a right of action shall accrue to the party injured, for the damage sustained thereby, and in all cases in this state, whenever the death of a person shall be caused by wrongful act, neglect or default, such as would, if death had not ensued, have entitled the party injured to maintain an action to recover damages in respect thereof, the person who, or the corporation which would have been liable, if death had not ensued, shall be liable to an action for damages notwithstanding the death of the person injured, and the legislature shall provide by law at its first session for the manner in which the right of action in respect thereto shall be enforced.

Cross references. — As to action for wrongful death, see §§ 1-38-101 and 1-38-102. As to worker's compensation, see §§ 27-12-101 to 27-12-804.

This section is not a provision for the survival of personal injury actions. Parsons v. Roussalis, 488 P.2d 1050 (Wyo. 1971).

Wrongful death action against representative of deceased wrongdoer. — Prior to the 1947 amendment of § 1-38-101, a wrongful death action could not be maintained against the personal representatives of the deceased wrongdoer either under that statute or under this section. The provisions of art. 1, § 8, Wyo. Const., did not change this rule. Mull v. Wienbarg, 66 Wyo. 410, 212 P.2d 380 (1949).

Limitation on amount of recovery for death.

A statutory provision limiting the amount of

recovery for death to \$5,000.00 was not repealed or repugnant to the constitution on its adoption. Mestas v. Diamond Coal & Coke Co., 12 Wyo. 414, 76 P. 567 (1904).

Supreme court review. — The supreme court would not pass upon a question reserved to it by the district court as to negligence under a statute which authorized reservation of constitutional questions only, as the question was a proposition of statutory construction and not constitutional. Burton v. Union Pac. Coal Co., 18 Wyo. 362, 107 P. 391 (1910), rehearing denied, 112 P. 841 (1911).

Cited in State ex rel. Jamison v. Forsyth, 21 Wyo. 359, 133 P. 521 (1913).

§ 5. School of mines.

The legislature may provide that the science of mining and metallurgy be taught in one of the institutions of learning under the patronage of the state.

Cross reference. — For provision that mining and metallurgy be taught at the University of Wyoming, see § 21-17-102.

§ 6. State geologist.

There shall be a state geologist, who shall be appointed by the governor of the state, with the advice and consent of the senate. He shall hold his office for a term of six (6) years or until his successor shall have been appointed and shall have qualified. His duties and compensation shall be prescribed by law. No person shall be appointed to this position unless he has such theoretical knowledge and such practical experience and skill as shall fit him for the position; said state geologist shall ex officio perform his duties of inspector of mines until otherwise provided by law.

Cross reference. — For additional provisions relative to state geologist, see §§ 9-3-1403 to 9-3-1408.

ARTICLE 10. CORPORATIONS

* * *

§ 7. What corporations are common carriers.

All corporations engaged in the transportation of persons, property, mineral oils, and minerals products, news or intelligence, including railroads, telegraphs, express companies, pipe lines and telephones, are declared to be common carriers.

All public utilities in Wyoming are deemed common carriers. Continental Pipe Line Co. v. Belle Fourche Pipeline Co., 372 F. Supp. 1333 (D. Wyo. 1974).

Motor carriers may be common carriers, although automobiles were unknown at the time of the adoption of the constitution. In re Union Pac. Motor Freight Co., 72 Wyo. 298, 264 P.2d 771 (1953).

"Carriers" construed. — Under Selective Sales Tax Act of 1937, imposing a tax equivalent to 2 percent on the amount paid to carriers for transportation service, a company carrying its own oil in its own pipe lines, and none for others, is not a "carrier," is not within this section of the constitution, and is not taxable. State Bd. of Equalization v. Stanolind Oil & Gas Co., 54 Wyo. 521, 94 P.2d 147 (1939).

§ 14. Eminent domain.

Exercise of the power and right of eminent domain shall never be so construed or abridged as to prevent the taking by the legislature of property and franchises of incorporated companies and subjecting them to public use the same as property of individuals.

Cross references. — For identical provision, see § 9 of this article. As to eminent domain in

connection with railroads, see §§ 1-26-201 to 1-26-210.

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ARTICLE 15. TAXATION AND REVENUE

§ 1. Assessment of lands and improvements thereon.

All lands and improvements thereon shall be listed for assessment, valued for taxation and assessed separately.

Cross references. — For provision that no tax shall be imposed without the consent of the people and that all taxation shall be equal and uniform, see art. 1, § 28, Wyo. Const. As to origin of revenue bills, see art. 3, § 33, Wyo. Const. As to homestead exemption, see art. 19, § 9, Wyo. Const. As to taxation generally, see

title 39.

Special assessments for municipal improvements. — This section does not restrict the power to levy special assessments for municipal improvements. McGarvey v. Swan, 17 Wyo, 120, 96 P. 697 (1908).

City council was held not authorized to pass ordinance taxing each lot certain amount for water for irrigation, regardless of value of the property. Town Council v. Board of Comm'rs, 37 Wyo. 160, 259 P. 1051 (1927).

Gross product tax. — Tax on gross product of all mines and mining claims in Wyoming is a tax on "personalty." Board of Comm'rs v. Bernardin, 74 F.2d 809 (10th Cir. 1934), cert. denied, 295 U.S. 731, 55 S. Ct. 645, 79 L. Ed. 68 (1935).

Decision of state court, based on construction of constitution and statutes of Wyoming that gross product tax was not a severance tax, is binding on the federal courts. Board of Comm'rs v. Bernardin, 74 F.2d 809 (10th Cir. 1934), cert. denied, 295 U.S. 731, 55 S. Ct. 645, 79 L. Ed. 68 (1935).

Taxes not allowable as administrative expense. — Taxes against a corporation, for which a receiver was appointed, are not allowable as administrative expense. First Nat'l Bank v. Central Coal & Coke Co., 3 F. Supp. 433 (D. Wyo. 1933), modified, 74 F.2d 809 (10th Cir. 1934), cert. denied, 295 U.S. 731, 55 S. Ct. 643, 79 L. Ed. 1680 (1935).

Quoted in Oregon Basin Oil & Gas Co. v. Ohio Oil Co., 70 Wyo. 263, 248 P.2d 198 (1952).

Cited in State ex rel. Greenwood v. Pearson, 46 Wyo. 307, 26 P.2d 641 (1933).

Law reviews. — For article, "Remedies for Defects in General Property Tax Assessments in Wyoming," see 4 Wyo. L.J. 240.

For article, "Royalty Interest — Real or Personal," see 7 Wyo. L.J. 145.

§ 2. Assessment of coal lands.

All coal lands in the state from which coal is not being mined shall be listed for assessment, valued for taxation and assessed according to value.

Gross product tax. — Tax on gross product of all mines and mining claims in Wyoming is a tax on "personalty." Board of Comm'rs v. Bernardin, 74 F.2d 809 (10th Cir. 1934), cert. denied, 295 U.S. 731, 55 S. Ct. 645, 79 L. Ed. 68 (1935).

Decision of state court, based on construction of constitution and statutes of Wyoming that gross product tax was not a severance tax, is binding on the federal courts. Board of Comm'rs v. Bernardin, 74 F.2d 809 (10th Cir. 1934), cert. denied, 295 U.S. 731, 55 S. Ct. 645, 79 L. Ed. 68 (1935).

Taxes not allowable as administrative expense. — Taxes against a corporation, for which a receiver was appointed, are not allowable as administrative expense. First Nat'l Bank v. Central Coal & Coke Co., 3 F. Supp. 433 (D. Wyo. 1933), modified, 74 F.2d 809 (10th Cir. 1934), cert. denied, 295 U.S. 731, 55 S. Ct. 643, 79 L. Ed. 1680 (1935).

Applied in State ex rel. Wilkerson v. State Bd. of Equalization, 490 P.2d 1258 (Wyo. 1971).

Cited in Oregon Basin Oil & Gas Co. v. Ohio Oil Co., 70 Wyo. 263, 248 P.2d 198 (1952).

§ 3. Taxation of mines and mining claims.

All mines and mining claims from which gold, silver and other precious metals, soda, saline, coal, mineral oil or other valuable deposit, is or may be produced shall be taxed in addition to the surface improvements, and in lieu of taxes on the lands, on the gross product thereof, as may be prescribed by law; provided, that the product of all mines shall be taxed in proportion to the value thereof.

Production of mineral oil from Indian lands may not be subjected to a state production tax. Hudson Oil Co. v. Board of County Comm'rs, 49 Wyo. 1, 52 P.2d 683 (1935).

Whether mineral deposit is subject to production tax should be determined by whether it can reasonably be said, considering all economic factors, that value of materials is, in the long run, reasonably able to bear production tax in addition to tax assessed

against manufacturer. Certain-Teed Prods. Corp. v. Comly, 54 Wyo. 79, 87 P.2d 21 (1939).

Gypsite, if of requisite quality, is subject to production tax, notwithstanding that it could be obtained by open workings and inexpensively, since "gypsite" may be considered a mineral or such substance which if of requisite quality would be subject to the tax. Certain-Teed Prods. Corp. v. Comly, 54 Wyo. 79, 87 P.2d 21 (1939).

Tax on production is a personal tax. First

Nat'l Bank v. Central Coal & Coke Co., 3 F. Supp. 433 (D. Wyo. 1933), modified, 74 F.2d 809 (10th Cir. 1934), cert. denied, 295 U.S. 731, 55 S. Ct. 643, 79 L. Ed. 1680 (1935).

And receiver operating property, with consent of mortgagee, is liable for the production tax. First Nat'l Bank v. Central Coal & Coke Co., 3 F. Supp. 433 (D. Wyo. 1933), modified, 74 F.2d 809 (10th Cir. 1934), cert. denied, 295 U.S. 731, 55 S. Ct. 643, 79 L. Ed. 1680 (1935).

Gross product tax. — Tax on gross product of all mines and mining claims in Wyoming is a tax on "personalty." Board of Comm'rs v. Bernardin, 74 F.2d 809 (10th Cir. 1934), cert. denied, 295 U.S. 731, 55 S. Ct. 645, 79 L. Ed. 68 (1935).

The gross product tax is one upon personal property. J. Ray McDermott & Co. v. Hudson,

370 P.2d 364 (Wyo, 1962).

Tax on gross products of all mining claims was property tax, rather than license, privilege or occupation tax. Miller v. Buck Creek Oil Co., 38

Wyo. 505, 269 P. 43 (1928).

Decision of state court, based on construction of constitution and statutes of Wyoming that gross product tax was not a severance tax, is binding on the federal courts. Board of Comm'rs v. Bernardin, 74 F.2d 809 (10th Cir. 1934), cert. denied, 295 U.S. 731, 55 S. Ct. 645, 79 L. Ed. 68 (1935).

A lessee under an oil and gas lease which provided that the lessee was to pay "all taxes assessed and levied on said lands" was entitled to deduct from the royalties due the lessor for oil and gas produced the amount of the gross product tax, since the gross product tax is a tax on personal property, the severed product, and not a tax on real estate. Oregon Basin Oil & Gas Co. v. Ohio Oil Co., 70 Wyo. 263, 248 P.2d 198 (1952).

Computation of tax. — Tax on production of coal lands is based upon the production for the preceding year. First Nat'l Bank v. Central Coal & Coke Co., 3 F. Supp. 433 (D. Wyo. 1933), modified, 74 F.2d 809 (10th Cir. 1934), cert. denied, 295 U.S. 731, 55 S. Ct. 643, 79 L. Ed. 1680 (1935).

Method of valuation held proper. — The application of a method of valuation which, as applied, had the effect of arriving at the value of the mineral at the mine by separating, as components of the total sales price, the value attributable to processing or transportation and the value of the mineral at the mine was proper and legally justified. Hillard v. Big Horn Coal Co., 549 P.2d 293 (Wyo. 1976).

Assessment held invalid. — Where gypsite was assessed at \$2.85 per ton one year and the next year at 28 cents per ton, assessment was invalid as arbitrary and as a constructive fraud and not a mere overvaluation. Certain-Teed Prods. Corp. v. Comly, 54 Wyo. 79, 87 P.2d 21

(1939),

Sharing taxes. — Under lease entitling lessor to take royalty from "net" returns of oil or in kind, lessee could deduct proportionate share of taxes from lessor's interest. Miller v. Buck Creek Oil Co., 38 Wyo. 505, 269 P. 43 (1928).

Tax on products of mining claim covering both claim and royalty interest should be borne by lessor and lessee in proportion to interests. Miller v. Buck Creek Oil Co., 38 Wyo. 505, 269 P.

43 (1928).

Section does not authorize exemption of all operational expenses. — This section does not admit of an interpretation which would allow oil companies to claim all operational expenses, including depreciation, as an exemption. J. Ray McDermott & Co. v. Hudson, 370 P.2d 364 (Wyo. 1962).

Taxes not allowable as administrative expense. — Taxes against corporation, for which a receiver was appointed, are not allowable as administrative expense. First Nat'l Bank v. Central Coal & Coke Co., 3 F. Supp. 433 (D. Wyo. 1933), modified, 74 F.2d 809 (10th Cir. 1934), cert. denied, 295 U.S. 731, 55 S. Ct. 643, 79 L. Ed. 1680 (1935).

Law reviews. — For note dealing with tax on mineral production, see 4 Wyo. L.J. 250.

For article, "Tax Lien Priority," see 4 Wyo. L.J. 255.

For comment dealing with nature of a royalty interest, see 7 Wyo. L.J. 145.

§ 4. State levy limited.

For state revenue, there shall be levied annually a tax not to exceed four mills on the dollar of the assessed valuation of the property in the state except for the support of state educational and charitable institutions, the payment of the state debt and the interest thereon.

Cross reference. — As to levy of property taxes generally, see §§ 39-2-401 to 39-2-404.

Law reviews. — For article, "Administration

of the General Property Tax in Wyoming," see 4 Wyo, L.J. 227. For article, "Defeating Tax Levies to Recover Excess Taxes," see 4 Wyo. L.J. 233.

* * *

§ 9. Legislature to provide for state board of equalization.

The legislature shall provide by law for a state board of equalization. (As amended by Laws 1909, Senate Joint Resolution No. 2, p. 248.)

Amendment. — Laws 1909, Senate Joint Resolution No. 2, p. 248, authorized the submission of a proposed amendment of this section, which was adopted by vote of the people at the general election held November 8, 1910, and was proclaimed in effect December 12, 1910.

The 1910 amendment rewrote the section.

Stated in Scott Realty Co. v. State Bd. of Equalization, 395 P.2d 289 (Wyo. 1964). Cited in Town of Pine Bluffs v. State Bd. of Equalization, 79 Wyo. 262, 333 P.2d 700 (1958); J. Ray McDermott & Co. v. Hudson, 370 P.2d 364 (Wyo. 1962); Hillard v. Big Horn Coal Co., 549 P.2d 293 (Wyo. 1976).

§ 10. Duties of state board of equalization.

The duties of the state board shall be as follows: To fix a valuation each year for the assessment of live stock and to notify the several county boards of equalization of the rate so fixed at least ten (10) days before the day fixed for beginning assessments; to assess at their actual value the franchises, roadway, roadbed, rails and rolling stock and all other property, used in the operation of all railroads and other common carriers, except machine shops, rolling mills and hotels in this state; such assessed valuation shall be apportioned to the counties in which said roads and common carriers are located, as a basis for taxation of such property; provided, that the assessment so made shall not apply to incorporated towns and cities. Said board shall also have power to equalize the valuation on all property in the several counties for the state revenue and such other duties as may be prescribed by law.

Cross reference. — For another provision concerning duties of state board of equalization, see § 39-1-304.

"All" as used in this section must, if possible, be given some meaning. Chicago, N.W. Ry. v. Hall, 46 Wyo. 380, 26 P.2d 1071 (1933).

Power to equalize valuations. — Under this section, as to powers of state board of equalization, in connection with § 11 of this article, requiring uniform assessment, the legislature had power to authorize such board to equalize valuations for other purposes than the state tax. Baker v. Paxton, 20 Wyo. 500, 215 P. 257 (1923).

The state board of equalization has authority to equalize the values where that is appropriate in order to meet the constitutional requirements and the burden is on the taxpayer to establish any overevaluation. Hillard v. Big Horn Coal Co., 549 P.2d 293 (Wyo. 1976).

Lawful assessment required. — To overcome prima facie case in replevin, made by mortgagee of cattle with immediate right to possession, a tax collector distraining cattle, under lien for taxes, must at least show that a lawful assessment was made against cattle of mortgagor in sufficient number to satisfy tax lien. Farm & Cattle Loan Co. v. Faulkner, 34 Wyo. 199, 242 P. 415 (1926).

Requirements for method of valuation. — In performing its constitutional and statutory functions, the state board of equalization may arrive at different valuations for different property, but the method or system used by the board must lead to a fair value, and the properties must be assessed at a uniform rate. Hillard v. Big Horn Coal Co., 549 P.2d 293 (Wyo. 1976).

County assessment rolls. — The county assessment roll is not to be sent to state board of equalization until county board has completed all adjustments at its July meeting, and the roll is not complete or final, so as to authorize tax levy, until acted upon by state board. Baker v. Paxton, 29 Wyo. 500, 215 P. 257 (1923).

Section 39-2-204 does not violate the constitution. Chicago, N.W. Ry. v. Hall, 46 Wyo.

380, 26 P.2d 1071 (1959).

Court cannot strike plant from assessment.

— The provision regarding assessment of railroad property does not authorize a court to strike from the assessment a tie preserving plant because it was not in existence when the constitution was adopted. Chicago, N.W. Ry. v.

Hall, 46 Wyo. 380, 26 P.2d 1071 (1959).

Applied in J. Ray McDermott & Co. v. Hudson, 370 P.2d 364 (Wyo. 1962).

Quoted in Scott Realty Co. v. State Bd of Equalization, 395 P.2d 289 (Wyo, 1964).

Cited in Powder River Cattle Co. v. Board of County Comm'rs, 3 Wyo. 597, 29 P. 361, rehearing denied, 31 P. 278 (1892); Kelley v. Rhoads, 7 Wyo. 237, 51 P. 593 (1898); Pellish Bros. v. Cooper, 47 Wyo. 480, 38 P.2d 607 (1934); In re Union Pac. Motor Freight Co., 72 Wyo. 298, 264 P.2d 771 (1953); Town of Pine Bluffs v. State Bd. of Equalization, 79 Wyo. 262, 333 P.2d 700 (1958); Chicago & N.W. Ry. v. Hillard, 502 P.2d 189 (Wyo. 1972).

* * *

§ 19. Mineral excise tax; distribution.

The legislature shall provide by law for an excise tax on the privilege of severing or extracting minerals, of one and one-half percent (1½%) on the value of the gross product extracted. The minerals subject to such excise tax shall be coal, petroleum, natural gas, oil shale, and such other minerals as may be designated by the legislature. Such tax shall be in addition to any other excise, severance or ad valorem tax. The proceeds from such tax shall be deposited in the Permanent Wyoming Mineral Trust Fund, which fund shall remain inviolate. The monies in the fund shall be invested as prescribed by the legislature and all income from fund investments shall be deposited by the state treasurer in the general fund on an annual basis. The legislature may also specify by law, conditions and terms under which monies in the fund may be loaned to political subdivisions of the state. (As added by Laws 1974, House Joint Resolution No. 2A, p. 111.)

Cross reference. — For statutory provisions concerning tax, see §§ 39-6-301 to 39-6-306.

Section added. — This section was added by an amendment proposed by Laws 1974, House

Joint Resolution No. 2A, p. 111, adopted by vote of the people at the general election held November 5, 1974, and proclaimed in effect December 12, 1974.

* * *

ARTICLE 18. PUBLIC LANDS AND DONATIONS

§ 1. Acceptance of lands from United States; sale of such lands.

The State of Wyoming hereby agrees to accept the grants of lands heretofore made, or that may hereafter be made by the United States to the state, for educational purposes, for public buildings and institutions and for other objects, and donations of money with the conditions and limitations that may be imposed

by the act or acts of congress, making such grants or donations. Such lands shall be disposed of only at public auction to the highest responsible bidder, after having been duly appraised by the land commissioners, at not less than three-fourths the appraised value thereof, and for not less than \$10 per acre; provided, that in the case of actual and bona fide settlement and improvement thereon at the time of the adoption of this constitution, such actual settler shall have the preference right to purchase the land whereon he may have settled, not exceeding 160 acres at a sum not less than the appraised value thereof, and in making such appraisment the value of improvements shall not be taken into consideration. If, at any time hereafter, the United States shall grant any arid lands in the state to the state, on the condition that the state reclaim and dispose of them to actual settlers, the legislature shall be authorized to accept such arid lands on such conditions, or other conditions, if the same are practicable and reasonable.

Cross reference. — As to public lands generally, see title 36.

Section does not limit sovereign right of United States. — This section does not suggest a limitation of sovereign right of the United States to acquire these lands for less than \$10.00 per acre if needed in exercise of governmental functions. United States v. 2902 Acres of Land, 49 F. Supp. 595 (D. Wyo. 1943).

Lands granted to state university. — Control and disposition of lands granted to the state university lie in board of land commissioners. Ross v. Trustees of Univ. of Wyo., 31 Wyo. 464, 228 P. 642 (1924).

Rights-of-way. — The legislature may grant rights-of-way across university lands. Ross v. Trustees of Univ. of Wyo., 30 Wyo. 433, 222 P. 3 (1924).

Water rights. — Board of control had jurisdiction to adjudicate water rights. State ex rel. Mitchell Irrigation Dist. v. Parshall, 22 Wyo. 318, 140 P. 830 (1914).

Use of land for pipeline. — Grant of use of land for pipeline purposes only, to which plaintiff subsequently obtained a patent, was not a "disposition of the land." Richardson v. Midwest Ref. Co., 39 Wyo. 58, 270 P. 154 (1928).

Where the state retains an interest in land upon which a purchaser enters under a contract of purchase, such land may not be assessed for taxes as such, though the purchaser's interest may be assessed; a sale of the property for delinquent taxes might indirectly destroy the state's interest and violate

the provisions of this section. Olds v. Little Horse Creek Cattle Co., 22 Wyo. 336, 140 P. 1004 (1914).

Renewal of lease. — Right of renewal of a lease on school land was not a vested right as against one claiming a preference right. State ex rel. Huckfeldt v. State Bd. of School Land Comm'rs, 20 Wyo. 162, 122 P. 94 (1912).

By the use of the term "renewal" the legislature did not intend to give a preferential right upon the identical terms and conditions of old lease, but old lessee must meet all reasonable terms and conditions laid down from time to time by the board which other persons are willing to meet, making the lease not a continuing one in violation of the enabling act and the constitution but a new one. Wyodak Chem. Co. v. Board of Land Comm'rs, 51 Wyo. 265, 65 P.2d 1103 (1937).

Supreme court's duty. — It is bounden duty of supreme court, insofar as possible, to carry provisions that permanent school funds shall remain forever inviolate and undiminished into force and effect. Alamo Drainage Dist. v. Board of County Comm'rs, 60 Wyo. 177, 148 P.2d 229 (1944).

Quoted in Mayor v. Board of County Comm'rs, 64 Wyo. 409, 192 P.2d 403, rehearing denied, 64 Wyo. 430, 195 P.2d 752 (1948); Wyoming v. United States, 310 F.2d 566 (10th Cir. 1962), cert. denied, 372 U.S. 953, 83 S. Ct. 952, 9 L. Ed. 2d 977 (1963).

Cited in Kerrigan v. Miller, 53 Wyo. 441, 84 P.2d 724 (1938).

§ 3. Board of land commissioners.

The governor, secretary of state, state treasurer, state auditor and superintendent of public instruction shall constitute a board of land commissioners, which under direction of the legislature as limited by this constitution, shall have direction, control, leasing and disposal of lands of the state granted, or which may be hereafter granted for the support and benefit of public schools, subject to the further limitations that the sale of all lands shall be at public auction, after such delay (not less than the time fixed by congress) in portions at proper intervals of time, and at such minimum prices (not less than the minimum fixed by congress) as to realize the largest possible proceeds. And said board, subject to the limitations of this constitution and under such regulations as may be provided by law shall have the direction, control, disposition and care of all lands that have been heretofore or may hereafter be granted to the state. (As amended by Laws 1921, Senate Joint Resolution No. 7, p. 293.)

Cross reference. — For other provisions concerning board of land commissioners, see §§ 36-2-101 to 36-2-210.

Amendment. — Laws 1921, Senate Joint Resolution No. 2, p. 293, authorized the submission of a proposed amendment of this section, which was adopted by vote of the people at the general election held November 7, 1922, and was proclaimed in effect December 20, 1922.

The 1922 amendment rewrote the section.

Discretion of board. — In leasing state lands, board exercises wide discretion which should be controlling except in case of illegal exercise thereof, or fraud or grave abuse of such discretion. Banzhaf v. Swan Co., 60 Wyo. 201, 148 P.2d 225 (1944).

The discretion of the board in both the leasing and the sale of school lands of this state has been given a very broad scope, subject only to the limitation that review by the courts may be had of its action in the event of the board's transgression of provisions of positive law, fraud or having committed a grave abuse of that discretion. Whether the board has exceeded this limitation must be determined from the varying circumstances of individual cases. Mayor v. Board of County Comm'rs, 64 Wyo. 409, 192 P.2d 703, rehearing denied, 64 Wyo. 430, 195 P.2d 752 (1948).

"Under direction of the legislature as limited by this constitution" construed. — The constitution which creates the board of land commissioners grants broad authority which is to be exercised "under direction of the legislature as limited by this constitution." Under this provision, the legislature is authorized to establish rules and methods which will govern the board within constitutional limits, but any statutes passed under this authority must if effective to control a controverted point be clear and definite. When there is no such direction the board must exercise its best judgment with which the courts may not interfere except in cases of illegal exercise of discretion, or fraud. Mahoney v. L.L. Sheep Co., 79 Wyo. 293, 333 P.2d 712 (1958).

Board has control of all state lands. State ex rel. Walls v. State Bd. of Land Comm'rs, 36 Wyo. 302, 254 P. 491 (1927).

Constitution invests the board under such regulations as may be provided by law with the direction, control, disposition and care of all state lands. State ex rel. Marsh v. State Bd. of Land Comm'rs, 7 Wyo. 478, 53 P. 292 (1898); Bucknum v. Johnson, 21 Wyo. 26, 127 P. 904

Lease of state lands, — Board of land commissioners is only authority vested with power to lease state lands. Banzhaf v. Swan Co., 60 Wyo. 201, 148 P.2d 225 (1944).

Under this section and § 36-2-101, constitutional and statutory authority is granted to the board of land commissioners to lease lands of the state. Reese v. Bruegger Ranches, Inc.,

463 P.2d 23 (Wyo. 1969).

Mineral land leases. — Board of land commissioners or their employees must ascertain the amounts due state under mineral land leases, and that duty cannot be delegated by contract to others nor can they confer discretionary powers upon such parties, or agree to pay them out of funds in the hands of the board, as the board has no authority to disburse such funds, but must deposit them in the state treasury. McDougall v. Board of Land Comm'rs, 48 Wyo. 493, 49 P.2d 663 (1935).

Lease of school lands. — Contention that when an applicant for the lease of state school lands, who is in all respects qualified to hold it as

a renewal lessee, presents his application for such a lease to the board, that that body must grant the lease and may not under any circumstances decline to issue it to him, could not be sustained. Mayor v. Board of County Comm'rs, 64 Wyo. 409, 192 P.2d 403, rehearing denied, 64 Wyo. 430, 195 P.2d 752 (1948).

The provisions of law in § 36-5-105, relating to preferences in granting leases of state lands, become binding upon the board if and when it decides to lease school lands. Mayor v. Board of County Comm'rs, 64 Wyo. 409, 192 P.2d 403, rehearing denied, 64 Wyo. 430, 195 P.2d 752 (1948).

Lands granted to state university. — Control and disposition of lands granted to the state university lie in board of land commissioners. Ross v. Trustees of Univ. of Wyo., 31 Wyo. 464, 228 P. 642 (1924).

Rights-of-way. — The legislature may grant rights-of-way across university lands. Ross v. Trustees of Univ. of Wyo., 30 Wyo. 433, 222 P. 3 (1924).

University permanent land fund was not intended to be confined for use in payment of current expenses but may, if necessary and proper, be used to erect buildings when authorized by legislature. Arnold v. Bond, 47

Wyo. 236, 34 P.2d 28 (1934).

Mandamus. — Letting of a lease cannot be controlled by mandamus. State ex rel. Marsh v. State Bd. of Land Comm'rs, 7 Wyo. 478, 53 P. 292 (1898).

Judicial review. — Trial de novo mentioned in § 36-2-206 is limited to a determination on the part of the district court of whether, on the facts proved, there was "an illegal exercise" of board's discretion, fraud, or "grave abuse of such discretion." Banzhaf v. Swan Co., 60 Wyo. 201, 148 P.2d 225 (1944).

Where board in exercising its discretionary power leased state lands to qualified corporation holding expired lease and neither exercised its discretion illegally nor gravely abused it, and no fraud is proved, land board action must be affirmed. Banzhaf v. Swan Co., 60 Wyo. 201, 148 P.2d 225 (1944).

Stated in L.L. Sheep Co. v. Potter, 67 Wyo. 348, 224 P.2d 496 (1950)..

Cited in Reid v. Fillmore, 12 Wyo. 72, 73 P. 849 (1903); State v. Underwood, 54 Wyo. 1, 86 P.2d 707 (1939); In re Hagood, 356 P.2d 135 (Wyo. 1960).

Law review. — For article, "Rights of Way to Mining Claims Across Public Lands," see 12 Wyo. L.J. 162 (1958).

* * *

ARTICLE 19. MISCELLANEOUS

* * *

Concerning Labor

§ 2. Day's work.

Eight (8) hours actual work shall constitute a lawful day's work in all mines, and on all state and municipal works.

Cross references. — For another provision relative to protection of labor, see art. 1, § 22, Wyo. Const. As to 8 hour day on public works, see § 9-8-310. As to hours of labor generally, see §§ 27-5-101 to 27-5-107.

Editor's note. — This section was numbered 1 in the enrolled constitution.

Street paving is public work. — Contractor engaged in street paving for municipal corporation is doing public work as contemplated by this section, "public works," being all fixed works constructed for public use. State v. A.H. Reed Co., 33 Wyo. 387, 240 P. 208 (1925).

Wyoming Statutes 1977

TITLE 1 Code of Civil Procedure

CHAPTER 26

Eminent Domain

Cross references. — As to eminent domain generally, see art. 1, § 32, Wyo. Const. For provision that no private property shall be taken or damaged for public or private use without just compensation, see art. 1, § 33, Wyo. Const. For provision that the right of eminent domain shall never be so abridged or construed as to prevent the legislature from taking property and

franchises of corporations, see art. 10, § 9, Wyo. Const.

Editor's note, - This article was not enacted as part of the original civil code.

Law review. — See article, "Implementation of Land Use Policy: Police Power vs. Eminent Domain," 3 Land & Water L. Rev. 33 (1968).

ARTICLE 4. WAYS OF NECESSITY FOR CERTAIN PURPOSES

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Editor's note. — This article was not enacted as part of the original Civil Code.

Law review. — See "Record Title to Water and Ditch Rights," 6 Wyo. L.J. 200.

Am. Jur. 2d, ALR and C.J.S. references. — 26 Am. Jur. 2d Eminent Domain §§ 73 to 87, 113, 114, 128.

Effect of incidental private benefit, 53 ALR

Eminent domain for development or operation of mines and mining industries, 54 ALR 56. 29A C.J.S. Eminent Domain §§ 65 to 86.

§ 1-26-401. Right of eminent domain granted.

(a) Any person, association, company or corporation authorized to do business in this state may appropriate by condemnation a way of necessity over, across or on so much of the lands or real property of others as necessary for the location, construction, maintenance and use of reservoirs, drains, flumes, ditches including return flow and wastewater ditches, underground water pipelines, pumping stations and other necessary appurtenances, canals, electric power transmission lines, railroad trackage, sidings, spur tracks, tramways or mine truck haul roads required in the course of their business for agricultural, mining, milling, electric power transmission and distribution, domestic, municipal or sanitary purposes, or for the transportation of coal from any coal mine or railroad line. Persons under this subsection may enter upon any lands to examine and make surveys for planning or changing any use authorized under this subsection.

(b) The right of condemnation may be exercised for the purpose of:

(i) Acquiring new ways of necessity;

(ii) Enlarging or relocating existing ways of necessity;

 (iii) Acquiring material for the construction, repair or maintenance of any structures or facilities for which the way of necessity is or may be acquired;

- (iv) Acquiring easements or rights-of-way over adjacent lands sufficient to enable the owner of the way of necessity to construct, repair, maintain and use the structures or facilities for which the way of necessity is acquired.
- (c) A way of necessity acquired hereunder shall not exceed one hundred (100) feet in width on each side of the outer sides or marginal lines of the reservoir, drain, ditch, underground water pipeline, canal, flume, power transmission line, railroad trackage, siding or tramway unless a greater width is necessary for excavation, embankment or deposit of waste from excavation. In no case may the area appropriated exceed that actually necessary for the purpose or use for which a way of necessity is authorized.
- (d) A way of necessity for a mine truck haul road shall not be granted except where no other reasonable and practicable way is available. The petitioner for a mine truck haul road way of necessity shall show that his petition is made in good faith, that no other reasonable and practical way is available and that the mining operation is economically feasible. The way of necessity may not exceed in area that which is actually necessary for the haul road, and in no case shall it exceed one hundred (100) feet in total width.
- (e) No appropriation of private property shall be made for the uses herein specified until just compensation is paid to the owner or owners of the property taken, as provided by law.
- (f) Except for underground water pipelines, the way of necessity appropriated is for a surface easement or right-of-way only, and shall not include any claim, interest or property in or to the underlying minerals or mineral estate. Damages or compensation shall not be awarded for or on account of the underlying minerals or mineral estate, but only for the actual rights and property claimed and appropriated. (Laws 1907, ch. 52, § 1; 1909, ch. 96, § 1; C.S. 1910, § 3874; C.S. 1920, § 4938; Laws 1921, ch. 75, § 1; R.S. 1931, § 38-401; C.S. 1945, § 3-6301; Laws 1951, ch. 70, § 1; W.S. 1957, § 1-794; Laws 1965, ch. 35, § 1; 1971, ch. 40, § 1: 1977, ch. 188, § 1.)

Editor's note. — Section 292, ch. 111, Laws 1969, purports to repeal ch. 35, Laws 1965, which amends this section. Chapter 111, Laws 1969, is a revision of the laws relating to education and it is obvious that the repeal of ch. 35, Laws 1967 (now repealed), was intended.

Effective date. — Section 2, ch. 75, Laws 1921, makes the act effective from and after passage. Approved February 18, 1921.

Constitutionality. — Statute permitting fee to be taken for way of necessity does not deny due process of law or take property without compensation. Meyer v. Colorado Cent. Coal Co., 39 Wyo. 355, 271 P. 212 (1928), rehearing denied, 274 P. 1074 (1929).

Purpose of act. — The 1907 act was adopted to cure an adjudged defect in the former act concerning notice. Gustin v. Harting, 20 Wyo. 1, 121 P. 522 (1912).

Appeal. — Under this article, where defendant prevented a preliminary survey of a right of way for an irrigation ditch, court's confirmation of appraisers' report on conflicting evidence as to route appraised and described being different will not be disturbed on appeal. Hoover v. Biagini, 43 Wyo. 416, 5 P.2d 291 (1931).

Electric plant owner. — While fact that electric plant owner has power of eminent domain is not determinative of its status as public utility, it is factor which may be considered. Rural Elec. Co. v. State Bd. of Equalization, 57 Wyo. 451, 120 P.2d 741, rehearing denied, 122 P.2d 189 (1942).

Irrevocable license. — A parol license to construct and maintain a flume to carry water into land of plaintiff and across land of defendant, having been acted upon by plaintiff, and flume having been constructed as to time when statute gave plaintiff a right to condemn way for construction of the flume, is irrevocable. Gustin v. Harting, 20 Wyo. 1, 121 P. 522 (1912).

Jury trial. — Landowner is entitled to a jury trial for fixing amount of compensation. City of Cheyenne v. Edwards, 22 Wyo. 401, 143 P. 356 (1914).

Foreign corporation; benefit outside state.

— A foreign corporation duly authorized to do business in Wyoming is not authorized either by

this section, or independent thereof, to condemn land in Wyoming for irrigation works to reclaim lands solely located in Colorado. Grover Irrigation & Land Co. v. Lovella Ditch, Reservoir & Irrigation Co., 21 Wyo. 204, 131 P. 43 (1913).

Registering complaint. — Owners not appealing from award for taking land for way of necessity and demanding jury trial cannot complain of its insuffficiency. Meyer v. Colorado Cent. Coal Co., 39 Wyo. 355, 271 P. 212 (1928), rehearing denied, 274 P. 1074 (1929).

Way of necessity; surface. — Way of necessity, for which another's land may be taken, is not limited to the surface. Meyer v. Colorado Cent. Coal Co., 39 Wyo. 355, 271 P. 212 (1928), rehearing denied, 274 P. 1074 (1929).

Prescriptive rights. — The right to maintain a flume across the lands of another may be acquired by prescription, and damages may be recovered for its destruction. Gustin v. Harting, 20 Wyo. 1, 121 P. 522 (1912).

Decision under prior law — Constitutionality. — Statute which provided method for obtaining right of way for private irrigation ditch over lands of another by proceedings was unconstitutional and void for failure to provide for notice to property owner of time and place of meeting of appraisers appointed to determine amount of compensation. Sterritt v. Young, 14 Wyo. 146, 82 P. 946 (1905).

§ 1-26-402. Condemnation and certificate of public necessity and convenience.

No person, association of persons, company or corporation shall institute a condemnation proceeding relating to any activity for which a certificate of public necessity and convenience is required until the certificate has been issued. (Laws 1977, ch. 73. § 1.)

Editor's notes. — Section 1-794.1, W.S. 1957, which was enacted by \$ 1, ch. 73, Laws 1977, has been inserted as \$ 1-26-402, and the subsequent sections, enacted by \$ 1, ch. 188, Laws 1977, have been redesignated accordingly. Also, because of chapter renumbering, the sections in this article appear as \$\$ 1-26-401 to 1-26-405 instead of \$\$ 1-27-401 to 1-27-404 as originally enacted.

Former §§ 1-795 to 1-801, W.S. 1957, were superseded by the Rules of Civil Procedure. See Rule 87 (c), W.R.C.P. For present provisions as to condemnation of property, see Rule 71.1, W.R.C.P.

Effective date. — Section 3, ch. 73, Laws 1977, makes the act effective May 27, 1977.

§ 1-26-403. Reservation of right to establish crossing.

The order entered shall in all cases reserve to the owner or occupant of any real property through, over or across which any right-of-way is acquired, under the provisions of this act [§§ 1-26-404, 1-26-105], the right to establish a suitable crossing connecting his or their lands on either side of the right-of-way, at any point which may be selected by the owner or occupant, the ditch, canal, drain, flume, or other irrigation works to be protected at the crossing by the

construction and maintenance of a suitable bridge or viaduct at the expense of the owner or occupant, and the owner or occupant may cross and recross the same at all times at his pleasure. (Laws 1907, ch. 52, § 9; C.S. 1910, § 3882; C.S. 1920, § 4946; R.S. 1931, § 38-409; C.S. 1945, § 3-6309; W.S. 1957, § 1-802; Laws 1965, ch. 35, § 2; Laws 1977, ch. 188, § 1.)

Editor's notes. — Section 292, ch. 111, Laws 1969, purports to repeal ch. 35, Laws 1965, which amends this section. Chapter 111, Laws 1969, is a revision of the laws relating to education and it is obvious that the repeal of ch. 35, Laws 1967 (now repealed), was intended.

Former §§ 1-803 to 1-807, W.S. 1957, were superseded by the Rules of Civil Procedure. See Rule 87 (c), W.R.C.P. For present provisions as to condemnation of property, see Rule 71.1, W.R.C.P.

Affirmance of judgment. — Where landowner did not file exceptions and demand for jury trial until after more than a month after filing certificate of assessment, judgment affirming the commissioners' award will be

affirmed. Hoover v. Biagini, 43 Wyo. 416, 5 P.2d 291 (1931).

Election by owner. — Owner, after electing to take an unconditional personal judgment against power company and a lien upon all its realty within the county and the right to enforce judgment by execution, could not assert a right of action for damages for flooding his land where agreement entitled company to immediate possession and right to flood the land. Big Horn Power Co. v. Martin, 24 Wyo. 400, 160 P. 334 (1916).

Cited in Meyer v. Colorado Cent. Coal Co., 39 Wyo. 355, 271 P. 212 (1928), rehearing denied, 274 P. 1074 (1929).

§ 1-26-404. Appropriation of public grounds.

If it is necessary in the location of any part of a reservoir, drain, flume, ditch or canal to occupy any road, street, alley or public way of any kind, and the public authority owning or having charge thereof and the person or company seeking to occupy the public way cannot agree upon the manner, terms and conditions of the occupancy or use, the person or company may appropriate so much of the same as is necessary for the purposes of the reservoir, drain, flume, ditch or canal in the same manner and upon the same terms as provided by law for the appropriation of property of individuals. (Laws 1907, ch. 52, § 12; C.S. 1910, § 3888; C.S. 1920, § 4952; R.S. 1931, § 38-415; C.S. 1945, § 3-6315; W.S. 1957, § 1-808; Laws 1977, ch. 188, § 1.)

Editor's note. — Former § 1-809, W.S. 1957, was superseded by the Rules of Civil Procedure. See Rule 87(c), W.R.C.P. For present provisions as to condemnation of property, see Rule 71.1, W.R.C.P.

Repealing clause. - Section 14, ch. 52, Laws

1907, repealed all laws and parts of laws in conflict with the act.

Effective date. — Section 15, ch. 52, Laws 1907, makes the act effective from and after passage. Approved February 16, 1907.

§ 1-26-405. Procedure for condemnation of property.

Any action or proceeding to acquire title to or any interest in the real or personal property of another by condemnation, for any purpose whatsoever, shall be commenced and conducted in accordance with Wyoming Rules of Civil Procedure. (Laws 1977, ch. 188, § 1.)

Cross reference. — For provisions as to condemnation of property, see Rule 71.1, W.R.C.P.

Damages to business. — Owners are not entitled to compensation for damage to business, but may only recover injury to their lands, in

condemnation proceedings. Morrison v. Cottonwood Dev. Co., 38 Wyo. 190, 266 P. 117 (1928)

Competency of evidence. — Evidence of value of defendants' farming implements, horses, and cattle, and of their investment generally were not competent in condemnation suits to prove damage to defendants' business. Morrison v. Cottonwood Dev. Co., 38 Wyo. 190, 266 P. 117 (1928).

Affirmance of judgment. — Where landowner did not file exceptions and demand for jury trial until after more than a month after filing certificate of assessment, judgment affirming the commissioners' award will be affirmed. Hoover v. Biagini, 43 Wyo. 416, 5 P.2d 291 (1931).

Estoppel. — Where one consents to the occupation of his land by another possessing the power of eminent domain for the purpose of such occupation, without either requiring payment by agreement, or proceedings to condemn, and allows the party entering to go on and expend

the necessary money and labor to complete the proposed work, he will be regarded as having acquiesced therein, and is therefore estopped from maintaining either trespass or ejectment, and is restricted to a suit for damages. Gustin v. Harting, 20 Wyo. 1, 121 P. 522 (1912).

Decree not making final disposition of case not appealable. — Parties in a condemnation proceeding were not entitled to appeal from a decree of the trial court which determined that the proceeding was duly and regularly filed, approved bond for payment of compensation, and appointed commissioners, since no final disposition of the case had been made by the trial court. Such final determination does not come until the jury renders a verdict and its award is confirmed by an order of the trial court. Big Horn Coal Co. v. Sheridan-Wyoming Coal Co., 67 Wyo. 300, 224 P.2d 172 (1950).

Law review. — See comment, "An Overview of the Question of Access Across Indian Lands," 10 Land & Water L. Rev. 93 (1975).



TITLE 2

Wills, Decedents' Estates and Probate Code

Revision of title. - Section 1, ch. 54, Laws 1980, revised this title, amending §§ 2-2-101 through 2-2-108; amending and renumbering §§ 2-4-243 as 2-6-207(d); and amending ch. 142, 1979, by amending §§ 2-1-101, 2-1-102, 2-1-201 through 2-1-203, 2-1-301, 2-1-401, 2-1-402, 2-2-109 through 2-2-111, 2-2-201 through 2-2-203, 2-2-301 through 2-2-313, 2-2-401 through 2-2-407 and renumbering 2-2-405 and 2-2-406 as 2-2-403 and 2-2-404, 2-3-101 through 2-3-120, 2-3-201 through 2-3-211, 2-4-101 through 2-4-108, 2-4-201 through 2-4-214, 2-5-101 through 2-5-103, 2-6-101 through 2-6-111, 2-7-101 through 2-7-110, 2-7-201 through 2-7-206, 2-7-301 through 2-7-307, 2-7-401 and 2-7-402; by amending and renumbering §§ 2-1-403 as 2-1-402(a)(ii), 2-1-404 through 2-1-406 as 2-1-403 through 2-1-405, 2-2-310 through 2-2-313 as 2-2-309 through 2-2-312, 2-2-405 and 2-2-406 as 2-2-403 and 2-2-404, 2-3-122 through 2-3-139 as 2-3-121 through 2-3-138, 2-3-215 through 2-3-219 as 2-3-301 through 2-3-305, 2-3-221 through 2-3-223 as 2-3-401 through 2-3-403, 2-3-225 through 2-3-228 as 2-3-501 through 2-3-504, 2-3-231 through 2-3-244 as 2-3-601 through 2-3-614, 2-3-251 through 2-3-261 as 2-3-701 through 2-3-711, 2-5-201 as 2-5-104, 2-5-202 as 2-5-105, 2-6-201 through 2-6-207 as 2-6-112 through 2-6-118, 2-6-301 as 2-6-119, 2-6-302 as 2-6-120, 2-6-401 through 2-6-411 as 2-6-201 through 2-6-211, 2-6-501 through 2-6-506 as 2-6-301 through 2-6-306, 2-7-501 through 2-7-512 as 2-7-403 through 2-7-414, 2-7-601 through 2-7-609 as 2-7-501 through 2 7-509. 2-7-701 through 2-7-727 as 2-7-601 through 2-7-627, 2-7-801 through 2-7-819 as 2-7-701 through 2-7-719, 2-7-901 through 2-7-914 as 2-7-801 through 2-7-814, 2-7-1001 through 2-7-1003 as 2-8-101 through 2-8-103, 2-7-1101 through 2-7-1103 as 2-9-101 through 2-9-103, 2-7-1201 through 2-7-1204 as 2-9-201 through

2-9-204, 2-7-1301 through 2-7-1310 as 2-10-101 through 2-10-110, 2-8-101 through 2-8-105 as 2-11-101 through 2-11-105, 2-8-201 as 2-11-201, 2-8-301 as 2-11-301, 2-8-401 as 2-11-302, 2-8-402 as 2-11-303, 2-9-101 through 2-9-106 as 2-12-101 through 2-12-106, 2-10-101 through 2-10-107 as 2-13-101 through 2-13-107, 2-11-101 as 2-14-101, 2-12-101 as 2-14-201, 2-12-102 as 2-14-202, 2-8-202 through 2-8-204 as 2-15-101 through 2-15-103 and 2-13-101 through 2-13-104 as 2-15-104 through 2-15-107.

No detailed explanation of the changes made by the 1980 act has been attempted, but, where appropriate. historical citations to former provisions have been added to corresponding sections in this title, and annotations from cases decided under former provisions have been placed under comparable sections in this title where it was felt they would be helpful.

For the new revised section numbers corresponding to the former W.S. 1977 provisions of old title 2, see the Table of Revised and Renumbered Sections in Volume One (Supplement). For the complete disposition of ch. 142, Laws 1979, had it gone into effect and not been affected by ch. 54, Laws 1980, see the table in the appendix at the end of this title.

Section 2, ch. 54, Laws 1980, repealed §§ 2-4-111 through 2-4-113, 2-4-240 through 2-4-242 and 2-5-809, and §§ 2-2-309, 2-2-403, 2-2-404, 2-2-407, 2-3-121, 2-3-245 and 2-3-246 as created by ch. 142, Laws 1979.

Section 3, ch. 54, Laws 1980, reads: "If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable."

Section 4, ch. 54, Laws 1980, makes the act effective on April 1, 1980.

CHAPTER 3
Fiduciaries

ARTICLE 5. MORTGAGE, LEASE OR SALE

Cross references. — As to sale and redemption of real property sold under mortgage or execution, see §§ 1-18-101 to 1-18-112. As to sale of corporate stock under execution or attachment, see §§ 1-19-101 to 1-19-108. As to property exempt from execution or attachment, see §§ 1-20-101 to 1-20-106 and

1-20-108. As to deeds, mortgages and leases generally, see §§ 34-2-101 to 34-2-135. As to foreclosure of mortgages generally, see §§ 34-4-103 to 34-4-113. As to chattel mortgages generally, see §§ 34-21-901 to 34-21-966.

§ 2-3-501. Authorization by court; generally.

Whenever in any estate or guardianship now being administered or that may hereafter be administered, it appears to the court to be for the advantage of the estate or ward to raise money upon a note or notes secured by a mortgage of the real or personal property of any decedent or ward or to make a lease of such real property, or it appears to the court that the homestead of a minor or incompetent is mortgaged and the mortgage thereon is subject to foreclosure, and the guardian does not have sufficient money in the estate of the person to pay the mortgage, the court may as often as occasion therefor shall arise in the administration of the estate or guardianship, on petition, notice and hearing as provided in this article, authorize and direct the executor, administrator or guardian to mortgage the personal or real property, including release and waiver of homestead of the ward, and to execute a note or notes secured by the mortgage, or to lease the real estate, or any part thereof. (Laws 1919, ch. 24. § 1; C.S. 1920, § 6967; R.S. 1931, § 88-3401; Laws 1935, ch. 125, § 1; 1937, ch. 34, § 1; C.S. 1945, § 8-201; W.S. 1957, § 4-23; W.S. 1977, § 4-5-101; Laws. 1979, ch. 142, § 3; 1980, ch. 54, § 1.)

* * *

§ 2-3-502. Same; contents of petition; hearing; objections; terms, etc., of order.

- (a) A petition to mortgage or lease under W.S. 2-3-501, or a petition to transfer, sell or assign royalty, overriding royalty, leasehold or other mineral interest, or to lease the mineral interest in the property under W.S. 2-3-503, shall show:
 - (i) The advantage that may accrue to the estate from the lease, mortgage, transfer, sale or assignment;
 - (ii) A general description of the property to be leased, mortgaged, sold or assigned;
 - (iii) The term, rental and general conditions of the proposed lease, transfer, sale or assignment, or the amount, maturity and rate of interest of the proposed mortgage;
 - (iv) The names of the legatees and devisees, if any, and of the heirs of the deceased, or of the minor or incompetent person, lessee, assignee or purchaser, so far as known to the petitioner.

(b) Upon the filing of the petition, the court, if it deems the petition sufficient, shall set the matter for hearing and shall direct to what persons and in what manner notice of the hearing shall be given. At the hearing any person interested in the estate may appear and present objections to the proposed lease, mortgage, sale or assignment. If objections are filed to the petition, the court may adjourn the hearing to enable the parties objecting to fully present their reasons and evidence for and against the proposed lease, mortgage, sale or assignment. If no objections are filed, or if upon hearing the objections are deemed insufficient, the court may order the lease, mortgage, transfer, sale or assignment of royalty, overriding royalty, lease or other mineral interest, or lease of the mineral interest in the property, upon the terms, in the amount and for the period as is deemed proper by the court. (Laws 1919, ch. 24, §§ 2, 3; C.S. 1920, §§ 6968, 6969; Laws 1931, ch. 73, § 139; R.S. 1931, § 88-3402; C.S. 1945, § 8-202; Laws 1955, ch. 25, § 1; W.S. 1957, § 4-24; W.S. 1977, § 4-5-102; Laws 1979, ch. 142, § 2; 1980, ch. 54, § 1.)

* * *

§ 2-3-503. Same; transfer, etc., of mineral interests; terms.

Proceedings may be had in the district court of each Wyoming county in which an estate in probate is being administered or a guardianship proceeding is pending, which involves real property, for authority to transfer, sell or assign royalty, overriding royalty, leasehold or other mineral interest and to lease the mineral content ownership interest in the property of any then deceased person or of any then minor or incompetent person, as distinguished from realty surface leases referred to in W.S. 2-3-501. If it appears to the court that the transfer, sale or assignment of royalty, overriding royalty, leasehold or other mineral interest or execution and delivery of a lease or contract for exploration and development of the affected real property mineral interest of the decedent. minor or incompetent person, will be advantageous to the estate of the decedent, minor or incompetent person the court, may authorize and direct the trustee, executor or administrator of the probate estate or the guardian of the estate of the minor or incompetent person, to transfer, sell or assign the royalty, overriding royalty, leasehold or other mineral interest or to lease the real estate interest or any part thereof for the mineral content purposes stated. Leases may be for primary terms of five (5) years or less as mutually agreed by the parties thereto and for so long thereafter as the mineral content, including but not restricted to oil, gas or other hydrocarbons, shall or can be produced in commercial quantities from the leasehold premises, or for the term of each unit or cooperative agreement to which the lease may be committed with the consent and approval of the court. The lease is not invalid or voidable because its effectiveness may or will extend beyond the term in office of the lessor, trustee, executor, administrator or guardian, or beyond the time of final settlement of the probate estate, or beyond the minority of the minor or the period of incompetency of the incompetent involved. With the consent and approval of the court any royalty, overriding royalty or other mineral interest or a lease may be committed to a unit or cooperative agreement, or to a secondary recovery agreement, for a like term and with like effect. (Laws 1951, ch. 17, § 1; 1955, ch. 25, § 2; 1957, ch. 97, § 1; W.S. 1957, § 4-25; W.S. 1977, § 4-5-103; Laws 1979, ch. 142, § 2; 1980, ch. 54, § 1.)

Effective dates. — Section 2, ch. 97, Laws passage and approval. Approved February 12, 1957, makes the act effective from and after 1957.

§ 2-3-504. Same; same; prior leases validated.

All proceedings of the type herein authorized, which have been heretofore concluded in any court aforesaid, substantially consistent with the procedure herein authorized, and all unexpired leases of the kind specified, previously executed and delivered pursuant to each prior proceeding, substantially in conformity with the provisions hereof, are hereby declared valid, as effectively as if this act had been in force upon the date of each prior proceeding and lease. (Laws 1951, ch. 17, § 2; W.S. 1957, § 4-26; W.S. 1977, § 4-5-104; Laws 1979, ch. 142, § 3; 1980, ch. 54, § 1.)

Meaning of "this act". — The term "this act" seems to refer to provisions originally enacted by ch. 17, Laws 1951, which presently appear as §§ 2-3-503 and 2-3-504.

Severability. - Section 3, ch. 17. Laws

1951, provides "Should any part or portion of this act be adjudged invalid, the remaining portion or portions of the same shall remain in full force and effect notwithstanding such invalidity."

ARTICLE 6. PRINCIPAL AND INCOME

Cross references. — As to trust deposits in a bank, see § 2-1-203. For provisions of the Uniform Common Trust Fund Act, see § 2-3-401 et seq. For provisions of the Uniform Trustees Powers Act, see §§ 4-8-101 to 4-8-110. As to trusts, private foundations, etc., see § 4-8-111. As to trust companies generally, see ch. 5 of title 13. As to appointment of a trustee to manage funds set aside for children in a divorce action, see §§ 20-2-115, 20-2-116. As to duty of trustee to pay inheritance and gift tax, see § 39-6-806 et seq.

Law reviews. - See article, "Wyoming's

Law of Decedents' Estates, Guardianship and Trusts: A Comparison with the Uniform Probate Code — Part I," 7 Land & Water L. Rev. 169 (1972).

See article, "Wyoming's Law of Decedents' Estates, Guardianship and Trusts: A Comparison with the Uniform Probate Code — Part III." 9 Land & Water L. Rev. 567 (1974).

Am. Jur. 2d, ALR and C.J.S. references.
— Modern status of rules governing allocation of stock dividends or splits between principal and income, 81 ALR3d 876.

* * *

§ 2-3-609. Royalties and other interest in minerals or other natural resources; provisions not applicable to existing property; exceptions.

(a) If any part of the principal consists of a right to receive royalties, overriding or limited royalties, working interests, production payments, net profit interests or other interests in minerals or other natural resources in, on or under land, the receipts from taking the natural resources from the land shall be allocated as follows:

- If received as rent on a lease or extension payments on a lease, the receipts are income;
- (ii) If received from a production payment, the receipts are income to the extent of any factor for interest or its equivalent provided in the governing instrument. There shall be allocated to principal the fraction of the balance of the receipts which the unrecovered cost of the production payment bears to the balance owed on the production payment, exclusive of any factor for interest or its equivalent. The receipts not allocated to principal are income;
- (iii) If received as a royalty, overriding or limited royalty or bonus, or from a working, net profit, or any other interest in minerals or other natural resources, receipts not provided for in the preceding paragraphs of this section shall be apportioned on a yearly basis in accordance with this paragraph whether or not any natural resource was being taken from the land at the time the trust was established. Twenty-seven and one-half percent (27 ½%) of the gross receipts (but not to exceed fifty percent (50%) of the net receipts remaining after payment of all expenses, direct and indirect, computed without allowance for depletion) shall be added to principal as an allowance for depletion. The balance of the gross receipts, after payment therefrom of all expenses, direct and indirect, is income.
- (b) If a trustee, on the effective date of this act, held an item of depletable property of a type specified in this section he shall allocate receipts from the property in the manner used before the effective date of this act, but as to all depletable property acquired after the effective date of this act by an existing or new trust, the method of allocation provided herein shall be used.
- (c) This section does not apply to timber, water, soil, sod, dirt, turf or mosses. (Laws 1963, ch. 189, § 9; W.S. 1977, § 34-18-109; Laws 1979, ch. 142, § 3; 1980, ch. 54, § 1.)

Effective dates. — Laws 1963, ch. 189, was enacted at a session that adjourned on carried no provision as to its effective date, but February 16, 1963.

* * *

§ 2-3-611. Property subject to depletion.

Except as provided in W.S. 2-3-609 and 2-3-610, if the principal consists of property subject to depletion, including leaseholds, patents, copyrights, royalty rights and rights to receive payments on a contract for deferred compensation, receipts from the property not in excess of five percent (5%) per year of its inventory value are income, and the balance is principal. (Laws 1963, ch. 189, § 11; W.S. 1977, § 34-18-111; Laws 1979, ch. 142, § 3; 1980, ch. 54, § 1.)



TITLE 4

Fiduciaries

CHAPTER 5

Mortgage, Lease or Sale

Cross references. — As to sale and redemption of real property sold under mortgage or execution, see §§ 1-18-101 to 1-18-112. As to sale of corporate stock under execution or attachment, see §§ 1-19-101 to 1-19-108. As to property exempt from execution

or attachment, see §§ 1-20-101 to 1-20-106, and § 1-20-108. As to deeds, mortgages and leases generally, see §§ 34-2-101 to 34-2-135. As to foreclosure of mortgages generally, see §§ 34-4-103 to 34-4-113. As to chattel mortgages generally, see §§ 34-21-901 to 34-21-966.

§ 4-5-101. Mortgages or leases generally; authorization by court.

§ 4-5-102. Same; information to be shown in petition; hearing; order of court.

(a) The petition for such mortgage or lease, under section 8-201, Wyoming Compiled Statutes, 1945 [§ 4-5-101], or a petition for authority to transfer, sell or assign royalty, or overriding royalty, leasehold or other mineral interest, or to lease the mineral content ownership interest in such property under Wyoming Session Laws, 1951, section 1, chapter 17 [§ 4-5-103], as amended, shall show:

(i) The advantage that may accrue to the estate from such lease, mortgage, transfer, sale or assignment;

(ii) A general description of the property to be leased, mortgaged, sold or

(iii) The term, rental, and general conditions of the proposed lease, transfer, sale or assignment; or the amount, maturity, and rate of interest of the proposed mortgage;

(iv) The names of the legatees and devisees, if any, and of the heirs of the deceased, or of the minor, or of the incompetent person, lessee, assignee, or purchaser, so far as known to the petitioner.

(b) Upon the filing of such petition, the court, if it deems the petition sufficient, shall set the matter down for hearing and shall direct to what persons and in what manner notice of such hearing shall be given. At the hearing any person interested in the estate may appear and present objections to the proposed lease, mortgage, sale or assignment. If objections are filed to the petition, the court may adjourn the hearing to enable the parties objecting to fully present their reasons and evidence for and against the proposed lease, mortgage, sale or assignment. If no objections are filed, or if upon hearing, the objections are deemed insufficient, the court may make an order authorizing such lease, mortgage, transfer, sale or assignment of royalty, overriding royalty, lease or other mineral interest, or lease of the mineral content interest in such property, and upon such terms and in such amount, and for such period, as is deemed proper by the court or judge thereof. (Laws 1919, ch. 24, §§ 2, 3; C.S. 1920, §§ 6968, 6969; Laws 1931, ch. 73, § 139; R.S. 1931, § 88-3402; C.S. 1945, § 8-202; Laws 1955, ch. 25, § 1; W.S. 1957, § 4-24.)

Effective date. — Section 4, ch. 24, Laws 1919, makes the act effective from and after passage. Approved February 14, 1919.

§ 4-5-103. Sale, lease, etc., of mineral content of real property; generally; term.

Proceedings may be had in the district court of each Wyoming county in which an estate in probate is being administered or a guardianship proceeding is pending, which involves real property, for authority to transfer, sell or assign royalty, overriding royalty, leasehold or other mineral interest and to lease the mineral content ownership interest in such property of any then deceased person or of any then minor or incompetent person, as distinguished from realty surface leases referred to in section 8-201, Wyoming Compiled Statutes, 1945 [\$ 4-5-101]. If it shall appear to such court or judge thereof that the transfer, sale or assignment of royalty, overriding royalty, leasehold or other mineral interest or execution and delivery of a lease or contract for exploration and development of the affected real property mineral interest of such decedent, minor or incompetent person, will be advantageous to the estate of such decedent, minor, or incompetent person said court or judge, whenever occasion therefor arises in the administration of such probate estate, or in the course of such guardianship matter, on appropriate petition, notice and hearing as provided in section 8-202, Wyoming Compiled Statutes, 1945 [§ 4-5-102], as amended by section 1, chapter 25, Session Laws of Wyoming, 1955, may authorize, empower and direct the trustee, executor or administrator of such probate estate or the guardian of the estate of such minor or incompetent person, to transfer, sell or assign such royalty, overriding royalty, leasehold or other mineral interest or to lease such real estate interest or any part thereof for the mineral content purposes stated, which leases may each be for primary terms of five (5) years or less as mutually agreed by the parties thereto and for so long thereafter as such mineral content. including but not restricted to oil, gas or other hydrocarbons, shall or can be, produced in commercial quantities from the leasehold premises, or for the term of each unit or cooperative agreement to which such lease may be committed with the consent and approval of such court, and such lease shall not be invalid or voidable because its effectiveness may or will extend beyond the term in office of such lessor, trustee, executor, administrator or guardian or beyond the time of final settlement of the probate estate involved or beyond the minority of the minor involved or beyond the period of incompetency of the incompetent involved; with the consent and approval of such court any such royalty, overriding royalty, or other mineral interest or a lease may also be committed to a unit or cooperative agreement, or to a secondary recovery agreement, for a like term and with like effect. (Laws 1951, ch. 17, § 1; Laws 1955, ch. 25, § 2; 1957, ch. 97, § 1; W.S. 1957, § 4-25.)

Effective date. - Section 2, ch. 97, Laws 1957, makes the act effective from and after passage and approval. Approved February 12, 1957.

§ 4-5-104. Same; prior leases validated.

All proceedings of the type herein authorized, which have been heretofore concluded in any court aforesaid, substantially consistent with the procedure herein authorized, and all unexpired leases of the kind specified, previously executed and delivered pursuant to each such prior proceeding, substantially in conformity with the provisions hereof, are hereby declared valid, as effectively as if this act [§§ 4-5-103, 4-5-104] had been in force upon the date of each such prior proceeding and lease. (Laws 1951, ch. 17, § 2; W.S. 1957, § 4-26.)

Severability. - Section 3, ch. 17, Laws 1951, portions of the same shall remain in full force provides "Should any part or portion of this act be adjudged invalid, the remaining portion or

and effect notwithstanding such invalidity."



TITLE 6 Crimes and Offenses

Cross references. - For constitutional provision that the penal code shall be framed on the humane principles of reformation and prevention, see art. 1, § 15, Wyo. Const. As to criminal rules, see Rule 1 et seq., W.R. Cr. P. As to criminal forms, see Appendix of Forms, W.R. Cr. P. For provision that a person who has been convicted of a felony or other high crime is not competent to act as juror, see § 1-11-102. As to habeas corpus, see §§ 1-27-101 to 1-27-134. As to criminal procedure generally, see title 7. As to the division of criminal investigation of the office of attorney general, see §§ 9-2-530 to 9-2-547. As to the criminal identification division of the office of the attorney general, see §§ 9-2-560 to 9-2-571. As to the planning committee on criminal administration in the office of attorney general, see §§ 9-2-590 to 9-2-597. As to unlawful conduct within governmental facilities, see §§ 9-16-101 to 9-16-107. For offenses concerning livestock and other animals, see §§ 11-35-101 to 11-35-116. For crimes, offenses and penalties as to banks, banking and finance, see §§ 13-10-101 to 13-10-111. For provisions as to military courts

and crimes, see §§ 19-2-601 to 19-2-608. For offenses and penalties as to elections, see §§ 22-26-101 to 22-26-120. For provisions as to enforcement and penalties of game and fish laws generally, see §§ 23-6-101 to 23-6-207. For enforcement and penalties under the Uniform Act Regulating Traffic on Highways, see §§ 31-5-1201 to 31-5-1214. For crimes and offenses as to public health and safety, see §§ 35-10-101 to 35-10-408. For crimes and offenses as to public utilities, see §§ 37-12-101 to 37-12-213.

History of title. — The basic law concerning criminal offenses, now in effect, is ch. 73, Laws 1890. It consisted of 152 sections. The title to ch. 73 provided, "An act defining crimes, regulating criminal procedure and for other purposes" and a few sections dealt with criminal procedure and appear in this compilation in title 7. There are numerous other laws concerning criminal offenses which have been inserted in the framework of the basic act of 1890. As to the disposition of ch. 73, Laws 1890, see Table of Disposition of Acts.

CHAPTER 8 Offenses Against Public Justice

§ 6-8-103. Offering false mining claims for filing.

Every person who offers any location certificate for a placer mining claim, or lode claim, or affidavit of assessment work to be filed in an office of a county clerk of this state in behalf of himself, or for any other person, or any person who procures others to do so, knowing that the claim, certificate or affidavit was not preceded by a proper location of the claim physically upon the ground by the establishment of a proper notice of claim and the designation of the surface boundaries of the claim by substantial posts or monuments as required by the laws of the state shall be punished by imprisonment in the state penitentiary for not more than five (5) years, or by a fine of not more than five thousand dollars (\$5,000.00) or by both. (Laws 1973, ch. 2, § 1.)

Cross references.—As to prerequisites to As to affidavit of assessment work for any filing mine location certificates, see § 30-1-103. mining claim, see § 30-1-115.

TITLE 9

Administration of the Government

CHAPTER 3

Agencies, Boards, Commissions and Departments Generally

ARTICLE 3. STATE DEPARTMENT OF ECONOMIC PLANNING AND DEVELOPMENT

§ 9-3-301. Created; purpose; composition.

Effective July 1, 1969, there is created a department within the executive branch entitled the "state department of economic planning and development," hereinafter called "department." The department shall have as its purpose, the planning for and the development of the physical and economic resources of the state. The department shall consist of the office of economic planning and development; administrators and councils of the divisions of water, industrial and mineral development; and the board of economic planning and development. (Laws 1969, ch. 94, § 1.)

§ 9-3-302. Department succeeds Wyoming natural resource board.

The department is the successor to the Wyoming natural resource board, which is abolished as of July 1, 1969. Wherever the former board is referred to or designated by law, contract or other document, such reference or designation shall apply to the department, or to the division thereof in which the acts or functions so referred to or designated are vested by this act [§§ 9-3-301 to 9-3-317]. (Laws 1969, ch. 94, § 2.)

§ 9-3-303. Transfer of records, etc.

All records, property, personnel and unused funds of the Wyoming natural resource board shall be transferred to the department as of July 1, 1969. (Laws 1969, ch. 94, § 3.)

§ 9-3-304. Executive director.

(a) The governor shall appoint an executive director of the department who

shall be the department's executive and administrative head. The executive director, with the approval of the governor, shall appoint administrators for each of the divisions of water, industrial and mineral development, who shall be the executive and administrative heads of their respective divisions and will be responsible to the executive director. The executive director, with the approval of the governor, shall also appoint a chief of state planning whose duties shall be prescribed by the executive director after consultation with the governor. The chief of the state planning shall be responsible to the executive director. Each of said appointees shall serve at the pleasure of the appointing authority and their salaries shall be determined by the personnel commission.

(b) The executive director, with the advice of the respective administrators

and with the approval of the governor, may:

(i) Employ professional, technical and other assistants, one (1) of whom shall be a registered professional engineer, along with such other employees as may be necessary to carry out the purposes of W.S. 9-160.19 through 9-160.35 [§§ 9-3-301 to 9-3-317];

(ii) After consultation with the board, formulate the policies and programs to be carried out by the separate divisions, and adopt suitable rules and regulations for the administration of W.S. 9-160.19 through

9-160.35;

(iii) Submit an annual detailed report to the governor and to each member of the legislature on or before the first day of January of each year of the

operation of the department and its subdivisions for the year;

(iv) Appear, with approval of the governor, when no other officer or agency of the state is specifically empowered by law to do so, and represent the state in any proceeding or hearing whatsoever, including those before the congress, any department, bureau or agency of the United States or any state. (Laws 1969, ch. 94, § 4; 1975, ch. 180, § 2.)

Personnel commission abolished. — The personnel commission has been abolished, and the powers, duties and functions of the commission have been transferred to the personnel division of the department of administration and fiscal control. See §§ 9-3-2004, 9-3-2023.

Appropriation. - Section 3, ch. 180, Laws 1975, reads: "There is appropriated to the

interdepartmental water conference from the general fund of Wyoming one hundred eighty-four thousand dollars (\$184,000.00), to carry out the purposes of this act. Such funds shall be administered in the water planning fund established by W.S. 41-1.8 [§ 41-1-108] and shall be budgeted by the interdepartmental water conference for carrying out W.S. 41-1.42 through 41-1.46 [§§ 41-2-112 to 41-2-116]."

§ 9-3-305. Advisory councils; created; councils to constitute board of economic planning and development.

There is created within the department three (3) advisory councils to consist of three (3) members each: the council of water development; the council of industrial development; and the council of mineral development. Collectively they shall constitute the board of economic planning and development. (Laws 1969, ch. 94, § 5.)

Law review. — For comment, "State Level Transportation Management," see 6 Land & Water L. Rev. 701 (1971).

§ 9-3-311. Authority and powers of department.

(a) The department of economic planning and development is authorized to:

(i) Make such investigations and prepare such plans and specifications for development as may be deemed proper in connection with any resource of the state, industry or business within the state, and the attraction of new industries into the state, and to cooperate in the development and establishment of such new industries. Plans and feasibility studies for water development projects shall be made pursuant to W.S. 41-1.42 through 41-1.46 [§§ 41-2-112 to 41-2-116]:

(ii) Enter into contracts or agreements with the government of the United States, with state, county, city, towns, or other legal subdivisions, or with private corporations, associations or individuals for the conduct or execution of planning and investigations for the physical and economic development of Wyoming; and receive funds from any source for the conduct and

execution of such plans and investigations;

(iii) Receive, initiate, investigate, consider, recommend and promote, as herein provided, projects, plans and proposals for orderly and planned development, improvement and extension of public works, private works by agreement with the proper parties, and private works affected by public interest. Plans and feasibility studies for water development projects shall be made pursuant to W.S. 41-1.42 through 41-1.46;

(iv) Finance or assist the financing of any such projects and plans, including specifically, but not exclusively, those stated in this act [§§ 9-3-301

to 9-3-317];

(v) Loan according to law, money, assets and property to departments and agencies of the state and local government, persons, corporations and associations at such interest rates and taking such security and upon such terms and for such purposes as the executive director shall deem consistent with the purposes of this act [§§ 9-3-301 to 9-3-317], and in connection therewith foreclose any security instruments or otherwise take possession of the security and hold, own, manage, construct improvements on, improve, maintain and operate properties or assets, provided that title to all such property shall be in the state of Wyoming.

(b) In relation to water development projects authorized as provided in W.S. 41-1.45 [§ 41-12-115] and subsequent to specific legislative authorization for

each project, the department shall have the authority and power:

 (i) To design, construct, acquire, purchase, operate and maintain water development projects for the conservation, storage, distribution and use of water, or any feature, facility, function or portion of a project;

(ii) To enter into contracts for the performance of any of the above, to

consult with or employ experts and professional persons;

(iii) To acquire by purchase, lease, appropriation, gift, exchange or eminent domain, land, easements and other property deemed necessary for the construction, operation and maintenance of authorized water projects and to accept for this purpose gifts, grants and contributions of money from any source:

(iv) To acquire by purchase, lease, appropriation, development, gift, or exchange water rights deemed necessary for the construction, operation and maintenance of authorized water projects and to accept for this purpose

gifts, grants, and contributions of money from any source;

(v) To collect revenues from water projects pledged to secure revenue bonds, when authorized to finance a project of the Wyoming water development program, and to pool revenues from one (1) or more projects constructed or operated by the department;

(vi) To contract for the sale, lease or furnishing and delivery of water service, water rights, water storage, hydroelectric power, and to fix

charges, rates, rents, fees and tolls;

(vii) To acquire, operate and maintain any interest in, feature, facility or function of a project constructed by the United States, a legal subdivision

of the state, a special district, private corporation or person;

(viii) To contract with, contribute to or receive contributions from any legal subdivision of the state, special district, private corporation or person for the construction, operation, management and maintenance of any project or any interest in, feature, facility or function of a project; and

(ix) To take any action necessary to carry on any duties or powers under this act [§§ 9-3-301 to 9-3-317]. (Laws 1969, ch. 94, § 11; 1973, ch. 215, § 1;

Appropriation. - Section 3, ch. 180, Laws 1975, reads: "There is appropriated to the

1975, ch. 180, § 2.)

interdepartmental water conference from the general fund of Wyoming one hundred eighty-four thousand dollars (\$184,000.00), to carry out the purposes of this act. Such funds

shall be administered in the water planning fund established by W.S. 41-1.8 [\$ 41-1-108] and shall be budgeted by the interdepartmental water conference for carrying out W.S. 41-1.42 through 41-1.46 [§§ 41-2-112 to 41-2-116]."

§ 9-3-312. Receipt and disposition of moneys, etc.

When the authority in this section granted is not otherwise vested in the state of Wyoming, or one (1) of its officers, or in any of its county, municipal or other governmental subdivisions or official units, or in officers, boards or legal bodies thereof, the executive director, under the direction and control of the governor, is hereby authorized and empowered to receive assistance, assets and moneys donated, contributed, loaned, or allotted by any national resources board or other federal agency, by other states, or from any other source. Such moneys, together with the proceeds from the sale of any assets shall be used in the investigation, furtherance, construction, financing, operation and maintenance of any works or projects within the authorized activities of the department. All moneys shall be deposited with the state treasurer in the appropriate fund and account and expended by the department or loaned according to law to such local, state or federal agencies, departments or subdivisions as may by the executive director be deemed necessary or proper to carry out departmental duties and the purposes of this act [§§ 9-3-301 to 9-3-317], such loan to be made in such manner and upon such terms as may be deemed expedient and proper by the executive director; provided, however, that all moneys and the proceeds from the sale of all assets, donated, contributed, loaned or allotted for a particular or special purpose or purposes shall be expended, loaned or otherwise made available, only in compliance and in accordance with the purpose for which received. All funds to be used, administered, loaned or otherwise made available by the department in furtherance of and in carrying out projects, authorized by this act, shall be kept intact so far as may be by gifts, loans or grants from any source and by reimbursements and repayment of loans made, including interest thereon if required, together with such reimbursement which the department may require from those receiving benefits under a project for the cost of surveys, studies, plans and estimates made by the department in furtherance of such project. All gifts, loans, grants, repayments of loans, and reimbursements shall be paid to the state treasurer and by him deposited in the appropriate fund and account. (Laws 1969, ch. 94, § 12; 1974, ch. 16, § 2.)

Effective date. — Section 8, ch. 16, Laws 1974, makes the act effective July 1, 1975.

§ 9-3-313. Administrator; division of water development.

(a) The administrator of the division of water development shall be its administrative and executive head who shall be responsible to the executive director. The administrator of the division of water development shall be responsible for the duties imposed upon him by the legislature of Wyoming and the executive director in the conservation, planning and development of the water resources of this state, and he shall cooperate with the state engineer, without duplication of effort, and the duties of the administrator shall be directed to these general objectives.

(b) In addition to such other powers and duties as may be conferred by law upon the administrator, he shall, after consultation with the council of water

development, executive director and state engineer:

(i) Formulate the policies and programs to be carried out by the division;

(ii) Submit for inclusion within the annual report of the department of economic planning and development, a detailed report of the operation of

the division for the year;

(iii) Conduct studies and carry on any type of activity in connection with investigation, financing, and construction of proposed physical projects relating to the conservation, storage, distribution and use of water. Investigations, plans and feasibility studies shall be made pursuant to W.S. 41-1.42 through 41-1.46 [§§ 41-2-112 to 41-2-116];

(iv) Prepare and compile all information and data obtained, and make the same available to any and all individuals, local, state or federal agencies, departments, or subdivisions, irrigation, drainage or power districts and to the general public. (Laws 1969, ch. 94, § 13; 1973, ch. 48, § 1; 1975, ch. 180, § 2.)

Appropriation. — Section 3, ch. 180, Laws 1975, reads: "There is appropriated to the interdepartmental water conference from the general fund of Wyoming one hundred eighty-four thousand dollars (\$184,000.00), to carry out the purposes of this act. Such funds

shall be administered in the water planning fund established by W.S. 41-1.8[§ 41-1-108] and shall be budgeted by the interdepartmental water conference for carrying out W.S. 41-1.42 through 41-1.46 [§ 41-2-112] to 41-2-116]."

§ 9-3-314. Same; division of industrial development.

- (a) The administrator of the division of industrial development shall be its administrative and executive head who shall be responsible to the executive director. In addition to such other powers and duties as may be conferred by law upon the administrator, he shall, after consultation with the council of industrial development and executive director:
 - (i) Make such investigations and prepare such plans and specifications for development as are proper in connection with any resource of the state, industry or business within the state and the attraction of new industries into the state, and cooperate in the development and establishment of such new industries:
 - (ii) In cooperation with the division of mineral development, make studies of soil and its uses, including adaptability for cultivated crops, range and economic potentialities and related subjects of benefit to agriculture and stock raising;
 - (iii) Make studies to promote and protect the forest and range areas within the state, including those owned by individuals, by the state, or the United States. (Laws 1969, ch. 94, § 14.)

§ 9-3-315. Same; division of mineral development.

- (a) The administrator of the division of mineral development shall be its executive and administrative head who shall be responsible to the executive director. The state mineral supervisor and the state geologist shall cooperate with and make the information of their offices available to the administrator and his staff to facilitate the conservation and development of the mineral wealth of this state. In addition to such other powers and duties as may from time to time be conferred or imposed upon the administrator, he shall, after consultation with the council of mineral development and executive director:
 - (i) Make studies of all mineral resources, mines and mining, the exploration, development, conservation and production of oil and gas and other minerals, and present and future development thereof;
 - (ii) In cooperation with the division of water development recommend to each session of the legislature such legislation as may be necessary to effectuate a definite program or plan for the proper conservation, development and most beneficial utilization of the resources of the state; and to that end be assisted by the state oil and gas supervisor, state geologist and state engineer. (Laws 1969, ch. 94, § 15.)

Editor's note. — By virtue of ch. 174, Laws 1965, the former state mineral supervisor,

referred to in the introductory paragraph, is now the state oil and gas supervisor. See § 30-5-108.

§ 9-3-316. Chief of state planning.

The chief of state planning, under direction and control of the governor and executive director, may make such comprehensive state plans as may be deemed proper in the physical and economic development of the state of Wyoming. In order to avoid duplication, he shall cooperate in his planning efforts with other agencies or departments of state government who may also be preparing state plans. (Laws 1969, ch. 94, § 16.)

§ 9-3-317. Councils and board to counsel, advise and hold hearings.

The councils of water, industrial and mineral development shall counsel with and advise their respective administrators in the performance of the several functions of their divisions. Collectively, the board shall counsel with and advise the executive director of the department in the furtherance of the objectives of the department. Additionally, upon authorization by the executive director, the board or councils shall have the power to hold hearings, which shall be conducted as provided by the Wyoming Administrative Procedure Act [§§ 9-4-101 to 9-4-115]. (Laws 1969, ch. 94, § 17.)

Effective date. — Section 26, ch. 94, Laws 1969, makes the act effective from and after July 1, 1969.

§ 9-3-318. Feasibility and financing study to make use of water in Green River and Great Divide Basins.

(a) It is hereby declared to be in the public interest and to be the policy of Wyoming to foster and promote, by all reasonable means, the maximum development of the state's human, industrial, mineral, agricultural, and recreational resources. It is in the public interest to utilize said water resources, as expeditiously as it is feasible, to protect Wyoming's water resources from further encroachment by downstream states. It is in the public interest to make maximum, practical, beneficial, and multiple use of Wyoming's water resources, first in the drainage of origin and next in other drainages within the state.

(b) The state department of economic planning and development, shall in consultation with the Wyoming game and fish commission, the Wyoming department of agriculture, Wyoming state engineer, state recreation commission, and a legislative delegation composed of two (2) members of the senate to be appointed by the president of the senate and two (2) members of the house of representatives to be appointed by the speaker of the house are hereby authorized and directed to undertake forthwith a feasibility and financing study, which shall include various methods of financing to include [including] funding by issuance of revenue bonds for the development of projects as defined in this act [§§ 9-3-318, 9-3-319], for the necessary facilities to

make maximum, practical, beneficial and multiple use of Wyoming's water in the Green River and Great Divide Basins and to the degree that there is water in excess of the present and foreseeable uses in the Green River and Great Divide Basins, for the maximum, practical, beneficial and multiple use of Wyoming's Green River water in other river basins within the state. The organizations and persons named herein to conduct the feasibility study shall have the power to enter upon any lands, waters or premises for the purpose of making such surveys, soundings, borings, and examinations as the organizations and persons named herein may deem necessary or convenient for their purposes, and such entry shall not be deemed a trespass, nor shall an entry for such purposes be deemed an entry under any condemnation proceedings.

(c) The feasibility and financing study and report shall be filed with the governor on or before October 1, 1972, and with the forty-second legislature on or before January 1, 1973. (Laws 1971, ch. 206, § 1.)

Appropriation. — Subsection (c) of § 1, ch. 206, Laws 1971, reads: "There is hereby appropriated out of the funds of the state treasury of the state of Wyoming, not otherwise appropriated, the sum of \$100,000.00 or as much thereof as is necessary for the feasibility study provided in this act. Such funds shall be

administered through the department of economic planning and development pursuant to the purposes of feasibility and financial studies of this act."

Effective date. — Section 3, ch. 206, Laws 1971, makes the act effective from and after passage. Approved February 28, 1971.

§ 9-3-319. Construction of section 9-3-318.

Nothing in this act [§§ 9-3-318, 9-3-319] shall in any way be construed to do more than enable the state of Wyoming, through its agencies, to conduct a feasibility study to determine the best utilization of the state's water resources and protection of such resources from downstream states. (Laws 1971, ch. 206, § 2.)

Effective date. — Section 3, ch. 206, Laws 1971, makes the act effective from and after passage. Approved February 28, 1971.

§ 9-3-320. Fontenelle Reservoir; authorization to contract for purchase of storage capacity in reservoir.

The governor of Wyoming is authorized to negotiate, execute and deliver a contract between the United States of America and the state of Wyoming providing for the purchase by the state of Wyoming of sixty thousand (60,000) acre feet of storage capacity in Fontenelle Reservoir with any rights or appurtenances thereto, at a total cost not in excess of nine million twenty-six thousand dollars (\$9,026,000.00) for capital costs together with funded interest at the rate of two and six hundred thirty-two thousandths percent (2.632%) from December 31, 1968, to the date of the commencement of payments, all of which shall be paid in not more than forty (40) annual installments of principal plus interest at the rate of 2.632% per annum. (Laws 1973, ch. 128, § 1.)

Effective date. — Section 2, ch. 128, Laws 1973, reads: "Whereas an emergency exists for the immediate taking effect of this act, it shall be in full force and effect upon its passage." Approved February 24, 1973.

§ 9-3-321. Same; duties of department of economic planning and development upon execution of contract.

(a) In the event that the governor shall negotiate and execute such contract, the department of economic planning and development, in addition to its other powers and duties authorized by law, is authorized:

(i) To formulate and develop comprehensive plans for the development, utilization and sale of the yield of water stored in Fontenelle Reservoir to

potential users thereof;

(ii) To consult with and advise water users as to the availability of the yield of storage water from Fontenelle Reservoir and the most practicable

methods of water development and distribution;

(iii) To enter into water service contracts with water users for the furnishing of water yielded from the storage of Fontenelle Reservoir to the users thereof, based on the reasonable needs of water users so contracting with the board. All contracts for use of such water must be approved by

the governor and the state engineer;

- (iv) To set service rates charged for furnishing water from Fontenelle Reservoir, which revenue the department shall use to repay the contractual obligation of the state of Wyoming to the United States of America for the purchase of such water storage capacity and water rights. The price of any water sold under the provisions of this act [§§ 9-3-320, 9-3-321] shall be sufficient to pay all costs, including cost of water, interest, operating costs, and administration costs, and in addition thereto to bring a return to the state in an amount equal to the maximum rate of interest then being received by the state on investment of its permanent funds;
- (v) To file contracts negotiated with water users with the state engineer's office and provide the state engineer with such information as will enable him to accurately account for and identify water sold and used pursuant to this act [§§ 9-3-320, 9-3-321].
- (b) The department may negotiate contracts with water users only where the proposed use can be accomplished in a manner which will not injure or impair valid existing rights to the use of water, each of which shall be filed with the state engineer of the state of Wyoming, pursuant to rules and regulations promulgated pursuant to the water laws of Wyoming which shall be complied with.
- (c) All revenues derived from the furnishing of water to water users pursuant to this act [§§ 9-3-320, 9-3-321] shall be credited by the department to an account within the earmarked revenue fund. The department shall use any monies in this account for the repayment to the United States of the allocated cost of construction including interest and the operation and maintenance of the department's acquired space in the Fontenelle Reservoir. All monies in this account in excess of those required for the department's current operations

under this act shall be used, with the approval of the governor, for future obligations contracted by the department for water acquisition or physical water development. (Laws 1973, ch. 128, § 1; 1974, ch. 16, § 2.)

Effective dates. — Section 2, ch. 128, Laws 1973, reads: "Whereas an emergency exists for the immediate taking effect of this act, it shall be in full force and effect upon its passage."

Approved February 24, 1973.
Section 8, ch. 16, Laws 1974, makes the act effective July 1, 1975.

ARTICLE 4. WYOMING CONSERVATION AND LAND USE STUDY COMMISSION

§ 9-3-401, Created.

There is created a commission to be known as the "Wyoming conservation and land use study commission." (Laws 1973, ch. 184, § 1.)

§ 9-3-402. Composition.

The commission shall consist of seven (7) persons appointed by the governor, not more than four (4) of whom shall be of the same political party. (Laws 1973, ch. 184, § 1.)

§ 9-3-403. Advisory committee.

(a) There is created an advisory committee consisting of fourteen (14) members, four (4) of whom shall be members of the legislature and ten (10) of whom shall represent the specified state departments.

(b) The legislative members shall be appointed as follows: two (2) members of the senate appointed by the president of the senate, one (1) from each major political party; two (2) members of the house appointed by the speaker of the

house, one (1) from each major political party.

- (c) The specified state departments shall be represented by the following members: the director of the Wyoming air resources council; the director [administrator] of the Wyoming water quality division; the commissioner of public lands; the director of the state department of economic planning and development; the director of the Wyoming highway department [state highway superindendent]; the director of the Wyoming game and fish department; the commissioner of the Wyoming department of agriculture; the Wyoming state engineer; the director of the state recreation department; and the chairman of the Wyoming state conservation commission, or their respective designees.
- (d) Each member of the commission and the appointed members of the advisory committee shall serve a two (2) year term. Vacancies shall be filled by the initial appointing source.
- (e) The commission and advisory committee shall exist until the conclusion of the general and budget session of the 43rd legislature of Wyoming. (Laws 1973, ch. 184, § 1.)

Air resources council abolished. — The air resources council has been abolished and its powers, duties and functions transferred to the

air quality division of the department of environment quality. See \$\\$ 35-11-106, 35-11-107.

§ 9-3-404. Organization; meetings.

Following appointment of its members, the commission shall meet, organize and elect from its membership a chairman, a vice-chairman and a secretary. The commission shall have authority to fill vacancies in the offices from its membership. The commission shall meet upon call of the chairman or a majority of the commission members. At each meeting of the commission, the members of the advisory committee shall have the right to attend and participate, but not vote. (Laws 1973, ch. 184, § 1.)

Cross reference. — As to meetings of governmental agencies generally, see §5 9-11-101 to 9-11-107.

§ 9-3-405. Commission to utilize department of economic planning and development; officials to furnish information.

The commission shall utilize the staff of the Wyoming department of economic planning and development to assist in the performance of its duties. The commission may employ legal, administrative and clerical assistance and engage the services of research agencies as it deems desirable. All elected and appointed officials of the state and its political subdivisions are authorized and directed to promptly furnish the commission, upon its request, with such information, statistics and reports as is necessary, and shall cooperate with the commission to the fullest extent. The commission may receive and utilize gifts and any funds from federal or other governmental agencies pursuant to general provisions of the Wyoming statutes. (Laws 1973, ch. 184, § 1.)

§ 9-3-407. Powers and duties.

(a) The commission, in consultation with the advisory committee shall have the power and duty to:

(i) Study past, present and future land use controls in Wyoming, on the

state, federal and local governmental level;

(ii) Recommend to the governor and legislature a reasonable consolidation of existing land use controls with a recommendation for any additional controls;

(iii) Study the desirability of a public education effort relative to state

land use planning;

(iv) Report on the existing available data base for land use planning;

(v) Recommend projected data base requirements necessary for

statewide land use planning;

(vi) Study national legislation affecting state land use planning and

consider such in recommending appropriate state legislation;

(vii) Recommend necessary or appropriate constitutional amendments and legislation regarding statewide land use policy and planning for consideration by the 43rd legislature to be submitted to the legislature and governor not later than November 15, 1974;

(viii) Conduct hearings in at least four (4) separate cities or towns and in such other studies and investigations as may be required to carry out the purposes of this act [§§ 9-3-401 to 9-3-408] and also to consult appropriate federal agencies in making these studies. (Laws 1973, ch. 184, § 1.)

ARTICLE 14. GEOLOGIST, GEOLOGICAL SURVEY AND TOPOGRAPHIC MAPPING

Cross reference. — As to mines and minerals generally, see title 30.

Division 1. State Geologist Generally

§ 9-3-1401. Definitions.

(a) As used in W.S. 9-248.1 through 9-266 [§§ 9-3-1401 to 9-3-1441]:

(i) "Geology" means the science which treats of the earth in general, the earth's processes and its history, investigation of the earth's crust and the rocks and other materials which compose it, and the applied science of utilizing knowledge of the earth's history, processes, constituent rocks, minerals, liquids, gases and other materials for the use of mankind;

(ii) "Geologist" means a person who is a graduate of an institution of higher education that is accredited by a regional or national accrediting agency, with a minimum of thirty (30) semester or forty-five (45) quarter

hours of course work in geology; and

(iii) "Professional geologist" means a geologist as defined in W.S. 9-248.1 (a) (ii) [§ 9-3-1401 (a) (ii)] and who has had an additional five (5) years in aggregate of post baccalaureate geological training or experience, no more than two (2) years of which may have been in post graduate study. (Laws 1977, ch. 151, § 1.)

§ 9-3-1402. Preparation or approval of reports containing geological information; exceptions.

Any report required by law or by rule and regulation and prepared as a result

of or based on geological data or geological interpretation, or which contains information relating to geology as defined by W.S. 9-248.1 (a) (i) [§ 9-3-1401 (a) (i)], and is to be presented to or prepared for the state, any agencies or political subdivisions thereof, shall be prepared or approved by a geologist or professional geologist as defined by W.S. 9-248.1 (a) [§ 9-3-1401 (a)], provided however that the requirements of W.S. 9-248.2 [this section] shall not apply to state agency forms or exploratory mineral drill hole data defined under W.S. 36-74.1 [§ 36-6-102] or to any report required by law or rule or regulation to be filed with the oil and gas conservation commission. (Laws 1977, ch. 151, § 1.)

Effective date. — Section 3, ch. 151, Laws 1977, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 2, 1977.

§ 9-3-1403. Office created; appointment; term.

There shall be a state geologist of the state of Wyoming who shall be appointed by the governor by and with the consent of the senate. He shall hold his office for the term of six (6) years or until his successor shall have been appointed and qualified. (Laws 1901, ch. 45, § 1; C.S. 1910, § 208; C.S. 1920, § 221; R.S. 1931, § 109-1001; C.S. 1945, § 18-1201; W.S. 1957, § 9-249.)

Cross references. — For constitutional provision as to state geologists, see art. 9, \$ 6, Wyo. Const. For provisions as to protections of prehistoric ruins, pictographs, hieroglyphics or any other ancient markings or writings or archaeological and paleontological deposits, see \$ 36-1-114. For duty of state geologist to visit

and report upon lands held coal and mineral leases, see § 36-6-105.

Am. Jur. 2d references. — 63 Am. Jur. 2d Public Officers and Employees §§ 9, 14; 72 Am. Jur. 2d States, Territories and Dependencies § 62.

§ 9-3-1404. Oath; bond.

Before entering upon the duties of his office, the state geologist so appointed as hereinbefore provided, shall take the oath required by the constitution of this state and shall give a bond to the state of Wyoming with sureties to be approved by the governor in the sum of two thousand dollars (\$2,000.00), conditioned for the faithful performance of the duties of his office. (Laws 1901, ch. 45, § 2; C.S. 1910, § 209; C.S. 1920, § 222; R.S. 1931, § 109-1002; C. S. 1945, § 18-1202; W.S. 1957, § 9-250.)

Cross reference. — For constitutional provisions as to oath of office, see art. 6, §§ 20 and 21, Wyo. Const.

§ 9-3-1405. Removal from office.

The governor shall have the power to remove from office any person appointed to the position of state geologist for cause. The grounds for which shall be in writing and filed in the office of the secretary of state. (Laws 1901, ch. 45, § 3; C.S. 1910, § 210; C.S. 1920, § 223; R.S. 1931, § 109-1003; C.S. 1945, § 18-1203; W.S. 1957, § 9-251.)

Cross reference. — As to removal of appointive officers by governor generally, see § 9-2-101.

§ 9-3-1406. Duties.

(a) The state geologist shall make or cause to be made, examinations and reports on any state or school lands when so requested by the board of land commissioners and make written reports concerning the geology of any lands in which Wyoming is or may hereafter become interested, and on such other matters as the respective state boards may desire information.

(b) The state geologist shall:

- (i) Perform all other acts as are provided by the laws of Wyoming relating to mineral deposits;
- (ii) Make valuation surveys, investigations, appraisements and reports on the mineral resources of the state;
- (iii) Have authority to designate and supervise mining operations on state and school lands in the interest of economic development;
- (iv) Have authority to cooperate with the United States government, departments of the state of Wyoming, University of Wyoming or private corporations in the matter of geological, topographic, soil and mineral surveys, also industrial investigations and examinations that may bring about further economic development of the mineral resources of the state. The cooperative activities of his office may be accomplished on whatever basis he may determine but in no case shall the cost to the state exceed fifty percent (50%) thereof;

(v) As required by W.S. 9-21 [§ 9-2-103], report to the governor covering the activities of his office and include therein suggestions as to the enactment of laws relating to the mineral resources of the state;

(vi) Keep in his office full and complete records of all work done by him or under his supervision, all of which shall be the property of the state; and

(vii) Publish all reports, maps and data as he considers advisable and of public interest, and distribute the reports, maps and data to the public upon request either free or at a price he deems reasonable. (Laws 1901, ch. 45, § 4; C. S. 1910, § 211; Laws 1919, ch. 72, § 1; C. S. 1920, § 224; Laws 1927, ch. 90, § 1; R. S. 1931, § 109-1004; C. S. 1945, § 18-1204; Laws 1947, ch. 129, § 1; W.S. 1957, § 9-252; Laws 1973, ch. 215, § 1; 1977, ch. 151, § 2.

The 1977 amendment rewrote subsection (b). Repealing clauses. — Section 3, ch. 72, Laws 1919, repealed §§ 212, 213 and 214, C.S. 1910, and all laws and parts of laws in conflict with that act.

Section 3, ch. 90, Laws 1927, repealed all laws and parts of laws in conflict with that act.

Effective dates. — Section 4, ch. 72, Laws 1919, makes the act effective from and after passage. Approved February 22, 1919.

Section 2, ch. 129, Laws 1947, makes the act effective from and after passage. Approved

February 24, 1947.

Section 3, ch. 151, Laws 1977, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 2, 1977.

§ 9-3-1407. Interest in mineral property.

No person holding a pecuniary interest in any producing or prospective mineral property of any kind, including oil and gas, in this state shall be eligible to fill or hold the office of state geologist, or the office of assistant state geologist. (Laws 1901, ch. 45, § 9; C.S. 1910, § 216; C.S. 1920, § 226; R.S. 1931, § 109-1007; Laws 1933, ch. 33, § 1; C.S. 1945, § 18-1205; W.S. 1957, § 9-253.)

Repealing clauses. — Section 10, ch. 45, Laws 1901, repealed all laws and parts of laws in conflict with that act. Sections 2 and 3, ch. 33, Laws 1933 repealed §§ 109-1005 and 109-1006, R.S. 1931.

Effective date. — Section 11, ch. 45, Laws 1901, makes the act effective from and after passage. Approved February 16, 1901.

§ 9-3-1408. Salary; additional compensation.

The state geologist shall receive a salary as provided by law and shall receive no additional compensation for services rendered from any source whatsoever, provided, he shall be entitled to receive such additional compensation as may be provided for the position of executive director of the geological survey of Wyoming. (Laws 1969, ch. 138, § 1; 1971, ch. 190, § 21.)

Cross reference. — For amount of salary, see § 9-1-105.

Appropriations. - Section 23, ch. 190, Laws 1971, reads: "There is hereby appropriated, to be distributed by the state auditor, out of the funds in the treasury of the state of Wyoming not otherwise appropriated the sum of two hundred forty-two thousand five hundred dollars (\$242,500.00) or so much thereof as may be necessary, as determined by the assistant budget officer, to pay the salaries fixed by this act, and such appropriation is in addition to any funds heretofore appropriated for such purposes for the biennium ending June 30, 1971, and in addition to any funds appropriated for such purposes for the ensuing biennium ending June 30, 1973."

Section 24, ch. 190, Laws 1971, reads: "The state highway department, game and fish commission, public service commission, tax commission, employment security commission and workmen's compensation department, are hereby authorized to use an increased allotment of nongeneral fund income revenues in the amounts approved by the assistant budget officer to meet the additional expenses of salaries specified herein."

Effective date. — Section 25, ch. 190, Laws 1971, reads: "For all those public officials serving specific terms, this act shall be in force and effect as of the date of its passage. The balance of this act relating to the salaries provided for herein shall be in force and effect on July 1, 1971." Approved February 27, 1971.

Division 2. Geological Survey

§ 9-3-1420. Created; office and headquarters.

A geological survey of Wyoming is hereby created and is hereinafter referred to as the "geological survey." The office and headquarters of the geological survey shall be in Laramie, Albany county, Wyoming, and may be located within the physical plant of the University of Wyoming. (Laws 1933, ch. 33, § 5; C.S. 1945, § 18-1207; W.S. 1957, § 9-255; Laws 1969, ch. 189, § 1.)

Cross references. — For provision recognizing the desirability of collecting, analyzing and organizing studies, information and data concerning mineral deposits, geological

formations and mining and milling operations in the state, see § 30-2-302. As to Bear River Compact, see §§ 41-12-101 and 41-12-102. For duty of United States geological survey to collaborate with the officials of the states charged with the administration of the Belle Fourche River Compact, see § 41-12-203. As to Colorado River Compact, see §§ 41-12-301 and 41-12-302. For duty of director of United States geological survey to appoint a federal representative to participate as to the matters in disagreement in connection with the Snake River Compact, see § 41-12-501. For duty of United

States geological survey to collaborate with officials of the states charged with the administration of the Snake River Compact, see § 41-12-501. As to Upper Colorado River Basin Compact, see §§ 41-12-401 and 41-12-402. For duty of director of the United States geological survey to appoint member of commission to administer the Yellowstone River Compact, see § 41-12-601.

§ 9-3-1421. Purposes of survey; disposition of materials and specimens collected.

(a) The purposes of the geological survey shall be:

 (i) Studies of the geological formations and rocks of the state with special reference to its metallic and nonmetallic resources;

(ii) Examinations of the topography and physical features of the state with reference to their practical bearing upon the occupations of the people;

(iii) General studies leading to a comprehensive understanding of the geology and fossil life of the state;

(iv) The preparation and publication, from time to time, of reports and maps descriptive of the geology and mineral resources of the state;

(v) The preparation and publication, from time to time, of reports and maps descriptive of the topography and physical features of the state;

(vi) The preparation and publication of special reports, with necessary illustrations and maps, descriptive of the geology and fossil life of the state;

(vii) The preparation and publication of comprehensive summaries or digests, together with a complete bibliography and maps, of all literature and reports heretofore published on the geology and mineral resources of Wyoming;

(viii) The distribution of all publications and maps to the public upon request, either free or at prices determined by the geological survey;

(ix) To furnish advice and consulting services to state of Wyoming departments, agencies and officers;

(x) To contract with other Wyoming state agencies and the federal and other state geological surveys and industry to furnish services involving any of the foregoing purposes or areas related thereto;

(b) All materials and specimens collected, having served the purposes of the geological survey, shall be deposited in the geological museum of the University of Wyoming, provided that duplicates may be distributed to various scientific and industrial institutions under such regulations as the state geologist and the advisory board (hereinafter created) shall formulate. (Laws 1933, ch. 33, § 6; C.S. 1945, § 18-1208; W.S. 1957, § 9-256; Laws 1969, ch. 189, § 2.)

§ 9-3-1422. State geologist as executive director; salary; duties; appointment and compensation of employees.

The state geologist shall also be the executive director of the geological survey, hereinafter referred to as the executive director. Such executive director

shall receive a salary to be fixed by the governor after consultation with the advisory board but not to exceed five thousand dollars (\$5,000.00). The executive director shall supervise and direct the day-to-day functions of the geological survey and with the advice and aid of the advisory board shall establish policy for the geological survey. When the public interest will be served thereby, the executive director, after consultation with the advisory board, may appoint such other employees as are found to be necessary to assist the executive director and the advisory board. All employees or assistants authorized by this act [§§ 9-3-1420 to 9-3-1429] shall be paid their necessary travelling and living expenses while travelling on official business at such rate and within such limits as may be applicable to other employees of the state of Wyoming. (Laws 1969, ch. 189, § 3.)

§ 9-3-1423. Advisory board; created; purpose; rules and regulations; composition; qualifications of members; ex officio members.

The geological survey advisory board (the board) is hereby created and established within the executive department of the state government to aid the executive director of the geological survey in the formulation and direction of the policies and programs to be carried out by the geological survey. The board shall adopt suitable rules and regulations for the administration of this act [§§ 9-3-1420 to 9-3-1429]. The geological survey board shall consist of five (5) members, who shall be from the public at large, not more than three (3) of which members shall be from the same political party, who shall be qualified electors of the state and who possess knowledge, the experience and skill to fit them for the position. The governor, the president of the University of Wyoming, the state geologist and the state oil and gas supervisor shall be ex officio members of the board with full voting privileges. (Laws 1933, ch. 33, § 7; C.S. 1945, § 18-1209; W.S. 1957, § 9-257; Laws 1969, ch. 189, § 4.)

§ 9-3-1424. Same; appointment of members; vacancies.

The governor shall, by and with the consent of the senate, appoint the five (5) public members of the board in accordance with the provisions of this act [§§ 9-3-1420 to 9-3-1429]. Any vacancy caused by the death, removal, resignation or disqualification of any member of the board shall be filled by the governor for the unexpired term wherein the vacancy occurred. (Laws 1969, ch. 189, § 5.)

§ 9-3-1425. Same; terms of members; election of president and vice-president; vacancy in office of president or vice-president; secretary.

The term for which said board members shall serve shall be for four (4) years, provided that the term of the members to be first appointed shall be as follows: two (2) members whose terms shall expire on the first Monday of January, 1971;

two (2) members whose terms shall expire on the first Monday of January, 1972; and one (1) member whose term shall expire on the first Monday of January, 1973. At the first meeting of the board and thereafter at the regular meeting in March of each year, the board shall elect one (1) of its members president and one (1) of its members vice-president, and each of them shall hold his respective office for a period of one (1) year. Should a vacancy occur in the office of president or vice-president, the board shall appoint a member of the board to fill the vacancy for the remainder of the term. The board shall select a suitable person to act as secretary to the board to serve without pay. (Laws 1969, ch. 189, § 6.)

§ 9-3-1426. Same; meetings; special meetings; quorum; allowances.

The first meeting of the board shall be within sixty (60) days from the effective date of this act [§§ 9-3-1420 to 9-3-1429] and thereafter the board shall hold quarterly meetings on such dates as may be set by the president of the board during the months of March, June, September and December. Special meetings may be held by a call of the president of the board or by a majority of the members of the board. A majority of the members of the board present at a meeting shall constitute a quorum for the transaction of business. Each member of the board not otherwise a full-time employee of the state shall receive the same allowances as other state officials and employees as set forth in section 9-13, Wyoming Statutes, 1957 [§ 9-1-115], as amended, while attending and travelling to and from the meetings of the board. (Laws 1969, ch. 189, § 7.)

Cross reference. — As to meetings of governmental agencies generally, see §§ 9-11-101 to 9-11-107.

no provision as to its effective date, but was enacted at a session that adjourned on February 22, 1969.

Effective date. - Laws 1969, ch. 189, carried

§ 9-3-1427. Cooperation with other surveys, departments, etc.

The geological survey is hereby authorized to cooperate and exchange information with and contract with the United States geological survey, other state geological surveys, other departments of the state of Wyoming, the University of Wyoming, private industry, scientific institutions and foundations and all types of projects or undertakings which will further the purposes of the geological survey, provided that the cost to the state of Wyoming shall in no case exceed the amount approved therefor by the board. (Laws 1933, ch. 33, § 12; C.S. 1945, § 18-1214; W.S. 1957, § 9-262; Laws 1969, ch. 189, § 8.)

§ 9-3-1428. Use of University of Wyoming students for field expeditions.

The geological survey may organize from among the students of the University of Wyoming who are pursuing courses of study in the department of geology of the University of Wyoming, field expeditions for the purpose of performing work for the geological survey, using only such students who are

sufficiently advanced in their courses of study as to be able to perform the work. The expenses of such expeditions shall be paid for by the state of Wyoming from a general fund appropriation as provided by the legislature. All expenditures of such expeditions must be authorized by the board of the geological survey. (Laws 1933, ch. 33, § 13; C.S. 1945, § 18-1215; W.S. 1957, § 9-263; Laws 1969, ch. 189, § 9; 1973, ch. 245, § 3.)

Appropriation. — Section 4, ch. 245, Laws 1973, reads: "If an appropriation is made to an agency from a fund abolished or affected by this act, the appropriation shall be made from the fund into which the preexisting fund was consolidated."

Effective date. — Section 6, ch. 245, Laws 1973, makes the act effective on and after July 1, 1973.

§ 9-3-1429. Legislature to provide funds.

The legislature of the state of Wyoming shall provide such funds by appropriation as are reasonably necessary to meet the requirements of the state geologist and the geological survey. (Laws 1933, ch. 33, § 14; C.S. 1945, § 18-1216; W.S. 1957, § 9-264; Laws 1969, ch. 189, § 10.)

Effective date. — Section 15, ch. 33, Laws 1933, makes the act effective from and after passage. Approved February 7, 1933.

§ 9-3-1430. Disposition of fees, etc., from sale of publications or other materials.

All fees, charges or other receipts received by the state geologist or geological survey for the sale of publications or other materials shall be deposited by the state treasurer to the credit of the general fund. (Laws 1971, ch. 89, § 1; 1973, ch. 245, § 3.)

Appropriation. — Section 4, ch. 245, Laws 1973, reads: "If an appropriation is made to an agency from a fund abolished or affected by this act, the appropriation shall be made from the fund into which the preexisting fund was consolidated."

Effective date. — Section 6, ch. 245, Laws 1973, makes the act effective on and after July 1, 1973.

Division 3. Topographic Mapping

§ 9-3-1440. Future policy declared; cooperation with United States geological survey.

It is declared to be the future policy of the state of Wyoming to cooperate in the topographic mapping of the state of Wyoming with the topographic division of the United States geological survey in a program to secure accurate topographic maps of the state and to speed up this mapping. (Laws 1955, ch. 163, § 1; W.S. 1957, § 9-265.)

§ 9-3-1441. Appropriation for mapping; supervision of funds; selection of areas to be mapped.

That there is hereby appropriated from any funds in the state treasury not otherwise appropriated the sum of ten thousand dollars (\$10,000.00) to be expended under a cooperative contract with the United States geological survey on the survey and mapping of two (2) or more seven and one-half (7½) minute quadrangles. The funds so appropriated to be placed under the supervision of the state engineer. The selection of areas to be mapped shall be mutually agreed upon by the United States geological survey and the Wyoming advisory mapping committee. (Laws 1955, ch. 163, § 2; W.S. 1957, § 9-266.)

TITLE 10 AERONAUTICS

Revision of title. - Chapter 22, Laws 1978, revised this title, amending and renumbering §§ 10-1-101 to 10-6-104 as §§ 10-1-101 to 10-6-104, by § 1, ch. 22, Laws 1978. No detailed explanation of the changes made by the 1978 Act has been attempted, but, where appropriate, historical citations to former provisions have been added to corresponding sections in this title, and annotations from cases decided under former provisions have been placed under comparable sections in this title where it was felt

they will be helpful.

Section 2, ch. 22, Laws 1978, reads: "Any other act adopted by the Wyoming legislature during the same session which this act is adopted shall be given precedence and shall prevail over the amendments in this act to the extent that such acts are in conflict herewith."

Section 3, ch. 22, Laws 1978, reads: "This act

is effective May 27, 1978."

CHAPTER 2 Certification and Registration

ARTICLE 3. AERIAL HUNTING OR PROSPECTING

§ 10-2-301. Aerial hunting or prospecting; annual registration required; contents of registration forms; unlawful unless registered; pilot qualifications.

(a) On or before the first Monday in May each person prior to piloting aircraft to hunt, drive or trap wild horses or to prospect for minerals, shall register with the commission. The commission shall prescribe registration forms which shall contain the name and address of the owner of any aircraft employed as aforesaid, the name and address of the pilot of aircraft so employed, his airman rating, number of hours flown, airman certificate number, the make, model and type of aircraft, the identification number assigned to such aircraft and the type of electronic equipment or other apparatus used in aerial prospecting for minerals and such other information as the commission may require.

(b) It is unlawful for any person to engage in any activity described in W.S. 10-2-301 (a) unless registered with the commission. Any pilot performing these activities as a business or for hire shall have a minimum of five hundred (500) solo hours. (Laws 1955, ch. 37, §§ 1, 2; W.S. 1957, §§ 10-10, 10-11; Laws 1978,

ch. 22, § 1.)

Cross references. - For provision requiring report of accidents or injuries with reference to automobiles, snow vehicles, artificial light, etc., aircraft to Wyoming aeronautics commission,

see § 10-3-301. As to use of flying machine, for hunting or fishing, see § 23-3-306.



TITLE 11

Agriculture, Livestock and Other Animals

CHAPTER 34 Farm Loan Board

ARTICLE 1. IN GENERAL

§ 11-34-120. Mortgages, etc., to run to board; control, etc., of property with minerals, etc.; terms and conditions of leases; duration thereof; sale or lease of improved land; disposition of property by board; lease for farm purposes.

(a) All mortgages and accompanying promissory note or notes taken by the board for monies loaned shall run to Wyoming farm loan board as mortgagee or payee, and all titles to property taken by the board shall run to the board as grantee. The board may control, manage, lease and dispose of the property, subject to the following:

(i) The board may lease any or all property for oil and gas for a primary term up to ten (10) years and as long thereafter as oil or gas is produced in paying quantities and extend the term of existing oil and gas leases in good standing for as long as oil or gas is produced in paying quantities and for coal and other mineral purposes for terms not exceeding ten (10) years, with the preferential right in each coal or other mineral lessee to renew the lease for successive periods of ten (10) years each;

(ii) The board may make and establish rules and regulations governing the issuance of mineral leases and covering the conduct of development and

mining operations to be carried on thereunder;

(iii) Mineral leases may be issued upon monthly or annual minimum rental payment basis as fixed by the board, with payments annually applied against any royalty as shall accrue for the same lease year by the terms of the lease, which royalty, as to lands leased for oil or gas shall not be less than five percent (5%) of all oil and gas produced and saved from and not used in operations on the lands under the lease, and royalty of not less than five cents (\$.05) per ton on coal produced from the lands under any lease for coal purposes, the royalty to be paid on mine run of coal.

(b) No mineral lease is assignable or transferable except with written

consent of the board. It shall require the lessee's full compliance with all rules and regulations adopted by the board and compliance with all terms of the lease. All mineral leases shall be separate and distinct from each lease of the land for grazing or agricultural purposes. Rules and regulations adopted by the board shall provide for joint use of the lands for grazing and agricultural or mineral purposes without undue interference by the lessees under any class of leases with lessees under any other class. The board, on behalf of the state and its lessee in any mineral lease may join in the interest of conservation and greater ultimate recovery of oil and gas, in fair and equitable cooperative or unit plans of development or operation of oil and gas pools, with the United States government and its lessees or permittees, or others, and the board may modify and change any terms and conditions of any oil and gas lease as mutually agreed by the lessor and lessee to conform to the terms of any lease to the cooperative or unit plan and to effectuate proper operations thereunder. The changes may include extension of the term of years applicable to any lease for the full period of time during which the cooperative or unit plan may remain in effect,

(c) When a cooperative or unit agreement is terminated or ceases to be effective as to lands upon which there is no production of oil or gas, the lease covering the lands shall remain in effect for two (2) years from the date the lands ceased to be subject to the agreement, or for the remaining length of the term of the original lease, whichever is greater, and so long thereafter as oil or gas is produced from the lands in accordance with the requirements of the original

lease.

(d) The terms of any lease issued under this section for land on which actual drilling operations were commenced prior to the end of its primary term and are being diligently prosecuted at that time shall be extended for one (1) year and

so long thereafter as oil or gas is produced in paying quantities.

(e) If land acquired by the board and upon which improvements for mineral operations and other improvements have been made, are sold as to both surface and mineral rights, or if the lands are leased for minerals to other than the owner of the mineral improvements, the purchaser or new lessee shall pay the owner of the improvements the fair value thereof at a mutually agreed price. If agreement cannot be promptly reached the price shall be fixed by appraisement under the direction of the board. As used in this subsection "improvements" means improvements which are used or useful and necessary for subsequent operation of the land for mineral purposes and the price shall include the fair value of the work previously done in the development of the property if it is of practical use in future mineral operation. No well drilled on the land for oil or gas which does not produce either in commercial quantities, and no shaft, tunnel or drift from which coal or other minerals have been substantially exhausted shall be considered improvements for the purposes of this subsection.

(f) The board may sell or otherwise dispose of property at a price not less than seventy-five percent (75%) of the appraised value and upon terms determined by the board which shall adopt rules and regulations governing such sales. When land is sold the board may reserve all or any part of the mineral content of the land and the right to use so much of the surface of the land as it considers convenient or necessary in connection with mineral operations thereon, together with all needed rights of ingress and egress, but the board in each case shall appropriately provide for indemnification of the surface owner against all surface damages caused by mineral operations on the land.

(g) The board may lease for agricultural and grazing purposes any lands acquired by it on such terms and conditions as it prescribes and adopt rules and regulations it considers necessary in facilitating the leases. (Laws 1921, ch. 118, § 22; 1929, ch. 92, § 6; R.S. 1931, § 41-122; Laws 1945, ch. 143, § 1; C.S. 1945, § 21-122; Laws 1951, ch. 156, § 1; W.S. 1957, § 11-631; Laws 1965, ch. 194, § 1; 1978, ch. 32, § 1.)

Cross reference. — For meaning of "board," see § 11-34-101.

Cited in In re Hagood, 356 P.2d 135 (Wyo. 960).

Effective date. — Section 2, ch. 156, Laws 1951, makes the act effective from and after passage. Approved February 20, 1951.



TITLE 17

Corporations, Partnerships and Associations

Cross references. — As to right of eminent domain with reference to every person, association or corporation requiring a way of necessity for reservoirs, ditches, canals, electric light lines, railroad trackage, or mine truck haul roads, on or across lands of others for agricultural, mining, milling, municipal or sanitary purposes, or for the transportation of coal and as to the procedure in connection therewith, see §§ 1-26-401 to 1-26-403 and Rule 71.1, W.R.C.P. As to embezzlement by employees, see § 6-7-310. As to employees being allowed time off from work to vote, see § 22-2-111. As to employer interference with employee's political rights, see §§ 22-26-116 to

22-26-118. As to licensing copartnerships, associations or corporations as real estate brokers and salesmen, see §§ 33-28-101, 33-28-102 and 33-28-106. As to duty of director of the department of environmental quality to advise, consult and cooperate with corporations, partnerships and other business associations as to water and air pollution, see § 35-11-109. As to power of companies, associations and corporations operating irrigation systems, etc., to levy and collect assessments for cost of operation under Carey Act, etc., see § 36-7-326. As to unfair competition, discrimination and monopolies in connection with trade and commerce, see §§ 40-4-101 to 40-4-123.

CHAPTER 12

Miscellaneous Companies

Am. Jur. 2d and C.J.S. references. — 18 Am. Jur. 2d Corporations § 1 et seq. 18 C.J.S. Corporations § 1 et seq.

§ 17-12-101. Certificate of ditch company.

Whenever any three (3) or more persons associate under the provisions of this article, to form a company for the purpose of constructing a ditch or ditches for the purpose of conveying water to any mines, mills or lands to be used for mining, milling or irrigating of lands, they shall in their certificate, in addition to the matters required in the first section of this article, specify as follows: the stream or streams from which the water is to be taken out; the line of said ditch or ditches, as near as may be, and the use to which said water is intended to be applied. (C.L. 1876, ch. 34, Tit. I, § 28; Laws 1884, ch. 24, § 1; R.S. 1887, § 532; R.S. 1899, § 3066; C.S. 1910, § 4009; C.S. 1920, § 5082; R.S. 1931, § 28-143; C.S. 1945, § 44-137; W.S. 1957, § 17-188.)

Cross references. — For authority of public service commission to require local utilities to file lists of stockholders, directors, etc., see § 37-2-127. As to assessments against stockholders for care and maintenance of ditches, see § 41-5-105.

Meaning of references. - The words "this

article" and "the first section of this article" appeared in earlier compilations and referred to provisions repealed by § 128, ch. 85, Laws 1961. See now §§ 17-1-201 to 17-1-206.

Cited in Willey v. Decker, 11 Wyo. 496, 73 P.

210 (1903).

§ 17-12-102. Right-of-way of ditch company; interference with prior ditch and water rights.

Any ditch company formed under the provisions of this article shall have the right-of-way over the lines named in the certificate, and shall also have the right to run the water of the stream or streams named in the certificate through their ditch or ditches; provided, that the lines proposed shall not interfere with any other ditch whose rights are prior to those acquired under this article and by virtue of said certificate. Nor shall the water of any stream be directed from its original channel to the detriment of any miners, mill men or others along the line of said stream, or who may have a priority of right, and there shall be at all times left sufficient water in said stream for the use of miners and agriculturists who may have a prior right to such water along said stream. (C.L. 1876, ch. 34, Tit. I, § 29; Laws 1884, ch. 24, § 1; R.S. 1887, § 533; R.S. 1899, § 3067; C.S. 1910, § 4010; C.S. 1920, § 5083; R.S. 1931, § 28-144; C.S. 1945, § 44-138; W.S. 1957, § 17-189.)

Cross references. — As to power of eminent domain with reference to ditches and flumes, see §§ 1-26-301 to 1-26-303. For another provision concerning use of water for mining purposes, see § 30-1-117. As to right-of-way of any ditch or flume for mining purposes, see § 30-1-118.

Meaning of references. — See same catchline in note to § 17-12-101.

Cited in Willey v. Decker, 11 Wyo. 496, 73 P. 210 (1903).

§ 17-12-103. Proper condition of ditches required of ditch companies, etc.

Every ditch company organized under the provisions of this article shall be required to keep the banks of their ditch or ditches in good condition, so that the water shall not be allowed to escape from the same, to the injury of any mining claim, road, ditch or other property located and held prior to the location of such ditch; and whenever it is necessary to convey any ditch over, or across, or above any lode or mining claim, the company shall, if necessary to keep the water of said ditch out from any claim, flume the ditch so far as necessary to protect such claim or property from the water of said ditch; provided, that in all cases where the ditch has priority of right by location, the owners of such claim or property shall be compelled to protect themselves from any damages that might be created by said ditch, and the owner of such claim shall be liable for any damages resulting to said ditch by reason of the works or operations performed on such claim or property. (C.L. 1876, ch. 34, Tit. I, § 31; Laws 1884, ch. 24, § 1; R.S. 1887, § 535; R.S. 1899, § 3069; C.S. 1910, § 4011; Ç.S. 1920, § 5084; R.S. 1931, § 28-145; C.S. 1945, § 44-139; W.S. 1957, § 17-190.)

Cross reference. — As to care, maintenance and protection of irrigation ditches, see §§ 41-5-101 to 41-5-110.

Meaning of references. — See same catchline in note to § 17-12-101.

Section uses mandatory language. - This

section speaks in what the supreme court has thought about from time to time as being "mandatory" language. Wheatland Irrigation Dist. v. McGuire, 537 P.2d 1128 (Wyo. 1975), modified on rehearing, 562 P.2d 287 (1977).

But it was not intended to make an insurer

out of ditch owners. — Wheatland Irrigation Dist. v. McGuire, 537 P.2d 1128 (Wyo. 1975), modified on rehearing, 562 P.2d 287 (1977).

Waiver of right to damages. — Where water from spills in defendant's irrigation reservoir flowed onto plaintiff's land, and plaintiff, instead of acquiescing in defendant's offer to construct drainage ditches to divert the water away from his land, authorized defendant to allow water to flow there, he waived his right to recover damages for such alleged flowage until consent was withdrawn. Howell v. Big Horn Basin Colonization Co., 14 Wyo. 14, 81 P. 785 (1905).

Cited in Willey v. Decker, 11 Wyo. 496, 73 P. 210 (1903).

§ 17-12-104. Applicability of sections 17-12-101 to 17-12-104 to existing companies.

This act [§§ 17-12-101 to 17-12-104] shall apply to all ditch companies already formed and incorporated under the laws of Wyoming. (Laws 1884, ch. 24, § 2; R.S. 1887, § 536; R.S. 1899, § 3071; Laws 1907, ch. 86, § 17; C.S. 1910, § 4013; C.S. 1920, § 5086; R.S. 1931, § 28-147; C.S. 1945, § 44-140; W.S. 1957, § 17-191.)

§ 17-12-105. Authority of ditch and water companies to issue bonds and mortgage property.

Every corporation organized under the laws of Wyoming for the purpose of constructing or operating a system of waterworks, within the corporate limits of any city or town, and every ditch and water company organized under the laws of Wyoming shall have power, and is hereby authorized to mortgage or execute deeds of trust in whole or in part, of their real and personal property and franchises, to secure money borrowed by them for the construction or operation of their waterworks, or ditches, and may also issue their corporate bonds, to make all of said bonds payable to bearer, or otherwise, negotiable by delivery and bearing interest at such rates, and may sell the same at such rates and prices as they may deem proper; and said bonds shall be made payable at such times, and the principal and interest thereof may be made payable within or without this state, at such place or places as may be determined upon by said company. (Laws 1890-91, ch. 88, § 1; R.S. 1899, § 3070; C.S. 1910, § 4012; C.S. 1920, § 5085; R.S. 1931, § 28-146; C.S. 1945, § 44-141; W.S. 1957, § 17-192.)

Cross reference. — As to franchise of private corporations to operate waterworks in cities and towns, see §§ 15-7-480 to 15-7-490.

§ 17-12-106. Certificate of flume company.

When any company shall organize under the provisions of this article to form a company for the purpose of constructing a flume, their certificate, in addition to the matters required in the first section of this article, shall specify as follows: the place of beginning, the termini and the route so near as may be, and the purpose for which such flume is intended, and when organized according to the provisions of this chapter, said company shall have the right-of-way over the line proposed in such certificate for such flume; provided, it does not conflict with the right of any farmer, fluming, ditching or other company. (C.L. 1876, ch. 34, Tit. I, § 32; R.S. 1887, § 537; R.S. 1899, § 3072; C.S. 1910, § 4014; C.S. 1920,

§ 5087; R.S. 1931, § 28-148; C.S. 1945, § 44-142; W.S. 1957, § 17-193.)

Cross references. — As to power of eminent domain with reference to ditches and flumes, see §§ 1-26-301 to 1-26-303. As to right-of-way of any ditch or flume for mining purposes, see § 30-1-118.

Meaning of references. — The words "this article," "the first section of this article" and "this chapter" appeared in earlier compilations and referred to provisions repealed by § 128, ch. 85, Laws 1961. See now §§ 17-1-201 to 17-1-206.

TITLE 18

Counties

Cross references. - For constitutional provisions as to county organization, see art. 12, §§ 1 to 5, Wyo. Const. For provisions that the legislature shall make provisions for attaching unorganized counties or territory to organized counties for judicial purposes, see art. 5, § 24, Wyo: Const. For duty of county to provide district court with seal, see § 5-3-110. For duty of counties to designate the Wyoming aeronautics commission as its agent to apply for, accept, etc., funds granted by the United States government, see § 10-2-102. For authority of counties to regulate, prohibit or license the sale of alcoholic or malt beverages, see § 12-2-101. As to county central committees of political parties, see ch. 4 of title 22. As to selection of voting machines by county commissioners, see § 22-10-102. As to county, municipal and district health departments, see § 35-1-301 to 35-1-309. As to county board of equalization, see § 39-2-302. For provisions prohibiting discrimination in price between localities, see § 40-4-106. As to county department of public assistance and social services, see §§ 42-3-101 to 42-3-104.

Revision of title. - Section 1, ch. 124, Laws 1977, revised this title. No detailed explanation of the changes made by the 1977 Act has been attempted, but where appropriate, the historical citations have been added to the revised sections.

Section 2, ch. 124, Laws 1977, reads: "If any other act of the legislature enacted during the same session in which this act is enacted is in conflict with the provisions of this act, the other act shall prevail in all cases to the extent of such conflict, regardless of whether enacted before or after the enactment of this act,"

Section 3, ch. 124, Laws 1977, reads: "Notwithstanding the provisions of Section 2 of this act, if House Bill 88 is enacted during the 1977 regular session, effective January 1, 1978, W.S. 18-95(a) is repealed and W.S. 18-95(b) is renumbered as W.S. 18-3-102(c) and subsequent

subsections renumbered."

Section 4, ch. 124, Laws 1977, reads: "If House Bill 88 is enacted during the 1977 regular session, effective January 1, 1978, W.S. 18-3-204(a)(vi), (vii) and (viii), 18-3-205, 18-3-208 and 18-10-214 are repealed."

Section 5, ch. 124, Laws 1977, reads: "This act

is effective January 1, 1978."

Chapter 12, as enacted by § 1, ch. 124, Laws 1977, has been redesignated as present chapter 13, and the provisions which were enacted by 5 1, ch. 173, Laws 1977, have been inserted as chapter 12. Other changes from § 1, ch. 124, Laws 1977, have been noted throughout the title where applicable.

CHAPTER 5 Planning and Zoning

Cross references. - As to eminent domain generally, see §§ 1-26-101 to 1-26-405 and Rule 71.1, W.R.C.P. As to municipal and county airports generally, see §§ 10-4-101 to 10-4-107. As to county surveyors, see §§ 18-3-701 to 18-3-705. For the Wyoming Conservation Districts Law, see §§ 11-19-101 to 11-19-118. As to municipal zoning generally, see §§ 15-1-601 to 15-1-709.

ALR references. - Validity of statutes as to county planning or zoning, or planning or zoning in territory outside municipal limits, 131 ALR 1055.

Protest or petition by property owners, validity and construction of provisions of zoning statute or ordinance respecting, 4 ALR2d 335.

Applicability of zoning regulations to governmental projects or activities, 61 ALR2d

Judgment denying permit for use of premises under zoning regulations as bar to subsequent application, 71 ALR2d 1362.

Authority of zoning commission to impose, as condition of allowance of special zoning exception, permit, or variance, requirements as to highway and traffic changes, 49 ALR3d 492.

§ 18-5-107. Violation of provisions.

If a building, structure or facility is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land is used in violation of the provisions of W.S. 18-5-101 through 18-5-107 or of any regulation made thereunder, the proper local authorities of the county, in addition to remedies which may be prescribed by local regulations, may institute any appropriate legal action to prevent or abate such unlawful acts. (Laws 1955, ch. 232, § 9; W.S. 1957, § 18-289; Laws 1977, ch. 124, § 1.)

ARTICLE 2. PLANNING AND ZONING COMMISSION

§ 18-5-201. Authority vested in board of county commissioners; inapplicability of chapter to incorporated cities and towns and mineral resources.

To promote the public health, safety, morals and general welfare of the county, each board of county commissioners may regulate and restrict the location and use of buildings and structures and the use, condition of use or occupancy of lands for residence, recreation, agriculture, industry, commerce, public use and other purposes in the unincorporated area of the county. However, nothing in W.S. 18-5-201 through 18-5-207 shall be construed to contravene any zoning authority of any incorporated city or town and no zoning resolution or plan shall prevent any use or occupancy reasonably necessary to the extraction or production of the mineral resources in or under any lands subject thereto. (Laws 1959, ch. 85, § 1; 1967, ch. 202, § 1; 1977, ch. 124, § 1.)

Section not unconstitutional as improper delegation. — This section is not unconstitutional because it does not grant authority to the county planning and zoning commission to adopt a comprehensive zoning plan, and thus, it is not an improper delegation. Carter v. Board of County Comm'rs, 518 P.2d 142 (Wyo. 1974).

Legislature intended to differentiate this section from § 18-5-105. — The statements of the respective purposes in this section and § 18-5-105 clearly indicate that the legislature

intended to deal with separate subjects and provide authority to accomplish different objectives by the two pieces of legislation. Carter v. Board of County Comm'rs, 518 P.2d 142 (Wyo. 1974).

Law reviews. — See article, "Implementation of Land Use Policy: Police Power vs. Eminent Domain," 3 Land & Water L. Rev. 33 (1968).

See comment, "County and Municipal Flood Plain Zoning Under Existing Wyoming Legislation," 7 Land & Water L. Rev. 103 (1972).

CHAPTER 10

Archaeological, Geological and Historical Museums

Cross references. — For authority of director of state archives and historical department to assemble archaeological, historical, etc...

collections, see § 9-3-962. As to powers of cities and towns to establish and maintain public museums, see § 15-1-103(a)(xxx).

ARTICLE 1. GENERALLY

§ 18-10-101. County commissioners may purchase, construct, accept by gift, etc., museums and collections of exhibits.

Each board of county commissioners may purchase, construct or acquire by donation or otherwise archaeological, geological and historical museums and collections of exhibits and articles to be included in or added to the museums and collections. (Laws 1959, ch. 31, § 1; 1963, ch. 40, § 1; 1977, ch. 124, § 1.)

§ 18-10-102. Appropriation for construction, maintenance, etc.; annual tax levy.

Each board of county commissioners of any county owning, constructing or acquiring any museum or collection of exhibits may annually levy a tax of not to exceed one-half mill on each dollar of the taxable valuation of the property in the county, for the construction, maintenance and support of the museum or collection of exhibits. The levy shall be made at the same time as other county and school levies are made. The proceeds from the collection of the levy shall be placed in a special fund by the county treasurer and used solely for the purpose for which the levy was made. (Laws 1959, ch. 31, § 2; 1963, ch. 40, § 2; 1977, ch. 124, § 1.)

§ 18-10-103. Board of trustees; appointment; composition; qualifications of members; terms of office; vacancies.

Each board of county commissioners of any county owning, constructing or acquiring any museum or collection of exhibits shall appoint a board of trustees for the museum or collection composed of three (3) responsible electors of the county. The original board of trustees shall be appointed as follows: one (1) member for a one (1) year term, one (1) for a two (2) year term and one (1) for a three (3) year term, with each term expiring on June 30 of the appropriate year. Thereafter the board of county commissioners shall annually at its regular

meeting in June appoint a member of the board of trustees for a three (3) year term. If a vacancy occurs on the board of trustees the board of county commissioners shall appoint a person to complete the unexpired term. (Laws 1959, ch. 31, § 3; 1963, ch. 40, § 3; 1977, ch. 124, § 1.)

§ 18-10-104. Same; duties generally; employment of personnel; rules and regulations.

- (a) Each board of trustees of a county museum or collection of exhibits shall:
 - (i) Have the custody and control of the museum or collection;
 - (ii) Employ such personnel as required;
 - (iii) Make rules and regulations as necessary for the preservation, maintenance, operation and display of the museum or collection of exhibits;
 - (iv) Consult with the director of the state archives and historical department on matters relating to the management and operation of the county museum and enter into agreements with the state library, archives and historical board for the purpose of lending or borrowing materials and improving the management and operation of the county museum;
 - (v) Annually not later than June 1, file with the board of county commissioners a report detailing all gifts and donations made to the museum or collection and the receipts and expenditures during the preceding fiscal year, together with estimated requirements for expenditures for the ensuing fiscal year. (Laws 1959, ch. 31, §§ 4 to 6; 1977, ch. 124, § 1.)

Cross reference. — As to director of state archives and historical department, see §§ 9-3-960 to 9-3-964.

§ 18-10-105. Same; authority to provide funds for preservation of historical artifacts and landmarks.

The board of county commissioners may provide funds for the preservation of historical artifacts and landmarks when the same are threatened with removal or destruction. (Laws 1959, ch. 31, § 7; 1977, ch. 124, § 1.)

TITLE 21 Education

CHAPTER 17 University of Wyoming

* * *

ARTICLE 3. AGRICULTURE AND EXTENSION WORK

* * *

§ 21-17-307. Leases authorized; scope of authority to lease.

(a) The trustees of the University of Wyoming may grant mineral leases in the name of the state of Wyoming to any lands acquired in the name of the state of Wyoming for experimental farm purposes. This authority extends to those lands transferred into the control of the trustees of the University of Wyoming by chapter 99, Session Laws of Wyoming, 1923, and all other land theretofore or thereafter acquired in the name of the state of Wyoming for experimental farm purposes and now under the administration and control of the trustees of the University of Wyoming, whether or not acquired pursuant to express legislative authorization.

(b) Mineral leases executed under the authority hereby granted shall be executed by such persons, shall be granted upon terms prescribed by the state board of land commissioners for the leasing of other state lands and shall include such additional provisions as the trustees of the University of Wyoming determine to be necessary to protect the surface of the lands or the use thereof

for university purposes.

(c) If land used for experimental farm purposes is leased under this section, and it becomes untenable for experimental purposes by virtue of mineral production or exploration thereon, the trustees shall, without unnecessary delay, obtain other lands in the same general vicinity. In all cases the land obtained, whether by grant, purchase or gift, must be within the boundaries of the same county as the land rendered untenable and must be suitable for experimental farm purposes. The trustees shall take immediate steps to reestablish an operating experimental farm on the land obtained.

(d) All amounts received under mineral leases, including bonus payments, delay rentals and royalties, shall be expended for the purposes of the University of Wyoming as the trustees of the University of Wyoming may determine. (Laws

1963, ch. 96, §§ 1-4; 1977, ch. 169, § 1.)

Editor's note. — Chapter 99, Laws 1923, transferred the powers of the state board of horticulture and the agricultural advisory board

to the board of trustees of the University of Wyoming.

TITLE 23 Game and Fish

Effective date. — Section 5, ch. 249, Laws 1973, makes the act effective from and after passage. Approved March 9, 1973.

CHAPTER 1 Administration

ARTICLE 1. GENERAL PROVISIONS

- § 23-1-105. Migratory bird refuges; consent of state to acquisition of land by United States; approval of establishment by state officials; reservation of jurisdiction by state; reversion to state; reservation of certan rights by owner of land.
- (a) The state consents to the acquisition by the United States by purchase, gift, devise, or lease of land or land covered by water in the amount of twenty thousand (20,000) acres in the Seedskadee area in Sweetwater county where approved by the commission and the state land board. The acquisition shall be as the United States may deem necessary for the establishment and maintenance of migratory bird refuges in accordance with and for the purposes of the act of congress approved February 18, 1929 entitled "Migratory Bird Conservation Act" (Public Law 770, 70th congress) [16 U.S.C. §§ 715 to 715r] and amendments thereto, and the act of congress approved March 16, 1934, entitled "Migratory Bird Hunting Stamp Act" (Public Law 124, 73rd congress) [16 U.S.C. §§ 718 to 718h] and amendments thereto.
- (b) The land or land under water may be used by the United States as refuge for migratory birds. Wyoming reserves full and complete jurisdiction and authority over all such areas not incompatible with the administration, maintenance, protection, and control of the areas by the United States under the terms of the acts of congress stated herein. If the land or land under water is purchased by the United States, the deed shall contain a clause that in the event the land or land under water ceases to be used as a migratory bird refuge, it shall revert to the state.
 - (c) The owner of any land to be acquired under this section is entitled to

reserve all oil, gas, coal or other minerals owned by him in or upon the land together with the right to enter upon the land for exploration, development, and production of oil, gas, coal, or other minerals. (Laws 1959, ch. 162, §§ 1, 2; 1973, ch. 249, § 1.)

TITLE 27

Labor and Employment

Cross references. - For constitutional provision as to protection of labor, see art. 1, § 22, Wyo. Const. As to right of action for injuries in connection with mining operations, see art. 9, § 4, Wyo. Const. For constitutional provisions concerning labor generally, see art. 19, §§ 2 to 8, Wyo. Const. As to relationship of master and servant as sufficient cause for challenge in connection with jury duty, see § 1-11-203. As to attachment and garnishment generally, see §§ 1-15-101 to 1-15-407. As to wage earners exemption from garnishments, see § 1-17-411. As to enforcement of judgments by garnishment, see §§ 1-17-501 to 1-17-505. As to release of garnished wages on giving bond and suits in the justice of the peace courts, see § 1-21-326. As to embezzlement by employees, see § 6-7-310. As to parole to permit continuation of employment, see §§ 7-13-501 to 7-13-507. As to labor by prisoners generally, see §§ 7-13-701 to 7-13-727. As to preference for Wyoming contractors, labor, etc., generally, in connection with public works and contractors, see §§ 9-8-302 to 9-8-308. As to disputed labor claims in connection with public works contracts and contractor's bonds, see § 9-8-317. As to Wyoming Preference Act of 1971, see §§ 9-8-401 to 9-8-406.

As to fire and police departments in cities and towns generally, see §§ 15-5-101 to 15-5-301. As to exemption of members of national guard from labor on the public highways, see § 19-2-501. As to preference with reference to employment of veterans in public departments or public works, see § 19-6-102. For provisions that employees are entitled to time off to vote, see § 22-2-111. As to interference with employees political rights or threatening discharge for political involvements, see §§ 22-26-116 to 22-26-118. As to mechanic's', materialman's', and laborer's' liens generally, see title 29. For authority of public utilities to furnish transportation free of charge or at reduced rates to employees and former employees, etc., see § 37-3-105. As to embezzlement of railroad cickets by railroad employees, see § 37-12-102.

CHAPTER 1

General Provisions

Am. Jur. 2d, ALR and C.J.S. references. — 48 Am. Jur. 2d Labor and Labor Relations § 1 et seq.; 53 Am. Jur. 2d Master and Servant § 1 et seq.

Express agreement by master to be responsible for any accident that may be sustained by servant incident to work, 60 ALR 474.

Federal Employers' Liability or Safety Appliance Act, 1 ALR2d 302.

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Employee's rights with respect to compensation or bonus where he continues in employer's service after expiration of contract for definite term; quantum meruit recovery, 53 ALR2d 396.

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Duty to care for or to furnish medical aid to servant stricken by illness, 64 ALR2d 1108.

Right of employee who has wrongfully appropriated trade secrets, in accounting for profits, to set off losses, 67 ALR2d 825.

Mining grubstake agreements distinguished from employment contracts, 70 ALR2d 908.

Liability of master for injury or death of servant on master's premises where injury occurred outside working hours, 76 ALR2d 1215.

Liability for injury from overhead door, 83 ALR2d 748.

Enforceability, under statute of frauds provision as to contracts not to be performed within a year, of oral employment contract for more than one year but specifically made terminable upon death of either party, 88 ALR2d 701.

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Attempt to terminate employment upon shorter notice than that stipulated in contract, 96 ALR2d 272.

Provision in employment contract requiring written notice before instituting action, 4 ALR3d 439.

Validity of individual employment contract for specific term which contains provision that employee will perform if physically able, if health permits or the like, 7 ALR3d 898.

Employer's liability to employee or agent for physical injury received as result of assault by third person, 9 ALR3d 517. Employer's liability to employee for malpractice of physician supplied by employer, 16 ALR3d 564.

Employer's misrepresentations as to employee's or agent's future earnings as actionable fraud, 16 ALR3d 1311.

Liability for inducing employee not engaged for definite term to move to competitor, 24 ALR3d 821.

Measure of damages for fraudulently inducing employment contract, 24 ALR3d 1388.

Employer's misrepresentation as to prospect or duration of employment as actionable fraud, 24 ALR3d 1412.

Liability, under Federal Employers' Liability Act [45 U.S.C. § 51 et seq.], for industrial or occupational poisoning, 30 ALR3d 735.

Judgment in action on express contract for labor or services as precluding, as a matter of res judicata, subsequent action on implied contract (quantum meruit) or vice versa, 35 ALR3d 874.

Rights and obligations under employeremployee suggestion plans, 40 ALR3d 1416.

Employer's liability for theft or disappearance of employee's property left at the place of employment, 46 ALR3d 1306.

51 C.J.S. Labor Relations § 1 et seq.; 56 C.J.S. Master and Servant § 1 et seq.

§ 27-1-101. Manufacturing establishment defined; person defined.

Manufacturing establishments, as those words are used in this act [§§ 27-1-101 to 27-1-104, 27-1-108, 27-1-109, 27-2-101 to 27-2-110], shall mean and include all smelters, oil refineries, cement works, mills of every kind, machine and repair shops, and in addition to the foregoing, any other kind or character of manufacturing establishment, of any nature or description whatsoever, wherein any natural product or other articles or materials of any kind, in a raw or unfinished or incomplete state or condition, are converted into a new or improved or different form. Wherever the expression occurs in this act in substantially the following words: "every person owning or operating any manufacturing establishment," or where language similar to that is used, the word "person" in that connection shall be held and construed to mean any person or persons, partnership, corporation, receiver, trust, trustee, or any other person or combination of persons, either natural or artificial, by whatever name he or they may be called. (Laws 1917, ch. 113, § 8; C.S. 1920, § 268; R.S. 1931, § 109-1208; C.S. 1945, § 54-309; W.S. 1957, § 27-1.)

§ 27-1-102. Doors at public places to open outward; handrails on stairs; enforcement.

All doors leading into or to any manufacturing establishment, mills, workshops, offices, bakeries, laundries, stores, hotels, theaters, halls, or other buildings in which people are employed, shall be so constructed as to open outward, when practicable, and shall not be locked, bolted or fastened so as to prevent free egress during working hours. Proper and substantial handrails shall be provided on all stairways in manufacturing establishments, mills, workshops, offices, bakeries, laundries, stores, hotels, theaters, halls, and other buildings where people are employed or rooms are rented to the public. And he [the commissioner of labor and statistics] shall have authority to enforce by due process of law, the provisions of this section, and other laws relating to fire escapes. (Laws 1917, ch. 113, § 6; C.S. 1920, § 266; R.S. 1931, § 109-1206; C.S. 1945, § 54-307; W.S. 1957, § 27-2.)

§ 27-1-103. Safety devices on elevators, etc., and machinery.

The openings of all hoistways, hatchways, elevators, well holes and stairways in manufacturing establishments, mills, workshops, bakeries, laundries, stores, hotels, theaters, halls, or any other kind of establishment where labor is employed, or machinery used, shall be protected by trapdoors, hatches, fences, automatic gates or other safeguards, and all due diligence shall be used to keep all such means of protection closed, except when it is necessary to have the same open for use when practicable. All machinery, in use in any mercantile, manufacturing, or any other establishment whatsoever where labor is employed, shall be equipped, with proper shifters for throwing on or off pulleys, loose pulleys and other such safeguards as may be deemed necessary by the commissioner of labor for the proper safeguard of life and limb. (Laws 1917, ch. 113, § 7; C.S. 1920, § 267; R.S. 1931, § 109-1207; C.S. 1945, § 54-308; W.S. 1957, § 27-3.)

§ 27-1-104. Mines and interstate railroads exempt.

Nothing herein contained, as applied to inspection and application of safety devices, shall be construed to be applicable to coal and metalliferous mines and workshops connected therewith, nor to railroads engaged in interstate commerce and workshops connected therewith. (Laws 1917, ch. 113, § 17; C.S. 1920, § 277; R.S. 1931, § 109-1217; Laws 1933, ch. 116, § 1; C.S. 1945, § 54-318; W.S. 1957, § 27-4.)

Cross references. — As to safety regulations in mining operations generally, see §§ 30-2-401 to 30-2-433. As to safety regulations in coal mines, see §§ 30-3-401 to 30-3-506. As to safety regulations in noncoal mines, see §§ 30-4-301 to 30-4-305. As to railroads generally, see §§ 37-9-101 to 37-10-105.

Repealing clause. — Section 18, ch. 113, Laws 1917, repealed all laws and parts of laws in conflict therewith.

Effective date. — Section 19, ch. 113, Laws 1917, makes the act effective from and after passage. Approved February 21, 1917.

CHAPTER 4

Wages

Cross references. - As to wage earners' exemption from garnishments, see § 1-17-411. As to garnishment of salary or wages of city employees, see § 1-17-504. For salary provisions applying to the various forms of cities, see §§ 15-3-205, 15-4-105 and 15-4-220. As to deductions from salaries for firemen's and policemen's pension funds, see §§ 15-5-203, 15-5-221 respectively. As to maximum and minimum salaries for firemen and policemen, see § 15-5-301. As to definition of "wages," in connection with unemployment compensation, see § 27-3-102. As to property subject to taxation generally, see § 39-1-102. As to salaries of state officers and employees and as to limitation on salaries not fixed by statute, see § 9-1-105 et seq.

Am. Jur. 2d, ALR and C.J.S. references. — 48 Am. Jur. 2d Labor and Labor Relations §§ 1765 to 1837; 53 Am. Jur. 2d Master and Servant §§ 71 to 96.

Duration of contract of hiring which specifies no term, but fixes compensation at a certain amount per day, week, month or year, 11 ALR 469; 100 ALR 834; 161 ALR 706.

Servant's right to compensation for extra work or overtime, 25 ALR 218; 107 ALR 705.

Right of employee to bonus as affected by termination of employment before bonus becomes payable, 28 ALR 346.

Recovery on quantum meruit where contract of employment is too indefinite to be enforced because it leaves amount to be paid in performance thereof to promissor's determination, 92 ALR 1406.

Statute designed to prevent discrimination between male and female employees as regards wages, 130 ALR 436.

Rights and remedies of insurance company in

respect of amounts which employer has deducted, assumed to deduct, or agreed to deduct, as premiums, from salary or wages of employees, 137 ALR 493,

Portal-to-Portal Act, 3 ALR2d 1097: 21 ALR2d

1327.

Running of statute of limitations against claim for services rendered over extended period under indefinite employment not fixing time of payment, 7 ALR2d 198.

What constitutes change of position by payee-servant so as to preclude recovery of payment made under mistake, 40 ALR2d 1035,

Construction of "net profits," "earnings" or the like, in provision for profit-sharing bonus of corporate employees, 49 ALR2d 1129.

Employee's right with respect to compensation where he continues in employer's service after termination of contract for definite term, 53 ALR2d 384.

Recovery back by employer of compensation paid to employee as result of mistake or the employee's fraud, 88 ALR2d 1437.

Garnishment of salary, wages or commissions where defendant debtor is indebted to garnishee-employer, 93 ALR2d 995.

Personal liability of servant or agent for advances or withdrawals in excess of commissions earned, bonus or share of profits, 32 ALR3d 802.

Rights and obligations under employer-employee suggestion plans, 40 ALR3d 1416.

What contracts are subject to wage and hour requirements of Walsh-Healey Act [41 U.S.C. § 350], 2 ALR Fed. 637.

56 C.J.S. Master and Servant §§ 81 to 160 (13);

98 C.J.S. Work and Labor 5 8 et seg.

ARTICLE 1. IN GENERAL

- § 27-4-101. Semimonthly payments required; method of payment; agricultural operations exempt; payment in case of labor dispute or temporary layoff.
- (a) Every person, firm or corporation, engaged in the operation of any railroad, mine, refinery, and work incidental to prospecting for, or the production of, oil and gas, or other factory, mill or workshop, within the state of Wyoming, shall, on or before the first day of each month, pay the employees thereof the

wages earned by them during the first half of the preceding month ending with the fifteenth day thereof, and on or before the fifteenth day of each month pay the employees thereof the wages earned by them during the last half of the preceding month; provided, however, that if at any time of payment any employee shall be absent from his or her regular place of labor, and shall not receive his or her wages, at that time due and owing, through a duly authorized representative, he or she shall be entitled to said payment at any time thereafter upon demand on the proper paymaster or at the place where such wages are usually paid; provided, further, that if the first or the fifteenth of the month occurs on a day which is not a working day, that the last preceding working day shall be the payday, for all personnel who are regularly paid at one (1) location. provided, further, every employer shall establish and maintain regular paydays as herein provided and shall post and maintain copies of this law printed in plain type in at least two (2) conspicuous places where such notices can be seen by the employees. Provided, further, that state employees receive their pay at a date no later than the eighth of the month following the month of employment, for which said payment is made.

(b) Every employer shall, at the time of each payment of wages, furnish each of his employees with a detachable part of the check, draft or voucher, paying the employees' wages, giving an itemized statement in writing showing all deductions made from such wages. If the employer does not make his payroll payments in the aforementioned manner, then he shall provide such itemized statement on a slip attached to such payment. Nothing in W.S. 27-192 through 27-194 [§§ 27-4-101 to 27-4-103] shall be construed to prohibit an employer from depositing wages due or to become due or an advance on wages to be earned, in an account in any bank, savings and loan association, credit union or other financial institution authorized by the United States or one (1) of the several states to receive deposits in the United States if the employee has voluntarily

authorized such deposit.

(c) Agricultural operations shall be exempt from the provisions provided

herein.

(d) When work of any employee is suspended as a result of a labor dispute, or when an employee for any reason whatsoever is temporarily laid off, the employer shall pay in full to such employee on the next regular payday, either through the regular pay channels or by mail if requested by the employee, wages earned to the time of suspension or layoff. (Laws 1919, ch. 73, § 1; C.S. 1920, § 4310; Laws 1923, ch. 36, § 1; R.S. 1931, § 63-114; C.S. 1945, § 54-601; Laws 1953, ch. 135, § 1; W.S. 1957, § 27-192; Laws 1959, ch. 183, § 1; 1973, ch. 99, § 1; 1975, ch. 100, § 1.)

Cross reference. — For provision requiring lawful money, check or draft, see § 30-3-101 et miners and laborers to be paid semi-monthly in seq.

§ 27-4-102. Same; exceptions by agreement of parties.

Nothing in this act [§§ 27-4-101 to 27-4-103], however, shall be so construed as to mean that on any special occasion where it appears to be satisfactory and beneficial to both employer and employee, and they shall not have the right to agree either verbally or in writing, as to where and at what time, other than every fifteen (15) days, wages shall be paid; provided, that it shall be unlawful for any employer to require any employee to enter into any such agreement as a condition to entering into or remaining in his service. (Laws 1923, ch. 36, § 2; R.S. 1931, § 63-115; C.S. 1945, § 54-602; W.S. 1957, § 27-193.)

§ 27-4-103. Same; penalty.

Every person violating any of the provisions of this act [§§ 27-4-101 to 27-4-103], shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00), or by imprisonment in the county jail for a period of not more than ninety (90) days, or by both such fine and imprisonment. (Laws 1923, ch. 36, § 3; R.S. 1931, § 63-116; C.S. 1945, § 54-603; W.S. 1957, § 27-194.)

Repealing clause. — Section 4, ch. 36, Laws 1923, repealed all laws and parts of laws in conflict therewith.

Effective date. — Section 5, ch. 36, Laws 1923, makes the act effective from and after passage. Approved February 20, 1923.

§ 27-4-104. Payment of employee quitting or discharged; suit for wages.

- (a) Whenever an employee quits the service or is discharged therefrom, such employee shall be paid, whatever wages are due him or her, in lawful money of the United States of America, or by check or draft which can be cashed at a bank. and said wages shall be paid within a period of seventy-two (72) hours when he or she voluntarily quits the service, or when an employee is discharged from the service he or she shall be paid within twenty-four (24) hours after his or her discharge. The provisions of this section shall not apply to employees working for interstate carriers where the payroll records of such employees are kept at a location outside the state of Wyoming. In such instances the employee shall be paid within forty-eight (48) hours after the termination of his or her employment. In any event, the employer may offset from any monies due the employee as wages, such sums as may be due said employer from said employee, which have been incurred by said employee during his employment. The provisions of this section shall not apply to the earnings of a sales agent employed on a commission basis and having custody of accounts, money or goods of his principal where the net amount due such agent may not be determinable except after an audit or verification of sales, accounts, funds or stocks.
- (b) Whenever an employee who has quit the service or has been discharged therefrom shall have cause to bring suit for wages earned and due according to the terms of his employment, and shall establish by decision of the court or

verdict of the jury that the amount for which he has brought suit is justly due, the court before which the case is tried shall allow to the plaintiff a reasonable attorney fee, to be taxed as costs of suit. (Laws 1919, ch. 73, § 2; C.S. 1920, § 4311; R.S. 1931, § 63-125; Laws 1945, ch. 26, § 1; C.S. 1945, § 54-604; Laws 1947, ch. 35, § 1; W.S. 1957, § 27-195; Laws 1967, ch. 88, § 1.)

Cross references. — As to collection of unpaid wages generally, see art. 5 of this chapter. As to assignment of unpaid wages to the commissioner of labor and statistics, see \$5 27-4-502, 27-4-504.

Effective date. Section 2, ch. 35, Laws 1947, makes the act effective from and after passage. Approved February 12, 1947.

§ 27-4-105. Penalty for violation of section 27-4-104.

Every person, firm or corporation, violating any of the provisions of this act [§ 27-4-104] shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars (\$50.00), nor more than five hundred dollars (\$500.00), for each offense. (Laws 1919, ch. 73, § 3; C.S. 1920, § 4312; R.S. 1931, § 63-126; C.S. 1945, § 54-605; W.S. 1957, § 27-196.)

Repealing clause. — Section 4, ch. 73, Laws 1919, repealed all laws and parts of laws in conflict therewith.

Effective date. — Section 5, ch. 73, Laws 1919, makes the act effective from and after passage. Approved February 22, 1919.

§ 27-4-106. Assignment of certain accounts and prosecution of certain suits prohibited.

It is hereby declared unlawful for any creditor or other holder of any evidence of debt, book account, or claim of any name or nature against any laborer, servant, clerk or other employee of any corporation, firm or individual in this state for the purpose below stated, to sell, assign, transfer, or by any means dispose of any such claim, book account, bill or debt of any name or nature whatever, to any person or persons, firm, corporation or institution, or to institute elsewhere than in this state or prosecute any suit or action for any such claim or debt against any such laborer, servant, clerk or employe, by any process seeking to seize, attach or garnishee the wages of such person or persons earned within sixty (60) days prior to the commencement of such proceedings for the purpose of avoiding the effect of the laws of the state of Wyoming concerning exemptions. (Laws 1895, ch. 47, § 1; R.S. 1899, § 2516; C.S. 1910, § 3424; C.S. 1920, § 4300; R.S. 1931, § 63-119; C.S. 1945, § 54-606; W.S. 1957, § 27-197.)

§ 27-4-107. Aiding, abetting violation of section 27-4-106 prohibited.

It is hereby declared unlawful for any person or persons to aid, assist, abet or counsel a violation of section one of this act [§ 27-4-106] for any purpose whatever. (Laws 1895, ch. 47, § 2; R.S. 1899, § 2517; C.S. 1910, § 3425; C.S. 1920, § 4301; R.S. 1931, § 63-120; C.S. 1945, § 54-607; W.S. 1957, § 27-198.)

§ 27-4-108. Prima facie evidence.

In any proceeding, civil or criminal, growing out of a breach of sections 1 and 2 of this act [§§ 27-4-106 and 27-4-107], proof of the institution of a suit or service of garnishment summons by any persons, firm or individual in any court of any state or territory other than this state, to seize by process of garnishment or otherwise, any of the wages of such persons as defined in section 1 of this act [§ 27-4-106] shall be deemed prima facie evidence of an evasion of the laws of the state of Wyoming, and a breach of the provisions of this act [§§ 27-4-106 to 27-4-109] on the part of the creditor or resident in Wyoming causing the same to be done. (Laws 1895, ch. 47, § 3; R.S. 1899, § 2518; C.S. 1910, § 3426; C.S. 1920, § 4302; R.S. 1931, § 63-121; C.S. 1945, § 54-608; W.S. 1957, § 27-199.)

§ 27-4-109. Liability and penalty for unlawful assignment.

Any person, firm, company, corporation, or business institution guilty of a violation of sections 1 and 2 of this act [§§ 27-4-106 and 27-4-107] shall be liable to the party so injured for the amount of the debt sold, assigned, transferred, garnisheed, or sued upon, with all costs and expenses, and a reasonable attorney's fee to be recovered in any court of competent jurisdiction in this state, and shall further be liable by prosecution to punishment by a fine not exceeding the sum of one hundred dollars (\$100.00) and costs of prosecution. (Laws 1895, ch. 47, § 4; R.S. 1899, § 2519; C.S. 1910, § 3427; C.S. 1920, § 4303; R.S. 1931, § 63-122; C.S. 1945, § 54-609; W.S. 1957, § 27-200.)

Effective date. — Section 5, ch. 47, Laws 1895, makes the act effective from and after passage. Approved February 15, 1895.

§ 27-4-110. Assignments of wages; acceptance by employer; filing.

No assignment of, or order for, wages to be earned in the future to secure a loan of less than two hundred dollars (\$200.00) shall be valid against an employer of the person making said assignment or order until said assignment or order is accepted in writing by the employer, and said assignment or order and the acceptance of the same have been filed and recorded with the clerk of the city or town where the party making said assignment or order resides, if a resident of this state, or in which he is employed, if not a resident of the commonwealth. (Laws 1909, ch. 120, § 1; C.S. 1910, § 3432; C.S. 1920, § 4349; R.S. 1931, § 8-101; C.S. 1945, § 54-610; W.S. 1957, § 27-201.)

Cross references. — For section providing that assignment of unemployment compensation benefits shall be void, see § 27-3-116. As to

assignment of claims for unpaid wages to the commissioner of labor and statistics for collection, see §§ 27-4-502, 27-4-504.

§ 27-4-111. Same; consent of wife required.

No such assignment of or order for, wages to be earned in the future shall be valid, when made by a married man, unless the written consent of his wife to the making of such assignment is attached thereto. (Laws 1909, ch. 120, § 2; C.S. 1910, § 3433; C.S. 1920, § 4350; R.S. 1931, § 8-102; C.S. 1945, § 54-611; W.S. 1957, § 27-202.)

Cross reference. — As to rights and liabilities of married persons generally, see §§ 20-1-201, 20-1-202.

§ 27-4-113. Contracts for alien labor; when unenforceable.

No contract made for labor or services with any alien or foreigner previous to the time that such alien or foreigner may come into the state shall be enforced within this state for any period after six (6) months from the date of such contract. (C.L. 1876, ch. 37, § 1; R.S. 1887, § 1075; R.S. 1899, § 2520; C.S. 1910, § 3428; C.S. 1920, § 4304; R.S. 1931, § 63-117; C.S. 1945, § 54-613; W.S. 1957, § 27-204.)

Cross references. — For constitutional provision relative to rights of aliens, see art. 1, § 29, Wyo. Const. For provision that no person not a citizen of the United States, or who has not declared his intention to become such, shall be

employed in connection with public works, see art. 19, § 3, Wyo. Const. As to third party receiving pay for alien labor, see § 27-4-115. As to alien land act generally, see §§ 34-15-101 to 34-15-103.

§ 27-4-114. Same; measure of recovery; defenses.

Any alien or foreigner who shall hereafter perform labor or services for any person or persons, company or corporation within this state, shall be entitled to recover from such person or persons, company or corporation, a reasonable compensation for such labor or services, notwithstanding such person or persons, company or corporation may have paid any other party or parties for the same; and in actions for the price of such labor or services, no defense shall be admitted to the effect that the defendant or defendants had contracted with other parties who had, or pretended to have, power or authority to hire out the labor or services of such party or parties, or to receive the pay or price for such labor or services. (C.L. 1876, ch. 37, § 2; R.S. 1887, § 1076; R.S. 1899, § 2521; C.S. 1910, § 3429; C.S. 1920, § 4305; R.S. 1931, § 63-118; C.S. 1945, § 54-614; W.S. 1957, § 27-205.)

Cross reference. — See also, cross references following § 27-4-113.

§ 27-4-115. Same; third party receiving pay for alien's labor prohibited.

Any person, whether he or she acts for himself or herself, or as agent, attorney or employe for another or others, who shall, in pursuance of, or by virtue of, any contract made with any alien or foreigner, made before such alien or foreigner came into this state, receive or offer to receive any money, pay or remuneration for the labor or services of any alien or foreigner, excepting the person so performing such labor or services, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined in a sum not less than five hundred dollars (\$500.00), and not more than five thousand dollars (\$5,000.00), and imprisoned in the county jail for not less than three (3) nor more than twelve (12) months, for each and every offense. (C.L. 1876, ch. 37, § 3; R.S. 1887, § 1077; R.S. 1899, § 5125; C.S. 1910, § 5976; C.S. 1920, § 7272; R.S. 1931, § 32-822; C.S. 1945, § 54-615; W.S. 1957, § 27-206.)

Cross reference. — See also, cross references following § 27-4-113.

Effective date. — Section 4, ch. 37, Compiled

Laws 1876, makes the act effective from and after passage. Approved December 16, 1871.

CHAPTER 5 Hours of Labor

Cross references. — For constitutional provision as to hours of labor, see art. 19, § 2, Wyo. Const. For provision restricting work on public works to eight hours per day, see § 9-8-310, and for penalties for violations, see

§ 9-8-311. As to working hours of firemen and policemen under civil service in cities and towns, see § 15-5-107. As to hours of labor for females, see § 27-6-101. As to hours of labor for children, see § 27-6-110.

§ 27-5-101. Hours of labor for state and county employees; overtime compensation.

- (a) The period of employment of state and county employees is eight (8) hours per day and forty (40) hours per week which constitute a lawful day's and week's work respectively.
- (b) Except for employees whose maximum salary is limited by statute, any state or county employee may be compensated at a rate one and one-half (1½) times their regular compensation for each hour of service required to be performed because of emergency situations in excess of eight (8) hours per day and forty (40) hours per week. If overtime compensation is paid pursuant to this section, no additional benefits, such as compensatory time off, shall be allowed to the employee receiving the overtime compensation.
- (c) Overtime compensation may only be authorized by the appropriate employing governing body subject to the following:
 - (i) For employees of the executive branch of state government, pursuant to rules and regulations of the personnel division of the department of administration and fiscal control. The personnel division shall specify what employees may receive overtime compensation, may require notification of an intent to pay overtime compensation preceding rendering of the additional services, and may prescribe any other limitations deemed desirable;
 - (ii) For employees of the legislative branch of state government, pursuant to rules and regulations of the management council of the legislative service office or resolution of the legislature;
 - (iii) For employees of the judicial branch of state government, pursuant to rules and regulations of the Wyoming supreme court;
 - (iv) For county employees, pursuant to rules and regulations of the respective boards of county commissioners. (Laws 1974, ch. 4, § 1.)

Cross references. — As to limitation on salaries not fixed by statute, see § 9-1-104. As to salaries of certain state officers and employees, see § 9-1-105.

Editor's note. — Section 3, ch. 4, Laws 1974, reads as follows: "This act operates prospectively only and does not permit overtime compensation for services rendered prior to July

1, 1974. This act shall not apply to any employee covered by the provisions of the federal Fair Labor Standards Act of 1938, as amended."

Effective date. — Section 4, ch. 4, Laws 1974, makes the act effective on July 1, 1974.

Am. Jur. 2d reference. — 48 Am. Jur. 2d Labor and Labor Relations §§ 1838, 1849, 1850.

§ 27-5-102. Working day in mines generally.

The period of employment of men in all underground mines or workings shall be eight (8) hours per day, and it shall be unlawful to employ, require or knowingly permit miners, laborers, workmen or mechanics to work more than eight (8) hours in any one (1) calendar day, except in case of emergency where life or property is in imminent danger. (Laws 1909, ch. 17, § 1; C.S. 1910, § 3499; C.S. 1920, § 4422; Laws 1931, ch. 73, § 62; R.S. 1931, § 63-103; C.S. 1945, § 54-802; W.S. 1957, § 27-212.)

Cross references. — For constitutional provision that eight hours actual work shall constitute a lawful day's work in all mines, see art. 19, § 2, Wyo. Const. As to mines, and oil and gas wells generally, see title 30.

C.J.S. reference. — 56 C.J.S. Master and Servant § 15.

§ 27-5-103. Working day in reduction and refining works.

The period of employment of working men in smelters, stamp mills, sampling works, concentration plants and all other institutions for the reduction or refining of ores or metals, shall be eight (8) hours per day, and it shall be unlawful to employ, require or knowingly permit laborers, workmen or mechanics to work more than eight (8) hours in any one (1) calendar day, except in case of emergency where life or property is in imminent danger. (Laws 1909, ch. 17, § 2; C.S. 1910, § 3500; C.S. 1920, § 4423; Laws 1931, ch. 73, § 63; R.S. 1931, § 63-104; C.S. 1945, § 54-803; W.S. 1957, § 27-213.)

Cross reference. — See also, notes to § 27-5-102.

§ 27-5-104. Penalty for violation of sections 27-5-102 and 27-5-103.

Any person or persons, body corporate, agent, manager or employer who shall violate any of the provisions of section one (1) or two (2) of this act [§ 27-5-102 or § 25-5-103] shall be deemed guilty of a misdemeanor, and upon conviction thereof shall for each offense, be subject to a fine of not less than one hundred dollars (\$100.00) or more than five hundred dollars (\$500.00), or by imprisonment in the county jail for a period of not less than one (1) month or more than six (6) months or by both such fine and imprisonment.

(Laws 1909, ch. 17, § 3; C.S. 1910, § 3501; C.S. 1920, § 4424; R.S. 1931, § 63-105; C.S. 1945, § 54-804; W.S. 1957, § 27-214.)

Repealing clause. — Section 4, ch. 17, Laws 1909, repealed all laws and parts of laws in conflict therewith. Effective date. — Section 5, ch. 17, Laws 1909, makes the act effective 90 days after passage. Approved February 13, 1909.

§ 27-5-105. Working day in coal mines.

In all contracts hereafter made between any owner, lessee or operator of any coal mine, with any such miner or laborer for his services as such, the word day when used shall be construed to be eight (8) hours; provided, that nothing in this act [§§ 27-5-105 to 27-5-107] contained shall be construed to prohibit or prevent any such owner, lessee or operator from operating his or its coal mine more than eight (8) hours in any twenty-four (24). (Laws 1890-91, ch. 83, § 2; R.S. 1899, § 2587; C.S. 1910, § 3502; C.S. 1920, § 4425; R.S. 1931, § 63-106; C.S. 1945, § 54-805; W.S. 1957, § 27-215.)

Cross reference. — See also, notes to § 27-5-102.

Editor's note. — Section 1, ch. 83, Acts 1890-91, read: "That eight hours shall constitute a day's work for all coal miners and laborers now employed, or who may be hereafter employed, in any coal mine in this state, except in cases where it may be necessary to work more than eight hours per calendar day for the protection of property or human life; provided, that in all such cases the miners or laborers so employed and working to exceed eight hours per calendar day shall be paid upon the basis of eight hours constituting a day's work."

Evidently the above-quoted section was omitted by previous compilers on the theory that it was covered by § 27-5-102.

"Employee" or "servants". — "Employee" or "servants," as used in § 27-5-107, should be construed to mean employees or servants of the mine owner occupying positions of "agent," and not to include miners and laborers, so that a miner was not subject to punishment under the penal provision for working more than 8 hours a day. State v. Thompson, 15 Wyo. 136, 87 P. 433 (1906).

§ 27-5-106. Time defined as to labor in coal mines.

The eight (8) hours herein provided for, shall be construed to mean eight (8) hours of actual labor and shall not include the time consumed in going to and returning from work. (Laws 1890-91, ch. 83, § 3; R.S. 1899, § 2588; C.S. 1910, § 3503; C.S. 1920, § 4426; R.S. 1931, § 63-107; C.S. 1945, § 54-806; W.S. 1957, § 27-216.)

Cross reference. — See also, notes to § 27-5-102.

§ 27-5-107. Penalty for violation of sections 27-5-105 and 27-5-106.

Any owner, lessee or operator, his or its agent, employes or servants, violating any of the provisions of this act [§§ 27-5-105 to 27-5-107], shall be fined not less than fifty dollars (\$50.00), nor more than three hundred dollars (\$300.00), or imprisoned not more than three (3) months, or both. (Laws 1890-91, ch. 83, § 4;

R.S. 1899, § 2589; C.S. 1910, § 3504; C.S. 1920, § 4427; R.S. 1931, § 63-108; C.S. 1945, § 54-807; W.S. 1957, § 27-217.)

TITLE 29

Liens

Cross references. — For constitutional provision that the legislature shall not pass local or special laws authorizing the creation, extension or impairing of liens, see art. 3, § 27, Wyo. Const. As to lien of judgment and enforcement by execution, see §§ 1-17-301 to 1-17-345. As to liens for delinquent contributions under unemployment compensation, see § 27-3-109. For provision that a mortgage or other specific lien on real property shall take precedence over lien of taxes levied against any other property and the property subject to such lien, see § 34-2-124. As to applicability of Uniform Fraudulent Conveyance Act to liens on

real and personal property, see § 34-14-102. As to secured transactions generally, see §§ 34-21-901 to 34-21-966. As to lien upon reservoirs, irrigation systems and ditches, see § 36-7-326. As to liens in connection with water rights relative to Carey Act lands, see §§ 36-7-501 to 36-7-510. As to right of laborers, mechanics, farmers and other persons performing work or labor, or furnishing materials, etc., with reference to railroad construction, to file verified statement of account with railroad and collect the same from contractor through railroad, see §§ 37-9-602, 37-9-603.

CHAPTER 3

Mines, Quarries, Oil, Gas or Other Wells

Cross references. — As to relation of liens described in ch. 2 of this title to liens in connection with mines, quarries, oil, gas or other wells, generally, see § 29-3-112.

Effect of amendments upon direct-lien coverage. — The lien statutes concerning "mines, quarries, oil, gas or other wells" originated in the Laws of Wyoming, 1869, and were concerned with direct liens. Subsequent 1871 changes did no more than broaden this direct-lien coverage and additionally provide that subcontractors, and others, who had furnished material, etc., and not been paid might

so notify the owner and if the owner did not retain out of subsequent payments to the contractor, such amount it might be recovered in an action at law to the extent in value of any balance due by the owner to the contractor at the time of such notice. Further amendments and additions in 1919 and 1955 continued the direct-lien coverage. Arnold v. American Pipe & Supply Co., 413 P.2d 874 (Wyo. 1966).

Am. Jur. 2d references. — 38 Am. Jur. 2d Gas and Oil §§ 136 to 139; 51 Am. Jur. 2d Liens § 1 et seq.; 54 Am. Jur. 2d Mines and Minerals

§§ 256 to 259.

ARTICLE 1. IN GENERAL

§ 29-3-101. "Owner, part owner or lessee" defined; attachment of lien prior to forfeiture or failure of condition.

As used in this act [§§ 29-3-101 to 29-3-106, 29-3-108, 29-3-113], the words "owner, part owner or lessee," include a person holding any interest in the legal or equitable title, or both, and purchasers under executory contract. If a lien provided for in this act attaches to an estate less than the fee, forfeiture of such estate shall not impair any lien as to material, appurtenances and fixtures located thereon and to which said lien has attached prior to forfeiture. If a lien provided for in this act attaches to an equitable interest or to a legal interest contingent upon the happening of a condition subsequent, failure of such interest to ripen into legal title or such condition subsequent to be fulfilled, shall not impair any lien as to material, appurtenances and fixtures located thereon and to which said lien attached prior to such failure. (Laws 1955, ch. 101, § 5; W.S. 1957, § 29-27.)

A lien may attach to an estate less than the fee. Cities Serv. Oil Co. v. Pubco Petroleum Corp., 497 P.2d 1368 (Wyo. 1972).

Applied in Oxley v. Mine & Smelter Supply Co., 439 P.2d 661 (Wyo. 1968).

ALR references. - Rights and duties as

between owner of land and owner of mineral in place as regards lien covering both interests, 26 ALR 1031.

Interest of owner of land as subject to lien for material or services engaged by holder of mineral rights, 59 ALR 548.

§ 29-3-102. Definition of "material."

As used in this act [§§ 29-3-101 to 29-3-106, 29-3-108, 29-3-113], and in section 55-403, Wyoming Compiled Statutes, 1945 [§ 29-3-107], the word "material" means material, fuel, machinery, equipment, appliances, buildings, structures, tools, bits or supplies but does not include drilling rigs or heists or their integral component parts except wire lines. (Laws 1955, ch. 101, § 6; W.S. 1957, § 29-28.)

§ 29-3-103. Extent of liens; generally.

Every person, corporation, firm, association, copartnership, materialman, artisan, laborer or mechanic who does work or labor upon, or furnishes or rents material or services for constructing, altering, digging, drilling, boring, operating, completing or repairing of any gas wells, oil wells or other wells, mine or quarry, or for altering, repairing or constructing any oil derrick, oil tank or oil or gas pipelines whether or not such material is incorporated therein or becomes a part thereof, by virtue of a contract, express or implied, with the owner, part owner or lessee of any interest in real estate, or the authorized agent of any such owner, part owner or lessee or with the trustee or receiver of any such owner, part owner or lessee, shall have a lien to secure the payment thereof, including without limitation transportation and mileage charges connected therewith and interest from the date the same was due, upon said gas well, oil well, or other well and upon said oil derricks, oil tanks, oil or gas pipeline

including the right-of-way therefor, mine or quarry, and upon all material furnished to be used in connection with said improvement, and upon the whole of the land or leasehold including all other wells, buildings and appurtenances located upon said land or leasehold upon which said improvement may be located; and provided, however, that if such labor is performed for, or materials or services are furnished to, the owner, part owner or lessee of an estate less than a fee, the lien granted by this act [§§ 29-3-101 to 29-3-106, 29-3-108, 29-3-113] shall not extend to the underlying fee or royalty interest unless expressly provided by contract with the owner of the underlying fee or royalty interest; and provided further, that in the event labor is performed for, or materials or services are furnished to, the owner, part owner or lessee of the working interest in only a portion of the acreage covered by a lease, the lien granted by this act shall be restricted to such portion of the acreage. (Laws 1919, ch. 128, § 1; C.S. 1920, § 4830; R.S. 1931, § 66-604; C.S. 1945, § 55-401; Laws 1955, ch. 101, § 1; W.S. 1957, § 29-29.)

Basic purpose of lien statutes, which are in derogation of the common law, is to create a new means of securing claims of particular classes of creditors and to prevent unjust enrichment arising from enhancement of property from which work and materials expended thereon would otherwise go without payment. Permian Corp. v. Armco Steel Corp., 508 F.2d 68 (10th Cir. 1974).

Oil and gas lien laws, like other lien laws, are purely statutory. Cities Serv. Oil Co. v. Pubco Petroleum Corp., 497 P.2d 1368 (Wyo. 1972).

They must be strictly construed, and their scope cannot be extended by implication. Cities Serv. Oil Co. v. Pubco Petroleum Corp., 497 P.2d 1368 (Wyo. 1972).

The lien, if any, has to arise by statute and not by a series of provisions in a contract wherein the lien claimant is not a party. Cities Serv. Oil Co. v. Pubco Petroleum Corp., 497 P.2d 1368 (Wyo. 1972).

No lien can be created without a contract with an owner or part owner, either legal or equitable, upon the property upon which the lien is established. Cities Serv. Oil Co. v. Pubco Petroleum Corp., 497 P.2d 1368 (Wyo. 1972).

Language of proviso clause is clear and unambiguous. Cities Serv. Oil Co. v. Pubco Petroleum Corp., 497 P.2d 1368 (Wyo. 1972).

Term "royalty interest" does not mean "landowner's royalty interest"; that would add someting to this section which is not there. Cities Serv. Oil Co. v. Pubco Petroleum Corp., 497 P.2d 1368 (Wyo. 1972).

Intent of legislature was to restrict the lien in case of an oil well to the leasehold estate of the party who contracts for the drilling. Cities Serv. Oil Co. v. Pubco Petroleum Corp., 497 P.2d 1368 (Wyo. 1972).

And lien does not extend to fee or royalty

interest absent express contract provision. — The proviso expressly provides that a lien shall not extend to the underlying fee or royalty interest unless expressly provided by contract. Cities Serv. Oil Co. v. Pubco Petroleum Corp., 497 P.2d 1368 (Wyo. 1972).

Term "overriding royalty" is defined as an interest in oil and gas production at the surface, free of the expense of production, and in addition to the usual landowner's royalty reserved to the lessor in an oil and gas lease. It is, first and foremost, a "royalty interest," and the application of this section means a lien shall not extend an overriding royalty interest. Cities Serv. Oil Co. v. Pubco Petroleum Corp., 497 P.2d 1368 (Wyo. 1972).

A mechanic's lien may arise by implication from the relations and dealings of the parties whose interests are involved. Permian Corp. v. Armco Steel Corp., 508 F.2d 68 (10th Cir. 1974).

Similarity to equitable lien. — The statutorily created mechanic's lien is akin to an "equitable lien," which has been defined as a right, not existing at law, to have specific property applied, in whole or in part, to the payment of a particular class of debts which may be created by express contract which shows an intention to charge some particular property with a debt obligation. Permian Corp. v. Armco Steel Corp., 508 F.2d 68 (10th Cir. 1974).

Effect of previous entry of judgment in favor of lienholder. — Where the holder of a mechanic's lien as a statutory lien creditor against a corporate debtor obtained a choate lien upon the proceeds of the debtor's share of the proceeds of production in the hands of a judgment creditor with writ of execution upon service of the statutory notice, the previous entry of judgment in favor of the mechanic lienholder on the lien claim did not deprive the

holder of the priority benefit of the lien. Permian Corp. v. Armco Steel Corp., 508 F.2d 68 (10th Cir. 1974).

Lien for labor and materials furnished assignee of lease extends to oil, not land. — A lien for labor and material furnished under a contract with the assignee of an oil and gas lease, together with its priority, extends to the oil, and the proceeds thereof, as distinguished from the land or leasehold. Pheister v. Ogden Smelting & Ref. Mills, Inc., 364 P.2d 1078 (Wyo. 1961).

But is superior to prior mortgage as to oil not in possession of mortgagee. - Where the mortgagee made no effort of any kind whatever to take possession or control of oil produced on a leasehold, or the proceeds thereof, up to the time when plaintiff's lien for labor and material furnished under a contract with the assignee of an oil and gas lease became effective, the lien of the plaintiff must be held to be prior and superior to the claim of the mortgagee insofar as the oil and the proceeds thereof are concerned. The date of priority, however, must be held to relate back only to the time when the work and labor of the plaintiff was completed. Pheister v. Ogden Smelting & Ref. Mills, Inc., 364 P.2d 1078 (Wyo. 1961)

Contents of notice. — Although in action to enforce lien, under this section, it is necessary to state that contract for labor or materials was made with owner, or someone acting under his authority, such statement is not necessary in notice of lien under § 29-3-108. Craig v. Higgins, 31 Wyo. 166, 224 P. 668, rehearing denied, 32 Wyo. 58, 228 P. 802 (1924).

Limitations of lien. - Where principal contractor furnished material to dig an oil well, for which leaseholder agreed to assign certain leases, persons furnishing materials to contractor were not entitled to lien, since § 29-3-113 limits owner's liability consideration expressed in contract, and this § 29-3-104 provide materialman's lien right is limited to that of contractor. National Co.-Midwest v. Weaver, 35 Wyo. 224, 248 P. 353 (1926).

Law review. — See note, "Oil and Gas Interests Subject to Wyoming Lien Laws," 11 Wyo. L.J. 160.

ALR and C.J.S. references. — Reservation of vendor's lien as preventing severance of estate in mineral from estate in surface by deed, 29 ALR 618.

Interest of owner as subject to lien against holder of mineral rights, 59 ALR 548.

Area of land subject to lien, 84 ALR 138. 57 C.J.S. Mechanics' Liens § 174.

§ 29-3-104. Same; subcontractors, artisans and day laborers.

Any person, corporation, firm, association, copartnership or materialman who shall furnish or rent such materials or services as a subcontractor or to a contractor or a subcontractor, or any person who shall perform labor under a subcontract with a contractor, or who as an artisan or day laborer in the employ of such contractor or subcontractor shall perform any such labor, shall have a lien upon all the property upon which the lien of an original contractor may attach to the same extent as an original contractor to secure the payment thereof, including without limitation transportation and mileage charges connected therewith and interest from the date the same was due. (Laws 1919, ch. 128, § 2; C.S. 1920, § 4831; R.S. 1931, § 66-605; C.S. 1945, § 55-402; Laws 1955, ch. 101, § 2; W.S. 1957, § 29-30.)

Property held subject to materialmen's liens after principal contractor paid in full. — See same catchline in notes to § 29-3-113.

Cited in National Supply Co.-Midwest v. Weaver, 35 Wyo. 224, 248 P. 353 (1926).

§ 29-3-105. Same; on oil, etc., or proceeds thereof; notice to purchaser required; liability of purchaser.

The lien provided for in this act [§§ 29-3-101 to 29-3-106, 29-3-108, 29-3-113] shall additionally extend to and cover all oil or gas and all ore and minerals in

solid form produced attributable to the interest which is subject to the lien and the proceeds thereof enuring to the working interest therein as such working interest existed on the date labor was first performed or materials or services were first furnished. Anything in this act to the contrary notwithstanding, any lien claimed by virtue of this act insofar as it may extend to oil or gas or ore and minerals in solid form or the proceeds of the sale of oil or gas or ore and minerals in solid form shall not be effective against any purchaser of such oil or gas or ore and minerals in solid form until written notice of such claim has been delivered to such purchaser at his residence or principal place of business. Such notice shall state the name of the claimant, his address, the amount for which the lien is claimed and the description of the interest upon which the lien is claimed. Such notice shall be delivered personally to the purchaser or by registered, or certified letter deposited in the United States mail. Until such notice is delivered as above provided, no such purchaser shall be liable to the claimant for any oil or gas or ore and minerals in solid form produced from the interest upon which the lien is claimed or the proceeds thereof except to the extent of such part of the purchase price of such oil or gas or ore and minerals in solid form or the proceeds thereof as may be owing by such purchaser at the time of delivery of such written notice. Such purchaser shall withhold payments for such oil or gas runs or ore and minerals in solid form to the extent of the lien amount claimed until delivery of notice, in writing, that the claim has been paid. (Laws 1955, ch. 101, § 7; W.S. 1957, § 29-31; Laws 1959, ch. 4, § 1.)

Basic purpose of lien statutes, which are in derogation of the common law, is to create a new means of securing claims of particular classes of creditors and to prevent unjust enrichment arising from enhancement of property from which work and materials expended thereon would otherwise go without payment. Permian Corp. v. Armco Steel Corp., 508 F.2d 68 (10th Cir. 1974).

A mechanic's lien may arise by implication from the relations and dealings of the parties whose interests are involved. Permian Corp. v. Armco Steel Corp., 508 F.2d 68 (10th Cir. 1974).

Similarity to equitable lien. — The statutorily created mechanic's lien is akin to an "equitable lien," which has been defined as a right, not existing at law, to have specific property applied, in whole or in part, to the payment of a particular class of debts which may be created by express contract which shows an intention to charge some particular property with a debt obligation. Permian Corp. v. Armco Steel Corp., 508 F.2d 68 (10th Cir. 1974).

Effect of previous entry of judgment in favor of lienholder. — Where the holder of a mechanic's lien as a statutory lien creditor

against a corporate debtor obtained a choate lien upon the proceeds of the debtor's share of the proceeds of production in the hands of a judgment creditor with writ of execution upon service of the statutory notice, the previous entry of judgment in favor of the mechanic lienholder on the lien claim did not deprive the holder of the priority benefit of the lien. Permian Corp. v. Armco Steel Corp., 508 F.2d 68 (10th Cir. 1974).

Lien for labor and materials furnished assignee of lease extends to oil, not land. — See same catchline in notes to § 29-3-103.

But is superior to prior mortgage as to oil not in possession of mortgagee. — See same catchline in notes to § 29-3-103.

ALR and C.J.S. references. — Rights and liabilities with respect to natural gas reduced to possession and subsequently stored in natural reservoir, 94 ALR2d 543.

Assertion of statutory mechanic's or materialman's lien against oil and gas produced or against proceeds attributable to oil and gas sold, 59 ALR3d 278.

58 C.J.S. Mines and Minerals § 259 et seq.

§ 29-3-106. Labor, materials or services considered as performed or furnished under single contract.

All labor performed or materials or services furnished by any person entitled

to a lien under this act [§§ 29-3-101 to 29-3-106, 29-3-108, 29-3-113] upon the same land or leasehold for oil and gas purposes or the same pipeline shall for the purposes of this act be considered as having been performed or furnished under a single contract regardless of whether or not the same was performed or furnished at different times or on separate orders, provided that no more than six (6) months shall have elapsed between the date of performance of such labor or the date of furnishing such material or services and the date on which labor is next performed or materials or services are next furnished. (Laws 1955, ch. 101, § 8; W.S. 1957, § 29-32.)

Cross reference. — See also § 29-2-123 and cross references thereunder.

§ 29-3-107. Preference over prior liens, encumbrances or mortgages; effect thereon.

The lien herein provided for shall attach to the materials, machinery and supplies and the specific improvements made, in preference to any prior lien or encumbrance or mortgage upon the land or leasehold interest upon which the said materials, machinery, supplies or specific improvements are placed or located, provided, however, that any lien, encumbrance or mortgage upon the land or leasehold interest at the time of the inception of the lien herein provided for shall not be affected; and the holder or holders of such prior lien or liens upon such land or leasehold interest shall not be necessary party or parties in suits to foreclose the liens hereby created. (Laws 1919, ch. 128, § 3; C.S. 1920, § 4832; R.S. 1931, § 66-606; C.S. 1945, § 55-403; W.S. 1957, § 29-33.)

Lien for labor and materials furnished assignee of lease extends to oil, not land. — See same catchline in notes to § 29-3-103.

But is superior to prior mortgage as to oil not in possession of mortgagee. — See same catchline in notes to § 29-3-103.

Chattel mortgage superior to miner's lien. — The lien of a chattel mortgage on a mining claim, machinery and equipment held superior to a miner's lien for work which was performed after filing of mortgage. Prugh v. Imhoff, 44 Wyo. 143, 9 P.2d 152 (1932).

Law review. — See note, "Priority Between Mortgages and Mechanics' Liens," 13 Wyo. L.J. 239 (1959).

C.J.S. reference. — 58 C.J.S. Mines and Minerals § 268.

§ 29-3-108. Attachment and enforcement procedures.

The lien herein created shall be fixed and secured and notice thereof shall be given and any such lien shall attach and be enforced in the following manner: When any sum, exceeding ten dollars (\$10.00) for materials or services furnished or labor performed in the manner and for any of the purposes mentioned in either of the preceding sections hereof, shall be owing, it shall be competent for the person or persons to whom such sum of money shall be owing to file a notice in the office of the county clerk in the county in which the land, leasehold or pipeline, or some part thereof, is situated at any time within six (6) months after the last day when any of such materials or services were delivered or upon which

such work was done, which said notice shall set forth the fact that the claimant furnished such materials or services or performed such labor (naming the items thereof) for a party or company (naming the party or company), the dates on which labor was performed or materials or services furnished, the amount claimed, the claimant's name and address and a description of the premises to which such materials or services were furnished or upon which such labor was performed, which statement shall be verified by the affidavit of the claimant and when filed, the county clerk shall record the same in a "lien book" the same as required in the case of "mechanics" notices of liens. (Laws 1919, ch. 128, § 4; C.S. 1920, § 4833; R.S. 1931, § 66-607; C.S. 1945, § 55-404; Laws 1955, ch. 101, § 3; W.S. 1957, § 29-34.)

Cross reference. — As to enforcement of lien by action in connection with mines and oil wells generally, see §§ 29-3-220 to 29-3-233.

Applied in Oyley v. Mine & Smelter Supply.

Applied in Oxley v. Mine & Smelter Supply Co., 439 P.2d 661 (Wyo, 1968). Cited in Craig v. Higgins, 31 Wyo. 166, 224 P. 668, rehearing denied, 32 Wyo. 58, 228 P. 802 (1924).

C.J.S. reference. — 58 C.J.S. Mines and Minerals § 269.

§ 29-3-109. Property not to be sold or removed after lien attaches without lienholder's consent; violation of article.

When the lien herein provided for shall have attached to the property covered thereby, neither the owner of the land nor the owner of said oil, gas or mineral leasehold interest therein, nor the owner of any oil, gas or water pipeline, nor the contractor, subcontractor, purchaser, trustee, receiver or agent of any such owner, lessor, lessee, contractor, subcontractor or purchaser shall either sell or remove the property subject to said lien, or cause same to be removed from such land or premises, or otherwise sell or dispose of the same, without the written consent of the holder of the lien hereby created; and in the case of any violation of the provisions of this article [§§ 29-3-103, 29-3-104, 29-3-107 to 29-3-109], the said lienholder shall be entitled to the possession of the property upon which said lien exists, wherever the same may be found, and shall be entitled to have the same then sold for the payment of said debt, whether said debt has become due or not. (Laws 1919, ch. 128, § 6; C.S. 1920, § 4835; R.S. 1931, § 66-609; C.S. 1945, § 55-406; W.S. 1957, § 29-35.)

Section does not deprive owner of right to Armco Steel Corp., 407 P.2d 1015 (Wyo. 1965). possession prior to foreclosure. Chittim v. C.J.S. reference. — 53 C.J.S. Liens § 12.

§ 29-3-110. Penalty for fraudulent removal of property.

If any person shall remove or cause to be removed any property or part thereof covered by the lien hereby created, from the place where such property was located when the lien herein provided for shall have been filed of record, without the written consent of the owner and holder of said lien, with intent to defraud the person having such lien, either originally or by transfer, such person so removing said property or causing said property to be so removed shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than five dollars (\$5.00) or more than five hundred dollars (\$500.00). (Laws 1919, ch. 128, § 7; C.S. 1920, § 1920, § 4836; R.S. 1931, § 66-610; C.S. 1945, § 55-407; W.S. 1957, § 29-36.)

C.J.S. reference. - 53 C.J.S. Liens § 14.

§ 29-3-111. Obtaining of judgment; procedure when property subject to lien removed.

Every person, corporation, firm, association or copartnership holding such lienmay proceed to obtain a judgment for the amount of said account thereon by civil action commenced on such account within six (6) months after said filing of such notice and the lien shall continue until such suit be finally determined and satisfied. Whenever any person shall remove any such property to a county other than the one in which the lien has been filed, the lienholder may, within thirty (30) days thereafter, file with the county clerk of the county to which it has been removed an itemized inventory of the property so removed, showing how much there is due and unpaid thereon, which said inventory shall be recorded in the lien records of such county, and such filing shall operate as a notice of the existence of the lien and the lien shall attach and extend to the land or leasehold and other premises, properties and appurtenances to which said property so removed shall attach, of the kind and character enumerated in section 1 [§ 29-3-103] and 2 [§ 29-3-104] hereof. (Laws 1919, ch. 128, § 5; C.S. 1920, § 4834; R.S. 1931, § 66-608; C.S. 1945, § 55-405; Laws 1951, ch. 35, § 3; W.S. 1957, § 29-37.)

Cross reference. — See also § 29-2-123 and cross references thereunder.

Basic purpose of lien statutes, which are in derogation of the common law, is to create a new means of securing claims of particular classes of creditors and to prevent unjust enrichment arising from enhancement of property from which work and materials expended thereon would otherwise go without payment. Permian Corp. v. Armco Steel Corp., 508 F.2d 68 (10th Cir. 1971)

A mechanic's lien may arise by implication from the relations and dealings of the parties whose interests are involved. Permian Corp. v. Armco Steel Corp., 508 F.2d 68 (10th Cir. 1974).

Similarity to equitable lien. — The statutorily created mechanic's lien is akin to an "equitable lien," which has been defined as a right, not existing at law, to have specific property applied, in whole or in part, to the payment of a particular class of debts which may

be created by express contract which shows an intention to charge some particular property with a debt obligation. Permian Corp. v. Armco Steel Corp., 508 F.2d 68 (10th Cir. 1974).

Choate lien. — The mechanic's lien of a materialman is a "choate" lien following service of notice. Permian Corp. v. Armco Steel Corp., 508 F.2d 68 (10th Cir. 1974).

Effect of previous entry of judgment in favor of lichholder. — Where the holder of a mechanic's lien as a statutory lien creditor against a corporate debtor obtained a choate lien upon the proceeds of the debtor's share of the proceeds of production in the hands of a judgment creditor with writ of execution upon service of the statutory notice, the previous entry of judgment in favor of the mechanic's lienholder on the lien claim did not deprive the holder of the priority benefit of the lien. Permian Corp. v. Armco Steel Corp., 508 F.2d 68 (10th Cir. 1974).

§ 29-3-112. Prior legal rights and remedies not impaired; relation to other liens.

The provisions of this act [§§ 29-3-103, 29-3-104, 29-3-107 to 29-3-113] shall not

be construed to deprive or abridge materialmen, artisans, laborers or mechanics of any right or remedy now given them by law, and the provisions of this act shall be cumulative of the present lien law, and all liens under this act shall be concurrent with, and shall prorate with all liens under the provisions of chapters 253 and 254, Wyoming Compiled Statutes, 1910 [§§ 29-2-101 to 29-2-124, 29-3-201, 29-3-203 to 29-3-233]. (Laws 1919, ch. 128, § 8; C.S. 1920, § 4837; R.S. 1931, § 66-611; C.S. 1945, § 55-408; W.S. 1957, § 29-38.)

§ 29-3-113. Limitation upon owner's liability.

Nothing in this act [§§ 29-3-103, 29-3-104, 29-3-107 to 29-3-113] shall be construed to fix a greater liability against the owner of the land or leasehold interest therein than the price or sum stipulated by such owner to be paid for such materials or services furnished or labor performed; provided, however, that the risk of all payments made to the original contractor shall be upon such owner if such payments be made after written notice from a person other than an original contractor is received by such owner at his residence or principal place of business which notice shall set forth the name and address of the claimant and the amount and nature of his claim; and provided, further, that the owner shall not have the right to offset obligations of the original contractor unless such obligations arise out of the original contract. (Laws 1919, ch. 128, § 9; C.S. 1920, § 4838; R.S. 1931, § 66-612; C.S. 1945, § 55-409; Laws 1955, ch. 101, § 4; W.S. 1957, § 29-39.)

Severability. — Section 10, ch. 128, Laws 1919, provided that if any of the provisions thereof should be held invalid or unenforceable the remainder of the act should not be affected thereby.

Effective date. — Section 11, ch. 128, Laws 1919, makes the act effective from and after passage. Approved February 27, 1919.

Property held subject to materialmen's liens after principal contractor paid in full. —The oil and gas leasehold estate and well of the owner may be subject to materialmen's liens for amounts owing from the principal contractor to materialmen when the owner paid the principal contractor in full, pursuant to the drilling contract, after the well was completed prior to receiving notice from the materialmen that they had not been paid by the principal contractor. Arnold v. American Pipe & Supply Co., 413 P.2d 874 (Wyo. 1966).

Cited in National Supply Co.-Midwest v. Weaver, 35 Wyo. 224, 248 P. 353 (1926).

ARTICLE 2. MINES AND OIL WELLS

Division 1. Lien for Labor and Materials

§ 29-3-201. Miners', etc., liens for labor.

Every miner or other person, who, at the request of the owner of any ledge or lode of quartz bearing gold, silver, lead, cinnabar or copper, or of any coal bank or mine, shall work in or upon said mine or bank, or do assessment work upon or in any mining claim, lode or placer, or upon or in any soda well or lake, oil well or spring, shall have a lien upon such vein or lode, mine, bank, well, lake or spring, to the amount due at any time when a demand shall be made upon

such owner or his or their agent, for money due for such labor, and payment shall be refused. (C.L. 1876, ch. 77, part IV, § 1; R.S. 1887, § 1486; Laws 1897, ch. 62, § 1; R.S. 1899, § 2868; C.S. 1910, § 3778; C.S. 1920, § 4827; R.S. 1931, § 66-601; C.S. 1945, § 55-301; W.S. 1957, § 29-40.)

Cross references. - See Editor's note to § 29-3-220. See also § 29-3-108 et seq. as to attachment and enforcement procedures generally. As to relation of liens described in §§ 29-3-201, 29-3-203 to 29-3-233, with reference to liens in connection with mines, quarries, oil. gas or other wells, see § 29-3-112. As to liens on coal mines, see § 29-3-202. For application to oil and transportation charges, §§ 29-3-204, 29-3-233. See also § 29-3-208 as to enforcement proceedings under this act. As to limitation of action, see § 29-3-209.

Effective date. - Section 2, ch. 62, Laws 1897, makes the act effective from and after passage.

Approved March 1, 1897.

Chattel mortgage superior to miner's lien. -The lien of a chattel mortgage on a mining claim, machinery and equipment held superior to a miner's lien for work which was performed after filing of mortgage. Prugh v. Imhoff, 44 Wvo. 143, 9 P.2d 152 (1932).

Cited in Arnold v. American Pipe & Supply

Co., 413 P.2d 874 (Wyo. 1966).

Law review. - See note, "Oil and Gas Interest Subject to Wyoming Lien Laws," 11 Wyo. L.J.

Am. Jur. 2d, ALR and C.J.S. references. -38 Am. Jur. 2d Gas and Oil §§ 136 to 139; 54 Am. Jur. 2d Mines and Minerals §§ 256 to 259.

Casings of oil and gas well as subject to

mechanics' lien, 39 ALR 1260.

Oil and gas, right or interest subject to statutory lien for labor or material in developing property for, 122 ALR 1182.

58 C.J.S. Mines and Minerals § 261.

§ 29-3-202. Extent of lien for coal mine labor.

Every laborer, or miner, who shall perform labor in opening or developing any coal mine, including sinking shafts, constructing slopes, or drifts, mining coal and the like, shall have a lien upon all of the property of the person, firm or corporation owning, constructing or operating such mine, used in the construction or operation thereof, including real estate, buildings, engines, cars, mules, horses, scales and all other personal property, for the value of such labor for the full amount thereof, upon the same terms, with the same rights and to be secured and enforced as mechanics' and builders' liens are secured and enforced. Provided, that the property holdings of any mining company shall be liable for the wages of any employee or employees, where such property or any portion of it is worked by lessees. (Laws 1911, ch. 26, § 1; 1919, ch. 26, § 1; C.S. 1920, § 4828; R.S. 1931, § 66-602; C.S. 1945, § 55-309; W.S. 1957, § 29-41.)

Cross reference. - As to mechanics' and builders' liens generally, see ch. 2 of this title.

Repealing clauses. - Section 2, ch. 26, Laws. 1911, repealed all laws and parts of laws in conflict therewith.

Section 2, ch. 26, Laws 1919, repealed all laws and parts of laws in conflict therewith.

Effective dates. - Section 3, ch. 26, Laws. 1911, makes the act effective from and after passage. Approved February 16, 1911.

Section 3, ch. 26, Laws 1919, makes the act effective from and after passage. Approved February 17, 1919.

§ 29-3-203. Lien for labor or furnishing certain materials.

Any person who shall labor as a mechanic or otherwise, or who shall furnish timber, lumber, rope, nails or any other material for timbering shafts or levels for the mine, or who shall furnish any kind of materials for erecting windlass, whim or other hoisting apparatus upon any vein, mine or coal bank, referred to in the first section [§ 29-3-201], shall also have a lien upon the mine or coal bank for which he furnished such materials, or upon which he performed such labor. (C.L. 1876, ch. 77, Part IV, § 2; R.S. 1887, § 1487; R.S. 1899, § 2869; C.S. 1910, § 3779; C.S. 1920, § 4829; R.S. 1931, § 66-603; C.S. 1945, § 55-302; W.S. 1957, § 29-42.)

ALR reference. — Right or interest subject developing property for oil and gas, 122 ALR to statutory lien for labor or material in 1182.

§ 29-3-204. Lien on oil lands.

Any owner of any oil well or spring, who shall employ any person to perform any work of any kind around, or about, any oil well or spring, either in building derricks, buildings, or any kind of machinery, or in boring or drilling, shall be deemed within the provisions of this act [§§ 29-3-201, 29-3-203 to 29-3-209]; and all persons performing labor or furnishing materials, shall have like liens upon oil territory upon which they labored or for which they furnished materials or the improvements thereon, as miners or other laborers upon, or in, mines as provided in this act and shall proceed in the same manner to enforce a lien. (C.L. 1876, ch. 77, Part IV, § 8; R.S. 1887, § 1493; R.S. 1899, § 2875; C.S. 1910, § 3785; C.S. 1920, § 4845; R.S. 1931, § 66-618; C.S. 1945, § 55-308; W.S. 1957, § 29-43.)

Cross reference. — For application to oil wells and transportation charges, see § 29-3-233.

Property held subject to material man le liene.

Property held subject to materialmen's liens after principal contractor paid in full. — See same catchline in notes to § 29-3-113.

Law review. — See note, "Oil and Gas Interests Subject to Wyoming Lien Laws," 11 Wyo. L.J. 160.

§ 29-3-205. Filing of notice required; contents; verification and recordation.

When any sum, exceeding ten dollars (\$10.00), for labor performed by any miner or other person, upon or in any mine or coal bank specified in this chapter [§§ 29-3-201, 29-3-203 to 29-3-209], shall be due and upaid for ten (10) days, it shall be competent for the person or persons to whom such sum of money shall be due, to file a notice in the office of the county clerk in the county where such mine is situated, at any time within six (6) months after the last day upon which work was done by him; which said notice shall in substance set forth the fact that the party performed labor (naming the kind), for a party or company (naming the party or company), that such labor was performed under a contract (stating the substance); also, the time when the party commenced and when ceased to work, the amount still due and unpaid, together with a description of the mine or coal bank upon which such work was performed, which statement shall be verified by the affidavit of the party so filing it, and when filed, the county clerk shall record the same in a "lien book," the same as required in the case of "mechanics' notices of lien." (C.L. 1876, ch. 77, Part IV, § 4; R.S. 1887, § 1489; Laws 1897, ch. 64, § 1; R.S. 1899, § 2871; C.S. 1910, § 3781; C.S. 1920, § 4841; R.S. 1931, § 66-614; C.S. 1945, § 55-304; W.S. 1957, § 29-44.)

Cross reference. — See also 95 29-2-123, 29-3-209.

Effective date. — Section 2, ch. 64, Laws 1897, makes the act effective from and after passage. Approved March 1, 1897. C.J.S. reference. — 58 C.J.S. Mines and Minerals § 264.

§ 29-3-206. Applicability of section 29-3-205.

The provisions of the next preceding section [§ 29-3-205] shall apply to persons who shall furnish materials or work upon any shaft, whim, or other hoisting works, who, by complying with the general provisions of such section, shall have a like lien. (C.L. 1876, ch. 77, Part IV, § 5; R.S. 1887, § 1490; R.S. 1899, § 2872; C.S. 1910, § 3782; C.S. 1920, § 4842; R.S. 1931, § 66-615; C.S. 1945, § 55-305; W.S. 1957, § 29-45.)

§ 29-3-207. Against whom lien holds.

When notices, as provided in the next two (2) preceding sections [§§ 29-3-205, 29-3-206], shall be filed, the lien shall hold, not only against the owner of the mine or bank from the time when the miner or other person began work, but against all persons or company who shall have purchased such mine or coal bank while such miner or other person was employed therein, or furnished materials used therein or thereon. (C.L. 1876, ch. 77, Part IV, § 6; R.S. 1887, § 1491; R.S. 1899, § 2873; C.S. 1910, § 3783; C.S. 1920, § 4843; R.S. 1931, § 66-616; C.S. 1945, § 55-306; W.S. 1957, § 29-46.)

C.J.S. reference. — 58 C.J.S. Mines and Minerals § 268.

§ 29-3-208. Enforcement proceedings.

The party seeking a lien shall proceed, so far as the proceedings are applicable, in the same manner, to enforce a lien as by law required in the case of mechanics and other persons seeking to enforce a lien upon dwelling houses and other buildings, except when other provisions are made by this act [§§ 29-3-201, 29-3-203 to 29-3-209]. (C.L. 1876, ch. 77, Part IV, § 3; R.S. 1887, § 1488; R.S. 1899, § 2870; C.S. 1910, § 3780; C.S. 1920, § 4840; R.S. 1931, § 66-613; C.S. 1945, § 55-303; W.S. 1957, § 29-47.)

Cross reference. — As to venue and service of process, see §§ 29-3-230 to 29-3-233.

C.J.S. reference. — 58 C.J.S. Mines and Minerals § 269.

§ 29-3-209. Limitation of actions.

Suit to enforce such lien may be commenced at any time within six (6) months after the aforesaid filings of such notice. (C.L. 1876, ch. 77, Part IV, § 7; R.S. 1887, § 1492; R.S. 1899, § 2874; C.S. 1910, § 3784; C.S. 1920, § 4844; R.S. 1931, § 66-617; C.S. 1945, § 55-307; Laws 1951, ch. 35, § 1; W.S. 1957, § 29-48.)

Cross references. — See § 29-2-123 and cross references thereunder. See also § 29-3-225.

Applied in Butane Power & Equip. Co. v. Arnold, 415 P.2d 71 (Wyo. 1966).

Division 2. Lien and Enforcement by Action

§ 29-3-220. Lien for labor or furnishing certain materials.

Every miner or other person, who at the request of the owner or owners, or his or their agent, of any lode, lead or ledge of quartz bearing gold, silver, cinnabar or copper, or of any coal bank or mine, shall perform any labor, or furnish any timber, rope, nails or any other materials for timbering shafts or levels for the mine or who shall furnish any kind of material for erecting windlass, whims or any other hoisting apparatus or machinery, shall have a lien upon such lode, ledge, lead, mine or bank to secure the payment of the same. (C.L. 1876, ch. 77, Part V, § 1; C.S. 1945, § 55-310; W.S. 1957, § 29-49.)

Cross references. — As to provisions of \$\frac{5}{29.3-103}, 29.3-104, 29.3-107 to 29.3-113 being cumulative and not repealing this act, see \$\frac{5}{29.3-112}. As to venue and service of process, see \$\frac{5}{29.3-230} to 29.3-233.

Editor's note. — Revised Statutes 1887 and subsequent compilations before 1945 omitted C.L. 1876, ch. 77, part V, § 1 (this section), apparently because of its similarity to C.L. 1876, ch. 77, part IV, § 2 (§ 29-3-203). Compiled Laws 1876, ch. 77, part IV (§§ 29-3-201, 29-3-203 to 29-3-209), was originally enacted as Laws 1869,

approved December 2, 1869, and C.L. 1876, ch. 77, part V (§§ 29-3-210 to 29-3-229), was originally enacted as Laws 1871, approved December 16, 1871. The 1945 compiler reinstated this section.

Law review. — See note, "Oil and Gas Interest Subject to Wyoming Lien Laws," 11 Wyo. L.J. 160.

Am. Jur. 2d references, — 38 Am. Jur. 2d Gas and Oil §§ 136 to 139; 54 Am. Jur. 2d Mines and Minerals §§ 256 to 259.

§ 29-3-221. Claim against contractor submitted to owner; reduction of subsequent payments to contractor by owner.

Every miner or other person doing or performing any work or furnishing any material, as specified in section one of this act [§ 29-3-220], under a contract or agreement, expressed or implied between the owner or owners thereof, or his or their agent, whether such work shall be performed or material furnished as miner, laborer, subcontractor, or otherwise, whose demand for work so done or material so furnished has not been paid, may deliver to the owner or owners of such mine or his or their agent an attested account of the amount and value of the work and labor thus performed or the material thus furnished and remaining unpaid, and thereupon such owner or owners, or his or their agent, shall retain out of his subsequent payments to the contractors the amount of such work and labor or material furnished for the benefit of the person so performing or furnishing the same. (C.L. 1876, ch. 77, Part V, § 2; R.S. 1887, § 1494; R.S. 1899, § 2876; C.S. 1910, § 3786; C.S. 1920, § 4846; R.S. 1931, § 66-619; C.S. 1945, § 55-311; W.S. 1957, § 29-50.)

Property held subject to materialmen's liens after principal contractor paid in full. — See same catchline in notes to § 29-3-113.

C.J.S. reference. — 58 C.J.S. Mines and Minerals § 269.

§ 29-3-222. Same; duty of owner to notify contractor and of contractor to dispute or adjust claim.

Whenever any account of labor performed or material furnished, as referred to in the preceding section [§ 29-3-221], shall be placed in the hands of the owner or owners of any mine or his or their agent, as above stated, it shall be the duty of such owner or owners or his or their agent to furnish his or their contractor with a copy of such papers, so that if there be any disagreement between such contractor and his creditor they may by amicable adjustment or by arbitration ascertain the true sum due, and if the contractor shall not, within ten (10) days after the receipt of such papers, give the owner or owners or his or their agent written notice that he intends to dispute the claim, or if for ten (10) days after giving notice he shall refuse or neglect to have the matter adjusted as aforesaid, he shall be considered as assenting to the demand, and the owner or owners or his or their agent shall be justified in paying the same when it becomes due. (C.L. 1876, ch. 77, Part V, § 3; R.S. 1887, § 1495; R.S. 1899, § 2877; C.S. 1910, § 3787; C.S. 1920, § 4847; R.S. 1931, § 66-620; C.S. 1945, § 55-312; W.S. 1957, § 29-51.)

§ 29-3-223. Same; enforcement of claim in action against owner.

The amount which may be due from any contractor to his creditor may be recovered from said owner or owners or his or their agent by the creditor of said contractor, in an action at law to the extent in value of any balance due by the owner or owners or his or their agent, to his or their contractor, under the contract with him at the time of the notice first given as aforesaid, or subsequently, according to such contract or under the same. (C.L. 1876, ch. 77, Part V, § 4; R.S. 1887, § 1496; R.S. 1899, § 2878; C.S. 1910, § 3788; C.S. 1920, § 4848; R.S. 1931, § 66-621; C.S. 1945, § 55-313; W.S. 1957, § 29-52.)

Cited in Arnold v. American Pipe & Supply Co., 413 P.2d 874 (Wyo. 1966).

§ 29-3-224. Filing of lien; recordation; duration of lien; sale proceeds prorated.

Any person entitled to a lien under this act [§§ 29-3-220 to 29-3-229], shall make an account in writing of the items of labor, skill, machinery and material furnished, or either of them, as the case may be; and after making oath thereto, shall, within sixty (60) days from the time of completing such labor and skill, or furnishing the last item of such machinery or material, file the same in the office of the register of deeds of the county in which the ledge, lead or lode, or bank, may be situated, for which such labor, skill, machinery or material shall have been furnished, and shall also file at the same time a correct description of the property to be charged with said lien, which account and description of said property so made and filed, shall be recorded in a separate book to be provided for that purpose, and shall for the time of the completion of the work, or furnishing material, and for one (1) year thereafter, operate as a lien on the

several descriptions of ledges, leads, lodes, mines or banks named in the first section of this act [§ 29-3-220]; when any labor has been done or material furnished, on a written contract, the same, or a copy thereof, shall be filed with the account herein required to be filed; provided, that all lien claims for labor performed, or material furnished shall be concurrent liens upon the same, and shall be paid pro rata out of the proceeds arising from the sale thereof, if the same shall be sold. (C.L. 1876, ch. 77, Part V, § 5; R.S. 1887, § 1497; R.S. 1899, § 2879; C.S. 1910, § 3789; C.S. 1920, § 4849; R.S. 1931, § 66-622; C.S. 1945, § 55-314; W.S. 1957, § 29-53.)

Powers and duties of registers of deeds transferred. — The powers, duties and functions of registers of deeds have been transferred to county clerks. See ch. 54, Laws 1890-91; § 18-3-402.

§ 29-3-225. Enforcement of lien; parties.

Every person holding such lien may proceed to obtain a judgment for the amount of his account thereon, by civil action, and when any suit or suits shall be commenced on such accounts within six (6) months after said filing of such account, the lien shall continue until such suit or suits be finally determined and satisfied, and in all actions instituted under this act [§§ 29-3-220 to 29-3-229], all persons claiming liens upon the property sought to be affected shall be made parties to such action or proceeding; and the rights of all parties to such action shall be determined by the court and such order made therein as shall preserve and protect the rights of all such parties under the provisions of this act. (C.L. 1876, ch. 77, Part V, § 6; R.S. 1887, § 1498; R.S. 1899, § 2880; C.S. 1910, § 3790; R.S. 1920, § 4850; R.S. 1931, § 66-623; C.S. 1945, § 55-315; Laws 1951, ch. 35, § 2; W.S. 1957, § 29-54.)

Cross reference. - See also § 29-3-209.

§ 29-3-226. Filing and recording fees.

The county register of deeds, for filing and recording all papers under this act [§§ 29-3-220 to 29-3-229] shall be paid the same fees as are, or hereafter may be allowed by law for filing and recording deeds. (C.L. 1876, ch. 77, Part V, § 8; R.S. 1887, § 1500; R.S. 1899, § 2882; C.S. 1910, § 3791; C.S. 1920, § 4851; R.S. 1931, § 66-624; C.S. 1945, § 55-316; W.S. 1957, § 29-55.)

Cross reference. — As to fees for filing and recording deeds, see § 18-3-402.

Powers and duties of registers of deeds transferred. — The powers, duties and functions of registers of deeds have been transferred to county clerks. See ch. 54, Laws 1890-91; § 18-3-402.

§ 29-3-227. Entry of satisfaction.

When any person who shall have filed his account and perfected his lien, pursuant to the provisions of this act [§§ 29-3-220 to 29-3-229], shall have received satisfaction for his claim and the legal costs of his proceedings therein,

he shall, upon the request of any person interested, and within six (6) days, enter satisfaction of his lien in the office where such account and lien is of record, which shall forever thereafter discharge, defeat and release the same. (C.L. 1876, ch. 77, Part V, § 8; R.S. 1887, § 1500; R.S. 1899, § 2882; C.S. 1910, § 3792; C.S. 1920, § 4852; R.S. 1931, § 66-625; C.S. 1945, § 55-317; W.S. 1957, § 29-56.)

§ 29-3-228. Failure to enter satisfaction.

If any person, having received satisfaction as specified in the preceding section [§ 29-3-227], or having been tendered the amount due on his claim with legal costs, shall not, within six (6) days after request, enter satisfaction as aforesaid, he shall forfeit and pay to the person aggrieved, double the amount of damages which may have been sustained in consequence of such refusal or neglect. (C.L. 1876, ch. 77, Part V, § 9; R.S. 1887, § 1501; R.S. 1899, § 2883; C.S. 1910, § 3793; C.S. 1920, § 4853; R.S. 1931, § 66-626; C.S. 1945, § 55-318; W.S. 1957, § 29-57.)

§ 29-3-229. Applicability of sections 29-3-220 to 29-3-229.

The provisions of this act [§§ 29-3-220 to 29-3-229] shall apply to oil wells or springs, and iron mines, so far as the same may be applicable, and to all mines not herein specified, within this state. (C.L. 1876, ch. 77, Part V, § 10; R.S. 1887, § 1502; R.S. 1899, § 2884; C.S. 1910, § 3794; C.S. 1920, § 4854; R.S. 1931, § 66-627; C.S. 1945, § 55-319; W.S. 1957, § 29-58.)

Co., 413 P.2d 874 (Wyo. 1966),

Cited in Arnold v. American Pipe & Supply Interests Subject to Wyoming Lien Laws," 11 Wyo. L.J. 160.

Law review. - See note, "Oil and Gas

§ 29-3-230. Where actions to be brought.

The suits or actions provided for by an act giving liens to miners and other laborers in mines, coal banks and upon oil lands, approved December 2, 1869 [§§ 29-3-201, 29-3-203 to 29-3-209], and an act to create a lien for miners and laborers in certain cases and for other purposes, approved December 16, 1871 [§§ 29-3-220 to 29-3-229], shall be brought in the county in which the lien provided for by said acts is filed or recorded. (Laws 1879, ch. 55, § 1; R.S. 1887, § 1503; R.S. 1899, § 2885; C.S. 1910, § 3795; C.S. 1920, § 4855; R.S. 1931, § 66-628; C.S. 1945, § 55-320; W.S. 1957, § 29-59.)

Cross references. — As to venue generally, see § 1-5-101 et seq. As to procedure generally, see §§ 29-3-202, 29-3-208.

§ 29-3-231. Service of process; on defendant residents outside of county where action brought.

When the owner or owners of the mine upon which the lien is filed, being a person or persons, shall reside in the state, but in a county other than that in which the suit or action is brought, or being a corporation, shall have its place of business in the state but in a county other than that in which the suit or action is brought, and it shall be impossible to make service of process within the county in which the suit or action is brought, it shall be the duty of the clerk of the court in which the suit or action is brought, upon an affidavit being filed in his office showing such facts, to transmit the summons or other process to the sheriff of the county in which the defendant resides or has its place of business, and the summons or other process shall be served by such sheriff and returned as in other cases except that the time for making such service and return and the time of answering in such action may be extended one (1) week. (Laws 1879, ch. 55, § 3; R.S. 1887, § 1505; R.S. 1899, § 2887; C.S. 1910, § 3797; C.S. 1920, § 4857; R.S. 1931, § 66-630; C.S. 1945, § 55-322; W.S. 1957, § 29-60.)

§ 29-3-232. Same; by publication to nonresidents.

When the owner or owners of the mine upon which the lien is filed, being a person or persons, shall reside out of the state, or being a corporation shall have its place of business outside the state and it shall be impossible to make service of process within the state, service may be made by publication in the manner now provided by law. (Laws 1879, ch. 55, § 2; R.S. 1887, § 1504; R.S. 1899, § 2886; C.S. 1910, § 3796; C.S. 1920, § 4856; R.S. 1931, § 66-629; C.S. 1945, § 55-321; W.S. 1957, § 29-61.)

Cross reference. — For general provisions concerning publication of notices required by law, see §§ 1-6-201 to 1-6-203.

§ 29-3-233. Applicability of sections 29-3-201 and 29-3-203 to 29-3-229.

The two (2) acts mentioned in section one of this act [§ 29-3-230] shall apply to all persons who shall do any work in and about the mines or oil wells mentioned herein, or in hauling and transporting the products of such mines or oil wells at the request of the owner or owners thereof, or of his or their agent. (Laws 1879, ch. 55, § 4; R.S. 1887, § 1506; R.S. 1899, § 2888; C.S. 1910, § 3798; C.S. 1920, § 4858; R.S. 1931, § 66-631; C.S. 1945, § 55-323; W.S. 1957, § 29-62.)

Cross reference. — For other provisions concerning application to oil wells, see § 29-3-204.



TITLE 30

Mines and Minerals

Chap.

- 1. General Provisions, §§ 30-1-101 to 30-1-133.
- 2. Mining Operations Generally, §§ 30-2-101 to 30-2-433.
- 3. Coal Mines, §§ 30-3-101 to 30-3-605.
- 4. Other Mines, §§ 30-4-101 to 30-4-305.
- 5. Oil and Gas, §§ 30-5-101 to 30-5-204.
- 6. Explosives and Inflammables, §§ 30-6-101 to 30-6-112.

Cross references. - For constitutional provisions relative to mines and minerals generally, see art. 9, §§ 1 to 6, Wyo. Const. As to assessment of coal lands for taxation, see art. 15, § 2, Wyo. Const. As to taxation of mines and mining claims, see art. 15, § 3, Wyo. Const. As to excise tax on minerals, see art. 15, § 19, Wyo. Const. As to hours of labor in mines, smelters, stamp mills and other institutions for reduction or refining of ores or metals, see art. 19, § 2, Wyo. Const. As to right of eminent domain with reference to ways of necessity for mining purposes, or for the transportation of coal, and as to the procedure in connection therewith, see Rule 71.1, W.R.C.P., and §§ 1-26-401 to 1-26-403. As to sale of interest in mines, in connection with the administration of estates, see §§ 2-6-309 to 2-6-319. As to sale, lease, etc., of mineral content. of real property by fiduciaries, see §§ 4-5-103, 4-5-104. As to cheating in extracting gold, see § 6-3-118. For duties of administrator of division of mineral development, see § 9-3-315. For duty of Wyoming travel commission to assemble and distribute information concerning recreational, agricultural, mineral, industrial and other opportunities or resources of Wyoming, see § 9-3-506. As to general duties and powers of state geologist, see § 9-3-1406. As to geological survey, see §§ 9-3-1420 to 9-3-1429. For authority of state to retain or lease mineral rights to lands acquired in connection with home for the blind, see § 9-6-705. As to aerial prospecting, see §§ 10-2-110 to 10-1-112. For authority of farm loan board as to sale or lease of land with reference to both mineral and surface rights, etc., see § 11-30-123. As to incorporation, etc., of ditch companies, see § 17-12-101 et seq. For duty of county clerk to keep water users records as official records.

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CHAPTER 1

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§ 30-1-101. Recording mining claims required; requisites of certificate.

- (a) A discoverer of any mineral lead, lode, ledge, or vein shall, within sixty (60) days from the date of discovery, cause such claim to be recorded in the office of the county clerk and ex officio register of deeds of the county within which such claim may exist, by a location certificate which shall contain the following facts:
 - (i) The name of the lode claim;
 - (ii) The name or names of the locator or locators;
 - (iii) The date of location;
 - (iv) The length of the claim along the vein measured each way from the center of the discovery shaft, and the general course of the vein as far as it is known;
 - (v) The amount of surface ground claimed on either side of the center of the discovery shaft or discovery workings;
 - (vi) A description of the claim by such designation of natural or fixed object, or if upon ground surveyed by the United States system of land survey, by reference to section or quarter section corners, as shall identify the claim beyond question. (Laws 1888, ch. 40, § 15; 1890-91, ch. 46, § 1; 1895, ch. 108, § 1; R.S. 1899, § 2546; C.S. 1910, § 3467; C.S. 1920, § 4390; R.S. 1931, § 70-114; C.S. 1945, § 57-914; W.S. 1957, § 30-1.)

Purpose of recording mining claim location certificates. — In the absence of a contrary statement by the legislature, the primary purpose of requiring mining claim location certificates to be recorded is the imparting of permanent constructive notice concerning the acts claimed to have been performed by the locator. Globe Mining Co. v. Anderson, 78 Wyo. 17, 318 P.2d 373 (1957).

Meaning of "survey". — Survey referred to in this section, providing that certificate of mining location shall contain a description of the claim if upon ground surveyed by the United States system, by reference to section or quarter section corners, as shall identify the claim, means a completed survey by proper federal authorities, and does not include a survey which has not been approved. Slothower v. Hunter, 15 Wyo. 189, 88 P. 36 (1906).

Protection afforded by recordation of certificate. — The recording of lode mining location certificates in the proper county clerk's office will of itself suffice to give the locator and discoverer all protections which are entailed by making them of record. State ex rel. Blonder v. Goodbrod, 77 Wyo, 126, 307 P.2d 1073 (1957).

Recorded certificates take place of notices of location. — Where location certificates of mining claims are on record several years prior to the attempted location of adverse claims, they take the place of the location notices, and render proof of the posting of the notices unnecessary as against adverse claimants. Bergquist v. West Virginia-Wyoming Copper Co., 18 Wyo. 234, 106 P. 673 (1910).

The issue of good faith in filing location certificates involves an inquiry into the intent of the locator. United States v. Zweifel, 508 F.2d 1150 (10th Cir.), cert. denied, 423 U.S. 829, 96 S. Ct. 47, 46 L. Ed. 2d 46 (1975).

Improper location or recordation casts cloud on title. — Location and recordation of claims on unappropriated public land without actual discovery of valuable minerals, or recordation without marking the claim in compliance with federal and state law casts a cloud on the title of the United States. United States v. Zweifel, 508 F.2d 1150 (10th Cir.), cert. denied, 423 U.S. 829, 96 S. Ct. 47, 46 L. Ed. 2d 46 (1975).

Erroneous recordation pursuant to mining district regulation. — The district court

committed error in granting a writ of mandamus to compel a recorder of a mining district to record a lode mining certificate pursuant to a regulation adopted by the district under § 57-901, W.C.S. 1945, prior to its repeal, since such regulation was contrary to this section requiring such certificate to be recorded at the office of the county clerk. State ex rel. Blonder v. Goodbrod, 77 Wyo. 126, 307 P.2d 1073 (1957).

Effect of proper location and recordation. — If one locates, marks and records his claim in accordance with federal and state law, he has an exclusive right of possession to the extent of his claim as located, with the right to extract the minerals without paying any royalty to the United States as owner, and without ever applying for a patent or seeking to obtain title to the fee. United States v. Zweifel, 508 F.2d 1150 (10th Cir.), cert. denied, 423 U.S. 829, 96 S. Ct. 47, 46 L. Ed. 2d 46 (1975).

No right initiated by trespass. — It is a general rule that a mining location, to be valid, must be good when made, and that a right cannot be initiated by a trespass. Phillips v. Brill, 17 Wyo. 26, 95 P. 856 (1908).

But knowledge of claims precludes taking advantage of defects in recorded claims. — Defendants could not take advantage of defects in recorded claims of plaintiff where defendants had actual knowledge of claims, consulted the county records, traced some of the boundaries on the ground and saw certain stakes, notices and workings. Globe Mining Co. v. Anderson, 78 Wyo. 17, 318 P.2d 373 (1957).

In a pedis possessio conflict between 2 locators of lode mining claims, the better title prevails. MacGuire v. Sturgis, 347 F. Supp. 580 (D. Wyo. 1971).

No estoppel. — Even if person making discovery for defendants was estopped, by reason of conveyance to them, in denying validity of his former location, his employment by defendants to make the discovery and location on the same claim did not bring them into privity with him, so as to estop them by his conveyance, there being no evidence of fraud by defendants; nor does fact that such person was a stockholder in the company to which the claim was conveyed estop the company from claiming the benefit of his discovery. Whiting v. Straup, 17 Wyo. 1, 95 P. 849 (1908).

Only 1 recording with county clerk required.

The presence at 1 time in this section of a provision requiring the recording of a lode claim with the recorder of the mining district and its absence now would seem to indicate a legislative purpose that but a single recording of the certificates in the usual office of record — the county clerk and ex officio register of deeds — shall be made. State ex rel. Blonder v. Goodbrod, 77 Wyo. 126, 307 P.2d 1073 (1957).

Failure to record in time only affects intervening rights. — Failure to record a certificate of a mining location within 60 days as required by this section does not vitiate the certificate, the only effect of the failure being that it may affect intervening rights. Slothower v. Hunter, 15 Wyo. 189, 88 P. 36 (1906).

When "discovery" made. — When the locator finds rock in place containing mineral, he has made a discovery within the meaning of the statute, whether it assays high or low. Western Std. Uranium Co. v. Thurston, 355 P.2d 377 (Wyo. 1960), quoting Columbia Copper Mining Co. v. Duchess Mining, Milling & Smelting Co., 13 Wyo. 244, 79 P. 385 (1905).

Completion of location. — Mining claim location may be made by an agent, even without knowledge of the principal, if there is local rule authorizing it, or subsequent ratification, and where one had entered on land and performed the acts necessary for a valid location of a placer oil claim, except making a discovery of minerals, but before any discovery thereon such person sold part of it to plaintiffs, and abandoned the other, and thereafter entered defendants' employment for the purpose of locating placer oil mining claims, and completed a valid location for defendants by making a discovery, such discovery inured to defendants' benefit. Whiting v. Straup, 17 Wyo. 1, 95 P. 849 (1908).

Ratification of location by agent. — Where, in action to determine rights of claimants to a mining claim, defendant claims under amended certificate of location signed in the name of its attorney, by offering certificate in evidence and relying upon it, defendant ratifies the act of its agent, although he had no original authority to sign it. Bergquist v. West Virginia-Wyoming Copper Co., 18 Wyo. 234, 106 P. 673 (1910).

Amended certificate of location. — Where a company acquires all the title of locators of a mining claim, both under an original and a subsequent location, it is competent for the company to record an additional or amended certificate of location and claim thereby an original discovery on the date of the discovery by the original locators. Bergquist v. West Virginia-Wyoming Copper Co., 18 Wyo. 234, 106 P. 673 (1910).

Construing certificate. — Where location certificate of M claim used words "location shafts," instead of "discovery shaft," in giving length of claim in each direction, while the point from which the length is measured in the certificate of an adjoining claim is designated as the "location," the certificates must be construed as intending to give the length each way from center of the discovery shaft, as required by statute. Bergquist v. West Virginia-Wyoming Copper Co., 18 Wyo. 234, 106 P. 673 (1910).

Defective certificate vests no title. — A certificate of a mining location which fails to give the length of the claim along the vein each way from the center of the discovery shaft, or to mention the discovery shaft, is fatally bad, and vests no title in the locator. Slothower v. Hunter, 15 Wyo. 189, 88 P. 36 (1906).

Description of claim held prima facie sufficient.— A certificate of a mining location stating that it was located in a designated mining district and county, and describing the claim as lying west of claims designated, but which did not give distances or directions, was prima facie sufficient within this section, providing that a certificate of a mining location shall contain a description of the claim by such designation of natural or fixed objects as shall identify the claim. Slothower v. Hunter, 15 Wyo. 189, 88 P. 36 (1906).

Validity of entry as to Indian lands. — An entry under the mining laws after the expiration of 60 day limit set by congress in act disposing of Indian lands ceded to United States was not invalidated because person entering the same

had been upon the land before expiration of the 60 days, entry being forbidden by presidential proclamation until after 60 days, and had remained upon such lands or in close proximity to them until expiration of the 60 day period. LeClair v. Hawley, 18 Wyo. 23, 102 P. 853 (1909).

Discovery and extent of lode is question of fact. — Whether a vein or lode has been discovered or exists within the limits of the location in controversy, and as to the continuity of ore and mineral matter constituting the length, width and extent of any particular vein or lode, is always a question of fact to be determined by a jury, or by the court, if the case is tried without a jury. Western Std. Uranium Co. v. Thurston, 355 P.2d 377 (Wyo. 1960).

Cited in MacGuire v. Sturgis, 347 F. Supp. 580 (D. Wyo. 1971).

Law reviews. - For note, "The Description of a Mining Claim," see 9 Wyo. L.J. 224.

For note on Globe Mining Co. v. Anderson, 78 Wyo. 17, 318 P.2d 373 (1957), and the mining laws, see 13 Wyo. L.J. 43 (1958).

§ 30-1-102. Imperfect certificates void.

Any certificate of the location of a lode claim which shall not fully contain all the requirements named in the preceding section [§ 30-1-101], together with such other description as shall identify the lode or claim with reasonable certainty, shall be void. (Laws 1888, ch. 40, § 16; R.S. 1899, § 2547; C.S. 1910, § 3468; C.S. 1920, § 4391; R.S. 1931, § 70-115; C.S. 1945, § 57-915; W.S. 1957, § 30-2.)

New location. — Where recorded location certificate of lode mining claim has been adjudged defective and void, claim having been otherwise properly located and considerable development work having been done, locators may, to protect their interest, make new location of same ground. Bergquist v. West

Virginia-Wyoming Copper Co., 18 Wyo. 234, 106 P. 673 (1910).

Cited in Slothower v. Hunter, 15 Wyo. 189, 88 P. 36 (1906); Globe Mining Co. v. Anderson, 78 Wyo. 17, 318 P.2d 373 (1957).

Law review. — See "The Description of a Mining Claim," 9 Wyo. L.J. 224.

§ 30-1-103. Prerequisites to filing location certificates.

- (a) Before the filing of a location certificate in the office of the county clerk and ex officio register of deeds, the discoverer of any lode, vein or fissure shall designate the location thereof as follows:
 - (i) By sinking a shaft upon the discovery lode or fissure to the depth of ten (10) feet from the lowest part of the rim of such shaft at the surface;
 - (ii) By posting at the point of discovery, on the surface, a plain sign or notice, containing the name of the lode or claim, the name of the discoverer and locator, and the date of such discovery;
 - (iii) By marking the surface boundaries of the claim, which shall be marked by six (6) substantial monuments of stone or posts, hewed or

marked on the side or sides, which face is toward the claim, and sunk in the ground, one (1) at each corner, and one (1) at the center of each side line, and when thus marking the boundaries of a claim, if any one (1) or more of such posts or monuments of stone shall fall, by necessity, upon precipitous ground, when the proper placing of it is impracticable or dangerous to life or limb, it shall be lawful to place any such post or monument of stone at the nearest point properly marked to designate its right place; provided, that no right to such lode or claim or its possession or enjoyment, shall be given to any person or persons, unless such person or persons shall discover in said claim mineral bearing rock in place. (Laws 1888, ch. 40, § 17; R.S. 1899, § 2548; C.S. 1910, § 3469; C.S. 1920, § 4392; R.S. 1931, § 70-116; C.S. 1945, § 57-916; W.S. 1957, § 30-3.)

Cross reference. — As to manner and method of making surveys, see §§ 18-3-702, 18-3-704.

"Depth of shaft" construed. — The provisions of this section and § 30-1-106 which provide respectively that the shaft be sunk to the "depth of ten (10) feet from the lowest part of the rim of such shaft at the surface" and "any open cut ... with face ten (10) feet in height" refer to the depth of the "shaft" (or "cut") and not to the height of the vein. Globe Mining Co. v. Anderson, 78 Wyo. 17, 318 P.2d 373 (1957).

Location notice held in substantial compliance with section. — Location notice reading: "We the undersigned claim by right of discovery this ledge, lode or deposit described as follows: Fifteen hundred feet in a northwesterly direction from this notice, and three hundred feet on each side of this vein," containing also name of lode, dated and signed by locators, and posted on same date, substantially complied with statute. Columbia Copper Mining Co. v. Duchess Mining, Milling & Smelting Co., 13 Wyo. 244, 79 P. 385 (1905).

Discovery need not precede other acts of location. — Discovery of minerals within limits of a claim is essential to a valid location of a mining claim on public domain, whether it be a lode or placer claim, but such discovery need not, in absence of intervening rights, precede the other acts of location; and if made prior to any

intervening rights, though subsequent to marking out boundaries and recording claim, the location, if otherwise good, will be validated from discovery date. Whiting v. Straup, 17 Wyo. 1, 95 P. 849 (1908).

When it precedes intervening rights. — Plaintiff by posting location notice and recording same before sinking a shaft or making a cut failed to comply strictly with this section, but defendant who insisted on acts of discovery preceding acts of location as required by this section could not insist on acts being in proper order where discovery occurred before rights of defendant intervened. Globe Mining Co. v. Anderson, 78 Wyo. 17, 318 P.2d 373 (1957).

Cited in Western Std. Uranium Co. v. Thurston, 355 P.2d 377 (Wyo. 1960).

Law reviews. — For a note, "Location of Mining Claims in Wyoming," see 9 Wyo. L.J.

"The Description of a Mining Claim," 9 Wyo. L.J. 224.

"The Assessment Work Requirements," 9 Wyo, L.J. 231.

For note on Globe Mining Co. v. Anderson, 78 Wyo. 17, 318 P.2d 373 (1957), and the mining laws, see 13 Wyo. L.J. 43 (1958).

C.J.S. reference. — 58 C.J.S. Mines and Minerals §§ 45 to 48.

§ 30-1-104. Additional location certificate to be filed upon change of surface boundaries or addition of new territory.

Whenever it shall be apprehended by the locator, or his assigns, of any mining claims or property heretofore or hereafter located, that his or their original location certificate was defective, erroneous, or that the requirements of the law had not been complied with before the filing thereof, or shall be desirous of changing the surface boundaries of his or their original claim or location, or of

taking in any part of an overlapping claim or location which has been abandoned, such locator or locators, or his or their assigns, may file an additional location certificate in compliance with and subject to the provisions of this act [§§ 30-1-101 to 30-1-126]; provided, however, that such relocation shall not infringe upon the rights of others existing at the time of such relocation, and that no such relocation, or other record thereof, shall preclude the claimant or claimants from proving any such title or titles as he or they may have held under any previous location. (Laws 1888, ch. 40, § 7; R.S. 1899, § 2538; C.S. 1910, § 3459; C.S. 1920, § 4382; R.S. 1931, § 70-106; C.S. 1945, § 57-906; W.S. 1957, § 30-4.)

Cross reference. — As to duty of county surveyor to survey underground workings of mines to determine whether or not workings are encroaching upon lands of others, see §§ 30-3-403, 30-3-404.

No relocation until title under valid location reverts. — Land on which valid mining location has been made is segregated from the public domain, and until some act or laches of the locator occurs by which the title reverts to the government, it cannot be relocated. Slothower v. Hunter, 15 Wyo. 189, 88 P. 36 (1906).

Excessive locations are valid except as to the excess. Chittim v. Belle Fourche Bentonite Prods. Co., 60 Wyo. 235, 149 P.2d 142 (1944).

Relocation by former locators to cure defect. — Where mining claim has not been abandoned but has been improved by original locators or their assigns, and because of a defect in location certificate, claim is relocated, the former locators, or another for their benefit, have a right to protect their interest by making a new location, there being no failure on the part of those in possession to perform the required development work. Bergquist v. West Virginia-Wyoming Copper Co., 18 Wyo. 234, 106 P. 673 (1910).

Application of section proviso relating to existing rights. — The proviso in this section as to existing rights does not relate to amendments of mere defects or errors, but applies only where the boundaries are changed so as to take in territory not before included within the claim. Hagerman v. Thompson, 68 Wyo. 515, 235 P.2d 750 (1951).

Recital of relocation is admission of former claim. — A recital in a certificate of a mining location that it is "a relocation of" an abandoned location is an admission that a former claim once had legal existence, and former claimant, purchasing rights of second locator, can claim rights under his purchase only on theory that former claim had been abandoned. Slothower v. Hunter, 15 Wyo. 189, 88 P. 36 (1906).

Amendment by assignee. — A successor to the interest of original locators of an oil claim is entitled to amend the original or file an additional certificate showing the date of discovery made before the attachment of intervening rights. Dean v. Omaha-Wyoming Oil Co., 21 Wyo. 133, 128 P. 881, rehearing denied, 129 P. 1023 (1913).

Retaking of an oil claim or giving it a name is not essential to the validity of an amendment of the certificate made by an assignee of the original locators on the discovery of mineral. Dean v. Omaha-Wyoming Oil Co., 21 Wyo. 133, 128 P. 881, rehearing denied, 129 P. 1023 (1913).

Original and amended certificates construed together. — Where an amended certificate of location of an oil claim is filed as authorized by this section, before intervening rights have attached, original and the amended certificates must be construed together, and if, when so construed, they are sufficient, the location record will be held valid. Dean v. Omaha-Wyoming Oil Co., 21 Wyo. 133, 128 P. 881, rehearing denied, 129 P. 1023 (1913).

The original location certificate of a mining claim and an amended certificate, if one be filed, must be construed together, and, if sufficient when so construed, the location record will be valid, although neither standing alone would be sufficient. The amended certificate, if filed, relates back to the date of the original location. Hagerman v. Thompson, 68 Wyo. 515, 235 P.2d 750 (1951).

Facts showing discovery. — Where original discoverers and locators of a lode have sunk shaft on the claim, and each one knows of the existence of mineral-bearing rock in place in that shaft, and at a point where they posted a notice, such facts sufficiently show a discovery to support a new location by them at time of posting notice. Bergquist v. West Virginia-Wyoming Copper Co., 18 Wyo. 234, 106 P. 673 (1910).

Original boundaries may be adopted. — Where mining claim is relocated by the original locators, the boundaries of the relocation need not be marked, as required for original location, where boundaries of original location are marked and identified, as the locator may adopt the original markings and boundaries, even though § 30-1-109 contains an express permission to adopt old boundaries only in case of an abandoned claim. Bergquist v. West Virginia-Wyoming Copper Co., 18 Wyo. 234, 106 P. 673 (1910).

Failure to prove remarking of boundaries.

— Where certificate to original bentonite placer mining claim for 60 acres by defendant's predecessors was amended to exclude 40 acres

merely because original location included some ground not open to location, plaintiffs were not entitled to judgment for defendant's failure to prove boundaries were remarked to conform to relocation. Chittim v. Belle Fourche Bentonite Prods. Co., 60 Wyo. 235, 149 P.2d 142 (1944).

Law review. - See "The Description of a

Mining Claim," 9 Wyo. L.J. 224.

C.J.S. reference. — 58 C.J.S. Mines and Minerals § 53.

§ 30-1-105. Location certificates shall describe but 1 claim.

No location certificate shall contain more than one (1) claim or location, whether the location be made by one (1) or more locators, and any location certificate that contains upon its face more than one (1) location claim shall be absolutely void, except as to the first location named and described therein, and in case more than one (1) claim or location is described together so that the first one (1) can not be distinguished from the others, the certificate of location shall be void as an entirety. (Laws 1888, ch. 40, § 8; R.S. 1899, § 2539; C.S. 1910, § 3460; C.S. 1920, § 4383; R.S. 1931, § 70-107; C.S. 1945, § 57-907; W.S. 1957, § 30-5.)

Notices intended only to change groupings did not constitute abandonment of claims. — Notices of location which, by grouping of claims and acreage amounts, were rendered illegal as original notices under this section and 30 U.S.C. § 36 were seemingly intended only to change

groupings and amounts in prior valid notices of same claims and did not constitute abandonment of latter. Simmons v. Muir, 75 Wyo. 44, 291 P.2d 810 (1955).

Applied in Western Std. Uranium Co. v. Thurston, 355 P.2d 377 (Wyo. 1960).

§ 30-1-106. When open cut equivalent to discovery shaft; drilled hole in lieu of discovery shaft; requirements as to drilled hole.

- (a) Any open cut which shall cut the vein ten (10) feet in length, and with face ten (10) feet in height, or any cross-cut tunnel, or tunnel on the vein ten (10) feet in length which shall cut the vein ten (10) feet below the surface, measured from the bottom of such tunnel, shall hold such lode the same as if a discovery shaft were sunk thereon.
- (b) Provided however, that the discoverer of a mineral deposit may, at his option, in lieu of a discovery shaft, tunnel or pit otherwise required by provisions of law, and for the same purposes, and under the same provisions, drill or cause to be drilled, a hole, or holes, in the manner and under the conditions and requirements hereinafter set forth:
 - (i) The hole or holes shall be not less than one and one-half (1½) inches in diameter;
 - (ii) The said hole or holes shall aggregate at least fifty (50) feet in depth, and no one (1) hole shall be less than ten (10) feet in depth, and in the course thereof, at least one (1) of which shall cut or expose deposits of valuable minerals sufficient in quality to justify a reasonably prudent man in expending money and effort in further exploration or development:

- (iii) The discoverer shall designate one (1) of the holes thus drilled as the discovery hole, in the event that more than one (1) such hole shall have been drilled. The said hole shall be marked by a substantial post or other permanent marker, placed at and adjacent to the hole and within five (5) feet thereof, firmly fixed in the ground, and extending at least thirty (30) inches in height above the ground, and on which shall be placed the name of the claim, the owner thereof, the depth of the hole, and the date of the drilling thereof.
- (c) If, in drilling such hole or holes, a water-bearing stratum or strata is entered or cut by the drill, then, in such event, the hole shall be plugged back by or on behalf of the discoverers, locator or owner, who drilled the hole, or someone on his behalf, to a point immediately above such water-bearing stratum or strata, placing therein a plugging material or substance which is recognized and adequate to shut off said water-bearing stratum or strata. Within the time allowed by the provisions of 57-918 Wyoming Compiled Statutes, 1945 [§ 30-1-107], the discoverer, locator or owner, or someone on his behalf, shall set forth in an affidavit hereinafter provided for, or in a separate affidavit, setting forth the depth said water strata was encountered and the facts of the plugging thereof.
- (d) The drilling of such hole, or holes, or the sinking of the shaft or making of the discovery pit otherwise provided for in this act [§§ 30-1-101 to 30-1-126] shall be made a matter of record by the recording in the office of the county clerk of the county in which the claim shall be situated the affidavit or sworn statement of the discoverer, locator, owner or his or their agents stating the date of such work, the nature thereof, the person or persons by whom performed, the location of such work within the claim, and the nature of the mineral discovered. Such affidavit may be a part of the location certificate to be thereafter recorded in accordance with the provisions of this act.
- (e) The creation of the rights provided for in this act are based upon the truth of the statements contained in such affidavit or statement and the certificate of location, herein otherwise provided for, and no rights of any kind or nature shall vest or exist or be created or arise when any material statement or representation therein made is false.
- (f) The owner of any mining claim located prior to the effective date of this act and who has performed discovery work may avail himself of the provisions hereof by making the drill hole or holes herein provided for and filling any discovery cut previously made, and making and placing of record the affidavit herein provided for, together with a statement of the filling of such discovery pit or cut, and that the said work was done and the affidavit made for the purpose of obtaining the benefits of this act. (Laws 1888, ch. 40, § 18; R.S. 1899, § 2549; C.S. 1910, § 3470; C.S. 1920, § 4393; R.S. 1931, § 70-117; C.S. 1945, § 57-917; Laws 1955, ch. 88, § 1; W.S. 1957, § 30-6.)

Cross reference. — As to requirement that drill holes be capped, sealed or plugged, see § 35-11-401.

Effective date. — Section 3, ch. 88, Laws 1955, makes the act effective from and after passage. Approved February 11, 1955.

This section provides no penalty for failure to comply. Western Std. Uranium Co. v. Thurston, 355 P.2d 377 (Wyo. 1960).

Nor does it provide that the claims shall be void or that the locator is prohibited from claiming thereunder in event of his default, all of which are important criteria when considering whether a statute be mandatory in its terms. Western Std. Uranium Co. v. Thurston, 355 P.2d 377 (Wyo. 1960).

Hence, it is directory, not mandatory. - This statute says nothing about the effect of a failure to comply with it, and there may be good reasons for holding that it ought to be construed as merely directory. The intention of the law-making body to be gathered from the terms of the statute in the light of the objects and purposes intended to be accomplished is always the controlling factor in the construction of legislative acts. A short statement of those goals is "a result which is reasonable." The only possible suggested purpose which appears from an examination of this statute is protection of the surface and the rights of surface users, and a fair inference seems to be that this is not a condition precedent but an incident or regulation prescribing mining methods or operation on public lands. A different construction might be dictated insofar as this statute might affect the United States or any other landowner who owned, controlled or asserted the right to the use of the surface, but insofar as the failure to comply therewith cannot prejudice one, it cannot be considered mandatory as to him. Western Std. Uranium Co. v. Thurston, 355 P.2d 377 (Wyo. 1960), quoting Hirt v. City of Casper, 56 Wyo. 57, 103 P.2d 394 (1940).

Courts inclined to be liberal in construing locator's acts so as not to defeat his claim. — It was not the intent of the legislature to disturb or overthrow the established rule in this state, proven by years of use, that "where a locator attempts in good faith to comply with the law, the courts are inclined to be liberal in construing his acts so as not to defeat his claim by technical criticism," and without a clear statement of such intention, the supreme court would be loath to so hold. Western Std. Uranium Co. v. Thurston, 355 P.2d 377 (Wyo. 1960), quoting Globe Mining Co. v. Anderson, 78 Wyo. 17, 318 P.2d 373 (1957).

Intention of legislature to adapt laws to factual situation arising in exploration for uranium. — The 1955 statutory enactment of this section making drill holes the equivalent of discovery shafts or cuts is an obvious attempt by the legislature to adapt the laws to the factual situation arising in the exploration for uranium and to promote and encourage the development thereof upon the public domain. Western Std. Uranium Co. v. Thurston, 355 P.2d 377 (Wyo. 1960).

Definition of lodes and veins to be construed with federal statute. — The legislature has adopted a definition of lodes and veins in aid of and to be construed with the federal statute, 30 U.S.C. § 23, providing "no location of a mining claim shall be made until the discovery of the vein or lode within the limits of the claim located." Western Std. Uranium Co. v. Thurston, 355 P.2d 377 (Wyo. 1960).

"Depth of shaft" construed. — The provision of this section and § 30-1-103 which provide respectively that the shaft be sunk to the "depth of ten (10) feet from the lowest part of the rim of such shaft at the surface" and "any open cut." with face ten (10) feet in height" refer to the depth of the "shaft" (or "cut") and not to the height of the vein. Globe Mining Co. v. Anderson, 78 Wyo. 17, 318 P.2d 373 (1957).

Length requirement not applicable to shaft.

— The 10 foot length requirement as to open cuts provided by this section was not applicable to a shaft. Globe Mining Co. v. Anderson, 78 Wyo. 17, 318 P.2d 373 (1957).

Sufficiency of finding that pit was long enough.—A finding that a pit on specified claim was "long enough" was ambiguous, but reasonably interpreted it showed a substantial compliance with this section. Globe Mining Co. v. Anderson, 78 Wyo. 17, 318 P.2d 373 (1957).

Applied in MacGuire v. Sturgis, 347 F. Supp. 580 (D. Wyo. 1971).

Law reviews, — See "Location of Mining Claims in Wyoming," 9 Wyo. L.J. 220.

For note on Globe Mining Co. v. Anderson, 78 Wyo. 17, 318 P.2d 373 (1957), and the mining laws, see 13 Wyo. L.J. 43 (1958).

ALR2d and C.J.S. references. — "Discovery," under mining laws, of radioactive minerals such as uranium, 66 ALR2d 560.

58 C.J.S. Mines and Minerals § 43.

§ 30-1-107. Period allowed for sinking discovery shaft or drilling hole.

The discoverer of any mineral lode or vein in this state shall have the period of sixty (60) days from the date of discovering such lode or vein in which to sink a discovery shaft thereon, or to make the open cut equivalent to such discovery

shaft, or to drill the hole or holes hereinbefore provided. (Laws 1888, ch. 40, § 19; 1890-91, ch. 46, § 2; 1895, ch. 108, § 2; R.S. 1899, § 2550; C.S. 1910, § 3471; C.S. 1920, § 4394; R.S. 1931, § 70-118; C.S. 1945, § 57-918; Laws 1955, ch. 88, § 2; W.S. 1957, § 30-7.)

Effective dates. — Section 3, ch. 46, Laws 1890-91, makes the act effective from and after passage. Approved January 9, 1891.

Section 3, ch. 88, Laws 1955, makes the act

effective from and after passage. Approved February 11, 1955.

Cited in MacGuire v. Sturgis, 347 F. Supp. 580 (D. Wyo. 1971).

§ 30-1-108. Locators' rights of possession and enjoyment; "mineral boundaries" defined.

The locators of all mining locations heretofore made, or which shall hereafter be made, on any mineral vein, lode or ledge, situated on the public domain, their heirs and assigns, shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and of all veins, lodes and ledges throughout their entire depth, the top or apex of which lies inside of surface lines extended downward vertically although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side lines of such surface locations. But their right of possession to such outside parts of such veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward as above described, through the end lines of their locations, so continued in their own direction that such planes will intersect such exterior parts of such veins or ledges. And nothing in this section shall authorize a locator or possessor of a vein or lode which extends in its downward course beyond the vertical lines of his claim to enter upon the surface of a claim owned or possessed by another. (Laws 1888, ch. 40, § 20; R.S. 1899, § 2551; C.S. 1910, § 3472; C.S. 1920, § 4395; R.S. 1931, § 70-119; C.S. 1945, § 57-919; W.S. 1957, § 30-8.)

Cross reference. — As to surveys of underground workings, see notes to § 30-1-104.

Law review. — See "Location of Mining Claims in Wyoming," 9 Wyo. L.J. 220.

C.J.S. reference. - 58 C.J.S. Mines and Minerals §§ 59 to 66.

§ 30-1-109. Relocation of abandoned claims.

Any abandoned lode, vein or strata claim may be relocated and such relocation shall be perfected by sinking a new discovery shaft and by fixing new boundaries in the same manner as provided for the location of a new claim; or the relocator may sink the original discovery shaft ten (10) feet deeper than it was at the time of its abandonment, and erect new, or adopt the old boundaries, renewing the posts or monuments of stone if removed or destroyed. In either event, a new location stake shall be fixed. The location certificate of an abandoned claim may state that the whole or any part of the new location is located as an abandoned

claim. (Laws 1888, ch. 40, § 21; R.S. 1899, § 2552; C.S. 1910, § 3473; C.S. 1920, § 4396; R.S. 1931, § 70-120; C.S. 1945, § 57-920; W.S. 1957, § 30-9.)

Invalid relocation is not abandonment. — If a second location of a mining claim, with same name and boundaries as the first, attempted by original locators, should be found invalid, attempt to relocate will not constitute abandonment or forfeiture of former location. Bergquist v. West Virginia-Wyoming Copper Co., 18 Wyo. 234, 106 P. 673 (1910).

Abandonment is matter of intention. — In determining whether one has abandoned his property or rights, the intention is the paramount object of inquiry, and where plaintiff leased certain land to defendant for purpose of boring for oil and gas, operations to be commenced within a year, and operations were begun within that time, well drilled, and some 7 months thereafter lessee returned to drill another well when plaintiff revoked the lease, there was no intention by lessee to abandon

lease. Phillips v. Hamilton, 17 Wyo. 41, 95 P. 846 (1908); Douglas Oil Fields v. Hamilton, 17 Wyo. 54, 95 P. 849 (1908).

No rights acquired absent compliance with section. — Defendants acquired no rights of any kind or nature relative to locating certain lode uranium claims, where said claims were relocations of abandoned lode claims, and defendants neither drilled any new discovery shafts nor drilled any original discovery shafts 10 feet deeper nor fixed, in most instances, any new location stakes as required by this section. MacGuire v. Sturgis, 347 F. Supp. 580 (D. Wyo. 1971).

Law review. — See "The Description of a Mining Claim," 9 Wyo. L.J. 224.

C.J.S. reference. — 58 C.J.S. Mines and Minerals §§ 78 to 89.

§ 30-1-110. Location certificate for placer claims.

- (a) Hereafter the discoverer of any placer claim shall, within ninety (90) days after the date of discovery, cause such claim to be recorded in the office of the county clerk and ex officio register of deeds of the county within which such claim may exist, by filing therein a location certificate, which shall contain the following:
 - (i) The name of the claim, designating it as a placer claim;
 - (ii) The name or names of the locator or locators thereof;
 - (iii) The date of location;
 - (iv) The number of feet or acres thus claimed;
 - (v) A description of the claim by such designation of natural or fixed objects as shall identify the claim beyond question.
 - (b) Before filing such location certificate, the discoverer shall locate his claim:
 - (i) By securely fixing upon such claim a notice in plain painted, printed or written letters, containing the name of the claim, the name of the locator or locators, the date of the discovery, and the number of feet or acres claimed;
 - (ii) By designating the surface boundaries by substantial posts or stone monuments at each corner of the claim. (Laws 1888, ch. 40, § 22; R.S. 1899, § 2553; Laws 1901, ch. 100, § 1; C.S. 1910, § 3474; C.S. 1920, § 4397; R.S. 1931, § 70-121; C.S. 1945, § 57-921; W.S. 1957, § 30-10.)

Discovery is essential requirement. — An essential requirement of a valid location of a mining claim, as provided in this section, is that there shall be a discovery of mineral on the ground. Dean v. Omaha-Wyoming Oil Co., 21

Wyo. 133, 128 P. 881, rehearing denied, 129 P. 1023 (1913).

Location on ground covered by prior claim is void. — Location of mining claim is void where it is made upon ground covered at the time by a prior, valid and subsisting claim. Bergquist v. West Virginia-Wyoming Copper Co., 18 Wyo. 234, 106 P. 673 (1910).

The issue of good faith in filing location certificates involves an inquiry into the intent of the locator. United States v. Zweifel, 508 F.2d 1150 (10th Cir.), cert. denied, 423 U.S. 829, 96 S. Ct. 47, 46 L. Ed. 2d 46 (1975).

Effect of proper location and recordation. —
If one locates, marks and records his claim in accordance with federal and state law, he has an exclusive right of possession to the extent of his claim as located, with the right to extract the minerals without paying any royalty to the United States as owner, and without ever applying for a patent or seeking to obtain title to the fee. United States v. Zweifel, 508 F.2d 1150 (10th Cir.), cert. denied, 423 U.S. 829, 96 S. Ct. 47, 46 L. Ed. 2d 46 (1975).

Improper location or recordation casts cloud on title. — Location and recordation of claims on unappropriated public land without actual discovery of valuable minerals, or recordation without marking the claim in compliance with federal and state law casts a cloud on the title of the United States. United States v. Zweifel, 508 F.2d 1150 (10th Cir.), cert. denied, 423 U.S. 829, 96 S. Ct. 47, 46 L. Ed. 2d 46 (1975).

Curing defective location certificates. — If a location is merely defective in a location certificate, the defects are cured when a subsequent locator has knowledge of the prior location or if the location notice has been amended so as to comply with statutory requirements. Hagerman v. Thompson, 68 Wyo. 515, 235 P.2d 750 (1951).

Sufficiency of original and amended location certificates when construed together. — The original location certificate of a mining claim and an amended certificate, if one be filed, must be construed together, and, if sufficient when so construed, the location record will be valid, although neither standing alone would be sufficient. The amended certificate, if filed, relates back to the date of the original location. Hagerman v. Thompson, 68 Wyo. 515, 235 P.2d 750 (1951).

Location work must precede recording. —
Location certificates of placer claims cannot be validly recorded in the offices of the county clerks when recordee had not first done the necessary location work upon the ground. Zweifel v. State ex rel. Brimmer, 517 P.2d 493 (Wyo. 1974).

Location of posts on ground marked by U.S. surveys of public land system. — In locating posts for placer claims on ground marked in accord with the system of United States surveys of public land it is sufficient if the posts are placed within a few feet from the government

markers. Scoggin v. Miller, 64 Wyo. 206, 189 P.2d 677 (1948).

Notice describing section U.S. survey government adequate without designating acreage. - A notice which described 3 different subdivisions of a section of a United States government survey was sufficient though acreage was not designated, since the notice presumptively stated that locator claimed 120 acres, as each subdivision of a section of a United States government survey ordinarily contains 40 acres. Hagerman v. Thompson, 68 Wyo. 515, 235 P.2d 750 (1951).

Conformity of the boundaries of a placer claim with the lines of the United States government survey, by description of a placer location as covering recognized units or subdivisions of such survey, is sufficient to satisfy this section though no special name is attached to the claim. Hagerman v. Thompson, 68 Wyo. 515, 235 P.2d 750 (1951).

Defective reference to symbol in notice. — Plaintiff's notice of a placer mining claim which described location as "S.E.4 NE4 NE4 S.E.21 N.W.4 S.W.22 Section 22-21, Township 50, North, Range 66 West" was not void on the ground that symbol ¼ was designated by 4 but was only defective, and defendant who filed a subsequent mining claim could not take advantage of the defect where the plaintiffs subsequently amended the original claim and the defendant admitted that he knew about plaintiff's claim. Hagerman v. Thompson, 68 Wyo. 515, 235 P.2d 750 (1951).

Whether timber is "substantial post" is a question of fact and the trial court's finding upon substantial either undisputed or conflicting testimony is final. Scoggin v. Miller, 64 Wyo. 206, 189 P.2d 677 (1948).

Certain timber deemed "substantial post".

— A timber 4 inches square sunk in the ground 10 or 12 inches of its 20 or 30 inch length might fairly be regarded as a "substantial post." Scoggin v. Miller, 64 Wyo. 206, 189 P.2d 677 (1948).

Knowledge of boundaries of prior claims bar to attack on validity. — Plaintiffs, who had actual knowledge of the boundaries of prior placer claims filed by the defendants, could not attack validity of location certificate for alleged technical defects in notice. Scoggin v. Miller, 64 Wyo. 206, 189 P.2d 677 (1948).

The state attorney general has statutory authority under this section to prevent violations of state laws relative to the institution and perfection of mining claims. Zweifel v. State ex rel. Brimmer, 517 P.2d 493 (Wyo. 1974).

Cited in Globe Mining Co. v. Anderson, 78 Wyo. 17, 318 P.2d 373 (1957).

Law reviews. — See "Location of Mining Claims in Wyoming," 9 Wyo. L.J. 220. See "The Description of a Mining Claim," 9 Wvo. L.J. 224. C.J.S. reference, — 58 C.J.S. Mines and Minerals §§ 46, 49 to 56.

§ 30-1-111. Assessment work for placer claims; character and kind.

For every placer claim, assessment work, as hereinafter provided, shall be done during each and every year after the first day of September following the date of location. Such assessment work shall consist in manual labor, permanent improvements made on the claim in buildings, roads or ditches made for the benefit of working such claims, or after any manner, so long as the work done accrues to the improvement of the claim, or shows good faith and intention on the part of the owner or owners and their intention to hold possession of said claim. (Laws 1888, ch. 40, § 23; R.S. 1899, § 2554; C.S. 1910, § 3475; C.S. 1920, § 4398; R.S. 1931, § 70-122; C.S. 1945, § 57-922; Laws 1951, ch. 18, § 1; W.S. 1957, § 30-11; Laws 1967, ch. 20, § 1.)

Quoted in Scoggin v. Miller, 64 Wyo. 206, 189 P.2d 677 (1948); Parker v. Belle Fourche Bentonite Prods. Co., 64 Wyo. 269, 189 P.2d 882 (1948). C.J.S. reference. — 58 C.J.S. Mines and Minerals § 67 et seq.

§ 30-1-112. Same; amount of work required; suspension by act of congress.

On all placer claims heretofore or hereafter located in this state not less than one hundred dollars (\$100.00) worth of assessment work shall be performed during each year from the first day of July after the date of location provided that whenever annual assessment work required by United States laws be suspended by act of congress such assessment work required by this section shall be suspended for the year or years stated in the act of congress. (Laws 1888, ch. 40, § 23; R.S. 1899, § 2555; Laws 1901, ch. 100, § 2; C.S. 1910, § 3476; C.S. 1920, § 4399; R.S. 1931, § 70-123; C.S. 1945, § 57-923; Laws 1951, ch. 18, § 2; W.S. 1957, § 30-12.)

Editor's note. — The federal statute, 30 U.S.C. § 28, as amended by P.L. 85-736, approved August 23, 1958, provides that the assessment year shall run from September 1 to September 1.

Subordination to federal act. — State statutes in reference to mining rights on United States public domain must be construed in subordination to 30 U.S.C. § 28, which provides that period for doing required annual work shall commence on July 1st (now September 1st) succeeding date of location. Norris v. United Mineral Prods. Co., 61 Wyo. 386, 158 P.2d 679 (1945).

It is well settled that the locator need not personally do the assessment work. The work may be done by an agent or representative of the locator who does the work at the instance of the locator. Simmons v. Muir, 75 Wyo. 44, 291 P.2d 810 (1955).

Work done by U.S. government inures to claim owners. — Development work done by United States government on uranium claims held to inure to benefit of owners of claims and their assigns and lessees as proper assessment work. Simmons v. Muir, 75 Wyo. 44, 291 P.2d 810 (1955).

Test in determining "worth" of assessment work done by locators is actual, reasonable value of the labor or improvements placed upon the claims for their development, and what is paid for annual labor is not criterion. Norris v. United Mineral Prods. Co., 61 Wyo. 386, 158 P.2d 679 (1945).

Whether proper assessment was done is question for trial court. — The question whether or not proper assessment work was done is ordinarily a question of fact to be determined by trial court. Simmons v. Muir, 75 Wyo. 44, 291 P.2d 810 (1955).

Quoted in Scoggin v. Miller, 64 Wyo. 206, 189 P.2d 677 (1948); Parker v. Belle Fourche Bentonite Prods. Co., 64 Wyo. 269, 189 P.2d 882 (1948).

Law review. — For a note, "The Assessment Work Requirement," see 9 Wyo. L.J. 231. C.J.S. reference. — 58 C.J.S. Mines and

Minerals § 82.

§ 30-1-113. Same; upon contiguous claims.

When two (2) or more placer mining claims lie contiguous and are owned by the same person, persons, company or corporation, the yearly expenditure of labor and improvements required on each of such claims may be made upon any one (1) of such contiguous claims if the owner or owners shall thus prefer. (Laws 1888, ch. 40, § 23; R.S. 1899, § 2556; C.S. 1910, § 3477; C.S. 1920, § 4400; R.S. 1931, § 70-124; C.S. 1945, § 57-924; W.S. 1957, § 30-13.)

Section is supplemental to federal statutes.

— This section seems to be supplemental to federal statutes on the subject. Simmons v. Muir, 75 Wyo. 44, 291 P.2d 810 (1955).

Conditions limited to those specified in section. — There is no indication in this section that conditions other than those specified should be affixed, namely, that owner must show that assessment work on 1 claim benefits contiguous claims as well. Simmons v. Muir, 75 Wyo. 44, 291 P.2d 810 (1955).

Presumption is that work benefits all. — While assessment work on 1 claim should benefit whole group, this section seems to contemplate that when work is done upon any 1 of contiguous placer claims owned by same party, there is a presumption that that work does benefit all the others. Simmons v. Muir, 75 Wyo. 44, 291 P.2d 810 (1955).

So only contiguity, common ownership and work on 1 need be shown. — Where claims involved are all owned by 1 party, are all contiguous and are placer claims, on the face of this section, these are all facts necessary to be

shown in order that work done on any 1 claim inures for benefit of all; provided, that the total work done is sufficient to cover assessment work of \$100.00 for each claim as required by \$30-1-112. Simmons v. Muir, 75 Wyo. 44, 291 P.2d 810 (1955).

Burden of showing that assessment work on any 1 of contiguous group-claims does not benefit all devolves on those alleging failure to perform assessment work proper under this section. Simmons v. Muir, 75 Wyo. 44, 291. P.2d 810 (1955).

Evidence supporting finding that work did not benefit all. — Finding by the trial court that assessment work or annual labor performed by the defendants in developing 1 group of bentonite claims by means of so-called stripping pits did not benefit adjoining and contiguous groups of bentonite claims was supported by substantial evidence. Parker v. Belle Fourche Bentonite Prods. Co., 64 Wyo. 269, 189 P.2d 882 (1948).

C.J.S. reference. — 58 C.J.S. Mines and Minerals § 70.

§ 30-1-114. Same; effect of failure to perform.

Upon failure of the owners to do or have done the assessment work required within the time above stated, such claim or claims upon which such work has not been completed, shall thereafter be open to relocation on or after the first day of July of any year after such labor or improvements should have been done, in the same manner and on the same terms as if no location thereof had ever been made; provided, that the original locators, their heirs, assigns or legal representatives have not resumed work upon such claim or claims after failure, and before any subsequent location has been made. (Laws 1888, ch. 40, § 23; R.S. 1899, § 2558; C.S. 1910, § 3478; C.S. 1920, § 4401; R.S. 1931, § 70-125; C.S. 1945, § 57-925; Laws 1951, ch. 18, § 3; W.S. 1957, § 30-14.)

Editor's note. — The federal statute, 30 U.S.C. § 28, as amended by P.L. 85-736, approved August 23, 1958, provides that the assessment year shall run from September 1 to September 1.

Quoted in Scoggin v. Miller, 64 Wyo. 206, 189 P.2d 677 (1948); Parker v. Belle Fourche Bentonite Prods. Co., 64 Wyo. 269, 189 P.2d 882 (1948).

§ 30-1-115. Same; affidavit required upon completion.

Upon completion of the required assessment work for any mining claim, the owner or owners or agent of such owner or owners shall cause to be made by some person cognizant of the facts, an affidavit setting forth that the required amount of work was done, which affidavit shall within sixty (60) days of the completion of the work, be filed for record, and shall thereafter be recorded in the office of the county clerk and ex officio register of deeds of the county in which the said claim is located. (Laws 1888, ch. 40, § 23; R.S. 1899, § 2559; Laws 1901, ch. 100, § 3; C.S. 1910, § 3479; C.S. 1920, § 4402; R.S. 1931, § 70-126; C.S. 1945, § 57-926; W.S. 1957, § 30-15.)

Repealing clause. — Section 4, ch. 100, Laws 1901, repealed all laws and parts of laws in conflict with that act.

Effective date. — Section 5, ch. 100, Laws 1901, makes the act effective from and after passage. Approved February 19, 1901.

Subordination to federal act. — State statutes in reference to mining rights on United States public domain must be construed in subordination to 30 U.S.C. § 28, which provides that period for doing required annual work shall commence on July 1st (now September 1st) succeeding date of location. Norris v. United Mineral Prods. Co., 61 Wyo. 386, 158 P.2d 679 (1945).

Quoted in Scoggin v. Miller, 64 Wyo. 206, 189 P.2d 677 (1948).

Law review. — See "The Assessment Work Requirements," 9 Wyo. L.J. 231.

§ 30-1-116. Patents to placer claims.

When any person, persons or association, they and their grantors, have held and worked their placer claims in conformance with the laws of this state and the regulations of the mining district in which such claim exists, if such be organized, for five (5) successive years after the first day of September succeeding the date of location, then such person, persons or association, they and their grantors, shall be entitled to proceed to obtain a patent for their claims from the United States without performing further work; but where such person, persons or association, they or their grantors, desire to obtain a United States patent before the expiration of five (5) years from the date hereinbefore mentioned, they shall be required to expend at least five hundred dollars' (\$500.00) worth of work upon a placer claim. (Laws 1888, ch. 40, § 24; R.S. 1899, § 2560; C.S. 1910, § 3480; C.S. 1920, § 4403; R.S. 1931, § 70-127; C.S. 1945, § 57-927; Laws 1951, ch. 18, § 4; W.S. 1957, § 30-16; Laws 1967, ch. 20, § 2.)

C.J.S. reference. — 58 C.J.S. Mines and Minerals § 97 et seq.

§ 30-1-117. Use of water.

Whenever any person, persons or corporation, shall be engaged in mining or milling in this state, and in the prosecution of such business shall hoist or bring water from mines or natural water courses, such person, persons or corporation shall have the right to use such water in such manner, and direct it into such natural course or gulch as their business interests may require; provided, that such diversion shall not infringe on vested rights. The provisions of this section shall not be construed to apply to new or undeveloped mines, but to those only which shall have been open and require drainage or other direction of water. (Laws 1888, ch. 40, § 4; R.S. 1899, § 2535; C.S. 1910, § 3456; C.S. 1920, § 4379; R.S. 1931, § 70-103; C.S. 1945, § 57-903; W.S. 1957, § 30-17.)

Cross references. — As to appropriation and use of water by ditch companies, see §§ 17-12-101 to 17-12-106. For duty of county clerk to keep water users records as official records, see § 18-3-402. As to requirement that no harmful effluent be allowed to enter public waters, see § 23-3-303. As to permitting or allowing water to be dammed so as to permit overflow on public roads or highways, or

undermine, weaken or damage any bridge, etc., in connection with mining operations, see § 24-1-116. As to requirement of approval of plans for the construction of dams for settling purposes, to prevent contamination of streams, see § 35-4-202.

C.J.S. reference. — 58 C.J.S. Mines and Minerals §§ 159, 274, 275.

§ 30-1-118. Mining claims subject to right-of-way; construction of ditch or flume.

All mining claims or property now located, or which may hereafter be located within this state, shall be subject to the right-of-way of any ditch or flume for mining purposes, or of any tramway, pack-trail or wagon road, whether now in use, or which may hereafter be laid out across any such location, claim or property; provided, always, that such right-of-way shall not be exercised against any mining location, claim or property duly made and recorded as herein required, and not abandoned prior to the establishment of any such ditch, flume, tramway, pack-trail or wagon road, without the consent of the owner or owners, except in condemnation, as in the case of land taken for public highways. Consent to the location of the easement above enumerated over any mineral claim, location or property, shall be in writing; and provided, further, that any such ditch or flume shall be so constructed that water therefrom shall not injure vested rights by flooding or otherwise. (Laws 1888, ch. 40, § 5; R.S. 1899, § 2536; C.S. 1910, § 3457; C.S. 1920, § 4380; R.S. 1931, § 70-104; C.S. 1945, § 57-904; W.S. 1957, § 30-18.)

Cross references. — As to acquisition of lands or rights-of-way, by eminent domain, see §§ 1-26-401 to 1-26-403, and Rule 71.1, W.R.C.P. As to right-of-way of mining companies over public lands, see § 30-1-128.

C.J.S. reference. — 58 C.J.S. Mines and Minerals § 159.

§ 30-1-119. Protection of surface proprietors.

Where a mining right exists in any case and is separate from the ownership or right of occupancy to the surface, such owner or rightful occupant of the said surface may demand satisfactory security from the miner or miners, and if such security is refused, such owner or occupant of the surface may enjoin the miner or miners from working such mine until such security is given. The order for such injunction shall fix the amount of the bond therefor. (Laws 1888, ch. 40, § 6; R.S. 1899, § 2537; C.S. 1910, § 3458; C.S. 1920, § 4381; R.S. 1931, § 70-105; C.S. 1945, § 57-905; W.S. 1957, § 30-19.)

Law reviews. — See "Duty of a Uraniun. Miner to Support the Surface Estate," 10 Wyo. L.J. 239.

For an address on surface damages and claims by surface estate owners against mineral estate owners, see 14 Wyo. L.J. 99 (1960).

See comment, "Subsidence Regulations," 6 Land & Water L. Rev. 543 (1971).

ALR and C.J.S. references. — Duty of one removing mineral under highway to support surface, 9 ALR 1333.

Validity of statute restricting the right of mining so as not to interfere with surface, 28 ALR 1330

Interference with percolating waters which would naturally rise to surface by removal of surface support, 55 ALR 1427; 109 ALR 405.

Right of surface owner to minerals; statute or ordinance limiting, 67 ALR 1346; 99 ALR 1119.

Duty and liability of owner in respect to surface support as affected by conditions created by predecessor in title, 139 ALR 1267.

Restoration of surface after strip or other surface mining, 1 ALR2d 575.

Surface owner's right of access through solid mineral seam or vein conveyed to another, or through the space left by its removal, to reach underlying strata, water, oil, gas, etc., 25 ALR2d 1950.

Right of mineral lessee to deposit topsoil, waste materials and the like upon lessor's additional land not being mined, 26 ALR2d 1453.

Liability of mine operator for damage to surface structure by removal of lateral support, 32 ALR2d 1329.

Effect, as between lessor and lessee, of provision in mineral lease purporting to except or reserve a previously granted right-of-way or other easement through, over or upon the premises, 49 ALR2d 1191.

58 C.J.S. Mines and Minerals §§ 163, 273.

§ 30-1-120. Obtaining possession unlawfully; evidence.

In all cases when two (2) or more persons shall, through collusion or otherwise, associate themselves together for the purpose of obtaining possession of any lode, gulch or placer, or other mineral claim or mining property within this state, then in the actual possession of another or others, by force or violence, or threats of violence, or by stealth, and shall proceed to carry out such purpose by making threats to and against the party or parties in possession, or who shall enter upon such lode, gulch, placer or other mineral claim or mining property for the purposes aforesaid, or who shall enter upon or into mineral claim or mining property; or, not being on such mining claim or mineral property, but within hearing of the same, shall make any threats or any use of any language, signs, gestures, intended to intimidate any person or persons in possession or at work on the said claim or claims of mineral property of whatever kind or nature, from continuing such possession or work thereon or therein, every such person or persons so engaging shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined in a penal sum not exceeding two hundred fifty dollars (\$250.00), and be imprisoned in the county jail for not less than thirty (30) days nor more than six (6) months. On trial of any person or persons charged with any of the offenses enumerated in this section, the proof of a common purpose of two (2) or more persons to unlawfully secure possession of any mining claim or mineral property within the state, or to intimidate anyone in the possession of, or laborers at work on any mining claim or mineral property aforesaid, accompanied or followed by any acts or utterances of such person or persons as herein enumerated, shall be sufficient evidence to convict anyone committing such acts, although such parties may not be associated or acting together at the time of the commission of such offenses. (Laws 1888, ch. 40, § 9; R.S. 1899, § 2540; C.S. 1910, § 3461; C.S. 1920, § 4384; R.S. 1931, § 70-108; C.S. 1945, § 57-908; W.S. 1957, § 30-20.)

Taking possession for discovery. — Where defendants entered upon vacant and unappropriated land and performed all acts necessary for location of an oil placer mining claim, except discovery, they had right to take actual possession, and continue therein for a reasonable time, while exploring the land for purpose of discovery; and the acts of location would indicate, not only extent of surface intended to be appropriated, but extent of such

possession, and locators would be protected against forcible, fraudulent or surreptitious intrusion of others; and a delay in taking possession would not affect the rights of the locators, if at the commencement of their possession the rights of others had not intervened. Phillips v. Brill, 17 Wyo. 26, 95 P. 856 (1908).

C.J.S. reference. — 58 C.J.S. Mines and Minerals § 131.

§ 30-1-121. Destroying, etc., mining property.

Any person or persons who shall unlawfully cut down, break down, level, demolish, destroy, injure, remove or carry away any sign, notice, post, mark, monument or fence upon or around any shaft, pit, hole, incline or tunnel, or any building, structure, machinery, implements or other property on any mining claim or mineral property, ground or premises, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined a penal sum of money not less than fifty dollars (\$50.00) nor more than one thousand dollars (\$1,000.00), or be imprisoned for not less than thirty (30) days nor more than one (1) year, or both, in the discretion of the court. (Laws 1888, ch. 40, § 10; R.S. 1899, § 2541; C.S. 1910, § 3462; C.S. 1920, § 4385; R.S. 1931, § 70-109; C.S. 1945, § 57-909; W.S. 1957, § 30-21.)

Cross reference. — As to changing, defacing or destroying landmark, monument or marker, see § 6-10-111.

Nonexistence of mineral is no defense. — On a prosecution for destroying a building on an oil placer mining claim, it is no defense that the mineral does not exist thereon, if the claim was located in good faith. Van Horn v. State, 5 Wyo. 501, 40 P. 964 (1895).

Exclusion of deed. - On prosecution for

destroying building on an oil placer mining claim, it was not error to exclude a deed of the premises, where there was no offer to connect defendant with the grantee in the deed, or to show that the acts of defendant were done under claim or color of right. Van Horn v. State, 5 Wyo. 501, 40 P. 964 (1895).

C.J.S. reference. — 58 C.J.S. Mines and Minerals § 131.

§ 30-1-122. Defrauding, cheating or swindling by "salting," etc.

Any person or persons who shall defraud, cheat, swindle or deceive any party or parties in relation to any mine or mining property by "salting," or by placing or causing to be placed in any lode, placer or other mine, any genuine metals or material representing genuine minerals, which are designed to cheat and deceive others, for the purpose of gain, whereby others shall be deceived and injured by such, shall be guilty of a felony, and upon conviction thereof shall be fined in a penal sum of not less than fifty dollars (\$50.00), or imprisoned in the penitentiary for not more than three (3) years, or both, in the discretion of the court. (Laws 1888, ch. 40, § 11; R.S. 1899, § 2542; C.S. 1910, § 3463; C.S. 1920, § 4386; R.S. 1931, § 70-110; C.S. 1945, § 57-910; W.S. 1957, § 30-22.)

Cross reference. — As to cheating of miner by extractor of gold, see § 6-3-118.

§ 30-1-123. Protection of livestock from mining shafts, etc.

Every person, persons, company or corporation, who have already sunk mining shafts, pits, holes, inclines, upon any mining claim, or upon any mineral property, ground or premises, or who may hereafter sink such openings aforesaid, shall forthwith secure such shafts and openings against the injury or destruction of livestock running at large upon the public domain, by securely covering such shafts and other openings as aforesaid, in a manner to render them safe against the possibility of livestock falling into them or in any manner becoming injured or destroyed thereby; or by forthwith making a strong, secure and ample fence around such shafts and other openings aforesaid. Any person, persons, corporation or company who shall fail or refuse to fully comply with the provisions of this section shall be guilty of a misdemeanor, and on conviction thereof shall be subject to imprisonment in a county jail for not more than ninety (90) days or fine of not more than one hundred dollars (\$100.00) or both such imprisonment and fine in the discretion of the court imposing sentence. Any person, persons, corporation or company who shall fail or refuse to fully comply with the provisions of this section shall also be liable to the owner thereof for any damages sustained by injury or loss of livestock thereby. (Laws 1888, ch. 40, § 12; R.S. 1899, § 2543; C.S. 1910, § 3464; C.S. 1920, § 4387; R.S. 1931, § 70-111; C.S. 1945, § 57-911; Laws 1957, ch. 25, § 1; W.S. 1957, § 30-23.)

Cited in Chicago & N.W. Ry. v. Bishop, 390 C.J.S. reference. — 58 C.J.S. Mines and P.2d 731 (Wyo. 1964). Minerals §§ 231, 272.

§ 30-1-124. Length of lode claim.

The length of any lode mining claim located within Wyoming, shall not exceed fifteen hundred (1,500) feet measured horizontally along such lode or vein. Nor can the regulations of any mining district limit a location to less than this length. (Laws 1888, ch. 40, § 13; R.S. 1899, § 2544; C.S. 1910, § 3465; C.S. 1920, § 4388; R.S. 1931, § 70-112; C.S. 1945, § 57-912; W.S. 1957, § 30-24.)

Law review. — See "Location of Mining Claims in Wyoming," 9 Wyo. L.J. 220.

C.J.S. reference. — 58 C.J.S. Mines and Minerals 9 44.

§ 30-1-125. Width of lode claim.

The width of any lode claim located within Wyoming shall not exceed three hundred (300) feet on each side of the discovery shaft, the discovery shaft being always equally distant from the side lines of the claims. Nor can any mining district limit the location to a width of less than one hundred fifty (150) feet on either side of the discovery shaft. (Laws 1888, ch. 40, § 14; R.S. 1899, § 2545; C.S. 1910, § 3466; C.S. 1920, § 4389; R.S. 1931, § 70-113; C.S. 1945, § 57-913; W.S. 1957, § 30-25.)

"Width of any lode claim, etc.," construed.

— The provision of this section that the "width of any lode claim located within Wyoming shall not exceed three hundred (300) feet on each side of the discovery shaft, the discovery shaft being always equally distant from the sidelines of the claims," means that in no instance may a claim extend to more than 300 feet from the center point between the sidelines. A deviation of the discovery shaft from the original center point cannot alter the position of the sideline closest thereto, but automatically delimits the position of the other sideline to a point "equally distant" from the discovery shaft. Globe Mining Co. v. Anderson, 78 Wyo. 17, 318 P.2d 373 (1957).

Loss only of width exceeding amount allowed. — Claim of plaintiff was not invalidated where discovery point was not in the center of the claim, but plaintiff lost that part of his claim which was in excess of the amount allowed by this section. Globe Mining Co. v. Anderson, 78 Wyo. 17, 318 P.2d 373 (1957).

Law review. — For note on Globe Mining Co. v. Anderson, 78 Wyo. 17, 318 P.2d 373 (1957), and the mining laws, see 13 Wyo. L.J. 43 (1958).

C.J.S. reference. — 58 C.J.S. Mines and Minerals § 44.

§ 30-1-126. Sections 30-1-101 to 30-1-126 not applicable to coal mines.

Nothing in this act [§§ 30-1-101 to 30-1-126] shall apply to the working of coal mines. (Laws 1888, ch. 40, § 25; R.S. 1899, § 2561; C.S. 1910, § 3481; C.S. 1920, § 4404; R.S. 1931, § 70-128; C.S. 1945, § 57-928; W.S. 1957, § 30-26.)

Cross reference. — As to coal mines generally, see ch. 3 of this title.

§ 30-1-127. Charge for assays at university.

Hereafter the charge for making assays or tests for silver, gold, copper and lead at the University of Wyoming shall be in accordance with a fee schedule established by the university for charges to any resident of the state. (Laws 1907, ch. 79, § 1; C.S. 1910, § 3482; C.S. 1920, § 4405; R.S. 1931, § 70-129; C.S. 1945, § 57-929; W.S. 1957, § 30-27; Laws 1971, ch. 35, § 1.)

Effective date. — Section 2, ch. 79, Laws 1907, makes the act effective from and after passage. Approved February 20, 1907.

C.J.S. reference. — 58 C.J.S. Mines and Minerals § 159.

§ 30-1-128. Construction or operation of railroads, roads, etc., by mining companies.

Any corporation or association of persons organized under this article or under the laws of any other state and doing business in this state, now or hereafter engaged in mining gold or silver bearing quartz rock, coal, lead, iron, copper or other materials, may construct or operate a railroad, tramway road or wagon road from their said mine or mines, to any point or points desired by them, and shall have the exclusive right-of-way to the line of their road over the unoccupied public domain for the space of not exceeding one hundred (100) feet on either side thereof, and also, the exclusive possession at the termini of their said road, and at such intermediate points as may be required, for depots, buildings, turntables, water tanks, machine shops and other necessary appurtenances of a railroad, and said corporation or association of persons may file a survey or diagram of such line of road with the lands claimed by them on either side thereof, and also the land claimed at the termini aforesaid, with the secretary of state, and it shall not be lawful for any person or persons to construct any road or erect any buildings or otherwise interfere with the possession of the land so indicated in the survey or diagram as filed aforesaid, and a certified copy of said survey under the seal of the state shall be received in evidence in all courts of law or equity within the state. (C.L. 1876, ch. 34, Tit. 1, § 24; R.S. 1887, § 525; R.S. 1899, § 3059; C.S. 1910, § 4002; C.S. 1920, § 5075; R.S. 1931, § 28-142; C.S. 1945, § 44-136; Laws 1957, ch. 68, § 1; W.S. 1957, § 30-28.)

Cross references. — As to right-of-way over mining property, see § 30-1-118 and notes thereto. As to requirements relative to construction of tracks, roadbeds and switches with reference to safety precautions, see § 30-2-422. As to construction, installation and maintenance of roadbed, rails, joints, switches, frogs and other elements of track of all haulage roads in connection with coal mines, see § 30-3-440. For requirements as to locomotives, etc., used in coal mines, see § 30-3-443.

Meaning of "this article". — The words "this article" presumably refer to title 1, ch. 34, C.L.

1876, much of which has been repealed. The unrepealed provisions appear in this compilation as this section and \$\frac{8}{6}\) 6-7-606 and 17-12-101 to 17-12-107. For present provisions as to organization of corporations, see \$\frac{8}{6}\) 17-1-201 to 17-1-206

Effective date. — Section 2, ch. 68, Laws 1957, makes the act effective from and after passage. Approved February 8, 1957.

Law review. — See "Rights of Way to Mining Claims Across Public Lands in Wyoming," 12 Wyo. L.J. 162 (1958).

§ 30-1-129. Eminent domain for underground right-of-way easements; right of condemnation generally.

Every owner or operator of any mining claims or properties having a common corner who shall find it necessary for the practical or economical development thereof shall have the right to condemn, in accordance with the provisions of the Wyoming Rules of Civil Procedure relating to condemnation of property, and to take, hold and appropriate a right-of-way easement across such corner and under or through the lands of another for underground passages or tunnels, including mine access and ventilation entries provided that such right-of-way easement shall in no instance exceed two hundred fifty (250) feet in width and provided

further that any mineral removed from under the lands of another shall be accounted for by the person exercising the rights herein granted to the owner thereof at the gross value thereof on the surface. (Laws 1967, ch. 244, § 1.)

§ 30-1-130. Same; duty to show good faith and necessity.

In order to exercise the right of eminent domain herein granted the person claiming the benefit of such right shall be required to show that the proceeding is in good faith and that the right-of-way easement is necessary to continue the practical and economical development of a commercially feasible mining operation then being conducted. (Laws 1967, ch. 244, § 2.)

§ 30-1-131. Provisions for indemnity in certain contracts; invalidity.

- (a) All agreements, covenants or promises contained in, collateral to or affecting any agreement pertaining to any well for oil, gas or water, or mine for any mineral, which purport to indemnify the indemnitee against loss or liability for damages for:
 - (i) Death or bodily injury to persons;

(ii) Injury to property; or

- (iii) Any other loss, damage, or expense arising under either (i) or (ii) from:
 - (A) The sole or concurrent negligence of the indemnitee or the agents or employees of the indemnitee or any independent contractor who is directly responsible to such indemnitee; or
 - (B) From any accident which occurs in operations carried on at the direction or under the supervision of the indemnitee or an employee or representative of the indemnitee or in accordance with methods and means specified by the indemnitee or employees or representatives of the indemnitee, are against public policy and are void and unenforceable to the extent that such contract of indemnity by its terms purports to relieve the indemnitee from loss or liability for his own negligence. This provision shall not affect the validity of any insurance contract or any benefit conferred by the Worker's Compensation Law [§§ 27-12-101 to 27-12-805] of this state. (Laws 1969, ch. 46, § 1; 1977, ch. 145, § 1.)

Cross references. — For provision prohibiting contracts exempting employer from liability for employee's personal injuries, see art. 19, § 17, W.y.o. Const. For provision that contracts exempting employers from liability shall be void, see § 27-1-105.

The 1977 amendment deleted "and all" preceding "covenants or promises" and "and" preceding "which purport to indemnify" in the introductory paragraph of subsection (a), deleted "or" at the end of subdivision (i) of

subsection (a), and in paragraph (B) of subdivision (iii) of that subsection, added the language beginning "to the extent that such contract of indemnity" at the end of the first sentence and substituted "Worker's Compensation Law" for "Workmen's Compensation Law" at the end of the second sentence.

Effective date. — Section 2, ch. 145, Laws 1977, makes the act effective May 27, 1977.

§ 30-1-132. Same; definition.

The term "agreement pertaining to any well for oil, gas, or water, or mine for any mineral" as used in section 1 hereof [§ 30-1-131], means any agreement or understanding, written or oral, concerning any operations related to drilling, deepening, reworking, repairing, improving, testing, treating, perforating, acidizing, logging, conditioning, altering, plugging, or otherwise rendering services in or in connection with any well drilled for the purpose of producing or disposing of oil, gas or other minerals, or water, and designing, excavating, constructing, improving, or otherwise rendering services in or in connection with any mine shaft, drift, or other structure intended for use in the exploration for or production of any mineral, or an agreement to perform any portion of any such work or services or any act collateral thereto, including the furnishing or rental of equipment, incidental transportation, and other goods and services furnished in connection with any such service or operation. (Laws 1969, ch. 46, § 2.)

§ 30-1-133. Same; exemption.

Provided that nothing in this act [§§ 30-1-131 to 30-1-133] shall be construed to deprive an owner of the surface estate of the right to secure an indemnity from any lessee, operator, contractor or other person conducting operations for the exploration or production of minerals on such owner's land. (Laws 1969, ch. 46, § 3.)

Effective date. — Chapter 46, Laws 1969, carried no effective date, but became law without the signature of the governor in

accordance with art. 4, § 8, Wyo. Const. It was enacted at a session that adjourned on February 22, 1969.

CHAPTER 2

Mining Operations Generally

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30-2-409. Clothing to meet safety standards.

30-2-410. Clearance for employees. 30-2-411. Communication systems.

30-2-412. Devices for alleviating dust or fumes. 30-2-413. Electric installations and equipment.

30-2-414. Escapeways and exits.

30-2-415. Explosives.

30-2-416. Pits and quarries.

30-2-417. Fire extinguishers and fire-fighting equipment; posting of safety diagram.

30-2-418. First-aid equipment and training.

30-2-419. Storage of flammable materials.

30-2-420. Kind and type of hoisting equipment required; brakes and indicators.

30-2-421. Inspections for safety hazards.

30-2-422. Construction and maintenance of tracks, roadbeds, switches, etc.

Sec.

30-2-423. Responsibility of employers and employees regarding safety rules.

Intoxicating liquors and intoxication prohibited.

30-2-425. Lamps and electric equipment.

30-2-426. Standard safety methods required as to machinery.

 Maps or diagrams of mine workings and installations required.

30-2-428. Protection from falling material.

30-2-429. Care of tools.

30-2-430. Requirements as to internal combustion engines.

30-2-431. Requirements as to ventilation. 30-2-432. Restriction upon visitation.

30-2-433. Working alone prohibited; exception.

ARTICLE 1. IN GENERAL

§ 30-2-101. Intent of sections 30-2-101 to 30-2-433; construction and interpretation.

This act [§§ 30-2-101 to 30-2-433] is intended to provide a uniform standard for the operation of mining operations as herein defined within this state and to afford maximum freedom of operation to the operator while assuring proper working conditions for employees and reasonable protection to the public safety and interest; its provisions shall be liberally construed to effectuate such intent and purposes, and all laws, or interpretations hereby made or hereafter to become effective shall be applied and enforced with a wise discretion in view of the conditions found to actually exist. (Laws 1957, ch. 160, § 23; W.S. 1957, § 30-35.)

Cross references. — As to aerial prospecting, see §§ 10-1-110 to 10-1-112. As to semimonthly payment of employees by mining company, see § 27-4-101 et seq. See also cross references at the beginning of this title.

Am. Jur. 2d, ALR and C.J.S. references. — 54 Am. Jur. 2d Mines and Minerals \$\$ 167, 172 to

Damages recoverable by owner or occupier of surface on account of subsidence due to mining operations, 35 ALR 1137; 56 ALR 310.

Liability of landowner for injury or death of

adult falling down unhoused mine shaft or the like, 46 ALR2d 1069.

Quarries, gravel pits and the like as nuisance, 47 ALR2d 490.

Liability for property damage caused by vibrations attributable to quarry and stone cutting operations, 79 ALR2d 982.

Strip or other surface mine or quarry operator, liability to person, other than employee, injured or killed during mining operations, 84 ALR2d 733.

58 C.J.S. Mines and Minerals § 229.

§ 30-2-102. Mining operations defined; exclusion of certain highway construction projects.

Mining operations as herein referred to shall include the following, whether in process or development, construction or operation, to wit: mines, ore mills, ore processing plants, sampling works, smelters, metallurgical plants, cement manufacturing plants and cement works, rock quarries, clay pits and mines, sand and gravel pits, tunnels and tunnelling, excavation or removal of earth for commercial or industrial purposes and all other processes or operations whereby mineral materials in solid form are extracted, mined, removed or processed within the state of Wyoming but excluding herefrom all mining operations and processes relating to highway construction and maintenance, except tunnelling, which said mining operations and processes shall be carried on and directly under the control and supervision of the state highway commission of Wyoming; provided however that such exclusion under this section shall not apply to commercial suppliers, providing that the terms "mines" and "minerals" shall not include coal mines or coal. (Laws 1957, ch. 160, § 3; W.S. 1957, § 30-36; Laws 1959, ch. 124, § 1; 1961, ch. 133, § 1.)

§ 30-2-103. Uniform standards intended; provisions not applicable to coal mines.

This act [§§ 30-2-101 to 30-2-433] is intended to provide a uniform standard for the operation of mining operations other than coal mines, and the provisions herein relative to adoption of rules, procedure, and power of inspector of mines, and safety provisions and regulations, to wit: sections 15 to 62 inclusive [§§ 30-2-101, 30-2-104 to 30-2-106, 30-2-308 to 30-2-433], shall not apply to coal mines, as defined by chapter 128, section 2, Session Laws of Wyoming, 1951 [§ 30-3-201]. (Laws 1957, ch. 160, § 14; W.S. 1957, § 30-37.)

§ 30-2-104. Minimum standards.

The provisions of law hereinafter set forth, together with the rules and regulations adopted from time to time pursuant thereto and in accordance therewith, shall constitute the body of standards for mining operations as herein defined within this state; such laws, rules and regulations are intended to constitute minimum standards recognized as necessary for the protection of the public interest and the safety of employees and the general public; they shall be enforced according to their terms and under the provisions, conditions and penalties herein set forth. (Laws 1957, ch. 160, § 16; W.S. 1957, § 30-38.)

§ 30-2-105. Notice of violation; correction of condition constituting violation required; penalty upon failure to comply; continuing violations; authority of inspector to close operations; right of appeal.

In any instance where a violation of any of the provisions of this act [§§ 30-2-101 to 30-2-433] relating to operating methods and conditions of mining

operations within this state, or any rules or regulations adopted pursuant thereto, shall be found, the inspector discovering such violations shall give notice to the person in charge of such operation of the condition constituting such violation and the provision being violated; a period of five (5) days, or such further time prescribed by the inspector as is reasonable in view of the nature of the condition, shall be allowed for its correction; and the allowing of such period shall not prevent such act constituting a violation of the provisions hereof; the failure to correct such condition in the period allowed shall constitute a misdemeanor punishable by a fine of not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00), and each day during which such condition shall continue uncorrected after notice of correction has been given shall constitute a separate violation; in event, nevertheless, that such condition shall not be corrected within a reasonable time, or, in event, further, of the existence of a condition which constitutes a real, present and substantial danger to the lives or safety of persons or employees or to the general public, the inspector may summarily order the cessation of all activity and close the operation of such part thereof as, in the judgment of the inspector, constitutes the danger or menace; such order shall be in writing, specifying the nature of the condition, the basis of the action ordered, the date, time and place of the closing of the operation, and the person to whom the order was delivered. In such event, the operator may obtain a review of such action by the inspector of mines or by the district court of the county in which such operation shall be located, or the principal part thereof carried on; such review shall be afforded at the earliest possible date and, in any event within ten (10) days from and after the filing of the proceedings therefor, or, in event that the court shall not be available within the said period, as soon as the court shall be available. The matter shall be given precedence on the calendar of the court and the proceedings shall be by petition and order to show cause, returnable within the time hereinabove limited. In event that any action by the inspector shall be found to have been without justification and to have been taken without reasonable basis, the inspector shall be liable on his bond for damages resulting therefrom, including reasonable attorney's fees incurred by the operator in the said action. When an operation has been closed or work suspended under the provisions of this article [chapter], it shall not be reopened, or work recommenced until after it has been inspected and approved by the office of the inspector of mines. (Laws 1957, ch. 160, § 22; W.S. 1957, § 30-39.)

§ 30-2-106. Penalty for violation of sections 30-2-101 to 30-2-433 or rules and regulations.

The violation of or failure to observe, conform to and abide by any of the provisions of this act [§§ 30-2-101 to 30-2-433], or any of the rules and regulations adopted pursuant thereto, shall, unless a greater penalty shall have been specifically provided, constitute a misdemeanor punishable upon conviction

thereof by a fine of not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100.00), or imprisonment in the county jail for a period of not more than six (6) months, or both. (Laws 1957, ch. 160, § 24; W.S. 1957, § 30-40.)

Effective date. — Section 63, ch. 160, Laws 1957, makes the act effective from and after passage. Approved February 16, 1957.

C.J.S. reference, — 58 C.J.S. Mines and Minerals § 241.

ARTICLE 2. BOARD OF MINES

§ 30-2-201. Created; powers and duties generally.

There is hereby created a board of mines of the state of Wyoming, constituted, and possessing the powers and authority and being charged with the duties and responsibilities hereinafter set forth. (Laws 1957, ch. 160, § 1; W.S. 1957, § 30-41.)

Cross references. — For authority of board of mines to notify coroner that presence of inspector of mines or one of his deputies is not necessary at inquest, see § 30-2-306. As to

examining board in connection with coal mines, see §§ 30-3-301 to 30-3-311.

Am. Jur. 2d reference. — 54 Am. Jur. 2d Mines and Minerals § 173.

§ 30-2-202. To act in advisory capacity; exception as to coal mines.

The board of mines shall act in an advisory capacity to the inspector of mines as to safety matters in mining operations, other than coal, of this state, the production and the processing thereof, and all installations, equipment and operations constituting a part of mining operations carried on in this state. (Laws 1957, ch. 160, § 2; W.S. 1957, § 30-42.)

Cross references. — As to inspector of mines generally, see \$\frac{5}{2} \text{ 30-2-301 to 30-2-318. As to coal mines generally, see ch. 3 of this title.

§ 30-2-203. Composition; qualifications, appointment and term of members; vacancies; officers; rules; quorum.

The board of mines shall consist of ten (10) members appointed from among the management and employees of the mining industry, other than coal mining, and serving for a term of four (4) years and until their successors shall have been duly appointed and shall have qualified. Each member of such board shall be a qualified elector of the state of Wyoming and shall have been interested in the mining industry for at least five (5) years next preceding his appointment. They shall be appointed by the governor by and with the advice and consent of the senate and from among the management and employees of the mining industry, and such board shall at no time contain more than two (2) members from any one (1) category of mining, based upon products mined. The tenure of the

members of such board shall be so arranged that the terms of not more than five (5) of such members shall expire in any one (1) year, and, to that end, with respect to those members first appointed, the governor shall appoint five (5) for a four (4) year term and five (5) for a two (2) year term. The terms of the members of the board shall commence on the first day of April of each year and shall continue until the ending of their term and until their successors shall have been appointed and shall have duly qualified for the office. Vacancies occurring in the board shall be filled by appointment by the governor; any such appointment shall be for the remainder of the unexpired term, subject, nevertheless, to confirmation by the senate at its session next following such appointment. The officers of such board shall be a president and a vice-president, elected by the board from among its own members, and a secretary who need not be a member of the board. Such board shall have the power and duty to formulate and adopt rules not inconsistent with the provisions of law to govern its own operation and functions, provided, that a quorum necessary to transact business shall be not less than a majority of the entire board. (Laws 1957, ch. 160, § 5; W.S. 1957, § 30-43.)

§ 30-2-204. Regular and special meetings; record of proceedings.

Regular meetings of the board of mines shall be quarter-annually in the months of February, May, August and November of each year at such place or places within this state as the board shall from time to time decide upon. Special meetings may be called at any time by the governor or by the president of the board or by the inspector of mines and shall be called upon the request of any three (3) board members. Full and complete minutes and records of all board meetings, proceedings and actions shall be kept and preserved. (Laws 1957, ch. 160, § 6; W.S. 1957, § 30-44; Laws 1959, ch. 124, § 2.)

§ 30-2-205. Compensation and expenses.

The members of such board shall receive no compensation for their services as such but shall be reimbursed for expenses necessarily incurred in going to, attending upon and returning from meetings and performing the duties placed upon them by action of the board, as provided by section 20-203, Wyoming Compiled Statutes, 1945 [§ 9-1-115], as amended. (Laws 1957, ch. 160, § 7; W.S. 1957, § 30-45.)

Effective date. — Section 63, ch. 160, Laws 1957, makes the act effective from and after passage. Approved February 16, 1957.

ARTICLE 3. INSPECTOR OF MINES; DEPUTY INSPECTORS

- § 30-2-301. Appointment and qualifications of inspector and deputy inspectors; terms of office; powers and duties of mine inspector generally.
- (a) The inspector of mines shall be appointed by the governor of the state by and with the advice and consent of the senate from among persons qualified therefor and shall hold office for a term of two (2) years and until his successor is duly appointed and qualified, provided, however, that he may be discharged at any time during his term by the governor for failure to properly discharge the duties of his office. He shall be a qualified elector of the state of Wyoming, at least thirty-five (35) years of age. He shall be of good repute and temperate habits. He shall possess the degree of a graduate engineer from an accredited school, or the equivalent thereof, and shall have had not less than fifteen (15) years mining experience. He shall have had experience in underground mining operations, shall have knowledge of the various problems involving the health and safety of employees in both underground and open-pit mining, and in the upgrading, processing, milling and beneficiation of the various minerals mined or produced within this state. He shall be thoroughly familiar with the working and ventilating of such operations; the nature, chemistry, detection and control of noxious, poisonous, or explosive gases or emanations; the dangers incident to blasting and the prevention thereof; the application and use of electricity in mining operations as herein defined; the methods for prevention of mine fires and gas or dust explosions and the control and extinguishment of mine fires; the health and safety problems involved in small and large scale open-pit mining operations and earth-removal or excavation carried on as part thereof; the methods of rescue and recovery work following mine disasters; and a thorough knowledge of the mining laws and acquaintance with the nature of mining operations of the state of Wyoming. He shall not be an employee, owner or part owner of any mine or mining company in this state.
- (b) The inspector of mines shall exercise supervision for all purposes necessary to the enforcement of this act [§§ 30-2-101 to 30-2-433] over all mining exploration mines, mining operations, upgrading, processing, milling and beneficiation plants, as herein defined within the state of Wyoming, and the inspection thereof, including the inspection of drill holes to see that the same have been properly abandoned in conformity with the laws of this state. He shall be responsible for the enforcement of all laws, rules and regulations pertaining to the operation thereof according to law. He shall supervise and direct the work of deputy inspectors working under him. Under the procedure hereinafter prescribed he shall have the power to adopt and establish such rules and regulations as may be necessary or desirable in carrying out and giving full effect to the conditions and policies hereinafter prescribed for the operations of mining operations within this state.

(c) The governor shall appoint the necessary number of deputy inspectors of mines at least one (1) of which shall be qualified for coal mines as prescribed by law, who shall serve at the pleasure of the governor. The deputy inspector of

mines shall work under the direction of the inspector of mines.

(d) The qualifications for a deputy inspector of mines for the inspection of mines other than coal mines shall be as follows: he shall be a qualified elector of the state of Wyoming and at least thirty-five (35) years of age. He shall be of good repute and temperate habits. He shall possess the necessary technical or engineering training and background to adequately handle the duties of a deputy inspector. He shall have had not less than ten (10) years of mining experience. He shall have had experience in underground mining operations. shall have knowledge of the various problems involving the health and safety of employees in both underground and open-pit mining, and in the upgrading, processing, milling and beneficiation of the various minerals mined or produced within this state. He shall be thoroughly familiar with the working and ventilating of such operations; the nature, chemistry, detection and control of noxious, poisonous, or explosive gases or emanations; the dangers incident to blasting and the prevention thereof; the application and use of electricity in mining operations as herein defined; the methods for prevention of mine fires and gas or dust explosions and the control and extinguishment of mine fires; the health and safety problems involved in small and large scale open-pit mining operations and earth-removal or excavation carried on as part thereof; the methods of rescue and recovery work following mine disasters; and a thorough knowledge of the mining operations of the state of Wyoming. He shall not be an employee, owner or part owner, of any mine or mining company in this state. (Laws 1957, ch. 160, § 8; W.S. 1957, § 30-46; Laws 1963, ch. 93, § 1; 1971, ch. 190, § 15; ch. 215, § 1.)

Cross reférences. - For constitutional provision relative to inspector of mines, see art. 9, § 1, Wyo. Const. For authority of inspector of mines to close operations for violations relative to operating methods and conditions, see § 30-2-105. For duty of board of mines to act in an advisory capacity to inspector of mines, see § 30-2-202. For authority of inspector of mines to call special meetings of board of mines, see § 30-2-204. As to authority of inspector of mines to formulate and adopt rules and regulations, see § 30-2-308. For duty of owner or operator to provide inspector of mines with a copy of maps or diagrams of mine workings and installations, see § 30-2-427. As to deputy inspector for coal mines, see §§ 30-3-220 to 30-3-225. See also §§ 30-4-201 to 30-4-207 as to inspector of mines. For duties of state oil and gas supervisor as ex officio director of oil and gas conservation, see § 30-5-103 et seq. As to state oil and gas supervisor generally, see § 30-5-108. For duty of inspector of mines to enforce provisions relative to the sale and storage of explosives, oil and other inflammable materials, see § 30-6-103. For duty of state mine inspector to register with the department of health and social services any mine which is producing or has produced radioactive substances, see § 35-4-301. For duty of state coal mine inspector to visit and report to board of land commissioners lands held under coal and mineral leases, see § 36-6-105.

Appropriations. — Section 23, ch. 190, Laws 1971, reads: "There is hereby appropriated, to be distributed by the state auditor, out of the funds in the treasury of the state of Wyoming not otherwise appropriated the sum of two hundred forty-two thousand five hundred dollars (\$242,500.00) or so much thereof as may be necessary, as determined by the assistant budget officer, to pay the salaries fixed by this act, and such appropriation is in addition to any funds heretofore appropriated for such purposes for the biennium ending June 30, 1971, and in addition to any funds appropriated for such purposes for the ensuing biennium ending June 30, 1973."

Section 24, ch. 190, Laws 1971, reads: "The state highway department, game and fish commission, public service commission, tax commission, employment security commission and workmen's compensation department, are hereby authorized to use an increased allotment of nongeneral fund income revenues in the amounts approved by the assistant budget officer to meet the additional expenses of salaries specified herein.

Effective date. — Section 25, ch. 190, Laws 1971, reads: "For all those public officials serving specific terms, this act shall be in force and effect as of the date of its passage. The balance of this act relating to the salaries provided for herein shall be in force and effect on July 1, 1971." Approved February 27, 1971.

Am. Jur. 2d and C.J.S. references. — 54 Am. Jur. 2d Mines and Minerals § 173.

58 C.J.S. Mines and Minerals § 237.

§ 30-2-302. Collecting information and organizing studies concerning mineral deposits, etc.

The desirability of collecting, analyzing and organizing studies, information and data concerning mineral deposits, geological formations and mining and milling operations in this state, the results of the same and all facts pertinent thereto is hereby recognized; the collecting, organizing and making available such material shall be the duty of the inspector of mines, so far as resources of finance and personnel are available. (Laws 1957, ch. 160, § 4; W.S. 1957, § 30-47.)

Cross references. — As to state geologist generally, see §§ 9-3-1401 to 9-3-1408. As to geological survey, see §§ 9-3-1420 to 9-3-1429.

§ 30-2-303. Delivery of instruments, books, etc., to successor.

All instruments, plans, books, memoranda, notes, and other property pertaining to the offices hereby created, shall be the property of the state, and shall be delivered by each inspector to his successor in office. (Laws 1957, ch. 160, § 9; W.S. 1957, § 30-48.)

§ 30-2-304. To devote entire time to duties of office; specific duties of inspector and deputies.

- (a) The inspector of mines shall devote the whole of his time during working hours to the duties of his office, and, in addition to any other duties imposed by the mining laws of this state, it shall be the specific duty of the inspector of mines and his deputies and they are hereby authorized to do the following:
 - (i) Inspection and Examination of Mining Operations; Assistance of Commissioner of Labor, State Health Officer, etc. To enter, inspect and examine any mining operation as herein defined, whether in process of development, construction or operation, or inspect the workings and the machinery belonging thereto, at all reasonable times either day or night, but not so as to impede or obstruct the working thereof; the inspector of mines may request the assistance of the commissioner of labor, the state health officer or such other state governmental agency as he may deem advisable, provided, however, that the authority of the inspector of mines to make said inspections, to enforce laws, rules and regulations in regard to health and

safety, and to formulate and adopt rules and regulations in regard to mining operations as herein defined shall be exclusive of any authority conferred on the commissioner of labor or the state board of health;

(ii) Collection of Statistics; Report to the Governor. — To collect statistics relating to mining in the state, and shall, as required by section 9-21 [§ 9-2-103] of the statutes, report to the governor and include such statistics:

(iii) Record of Inspections and Reports. — To keep a properly indexed, permanent record of all inspections made by the inspector of mines and his deputies, and copies of all reports relating to mine inspections shall be kept on file, and all such records shall be laid before the governor upon his

request at any time;

(iv) Making and Filing of Maps or Diagrams. — To see that maps or diagrams of all underground mines in the state are made and filed in his office, and such maps or diagrams and any plans that are filed shall be preserved as a permanent and confidential record; providing that where an adjoining operator can show need for safety reasons, he shall be given access thereto;

(v) Supervision of Deputies. - To supervise the work of the deputy

inspectors and have full authority over their official activities;

(vi) Clearing Mines in Case of Danger. — To clear any mine or portion thereof of all persons where, in his opinion, there is imminent or serious danger to the life or health of the employees therein and refuse further entry to any persons until such time as, in his judgment, the mine can be reentered for investigation, examination, recovery or repair work, or production work, without unnecessary personal risk; but in no instance shall a mine that has been cleared of persons by the inspector of mines or deputy inspector be reopened for production work until it has been reexamined by such inspector of mines or a deputy inspector;

(vii) Revocation of Order Closing Mines. — To revoke, in writing, any order issued by a deputy inspector for the purpose of clearing a mine or portion thereof of persons. However, such revocation of an order shall not be made unless and until the inspector of mines has made a personal examination of the mine affected and determined it to be in a safe condition to operate. (Laws 1957, ch. 160, § 10; W.S. 1957, § 30-49; Laws 1959, ch. 124,

§ 3; 1973, ch. 215, § 1.)

Cross reference. — As to salaries of state officers and employees generally, see § 9-1-105.

Editor's note. — The commissioner of labor, referred to in subsection (a) (i) of this section, is apparently the commissioner of labor and statistics.

Powers and duties of board of health transferred. — The powers and duties of the state board of health have been transferred to the department of health and social sevices. See § 9-3-102.

§ 30-2-305. Deputy inspectors to devote entire time to duties of office; specific duties enumerated.

- (a) The duty inspectors shall devote the whole of their time during working hours to the duties of their office, and, in addition to any other duties imposed by the mining laws of this state, it shall be their specific duty to do the following:
 - (i) Inspection of Mines Generally. Inspect each operating mine in the state at least once every six (6) months, or oftener if practicable while the mine is in operation, and whenever any danger to the workmen may exist, or whenever called upon to do so by the workmen or their representatives. During such inspection the deputy inspector shall inspect the surface plant; every working place in the mine; all active haulageways, travelways, and airways in their entirety; entrances to abandoned workings; accessible old workings; escapeways and other places where men work or travel, or where dangerous conditions may exist; electric equipment and installation; first-aid equipment; ventilation facilities; communication installations; roof and rib conditions; blasting practices. He shall measure the volume of air at the intake and return of the main ventilating current and of each split, and the amount passing through the last open crosscut in each pair or set of entries, and designate to the superintendent or mine foreman where they shall measure the currents of air as required by this act [§§ 30-2-101 to 30-2-433]. In mines operating more than one (1) shift in a twenty-four (24) hour period, the inspector of mines shall devote sufficient time on the second and third shift to determine conditions and practices related to the health and safety of the employees. He shall make tests for gas and oxygen deficiency in each place which he is required to inspect in the mine;
 - (ii) Report of Inspection. Make an accurate report covering each inspection showing date of inspection; the condition in which the mine is found; the extent to which safety laws relating to mines are violated; the progress made in the improvement of the mine where such progress relates to the health and safety of the employees; the number of injuries and death resulting from accidents in and around the mine, and their cause; and in case any violations of the mine safety laws are found, the specific section or sections violated, with recommendations for correcting them, and the action taken to eliminate them shall be shown:
 - (iii) Inspection Report. Deliver within seven (7) days after the completion of the inspection two (2) copies of the inspection report to the operator, superintendent, or foreman and one (1) copy to a designated representative of the employees' organization, if such there be, of the mine inspected; one (1) such copy shall be posted within the seven (7) day limit on a bulletin board at a prominent place on the premises where it can be conveniently read by the employees, and the report shall remain posted until the report of the succeeding examination is posted; a third copy shall be forwarded to the office of the inspector of mines within one (1) week after making the inspection, provided that in instances where imminent or serious hazards are found, an interim report in person, by telephone, or telegram shall be made immediately;

- (iv) Mine Accidents, Fires or Explosions. Proceed immediately to the scene of any mine accident in his district that causes loss of life or serious personal injury, and to the scene of any mine fire or explosion regardless of whether there is loss of life or personal injury, make such investigation and recommendations and render such assistance as he deems necessary for the present or future safety of the employees, make a complete report thereof and give such report the same distribution as a regular mine inspection report;
- (v) Mine Rescue and Recovery Work. In the absence of the inspector of mines, take charge of any necessary mine rescue and recovery work in his district and supervise the reopening of mines that have been sealed or abandoned on account of fire or any other cause;
- (vi) Clearing Mine in Case of Danger. It shall be the duty of the deputy inspector, and he is hereby empowered to clear any mine or portion thereof of all persons where, in his opinion, there is imminent or serious danger to the life or health of the employees therein and refuse further entry to any persons, except those he deems necessary to remove such dangerous condition and those permitted to participate in investigations as provided for in this act [§§ 30-2-101 to 30-2-433], until he determines by actual inspection that the mine or portion thereof involved is in safe operating condition;
- (vii) Additional Duties. The deputy inspector shall perform such additional duties as may be required by the inspector of mines. (Laws 1957, ch. 160, § 11; W.S. 1957, § 30-50.)

§ 30-2-306. Police powers generally; duty of operator and county coroner to notify inspector in case of fatal accident; coroner's inquest.

The inspector and deputy inspectors of mines shall have and exercise throughout the state of Wyoming all of the powers of sheriffs and police officers with respect to the enforcement and giving effect of the provisions of this act [§§ 30-2-101 to 30-2-433], including the power to arrest any person violating any of the provisions thereof, and any rules or regulations adopted pursuant thereto, and they may serve all process other than civil process lawfully issued by any court or magistrate or justice of the peace under the provisions of this act. In event of any fatal accident or fatality resulting from any phase of mining operations as herein defined, it shall be the duty of the operator or person in charge thereof to notify the inspector of mines thereof immediately on its occurrence, and the duty of the county coroner of the county in which such accident occurs to see that the inspector of mines has been duly notified of such accident. If by him deemed necessary, the inspector of mines may order and such coroner shall hold an inquest respecting such accident, at which inquest the inspector or any deputy inspector of mines shall have the right to call, examine and cross-examine witnesses, and it shall be unlawful for any coroner to release the body of any person killed in such accident or fatality without notice from the inspector of mines that he does not deem an inquest necessary. It shall be

unlawful for any inquest to be held with respect to any such fatality without the presence of the inspector of mines or one (1) of the deputy inspectors unless the inspector or board of mines shall notify the county coroner in writing that the presence of either of the said officers is unnecessary. (Laws 1957, ch. 160, § 12; W.S. 1957, § 30-51.)

Cross references. — As to peace officers generally, see §§ 7-2-101 to 7-2-110. As to coroners' inquests generally, see §§ 7-4-201 to

7-4-211. As to sheriffs generally, see §§ 18-3-601 to 18-3-609. As to coroners' inquest in case of accident in coal mine, see § 30-3-410.

§ 30-2-307. Arbitrary action prohibited; information confidential; exception; interest in mining operations prohibited; discharge for violation of section; additional penalty.

Neither the inspector nor any deputy inspector shall, in any of their functions as such, act arbitrarily or without just cause; information obtained by them in the course of inspections shall be strictly confidential save where disclosure may be required in enforcement of the provisions of this act [§§ 30-2-101 to 30-2-433]. During their term of office of employment as such, no inspector or deputy inspector shall hold or acquire, directly or indirectly, any interest in any mining operation within the state of Wyoming. Grossly negligent release of confidential information acquired in the course of duty, or willful discrimination between operators by the inspector or any deputy inspector, or knowingly applying to his own material gain knowledge acquired in the course of duty, shall be justification for the discharge of any such officer and, in addition, shall constitute a misdemeanor punishable upon conviction thereof by a fine not to exceed five hundred dollars (\$500.00) and imprisonment in the county jail for a period of six (6) months or both. (Laws 1957, ch. 160, § 13; W.S. 1957, § 30-52.)

§ 30-2-308. Rules and regulations.

The inspector of mines shall have power to formulate and adopt such rules and regulations as he may deem necessary from time to time to clarify and to make specifically applicable and to carry into effect the provisions hereinafter set forth concerning mining operations carried on within this state and to alter, amend and repeal the same. All such rules and regulations shall be within the limits of and consistent with and not contrary to the purposes and intent of said provisions. Such rules and regulations shall be designed to more specifically define the said provisions and to give the flexibility necessary in application to specific instances and to carry out the basic purpose of giving to all such mining operations the greatest freedom consistent with the public interest, the safety of employees and the general public. Such rules and regulations shall be adopted only in accordance with the procedure and under the conditions hereinafter set forth. (Laws 1957, ch. 160, § 15; W.S. 1957, § 30-53.)

Cross reference. — As to powers and duties of inspector generally, see § 30-2-301.

§ 30-2-309. Limitation upon power; notice prerequisite to adoption of rules and regulations; authority in case of emergency.

No inspector or deputy inspector shall have the power to take any action unless such power shall have been granted to him by a provision of law or shall be reasonably necessary or incidental to the giving of proper effect to the same; no rule or regulation shall be adopted or become effective until notice thereof shall have been given to all interested parties and opportunity to be heard with respect thereto has been afforded; provided, nevertheless, that the inspector and the deputy inspectors of mines shall have authority to act in case of emergency as hereinafter provided. (Laws 1957, ch. 160, § 17; W.S. 1957, § 30-54.)

§ 30-2-310. Filing of requests prerequisite to notice and information.

Any person, firm or corporation desiring to receive notice of any action of the inspector of mines, or of the proposal or adoption of any rule or regulation, or hearing with respect thereto, shall file with the inspector of mines his or its request for such notice together with his or its name and address and the name of the person or officer authorized to receive such communication, and only those persons, firms or corporations filing such requests for notice and information shall be deemed to be interested persons entitled to notice under the terms of this act [§§ 30-2-101 to 30-2-433]; for any purposes of notice, such requests shall be deemed to have been filed as of the fifth day following the date of the receipt in the office of the inspector of mines. (Laws 1957, ch. 160, § 18; W.S. 1957, § 30-55.)

§ 30-2-311. Copies of proposed rule or regulation to be sent persons requesting notice; notice as to object, purpose, etc., of hearing; requirements as to hearings; decision of inspector; effective date of rule or regulation.

Whenever any rule or regulation shall have been proposed, the inspector shall cause to be made copies of such rule or regulation in the form in which it has been proposed; a copy thereof shall be sent to all those who shall have registered for such notices, and shall be accompanied by a notice stating that such rule has been proposed, the number of such rule, with a general statement of its object and purposes, and the date, time and place of the hearing with respect to the rule, and shall contain a statement that unless protest or objections are presented at the hearing, the rule shall be adopted on that date. Such notice shall be deemed to have been given on the date of mailing. Hearings shall be held before the inspector and shall be held not less than twenty (20) nor more than thirty (30) days from the date of notice given. At such hearing all interested persons shall be entitled to be heard and to introduce evidence in support of or opposing such

rules or amendments thereto or alterations thereof. At the end of such hearing, the inspector shall render his decision upon the evidence introduced and arguments received, and unless an emergency shall be found to exist in fact, such rule or regulation if approved by the inspector, shall become effective fifteen (15) days thereafter; where an emergency is found to exist, the rule or regulation shall become effective immediately. (Laws 1957, ch. 160, § 19; W.S. 1957, § 30-56.)

§ 30-2-312. Appeals from decision of inspector relative to rules.

Any interested person may appeal from the decisions of the inspector with respect to the adoption of the rule to the district court of the county wherein the office of the inspector of mines shall be located; notice of appeal shall be given in writing on or before the 10th day after said decision has been rendered. The appeal shall be taken by the filing of a petition, setting forth a copy of the proposed rule or regulation and the basis of the objection; the procedure in such instances shall be the same as in civil actions in courts of this state; the basis for such appeal shall be that the proposed rule or regulation is beyond the power of the inspector, or is arbitrary or discriminatory or is without reasonable justification in sound mining practices or under reasonable safety demands. The petition shall state in clear and ordinary language the basis of appeal and the ultimate facts constituting such basis. The trial of the issues shall be de novo and in such trial the objector shall be the plaintiff and the inspector, defendant. The court shall advance all of such matters upon its calendar to the end that prompt disposition may be made. (Laws 1957, ch. 160, § 20; W.S. 1957, § 30-57.)

Cross reference. — As to rule of civil procedure governing judicial review of administrative action, see Rule 72.1, W.R.C.P.

§ 30-2-313. Access to mining operations, etc.; penalty for refusal of access; enforcement by injunction; misrepresenting facts or information to inspector.

The inspector, and any deputy inspectors duly authorized so to act, shall have access to all mining operations as herein defined within this state and all parts thereof at any time for all purposes of enforcement of this act [§\$ 30-2-101 to 30-2-433] and all rules and regulations adopted pursuant thereto. Refusal of access to such duly authorized person after request made shall constitute a misdemeanor punishable by a fine of not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00) for each instance and, in addition, the granting of such access may be enforced by injunction; in such instance, proceedings shall be summary, by petition to the court and order to show cause made returnable within ten (10) days or as soon thereafter as the matter may be heard by the court. Any owner, lessee, manager, superintendent or foreman in charge of any such mine who shall willfully misrepresent facts or information to the inspector regarding the mine, or who shall make any misrepresent

tation tending to show safety when the reverse is true, shall be deemed guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiction, shall be fined in any sum not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00) for each offense. (Laws 1957, ch. 160, § 21; W.S. 1957, § 30-58.)

§ 30-2-314. Regulations for abandonment or closing down of mine.

(a) Notice to inspector. — When it is intended to abandon or indefinitely close down any underground working, the inspector of mines shall be notified far enough in advance of the abandonment that a final inspection may be made of the property before it is completely closed down.

(b) Closing or fencing underground mine. — Upon abandonment or closing down of an underground mine, the owner or operator shall effectively close or fence off all surface openings through which persons or animals could fall or

enter.

(c) Protection of persons and animals when strip, etc., mine is closed. — Upon abandonment or closing down of a strip or open pit mine, mining or prospecting pit or excavation, appropriate action shall be taken where necessary to

safeguard against injury to persons or animals.

(d) Within thirty (30) days after abandonment or closing down of any underground mine, the owner or operator shall file with the inspector of mines a map showing all pertinent data as of the date of closing or abandonment in the form as hereafter prescribed. The map and all data shown thereon shall be confidential and not open for public inspection until a period of two (2) consecutive years have elapsed without resumption of mining activity, unless release thereof has been authorized in writing by the owner or unless need because of safety reasons is shown by an adjoining operator or other interested party. (Laws 1957, ch. 160, § 25; W.S. 1957, § 30-59; Laws 1977, ch. 65, § 1.)

The 1977 amendment, in subsection (d), substituted "hereafter" for "hereinafter" near the end of the first sentence and in the second sentence substituted "The map and all data" for "Such map, and all of the data and information," "a period of two (2) consecutive years have elapsed without resumption of mining activity" for "and unless a period of ten consecutive years without resumption or recommencement of mining activity shall have elapsed," "has been

authorized" for "shall have been authorized" and "is shown by an adjoining operator or other interested party" for "shall be shown by an adjoining operator."

Effective date. - Section 2, ch. 65, Laws 1977,

makes the act effective May 27, 1977.

Cited in Chicago & N.W. Ry. v. Bishop, 390

P.2d 731 (Wyo. 1964).

C.J.S. reference. — 58 C.J.S. Mines and Minerals §§ 231, 240, 271, 272.

§ 30-2-315. Record of accidents to be kept; inspection; reports filed with inspector; collection and compilation by inspector.

(a) The owner or operator shall keep a record of all accidents occurring in, on, or about, or in the course of mining activities as herein defined, which record shall be open to the inspector of mines or his deputies at all times.

- (b) In all compensable injuries, the owner or operator shall send to the inspector of mines a copy of the employer's report filed in workmen's compensation cases.
- (c) The inspector of mines shall collect and compile records of accidents occurring in mining operations as herein defined. (Laws 1957, ch. 160, § 26; W.S. 1957, § 30-60.)

Cross reference. — As to employers report under Worker's Compensation Act, see § 27-12-506.

§ 30-2-316. Notification of change in ownership, etc., of mining property.

The inspector of mines shall be informed promptly of any change in the name, ownership or operator of any operating mining property. (Laws 1957, ch. 160, § 34; W.S. 1957, § 30-61.)

§ 30-2-317. Notice as to commencement of operations.

Within thirty (30) days after the commencement of any mining operation as hereinabove referred to the owner or operator shall notify the inspector of mines of the date and place of commencement. (Laws 1957, ch. 160, § 37; W.S. 1957, § 30-62.)

§ 30-2-318. Uniform code of signals.

The inspector of mines shall have the power to prescribe and adopt a uniform code of signals to be in effect at all mining operations where in his discretion such code of signals shall be advisable; on adoption, such code shall be displayed and made available at such place or places and in such manner as the inspector of mines may prescribe. (Laws 1957, ch. 160, § 62; W.S. 1957, § 30-63.)

Cross reference. — As to code of signals in noncoal mines, see § 30-4-301.

Effective date. — Section 63, ch. 160, Laws 1957, makes the act effective from and after passage. Approved February 16, 1957.

ARTICLE 4. SAFETY REGULATIONS

§ 30-2-401. General enumeration.

- (a) Safe place to work. Reasonable safety regulations and precautions shall be observed in all phases of all mining activities as hereinabove referred to for the purpose of providing a safe place for persons to work and in order to avoid injury and accident.
- (b) Apparatus, machinery, etc., to be in good repair, etc. No apparatus, piece of equipment, machinery or tool shall be used when not in good repair or working condition or for any purpose for which it is not intended or suited.

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(c) Working in unsafe places. — No work shall be permitted in any unsafe place unless it is for the purpose of making the place safe, and then only by experienced persons under the supervision of a qualified person.

(d) Precautions as to gas. - Special precautions shall be observed in

operations where gas has been found to exist in dangerous quantity.

(e) Hazards to be designated by signs. — Appropriate signs shall be posted where dangerous or temporary hazards exist.

(f) Good housekeeping required. — Good housekeeping shall be practiced in and around all mining activities. Such practices include cleanliness, orderly and safe storage of materials, and the removal of possible sources of injury such as stumbling hazards, protruding nails, broken glass, discarded equipment, supplies, containers, parts, and other similar objects or materials. (Laws 1957, ch. 160, § 47; W.S. 1957, § 30-64.)

Am. Jur. 2d and C.J.S. references. — 54 Am. Jur. 2d Mines and Minerals §§ 167, 172 to 181. 58 C.J.S. Mines and Minerals § 229 et seq.

§ 30-2-402. Aerial trams, belts and conveyors.

Aerial trams, belts, conveyors or other transporting equipment shall be adequate for the purpose used and shall be installed and maintained in good workmanlike manner in accordance with recognized good, safe engineering practice. (Laws 1957, ch. 160, § 27; W.S. 1957, § 30-65.)

§ 30-2-403. Bins and chutes.

- (a) All bins shall be so designed and constructed as to hold and maintain the load required.
- (b) Chutes for discharging bins shall be of approved design, and so arranged as to be conveniently and safely operated, with a uniform flow to lessen arching of stored material.
- (c) Open top bins shall be protected by adequate guardrails and toeboards. (Laws 1957, ch. 160, § 28; W.S. 1957, § 30-66.)

§ 30-2-404. Boilers and compressed air receivers.

- (a) All boilers used for generating steam shall be kept in good order, and the owner or operator shall have them inspected and approved by a competent boiler inspector at least once every twelve (12) months.
- (b) All compressed air receivers shall be built and installed according to standard specifications and shall be inspected and approved by a competent person at least once every twelve (12) months. (Laws 1957, ch. 160, § 29; W.S. 1957, § 30-67.)

§ 30-2-405. Requirements as to buildings generally; nonfireproof structures prohibited; exception.

(a) Buildings shall be constructed and located in a manner consistent with

recognized good mining practice.

(b) After the adoption of this act [§§ 30-2-101 to 30-2-433], no nonfireproof structure shall be constructed within fifty (50) feet of any underground mine opening. Provided, however, that open wooded headframes shall be excepted from this provision. (Laws 1957, ch. 160, § 30; W.S. 1957, § 30-68.)

Effective date. — Section 63, ch. 160, Laws 1957, makes the act effective from and after passage. Approved February 16, 1957.

§ 30-2-406. Bulletin boards to be maintained for posting rules and regulations.

Bulletin boards shall be maintained at central locations in all mining operations and notices pertaining to safety rules and regulations and operations shall be posted on said boards. It shall be the responsibility of each employee to take notice, and be advised, and each employee shall be charged with notice of all material so posted. (Laws 1957, ch. 160, § 31; W.S. 1957, § 30-69.)

§ 30-2-407. Cables and ropes.

(a) Cables and ropes must be of adequate size to meet the use intended.

(b) Hoisting ropes on all cages or trips shall be adequate in size to handle the load and have a proper safety factor as defined in the American Standards Association's Wire Rope Standards, and shall be replaced when inspection shows more than six (6) broken wires in any single pitch length or lay or rope. (Laws 1957, ch. 160, § 32; W.S. 1957, § 30-70.)

§ 30-2-408. Hoisting equipment generally.

Cages, skips and buckets and other means of lowering and raising personnel, materials, equipment or products shall be constructed, maintained and operated in accordance with sound, safe, engineering standards. (Laws 1957, ch. 160, § 33; W.S. 1957, § 30-71.)

Cross references. — As to kind and type of to qualifications of hoisting engineer, see hoisting equipment required, see § 30-2-420. As § 30-4-303.

§ 30-2-409. Clothing to meet safety standards.

Where the nature of the duties of a person may be such that the type of clothing worn by said person, or protective devices used, may affect the safety of said person or of other persons, said person shall wear such type of clothing and use such protective devices as may be required to meet recognized approved safety standards. (Laws 1957, ch. 160, § 35; W.S. 1957, § 30-72.)

§ 30-2-410. Clearance for employees.

Adequate clearance for employees or other persons shall be provided in all main haulageways, passageways or travelways. (Laws 1957, ch. 160, § 36; W.S. 1957, § 30-73.)

§ 30-2-411. Communication systems.

Telephone or other adequate communication systems, installed in a manner to reduce possibility of interruption of service, shall be provided in all underground workings where the distance from the surface to the underground working areas is more than two hundred (200) feet vertically, or where entry is by adit level or tunnel two thousand (2,000) feet from the portal. (Laws 1957, ch. 160, § 38; W.S. 1957, § 30-74.)

Cross reference. — As to code of signals for noncoal mines, see § 30-4-301.

§ 30-2-412. Devices for alleviating dust or fumes.

Where dust or fumes in harmful quantities result from mining, milling or processing operations, some mechanical or other means that will alleviate this condition shall be used wherever and whenever practical and the operator shall furnish and encourage use of devices for alleviating such effects of dust and fumes. Each and every person shall use such devices as are furnished by the operator. (Laws 1957, ch. 160, § 39; W.S. 1957, § 30-75.)

§ 30-2-413, Electric installations and equipment.

All electric installations and equipment shall be installed and maintained in a manner consistent with safe, sound, electrical engineering practice. Electric equipment shall be protected against excessive overload with fuses and the equivalent. Switches and circuit breakers shall be so installed as to be readily accessible and able to be operated without danger of contact with moving or live parts. Power circuits shall be protected against short circuits or excessive overload. Wires or other conducting materials shall not be used as a substitute for properly designed fuses. All electric equipment shall be grounded effectively. (Laws 1957, ch. 160, § 40; W.S. 1957, § 30-76.)

Cross reference. - See also § 30-2-425.

§ 30-2-414. Escapeways and exits.

All underground workings shall possess escapeways, exits, and manways, sufficient in view of the size, depth and extent of the operation and number of men employed, to permit reasonably available and speedy exit, in the event of accident or unforeseen or unusual need. These passageways shall be kept in good traveling condition and be of such size, that persons will have no difficulty

in traveling the same. They shall be marked with signs reading: "This Way Out" or "Man Way." All shafts that are used as escapeways shall be equipped with a ladderway with appropriate landings every twenty-five (25) feet. (Laws 1957, ch. 160, § 41; W.S. 1957, § 30-77.)

§ 30-2-415. Explosives.

Explosives shall be stored, transported, handled and used in a manner prescribed by approved safety standards. (Laws 1957, ch. 160, § 42; W.S. 1957, § 30-78.)

Cross reference. — See also ch. 6 of this title, as to approved safety standards.

§ 30-2-416. Pits and quarries.

- (a) Reasonable precautions shall be taken to insure the safety of all persons working in and about open excavations, pits and quarries.
- (b) Overhanging banks shall not permitted in any excavation, pit, or quarry, and sides and banks shall be sloped to an angle, in view of the nature of the material and the depth of the excavation, that will minimize the danger of materials sliding or falling. (Laws 1957, ch. 160, § 43; W.S. 1957, § 30-79.)

§ 30-2-417. Fire extinguishers and fire-fighting equipment; posting of safety diagram.

- (a) All structures or installations either underground or above ground shall be constructed and of material and in such manner as to minimize the danger of fire.
- (b) No material shall be stored underground or above ground in such manner or quantity as to create or constitute a fire hazard.
- (c) Smoking or the use of an open flame shall not be permitted in areas where it would constitute a serious hazard.
- (d) All operations shall be equipped with fire extinguishers and fire fighting apparatus in an amount and of a type sufficient, in view of the nature of the particular installation and the availability of other fire fighting equipment, to provide reasonably effective means of controlling fires.
- (e) In all underground mines a diagram, brought up to date every six (6) months, showing the position of the workings, including escapeways, exits, fire doors, and communication systems, shall be kept legible and posted on bulletin boards at or near underground entrances, and at all principal working stations. (Laws 1957, ch. 160, § 44; W.S. 1957, § 30-80.)

§ 30-2-418. First-aid equipment and training.

Each mine, mill, or processing plant shall maintain on hand an adequate supply of first-aid equipment and supplies. This equipment shall be located at various points in the mill or plant and near the working section in the mine. The first-aid supplies shall be encased in a reasonably dust tight, moistureproof container. In addition to other first-aid equipment, adequate stretchers, splints and blankets shall be provided. The operator shall endeavor to train a reasonable number of employees in first aid. (Laws 1957, ch. 160, § 45; W.S. 1957, § 30-81.)

§ 30-2-419. Storage of flammable materials.

Petroleum products and other dangerous flammable materials shall be stored in tanks or covered buildings, kept solely for such storage, located at least one hundred (100) feet from any powder magazine, any underground mine opening, any building over an underground mine opening, or any flammable building or buildings. (Laws 1957, ch. 160, § 46; W.S. 1957, § 30-82.)

Cross reference. — As to proper storage techniques for petroleum products, see ch. 6 of this title.

§ 30-2-420. Kind and type of hoisting equipment required; brakes and indicators.

Hoisting equipment shall be of such kind and type as to assure a reasonable certainty of safe operation and ease of control. It shall be equipped with two (2) independent and separate braking devices, either of which shall be capable of stopping, or holding a descending fully loaded, unbalanced bucket, cage or skip. Each and every hoist shall be equipped with a positive indicator, which shall be in clear view of the hoistman and so constructed that it will show the exact position of the bucket, cage or skip at all times. (Laws 1957, ch. 160, § 48; W.S. 1957, § 30-83.)

Cross references. — As to hoisting equipment generally, see § 30-2-408. As to qualifications of hoisting engineer, see § 30-4-303.

§ 30-2-421. Inspections for safety hazards.

The operator, or some competent person designated by the operator, shall make inspections for safety hazards at least once, or oftener if necessary for safety, during each working shift, of all those parts of the operations which are traveled or being worked. (Laws 1957, ch. 160, § 49; W.S. 1957, § 30-84.)

§ 30-2-422. Construction and maintenance of tracks, roadbeds, switches, etc.

Tracks, roadbeds, rails, joints, switches and frogs on all haulageways (surface or underground) shall be constructed, installed, and maintained in a manner consistent with speed and type of haulage operations conducted, to reasonably assure safe operation. (Laws 1957, ch. 160, § 50; W.S. 1957, § 30-85.)

Cross reference. — As to authority of mining companies to construct railroads, roads, etc., see § 30-1-128.

§ 30-2-423. Responsibility of employers and employees regarding safety rules.

It shall be the responsibility of the employer to make available to all employees the rules of safety governing their employment. Employees shall be responsible for the observance of all such rules and safety practices in all phases of their work. (Laws 1957, ch. 160, § 51; W.S. 1957, § 30-86.)

§ 30-2-424. Intoxicating liquors and intoxication prohibited.

No intoxicating liquors or beverages shall be taken into or permitted within any mine, excavation, pit or quarry, or mill or processing plant, and no person in a state of intoxication, or believed to be under the influence of intoxicating liquors or beverages shall be allowed to enter or loiter in or around any mine, excavation, pit, quarry, or mill or processing plant. (Laws 1957, ch. 160, § 52; W.S. 1957, § 30-87.)

§ 30-2-425. Lamps and electric equipment.

Approved type, electric portable lamps shall be used in any underground mine that generates any type of explosive gases. Electric lighting shall be well installed and proper switches and fuses used. Installation and maintenance shall be in accordance with good safe electric engineering practice. (Laws 1957, ch. 160, § 53; W.S. 1957, § 30-88.)

Cross reference. - See also § 30-2-413.

§ 30-2-426. Standard safety methods required as to machinery.

(a) All machinery shall be guarded by standard approved methods and devices which shall adequately provide protection against accidents and prevent all access to the danger zones during operation.

(b) All persons shall avail themselves of such protective devices and shall observe all rules governing the maintenance and operation of same and shall promptly report to the operator or supervisor any unsafe condition or the lack of any such protective device. (c) No employee or person or persons shall knowingly do any willful act to injure or destroy any machinery, which will thereby endanger the safety of persons, or working places or property. (Laws 1957, ch. 160, § 54; W.S. 1957, § 30-89.)

§ 30-2-427. Maps or diagrams of mine workings and installations required.

For safety purposes the owner or operator of every mine shall make or cause to be made accurate maps or diagrams of mine workings and installations which are or may be pertinent to safety in employment, operation, ingress, egress, and other similar matters. Such maps or diagrams shall be accurate, kept up to date, and on a scale not exceeding two hundred (200) feet to an inch; a copy thereof shall be posted at such place or places in or about the mine as may be advisable for the purpose intended, and a copy thereof shall be furnished to the inspector of mines and kept up to date in his office. (Laws 1957, ch. 160, § 55; W.S. 1957, § 30-90.)

§ 30-2-428. Protection from falling material.

Every shaft, incline, winze, adit, tunnel level or drift, and every working place in any underground mine shall be properly protected and sufficiently timbered or supported where necessary to protect persons therein from injury from falling material. (Laws 1957, ch. 160, § 56; W.S. 1957, § 30-91.)

§ 30-2-429, Care of tools.

Tools except when they are in actual use, shall be kept in racks, boxes, kits, or where they will create no hazard. (Laws 1957, ch. 160, § 57; W.S. 1957, § 30-92.)

§ 30-2-430. Requirements as to internal combustion engines.

The use of equipment underground which is powered by internal combustion engines shall be limited to the type constructed so as to conform to the standards approved by the United States bureau of mines for underground internal combustion engines. Such equipment shall only be used and operated under conditions approved by the inspector of mines. (Laws 1957, ch. 160, § 58; W.S. 1957, § 30-93; Laws 1959, ch. 124, § 4.)

§ 30-2-431. Requirements as to ventilation.

(a) The operator shall provide and maintain, for every working place, a good and sufficient amount of ventilation for persons working therein, and shall cause an adequate quantity of fresh air to circulate through and into all working places where persons have to work, and no obstruction shall at any time, be placed in any ventilation area. (b) The ventilation shall be sufficient to dilute and render harmless any

noxious gases or powder smoke that may be present.

(c) In any underground mine in which ten (10) or more men are employed on any shift, or in any underground mine more than three hundred (300) feet in vertical depth or in any underground mine where men are working more than one thousand five hundred (1,500) feet from the surface opening, the operator shall provide on the surface or underground a fan or other mechanical means for producing and controlling air circulation within the mine. (Laws 1957, ch. 160, § 59; W.S. 1957, § 30-94.)

§ 30-2-432. Restriction upon visitation.

- (a) No person shall enter upon or be or remain in any mine, excavation, pit, quarry, mill, or processing plant unless authorized to do so by the owner or operator.
- (b) No visitor shall be allowed to enter upon or be or remain in any mine, excavation, pit, quarry, mill, or processing plant unless accompanied by the operator or by some employee duly authorized by him to accompany such stranger or visitor. (Laws 1957, ch. 160, § 60; W.S. 1957, § 30-95.)

§ 30-2-433. Working alone prohibited; exception.

No person, be he employer or employee, shall be required to work alone in any hazardous place where his life might be endangered. This provision shall not apply to any person engaged in inspection work. (Laws 1957, ch. 160, § 61; W.S. 1957, § 30-96.)

Effective date. — Section 63, ch. 160, Laws 1957, makes the act effective from and after passage. Approved February 16, 1957.

CHAPTER 3

Coal Mines

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Cross references. - For constitutional provision as to assessment of coal lands for taxation, see art. 15, § 2, Wyo. Const. For provision authorizing an excise tax on minerals, see art. 15, \$ 19, Wyo. Const. As to right of eminent domain with reference to ways of necessity for mining purposes, or for the transportation of coal, and as to procedure in connection therewith, see §§ 1-26-401 to 1-26-403 and Rule 71.1, W.R.C.P. For duty of county clerk to keep water users' records as official records, see § 18-3-402. For provision that nothing contained in §§ 27-1-101 to 27-8-111, relative to labor and employment, as applied to inspection and application of safety devices, shall be construed to be applicable to coal and metalliferous mines and workshops connected

therewith, see § 27-1-104. As to inapplicability of §§ 30-1-101 to 30-1-126 to coal mines, see § 30-1-126. As to inapplicability of §§ 30-2-101, 30-2-104 to 30-2-106 and 30-2-308 to 30-2-433 to coal mines, see § 30-2-103. For duty of board mines to act in an advisory capacity to inspector of mines, other than coal mines, see § 30-2-202. As to appointment of members of hoard of mines among the management and employees of the mining industry, other than coal mining, see § 30-2-203. See also the cross references at the beginning of this title. As to assessment of mines and products thereof, for taxation, see §§ 39-2-201 to 39-6-306. For duty of state geologist to visit and report upon lands held under coal and mineral leases, see \$ 36-6-105.

ARTICLE 1. IN GENERAL

§ 30-3-101. Miners and laborers to be paid semimonthly; payment to be lawful money, check or draft.

All wages or compensation of coal miners and laborers employed in or about any coal mine in the state are due and payable semimonthly, and payment shall be made in lawful money of the United States or by a good and valid check or draft, payable in lawful money of the United States; or, with the voluntary authorization of the miner or laborer, by deposit to the account of the coal miner or laborer in any bank, savings and loan association, credit union or other financial institution authorized by the United States or one (1) of the several states to receive deposits in the United States, and not otherwise. All money earned prior to the first day of any month is due and payable on or before the fifteenth day of such month, and any money earned prior to the sixteenth day of any month is due and payable on or before the last day of such month. Any

person, company or corporation operating coal mines within this state who fails to comply with the provisions of this section shall be fined not more than one hundred dollars (\$100.00) for each and every offense. (Laws 1890-91, ch. 82, § 1; R.S. 1899, § 2590; Laws 1903, ch. 64, § 1; C.S. 1910, § 3549; C.S. 1920, § 4485; R.S. 1931, § 23-173; C.S. 1945, § 57-501; W.S. 1957, § 30-97; Laws 1975, ch. 150, § 1.)

Cross references. — For provision as to hours of labor in mines, smelters, stamp mills and other institutions for reduction or refining of ores or metals, see art. 19, § 2, Wyo. Const. As to use of convict labor in coal mines, see § 9-3-709. As to semimonthly payment of employees generally, see § 27-4-101 et seq. As to minimum wages, see §§ 27-4-201 to 27-4-204. As to definition and length of working day in mines, see §§ 27-5-102 to 27-5-106. As to miner's liens for labor and materials, see §§ 29-3-201 to 29-3-233.

Effective date. — Section 2, ch. 64, Laws 1903, makes the act effective from and after passage. Approved February 20, 1903.

Am. Jur. 2d and ALR references. — 54 Am. Jur. 2d Mines and Minerals \$§ 148, 149, 167, 172 to 189; 200 to 214.

Smoke or other air pollution by coal mine, regulation of, 78 ALR2d 1353.

What constitutes "imminent danger," within provisions of federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. § 801 et seq.) requiring secretary of interior, upon finding that imminent danger exists in coal mine, to order all persons withdrawn therefrom until danger no longer exists, 25 ALR Fed. 646.

§ 30-3-102. Action for failure or refusal to make payment.

In case any employer of any such miner or laborer shall fail or refuse to make payment as aforesaid the same shall be recoverable in an action at law, together with legal interest from the date when such payment was due, as provided herein. (Laws 1890-91, ch. 82, § 2; R.S. 1899, § 2591; C.S. 1910, § 3550; C.S. 1920, § 4486; R.S. 1931, § 23-174; C.S. 1945, § 57-502; W.S. 1957, § 30-98.)

Cross reference. — As to legal rate of interest, see § 40-1-107 (e).

§ 30-3-103. Setoff against wages.

No account for goods, wares or merchandise, nor any claim, except for money loaned or advanced by such employer, to such miner or laborer, except as hereinafter provided, shall be allowed as a setoff or counterclaim in such action, and any condition of employment whereby any of the provisions of this act [§§ 30-3-101 to 30-3-104] are sought to be avoided, shall be utterly null and void. (Laws 1890-91, ch. 82, § 3; R.S. 1899, § 2592; C.S. 1910, § 3551; C.S. 1920, § 4487; R.S. 1931, § 23-175; C.S. 1945, § 57-503; W.S. 1957, § 30-99.)

§ 30-3-104. Employer may furnish certain supplies and services.

Nothing in this act [§§ 30-3-101 to 30-3-104] contained shall be held to interfere with any contract or agreement, in writing, for the furnishing by such employer to such employees, of medicine, medical attendance, fuel or house rent. (Laws 1890-91, ch. 82, § 4; R.S. 1899, § 2593; C.S. 1910, § 3552; C.S. 1920, § 4488; R.S. 1931, § 23-176; C.S. 1945, § 57-504; W.S. 1957, § 30-100.)

Effective date. — Section 5, ch. 82, Laws 1890-91, makes the act effective from and after passage. Approved January 10, 1891.

§ 30-3-105. Miners and loaders to receive credit prior to screening; exceptions.

It shall be unlawful for any mine owner, lessee, operator, agent or company in this state, employing miners at bushel or ton rates, or other quantities, in mining coal, to pass the output of coal mined by said miners over any screen or any device which shall take any part of the marketable coal from the amount thereof, before the same shall have been weighed and duly credited to the employees sending the same to the surface, unless otherwise agreed upon between miners and their employers. In case of any agreement where coal is credited to miners after having been screened and weighed, said miners or employees shall receive compensation for all marketable or saleable coal sent by them to the surface, and accounted for at the customary rate of weights; provided, that this section shall also apply to the class of workers in mines known as loaders engaged in mines where mining is done by machinery whenever the workers are under contract to load coal by the bushel, ton or quantity. (Laws 1911, ch. 74, § 1; C.S. 1920, § 4489; R.S. 1931, § 23-159; C.S. 1945, § 57-505; W.S. 1957, § 30-101.)

§ 30-3-106. Oath required of weighman; to be posted.

The weighman employed at any mine shall subscribe an oath or affirmation before a justice of the peace or other officer authorized to administer oaths, to do justice between employer and employee and to weigh the output of coal from miners in accordance with the provisions of section 1 of this act [§ 30-3-105]. Said oath or affirmation shall be kept conspicuously posted in the weigh office and any weigher of coal or person so employed who shall knowingly violate any of the provisions of this act [§§ 30-3-105 to 30-3-109] shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00) for each offense, or by imprisonment in the county jail for a period of not to exceed thirty (30) days, or by both such fine and imprisonment. (Laws 1911, ch. 74, § 2; C.S. 1920, § 4490; R.S. 1931, § 23-160; C.S. 1945, § 57-506; W.S. 1957, § 30-102.)

Cross reference. — As to weights and measures generally, see §§ 40-10-101 to 40-10-115.

§ 30-3-107. Authority of miners to employ check weighman; rights, oath, etc., of check weighman.

The miners employed by or engaged in working for any mine owner, lessee, operator, agent or company in this state shall have the privilege, if they so desire, of employing at their own expense a check weighman, who shall have like rights

and privileges in the weighing of coal as the regular weighman and be subject to the same oath and penalties as the regular weighman. (Laws 1911, ch. 74, § 3; C.S. 1920, § 4491; R.S. 1931, § 23-161; C.S. 1945, § 57-507; W.S. 1957, § 30-103.)

§ 30-3-108. Suitable and accurate scales to be provided; testing.

- (a) The owner, lessee, operator, agent or company operating any coal mine in this state, at which miners are paid by weight, shall provide suitable and accurate scales of standard manufacture for weighing of coal which may be procured from such mines; such owner, lessee, operator, agent or company shall be required to keep United States standard weights to test said scales.
- (b) At every mine where the coal miner is paid for by weight it shall be the duty of the weighman and the check weighman to examine and balance the scales each morning, and in no case shall any coal be weighed until such scales are tested by the United States standard weights and found correct; provided, that if the weighman and check weighman shall disagree, work may continue until the inspector of mines can be present, and any erroneous weights made during such time shall be rectified. When differences shall arise between the weighman and the check weighman, or operator, of any mine, as to the correctness of the scales, the same shall be referred to the inspector of mines whose duty it shall be to see and regulate the same at once. The mine inspector of the district upon each regular visit to each mine, shall test the scales used for the weighing of coal; if for any reason, he believes the scales to be inaccurate he shall call in the county assessor, as county sealer of weights and measures, and they shall proceed to test out the scales according to United States standards; if any inaccuracies are discovered they shall direct the scales to be properly repaired or adjusted until they register approximately correct weights. Any failure on the part of the mine inspector, and county assessor when called on to perform these duties shall constitute a refusal to perform the duties of their office and upon failure to do so they shall be reported to the governor of the state in writing.

(c) The inspector of mines upon each regular visit to each mine shall test the

scales used for the weighing of coal.

(d) Miners employed in the mine and others personally interested shall at all proper times have full right of access to and examination of scales or apparatus used for weighing coal in or about said mine; provided, however, the provisions of this act [§§ 30-3-105 to 30-3-109] shall not apply to mines classed as prospects, but only to those having regular output. (Laws 1911, ch. 74, § 4; 1913, ch. 16, § 1; 1919, ch. 126, § 21; C.S. 1920, § 4492; R.S. 1931, § 23-162; C.S. 1945, § 57-508; W.S. 1957, § 30-104.)

Repealing clause. — Section 22, ch. 126, Laws 1919, repealed all laws and parts of laws in conflict with that act.

Effective date. — Section 2, ch. 16, Laws 1913, makes the act effective from and after passage. Approved February 17, 1913.

§ 30-3-109. Fraudulent weighing.

Any person or persons having or using any scale or scales for the purpose of weighing the output of coal at mines so arranged or constructed that fraudulent weighing may be done thereby, or who shall knowingly resort to or employ any means whatever by reason of which such coal is not correctly weighed and reported in accordance with the provisions of this act [§§ 30-3-105 to 30-3-109], shall be deemed guilty of a misdemeanor and shall upon conviction for each offense be punished by a fine of not less than one hundred dollars (\$100.00) nor more than three hundred dollars (\$300.00), or by imprisonment in the county jail for a period not to exceed sixty (60) days, or by both such fine and imprisonment. (Laws 1911, ch. 74, § 5; C.S. 1920, § 4493; R.S. 1931, § 23-163; C.S. 1945, § 57-509; W.S. 1957, § 30-105.)

§ 30-3-110. Examination and balancing of mine scales and other devices.

The state inspector of coal mines is hereby made the legal examiner of all scales, measures or other mechanical devices by which coal is weighed or measured for the purpose of ascertaining or determining the compensation which shall be paid coal mine employees, and shall examine and balance said scales, measures or devices at any time he may consider it necessary in his official visits to the mines. (Laws 1927, ch. 41, § 1; R.S. 1931, § 23-164; C.S. 1945, § 57-510; W.S. 1957, § 30-106.)

Effective date. — Section 2, ch. 41, Laws 1927, makes the act effective from and after passage. Approved February 23, 1927.

§ 30-3-111. Changing, removing, etc., check numbers on mine cars with intent to defraud.

It shall be unlawful for any person to change, exchange, substitute, alter or remove any number or check number placed upon any car or pit car in or about any mine in the state of Wyoming, with the intent to cheat or defraud any other person out of the value of his services in mining and loading the coal or mineral contained in such car or pit car; and it shall be unlawful for any person, with the intent to cheat or defraud another, to place any number or check number upon any car or pit car loaded by any other person in or about any mine. (Laws 1913, ch. 89, § 1; C.S. 1920, § 4464; R.S. 1931, § 23-148; C.S. 1945, § 57-511; W.S. 1957, § 30-107.)

§ 30-3-112. Penalty for violating section 30-3-111.

Every person who shall violate any of the provisions of section 1 of this act [§ 30-3-111], shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in the sum of not more than one hundred dollars (\$100.00), or by imprisonment in the county jail for a term not to exceed six (6) months, or by both such fine and imprisonment. (Laws 1913, ch. 89, § 2; C.S. 1920, § 4465; R.S. 1931, § 23-149; C.S. 1945, § 57-512; W.S. 1957, § 30-108.)

Effective date. — Section 3, ch. 89, Laws 1913, makes the act effective from and after passage. Approved February 26, 1913.

§ 30-3-113. General penalty.

Any person who willfully and knowingly violates any of the provisions of the coal mining laws of the state of Wyoming or who shall disobey any order given in pursuance of such laws shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than two hundred dollars (\$200.00) or by imprisonment of not more than six (6) months, or both at the discretion of the court, except as otherwise provided. (Laws 1951, ch. 128, § 65; W.S. 1957, § 30-109.)

Effective date. — Section 68, ch. 128, Laws 1951, makes the act effective from and after March 1, 1951.

ARTICLE 2. INSPECTION

Division 1. Generally

§ 30-3-201. Definitions.

(a) In this act, and where used in the coal mining laws of this state, unless the context otherwise requires, the following words, to wit: operator, mine foreman, mine, coal mine, gassy mine, nongassy mine, permissible, interested persons, mine inspector, cross entry, approved and unit foreman, are defined as follows:

(i) "Operator" means an individual, firm, partnership, or corporation

operating a coal mine or any part thereof;

(ii) "Mine foreman" means the person whom the operator places in charge of the workings of a mine and of persons employed therein, and is hereby designated as the official responsible for the health and safety of the employees;

(iii) "Mine" means a group or system of shafts, tunnels, slopes, drifts, or inclined planes connected by one (1) general system of transportation over which coal is transported from the coal bed, and strip or open-pit coal mines;

(iv) "Coal mine" means any coal mine from which coal is produced for sale, exchange, or use;

(v) "Gassy mine" means a mine in which methane has been ignited or has been found by means of a permissible flame safety lamp or by air analysis in an amount of twenty-five one hundreths of a percent (0.25%) or more, or which is contiguous to a gassy mine;

(vi) "Nongassy mine" means any mine not classed as a gassy mine;

(vii) "Permissible" means any equipment, device, or explosive that meets the requirements of the United States bureau of mines;

(viii) "Interested persons" means authorized members of the mine safety committee, state and federal coal-mine inspectors, and, to the extent required by law, any other person;

(ix) "Mine inspector" means the state inspector of coal mines, sometimes

called the inspector of mines;

(x) "Cross entry" means an entry from which room entries are turned;

(xi) "Approved" means any device or practice approved by the mine inspector;

(xii) "Unit foreman" means a company employed mine boss who shall have the same responsibility in the workings under his supervision as the mine foreman has in the whole mine regarding safety regulations provided in this act. (Laws 1951, ch. 128, § 2; W.S. 1957, § 30-110.)

Meaning of "this act". — The words "this act" refer to ch. 128, Laws 1951, which appears herein as \$\\$ 30-3-113 to 30-3-224, 30-3-302, 30-3-306, 30-3-307, 30-3-310, 30-3-418 to 30-3-465 and 30-6-105 to 30-6-112.

Am. Jur. 2d reference. — 54 Am. Jur. 2d Mines and Minerals § 174.

§ 30-3-202. Applicability of provisions.

The safety provisions and regulations of this act shall apply only to coal mines, and are intended to apply primarily to underground coal mines, and are to apply to strip or open-pit coal mines only where specific reference is made to said strip or open-pit coal mines. (Laws 1951, ch. 128, § 1; W.S. 1957, § 30-111.)

Meaning of "this act". — See note to § 30-3-201.

Effective date. - Section 68, ch. 128, Laws

1951, makes the act effective from and after March 1, 1951.

Division 2. Inspectors

§ 30-3-220. Deputy inspector for coal mines; qualifications; examination; appointment; term; office of mine inspector.

(a) The governor shall nominate and by and with the advice and consent of the senate appoint a deputy inspector qualified for coal mines who shall hold office for a term of four (4) years and until his successor is duly appointed and qualified. The deputy inspector qualified for coal mines shall be not less than thirty-five (35) years of age, a citizen of the United States and a qualified elector of this state, of good repute and temperate habits, shall have had not less than fifteen (15) years mining experience, ten (10) of which shall have been underground in coal mines or other underground mines of this state, and shall have passed an examination by the coal mining examining board. Such examinations shall disclose that the applicant possesses a practical knowledge of the different systems of working and ventilating coal mines; the nature, chemistry, detection, and control of noxious, poisonous, and explosive gases; the dangers incident to blasting and the prevention thereof; the application of electricity in mining operations; the methods for the prevention of mine fires and gas or dust explosions; the methods for control and extinguishment of mine fires; the methods of rescue and recovery work following mine disasters; a thorough knowledge of the coal mining laws of this state and mining engineering.

(b) The deputy inspector qualified for coal mines shall not be an employee,

owner or part owner of any mine or mining company in this state.

(c) The inspector of mines shall keep his office in the city of Rock Springs, Sweetwater county, Wyoming. All instruments, records, papers, documents, and other property entrusted to him shall be kept safely and delivered to his successor in office. (Laws 1951, ch. 128, § 3; W.S. 1957, § 30-112; Laws 1963, ch. 93, § 2; 1971, ch. 7, § 1.)

Cross references. - As to inspector of mines generally, see §§ 30-2-301 to 30-2-318 and 30-4-201 to 30-4-207. For other cross references pertaining to inspector of mines, see notes following § 30-2-301. As to coal mine examining board, and rights and duties of inspector with respect thereto, see §§ 30-3-301 to 30-3-310. For duty of owner or operator to keep map or plan at mine for use of inspector, see § 30-3-402. As to right of entry of inspector and his deputies, see §§ 30-3-409, 30-3-413 et seq. For authority of inspector to order work to stop upon failure to comply with notice requiring correction of violations, see § 30-3-409. For duty of inspector to appoint a committee of 2 miners assisted by mine foreman to make inspection of mine and

report results, see § 30-3-414. For duty of owner or manager to notify inspector as to opening, closing or reopening mines, see § 30-3-416. For duty of inspector to enforce §§ 30-3-601 to 30-3-605, relative to bathhouses, see § 30-3-605. For powers and duties of inspector, appointed under the provisions of this section, as ex officio state mine inspector with reference to metalliferous mines (other than coal mines), see § 30-4-201. For duty of state coal mine inspector to visit and report to board of land commissioners lands held under coal and mineral leases, see § 36-6-105.

Am. Jur. 2d and C.J.S. references. 54 Am. Jur. 2d Mines and Minerals § 173.

58 C.J.S. Mines and Minerals § 237.

§ 30-3-221. Bond required of inspector and deputies.

The mine inspector and deputy inspector shall, before entering upon the discharge of their duties, give bond to be approved by the insurance commissioner in the penal sum of five thousand dollars (\$5,000.00) to the state of Wyoming with sufficient sureties, which bonds shall be conditioned on the faithful discharge of their duties. (Laws 1951, ch. 128, § 5; W.S. 1957, § 30-114.)

§ 30-3-222. Salary of inspector and deputies; expenses; delivery of state property to successor.

- (a) The mine inspector shall receive an annual salary as provided by law, and shall receive actual expenses when in the discharge of his duties. Each deputy mine inspector shall receive an annual salary as determined by the Wyoming personnel commission and shall receive actual expenses when in the discharge of his duties.
- (b) The mine inspector is hereby authorized to procure such instruments, chemical tests, and stationery and to incur such communication expense as may be necessary to the discharge of his duties and those of his deputies; provided that such expense shall not exceed the contingent fund provided. All expenses of the mine inspector or his deputies, or his or their offices, shall be paid out of the state treasury upon accounts duly certified by the mine inspector and audited by the state auditor. All instruments, plans, books, memoranda, notes and other property pertaining to the offices hereby created, shall be the property of the state, and shall be delivered by each inspector to his successor in office. Each inspector shall be allowed all expenses necessarily incurred in enforcing the provisions of law relating to coal mines and mines other than coal mines in the courts of this state when such expenses are certified to be correct by the court before which the proceedings were heard. (Laws 1951, ch. 128, § 6; 1953, ch. 139, § 31; 1957, ch. 157, § 36; W.S. 1957, § 30-115; Laws 1961, ch. 148, § 41; 1965, ch. 94, § 1; 1967, ch. 21, § 1; 1969, ch. 168, § 30; 1971, ch. 190, § 14.)

Cross references. — For constitutional provisions that all state officers shall be paid fixed and definite salaries, and for duty of said officers to pay all fees collected into the proper treasury, see art. 14, §§ 1, 2, Wyo. Const. For amounts of salaries of state officers generally, see § 9-1-105.

Powers and duties of personnel commission transferred. — The powers and duties of the Wyoming personnel commission have been transferred to the personnel division of the department of administration and fiscal control. See §§ 9-3-2004 and 9-3-2023.

Appropriations. — Section 23, ch. 190, Laws 1971, reads: "There is hereby appropriated, to be distributed by the state auditor, out of the funds in the treasury of the state of Wyonning not otherwise appropriated the sum of two hundred forty-two thousand five hundred dollars

(\$242,500.00) or so much thereof as may be necessary, as determined by the assistant budget officer, to pay the salaries fixed by this act, and such appropriation is in addition to any funds heretofore appropriated for such purposes for the biennium ending June 30, 1971, and in addition to any funds appropriated for such purposes for the ensuing biennium ending June 30, 1973."

Section 24, ch. 190, Laws 1971, reads: "The state highway department, game and fish commission, public service commission, tax commission, employment security commission and workmen's compensation department, are hereby authorized to use an increased allotment of nongeneral fund income revenues in the amounts approved by the assistant budget officer to meet the additional expenses of salaries specified herein.

Effective dates. — Section 68, ch. 128, Laws 1951, makes the act effective from and after March 1, 1951.

Section 33, ch. 139, Laws 1953, makes the act effective from and after April 1, 1953.

Section 41, ch. 157, Laws 1957, makes the act effective from and after passage and approval. Approved February 15, 1957.

Section 52, ch. 148, Laws 1961, makes the act effective from and after passage. Approved February 18, 1961.

Section 19, ch. 116, Laws 1963, makes the act

effective from and after passage. Approved February 20, 1963.

Section 2, ch. 94, Laws 1965, makes the act effective on March 1, 1965.

Section 25, ch. 190, Laws 1971, reads: "For all those public officials serving specific terms, this act shall be in force and effect as of the date of its passage. The balance of this act relating to the salaries provided for herein shall be in force and effect on July 1, 1971." Approved February 27, 1971.

§ 30-3-223. Powers and duties of inspector and deputies.

- (a) The mine inspector shall devote the whole of his time during working hours to the duties of his office, and, in addition to any other duties imposed by the coal mining laws, or other laws, of this state, it shall be the specific duty of the mine inspector and his deputies and they are hereby authorized to do the following:
 - (i) Right of Entry. To enter, inspect and examine any mine or any shaft, drift, or slope in the process of sinking for the purpose of mining in this state, and inspect the workings and the machinery belonging thereto, at all reasonable times either day or night, but not so as to impede or obstruct the workings of the mine;
 - (ii) Collection of Statistics, etc.; Report to the Governor. To collect statistics relating to coal mining in the state. He shall, as required by section 9-21 [§ 9-2-103] of the statutes, report to the governor and include such statistics and cover his proceedings during the preceding period. The report shall cover the complete operation of the coal mines in the state during the preceding calendar year, and shall show a record of all accidents that render the victims physically unable to resume work on the day after the injury occurring in or about any such mine during the year, improvements made. number of men employed, tons produced, and the number of days worked at individual mines; and he shall make such suggestions as he deems important as to further legislation on the subject of mining. The governor shall cause a sufficient number of such reports to be published directly after receiving the same in order to supply coal mine operators, coal miners, and the public generally, who shall be furnished such reports upon application therefor without expense; and such reports shall be submitted to the legislature following their rendition, by the governor with such recommendation for legislation thereon as he shall see fit to make:
 - (iii) Record of Inspections; Inspections; Certified Copies. To keep a properly indexed, permanent record of all inspections made by the mine inspector and his deputies, and copies of all reports relating to coal mine inspections shall be kept on file, and all such records shall, at all times during office hours, be open to inspection by the public, and shall be laid before the governor upon his request at any time. He shall furnish certified

copies of any such records when requested to do so by interested persons, provided the request is accompanied by a money order made in favor of the state treasurer and in the amount generally charged by courts of record for certified copies;

(iv) Maps and Plans. — To see that maps and plans of all coal mines in the state are made and filed in his office, and such maps and plans shall be

preserved as a permanent record;

(v) Supervision of Deputies. — To supervise the work of the deputy inspectors and he shall have full authority over their official activities;

(vi) Clearing Mines in Case of Serious Danger. — To clear any mine or portion thereof of all persons where, in his opinion, there is imminent or serious danger to the life or health of the employees therein and refuse further entry to any persons until such time as, in his judgment, the mine can be reentered for investigation, examination, recovery, or repair work, or production work without unnecessary personal risk; but in no instance shall a mine that has been cleared of persons by the mine inspector or deputy inspector be reopened for production work until it has been first examined by such mine inspector or a deputy inspector;

(vii) Revocation of Order Clearing Mine. — To revoke, in writing, any order issued by a deputy inspector for the purpose of clearing a mine or portion thereof of persons. However, such revocation of an order shall not be made unless and until the mine inspector has made a personal examination of the mine affected and determined it to be in a safe condition to operate. (Laws 1951, ch. 128, § 7; W.S. 1957, § 30-116; Laws 1971, ch. 225,

§ 1; 1973, ch. 215, § 1.)

Cross reference. — As to mines being excepted from jurisdiction of commissioner of labor and statistics and from provisions

concerning safety devices and regulations generally, see § 27-1-104.

§ 30-3-224. Powers and duties of deputies.

(a) The deputy inspectors shall devote the whole of their time during working hours to the duties of their office, and, in addition to any other duties imposed by the coal mining laws of this state, it shall be their specific duty to do the following:

(i) Inspection of Mines Generally. — Inspect each coal mine in the state at least once every two (2) months, or oftener if practicable, while the mine is in operation, and whenever any danger to the workmen may exist, or whenever called upon to do so by the workmen or their representatives. During such inspection the deputy inspector shall inspect the surface plant; every working place in the mine; all active haulageways, travelways, and airways in their entirety; entrances to abandoned workings; accessible old workings; escapeways and other places where men work or travel, or where dangerous conditions may exist; electric equipment and installations; first-aid equipment; ventilation facilities; communication installations; roof and rib conditions; blasting practices, etc. He shall measure the volume of

air at the intake and return of the main ventilating current and of each split, and the amount passing through the last crosscut in each pair or set of entries, and designate to the superintendent or mine foreman where they shall measure the currents of air as required by this act. In mines operating more than one (1) shift in a twenty-four (24) hour period, the mine inspector shall devote sufficient time on the second and third shift to determine conditions and practices related to the health and safety of the employees. He shall make tests for gas and oxygen deficiency in each place which he is required to inspect in the mine;

- (ii) Report of Inspections. Make an accurate report covering each inspection of mines, showing date of inspection; the condition in which mine is found; the extent to which laws relating to mines are violated; the progress made in the improvement of the mine where such progress relates to the health and safety of the employees; the number of injuries and deaths resulting from accidents in and around the mine, and their cause; and in case any violations of the mining laws are found, the specific section or sections violated, with recommendations for correcting them, and the action taken to eliminate them shall be shown;
- (iii) Distribution of Copies of Report. Deliver within seven (7) days after the completion of the inspection one (1) copy of the inspection report on a mine to the operator, superintendent, or mine foreman of the mine inspected; one (1) copy to the mine safety committee, if such a committee is maintained; one (1) copy to the district office of the mine workers' organization having jurisdiction at the mine, if the mine is working under union contract; one (1) copy shall be posted within the seven (7) day limit on a bulletin board at a prominent place on the premises where it can be conveniently read by the employees, and the report shall remain posted until the report of the succeeding examination is posted; and one (1) copy shall be forwarded to the office of the mine inspector within one (1) week after making the inspection, except in instances where imminent or serious hazards are found, an interim report in person, by telephone, or telegram shall be made immediately;
- (iv) Accidents; Duty to Report. Report immediately, upon being informed of a mine fire, mine explosion, or any accident resulting in loss of life or serious injury, to the office of the mine inspector, the mine inspector in turn to notify interested persons;
- (v) Same; Investigation, Rendering Assistance, etc. Proceed immediately to the scene of any mine accident in his district that causes loss of life or serious personal injury, and to the scene of any mine fire or explosion regardless of whether there is loss of life or personal injury, make such investigation and recommendations and render such assistance as he deems necessary for the present or future safety of the employees, make a complete report thereof and give such report the same distribution as a regular mine inspection report;
- (vi) Same; Rescue and Recovery Work. In the absence of the mine inspector, take charge of any necessary mine rescue and recovery work in

his district and supervise the reopening of mines that have been sealed or abandoned on account of fire or any other cause;

(vii) Clearing Mine in Case of Danger. — It shall be the duty of the deputy inspector, and he is hereby empowered to clear any mine or portion thereof of all persons where, in his opinion, there is imminent or serious danger to the life or health of the employees therein and refuse further entry to any persons, except those he deems necessary to remove such dangerous condition and those permitted to participate in investigations as provided for in this act, until he determines by actual inspection that the mine or portion thereof involved is in safe operating condition;

(viii) Additional Duties. — The deputy inspector shall perform such additional duties as may be required of the mine inspector. (Laws 1951, ch. 128, § 8; W.S. 1957, § 30-117.)

Meaning of "this act". — See note to § 30-3-201.

1951, makes the act effective from and after March 1, 1951.

Effective date. - Section 68, ch. 128, Laws

§ 30-3-225. Duty of operators, etc., to report to inspector.

On or before the 31st of January in each year the owner, operator or superintendent of any mine or colliery shall send to the state inspector of coal mines a correct report, specifying with respect to the year ending the 31st of December of the previous year, the name of the owner, operator and officers of the mine, and the quantity of coal mined, and the number of men employed. The report shall be in such form and give such information as may be from time to time required and prescribed by the inspector; blank forms for such report shall be furnished by the state. (Laws 1903, ch. 23, § 8; C.S. 1910, § 3542; Laws 1919, ch. 126, § 17; C.S. 1920, § 4472; Laws 1925, ch. 79, § 5; R.S. 1931, § 23-154; C.S. 1945, § 57-205; W.S. 1957, § 30-118.)

Repealing clauses. — Section 11, ch. 23, Laws 1903, repealed R.S. 1899, ch. 8, Title 3, div. 1. Section 8, ch. 79, Laws 1925, repealed C.S. 1920, §§ 4467, 4470, 4477 and 4478, and §§ 10 and 11, ch. 95, Laws 1921.

Effective dates. - Section 12, ch. 23, Laws

1903 makes the act effective from and after passage. Approved February 17, 1903.

Section 9, ch. 79, Laws 1925, makes the act effective from and after passage. Approved February 21, 1925.

ARTICLE 3. EXAMINING BOARD

§ 30-3-301. Created; designation; composition; qualifications of members.

There is hereby created and established an examining board, which shall be known as the coal mining examining board of Wyoming. The said board shall

consist of a coal mine operator or coal mine operating official, a practical coal miner and a mining engineer. Each member of the board shall be a citizen of Wyoming, who has had at least five (5) years experience in coal mines and mining. (Laws 1925, ch. 80, § 1; R.S. 1931, § 23-120; C.S. 1945, § 57-301; W.S. 1957, § 30-119.)

Cross references. — As to boards of mines in connection with mining operations generally, see §§ 30-2-201 to 30-2-205. As to examination of deputy inspector for coal mines by examining board, see § 30-3-220.

Am. Jur. 2d reference. — 54 Am. Jur. 2d Mines and Minerals §§ 173, 175.

§ 30-3-302. Appointment, term and compensation of members.

The governor shall nominate and by and with the consent of the senate appoint the members of the board, who shall hold their respective offices for a term of two (2) years and until their successors are duly appointed and qualified. Each member of the board shall receive as compensation the sum of twelve dollars (\$12.00) a day while going to, attending, or returning from the meetings of the board, together with their actual and necessary expenses. (Laws 1925, ch. 80, § 2; R.S. 1931, § 23-121; C.S. 1945, § 57-302; Laws 1951, ch. 128, § 66; W.S. 1957, § 30-120.)

Effective date. — Section 68, ch. 128, Laws 1951, makes the act effective from and after March 1, 1951.

§ 30-3-303. Election of chairman; appointment of secretary; record of actions.

It shall be the duty of the board to elect one (1) of their members as chairman and to appoint a secretary, and to keep a record of all of their official actions, and to file such record in the office of the state inspector of coal mines. (Laws 1925, ch. 80, § 3; R.S. 1931, § 23-122; C.S. 1945, § 57-303; W.S. 1957, § 30-121.)

§ 30-3-304. Meetings for purpose of conducting examinations for certificate; duty as to examinations generally; notice of meetings, etc.

It shall be the duty of the said board to examine any person applying thereto for a certificate certifying to his competency and qualifications to discharge the duties of state inspector of coal mines or of deputy inspector of coal mines, of mine foreman, or of assistant mine foreman or of fire boss, or of mine examiner, and to issue certificates of competency to the applicants who upon examination show themselves competent and qualified. Said board shall meet annually in May at Rock Springs for the purpose of examining applicants for certificates. The board shall meet at such other times and places as it shall deem advisable. The

chairman shall decide the day and place of all meetings. At least fifteen (15) days notice of the place and date of every meeting of the board held for the purpose of examining applicants shall be given by publication in a newspaper published in the town or city where the examination is to be held, and also by posting copies of the published notice at all coal mines in the vicinity of said town or city. (Laws 1925, ch. 80, § 4; R.S. 1931, § 23-123; Laws 1935, ch. 110, § 1; C.S. 1945, § 57-304; W.S. 1957, § 30-122; Laws 1959, ch. 94, § 1.)

Cross reference. — As to publication of notices required by law, see §§ 1-6-201 to 1-6-203.

§ 30-3-305. Nature of examination generally; grading; record to be kept; public inspection of record.

The board in examining each applicant shall ascertain the experience, knowledge and understanding of the applicant for the position for which he desires a certificate. The board shall require the applicant to make a showing of his experience, and shall examine him both by written questions and answers and by oral questions and answers. An applicant may be given grades of forty percent (40%) on his experience, forty percent (40%) on the result of the written examination and twenty percent (20%) on the result of the oral examination. In order to obtain a certificate the applicant must obtain a total grade of seventy-five percent (75%). A complete record must be made of each examination, and this record shall include all questions propounded to the applicant, both oral and written, and the answers given, and a copy of the showing made by the applicant concerning his experience. The complete record of each examination shall be filed in the office of the state inspector of coal mines, and shall be held by him in a permanent file, open to public inspection. (Laws 1925, ch. 80, § 5; R.S. 1931, § 23-124; C.S. 1945, § 57-305; W.S. 1957. § 30-123.)

§ 30-3-306. Mine foreman and assistants; duties; mines to be supervised by certified personnel.

Each mine regularly employing five (5) or more persons shall be supervised by a certified mine foreman who shall see that the provisions of the coal mining laws of Wyoming that apply to his duties and to the health and safety of the mine employees are complied with. When the mine workings become so extensive that the mine foreman is unable personally to carry out the duties required of him by law, the operator shall employ a sufficient number of certified assistants who shall act under the direction of the mine foreman. The mine foreman or his assistants shall not permit any person to work in an unsafe place unless it be for the purpose of making it safe, and such work shall be under the direct supervision of a certified official. The mine foreman shall provide such data and information regarding the operation of the mine as may be required by the mine inspector on blanks which shall be furnished by the mine inspector. (Laws 1951, ch. 128, § 9; W.S. 1957, § 30-124.)

Cross references. — As to examination of mine foreman and assistants by coal mining examining board, see § 30-3-304. As to duties of mine foreman concerning ventilation, see § 30-3-427.

C.J.S. reference. — 58 C.J.S. Mines and Minerals § 236.

§ 30-3-307. Same; qualifications generally; certificate of competency required; reciprocity.

No person shall act as mine foreman, assistant mine foreman or safety engineer unless he shall be at least twenty-three (23) years of age, a citizen of the United States with at least three (3) years experience underground in coal mines or the type of underground mine in which he desires to work in such position, one (1) year of which shall be in Wyoming and possesses a mine foreman certificate granted by the coal mining examining board of Wyoming. No person shall act as unit foreman, fire boss or mine examiner unless he has at least two (2) years experience underground in coal mines, or the type of underground mine in which he desires to work in such position, one (1) year of which shall be in Wyoming and possesses a mine examiner certificate granted by the coal mining examining board of Wyoming. Each one (1) year training as a mining engineer in an accredited college or university is considered the equivalent of one (1) year practical experience underground, but such credit for training as a mining engineer shall not exceed two (2) years for mine foreman certificate and one (1) year for fire boss or mine examiner certificate. Any person holding a certificate of competency from a proper examining board of any state with which Wyoming has a reciprocal agreement may perform the duties in Wyoming for which his certificate certifies that he is competent, without examination by the coal mining examining board of Wyoming. Any such person before assuming any duties in a coal mine or other underground mines in Wyoming shall present his certificate to the coal mining examining board of Wyoming or to the mine inspector of coal mines in Wyoming and secure approval of the certificate. Such person is subject to examination by the board at the request of the mine inspector, and his authority to act in Wyoming as mine foreman, assistant mine foreman, mine examiner, safety engineer, unit foreman, or fire boss is subject to cancellation as if his certificate were issued by the coal mining examining board of Wyoming. No owner, operator, contractor, lessee, or agent shall employ any mine foreman, assistant mine foreman, mine examiner, safety engineer, unit foreman, or fire boss who does not possess the certificate of competency herein required. This act [section] shall not apply to open-pit mining. (Laws 1951, ch. 128, § 10; W.S. 1957, § 30-125; Laws 1973, ch. 16, § 1; 1974, ch. 13, § 1.)

Effective dates. — Section 68, ch. 128, Laws 1951, makes the act effective from and after March 1, 1951.

Section 2, ch. 13, Laws 1974, makes the act effective immediately upon passage. Approved February 12, 1974.

Operator's duty. - Statute regulating mines

and charging mining foreman with certain duties of inspection prescribed by law does not relieve operator, who is employed by the boss or foreman, of duty to provide safe place in which miners may perform their work. Owl Creek Coal Co. v. Goleb, 210 F. 209 (8th Cir. 1914) (construing former § 57-426, W.C.S. 1945).

§ 30-3-308. Same; examination upon request of mine inspector; cancellation of certificate.

Whenever the state mine inspector becomes satisfied that any mine foreman, assistant mine foreman or fire boss is incompetent, he may request him to undergo an examination before the coal mining board of Wyoming, and in the event of his refusal to undergo said examination or in the event of his failure to pass examination then and in either case the said board shall cancel the certificate held by such mine foreman, assistant mine foreman, or fire boss, and the same shall become null and void. (Laws 1925, ch. 80, § 6; R.S. 1931, § 23-125; C.S. 1945, § 57-306; W.S. 1957, § 30-126.)

§ 30-3-309. Same; temporary permit; subsequent examination required.

The state inspector of coal mines may issue a temporary permit to an applicant for a certificate for mine foreman, assistant mine foreman, or fire boss, pending a meeting of said board, if in his judgment the person applying has practical knowledge sufficient to warrant such permit, but such person holding such temporary permit shall present himself for examination to the next meeting of the board of examiners held nearest to his place of residence, and such temporary permit shall terminate on the date of such meeting and no further permits shall be issued to such person or persons until they have been certified by the mining examining board. (Laws 1925, ch. 80, § 7; R.S. 1931, § 23-126; Laws 1939, ch. 85, § 2; C.S. 1945, § 57-307; W.S. 1957, § 30-127.)

Effective date.—Section 7, ch. 85, Laws 1939, makes the act effective from and after passage. Approved February 18, 1939.

§ 30-3-310. Revocation of certificate after notice and hearing; reexamination; issuance of duplicate certificate in case of loss, etc.; fee; filing of certificate.

(a) Any certificate provided for in the coal mining laws of this state may be revoked by the coal mining examining board after hearing, upon due notice to the holder of the certificate, and upon written charges preferred by the board of by some interested person for violation of such laws. Complaint may be filed against the holder of a certificate for intoxication while in duty status, mental disabilities, neglect of duty, or other sufficient cause. The holder of a certificate so revoked shall be entitled to reexamination by the board after three (3) months have elapsed from the date of revocation thereof; provided he can prove to the satisfaction of the board that the incapacity complained of has ceased to exist. In event of loss or destruction of any certificate provided for in the coal mining laws of this state, the board, upon satisfactory proof of said loss or destruction, shall issue a duplicate on receipt of one dollar (\$1.00) which fee shall be covered into the state treasury. If the board revokes the certificate of the mine inspector

or deputy inspector of coal mines, the governor shall forthwith remove such

person from office.

(b) The holder of a mine foreman or mine examiner certificate shall present same to the official of the mine where he is employed, who shall file said certificate in the office at said mine, and such certificate shall be made available for inspection by interested persons. (Laws 1951, ch. 128, § 11; W.S. 1957, § 30-128.)

Effective date. — Section 68, ch. 128, Laws 1951, makes the act effective from and after March 1, 1951.

§ 30-3-311. Fee for examination and certificate.

Each applicant for examination shall deposit with the examining board an examination fee of five dollars (\$5.00), and each person to whom a certificate shall be granted shall pay to the board a fee of one dollar (\$1.00), all fees to be covered into the state treasury. (Laws 1925, ch. 80, § 8; R.S. 1931, § 23-127; C.S. 1945, § 57-308; W.S. 1957, § 30-129.)

Repealing clause. — Section 9, ch. 80, Laws 1925, repealed C.S. 1920, §§ 4444 to 4446.

Effective date. - Section 10, ch. 80, Laws.

1925, makes the act effective from and after passage. Approved February 21, 1925.

ARTICLE 4. SAFETY REGULATIONS

Cross references. — As to duty of legislature to enact laws for development, ventilation, drainage and operation of mines, see art. 9, § 2, Wyo. Const. As to mines excepted from jurisdiction of commissioner of labor and statistics and from provisions concerning safety devices and regulations generally, see § 27-1-104. As to exemption of coal mines from regulations concerning lode and placer claims.

see § 30-1-126. As to application of §§ 30-3-418 to 30-3-465 of this article to strip or open-pit coal mines, see § 30-3-202. As to authority of coal mines inspector and his deputies, see § 30-3-223. As to regulations applicable where Airdox is used to break down coal, see § 30-6-110. As to entering mine while intoxicated or taking intoxicating liquor into mines, see § 35-10-402.

§ 30-3-401. Mines included in term "coal mine."

The term mine or coal mine as used in this act and as used in chapter 23, Wyoming Revised Statutes, 1931, shall also mean and include strip and other open-pit mines, and the provisions of this act and said chapter 23 shall apply to such strip and open-pit coal mines, insofar as the same are applicable. (Laws 1939, ch. 85, § 6; C.S. 1945, § 57-447; W.S. 1957, § 30-130.)

Cross reference. — For definitions applicable to this article, see § 30-3-201.

Editor's note.—The words "this act" refer to ch. 85, Laws 1939, which appears herein as \$\\$ 30-3-309 and this section. Sections 1, 3, 4 and 5 of said ch. 85, which appeared respectively as \$\\$ 57-413, 57-440, 57-202 and 57-446, W.C.S. 1945, were repealed by \$ 67, ch. 128, Laws 1951.

Chapter 23, Wyoming Revised Statutes 1931, appears herein as \$\$ 30-3-101 to 30-3-112,

30-3-225 to 30-3-305, 30-3-308 to 30-3-311, 30-3-402 to 30-3-414 and 30-3-501 to 30-3-605.

Effective date.—Section 7, ch. 85, Laws 1939, makes the act effective from and after passage. Approved February 18, 1939.

Am. Jur. 2d and C.J.S. references.—54 Am. Jur. 2d Mines and Minerals \$\$ 167, 172 to 183, 184 to 189, 200 to 214.

58 C.J.S. Mines and Minerals § 1.

§ 30-3-402. Maps of mines to be made; biannual revision; care and custody; corrections by state inspector; copies; abandonment of mine.

- (a) The owner, operator or superintendent of every coal mine shall make an accurate map or plan of the coal mine on a scale not exceeding two hundred (200) feet to the inch. The map or plan shall exhibit all openings or excavations, shafts, tunnels, slopes, planes, gangways, entries, cross headings, rooms, etc., and shall show the direction of the air currents therein, shall accurately delineate the boundary line between the mine and adjoining mines and show its relation and proximity thereto. The map shall be prepared with reference to the legal subdivision or subdivisions in which the mine is located, and shall show thereon the lines of such legal subdivision or subdivisions.
- (b) The coal map, plan or true copy thereof shall be kept at the mine by the owner, operator or superintendent for the use of the state inspector of coal mines, and for the inspection of any miner working in the mine whenever the miner has cause to fear that the place where he is working is becoming dangerous by reason of its proximity to other workings which may contain water or dangerous gases.
- (c) The owner, operator or superintendent of every coal mine shall once every six (6) months, accurately place on a map or plan of the coal mine, a plan of the excavations made of all working places or other parts of the coal mine during the preceding six (6) months. The operator or the superintendent shall then furnish the state inspector of coal mines with a true and correct copy of this map and at the end of every six (6) months thereafter the state inspector shall return the copy to the operator or superintendent, who shall place thereon all extensions made, all portions of the mine worked out or abandoned during the preceding six (6) months and the part or parts in proximity to the boundary line.
- (d) All coal maps or plans of mines in the state which are furnished to the state inspector of coal mines shall be the property of the state of Wyoming, shall remain in the care of the state inspector of coal mines, shall be transferred by him to his successor in office, and in no case shall any copy of these maps be made without the consent of the owner or operator. If the state inspector of coal mines finds or has good reason to believe that any map or plan of any coal mine made or furnished is materially inaccurate or imperfect, he is authorized to cause a correct plan or map of the coal mine to be made at the expense of the owner or operator thereof, the cost of which shall be recovered from the owner or

operator in the name of the state of Wyoming as other debts are recoverable by law. However, if the map or plan which is claimed to be inaccurate proves to be correct, the expense of making the test survey shall be paid by the state of Wyoming from any funds in the state treasury not otherwise appropriated.

(e) Within thirty (30) days after abandonment of any coal mine, the owner, operator or superintendent shall file with the inspector of coal mines a map showing all pertinent information as of the date of abandonment. The map and all information thereon shall be held in confidence and not disclosed to the public for two (2) years after the date of abandonment, unless the owner authorizes in writing the release thereof or the need for safety reasons is shown by an adjoining operator or other interested party. (Laws 1890-91, ch. 80, § 1; R.S. 1899, § 2562; C.S. 1910, § 3505; Laws 1919, ch. 126, § 1; C.S. 1920, § 4428; Laws 1927, ch. 51, § 1; R.S. 1931, § 23-101; C.S. 1945, § 57-401; W.S. 1957, § 30-131; Laws 1977, ch. 65, § 1.)

The 1977 amendment so changed this section as to make a detailed comparison impracticable.

Repealing clause. — Section 23, ch. 80, Laws 1890-91, repealed all laws and parts of laws in conflict with that act.

Effective dates. — Section 24, ch. 80, Laws 1890-91, makes the act effective from and after passage. Approved January 10, 1891.

Section 2, ch. 51, Laws 1927, makes the act effective from and after passage. Approved February 23, 1927.

Section 2, ch. 65, Laws 1977, makes the act effective May 27, 1977.

C.J.S. reference, — 58 C.J.S. Mines and Minerals § 240.

§ 30-3-403. Survey and platting underground workings by county surveyor; generally; fees.

It is hereby made the duty of the county surveyor of any county in this state wherein is situated any coal or other mine or mines, upon the written request of an adjoining landowner, to enter any coal or other mine or mines and make a complete, true and accurate survey and plat of the underground workings of such mine or mines, for the purpose only of ascertaining whether the said underground works are or have been extended beyond the legal boundaries of the premises belonging to the owner or occupant of such mine or mines and upon the lands of such adjoining owner, or to ascertain how near the said underground workings have been extended toward such boundary line of the premises of such adjoining owner. And he shall make an official plat and report of such survey to such adjoining owner. Such county surveyor shall receive from the applicant the same fees therefor as shall be allowed to such surveyor by law for county surveying. In case the said county surveyor is interested in either of said adjoining properties, he shall call some competent engineer who is not interested, to make such survey and plat. And in all cases the said county surveyor shall be, and is hereby, authorized to take all such necessary assistance to aid him in making such survey and plat as he may deem necessary. (Laws 1911, ch. 12, § 1; C.S. 1920, § 4459; R.S. 1931, § 23-143; C.S. 1945, § 57-402; W.S. 1957, § 30-132.)

Cross references. — As to changing, defacing or destroying landmarks, monuments or markers, see § 6-10-111. As to manner and method of making surveys, see §§ 18-3-702, 18-3-704.

C.J.S. reference. — 58 C.J.S. Mines and Minerals § 142.

§ 30-3-404. Same; notice to mine owner; hindering or delaying surveyor.

It shall be unlawful for the owner, superintendent or any person having in charge any mine to hinder, delay or prevent said county surveyor, or engineer substituted for him in going into such mine, from making the survey and plat, and from carrying out the purposes and duties referred to in section one of this act [§ 30-3-403], provided, however, the said county surveyor shall give to such mine owner, his agent, or superintendent, as least ten (10) days written notice of the date on which he will begin such survey. Any person violating the provisions hereof shall be guilty of a misdemeanor, and shall for each offense be fined in any sum not exceeding one thousand dollars (\$1,000.00) or be imprisoned in the county jail not to exceed six (6) months, and each hindering, delaying or preventing for each and every day shall constitute a separate offense. (Laws 1911, ch. 12, § 2; C.S. 1920, § 4460; R.S. 1931, § 23-144; C.S. 1945, § 57-403; W.S. 1957, § 30-133.)

Effective date. — Section 3, ch. 12, Laws 1911, makes the act effective from and after passage. Approved February 13, 1911.

§ 30-3-405. Barrier pillars.

The operator of every coal mine which has another coal property contiguous to it or immediately adjacent to it shall leave barrier pillars at least fifty (50) feet in width along the boundary line of the contiguous coal property; provided, however, that nothing herein shall be construed as forbidding owners of adjacent properties from extracting the coal along the boundary line after they have entered into a written agreement providing that the said pillars may be pulled. (Laws 1925, ch. 70, § 1; R.S. 1931, § 23-102; C.S. 1945, § 57-404; W.S. 1957, § 30-134.)

C.J.S. reference. — 58 C.J.S. Mines and Minerals § 232.

§ 30-3-406. Penalty for violation of section 30-3-405.

Any person or corporation violating any of the provisions of section one of this act [§ 30-3-405] shall be guilty of a misdemeanor, and shall be subject to a fine of not less than five hundred dollars (\$500.00) nor more than one thousand dollars (\$1,000.00), or by imprisonment of not less than six (6) months, or both. (Laws 1925, ch. 70, § 2; R.S. 1931, § 23-103; C.S. 1945, § 57-405; W.S. 1957, § 30-135.)

Effective date. — Section 3, ch. 70, Laws 1925, makes the act effective from and after passage. Approved February 20, 1925.

§ 30-3-407. Posting rules as to duties of employees.

All owners and operators of coal mines shall keep posted in a conspicuous place about their mine printed rules, submitted to and approved by the state inspector of coal mines, defining the duties of all persons employed in or about said coal mines. (Laws 1890-91, ch. 80, § 6; R.S. 1899, § 2571; C.S. 1910, § 3515; C.S. 1920, § 4438; Laws 1927, ch. 95, § 4; R.S. 1931, § 23-112; C.S. 1945, § 57-418; W.S. 1957, § 30-136.)

§ 30-3-408. Prohibited acts generally.

Any miner, workman or other person who shall intentionally injure any shaft, lamp, instrument, air course or brattice, or obstruct or throw open air ways, or carry any pipe, cigar or cigarette, match or fire producing material or appliance into places that are worked by safety lamps, or handle or disturb any part of the machinery, or open a door and not close it again, or enter any place of the mine against caution, or disobey any order given in carrying out the provisions of this chapter, or do any other act whereby the lives or the health of persons or security of the mines or machinery is endangered, shall be deemed guilty of a misdemeanor, and may be punished in a manner provided in section 4451. (Laws 1890-91, ch. 80, § 7; R.S. 1899, § 2572; C.S. 1910, § 3516; C.S. 1920, § 4439; Laws 1925, ch. 74, § 1; R.S. 1931, § 23-113; C.S. 1945, § 57-419; W.S. 1957, § 30-137.)

Editor's note. — The words "this chapter," as used in this section, refer to ch. 80, Laws 1890-91, many sections of which have been repealed or superseded. The sections of said act which are still in effect appear herein as §§ 30-3-402 and 30-3-407 to 30-3-412.

Section 4451, referred to at the end of this section, which appeared as § 57-429, W.C.S.

1945, was repealed by § 67, ch. 128, Laws 1951. As to general penalty for violation of the coal mining laws, see now 30-3-113.

Effective date. — Section 2, ch. 74, Laws 1925, makes the act effective from and after passage. Approved February 20, 1925.

C.J.S. reference. - 58 C.J.S. Mines and Minerals §§ 131, 229.

§ 30-3-409. Right of entry of inspector, etc.; notice of violations; ordering work to stop in case notice disregarded; penalty for obstructing or failing to cooperate with inspector; authority of inspector to make arrest, etc.

Any state inspector of coal mines or his deputy or deputies shall have the right to enter at all times any coal mine within his district in this state, or wherever he may lawfully act in said state, to make examination thereof or to obtain information relating to the working of the same, and the owner, lessee or superintendent of such mine shall afford any assistance required by said inspector or his deputy or deputies in making such examination or obtaining such information. Said inspector or his deputy or deputies shall immediately notify the

owner, lessee, superintendent or mining boss of the discovery of any violation of the mining laws of this state, and of the penalty thereby imposed for such violation: and in case such notice is disregarded, such inspector or deputy or deputies shall have power to stop immediately the working and operation of any mine or any part thereof where any dangerous or unlawful conditions are found; provided, however, that where conditions justify him in so doing, he may grant a reasonable length of time for making repairs or for putting such mine in proper condition; and, provided, further, that where any stops or cessation of work are enforced, such inspector or deputy or deputies shall have the power thereafter to allow such mine or part of a mine to be reopened when the dangerous or unlawful conditions therein existing are removed or remedied so that they no longer exist. Every person, company or corporation who willfully obstructs the state inspector of coal mines or his deputy or deputies in the execution of his or their duties under this act, and every owner, agent, officer, lessee or manager of a coal mine who refuses or neglects to furnish to the said inspector or his deputy or deputies the means, information, or opportunity necessary for making any entry, inspection, examination or inquiry of or relating to any coal mine in this state as herein provided for, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than two hundred dollars (\$200.00), and not exceeding five hundred dollars (\$500.00) at the discretion of the court trying said offender. Every state inspector of coal mines in this state and his deputy or deputies is and are hereby empowered to act as police officers and deputy sheriffs, with full powers to arrest and detain any person found violating any provision of this section, or of any of the coal mining laws of this state, or any part thereof, or who shall be engaged in any attempt to violate such law or laws, or against whom there is found any evidence of a previous violation thereof. (Laws 1890-91, ch. 80, § 11; R.S. 1899, § 2574; Laws 1909, ch. 62, § 1; C.S. 1910, § 3518; C.S. 1920, § 4441; R.S. 1931, § 23-117; C.S. 1945, § 57-423; W.S. 1957, § 30-138.)

Cross references. — As to peace officers generally, see §§ 7-2-101 to 7-2-110. As to sheriffs generally, see §§ 18-3-601 to 18-3-609.

Editor's note. — The words "this act," as used in this section, refer to ch. 80, Laws 1890-91, many sections of which have been repealed or

superseded. The sections of said act which are still in effect appear herein as \$\$ 30-3-402 and 30-3-407 to 30-3-412.

Effective date. — Section 2, ch. 62, Laws 1909, makes this act effective from and after passage. Approved February 19, 1909.

§ 30-3-410. Procedure in case of accident; coroners' inquests; investigation by inspector; cost.

Whenever, by reason of any explosion, or any other accident, in any coal mine or the machinery connected therewith, loss of life or serious personal injury shall occur, it shall be the duty of the persons having charge of such mine or colliery to give a notice thereof forthwith to the state inspector of coal mines, and if any person is killed thereby, to the coroner of the county, who shall give due notice of the inquest to be held. If the coroner shall determine to hold an inquest, the said inspector shall be allowed to testify and offer such testimony as he shall

deem necessary to thoroughly inform the said inquest of the causes of the death, and the said inspector shall have authority at any time to appear before said coroner and jury and question or cross question any witness, and in choosing a iury for the purpose of holding such inquest, it shall be the duty of the coroner to empanel at least one (1) experienced miner on such jury. It shall be the duty of the said inspector, upon being notified as herein provided, to immediately repair to the scene of the accident and make such suggestions as may appear necessary to secure the future safety of the men, and if the results of the explosion or accident do not require an investigation by the coroner, he shall proceed to investigate and ascertain the cause of the explosion or accident and make a record thereof, which he shall file as provided for, and to enable him to make the investigation he shall have the power to compel the attendance of persons to testify, and to administer oaths or affirmations. The cost of such investigation shall be paid by the county in which the accident occurred in the same manner as costs of coroners' inquests are paid by law. (Laws 1890-91, ch. 80, § 12; R.S. 1899, § 2575; C.S. 1910, § 3519; C.S. 1920, § 4442; R.S. 1931, § 23-118; C.S. 1945, § 57-424; W.S. 1957, § 30-139.)

Cross references. — As to officers authorized to administer ouths, see § 1-2-102. As to coroners' inquests generally, see §§ 7-4-201 to

7-4-211. As to coroners' inquests in case of fatal accident in connection with mining operations generally, see § 30-2-306.

§ 30-3-411. Appeal from decision of inspector; costs.

The inspector shall exercise his sound discretion in the enforcement of the provisions of this chapter, and if the operator, owner or miner shall not be satisfied with any decision of the inspector rendered in the discharge of his duties under this chapter, which said decision shall be in writing, and signed by said inspector, the said owner, operator, miner or miners may, within fifteen (15) days after such decision is rendered, appeal to the district court of the county in which the mine concerned is located, and said court shall speedily determine the point involved in said decision and appeal, which said decision shall be binding and conclusive, subject only to an appeal to the supreme court of the state. The court, in its discretion, may appoint three (3) practical, competent and disinterested persons, whose duty it shall be, under instructions of the said court, to forthwith examine such mine and make report under oath of the facts as they exist or may have been, together with their opinion thereon, which report of said board shall become absolute, unless exceptions thereto shall be filed within ten (10) days after the notice of the filing thereof, to the owner, operator, miner or miners, or inspector, and if exceptions be filed, the court shall at once hear and determine the same, and the decision shall be final and conclusive, subject only to appeal as aforesaid. If the court shall finally sustain the decision of the inspector, then the appellants shall pay all costs of such proceedings, and if the court shall not sustain the decision of the inspector, then such costs shall be paid by the county or by the appellants and county in such proportion as the court shall determine. No appeal from any decision made by any inspector shall work as a supersedeas during the pendency of such appeal, but all such decisions shall be in full force until reversed or modified by the court. (Laws 1890-91, ch. 80, § 14; R.S. 1899, § 2576; C.S. 1910, § 3520; C.S. 1920, § 4443; R.S. 1931, § 23-119; C.S. 1945, § 57-425; W.S. 1957, § 30-140.)

Cross reference. — As to judicial review of administrative action, see Rule 72.1, W.R.C.P.

§ 30-3-412. Injury to person or property; loss of life; action for damages.

For any injury to person or property occasioned by any violation of this chapter, or any willful failure to comply with its provisions, a right of action against the party at fault shall accrue to the party injured for the direct damages sustained thereby, and in any case of loss of life, by reason of such violation or willful failure, a right of action against the party at fault shall accrue to the administrator of the estate of the person whose life shall be lost, for like recovery of damages for the injuries sustained; provided, that nothing in this section shall be so construed as to prevent the recovery of any lawful damages against the person or company operating mines if said company should be found in fault or shall have contributed to any accident by means of carelessness on their part; and provided, further, that in no case shall the state be liable for damages under this chapter. (Laws 1890-91, ch. 80, § 17; R.S. 1899, § 2582; C.S. 1910, § 3526; C.S. 1920, § 4449; R.S. 1931, § 23-129; C.S. 1945, § 57-427; W.S. 1957, § 30-141.)

Cross reference. — For constitutional provisions guaranteeing right of action for injury or death of employee, see art. 9, § 4, art. 10, § 4, art. 19, § 7, Wyo. Const.

Editor's note. — As to meaning of "this chapter," see Editor's note to 5 30-3-408.

Repealing clause. — Section 23, ch. 80, Laws 1890-91, repealed all laws and parts of laws in conflict with that act.

Effective date. — Section 24, ch. 80. Laws 1890-91, makes the act effective from and after passage. Approved January 10, 1891.

Amount of damages. — As this section does not expressly provide any limitation upon amount of recovery, but authorizes recovery unlimited as to amount, except by ordinary rules of law as to damages in such cases, and as legislature could not, when this section was first enacted, have limited amount of recovery, court could not impute to language used anything less than it naturally imports. Burton v. Union Pac. Coal Co., 18 Wyo. 362, 107 P. 391 (1910), rehearing denied, 112 P. 841 (1911). See art. 10, § 4, Wyo. Const.

Assumption of risk. — Statute requiring fencing of machinery at a mine and providing cause of action shall accrue to injured workman through master's failure to comply does not abolish defense of assumption of risk. Maki v. Union Pac. Coal Co., 187 F. 389 (8th Cir.), cert, denied, 223 U.S. 728, 32 S. Ct. 526, 56 L. Ed. 632 (1911).

Liability for negligence. — Whether by any provisions of this section action for damages in case of person's death from injury in coal mine is given or provided for in case of negligence, or only where death results from willful failure or violation to comply with provisions of chapter is purely matter of statutory construction. Burton v. Union Pac. Coal Co., 18 Wyo. 362, 107 P. 391 (1910), rehearing denied, 112 P. 841 (1911).

Workmen's compensation. — Workmen's Compensation Act, abolishing actions against employer for negligence, did not take property without due process of law. Zancanelli v. Central Coal & Coke Co., 25 Wyo. 511, 173 P. 981 (1918). For present Worker's Compensation Act, see §§ 27-12-101 to 27-12-804.

Cited in Horvath v. Sheridan-Wyoming Coal Co., 58 Wyo. 211, 131 P.2d 315 (1942); Druley v. Houdesheldt, 75 Wyo. 166, 296 P.2d 251 (1956).

C.J.S. reference. — 58 C.J.S. Mines and Minerals § 270 et seq.

§ 30-3-413. Who may enter mines.

No person other than the owner, lessor or operator of a coal mine, and the officials, agents and employees of such owner, lessor or operator, and the state inspector of coal mines and his deputies shall enter such mine unless accompanied by the owner, lessor or operator of such mine, or his duly appointed agent. (Laws 1927, ch. 95, § 9; R.S. 1931, § 23-140; C.S. 1945, § 57-437; W.S. 1957, § 30-142.)

Cross reference. — As to entering mines while intoxicated or taking intoxicating liquor into mine, see § 35-10-402.

§ 30-3-414. Inspection at request of miners.

At any time upon the request of the miners employed in any coal mine the state inspector of coal mines may appoint a committee of two (2) miners employed in said mine, which committee shall be assisted by the mine foreman to make an inspection of said mine and report the result of said inspection to the state inspector of coal mines, for which services said committee shall be paid by the miners employed in said mine. (Laws 1927, ch. 95, § 10; R.S. 1931, § 23-141; C.S. 1945, § 57-438; W.S. 1957, § 30-143.)

Repealing clause. — Section 12, ch. 95, Laws 1927, repealed all laws and parts of laws in conflict with that act, and expressly repealed C.S. 1920, § 4448, and ch. 71, Laws 1925.

Effective date. — Section 13, ch. 95, Laws 1927, makes the act effective on September 1, 1927.

§ 30-3-415. Use of internal combustion engines prohibited; exception.

The use of mining locomotives, pumping engines, hoists, trucks, or any other form of machinery driven or propelled by internal combustion engines, in which power is generated by burning within the cylinder or cylinders, a mixture of air and gas, or air and alcohol, gasoline, fuel oil, oil distillate, or other liquid fuel, within any coal mine or mines, except diesel-powered equipment, which is operated in compliance with federal regulations and regulations established by the state mine inspector, is hereby declared to be unlawful, and any person, or persons, body corporate, agent, manager or employer, who violates any of the provisions of this section is guilty of a misdemeanor, and upon conviction thereof, shall for each offense, be fined not more than two hundred dollars (\$200.00), or imprisoned in the county jail for a period of not more than four (4) months, or both. (Laws 1933, ch. 40, § 1; C.S. 1945, § 57-443; W.S. 1957, § 30-144; Laws 1973, ch. 105, § 1.)

Effective dates. — Section 2, ch. 40, Laws 1933, makes the act effective from and after passage. Approved February 10, 1933.

Section 2, ch. 105, Laws 1973, makes the act effective upon passage. Approved February 22, 1973.

§ 30-3-416. Notice of opening, closing or reopening mine.

It shall be the duty of the owner or manager of coal mines to notify the state coal mine inspector, in writing, whenever a new mine is opened, or whenever an existing mine is either closed or reopened. Such written notice shall be given immediately before the happening of the event, and shall specify the date upon which said event will take place. (Laws 1937, ch. 95, § 1; C.S. 1945, § 57-444; W.S. 1957, § 30-145.)

§ 30-3-417. Penalty for violation of section 30-3-416.

Any owner or manager of any coal mine in the state of Wyoming who shall fail to comply to the foregoing section of this act [§ 30-3-416] shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than one hundred (\$100.00) dollars, or by imprisonment for not more than six (6) months, or both such fine and imprisonment for each separate offense. (Laws 1937, ch. 95, § 2; C.S. 1945, § 57-445; W.S. 1957, § 30-146.)

Repealing clause. — Section 3, ch. 95, Laws 1937, repealed all laws and parts of laws in conflict with that act. Effective date. — Section 4, ch. 95, Laws 1937, makes the act effective from and after passage. Approved Februrary 24, 1937.

§ 30-3-418. Prevention of dust; overhead protection; welding.

- (a) In dusty locations, electric motors, switches, and controls shall be of dust-tight construction or in reasonably dust-tight housings or enclosures.
 - (b) Structures shall be kept reasonably free of coal-dust accumulations.
- (c) Where coal is dumped at or near air intake openings, provisions shall be made to prevent the dust from entering the mine.
- (d) Where repairs are being made to the plant, proper scaffolding and proper overhead protection shall be provided for workmen.
- (e) Welding shall not be done in dusty atmospheres or dusty locations, and fire-fighting materials shall be readily available during welding. (Laws 1951, ch. 128, § 12; W.S. 1957, § 30-147.)

C.J.S. reference, — 58 C.J.S. Mines and Minerals § 233.

§ 30-3-419. Flammable liquids; flame safety and electric lamps.

- (a) Naphtha or other flammable liquids in lamp houses shall be kept in approved containers or other safe dispensers approved by the mine inspector.
- (b) Flame safety lamps shall be permissible and maintained in permissible condition. All flame safety lamps shall be checked by the persons using them and by a qualified lamp attendant, or by a mine examiner, immediately before entering the mine.
- (c) When not in service, flame safety lamps and electric lamps shall be under the charge of a responsible company employee. (Laws 1951, ch. 128, § 13; W.S. 1957, § 30-148.)

Cross reference. — As to storage of flammable materials, see § 30-6-107.

§ 30-3-420. Stairways and platforms.

- (a) Stairways, elevated platforms, and runways shall be equipped with handrails.
- (b) Elevated platforms and stairways shall be provided with toe-boards where necessary, and they shall be kept clear of refuse and maintained in good repair. (Laws 1951, ch. 128, § 14; W.S. 1957, § 30-149.)

§ 30-3-421. Good housekeeping to be practiced.

Good housekeeping shall be practiced in and around mine buildings and yards. Such practices include cleanliness, orderly storage of materials, and the removal of possible sources of injury, such as stumbling hazards, protruding nails, and broken glass. (Laws 1951, ch. 128, § 15; W.S. 1957, § 30-150.)

§ 30-3-422. Minimum standards for roofs of mines; inspection.

- (a) Minimum standards for systematic roof control suitable to the roof conditions and mining system of each mine shall be adopted. The minimum standards shall be complied with by workmen and officials, and additional supports shall be installed wherever it is necessary to afford adequate protection.
- (b) At each mine, the mine foreman shall provide at or near the face workings an ample supply of timber and cap pieces or wedges of proper size, roof-bolting materials where used, etc., with which to secure al! working places in a safe manner.
- (c) Safety posts, jacks, or cross bars shall be set close to the face before other mining operations are begun, and as needed thereafter.
- (d) All underground working places shall be secured sufficiently to protect employees from falls of roof, ribs, or face. Loose top and overhanging or loose faces and ribs shall be timbered adequately or taken down.
- (e) Timbers removed or knocked out deliberately or inadvertently shall be replaced promptly unless they are not needed for adequate roof support or protection.
- (f) It shall be the duty of the mine foreman, assistant mine foreman and mine inspectors to ascertain if workmen understand roof, rib, and face testing. Uninformed workmen and new employees shall be instructed properly in correct methods of testing.
- (g) Face workers and other employees exposed to hazards from falls of rock and coal shall, unless this testing is specifically and satisfactorily performed by others, examine and test the roof, ribs, and face before starting work or before starting a machine and frequently thereafter. When dangerous conditions are found, they shall be corrected immediately by taking down loose materials or by proper and adequate support before any other work is done.

(h) At least once each day, the mine foreman or his certified assistants shall examine roof, ribs, and face of working places and passageways, where men work or travel, for dangerous conditions. Where found, such dangerous conditions shall be corrected promptly.

(j) When there is danger of coal rolling on a person during or after cutting, it shall be spragged by placing blocks in the cut or by blocking with leaning

posts.

(k) Permanent timber extraction shall be done only by mechanical means, and persons so engaged shall not be permitted to work alone. Persons assigned to such work shall have not less than two (2) years practical mining experience under conditions comparable with those under which such work is done. (Laws 1951, ch. 128, § 17; W.S. 1957, § 30-151.)

Operator's duty. — Statute regulating mines and charging mining foreman with certain duties of inspection prescribed by law does not relieve operator, who is employed by the boss or foreman, of duty to provide safe place in which miners may perform their work. Owl Crook Coal Co. v. Goleb, 210 F. 209 (8th Cir. 1914) (construing former § 57-417, W.C.S. 1915). C.J.S. reference. — 58 C.J.S. Mines and

Minerals § 232.

§ 30-3-423. Ventilation regulations generally.

- (a) The main intake air current shall be divided into splits when necessary utilizing air crossings, where needed, so as to ventilate all parts of the mine effectively.
 - (b) The number of men on a split shall be limited to fifty (50).
- (c) The quantity of air reaching the last open crosscut in any pair or set of entries shall not be less than six thousand (6,000) cubic feet a minute. However, the quantity of air reaching the last open crosscut in any pair or set of entries in pillar sections may be less than six thousand (6,000) cubic feet of air a minute, provided that at least six thousand (6,000) cubic feet of air a minute is being delivered to the intake end of the pillar line.
- (d) The air current at working faces shall under any condition have a sufficient volume and velocity to dilute and carry away smoke from blasting and any flammable or harmful gases.
- (e) At least once each week, the mine foreman, his assistants, or other certified persons designated by the mine foreman, shall measure the volume of air near the main intake or main return, the amount passing through the last open crosscut of entries, and the volume of air in each split. A record of these measurements shall be kept in a book on the surface and shall be open for inspection by interested persons.
- (f) The main-intake and main-return air currents in mines driven after the effective date of this act shall be in separate openings.
- (g) After the effective date of this act all slopes or entries in coal shall be driven in sets of two (2) or more.
- (h) In gassy mines haulage roads driven after the effective date of this act shall be in intake air.

(j) Battery-charging stations and transformer stations containing liquid-filled transformers shall be well ventilated by separate splits of air conducted through

vents to the return air courses and returning direct to the surface.

(k) Changes in ventilation that materially affect the main air current or any split thereof shall be made when the mine is idle and with no men in the mine, other than those engaged in changing the ventilation. (Laws 1951, ch. 128, §§ 27, 28; W.S. 1957, § 30-152.)

Editor's note. — Sections 27, 28, ch. 128, Laws 1951, were compiled as one section in W.S. 1957.

Meaning of "this act". - See note to

\$ 30-3-201.

Effective date. — Section 68, ch. 128, Laws 1951, makes the act effective from and after March 1, 1951. C.J.S. reference. — 58 C.J.S. Mines and Minerals § 240.

§ 30-3-424. Ventilation by means of fans generally; installation, location and use; continuous operation required; exception; type of power to be used.

- (a) All mines shall be ventilated by means of fans that shall be installed on the surface in fireproof housings, offset not less than fifteen (15) feet from the nearest side of the mine opening, and be equipped with fireproof air ducts and ample pressure-relief or explosion doors. However, present fans that are offset any distance from the mine opening need not be moved if they otherwise comply with the provisions of this section.
- (b) In lieu of requirements for the location of the fan and the pressure-relief or explosion doors, the fan may be directly in front of, or over, the mine opening, provided the opening is not in direct line with possible forces coming out of the mine if an explosion occurs, and provided further that there is another opening having a weak-wall stopping or explosion doors that would be in direct line with the forces coming out of the mine if an explosion occurs, such opening to be not less than fifteen (15) feet nor more than one hundred (100) feet from the fan opening.
- (c) Main mine fans shall be installed to permit the reversal of air flow, provided with a pressure recording gauge and, unless the fan is attended constantly, an automatic device to give alarm when the fan slows down or stops. This device shall be placed so that it will be seen or heard by a responsible person.
- (d) In gassy mines the fan shall be on a separate power circuit, independent of the mine circuit.
- (e) Main-fan installations shall be protected from wood fire, grass fire, and rubbish for at least one hundred (100) feet in all directions from the fan installations where physical conditions permit.
- (f) The fan shall be inspected daily and a record kept of the inspection, which shall be open for inspection by interested persons.
- (g) When the main fan of a gassy mine fails or stops, immediate action shall be taken to cut off the power and withdraw the men from the face regions of

the mine. If ventilation is restored in a reasonable time, the face regions and other places where methane is likely to accumulate shall be reexamined by certified supervisors, and if found to be free from explosive gas, power may be restored and work resumed. If ventilation is not restored in a reasonable time, all underground employees shall be removed from the mine.

(h) Main fans shall be operated continuously except when mine operations are suspended for a period of twenty-four (24) hours and no men are underground. In such event, after the fan has been started, the mine shall be examined for gas and other hazards by certified employees and made safe before men, other than

the certified employees, are permitted in the mine.

(i) Where electric power is available main mine fans shall not be powered by means of internal combustion engines. Provided, however, that where electric power is not available or for emergency use main mine fans may be powered with such engines but they shall be surrounded with safeguards as follows:

(i) The fan shall be operated exhausting;

(ii) The engine operating the fan shall be offset at least ten (10) feet from

the fan and housed in a separate fireproof structure;

(iii) Such installations shall be approved in writing by the mine inspector before they are placed in operation. (Laws 1951, ch. 128, § 25; W.S. 1957, § 30-153.)

§ 30-3-425. Booster fans prohibited; exceptions; safeguards required when used.

(a) After the effective date of this act, the installation of booster fans shall not be permitted, unless the mine inspector determines that such installation is necessary for the safe operation and proper ventilation of the mine and gives permission in writing to make such installations. In mines where such fans are now being used their use may be continued but they, and any new installations, shall be surrounded with safeguards as follows:

(i) The fan motor shall be an enclosed type, the surroundings of the fan fireproofed, and the fan installed and located so as to prevent recirculation

of air:

(ii) Passageway by the fan installation shall be by means of an airlock, the doors of which shall have at least thirty (30) square feet cross-sectional area and open automatically when the fan stops;

(iii) In case of booster-fan stoppage, the procedure outline in this act with respect to stoppage of main fans shall apply to the section of the mine

affected;

(iv) Inspected at least twice each shift during which the fan operates by a certified official designated by the mine foreman.

(b) Blower fans with tubing used in underground mines shall be surrounded

with safeguards as follows:

(i) Each fan purchased after the date of this act shall be powered with a permissible driving unit and installed on the intake-air side of the entrance of the place to be ventilated not less than sixteen (16) feet from the line of cross-cut or entrance to place being ventilated:

- (ii) The volume of air in which the fan is placed shall be at least two and one-half (2½) times the manufacturer's maximum rated capacity of the fan;
- (iii) The fan tubing shall be maintained in good condition. The discharge end of the tubing shall be kept within twenty (20) feet of the face, and not more than three hundred (300) feet of the tubing shall be extended from the fan;
- (iv) Blower fans used in gassy mines shall be of permissible type and places in gassy mines ventilated by means of blower fans shall be examined for methane by a certified official or other certified person designated by the mine foreman before the fan is started at the beginning of the shift and after the interruption of fan operation for five (5) minutes or more during the shift;
- (v) Accumulations of methane shall not be moved by means of a blower fan and tubing or by any other means except by properly installed line brattice;
- (vi) The fan and tubings shall be inspected at least twice during each working shift by a certified official. (Laws 1951, ch. 128, § 26; W.S. 1957, § 30-154.)

Effective date. — Section 68, ch. 128, Laws 1951, makes the act effective from and after March 1, 1951.

§ 30-3-426. Conditions existing when air required to be improved.

(a) Air in which men work or travel in mines shall be improved when it contains less than nineteen and one-half percent (19½%) oxygen, more than one-half of one percent carbon dioxide, or is contaminated with noxious or poisonous gases.

(b) If the air immediately returning from a split that ventilates any group of active workings contains more than one percent (1%) methane, as determined with a permissible flame safety lamp, by air analysis, or by other recognized

means of accurate detection, the ventilation shall be improved.

(c) If the air immediately returning from the split contains one and one-half percent (1½%) methane, the employees shall be withdrawn from the mine or portion of the mine affected, and all power shall be cut off from said mine or portion of the mine, until such dangerous condition has been corrected.

- (d) At working faces and other places where methane has accumulated and is likely to attain an explosive mixture, blasting shall not be done and the men shall be removed from such working faces or places until such condition has been corrected.
- (e) When the methane content of air in face operations exceeds one percent at any point not less than twelve (12) inches from the roof, face, or rib, as determined by a permissible methane detector, a permissible flame safety lamp, or by chemical analysis, the men shall be removed from the affected area until the condition has been corrected by improving the ventilation. (Laws 1951, ch. 128, § 29; W.S. 1957, § 30-155.)

§ 30-3-427. Duties of mine foreman concerning ventilation; additional ventilation regulations.

(a) It shall be the further duty of the mine foreman to see that proper crosscuts are made in the room pillars of the miners' places at intervals of not more than fifty (50) feet for the purpose of ventilation, except where other adequate means of ventilation is provided.

(b) Entries of development places may be driven three hundred (300) feet ahead of the last crosscut by the proper use of line brattice or other adequate means of ventilation to carry the air to the working face or faces, the same to be approved by the mine inspector.

(c) All crosscuts of development places shall be adequately closed except the

last crosscut nearest the working face.

(d) Where practicable, a crosscut shall be provided at or near the face of each

entry or room before the place is abandoned.

(e) Entries, rooms, or chutes shall not be turned off an entry beyond the last crosscut. This does not apply to the driving of such places to make a connection at the first crosscut or similar passageway used as a main airway in connection with an entry. It does apply to extending such places beyond the airway before the main intake and return passageways are connected.

(f) On entries other than room entries, stoppings in crosscuts between intake and return airways shall be built of substantial, incombustible material such as concrete, concrete blocks, brick, or tile. In mines where physical conditions exist because of heavy or caving ground so as to make the use of concrete, concrete blocks, brick, or tile impracticable, timbers laid longitudinally "skin to skin" may be used. (Laws 1951, ch. 128, § 30; W.S. 1957, § 30-156.)

Purpose of former act. - Main purpose of statute was to make definite, or perhaps to enlarge, employer's common-law duty to maintain haulage-way in safe condition for workmen who, while acting within scope of

employment, had occasion to be there. Hamilton v. Swigart Coal Mine, 59 Wyo. 485, 143 P.2d 203 (1913) (construing former § 57-415, W.C.S. 1945).

§ 30-3-428. Doors in regard to ventilation.

(a) Doors used on main-entry or cross-entry haulage roads, which when open would connect intake and return air courses ventilating the mine inby such doors, shall be in pairs to provide an air lock; provided however, when only a single door is installed, such single door shall be attended except in the case of panel or room entries in process of development. Where air lock doors are provided, there shall be sufficient leakage to prevent accumulations of methane between the doors.

(b) Doors shall be kept closed except when men or equipment is passing through the doorways. Motor crews and other persons who open doors shall see

that the doors are closed before leaving them.

(c) Overcasts shall be constructed substantially and tightly of incombustible material such as masonry, concrete, concrete blocks, or prefabricated metal, and be of ample area to pass the required quantity of air. (Laws 1951, ch. 128, § 31; W.S. 1957, § 30-157.)

§ 30-3-429. Line brattice.

- (a) Substantially constructed line brattice shall be used from the last open crosscut of an entry or room, when necessary to remove gases, explosive fumes, and smoke. When damaged by falls or otherwise they shall be repaired promptly.
- (b) The space between the line brattice and the rib shall be large enough to permit the flow of a sufficient volume of air to keep the working face clear of gases, explosive fumes, and smoke.
- (c) Flame-resistive material shall be used in the construction of line brattice. (Laws 1951, ch. 128, § 32; W.S. 1957, § 30-158.)

C.J.S. reference. — 58 C.J.S. Mines and Minerals § 233.

§ 30-3-430. Abandonment or closing down mines generally; owner or operator to notify inspector; final inspection prior to closing down.

When it is intended by the owner or operator to abandon or indefinitely close down any underground coal mine, the inspector of mines shall be notified by the owner or operator far enough in advance of the abandonment that a final inspection may be made of the property before it is completely closed down. (Laws 1959, ch. 99, § 1.)

§ 30-3-431. Same; surface openings of underground mines.

Upon the abandonment or closing down of an underground coal mine, the owner or operator shall effectively close or fence off all surface openings through which persons or animals could fall or enter. (Laws 1959, ch. 99, § 2.)

§ 30-3-432. Same; duty as to strip or open-pit mines.

Upon abandonment or closing down of a strip or open-pit coal mine, mining or prospecting pit or excavation, appropriate action shall be taken by the owner or operator where necessary to safeguard against injury to persons or animals. (Laws 1959, ch. 99, § 3.)

§ 30-3-433. Same; penalty for violation.

Any owner or operator of any underground coal mine in the state of Wyoming who shall fail to comply with the provisions hereof [§§ 30-3-430 to 30-3-433] shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than one hundred dollars (\$100.00), or by imprisonment for not more than six (6) months, or both such fine and imprisonment for each separate offense. (Laws 1959, ch. 99, § 4.)

§ 30-3-434. Posting, sealing and ventilation of abandoned workings.

(a) The entrances to abandoned workings shall be posted to warn unauthorized persons against entering the territory.

(b) Abandoned workings shall be sealed or ventilated.

(c) Where abandoned workings are sealed, the sealing shall be done in a substantial manner with incombustible material. In every sealed area, one (1), or more of the seals shall be fitted with a pipe and cap or valve to permit the gases behind the seals to be sampled and also to provide a means of determining any existing hydrostatic pressure.

(d) In gassy mines air that has passed through abandoned sections or that has been used to ventilate pillar lines shall not be reused to ventilate live workings. Mines that cannot comply with this requirement may continue to operate as at present or until future mine development and ventilation can be changed to permit compliance with this section. (Laws 1951, ch. 128, § 33; W.S. 1957,

§ 30-159.)

C.J.S. reference. — 58 C.J.S. Mines and Minerals §§ 231, 271.

§ 30-3-435. When mine classified as gassy; inspection by mine examiners; written record.

- (a) Any mine in which methane has been ignited or has been found by a permissible flame safety lamp or by air analysis in an amount of twenty-five hundredths of one percent or more which is contiguous to a gassy mine shall be classed gassy.
- (b) Not less than two (2) permissible flame safety lamps in proper working condition shall be kept available at each mine for the use of authorized persons. Only permissible flame safety lamps, permissible methane detectors, or air sampling and analysis shall be used for determining the presence of methane in mine air.
- (c) Officials whose regular duties require them to inspect working places shall have in their possession and use when underground, a permissible flame safety lamp in safe working condition, for the detection of methane and oxygen deficiency.
- (d) Mine examiners shall make examination of all mines before other men are permitted to enter, and they shall begin their examination in the first working place in their assigned territory not more than three (3) hours before the first shift enters the mine; however, such examinations in multiple-shift operations may be made by certified officials or other competent persons designated by mine foreman or mine manager within four (4) hours of the entrance of the next or succeeding shift, provided that in mines in which gas has not been found, such examination need be made only once in twenty-four (24) hours.
- (e) The duties of the mine examiner shall be to visit every live working place in the mine; test for methane, noxious gases, and oxygen deficiency; examine

seals and doors; test and inspect the roof, face, and rib conditions in all places examined, including active roadways, travelways, approaches to abandoned workings, and accessible falls in active sections for explosive gas and other hazards; be certain that the air is traveling in its regular course and in the required volume in each split; and he shall place his initials and the date at or near the face of each place examined.

(f) Where dangerous conditions are found by the mine examiner (or other official), the place shall be dangered off with an approved danger sign and no one except an authorized person shall cross the sign and then only for the

purpose of correcting the dangerous condition.

(g) Upon completion of his examination, the mine examiner shall report to the mine foreman or a designated certified assistant before the men enter the mine.

(h) The mine examiner shall record in ink or indelible pencil the result of his inspection in a book provided by the mine inspector and kept on the surface for that purpose immediately upon reaching the surface.

(j) Idle and abandoned sections shall be inspected for gas and other dangerous conditions by a certified mine examiner immediately before other employees are

permitted to enter or work in such places.

(k) The working places in all mines shall be examined for hazards by a certified official at least once during each shift while the men are in the mines, or oftener if necessary for safety, such examinations shall include tests with a permissible flame safety lamp for methane and oxygen deficiency. Any dangerous condition found shall be corrected promptly.

(m) Pillar workings shall be examined by a certified official for explosive gas and other dangers before a fall is made. If methane is found in amounts that can be detected with a permissible flame safety lamp, the fall shall not be made until the gas is removed and other precautions shall be taken to safeguard all

employees.

(n) At least once each week, air samples shall be collected for analysis or tests for methane shall be made in all mines with a permissible methane indicator or a permissible flame safety lamp by the mine foreman or other certified person designated by him, in the return of each split immediately outby the last working place, in the main return, pillar falls, seals, abandoned workings and entrances thereto, and all active airways in their entirety, and shall also make an examination for other dangerous conditions; leave his initials and date at the places examined and, if dangerous conditions are found, they shall be corrected promptly. A record of these tests and examinations shall be kept.

(o) The mine foreman shall read and countersign the record book of the mine examiner daily and read and countersign the daily and weekly reports of assistant mine foremen. Where such reports disclose any dangerous conditions,

prompt action shall be taken to have them corrected.

(p) All records of daily and weekly reports shall be open for inspection by interested persons. (Laws 1951, ch. 128, § 34; W.S. 1957, § 30-160.)

§ 30-3-436. Coal dust; use of wetting agents.

- (a) Coal dust shall not be permitted to accumulate excessively in any part of the active mine workings.
- (b) Where mining operations raise an excessive amount of dust into the air, water or water with a wetting agent added to it or other effective methods shall be used to allay such dust at its source. (Laws 1951, ch. 128, § 35; W.S. 1957, § 30-161.)

C.J.S. reference. — 58 C.J.S. Mines and Minerals §§ 233, 240.

§ 30-3-437. Rock dusting.

- (a) All mines, except those mines or those locations in a mine in which the dust is too wet or too high in incombustible content to propagate an explosion, shall be rock-dusted to within forty (40) feet of all active working faces, and all open crosscuts within the forty (40) foot zone shall be rock dusted; however, if the dust in the mine or any part of it is wet but becomes dry, the mine or portion of the mine so affected shall be rock-dusted as soon as it becomes dry.
- (b) The rock dust shall be of such size that all will pass through a standard twenty (20) mesh sieve and sixty percent (60%) through a two hundred (200) mesh sieve, and shall contain not more than five percent (5%) combustible matter and not more than ten percent (10%) of quartz or free silica.
- (c) In mines rock-dusted partially or in mines that are required to start rock dusting, haulageways and parallel entries connected thereto by open crosscuts shall be rock-dusted for at least one thousand (1,000) feet outby the junction with the first active entry. Inby this junction, the rooms, entries, and crosscuts shall be rock-dusted by generalized rock dusting as hereinbefore provided.
- (d) Where rock dust is applied, it shall be distributed upon the top, floor, and sides of all open places and maintained in such quantity that the incombustible content of the mine dust will not be less than sixty-five percent (65%).
- (e) The mine inspector, his deputies or their assistants shall collect and have analyzed sufficient samples of the mine dusts to assure that the provisions above are complied with. (Laws 1951, ch. 128, § 36; W.S. 1957, § 30-162.)

§ 30-3-438. When hoisting engineer to be on duty; standards and use of equipment.

- (a) A hoisting engineer shall be on duty and available within hearing distance of an audible hoisting signal system when five (5) or more men are working underground and who are transported into and out of the mine by hoists.
- (b) While man-trips are being raised or lowered by a hoist, two (2) employees shall be stationed in the hoist house: one (1) shall be the hoist man and the other shall be a competent employee familiar with hoisting apparatus and who shall be present and available to operate the hoist in the event of an emergency.

(c) A register shall be maintained in the hoist house in which the emergency employee is stationed, in which register the emergency employee shall sign his name and state the time when he entered the hoist house for the purpose set forth in subsection (b) above.

(d) At the beginning of each shift and after the hoist has been idle, the hoisting engineer shall operate the cages up and down the shaft at least one (1) round trip before hoisting or lowering men. Similar procedure shall be followed in slope

hoisting, except that an attendant may ride on the trip.

(e) Slope, shaft, or incline-plane hoists shall be equipped with brakes capable of stopping and holding the fully loaded unbalanced cage or trip at any point in the shaft, slope, or on the incline. All hoists installed after the effective date of this act which may be used to raise or lower men shall be equipped with two (2) brakes which operate separately and independently of each other.

(f) An accurate and reliable indicator, showing the position of the cage or trip, shall be placed so as to be in clear view of the engineer, unless the position

of the car or trip is clearly visible to the engineer at all times.

(g) Hoisting equipment shall be inspected daily and a record made of such

inspection, which shall be open for inspection by interested persons.

(h) Hoisting ropes on all cages or trips shall be adequate in size to handle the load and have a proper factor of safety as defined in the American Standards Association's wire rope standards and shall be replaced when it shows more than six (6) broken wires in any single pitch length or lay of rope.

(j) The rope shall have at least three (3) full turns on the drum when extended to its maximum working length and shall make at least one (1) full turn on the drum shaft or around the spoke of the drum, in case of a free drum, and be

fastened securely by means of clamps.

(k) A hoisting rope shall be fastened to its load by a spelter-filled socket or by a thimble and clamps. (Laws 1951, ch. 128, § 37; W.S. 1957, § 30-163.)

Effective date. — Section 68, ch. 128, Laws 1951, makes the act effective from and after March 1, 1951.

§ 30-3-439. Standards and use of cages; inspection; signalling; other safety precautions.

- (a) Cages used for hoisting men shall be of substantial construction; with adequate steel bonnets; with enclosed sides, with gates, safety chains, or bars across the ends of the cage when men are being hoisted or lowered; and with sufficient handholds or chains for all men on the cage to maintain their balance.
- (b) The floor of the cage shall be constructed so that it will be adequate to carry the load and so that it will be impossible for a workman's foot or body to enter any opening in the bottom of the cage.
- (c) Cages used for handling men shall be equipped with safety catches that act quickly and effectively in an emergency.

(d) Cages shall be inspected daily. A test of safety catches on cages shall be made at least every two (2) months. A written record shall be kept of inspections and tests, which shall be open for inspection by interested persons.

(e) The speed of the cage when hoisting or lowering men shall not exceed nine

hundred (900) feet a minute.

(f) While men are being hoisted or lowered in a shaft, the cage or cages in said shaft shall not be used for carrying any cars or other material.

(g) The maximum number of men allowed on a cage at any one (1) time shall

be prescribed in writing by the mine inspector.

- (h) There shall be at least two (2) independent methods of signalling, one (1) of which shall be audible to the engineer, from all landings in shafts and slopes.
- (j) An approved signal code shall be in use at each mine and shall be posted prominently in the engine room in easy sight of the engineer and at all places where signals are given.

(k) Workmen shall wear safety belts while doing repair work in or over shafts.

(m) When men are being hoisted or lowered at the beginning and end of each operating shift and when men are working in the shaft, an attendant shall be on duty at each cage station where men are being handled.

(n) Shafts shall be equipped with self-closing or manually controlled safety

gates at surface landings.

- (o) Positive stop blocks or derails shall be placed near shaft surface landings.
- (p) At the bottom of each hoisting shaft and at intermediate landings, a "run-around" shall be provided for safe passage from one (1) side of the shaft to the other. This passageway shall be not less than five (5) feet in height and three (3) feet in width. (Laws 1951, ch. 128, § 38; W.S. 1957, § 30-164.)

§ 30-3-440. Construction, installation and maintenance of track.

(a) The roadbed, rails, joints, switches, frogs, and other elements of the track of all haulage roads shall be constructed, installed, and maintained in a manner consistent with speed and type of haulage operations being conducted to insure safe operation.

(b) Track switches, except room and entry development switches, shall be provided with properly installed throws, bridle bars, and guardrails; switch throws and stands, where possible, shall be placed on the clearance side. (Laws

1951, ch. 128, § 39; W.S. 1957, § 30-165.)

Cross reference. — As to authority of mining companies relative to the construction of railroads, roads, etc., see § 30-1-128.

§ 30-3-441. Clearance space on haulage roads; shelter holes.

(a) Haulage roads on entries developed after the effective date of this act shall have continuous unobstructed clearance of at least twenty-four (24) inches from the farthest projection of moving equipment on the side opposite the trolley wire, except in event that conditions require trolley installation on the clearance side, proper provision for guarded travelway will be provided.

(b) On the trolley-wire or "tight" side, there shall be sufficient clearance to prevent the farthest projection of moving equipment from rubbing or coming in

contact with ribs or timber.

(c) After the effective date of this act, all new side tracks, partings, or entries equipped with more than one (1) track shall have a clearance of at least twenty-four (24) inches between the outermost projection of moving traffic.

(d) The clearance space on all haulage roads on entries driven before or after the effective date of this act shall be kept free of loose rock, coal, supplies, or other materials, provided that not more than twenty-four (24) inches need be kept free of obstructions.

(e) Ample clearance shall be provided at all points where supplies are loaded

or unloaded along haulage roads or conveyors.

(f) Where it is necessary for men to cross conveyors regularly and where the width of conveyors or low roof introduces a hazard, suitable crossover or

crossunder bridges shall be provided.

(g) Shelter holes shall be provided along haulage entries and slopes driven after the effective date of this act where locomotive, rope, animal, or shuttle-car haulage is used. Such shelter holes shall be spaced not more than eighty (80) feet apart. Except where the trolley wire is six and one-half (6½) feet or more above the rail or guarded effectively at the shelter holes, they shall be on the side of the entry opposite the trolley wire.

(h) Shelter holes made after the effective date of this act shall be at least five (5) feet in depth, not more than four (4) feet in width, and six (6) feet in height or as high as the traveling space, if the traveling space is less than six (6) feet high. Room necks and crosscuts may be used as shelter holes even though their

width exceeds four (4) feet.

(j) Shelter holes shall be kept clear of refuse and other obstructions.

(k) Shelter holes shall be provided at switch throws, except where more than six (6) feet of clearance is maintained and at room switches.

(m) At each landing of a slope where men are passing and cars are handled, a shelter hole at least ten (10) feet deep, four (4) feet wide, and six (6) feet high shall be provided. (Laws 1951, ch. 128, § 40; W.S. 1957, § 30-166.)

Effective date. — Section 68, ch. 128, Laws 1951, makes the act effective from and after March 1, 1951.

Purpose of former section relating to haulage-ways. — Main purpose of statute was to make definite, or perhaps to enlarge, employer's common-law duty to maintain haulage-way in safe condition for workmen who, while acting within scope of employment, had occasion to be there. Hamilton v. Swigart Coal Mine, 59 Wyo. 485, 143 P.2d 203 (1943) (construing former § 57-408, W.C.S. 1945).

Effect of employee's violation of work rule.

— Although coal mine operator failed to provide holes for shelter and did not provide 22-inch clearance as required by statute, it was not liable

for death of miner resulting from employee's violation of employer's rule against entering haulage-way. Hamilton v. Swigart Coal Mine, 59 Wyo. 485, 143 P.2d 203 (1943) (construing former §§ 57-408 and 57-415, W.C.S. 1945).

§ 30-3-442. Machinery giving off noxious fumes prohibited underground.

Nonpermissible internal-combustion engines or other machinery which gives off noxious fumes shall not be permitted underground in any coal mine. (Laws 1951, ch. 128, § 41; W.S. 1957, § 30-167.)

§ 30-3-443. Requirements as to locomotives, etc., generally.

- (a) Locomotives shall be equipped with proper devices for rerailing of locomotives and cars.
- (b) An audible warning device and headlights shall be provided on each locomotive, shuttle car, and any other self-propelled mobile equipment used underground.
- (c) Where hoists are used for handling men in underground slopes, in pitching beds, or on slopes between two (2) or more beds, the provisions governing hoisting or haulage mentioned heretofore shall apply.
- (d) A permissible trip light shall be used on the rear of trips pulled, and on the front of trips lowered into slopes or pushed. Trip lights need not be used during gathering operations at working faces.
- (e) Pushing of cars on main haulage roads shall be prohibited unless under written approval of the mine inspector, and except where necessary to push cars from side tracks to producing entries, where necessary to clear switches and side tracks, and on the approach to cages.
- (f) Back-poling shall be prohibited except at places where the trolley pole cannot be reversed or when going up extremely steep grades and then only at very slow speed.
- (g) Other than the motorman and trip rider, no person shall ride on a locomotive and no person shall ride on loaded cars or between cars of any trip, except the trip rider.
- (h) Motormen and trip riders shall not get on or off cars, trips, or locomotives in motion, except that a trip rider may get on or off the rear of a slowly moving trip to throw a switch or to close a door.
- (j) All trips and all traffic equipment shall come to a complete stop before couplings are made.
- (k) Standing cars on any track, unless held effectively by brakes, shall be safely blocked or spragged. Cars shall be secured effectively at working faces.
- (m) On slopes and planes having a knuckle, there shall be a positive-acting stopblock, at or above the knuckle, or a derail.
- (n) When coal is not being loaded, but men are working at a room or entry face, a positive-acting stopblock or derail shall be placed across the room or entry track, or the room switch shall be kept closed to prevent cars from being inadvertently pushed or running into the places.

(o) Slides, skids, or other adequate means shall be used on descending trips on

grades where the locomotive is not adequate to control the trip.

(p) Material being hauled inside the mine shall be so loaded and protected that there is no danger to the motorman or trip rider from sliding of equipment and material.

(q) Timbers and other supplies not necessary for the operation of locomotives, cutting machines, drilling machines, and loading machines, shall not be transported on such equipment. (Laws 1951, ch. 128, § 42; W.S. 1957, § 30-168.)

Cross references. — As to authority of mining corporations relative to the construction of railroads, roads, etc., see § 30-1-128. As to

construction, installation and maintenance of track, see § 30-3-440.

§ 30-3-444. Man-trips operated by locomotives; belt lines; illumination of stations.

- (a) Man-trips operated by locomotives shall be pulled at safe speed consistent with the condition of roads and type of equipment used, and shall be so controlled that they can be stopped within the limits of visibility. The speed of man-trips on slopes shall be consistent with the condition of roads and type of equipment used and shall be limited to four hundred forty (440) feet per minute unless a greater speed shall be authorized by the mine inspector in writing, but in no event shall he authorize a speed in excess of eight hundred (800) feet per minute.
- (b) Each man-trip shall be under the charge of a certified official and it shall be operated independently of any loaded trip of coal or other material.
- (c) Cars on the man-trip shall not be overloaded, and sufficient cars in good mechanical condition shall be provided.
- (d) No person shall ride under the trolley wire unless suitable covered man-cars are used.
- (e) No material or tools shall be transported in the same car with men on any man-trip, and all persons shall ride inside of man-trip cars, except the motorman and trip rider.
- (f) Men shall not load or unload before the cars in which they are to ride or are riding come to a full stop, and men shall proceed in an orderly manner to and from man-trips.
- (g) A waiting station shall be provided where men are required to wait for man-trips or man-cages. It shall have sufficient room and ample clearance from moving equipment.
- (h) Trolley and power wires shall be guarded effectively at man-trip stations where there is a possibility of any person coming in contact with energized electric wiring while loading or unloading from the man-trip.
- (j) Where belts are used for transporting men, a minimum clearance of eighteen (18) inches shall be maintained between the belt and the roof or cross bars, projecting equipment, cap pieces, overhead cables, wiring, and other objects; but where the height of the coal bed permits, the clearance shall not be less than twenty-four (24) inches.

(k) The belt speed shall not exceed two hundred fifty (250) feet a minute while men are loading, unloading, or being transported.

(m) The space between men riding on a belt line shall be not less than five (5)

feet.

(n) Loading and unloading stations shall be illuminated properly.

(o) A certified official shall supervise the loading and unloading of belts and man-trips. (Laws 1951, ch. 128, § 43; W.S. 1957, § 30-169.)

§ 30-3-445. Power lines, circuits and electric wiring generally.

(a) Overhead high-potential power lines shall be placed at least fifteen (15) feet above the ground and twenty (20) feet above driveways and haulageways, and shall be installed on insulators, and shall be supported and guarded to prevent contact with other circuits.

(b) Overhead power circuits shall be protected against lightning and voltage surges, and high-potential power lines shall be protected adequately by circuit

breakers, fuses, or both.

(c) Electric wiring in surface buildings shall be installed so as to present minimum fire and contract hazards. (Laws 1951, ch. 128, § 44; W.S. 1957, § 30-170.)

§ 30-3-446. Transformers.

(a) Unless surface transformers are isolated by elevation (eight (8) feet or more above the ground), they shall be enclosed in a transformer house or surrounded by a suitable fence at least six (6) feet high. If the enclosure is of metal, it shall be grounded effectively. The gate or door to the enclosure shall be kept locked at all times, unless authorized persons are present.

(b) Surface transformers containing flammable oil and installed where they present a fire hazard (near mine openings or in or near combustible buildings) shall be provided with means to drain or to confine the oil in event of rupture

of the transformer casing.

(c) Transformers ordered after the effective date of this act, both permanent and portable, for use underground shall be air-cooled or nonflammable-liquid cooled.

(d) Permanent underground stations containing transformers filled with flammable oil shall be provided with door sills, or their equivalent, that will

confine the oil if leakage or explosion occurs.

(e) Portable underground substations for transformers or other power conversion equipment shall be in fireproof housings. Where the installation contains transformers filled with flammable oil, means shall be provided to confine the oil in event of leakage or explosion.

(f) Approved danger high voltage signs shall be posted conspicuously at all high-potential installations. (Laws 1951, ch. 128, § 45; W.S. 1957, § 30-171.)

Effective date. — Section 68, ch. 128, Laws 1951, makes the act effective from and after March 1, 1951.

§ 30-3-447. Substations and switchboards.

(a) Surface and underground substations shall be kept free from refuse, and metal containers shall be provided for oily waste.

(b) Switchboards installed after the effective date of this act shall be located so that ample room will be provided between the switchboard and passageways or lanes of travel and shall have an entrance at each end to permit authorized persons to inspect, adjust, or repair apparatus back of the board. Switchboards shall have the entrance to the rear guarded against entrance of unauthorized persons, unless in a building that is kept locked.

(c) Switchboards shall be well lighted for switch operations in the front and

for repair and maintenance in the rear.

(d) Rooms housing switchboards shall be free of debris and refuse.

(e) Pull switches and circuit breakers, or other power controls shall be mounted on slate or other suitable insulating material. (Laws 1951, ch. 128, § 46; W.S. 1957, § 30-172.)

Effective date. — Section 68, ch. 128, Laws 1951, makes the act effective from and after March 1, 1951.

§ 30-3-448. Power cables, wires and electrified track.

(a) High-potential power cables (six hundred (600) volts or more) carried from the surface through shafts, boreholes, and underground passageways shall be adequate for the services intended, installed in a permanent manner, and guarded from mechanical injury.

(b) Power wires carrying less than six hundred (600) volts, whether bare or insulated, except ground wires, negative return wires, and trailing cables, shall be supported on or by well-installed insulators and shall not touch combustible

materials, roof, or ribs.

(c) Power wires shall be insulated properly when passing through doors and stoppings, and where they cross other power circuits.

(d) Electric cables and wires, other than signal wires and trolley wires used for haulage, installed in haulage slopes shall be buried not less than twelve (12) inches below combustible material or installed in fireproof protective conduit.

(e) Where track is used as a power conductor:

(i) Both rails of main-line tracks shall be well bonded at every joint and cross-bonded at least every two hundred (200) feet; however, if the track circuit is paralleled with a feeder cable, both rails of the track shall be well bonded at every joint and cross bonds shall be installed at least every one thousand (1,000) feet in both the track and feeder circuit;

(ii) At least one (1) rail on secondary haulage roads shall be well bonded at every joint and cross bonds shall be installed at least every two hundred

(200) feet:

(iii) Switches on entries shall be well bonded.

- (f) Where practicable, power shall be disconnected before repair work is to be done on energized electric circuits or energized parts of electric equipment. Employees required to make repairs on energized bare trolley lines shall wear protective clothing, such as insulated shoes and lineman's gloves, or the power shall be disconnected.
 - (g) Trolley wires and trolley feeder wires shall be installed as follows:
 - (i) On the opposite side of the entry from shelter holes and clearance space, except where six and one-half (6½) feet or more above the rail, and except in event that conditions require trolley installation on the clearance side, proper provision for guarded travelway will be provided;

(ii) The hangers on curves shall be spaced so that the trolley wire may become detached at any one (1) hanger without exposing the locomotive

operator to a shock hazard;

(iii) Aligned properly and installed at least six (6) inches outside the track gauge line;

(iv) Provided with cut-out switches at intervals of not more than two

thousand (2,000) feet and near the beginning of all branch lines;

- (v) Kept taut and not permitted to touch the roof, rib, or cross bars; particular care shall be taken where they pass through door openings to preclude the possibility of bare wires coming in contact with combustible material:
- (vi) Guarded adequately where it is necessary for men to pass or work under them regularly, unless the wires are more than six and one-half (6½) feet above the top of the rail. They shall also be guarded adequately on both sides of doors;
 - (vii) Shall not extend beyond the last open crosscut;

(viii) Anchored securely and insulated properly at the ends;

(ix) Not in air known to contain one percent (1%) or more methane or in air returning from pillar recovery work or old workings where dangerous

amounts of methane may be liberated suddenly.

(h) In any new mine or any old mine that may be reopened and reequipped after the effective date of this act, as hereby amended, electric power for face equipment shall be limited to six hundred fifty (650) volts between any conductors and ground. (Laws 1951, ch. 128, § 47; W.S. 1957, § 30-173; Laws 1963, ch. 37, § 1.)

Effective date. — Section 68, ch. 128, Laws 1951, makes the act effective from and after March 1, 1951.

§ 30-3-449. Grounding of electrical lines and equipment.

(a) Metal conduit and metallic coverings and armor of cables shall be grounded effectively and shall be electrically continuous to afford a conductor path for the ground circuit.

(b) Metallic frames, casings, and other electric equipment that can become "alive" through failure of insulation or by contact with energized parts shall be grounded effectively.

(c) Casings of transformers shall be grounded effectively unless protected by

isolation (freedom from contact hazard by position).

(d) Mining equipment mounted on rubber tires or caterpillar treads, receiving power through a trailing cable purchased after the effective date of this act, shall be grounded effectively. (Laws 1951, ch. 128, § 48; W.S. 1957, § 30-174.)

Effective date. — Section 68, ch. 128, Laws 1951, makes the act effective from and after March 1, 1951.

§ 30-3-450. Electrical protective devices.

- (a) Electric equipment shall be protected against excessive overload with fuses or equivalent protective devices of the correct type and capacity. Wires or other conducting materials shall not be used as a substitute for properly designed fuses, and where circuit breakers are used, they shall be maintained in proper operating condition and adjusted so that equipment cannot be overloaded.
- (b) Switches and circuit breakers shall be installed so that they are readily accessible and can be operated without danger of contact with moving or live parts.
- (c) Disconnecting switches shall be installed in all main power circuits at the bottoms of shafts, boreholes, and other places where main power circuits enter the mine.
- (d) Underground electric equipment and circuits shall be provided with switches or other controls of safe design and construction, and they shall be installed in a safe manner.
- (e) Power circuits shall be protected against short circuit or excessive overload. Wires and other conducting materials shall not be used as a substitute for properly designed fuses; where circuit breakers are used, they shall be maintained in proper operating condition.
- (f) Dry wooden platforms, rubber mats, or other electrically nonconductive material shall be kept in place at each switchboard, power-control switch, and at stationary machinery where shock hazards exist. (Laws 1951, ch. 128, § 49; W.S. 1957, § 30-175.)

§ 30-3-451. Location of telephone service or communication facilities; insulation and protection.

- (a) Telephone service or equivalent communication facilities shall be provided at the bottom of each main shaft or slope and in all mines from the surface to the working sections of the mine.
- (b) Telephone lines, other than cables, shall be carried on insulators, installed on the opposite side from power or trolley wires, and where they cross power or trolley wires, they shall be insulated adequately.

(c) Telephone circuits shall be protected by lightning arresters. (Laws 1951, ch. 128, § 50; W.S. 1957, § 30-176.)

§ 30-3-452. Support and insulation of signal wires; voltage to be carried by bare signal wires.

(a) Signal wires shall be supported on insulators and insulated properly where

they cross power lines.

(b) Bare signal wires that are readily accessible to personal contact shall not carry more than forty-five (45) volts, provided that this shall not apply to block-signal systems. (Laws 1951, ch. 128, § 51; W.S. 1957, § 30-177.)

§ 30-3-453. Use of electrical equipment in gassy mines.

(a) After the effective date of this act, all electric face equipment taken into a gassy mine shall be permissible equipment approved by the United States bureau of mines, except that explosion-tested cable-reel locomotives and shuttle cars may be used.

(b) In gassy mines permissible junction or distribution boxes shall be used for making multiple-power connections in working places or other places where dangerous quantities of methane may be present or may enter the air current.

(c) Permissible equipment shall be maintained in a good state of repair and in permissible condition; and explosion-proof equipment shall be maintained in a good state of repair and in explosion-proof condition.

(d) No electrically driven equipment shall be taken into or operated in a working place where one percent (1%) or more methane can be detected at any

point not less than twelve (12) inches from the roof, face, or rib.

(e) In all face workings of gassy mines, inspections for methane shall be made before electric equipment is taken into or operated in face regions, and frequent tests shall be made for methane while such equipment is operated in face regions. If a dangerous condition exists the equipment shall not be taken into or operated in the face region until the dangerous condition is removed.

(f) Electric drills or other electrically operated rotating tools purchased after the effective date of this act, intended to be held in the hands, shall have the electric switch constructed so as to break the circuit when the hand releases the switch and shall be equipped with friction or safety clutches.

(g) Explosion-tested cable-reel locomotives shall be equipped with two-conductor trailing cables. (Laws 1951, ch. 128, § 52; W.S. 1957, § 30-178.)

Effective date. — Section 68, ch. 128, Laws 1951, makes the act effective from and after March 1, 1951.

§ 30-3-454. Trailing cables.

(a) All new trailing cables used on electric mine equipment shall meet the

United States bureau of mines tests for flame resistive qualities.

(b) Trailing cables shall be provided with suitable overload protection and power taps, unless properly connected to permissible junction or distribution boxes.

(c) Trailing cable splices shall be made in a workmanlike manner, mechanically strong, and well insulated. (Laws 1951, ch. 128, § 53; W.S. 1957, § 30-179.)

§ 30-3-455. Electric lights and light wires.

(a) Electric light wires shall be supported by suitable insulators and fastened securely to the power conductors by means of clamps or the equivalent.

(b) Electric lights shall not be installed beyond the last open crosscut.

(c) Electric lights shall be installed so that they cannot come in contact with combustible materials. (Laws 1951, ch. 128, § 54; W.S. 1957, § 30-180.)

§ 30-3-456. Cutter chains to be locked; control of dust when drilling.

- (a) The cutter chains of mining machines shall be locked securely by mechanical means to prevent accidental movement while being trammed or when parked.
- (b) Drilling in rock shall be done wet or other means of dust control approved by the mine inspector shall be used. (Laws 1951, ch. 128, § 55; W.S. 1957, § 30-181.)

C.J.S. reference. — 58 C.J.S. Mines and Minerals §§ 233, 240.

§ 30-3-457. Equipment to be guarded enumerated; repairing or oiling moving machinery; equipment on grinding wheels.

- (a) The following shall be guarded adequately:
 - Gears, sprockets, friction devices, and couplings with protruding bolts or nuts;
 - (ii) Shafting and projecting shaft ends that are within seven (7) feet of floor or platform level;
 - (iii) Belt, chain, or rope drives that are within seven (7) feet of floor or platform;
 - (iv) Where fly wheels extend more than seven (7) feet above the floor, they shall be guarded to a height of at least seven (7) feet;
 - (v) Circular and band saws and planers;
 - (vi) Repair pits shall be adequately guarded when not in use.

(b) Machinery shall not be repaired or oiled while in motion.

(c) A guard or safety device removed from any machine shall be replaced before the machine is put in operation.

(d) Mechanically operated grinding wheels shall be equipped with:

(i) Safety washers and tool rests;

(ii) Substantial retaining hoods, the hood opening of which shall not expose more than a ninety (90) degree sector of the wheel;

(iii) Eye shields, unless goggles are worn by the operators. (Laws 1951,

ch. 128, § 56; W.S. 1957, § 30-182.)

Cross reference. — As to oil and gas generally, see §§ 30-5-101 to 30-5-204.

§ 30-3-458. Fire prevention regulations; requirements as to fire-fighting equipment.

(a) Each mine shall be provided with suitable fire-fighting equipment, adequate for the size of the mine, such as supplies of rock dust at doors and at other strategic places, water lines and hose, water chemical trucks, and fire extinguishers.

(b) Clean dry sand, rock dust, or fire extinguishers, suitable from a toxic and shock standpoint, shall be provided and placed at each electrical station (substations, transformer stations, permanent pump stations, etc.) so as to be out of the smoke in case of a fire in the station.

(c) After every blasting operation an examination shall be made to determine whether fires have been started.

(d) Should a fire occur, the person discovering it and any persons in the vicinity of the fire shall make a prompt effort to extinguish it.

(e) If, or when, a fire has attained such proportions that an individual cannot extinguish it, he shall report immediately the existence of the fire to an official of the mine, who shall order all workmen from that part of the mine affected by the fire, except those needed for fire fighting.

(f) If the fire gets out of control, men shall be withdrawn and the part of the mine in which the fire is located or the entire mine, as conditions may require, shall be sealed or flooded.

(g) Underground storage places for lubricating oil and grease in excess of two
(2) days supply shall be of fireproof construction.

(h) Lubricating oil and grease kept in face regions or other working places shall be in portable, closed, metal containers.

(j) Underground structures (transformer stations, battery-charging stations, motor-generator stations, foremen's stations, substations, permanent pump rooms, etc.) installed after the effective date of this act shall be of fireproof construction. Where the fireproofing material is in contact with timber or coal, it shall not be of metal.

(k) When not in use, power circuits underground shall be deenergized on idle days and idle shifts.

(m) Mule barns shall be prohibited underground.

(n) Procedures to be followed in event of a mine fire or explosion shall be established. (Laws 1951, ch. 128, § 57; W.S. 1957, § 30-183.)

Effective date. — Section 68, ch. 128, Laws 1951, makes the act effective from and after Minerals § 233. Mines and Minerals § 233.

§ 30-3-459. Drilling and sealing oil and gas wells penetrating coal beds.

The drilling and sealing of oil and gas wells penetrating coal beds or open workings of mines shall be done in compliance with the Wyoming statutes. (Laws 1951, ch. 128, § 58; W.S. 1957, § 30-184.)

§ 30-3-460. Precautions required when working place approaches abandoned workings.

Whenever any working place approaches within two hundred (200) feet of abandoned workings that cannot be inspected, boreholes shall be kept at least twenty (20) feet in advance of the face, and forty-five (45) degrees angle rib holes shall be drilled at least twenty (20) feet deep. The holes shall be not more than eight (8) feet apart. (Laws 1951, ch. 128, § 59; W.S. 1957, § 30-185.)

§ 30-3-461. Surface openings, passageways, escapeways, stairways and ladders.

(a) Every underground mine shall have at least two (2) separate surface openings.

(b) Main slope or drift openings shall be separated by at least fifty (50) feet of natural ground in all mines opened after the effective date of this act.

(c) New shafts and partitions therein, made after the effective date of this act, shall be fireproof. Buntons and guides may be of wood.

(d) Mine openings at isolated locations, where there is danger of fire entering the mine, shall have adequate protection against surface fires entering the mine.

(e) Not more than ten (10) persons shall be allowed at any one (1) time in the mine until a connection has been made between the two (2) mine openings, and work shall be prosecuted with reasonable diligence.

(f) When only one (1) main opening is available, owing to final mining of pillars, not more than ten (10) persons shall be allowed in such a mine at any one (1) time.

(g) There shall be at least two (2) separate and distinct travelable passageways, to be designated as escapeways, from each working section to the surface whether the mine openings are shafts, slopes, or drifts. They shall be kept in safe condition for travel and reasonably free from standing water and other obstructions. One (1) of the designated escapeways may be the haulage road, provided, however, that one (1) of the escapeways shall be ventilated with intake air. At mines now operating with only one (1) free passageway to the surface, immediate action shall be taken to provide a second passageway.

(h) Where the designated escapeways are shafts:

(i) They shall be equipped with hoist and cage, or with travelable stairway, or ladders. No shaft more than thirty (30) feet deep sunk after the effective date of this act shall be equipped with ladders;

(ii) Stairways shall be of substantial construction, set at an angle not greater than forty-five (45) degrees with the horizontal, and equipped on at least one (1) side with a suitable handrail; landing platforms shall be at least two (2) feet wide and four (4) feet long and shall be railed properly;

(iii) Ladders shall be anchored securely:

(iv) Where ladders, or stairways set at an angle greater than forty-five (45) degrees, are now installed, their use may be continued provided they are of substantial construction, with platforms at intervals of not more than thirty (30) feet and equipped with a handrail in the case of stairways.

(j) If a designated escapeway is a slope of not more than forty-five (45) degrees, it shall be equipped with an adequate walkway. If the slope is more than

forty-five (45) degrees, stairways shall be installed.

(k) Where track haulage is used on underground slopes or planes, a suitable manway shall be provided unless employees are transported in man-trips. Where man-trips are not provided, employees shall travel the manways except those whose duties require them to work on the haulageways.

(m) Direction signs shall be posted conspicuously to indicate manways and

designated escapeways.

(n) Good housekeeping shall be practiced underground. (Laws 1951, ch. 128, § 60; W.S. 1957, § 30-186.)

Effective date. — Section 68, ch. 128, Laws 1951, makes the act effective from and after March 1, 1951.

Culpable negligence of miner. — Where coal miner in violation of rule established for his protection kept alive by warning signs and oral warnings returned to working place by forbidden, dangerous route, evidence established willful misconduct or culpable negligence. Hamilton v. Swigart Coal Mine, 59

Wyo. 485, 143 P.2d 203 (1943) (construing former § 57-407, W.C.S. 1945).

Where substantial evidence exists to support finding that injury was caused by serious and willful misconduct or culpable negligence of workman in violating rule established for his protection, disallowance of claim is required. Hamilton v. Swigart Coal Mine, 59 Wyo. 485, 143 P.2d 203 (1943) (construing former § 57-407, W.C.S. 1945).

§ 30-3-462. Use of other than permissible electric lamps prohibited; check-in and check-out system providing positive identification of workers required.

- (a) All workmen and other persons underground shall use only permissible electric lamps for portable illumination. Mines now operating with open-light equipment may continue to so operate until permissible electric lamps can be secured from suppliers.
- (b) Each mine shall have a check-in and check-out system that will provide identification upon the person of every individual underground. An accurate record of the men in the mine, which shall consist of a written record or a check

board shall be kept on the surface in a place that will not be affected in the event of an explosion. Said record shall bear a number identical to the identification check carried by the person underground. (Laws 1951, ch. 128, § 61; W.S. 1957, § 30-187.)

§ 30-3-463. Use of arc, spark or open flame prohibited; exceptions; search for flame-producing devices; welding and cutting operations.

(a) All persons in underground workings of a mine are herewith prohibited from intentionally creating any arc, spark, or open flame, except those that cannot be avoided in the normal performance of work. The carrying of smoking material or matches, or other flame-making devices into a mine and smoking underground shall be prohibited.

(b) Before entering the mine, employees shall be subject to search by the mine foreman or his assistants for smoking materials or matches, or other

flame-producing devices.

(c) In all underground mines welding and cutting (with electricity or flame) shall be restricted to places where trolley locomotives are permitted under the provisions of this act, except that where it is necessary to do welding and cutting in face regions, such work shall be under the direct supervision of a certified official, who shall test for gas before starting operations and frequently thereafter. In all welding and cutting operations, precautions shall be taken against starting a fire and the area shall be rock-dusted adequately. (Laws 1951, ch. 128, § 62; W.S. 1957, § 30-188.)

Meaning of "this act". - See note to \$ 30-3-201.

§ 30-3-464. Workers to wear protective gear and clothing.

- (a) All persons shall wear protective hats while underground and also while on the surface where falling objects may cause injury.
- (b) Protective footwear shall be worn by employees, officials, and others while on duty in and around a mine where falling objects may cause injury.
- (c) All employees inside or outside of mines shall wear approved-type goggles, except that the occupations of certain employees may be exempted by the mine inspector.
- (d) Welders and helpers shall use proper shields or goggles to protect their eyes.
- (e) Employees in haulage operations and other persons employed around moving equipment on the surface and underground shall wear snug fitting clothing.
- (f) Protective gloves shall be worn when material which may injure the hands is handled, but gloves with gauntlet cuffs shall not be worn around moving equipment.

(g) Men exposed for short periods to gas, dust, fume, and misinhalation hazards shall wear permissible respiratory equipment. When the exposure is for prolonged periods, other measures to protect workmen or to reduce the hazard shall be taken. (Laws 1951, ch. 128, § 63; W.S. 1957, § 30-189.)

§ 30-3-465. First-aid equipment required; when ambulance service to be provided; doctor to be notified upon injury.

(a) Each mine shall have an adequate supply of first-aid equipment to be used in case of injury to employees, and such supplies shall be located on the surface, at the bottom of shafts and slopes, and at other strategic locations near the working faces. The first-aid supplies shall be encased in suitable sanitary receptacles designed to be reasonably dust-tight and moisture-proof and shall be available to all persons employed in the mine. In addition to the material in the cases, splints, blankets, and stretchers in good condition necessary for the treatment of injuries and for the transportation of injured persons shall be provided.

(b) In mines employing ten (10) or more men adequate ambulance service shall be provided by or for account of the operator for the prompt transportation of

injured employees from mine where injury is sustained to a hospital.

(c) Where an injury occurs, a doctor shall be notified immediately, and the injured person shall be brought promptly to the surface. (Laws 1951, ch. 128, § 64; W.S. 1957, § 30-190.)

Effective date. — Section 68, ch. 128, Laws 1951, makes the act effective from and after March 1, 1951.

ARTICLE 5. SHOT-FIRERS

§ 30-3-501. Employment required; qualifications and examinations; issuance of certificate upon passage of examination; revocation of certificate; requirements when work being done.

In all mines in this state where coal is blasted or shot, the operator or operators of such mines, shall be required to employ forthwith, at his or their own expense, a sufficient number of certified shot-firers or certified mine officials who have had at least two (2) years practical experience at the working face, and who shall charge and tamp, or supervise the charging and tamping, of all holes for blasts and shots. They shall be orally examined by the state mine inspector or his deputies. Said inspector shall satisfy himself that applicants are citizens of the United States, or have declared their intention to become citizens of the United States, and have used due diligence in securing citizenship papers, and are qualified to act as shot-firers. When so satisfied, he shall issue him a certificate.

Said certificate shall be revoked at any time that the inspector or his deputies have knowledge that the holder thereof has, in any way, violated laws governing firing of any shots, or blasts, or has done any unlawful act, thereby endangering the lives of any employees in coal mines or property by his actions. No one other than shot-firers shall fire any shots or blasts in any coal mine in this state. No miner shall be permitted to return to any place where shots or blasts have been fired, until given permission by the shot-firers or other mine officials authorized by law. When shot-firers are engaged in the work of firing shots, the shot-firing cable must be disconnected from battery, and cable leads must be short circuited at battery and before connection is made to detonating cap at face, and all employees other than the one (1) connecting cable to cap at face are forbidden to handle battery while the work of firing shots is being carried on. The cable connecting battery to detonating cap or caps must be not less than one hundred and fifty (150) feet in length at all times. (Laws 1929, ch. 34, § 1; R.S. 1931, § 23-165; Laws 1937, ch. 120, § 5; C.S. 1945, § 57-601; W.S. 1957, § 30-191.)

Cross references. — As to explosives generally, see §§ 30-6-101 to 30-6-112. As to storage of explosives, see §§ 35-10-301 to 35-10-303, and also §§ 30-6-105, 30-6-106.

Repealing clause. — Section 6, ch. 120, Laws 1937, repealed all laws and parts of laws in conflict with that act.

Effective date. — Section 7, ch. 120, Laws 1937, makes the act effective from and after passage. Approved February 27, 1937.

Am. Jur. 2d and C.J.S. references. — 54 Am. Jur. 2d Mines and Minerals §§ 167, 172 to 189, 200 to 214.

58 C.J.S. Mines and Minerals § 236.

§ 30-3-502. Report upon completion of work.

The shot-firer shall immediately after the completion of his work, report in writing to the proper official, any shots not fired, their location and the reason therefor. He shall similarly report any missed shots. (Laws 1929, ch. 34, § 2; R.S. 1931, § 23-166; C.S. 1945, § 57-602; W.S. 1957, § 30-192.)

§ 30-3-503. Holes not charged or tamped by shot-firers.

Where shots or blasts are fired when all miners are out of the mine, with the exception of shot-firers, superintendents, mine foremen, assistant foremen, fire bosses, pumpmen, stablemen, or employees needed for emergency work, it will not be required that shot-firers charge and tamp holes or supervise the charging and tamping of holes. (Laws 1929, ch. 34, § 3; R.S. 1931, § 23-167; C.S. 1945, § 57-603; W.S. 1957, § 30-193.)

§ 30-3-504. Alteration of drill hole.

No miner or other person shall alter or change any drill hole, by increasing its depth or diameter, or otherwise altering it, after the same shall have been approved by the shot-firer. (Laws 1929, ch. 34, § 4; R.S. 1931, § 23-168; C.S. 1945, § 57-604; W.S. 1957, § 30-194.)

§ 30-3-505. Firing of unlawful or improper shots.

No shot-firer, whether voluntarily or by command or request of any person, shall fire any unlawful shot, or any shot which in his judgment, exercised as aforesaid, from his inspection thereof, made as aforesaid, shall not be a workmanlike, proper and practical shot. (Laws 1929, ch. 34, § 5; R.S. 1931, § 23-169; C.S. 1945, § 57-605; W.S. 1957, § 30-195.)

§ 30-3-506. Inducing shot-firer to fire unlawful or improper shot; drilling or shooting dead hole.

- (a) No person or persons shall order, command or induce by threat or otherwise, any shot-firer to fire any unlawful shot, or any shot which, in his judgment, after due inspection, shall not be a workmanlike, proper and practical shot.
- (b) No person shall drill or shoot a dead hole as hereinafter defined. A "dead hole" is a hole where the width of the shot at the point measured at right angles to the line of hole is so great that the heel is not of sufficient strength to at least balance the resistance at the point. The "heel" means that part of the shot which lies outside of the collar. (Laws 1929, ch. 34, § 6; R.S. 1931, § 23-170; C.S. 1945, § 57-606; W.S. 1957, § 30-196.)

Repealing clause. — Section 9, ch. 34, Laws 1929, repealed ch. 61, Laws 1923, and ch. 67, Laws 1925. Effective date. — Section 10, ch. 34, Laws 1929, makes the act effective on June 1, 1929.

ARTICLE 6. BATHHOUSES

§ 30-3-601. When required.

No mine owner, lessee or "operator" of a mine shall be required to install or maintain a bathhouse under the provisions of section 57-701, Wyoming Compiled Statutes, 1945 [§ 30-3-602], unless sixty percent (60%) of such employees of such mine make a written request therefor. When sixty percent (60%) of the employees shall make a written request therefor, such bathhouse shall be forthwith constructed and maintained, and no charge shall be made to any employee for the use of any bathhouse heretofore or hereafter constructed. (Laws 1923, ch. 63, § 2; R.S. 1931, § 23-178; Laws 1935, ch. 108, § 1; C.S. 1945, § 57-702; Laws 1950, Sp. Sess., ch. 19, § 2; W.S. 1957, § 30-197.)

Effective date, — Section 2, ch. 108, Laws 1935, makes the act effective from and after passage. Approved February 20, 1935. Am. Jur. 2d and C.J.S. references. — 54 Am. Jur. 2d Mines and Minerals §§ 177, 179 to 181. 58 C.J.S. Mines and Minerals § 229.

§ 30-3-602. Specifications; requirements as to use.

It shall be the duty of every owner, or lessee, its officers or agents, or other person or persons having jurisdiction or direction of any coal mine, employing twenty (20) or more miners who will use the bathhouse, within the state of Wyoming, to provide a suitable building, which shall be convenient to the principal entrance of such mine or mines, and equipped with individual lockers and hangers, benches or seats, proper lights, heat, hot and cold water, and shower baths, and maintain same in good order, for the use of persons employed therein, for the purpose of washing and bathing of employees and changing clothes. Said building or bathhouse to have sufficient floor space for the accommodation of miners or others using same. The flooring in said washroom or bathroom to be of concrete or cement and the flooring in the changing room to be optional with the owner as to material used. All lockers in new bathhouses when made of steel, shall not be less than twelve (12) inches by twelve (12) inches by forty-eight (48) inches in height; when made of lumber shall not be less than twelve (12) inches by twenty-two (22) inches by forty-eight (48) inches in height; with partitions in centers of wood lockers. Individual hangers shall consist of not less than three (3) hooks upon which to hang clothing and a receptacle of suitable size for use in connection therewith, attached to a proper chain or wire rope, and so suspended as to admit of hanger being raised such height that the wearing apparel, when hung thereon, will not be less than seven (7) feet above the floor of said building, and of being locked in that position. The lockers or hangers in each bathhouse shall be sufficient in number to accommodate the employees using the same. There shall be one (1) shower bath for every fifteen (15) employees using same and there shall be adequate floor space for each shower bath in each bathroom. Said employees shall furnish their own towels and soap, and a lock for their lockers or hangers, exercise control over, and be responsible for the property by them left therein. The individual owner, operator, lessee, agent, or company or corporation shall keep said bathhouse in a clean and sanitary condition: provided, all bathhouses built at underground mines sunk after the passage of this act, shall be built of concrete blocks, cement, brick, stone or other noncombustible material. The floors shall be of concrete or cement. The lockers shall be made of steel, not less than twelve (12) by twelve (12) inches, by forty-eight (48) inches in height. (Laws 1923, ch. 63, § 1; R.S. 1931, § 23-177; C.S. 1945, § 57-701; Laws 1950, Sp. Sess., ch. 19, § 1; W.S. 1957, § 30-198.)

Effective dates. — Section 6, ch. 63, Laws 1923, makes the act effective on September 1, 1923.

Section 3, ch. 19, Laws 1950, Sp. Sess., makes the act effective from and after passage and approval. Approved March 1, 1950.

§ 30-3-603. Use by employees; prohibited acts.

It shall be the duty of all persons using said bathhouses to remove therefrom all cast-off clothing or wearing apparel. It shall be unlawful for any person to in any wise break, injure, or destroy any bathhouse or any part thereof, or commit any nuisance therein, provided the provisions of this act [§§ 30-3-601 to 30-3-605] does not apply to mines to which water for household or drinking purposes is being hauled thereto in railroad cars. (Laws 1923, ch. 63, § 4; R.S. 1931, § 23-180; C.S. 1945, § 57-704; W.S. 1957, § 30-199.)

Cross references. — As to nuisances C.J.S. reference. — 58 C.J.S. Mines and generally, see §§ 6-12-101 to 6-12-109. Minerals § 131.

§ 30-3-604. Penalty for violation of section 30-3-603.

Any person found guilty of any violation of section 4 of this act [§ 30-3-603] shall, upon conviction, be fined not less than five (\$5.00) dollars nor more than ten (\$10.00) dollars, or by imprisonment in the county jail not less than ten (10) days nor more than thirty (30) days, or by both such fine and imprisonment in the discretion of the court. (Laws 1923, ch. 63, § 5; R.S. 1931, § 23-181; C.S. 1945, § 57-705; W.S. 1957, § 30-200.)

§ 30-3-605. Failure to comply with sections 30-3-601 to 30-3-605; continuing violations; enforcement.

Any owner or lessee, its officers or agents, or other person or persons failing or refusing to comply with the provisions of this act [§§ 30-3-601 to 30-3-605] shall be deemed guilty of a misdemeanor and shall, upon conviction, be fined the sum of not less than fifty (\$50.00) dollars, nor more than one hundred (\$100.00) dollars for each violation of the provisions of this act. And each day there is a failure to comply with the provisions of this act shall be a separate offense, and punished as such. The state inspectors of coal mines shall have general supervision of this law and the enforcement of the same, in their respective districts, and it shall be optional with said inspectors of mines to waive the provisions of this act as to all bathhouses that have been constructed prior to the taking effect of this act, but said inspectors of mines are hereby given authority to require such bathhouses already in existence to be changed or improved as in their judgment may be necessary. (Laws 1923, ch. 63, § 3; R.S. 1931, § 23-179; C.S. 1945, § 57-703; W.S. 1957, § 30-201.)

Effective date. — Section 6, ch 63, Laws 1923, makes the act effective on September 1, 1923.
C.J.S. reference. — 58 C.J.S. Mines and Minerals § 241.

CHAPTER 4

Other Mines

Article 1. In General

Sec.

30-4-101. Definition of "mine."

30-4-102. Provisions applicable to tunnel.

Article 2. Inspector of Mines.

30-4-201. Office established; coal mine inspector ex officio state mine inspector; qualifications; powers and duties generally.

 Right of entry for purpose of making inspections; penalty for refusal.

30-4-203. Enforcement of act; notice of violations; failure to comply with order to remedy defective condition.

 Misrepresenting facts or withholding information from inspector. Sec.

30-4-205. Report by operators to inspectors; information to be shown.

30-4-206. Duty of owner, etc., to report accidental death or injury; failure to comply.

30-4-207. Appeals from decisions of inspector.

Article 3. Safety Regulations

30-4-301, Code of signals; rules governing signals; posting.

30-4-302. Enforcement of code of signals; penalty for violation.

30-4-303. Qualifications of hoisting engineer.

30-4-304. Visitors to be accompanied.

30-4-305. Two separate outlets to surface required; limit on people in mine.

Cross references. — For constitutional provision as to taxation of mines and mining claims, see art. 15, § 3, Wyo. Const. For constitutional provision authorizing a mineral excise tax, see art. 15, § 19, Wyo. Const. As to right of eminent domain with reference to ways of necessity for mining purposes, or for the transportation of coal, and as to the procedure in connection therewith, see §§ 1-26-401 to 1-26-403 and Rule 71.1, W.R.C.P. As to duties of state geologist relative to mineral deposits, see § 9-3-1406. As to aerial prospecting, see § 9-3-1406. As to aerial prospecting, see § 5-1110 to 10-1-112. For duty of county clerk to keep water users' records as official records.

see § 18-3-402. As to mode of payment and minimum wages, see §§ 27-4-101 to 27-4-508. As to working day in mines and reduction works, see §§ 27-5-102, 27-5-103. As to miner's liens for labor, services and supplies, see §§ 29-3-201 to 29-3-233. As to mining operations generally, see ch. 2 of this title. See also the cross references at the beginning of this title and at the beginning of ch. 3. As to mineral leases of public lands generally, see §§ 36-6-101 to 36-6-204. For duty of state geologist to visit and report upon lands held under coal and mineral leases, see § 36-6-105. As to taxation of mine products generally, see §§ 39-6-301 to 39-6-306.

ARTICLE 1. IN GENERAL

§ 30-4-101. Definition of "mine."

The term "mine" as used in this act [§§ 30-4-101 to 30-4-302, 30-4-304, 30-4-305] shall include all metallic or nonmetallic mines but shall not include coal mines. Such term shall also include every quarry or pit from which any metallic or nonmetallic substance is produced. It shall also include every plant or facility used in connection with the production or processing of any such metallic or

nonmetallic substances located at or immediately adjacent to such mine, quarry or pit. (Laws 1949, ch. 131, § 2; W.S. 1957, § 30-202.)

Cross reference. — As to definition of Mines and Minerals §§ 148, 149, 167, 172 to 189, "mining operations," see § 30-2-102. — 200 to 214.

Am. Jur. 2d reference. — 54 Am. Jur. 2d

§ 30-4-102. Provisions applicable to tunnel.

So far as applicable the provisions of this act [§§ 30-4-101 to 30-4-302, 30-4-304, 30-4-305] shall apply to any tunnel in the construction of which more than twenty-five (25) men shall be employed at any one (1) time. (Laws 1949, ch. 131, § 12; W.S. 1957, § 30-203.)

Effective date. — Section 15, ch. 131, Laws passage and approval. Approved February 26, 1949, makes the act effective from and after 1949.

ARTICLE 2. INSPECTOR OF MINES

§ 30-4-201. Office established; coal mine inspector ex officio state mine inspector; qualifications; powers and duties generally.

There is hereby established the office of inspector of mines, as such mines are hereinafter defined, the duties of which office shall be as hereinafter prescribed. The state coal mine inspector appointed under the provisions of section 57-201, Wyoming Compiled Statutes, 1945, shall be ex officio the state mine inspector, and shall perform all the duties and possess all of the powers of the state mine inspector. He shall be a person of approved and practical experience competent to perform the duties thereof. Such inspector shall have power to make such examination and inquiry as is deemed necessary to ascertain whether the provisions of this act [§§ 30-4-101 to 30-4-302, 30-4-304, 30-4-305] are complied with; to examine into, and make inquiry into the condition of any mine, mill or part thereof, and all matters or things connected with or relating to the safety of the persons employed in or about the same; to examine into and make inquiry respecting the condition of machinery or mechanical devices, and if deemed necessary, have the same tested; to appear at all coroner's inquests held respecting accidents, and if necessary, call, examine and cross-examine witnesses; to exercise such other powers as are necessary for carrying out the provisions of this act. (Laws 1903, ch. 35, § 1; C.S. 1910, § 3483; C.S. 1920, § 4406; R.S. 1931, § 70-201; C.S. 1945, § 57-801; Laws 1949, ch. 131, § 1; W.S. 1957, § 30-204.)

Cross references. — For constitutional provision relative to inspector of mines, see art. 9, § 1, Wyo. Const. As to inspector of mines generally, see §§ 30-2-301 to 30-2-318. See also cross references at the beginning of this title and to §§ 30-2-301, 30-3-220. For authority of inspector of mines relative to the enforcement of the code signals established by § 30-4-301, see § 30-4-302. For duty of inspector of mines to enforce provisions relative to the sale and storage of explosives, oil and other inflammable materials, see § 30-6-103. For duty of state mine inspector to register with the department of health and social services any mine which is

producing or has produced radioactive substances, see § 35-4-301. For duty of state coal mine inspector to visit and report to board of land commissioners lands held under coal and mineral leases, see § 36-6-105.

Editor's note. — Section 57-201, W.C.S. 1945, referred to in the second sentence of this section, was repealed by § 67, ch. 128, Laws 1951. As to appointment, etc., of mine inspector, see now § 30-3-220 et seg.

Am. Jur. 2d and C.J.S. references. — 54 Am. Jur. 2d Mines and Minerals § 173.

58 C.J.S. Mines and Minerals § 237.

§ 30-4-202. Right of entry for purpose of making inspections; penalty for refusal.

Every owner, agent, manager or lessee of any such mine in this state shall admit the inspector on the exhibition of his badge or certificate of appointment, for the purpose of making examination and inspection provided for in this act [§§ 30-4-101 to 30-4-302, 30-4-304, 30-4-305], whenever the mine is in active operation and render any necessary assistance for such inspection, but said inspection shall not unnecessarily obstruct the working of said mine. The refusal of the owner, agent, manager or lessee to admit the inspector to such mine to lawfully inspect the same, shall be deemed a misdemeanor and, upon conviction, such owner, agent, manager or lessee, shall be subject to a fine of not less than fifty dollars (\$50.00) nor more than three hundred dollars (\$300.00) or be imprisoned not less than one (1) nor more than three (3) months. (Laws 1903, ch. 35, § 2; C.S. 1910, § 3484; C.S. 1920, § 4407; R.S. 1931, § 70-202; C.S. 1945, § 57-802; Laws 1949, ch. 131, § 3; W.S. 1957, § 30-205.)

§ 30-4-203. Enforcement of act; notice of violations; failure to comply with order to remedy defective condition.

The inspector shall exercise a sound discretion in the enforcement of this act [§§ 30-4-101 to 30-4-302, 30-4-304, 30-4-305] and if he shall find any matter, thing or practice in or connected with any such mine to be dangerous or defective so as to, in his opinion, threaten or tend to bodily injury of any person, the inspector shall give notice in writing thereof to the owner, agent, manager or lessee of such mine, stating in such notice the particulars in which he considers such mine, or part thereof, or practice to be dangerous or defective, and he shall order the same to be remedied; a copy of said order shall be filed and become a part of the records of the inspector of mines, and said owner, agent, manager or lessee shall, upon compliance with said order immediately notify the inspector of mines in writing. Upon the refusal or failure of said owner, agent, manager or lessee to report within a reasonable length of time, said owner, agent, manager or lessee shall be subject to a fine of not less than fifty dollars (\$50.00) nor more than three hundred dollars (\$300.00) for each and every such refusal or failure. (Laws 1903, ch. 35, § 3; C.S. 1910, § 3485; C.S. 1920, § 4408; R.S. 1931, § 70-203; C.S. 1945, § 57-803; Laws 1949, ch. 131, § 4; W.S. 1957, § 30-206.)

C.J.S. reference, — 58 C.J.S. Mines and Minerals 9 241.

§ 30-4-204. Misrepresenting facts or withholding information from inspector.

Any owner, lessee, manager, superintendent or foreman in charge of any such mine who shall willfully misrepresent or withhold facts or information from the inspector regarding the mine, such as the length of time timbers have been in place, or who shall make any misrepresentation tending to show safety when the reverse is true, shall be deemed guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiction, shall be fined in any sum not less than one hundred dollars (\$100.00) nor more than three hundred dollars (\$300.00) for each offense. (Laws 1903, ch. 35, § 4; C.S. 1910, § 3486; C.S. 1920, § 4409; R.S. 1931, § 70-204; C.S. 1945, § 57-804; Laws 1949, ch. 131, § 5; W.S. 1957, § 30-207.)

§ 30-4-205. Report by operators to inspectors; information to be shown.

Any person or persons operating any such mine and employing five (5) or more men, shall report such fact to the inspector of mines and shall report when work is to be commenced and when stopped; provided that mines working continuously shall report on or before December first, of each year. Such report shall contain the names of the owners and manager or lessee in charge of said work, the post office address, and name of the claim or claims to be operated, the name of the county and mining district, the number of men employed, directly or indirectly, the same being classified into miners, trammers, timbermen or assorters, mill men, teamsters, etc. The necessary blanks to carry out the provisions of this section shall be furnished upon application by the inspector of mines. (Laws 1903, ch. 35, § 6; C.S. 1910, § 3488; C.S. 1920, § 4411; R.S. 1931, § 70-206; C.S. 1945, § 57-806; Laws 1949, ch. 131, § 7; W.S. 1957, § 30-208.)

§ 30-4-206. Duty of owner, etc., to report accidental death or injury; failure to comply.

Any owner, agent, manager or lessee having charge of or operating any such mine, whenever loss of life or accident serious enough in character to cause the injured party to stop working for thirty (30) consecutive days and be and remain under the care of a physician for such time shall occur, shall give notice immediately and report all the facts thereof to the inspector of mines. The refusal or failure of the said owner, agent, manager or lessee to so report within a reasonable time shall be deemed a misdemeanor and shall upon conviction be subject to a fine of not less than fifty dollars (\$50.00) and not more than three hundred dollars (\$300.00), or be imprisoned for not less than one (1) and not more than three (3) months. The inspector of mines upon receipt of notice of accident

shall investigate and ascertain the cause and make or cause to be made a report, which shall be filed in his office for future reference. (Laws 1903, ch. 35, § 5; C.S. 1910, § 3487; C.S. 1920, § 4410; R.S. 1931, § 70-205; C.S. 1945, § 57-805; Laws 1949, ch. 131, § 6; W.S. 1957, § 30-209.)

Cross reference, — For constitutional provisions guaranteeing employees rights of action for injury or death or damage to property,

see art. 9, § 4, art. 10, § 4, art. 19, § 7, Wyo. Const.

§ 30-4-207. Appeals from decisions of inspector.

Anyone aggrieved by any order made by the inspector under or in accordance with this act [§§ 30-4-101 to 30-4-302, 30-4-304, 30-4-305] may appeal to the district court of the county in which the affected property is situated or to the district court of Laramie county, Wyoming, where the matter shall be heard de novo. Such appeal shall be taken by serving on the inspector and filing in the office of the clerk of such court a petition upon appeal setting forth such order or the substance thereof and the matters of which the appellant shall feel aggrieved. Such petition shall be served and filed within fifteen (15) days after receipt of such order of the inspector by the aggrieved party. The inspector shall file his answer to such petition within fifteen (15) days after service of such petition upon him. Upon hearing if the court shall find that the inspector abused his discretion in making such order, or that such order is arbitrary or unreasonable, such order shall be set aside and an order entered which shall be reasonable and consistent with the safety of all persons affected; otherwise the order of the inspector shall be affirmed. If such order shall be affirmed the aggrieved party may appeal to the supreme court of Wyoming. The provisions of the code of civil procedure shall apply so far as applicable to any such appeal to the district court or to the supreme court. The attorney general shall represent the inspector upon any such appeal. No order of the inspector shall be superseded by such appeal, but the district court or the supreme court may make an order superseding any such order upon the filing of bond to be fixed by the court. Either court may, upon appeal, grant relief by injunction, with or without bond upon any restraining order or temporary injunction in the discretion of such court. (Laws 1949, ch. 131, § 13; W.S. 1957, § 30-210.)

Cross reference. — As to judicial review of administrative action, see Rule 72.1, W.R.C.P.

Effective date. — Section 15, ch. 131, Laws 1949, makes the act effective from and after passage and approval. Approved February 26, 1949.

C.J.S. reference, - 58 C.J.S. Mines and Minerals § 240.

ARTICLE 3. SAFETY REGULATIONS

Cross references. — As to duty of legislature to enact laws for development, ventilation, drainage and operation of mines, see art. 9, § 2,

Wyo. Const. As to mines being excepted from jurisdiction of commissioner of labor and statistics and from provisions concerning safety devices and regulations generally, see § 27-1-104. See also art. 4 of ch. 2 of this title as to safety regulations. As to entering mine while intoxicated or taking intoxicating liquor into mine, see § 35-10-402.

§ 30-4-301. Code of signals; rules governing signals; posting.

- (a) There is hereby established the following code of signals for use in such mines of this state, which shall be securely posted in a clear and legible form in the engine room, at the collar of the shaft and at each level or station:
 - (i) Signals.
 - 1 Bell Hoist. (See Rule 2.)
 - 1 Bell Stop if in motion.
 - 2 Bells Lower. (See Rule 2.)
 - 3 Bells Men on, run slow. (See Rule 2.)
 - 7 Bells Accident. Hoist or lower by verbal orders only.
 - 3-2-1 Bells Ready to shoot. (See Rule 3.)

Engineer Signal — Engineer shall, after signal 3-2-1, raise the bucket or cage two (2) feet and lower it again, and shall remain at his post until final signal is given and command executed.

(ii) Rules governing signals.

Rule 1. In giving ordinary signals make strokes on bell at regular intervals. In signals similar to "ready to shoot" (3-2-1 bells) each bar (-) must take the same time as one (1) stroke of the bell.

Rule 2. When men are to be hoisted or lowered, give the signal for "men on, run slow," three (3) bells. Men must then get on bucket or cage, then give signals to hoist or lower. (one (1) or two (2) bells.)

Rule 3. After signal "ready to shoot" (3-2-1 bells) engineer must reply as above. Miners must then give signal "men on" (three (3) bells) then spit fuse, get on bucket or cage and give signal to hoist.

Rule 4. All timbers, tools, etc., longer than the depth of bucket or placed within a cage, must be securely lashed before being hoisted or lowered.

Rule 5. Signals to meet local demands and not in conflict with above may be added by individual operators but same must be posted in clear and legible form in connection with above code. (Laws 1903, ch. 35, § 7; C.S. 1910, § 3489; C.S. 1920, § 4412; R.S. 1931, § 70-207; C.S. 1945, § 57-807; Laws 1949, ch. 131, § 8; W.S. 1957, § 30-211.)

Cross references. — As to authority of inspector of mines to adopt a uniform code of signals, see § 30-2-318. As to communication systems generally, see § 30-2-411.

Am. Jur. 2d and C.J.S. references. — 54 Am. Jur. 2d Mines and Minerals §§ 167, 172 to 189, 200 to 214.

58 C.J.S. Mines and Minerals § 240.

§ 30-4-302. Enforcement of code of signals; penalty for violation.

The inspector of mines shall have power to enforce the adoption of this code of signals in all such mines using hoisting machinery, and all persons giving or causing to be given false signals or riding upon any cage, skip or bucket upon signals that designate to the engineer that no employees are aboard, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty (\$50.00) dollars nor more than one hundred (\$100.00) dollars. (Laws 1903, ch. 35, § [7a]; C.S. 1910, § 3490; C.S. 1920, § 4413; R.S. 1931, § 70-208; C.S. 1945, § 57-808; Laws 1949, ch. 131, § 9; W.S. 1957, § 30-212.)

Editor's note. — As printed in Laws 1903, ch. 35, this section carried no number. An earlier compiler, for convenience, numbered it "7a" and inserted that number in the history line in brackets.

Effective date. - Section 15, ch. 131, Laws

1949, makes the act effective from and after passage and approval. Approved February 26, 1949.

C.J.S. reference. — 58 C.J.S. Mines and Minerals § 241.

§ 30-4-303. Qualifications of hoisting engineer.

No person addicted to the use of intoxicating liquors or under eighteen (18) years of age shall be employed as hoisting engineer. (Laws 1903, ch. 35, § 8; C.S. 1910, § 3491; C.S. 1920, § 4414; R.S. 1931, § 70-209; C.S. 1945, § 57-809; W.S. 1957, § 30-213.)

Cross reference. — As to hoisting equipment generally, see §§ 30-2-408, 30-2-420.

Fellow servants. — The relation of fellow servants is a question of law or a mixed question of law and fact. Engen v. Rambler Copper & Platinum Co., 20 Wyo. 95, 121 P. 867, rehearing denied, 123 P. 413 (1912).

Competency of hoisting engineer. — Whether a hoisting engineer was competent in view of this section is question for jury. Engen v. Rambler Copper & Platinum Co., 20 Wyo. 95, 121 P. 867, rehearing denied, 123 P. 413 (1912).

C.J.S. reference. — 58 C.J.S. Mines and Minerals § 236.

§ 30-4-304. Visitors to be accompanied.

Strangers or visitors shall not be allowed underground in any mine unless accompanied by some owner, official, or employee deputized to accompany same. (Laws 1903, ch. 35, §§ 9, 10; C.S. 1910, § 3492; C.S. 1920, § 4415; R.S. 1931, § 70-210; C.S. 1945, § 57-810; Laws 1949, ch. 131, § 10; W.S. 1957, § 30-214.)

Cross reference. — As to entering mine while intoxicated or taking intoxicating liquor into mine, see § 35-10-402.

Effective dates. — Section 11, ch. 35, Laws 1903, makes the act effective from and after passage. Approved February 18, 1903.

Section 15, ch. 131, Laws 1949, makes the act effective from and after passage and approval. Approved February 26, 1949.

§ 30-4-305. Two separate outlets to surface required; limit on people in mine.

Every underground mine shall have at least two (2) separate outlets to the surface; provided that it shall not be necessary that such two (2) outlets belong to the same mine if persons can travel to and from another outlet to said mine. Provided further, where a new mine is being operated, or when a new drift or level is being worked for the purpose of making a connection between two (2) main outlets, not more than ten (10) persons may be allowed at any one (1) time in such mine, drift or level. (Laws 1949, ch. 131, § 11; W.S. 1957, § 30-215.)

Cross reference. — As to escapeways and exits, see § 30-2-414.

Repealing clause. — Section 14, ch. 131, Laws 1949, repealed all acts and statutory provisions and parts thereof inconsistent with that act. Effective date. — Section 15, ch. 131, Laws 1949, makes the act effective from and after passage and approval. Approved February 26, 1949.

CHAPTER 5 Oil and Gas

Article 1. In General

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30-5-102. Waste prohibited; power of commission to allocate allowable production.

30-5-103. Composition of oil and gas conservation commission; terms of office; travel expenses; chairman; quorum; meetings and hearings generally; powers and duties of state oil and gas supervisor as ex officio director of oil and gas conservation; duties of attorney general and county attorneys as legal advisors.

30-5-104. Powers and duties of commission.

30-5-105. Hearings; conducted by examiners.

30-5-106. Same; when held before commission.

30-5-107. Same; sections 30-5-105 to 30-5-107 subordinate to Administrative Procedure Act.

30-5-108. Appointment, duties, etc., of state oil and gas supervisor; authority of commission to appoint other employees; payment of traveling and living expenses.

30-5-109. Rules and regulations governing drilling units.

30-5-110. Agreements for waterflooding or other recovery operations, repressuring or pressure-maintenance operations, cycling or recycling operations; operation as a unit of 1 or more pools or parts thereof and pooling of interests in oil and gas therein.

30-5-111. Rules of practice and procedure generally.

30-5-112. Summoning witnesses and production of record; abridgment of rights, etc.; failure to testify.

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30-5-114. Maintenance of suits by commission for violation or threatened violation of act; restraining violation; recovery of penalties.

30-5-115. Notice of intention and permit required to drill well: fee.

30-5-116. Disposition of moneys; payment of expenses; charge assessed on value of oil or gas produced.

30-5-117. Construction of act generally.

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30-5-119. Penalties for violation of act, orders of commission, etc.

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30-5-121. Waste of natural gas prohibited.

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30-5-123. Penalty for violation of sections 30-5-121 and 30-5-122.

30-5-124. Purchase or taking ratably oil and gas for transportation without discrimination in favor of any owner or producer; oil.

30-5-125. Same; gas.

30-5-126. Same; oil and gas conservation commission to administer.

Article 2. Interstate Compact on Conservation

30-5-201. Governor authorized to join in interstate compact

30-5-202. Authority of governor to execute agreements; provision for withdrawal from compact.

30-5-203. Governor designated official representative; authority to appoint assistant; authority and oath of assistant.

30-5-204. Construction of sections 30-5-201 to 30-5-204.

Cross references. — As to duty of legislature to enact laws for development, ventilation, drainage and operation of mines and oil wells,

see art. 9, § 2, Wyo. Const. For constitutional provision as to taxation of mines and mining claims, see art. 15, § 3, Wyo. Const. For

constitutional provision as to mineral excise tax. see art. 15, § 19, Wyo. Const. As to right of eminent domain with reference to oil and gas pipelines, see §§ 1-26-301 to 1-26-303. As to aerial prospecting, see §§ 10-2-110 to 10-1-112. For duty of county clerk to keep water users' records as official records, see § 18-3-402. As to mode of payment and minimum wages, see §§ 27-4-101 to 27-4-508. As to liens in connection with mines and oil wells generally, see §§ 29-3-201 to 29-3-233. As to drilling and sealing oil and gas wells penetrating coal beds, see § 30-3-459. For duty of inspector of mines to enforce the provisions relative to the sale and storage of explosives, oil and imflammable materials, see § 30-6-103. See generally the cross references at the beginning of this title. For provision that no covenant shall be implied in any conveyance of real estate other than a conveyance of oil, gas or other minerals, see § 34-1-135. As to oil and gas leases of public lands, both state and local, generally, see §§ 36-6-101 to 36-6-204. As to authority of oil and gas companies with reference to rights-of-way over lands of state institutions, see § 37-9-204. As to interference or tampering with petroleum wells or pipelines, see § 37-12-117. As to taxation of oil and gas products, see §§ 39-2-201, 39-2-202, 39-6-301 to 39-6-306. As to discrimination in sales of petroleum products, see §§ 40-4-117 to 40-4-120.

Law reviews. — For a note, "The Constitutionality of Wyoming's Oil and Gas Compulsory Pooling Provision," see 6 Wyo. L.J. 300.

For analytical article on the Wyoming Oil and Gas Conservation Act, §§ 30-5-101 to 30-5-119, see 13 Wyo. L.J. 1 (1958).

For a note, "Creation of Royalties Prior to Leasing," see 13 Wyo. L.J. 244 (1959).

For an article, "Separate Views of John Kenneth Galbraith — Interim Report of the Oil Shale Advisory Board," see 2 Land & Water L. Rev. 51 (1967)

For an article, "Oil Shale — The Need for a National Policy," see 2 Land & Water L. Rev. 61 (1967).

For an article, "Lender Recoupment for Oil Not in Place," see 3 Land & Water L. Rev. 59 (1968).

For a comment, "The Federal Reserved Water Doctrine — Application to the Problem of Water for Oil Shale Development," see 3 Land & Water L. Rev. 75 (1968).

For a comment, "Non-Exclusive Rights of Lessees to Conduct Geophysical Exploration — Federal and Wyoming State Oil and Gas Leases," see 3 Land & Water L. Rev. 103 (1968).

For an article, "Protection of Correlative Rights in Wyoming," see 3 Land & Water L. Rev. 363 (1968). For a comment, "Wyoming's New Unitization Statute," see 6 Land & Water L. Rev. 537 (1971).

For a comment, "Secondary Recovery of Oil and Gas — The Rule of Positive Dominion," see 9 Land & Water L. Rev. 457 (1974).

For an article, "Practice Before the Wyoming Oil and Gas Conservation Commission," see 10 Land & Water L. Rev. 353 (1975).

Am. Jur. 2d, ALR and C.J.S. references. — 38 Am. Jur. 2d Gas and Oil § 1 et seq.

Respective rights of adjoining owners as to pumping oil, 5 ALR 421.

Oil and gas as minerals within meaning of deed, lease or license, 17 ALR 162; 86 ALR 986; 37 ALR2d 1440.

Railroad company's rights with respect to oil and gas in its right-of-way, 21 ALR 1141.

Constitutionality of statute controlling exploitation or waste of oil and gas, 24 ALR 307; 78 ALR 834.

Severance of title to oil and gas in place from title to surface, 29 ALR 586; 146 ALR 880.

Right to incidental gas or oil under mining lease, 64 ALR 734.

Constitutionality of statute, ordinance or regulation limiting rights of surface owner in respect to oil or gas, 67 ALR 1346; 99 ALR 1119.

Right and remedy of owner whose land is drained of oil or gas which runs to waste through well on land of another, 85 ALR 1154.

Constitutionality of statute regulating petroleum production, 86 ALR 418.

Construction and effect of statutes regulating production of oil or gas in a manner or under conditions constituting waste, 86 ALR 431.

Railroad company's right to permit laying of oil and gas pipeline under its right-of-way, 94 ALR 532.

Deed or mortgage of real estate as affecting right to oil and gas under existing lease, 94 ALR 660; 140 ALR 1280.

Operator's or lessee's responsibility for production of oil or gas in excess of allowance as affected by his ignorance of excess production, or his failure to profit thereby, 150 ALR 1149.

"Royalty" on oil or gas production within language of conveyance, exception or reservation, what constitutes, 4 ALR2d 492.

Mistake, accident, inadvertence, etc., as ground for relief from termination or forfeiture of oil or gas lease for failure to complete well, commence drilling or pay rental strictly on the, 5 ALR2d 993.

"Net operating loss," deduction for depletion under provision of Internal Revenue Code relating to "net operating loss" and its carry-back and carry-over, 9 ALR2d 353.

Abandonment of oil or gas lease by parol declaration, 13 ALR2d 951.

Tenant for life or for years and remaindermen, rights inter se in royalties or rents under oil, gas, coal or other mineral lease, 18 ALR2d 98.

Liability for injury to property occasioned by oil, water or the like flowing from well, 19 ALR2d 1025.

Oil and gas tanks, pipes and pipelines, and apparatus and accessories thereof as constituting attractive nuisance, 23 ALR2d 1157.

Necessity that mortagage covering oil and gas lease be recorded as real-estate mortgage, and/or filed or recorded as chattel mortgage, 34 ALR2d 902.

Compulsory pooling or unitization statute or ordinance requiring owners or lessees of oil and gas lands to develop their holdings as a single drilling unit and the like, validity of, 37 ALR2d 434.

Elements and measure of compensation for oil or gas pipeline through private property, 38 ALR2d 788.

Perpetual nonparticipating royalty interest in oil and gas as violating rule against perpetuities, 46 ALR2d 1268.

Duty of oil or gas lessee to restore surface of leased premises, 65 ALR2d 1356.

Employment in connection with oil or gas well drilling, as within Federal Fair Labor Standards Act, 66 ALR2d 1155.

Duty of lessee or assignee of oil or gas lease as regards marketing or delivery for marketing of oil and gas discovered, 71 ALR2d 1219.

Expenses and taxes deductible by lessee in computing lessor's oil and gas royalty or other return, 73 ALR2d 1056.

Right of lessor to cancel oil or gas lease for breach of implied obligation to explore and develop further after initial discovery of oil or gas, in absence of showing reasonable expectation of profit to lessee from further drilling, 79 ALR2d 792.

Production on one tract as extending term on other tract, where one mineral deed conveys oil or gas in separate tracts for as long as oil or gas is produced, 83 ALR2d 1169.

Oil refinery as nuisance, 86 ALR2d 1322.

Estoppel of oil and gas lessee to deny lessor's title, 87 ALR2d 602.

Secondary recovery of oil and gas, 93 ALR2d 451.

Rights and liabilities with respect to natural gas reduced to possession and subsequently stored in natural reservoir, 94 ALR2d 543.

Development or operation for oil or gas within terms of habendum clause extending primary term while the premises are being "developed or operated," 96 ALR2d 322. "Shut-in royalty" payment provisions in oil and gas leases, 96 ALR2d 345.

Rights of parties to oil and gas lease or royalty deed after expiration of fixed term where production temporarily ceases, 100 ALR2d 885.

Right and measure of recovery for breach of obligation to drill exploratory oil or gas wells, 4 ALR3d 284.

Validity of prohibition or regulation of removal or exploitation of oil, minerals, soil, sand, gravel, stone or other natural products within municipal limits, 10 ALR3d 1226.

"Dry hole" as "well" within undertaking to drill well, 15 ALR3d 450.

Construction of oil and gas lease as to the lessee's right and duty of geophysical or seismograph exploration or survey, 28 ALR3d 1426.

Liability of one maintaining pipeline for transportation of gas or other dangerous substances for injury or property damage sustained by one using surface, 30 ALR3d 685.

Liability in connection with fire or explosion incident to bulk storage, transportation, delivery, loading or unloading of petroleum products, 32 ALR3d 1169.

Rights, under oil and gas lease, deed or sales contract, to "distillate," "condensate" or "natural gasoline," 38 ALR3d 983.

Meaning of "paying quantities" in oil and gas lease, 43 ALR3d 8.

Validity, construction and application of entirety clause in gas and oil lease, 48 ALR3d 706.

Duty and liability as to plugging oil or gas well abandoned or taken out of production, 50 ALR3d 240.

Liability of oil and gas lessee or operator for injuries to or death of livestock, 51 ALR3d 304.

What constitutes reasonably necessary use of the surface of the leasehold by a mineral owner, lessee or driller under an oil and gas lease or drilling contract, 53 ALR3d 16.

Right to partition of overriding royalty interest in oil and gas leasehold, 58 ALR3d 1052.

Assertion of statutory mechanic's or materialman's lien against oil and gas produced or aginst proceeds attributable to oil and gas sold, 59 ALR3d 278.

Grant, lease, exception or reservation of oil and/or gas rights as including oil shale, 61 ALR3d 1109.

58 C.J.S. Mines and Minerals 88 1 to 3.

ARTICLE 1. IN GENERAL

§ 30-5-101. Definitions.

- (a) As used in this act unless the context otherwise requires:
 - (i) The term "waste" means and includes:
 - (A) Physical waste, as that term is generally understood in the oil and gas industry;
 - (B) The inefficient, excessive or improper use, or the unnecessary dissipation of, reservoir energy;
 - (C) The inefficient storing of oil or gas;
 - (D) The locating, drilling, equipping, operating, or producing of any oil or gas well in a manner that causes, or tends to cause, reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations, or that causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas;
 - (E) The production of oil or gas in excess of (I) transportation or storage facilities; (II) the amount reasonably required to be produced in the proper drilling, completing, or testing of the well from which it is produced, or oil or gas otherwise usefully utilized: except gas produced from an oil well pending the time when with reasonable diligence the gas can be sold or otherwise usefully utilized on terms and conditions that are just and reasonable;
 - (F) Underground or aboveground waste in the production or storage of oil, gas, or condensate, however caused, and whether or not defined in other subdivisions hereof; and
 - (G) The flaring of gas from gas wells except that necessary for the drilling, completing or testing of the well;
 - (H) The drilling of any well not in conformance to a well density and spacing program fixed by the commission or other agency, state or federal, as to any field or pool during a national emergency when casing or other materials necessary to the drilling and operation of wells are rationed or in short supply.
 - (ii) "Commission" means the Wyoming oil and gas conservation commission herein created to carry out the provisions of this act;
 - (iii) The word "pool" shall mean an underground reservoir containing a common accumulation of oil or gas, or both. Each zone of a general structure, which zone is completely separated from any other zone in the structure, is covered by the word "pool" as used herein;
 - (iv) "Person" means and includes any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any department, agency, or instrumentality of the state or of any governmental subdivision thereof; the masculine gender, in referring to a person, includes the feminine and the neuter genders;

(v) "Owner" means the person who has the right to drill into and produce from a pool and to appropriate the oil or gas he produces therefrom either for himself or others or for himself and others:

(vi) "Producer" means the owner of a well or wells capable of producing

oil or gas or both:

(vii) The word "oil" shall mean crude petroleum oil and any other hydrocarbons, regardless of gravities, which are produced at the well in liquid form by ordinary production methods, and which are not the result of condensation of gas before or after it leaves the reservoir. The word "gas" shall mean all natural gases and all hydrocarbons not defined herein as oil:

(viii) The word "and" includes the word "or," and the use of the word "or" includes the word "and." The use of the plural includes the singular, and the

use of the singular includes the plural;

(ix) "Correlative rights" shall mean the opportunity afforded the owner of each property in a pool to produce, so far as it is reasonably practicable to do so without waste, his just and equitable share of the oil or gas, or both, in the pool. (Laws 1951, ch. 94, § 13; W.S. 1957, § 30-216; Laws 1967, ch. 167, § 1; 1971, ch. 11, §§ 1, 2.)

Meaning of "this act". - The words "this act" refer to ch. 94, Laws 1951, compiled (as amended) as §§ 30-5-101 to 30-5-104, 30-5-108 to 30-5-119.

Effective date. - Section 7, ch. 11, Laws 1971. makes the act effective from and after passage. Approved February 8, 1971.

For analysis of 1969 and 1971 amendments to article, see Inexco Oil Co. v. Oil & Gas Conservation Comm'n, 490 P.2d 1065 (Wyo. 1971).

Quoted in Pan Am. Petroleum Corp. v. Wyoming Oil & Gas Conservation Comm'n, 446? P.2d 550 (Wyo. 1968); Mitchell v. Simpson, 493 P.2d 399 (Wyo. 1972).

§ 30-5-102. Waste prohibited; power of commission to allocate allowable production.

(a) The waste of oil and gas or either of them in the state of Wyoming as in

this act defined is hereby prohibited.

(b) Whenever in order to prevent waste the commission limits the total amount of oil and gas which may be produced in any pool in this state to an amount less than that amount which the pool could produce if no restriction was imposed, the commission shall allocate or distribute the allowable production among the several wells or producing properties in the pool on a reasonable basis. preventing or minimizing reasonably avoidable drainage from each developed area not equalized by counter-drainage, so that each property will have the opportunity to produce or to receive its just and equitable share, subject to the reasonable necessities for the prevention of waste. (Laws 1951, ch. 94, § 1; W.S. 1957, § 30-217; Laws 1967, ch. 167, § 2.)

Meaning of "this act". - See note to § 30-5-101.

ALR2d and C.J.S. references. - Waste

through oil or gas operations on other lands, rights and remedies in respect of, 4 ALR2d 198. 58 C.J.S. Mines and Minerals § 229.

- § 30-5-103. Composition of oil and gas conservation commission; terms of office; travel expenses; chairman; quorum; meetings and hearings generally; powers and duties of state oil and gas supervisor as ex officio director of oil and gas conservation; duties of attorney general and county attorneys as legal advisors.
- (a) The governor, commissioner of public lands, the state geologist, and two (2) additional members from the public at large who shall be appointed by the governor, by and with the consent of the state senate and shall be citizens and residents of the state of Wyoming and shall be qualified to serve the oil and gas industry of this state, shall comprise the commission. The terms of the two (2) members appointed by the governor shall be for two (2) years except that, of the initially appointed members, one (1) designated by the governor, shall serve for one (1) year.
- (b) Each member of the commission not otherwise in full time employment of the state, shall receive the same allowances as other state officials and employees as set forth in section 9-13, Wyoming Statutes 1957 [§ 9-1-114], as amended while attending and traveling to and from meetings of the commission, said fees and expenses to be paid from the funds of the Wyoming conservation commission.
- (c) The governor shall serve as chairman of the Wyoming oil and gas conservation commission. The commission shall meet or hold hearings at such times and places as may be found by the commission to be necessary to carry out its duties. Three (3) members of the board shall constitute a quorum.
- (d) The state oil and gas supervisor shall be ex officio the director of oil and gas conservation, and as such shall be charged with the duty of enforcing this act and all rules, regulations and orders promulgated by the commission. The director of oil and gas conservation with the concurrence of the commission shall have the authority, and it shall be his duty, to employ all personnel necessary to carry out the provisions of this act. The director of oil and gas conservation shall be ex officio secretary of the Wyoming oil and gas conservation commission and shall keep all minutes and records of the commission.
- (e) The attorney general shall be attorney for the commission; provided, that in cases of emergency, the commission may call upon the county attorney for the county of Laramie or the county attorney of the county in which the action is to be brought or defended to represent the commission until such time as the attorney general may take charge of the litigation and upon request, or with the consent of the attorney general, the commission may retain additional counsel to assist the attorney general, and for such purpose may employ any funds available under this act. Any member of the commission, or the secretary thereof, shall have power to administer oaths to any witness in any hearing,

investigation, or proceeding contemplated by this act, or by any other law of this state relating to the conservation of oil and gas. (Laws 1951, ch. 94, § 12; W.S. 1957, § 30-218; Laws 1965, ch. 174, § 1; 1967, ch. 111, § 1; 1971, ch. 27, § 9.)

Cross references. — As to officers authorized to administer oaths generally, see § 1-2-102. As to the oath and bond required of state officers and employees, see §§ 9-2-901 to 9-2-905. As to state oil and gas supervisor, see § 30-5-108.

Meaning of "this act". - See note to § 30-5-101.

Effective date. — Section 23, ch. 27, Laws 1971, makes the act effective July 1, 1971.

§ 30-5-104. Powers and duties of commission.

(a) The Wyoming oil and gas conservation commission, herein called "the commission," has jurisdiction and authority over all persons and property, public and private, necessary to effectuate the purposes and intent of this act.

(b) The commission has authority and it is its duty to make investigations to determine whether waste exists or is imminent, or whether other facts exist, which justify or require action by it hereunder. The commission is authorized to enter orders following any investigatory hearings if properly noticed to operators, producers and processors under the provisions of the Wyoming Administrative Procedure Act [§§ 9-4-101 to 9-4-115] and the rules of the commission.

(c) The commission shall make rules, regulations, and orders, and shall take other appropriate action, to effectuate the purposes and intent of this act.

(d) The commission has authority:

(i) To require:

 (A) Identification of ownership of wells, producing leases, tanks, plants and drilling structures;

(B) The making and filing of reports, well logs, and directional surveys; provided, however, that logs of exploratory or "wildcat" wells marked confidential shall be kept confidential for six (6) months after the filing thereof, unless the owner gives written permission to release such logs at an earlier date;

(C) The drilling, casing, and plugging of wells in such manner as to prevent the escape of oil or gas out of one (1) stratum into another, the intrusion of water into an oil and gas stratum, the pollution of fresh water supplies by oil, gas, or salt water, and to prevent blowouts, cavings, seepages, and fires;

(D) The furnishing of a reasonable bond with good and sufficient surety, conditioned for the performance of the duty to plug each dry or abandoned well or the repair of wells causing waste;

(E) The operation of wells with efficient gas-oil and water-oil ratios, and to fix these ratios;

(F) Gauging or other measuring of oil and gas to determine the quantity and quality thereof;

(G) That every person who produces oil or gas in this state shall keep and maintain for a period of five (5) years within this state complete and accurate record of the quantities thereof, which records or certified copies thereof shall be available for examination by the commission or its agents at all reasonable times.

(ii) To regulate, for conservation purposes:

(A) The drilling, producing, and plugging of wells;

(B) The shooting and chemical treatment of wells;

(C) The spacing of wells;

(D) Disposal of salt water, nonpotable water, and oil-field wastes;

(E) The contamination or waste of underground water.

(iii) To classify wells as oil or gas wells for purposes material to the

interpretation or enforcement of this act;

(iv) When required, in order to protect correlative rights, to restrict or limit the production of oil and gas from any well which is allowed, after the effective date of this act, as an exception to the location requirements of or as an additional well permitted under any order of the commission establishing drilling units for a pool or part thereof or of any general well spacing rule or order adopted by the commission for conservation purposes, upon such terms and conditions as the commission may determine, upon the commission's own motion or upon application of any interested person and after notice and hearing as provided by chapter 6, Wyoming Statutes 1957 [§§ 30-5-101 to 30-5-204], as amended, and by the commission's rules. (Laws 1951, ch. 94, § 2; W.S. 1957, § 30-219; Laws 1969, ch. 139, § 1; 1971, ch. 11, § 3.)

Meaning of "this act". - See note to \$ 30-5-101.

Effective dates. — Section 4, ch. 139, Laws 1969, makes the act effective from and after passage. Approved March 3, 1969.

Section 7, ch. 11, Laws 1971, makes the act effective from and after passage. Approved

February 8, 1971.

Conservation measures are permissible. — The 1971 amendment made it clear that, in order to prevent waste, conservation measures were permissible. Inexco Oil Co. v. Oil & Gas Conservation Comm'n, 490 P.2d 1065 (Wyo. 1971).

Commission given authority over all persons necessary for effectuation of powers.

— In order to effectuate its powers under subsection (f) of § 30-5-109, the oil and gas conservation commission was given jurisdiction and authority over all persons necessary for that effectuation. Mitchell v. Simpson, 493 P.2d 399 (Wyo. 1972).

Applied in Marathon Oil Co. v. Pan American Petroleum Corp., 473 P.2d 575 (Wyo. 1970).

Law reviews. — See article, "Fieldwide Unitization in Wyoming," 7 Land & Water L. Rev. 433 (1972).

For comment, "Secondary Recovery of Oil and Gas — The Rule of Positive Dominion," see 9 Land & Water L. Rev. 457 (1974).

§ 30-5-105. Hearings; conducted by examiners.

In addition to the powers and authority, either express or implied, granted to the Wyoming oil and gas conservation commission by virtue of the statutes of the state of Wyoming, the commission is hereby authorized and empowered in prescribing its rules of order or procedure in connection with hearings or other proceedings before the commission to provide for the appointment of one (1) or more examiners to conduct a hearing or hearings with respect to any matter properly coming before the commission and to make reports and recommendations to the commission with respect thereto. Any member of the commission, or its staff or any other person designated by the commission may serve as an examiner. The commission may also provide for additional compensation to be paid to a member of the commission appointed from the public at large or any other person designated by the commission for services performed as an examiner at the same rate as the at-large members of the commission are presently compensated. The commission shall promulgate rules and regulations with regard to hearings to be conducted before examiners which shall provide for rehearing before the commission, upon the request of any interested party, of any matter heard before an examiner. The commission may enter orders based upon the reports and recommendations of its examiners. If such an order grants the request of an applicant, and no objection to the granting thereof has been filed or made before or during the hearing before the examiner, said order shall become effective immediately. If such an order denies the request of the applicant, in whole or in part, or if a timely protest to the granting of an application is filed or made, said order shall not become effective until: (a) the time prescribed by rule for the making of a request for rehearing before the commission has expired without any such request having been made or (b) all interested parties have waived their right to request a rehearing, or (c) if timely request for rehearing is made, the commission after rehearing shall affirm, revoke or modify such order. After an order based upon a hearing conducted by an examiner has become effective, it shall have the same force and effect as if said hearing had been conducted before the members of said commission. (Laws 1965, ch. 175, § 1; 1971, ch. 6 § 1.)

Law review. — See article, "Practice Before Commission," 10 Land & Water L. Rev. 353 the Wyoming Oil and Gas Conservation (1975).

§ 30-5-106. Same; when held before commission.

Notwithstanding any provision of this act [§§ 30-5-105 to 30-5-107], or any rule of the commission adopted pursuant to the powers granted to it by this act, the hearing on any matter or proceeding shall be held before the commission (a) if the commission in its discretion desires to hear the matter, or (b) if the application or motion so requests, or (c) if the matter is initiated on the motion of the commission for enforcement of any rule, regulation, order, or statutory provision, or (d) if any party who may be affected by the matter or proceeding files with the commission more than three (3) days prior to the date set for the hearing on the matter or proceeding a written objection to such matter or proceeding being heard before an examiner, or (e) if the matter or proceeding is for the purpose of amending, removing or adding a statewide rule. (Laws 1965, ch. 175, § 2.)

§ 30-5-107. Same; sections 30-5-105 to 30-5-107 subordinate to Administrative Procedure Act.

This act [§§ 30-5-105 to 30-5-107] shall be supplemental but subordinate to the Wyoming Administrative Procedure Act (Original House Bill No. 196, 38th Legislature) [§§ 9-4-101 to 9-4-115]. (Laws 1965, ch. 175, § 3.)

§ 30-5-108. Appointment, duties, etc., of state oil and gas supervisor; authority of commission to appoint other employees; payment of traveling and living expenses.

To enable the commission to carry out its duties and powers under the laws of this state with respect to conservation of oil and gas, and to enforce the rules and regulations so prescribed, the commission shall appoint one (1) chief administrator who shall be a qualified and registered professional petroleum engineer or petroleum geologist who shall be designated and known as the "State Oil and Gas Supervisor." Such supervisor shall hold office at the pleasure of the commission and shall receive a salary, to be fixed by the commission. The state oil and gas supervisor shall be charged with such duties as are delegated by the commission, and in addition thereto he shall investigate charges and complaints of violation of the laws of this state with respect to conservation of oil and gas, and any order, rules and regulation of the commission made in connection therewith, and report concerning all such violations to the commission. The commission may at any time, when it finds that the public interest will be served thereby appoint such other employees as are found to be necessary, to assist the commission and the state oil and gas supervisor in the discharge of their respective duties. All employees or assistants authorized by this act shall be paid their necessary traveling and living expenses when traveling on official business, at such rates and within such limits as may be fixed by the commission, subject to existing law. (Laws 1921, ch. 157, § 2; R.S. 1931, § 78-302; Laws 1933, ch. 81, § 2; 1937, ch. 50, § 1; 1945, ch. 124, § 1; C.S. 1945, § 57-1102; Laws 1949, ch. 65, § 29; 1951, ch. 44, § 23; ch. 94, § 18; W.S. 1957, § 30-220; Laws 1961, ch. 143, § 1; 1965, ch. 174, § 2.)

Cross references. — For constitutional provisions that all state officers shall be paid fixed and definite salaries, and for duty of said officers to pay all fees collected into the proper treasury, see art. 14, §§ 1, 2, Wyo. Const. As to salaries, of officers, not fixed by statute, see § 9-1-104. As to officers or employees of state receiving other compensation, see § 9-1-113. As to powers and duties of state oil and gas supervisor as ex officio director of oil and gas conservation, see § 30-5-103.

Meaning of "this act". - See note to \$ 30-5-101.

Severability. - Section 19, ch. 94, Laws 1951, reads: "If any section, subsection, sentence,

clause, phrase or word of this act is adjudged to be unconstitutional or invalid, such adjudication shall not affect the validity of the remaining portion of this act. The legislature hereby declares that it would have passed this act and each division, section, subsection, sentence, clause, phrase, or word thereof, irrespective of the fact that any one or more sections subsections, sentences, clauses, phrases, or words might be adjudged to be unconstitutional, or for any other reason invalid."

Repealing clause. — Section 16, ch. 94, Laws 1951, repealed all acts or parts of acts inconsistent with that act. Effective dates. — Section 6, ch. 157, Laws 1921 makes the act effective from and after April 1, 1921.

Section 5, ch. 81, Laws 1933, makes the act effective from and after February 18, 1933.

Section 2, ch. 50, Laws 1937, makes the act effective from and after passage. Approved February 17, 1937.

Section 33, ch. 65, Laws 1949, makes the act effective from and after April 1, 1949.

Section 30, ch. 44, Laws 1951, as amended by ch. 101, Laws 1951, makes ch. 44 effective from and after passage and approval. Chapter 44 was approved February 12, 1951, and ch. 101 was approved February 17, 1951.

Section 20, ch. 94, Laws 1951, makes the act effective from and after July 1, 1951.

Ascertainment of damages. — Ample provision appears to have been made by this section and former § 57-1101, W.C.S. 1945, since repealed, for ascertainment of damages to the state by reason of negligent operations of oil and gas wells and right to employ outsiders would seem to be excluded. MacDougall v. Board of Land Comm'rs, 48 Wyo. 493, 49 P.2d 663 (1935).

§ 30-5-109. Rules and regulations governing drilling units.

- (a) Establishment generally. When required, to protect correlative rights or, to prevent or to assist in preventing any of the various types of waste of oil or gas prohibited by this act, or by any statute of this state, the commission, upon its own motion or on a proper application of an interested party, but after notice and hearing as herein provided shall have the power to establish drilling units of specified and approximately uniform size covering any pool.
- (b) Determination of acreage to be embraced. In establishing a drilling unit, the acreage to be embraced within each unit and the shape thereof shall be determined by the commission from the evidence introduced at the hearing but shall not be smaller than the maximum area that can be efficiently drained by one (1) well.
 - (c) Restriction upon number, etc., of wells; exceptions. (i) Subject to the provisions of this act, the order establishing drilling units for a pool or part thereof shall direct that no more than one (1) well shall be drilled to and produced from such pool on any unit, and that the well shall be drilled at a location authorized by the order, with such exception as may be reasonably necessary where the drilling unit is located on the edge of the pool and adjacent to a producing unit, or, for some other reason, the requirement to drill the well at the authorized location on the unit would be inequitable or unreasonable;
 - (ii) The state oil and gas supervisor, upon proper application therefor in accordance with the commission's rules, may grant exceptions from such authorized location for good cause shown, either (A) where written consents to the exception applied for have been given by all owners of drilling units directly or diagonally offsetting the unit for which the exception is requested and, as to lands for which drilling units have not been so established for such pool, by the owners of those lands which would comprise the directly and diagonally offsetting drilling units if the drilling unit order for the pool involved were extended to include such additional lands, in which case said supervisor may grant such exception immediately, or (B) if less than all of such owners have so consented to such exception, where the applicant shows to the satisfaction of said supervisor (by affidavit stating the time, place and manner of mailing, or such further proof as said supervisor may require) that notice of the filing of such

application for exception has been mailed by registered or certified mail with return receipt to all of such owners failing to so consent and that fifteen (15) days have elapsed since the date of such mailing without any of such owners having filed with said supervisor written objections to the granting of such exception, in which case the exception may be granted upon the expiration of such fifteen (15) day period;

- (iii) If any of the owners specified in paragraph (ii) above of this subsection (c), who have not in writing consented to the exception applied for, file written objections to the requested exception with the state oil and gas supervisor during said fifteen (15) day period following the applicant's mailing of the notice of filing, or if for any other reason said supervisor fails to grant such requested exception, then no well shall be drilled on the drilling unit involved except at the location authorized by the order establishing such unit, unless and until the commission shall grant such exception after notice and hearing upon the application as required by this act. Provided that in addition to any other notice required by section 30-223. (d), Wyoming Statutes 1957 [§ 30-5-111 (d)] as amended, or any other provision of law or the commission's rules, the commission shall cause notice of any hearing before it on an application for such exception to be mailed by registered or certified mail with return receipt to each of the owners specified in paragraph (ii) above of this subsection (c) at least ten (10) days before the date of such hearing.
- (d) Decreasing size; permitting additional wells. The commission, upon application, notice, and hearing, may decrease the size of the drilling units or permit additional wells to be drilled within the established units in order to prevent or assist in preventing any of the various types of waste prohibited by this act or in order to protect correlative rights, and the commission may enlarge the area covered by the order fixing drilling units, if the commission determines that the common source of supply underlies an area not covered by the order.
- (e) Violation of order. After an order fixing drilling units has been entered by the commission, the commencement of drilling of any well or wells into any common source of supply for the purpose of producing oil or gas therefrom, at a location other than authorized by the order, is hereby prohibited. The operation of any well drilled in violation of an order fixing drilling units is prohibited.
- (f) Voluntary pooling; generally. When two (2) or more separately owned tracts are embraced within a drilling unit, or when there are separately owned interests in all or a part of the drilling unit, then persons owning such interests may pool their interests for the development and operation of the drilling unit. In the absence of voluntary pooling, the commission, upon the application of any interested person, may enter an order pooling all interests in the drilling unit for the development and operation thereof. Each such pooling order shall be made after notice and hearing and shall be upon terms and conditions that are just and reasonable. Operations incident to the drilling of a well upon any portion of a unit covered by a pooling order shall be deemed for all purposes to be the conduct of such operations upon each separately owned tract in the unit by the several

owners thereof. That portion of the production allocated or applicable to each tract included in a unit covered by a pooling order shall, when produced, be deemed for all purposes to have been produced from such tract by a well drilled thereon.

(g) Each such pooling order shall make provision for the drilling and operation of a well on the drilling unit, and for the payment of the cost thereof, as hereinafter provided. The commission is specifically authorized to provide that the owner or owners drilling or paying for the drilling, or for the operation of a well for the benefit of all shall be entitled to all production from such well which would be received by the owner, or owners, for whose benefit the well was drilled or operated, after payment of royalty as provided in the lease, if any, applicable to each tract or interest, and obligations payable out of production, until the owner or owners drilling or operating the well or both have been paid the amount due under the terms of the pooling order or order settling such dispute. In the event of any dispute as to such cost, the commission shall determine the proper cost. The order shall determine the interest of each owner in the unit, and may provide in substance, that, as to each owner who agrees with the person or persons drilling and operating the well for the payment by the owner of his share of the costs, such owner, unless he has agreed otherwise, shall be entitled to receive, subject to royalty or similar obligations, the share of the production of the well applicable to the tract of the nonconsenting owner, and, as to each owner who does not agree, he shall be entitled to receive from the person or persons drilling and operating the well on the unit his share of the production applicable to his interest after the person or persons drilling and operating said well have recovered the following:

(i) One hundred percent (100%) of each such nonconsenting owner's share of the cost of any newly acquired surface equipment beyond the wellhead connections (including, but not limited to, stock tanks, separators, treaters, pumping equipment and piping), plus one hundred percent (100%) of each such nonconsenting owner's share of the cost of operation of the well commencing with first production and continuing until each such nonconsenting owner's relinquished interest shall revert to it under other provisions in this section, it being intended that each nonconsenting owner's share of such costs and equipment will be that interest which would have been chargeable to each nonconsenting owner had it initially agreed to pay its share of the costs of said well from the beginning of the operation; and

(ii) Two hundred percent (200%) of that portion of the costs and expenses of drilling, reworking, deepening or plugging back, testing and completing, after deducting any cash contributions received and two hundred percent (200%) of that portion of the cost of newly acquired equipment in the well (to and including the wellhead connections), which would have been chargeable to such nonconsenting owner if it had participated therein. (Laws 1951, ch. 94, § 3; W.S. 1957, § 30-221; Laws 1963, ch. 169, § 1; 1965, ch. 174, § 3; 1967, ch. 167, § 3; ch. 224, § 1; 1969, ch. 126, § 1; 1971, ch. 10, § 1.)

Meaning of "this act". — See note to § 30-5-101.

Effective date. — Section 2, ch. 10, Laws 1971, makes the act effective from and after passage.

Approved February 1, 1971.

Initially, the design and purpose of this chapter was to prevent "waste" in the production of oil and gas, and 1 of the means selected for accomplishment of that purpose was the granting of authority to the oil and gas conservation commission to establish, after hearing, "drilling units of specified and approximately uniform shape [now size] covering any pool." Pan American Petroleum Corp. v. Wyoming Oil & Gas Conservation Comm'n, 446 P.2d 550 (Wyo. 1968).

Commission given authority over all persons necessary for effectuation of powers under subsection (f). — In order to effectuate its powers under subsection (f), the oil and gas conservation commission was given jurisdiction and authority over all persons necessary for that effectuation. Mitchell v. Simpson, 493 P.2d 399

(Wyo. 1972).

Commission's power to create drilling unit and order pooling of all interests. — The state oil and gas conservation commission had the right to create a drilling unit in order to prevent or assist in the prevention of waste or to protect correlative rights and, subsequent to the establishment of a drilling unit, to order pooling of all interests, including royalty interests. Mitchell v. Simpson, 493 P.2d 399 (Wyo. 1972).

Subsection (g) does not deal with authority to provide for compulsory pooling. — Subsection (g) of this section does not deal with the authority of the oil and gas conservation commission to establish drilling units or provide for compulsory pooling. Mitchell v. Simpson, 493 P.2d 399 (Wyo. 1972).

Law reviews. — See case note, "Oil and Gas — Damages — Voluntary Unitization — Liability of Operator of Waterflood Project to Non-Joiner. Baumgartner v. Gulf Oil Corporation, 184 Neb. 384, 168 N.W.2d 510 (1969)," 6 Land & Water L. Rev. 577 (1971).

See article, "Fieldwide Unitization in Wyoming," 7 Land & Water L. Rev. 433 (1972).

See article, "Practice Before the Wyoming Oil and Gas Conservation Commission," 10 Land & Water L. Rev. 353 (1975).

C.J.S. reference. — 58 C.J.S. Mines and Minerals §§ 229, 241.

- § 30-5-110. Agreements for waterflooding or other recovery operations, repressuring or pressure-maintenance operations, cycling or recycling operations; operation as a unit of 1 or more pools or parts thereof and pooling of interests in oil and gas therein.
- (a) An agreement for waterflooding or other recovery operations involving the introduction of extraneous forms of energy into any pool, repressuring or pressure-maintenance operations, cycling or recycling operations, including the extraction and separation of liquid hydrocarbons from natural gas in connection therewith, or for carrying any other method of unit or cooperative development or operation of one (1) or more pools or parts thereof, is authorized and may be performed, and shall not be held or construed to violate any of the statutes of this state relating to trusts, monopolies, or contracts and combinations in restraint of trade, and may be submitted to the commission for approval as being in the public interest or reasonably necessary to prevent waste or to protect correlative rights. Approval of such agreement by the commission shall constitute a complete defense to any suit charging violation of any statute of this state relating to trusts, monopolies and combinations in restraint of trade on account of such agreement or on account of operations conducted pursuant thereto. The failure to submit such an agreement to the commission for approval shall not for that reason imply or constitute evidence that such agreement or operations conducted pursuant thereto are in violation of laws relating to trusts, monopolies and combinations in restraint of trade.

- (b) Except when context otherwise requires, the terms used or defined in section 30-216, Wyoming Statutes 1957, Compiled 1967 [§ 30-5-101], shall have the same meaning when used in this act [section].
- (c) Any interested person may file an application with the commission requesting an order providing for the operation as a unit of one (1) or more pools or parts thereof and for the pooling of the interests in the oil and gas in the proposed unit area for the purpose of conducting such unit operation. Such application shall contain:
 - (i) A description of the land and pool, pools or portions thereof proposed to be so operated, termed the "unit area";
 - (ii) The names, as disclosed by the conveyance records of the county or counties in which the proposed unit area is situated, and the status records of the district office of the bureau of land management, of (A) all persons owning or having an interest in the oil and gas in such unit area or the production therefrom including mortgages and the owners of other liens or encumbrances, (B) all owners (as defined in subparagraph (e) of section 30-216, Wyoming Statutes 1957, Compiled 1967 [§ 30-5-101 (a) (v)]) of every tract of land not included within but which immediately adjoins the proposed unit area or a corner thereof, and (C) the addresses of all such persons and owners, if known. If the name or address of any such person or owner is unknown, the application shall so indicate;
 - (iii) A statement of the type of operations contemplated in order to effectuate the purposes of this act [section];
 - (iv) A proposed plan of unitization applicable to the proposed unit area which the applicant considers fair, reasonable and equitable and which shall include provisions for the formula or method of allocating oil and gas produced from the proposed unit area to and among the separately owned tracts within such area, the appointment of a unit operator and the time when the plan is to become effective;
 - (v) A proposed operating plan providing the manner in which the unit will be supervised and managed and costs allocated and paid, unless all owners within the proposed unit area have joined in executing an operating agreement or plan providing for such supervision, management and allocation and payment of costs.
- (d) Upon filing of such application, the commission shall promptly set the matter for hearing, and in addition to the notice, if any, otherwise required by law or the commission's rules, shall cause notice of such hearing, specifying the time and place of hearing, and describing briefly its purpose and the land affected, to be mailed by certified mail at least fifteen (15) days prior to the hearing to all persons whose names and addresses are required to be listed in the application.
- (e) If after considering the application and hearing the evidence offered in connection therewith, the commission shall enter an order setting forth the following described findings and approving the proposed plan of unitization and proposed operating plan, if any, if the commission finds that:

(i) The material allegations of the application are substantially true;

(ii) Such unit operation is feasible, will prevent waste, will protect correlative rights, and can reasonably be expected to increase substantially the ultimate recovery of oil or gas;

(iii) The value of the estimated additional recovery of oil or gas will exceed the estimated additional costs incident to conducting unit operations;

(iv) The oil and gas allocated to each separately owned tract within the unit area under the proposed plan of unitization represents, so far as can be practically determined, each such tract's just and equitable share of the oil or gas in the unit area;

(v) Where the unit embraces less than the whole of a pool, that the portion thereof to be included within the unit area is of such size and shape as may be reasonably required for the successful and efficient conduct of the unitized method or methods of operation for which the unit is created and that the conduct thereof will have no material adverse effect upon the remainder of such pool;

(vi) In case there are owners who have not executed an operating agreement or agreed to the proposed operating plan covering the supervision, management and allocation of payment costs, that such proposed operating plan:

(A) Makes a fair and equitable adjustment among the owners within the unit area for their respective investments in wells, tanks, pumps, machinery, materials and equipment which have contributed to the unit

operations;

(B) Provides for a fair and equitable determination of the cost of unit operations, including capital investment, and establishes a fair and equitable method for allocating such costs to the separately owned tracts and for the payment of such costs by the persons owning such tracts, either directly or out of such person's respective share of unit production;

(C) If necessary, prescribes fair, reasonable and equitable terms and conditions as to time and rate of interest for carrying or otherwise financing any person who is unable to promptly meet his financial

obligations in connection with the unit; and

(D) Provides that each owner shall have a vote in the supervision and conduct of unit operations corresponding to the percentage of costs of unit operations chargeable against the interests of such person;

(E) Provides for fair and equitable terms and conditions for removal of unit operator and for appointment of a successor unit operator.

(f) No order of the commission authorizing the commencement of unit operations shall become effective until such plan of unitization has been signed or in writing ratified or approved by those persons who own at least eighty percent (80%) of the unit production or proceeds thereof that will be credited to royalty and overriding royalty interests which are free of costs, and unless both the plan of unitization and the operating plan, if any, have been signed, or in writing approved or ratified, by those persons who will be required to pay at

least eighty percent (80%) of the cost of unit operations; provided, however, to the extent that overriding royalty interests are in excess of a total of twelve and one-half percent (121/2%) of the production from any tract, such excess interests shall not be considered in determining the percentage of approval or ratification by such cost-free interests. If such consent has not been obtained at the time the commission order is made, the commission shall, upon application, hold such supplemental hearings and make such findings as may be required to determine when and if such consent has been obtained. Notice of such supplemental hearing shall be given by regular mail at least fifteen (15) days prior to such hearing to each person owning interests in the oil and gas in the proposed unit area whose name and address was required by the provisions of section 3 (b) [subsection (c) (ii)] of this act [section] to be listed in the application for such unit operations. If the required percentages of consent have not been obtained within a period of six (6) months from and after the date on which the order of approval is made, such order shall be ineffective and revoked by the commission, unless, for good cause shown, the commission extends that time.

- (g) From and after the effective date of an order of the commission entered under the provisions of this act [section], the operation of any well producing from the unit area defined in the order by persons other than the unit operator or persons acting under the unit operator's authority, or except in the manner and to the extent provided in the plan of unitization approved by such order, shall be unlawful and is hereby prohibited.
- (h) An order entered by the commission under this act [section] may be amended in the same manner and subject to the same conditions as an original order: provided, (i) if such an amendment affects only the rights of owners, then consent to such amendment by those persons who will be credited with unit production or proceeds thereof free of cost shall not be required; and (ii) no amendatory order shall change the percentage for the allocation of oil and gas as established by the original order for any separately owned tract, except with the written consent of all persons owning oil and gas rights in such tracts, nor change the percentage for the allocation of costs as established for any separately owned tract by the original order, except with the written consent of all owners in such tracts.
- (j) Upon application by any interested person, the commission, by order may, in the same manner and subject to the same conditions as an original order, provide for the unit operation of a pool or pools, or parts thereof, that embrace a unit area established by a previous order of the commission or that embrace a unit area previously established by a previous agreement under which waterflooding or other recovery operations involving the introduction of extraneous form of energy into the pool have been conducted. Such order in providing for the allocation of unit production, shall first treat the unit area previously established as a single tract, and the portion of unit production so allocated thereto shall then be allocated among the separately owned tracts included in such previously established unit area in the same proportions as those specified in the previous order or such previous agreement as the case may be.

- (k) All operations, including, but not limited to, the commencement, drilling, or operation of a well upon any portion of the unit area for all purposes shall be deemed to be the conduct of such operations upon each separately owned tract. in the unit area by the owner or owners thereof. The portion of the unit production allocated to a separately owned tract in a unit area shall, when produced, be deemed, for all purposes, to have been actually produced from such tract by a well drilled thereon. Operations conducted pursuant to an order of the commission providing for unit operations shall constitute a fulfillment of all the express or implied obligations of each lease or contract covering lands in the unit area to the extent that compliance with such obligations cannot be had because of the orders of the commission. Whenever the commission enters an order providing for a unit operation, any lease, other than a state or federal lease. which covers lands that are in part within the unit area embraced in any such plan of unitization and that are in part outside of such unit area shall be vertically segregated into separate leases, one (1) covering all formations underlying the lands within such unit area and the other covering all formations underlying the lands outside such unit area, such segregation to be effective as of the anniversary date of such lease next ensuing after the expiration of ninety (90) days from the effective date of unitization; provided, however, that any such segregated lease as to the outside lands shall continue in force and effect for the primary term thereof, but for not less than two (2) years from the date of such segregation and so long thereafter as operations are conducted under the provisions of the lease. If any such lease provides for a lump-sum rental and if rentals become payable under any segregated lease covering the outside land, such lump-sum rental shall be prorated between such segregated leases on an acreage basis.
- (m) The portion of the unit production allocated to any tract, and the proceeds from the sale thereof, shall be the property and income of the several persons to whom, or to whose credit, the same are allocated or payable under the order providing for unit operations.
- (n) No division order or other contract relating to the sale or purchase of production from a separately owned tract shall be terminated by the order providing for unit operations, but shall remain in force and apply to oil and gas allocated to such tract until terminated in accordance with the provisions thereof.
- (o) Except to the extent that the parties affected so agree, no order providing for unit operations shall be construed to result in a transfer of all or any part of the title of any person to the oil and gas rights in any tract in the unit area. All property, whether real or personal that may be acquired for the account of the owners within the unit area, shall be the property of such owners in the proportion that the expenses of unit operations are charged.
- (p) Subject to the limitations set forth in this section, and to such further limitations as may be set forth in the plan of unitization and operating plan, the operator of the unit shall have a first and prior lien for costs incurred pursuant to the plan of unitization and operating plan upon each owner's oil and gas rights and his share of unitized production to secure the payment of such owner's

proportionate part of the costs of developing and operating the unit area. The lien may be established and enforced in the same manner as provided by sections 29-27 through 29-62, Wyoming Statutes 1957, Compiled 1967 [§§ 29-3-101 to 29-3-233]. For such purposes any nonconsenting owner shall be deemed to have contracted with the unit operator for his proportionate part of the cost of developing and operating the unit area. A transfer or conversion of any owner's interest or any portion thereof however accomplished after the effective date of the order creating the unit, shall not relieve the transferred interest of said operator's lien on said interest for the cost and expense of unit operations.

(q) Notwithstanding any other provisions in this act [section] to the contrary, any person who owns an interest in oil or gas within the unit area which is not subject to an oil and gas lease or similar contract, shall, with respect to seven-eighths of such interest, be deemed to be an owner obligated to pay all costs of unit operations attributable to such interest and shall be deemed to be a royalty owner to the extent of one-eighth of such interest free from such costs.

(r) The provisions of section (2) through (15) [subsections (b) through (q)] of

this act [section] shall never be applicable for the purpose of:

(i) Changing the terms of unit agreements under which waterflooding or other recovery operations involving the introduction of extraneous forms of energy into a pool have been conducted prior to the effective date of this act [section] or changing the rights of either any person who has executed or ratified such a preexisting unit agreement or any person who, being qualified to become a party to such a preexisting unit agreement and having received an opportunity to become a party thereto, has failed or refused to execute or ratify such agreement; or

(ii) Subjecting the interest of any person in the oil and gas in the unit area to a unit agreement which allocates unit production to such interest under a formula based solely upon the surface acreage of the separate tracts

within the unit area.

(s) A certified copy of any order of the commission entered under the provisions of this act [section] shall be entitled to be recorded in the office of the register of deeds for the counties where all or any portion of the unit area is located, and such recordation shall constitute notice thereof to all persons.

(t) If any section, subsection, sentence or clause of this act [section] is adjudged to be unconstitutional or invalid, such adjudication shall not affect any other portions of this act [section] which can be given effect without the unconstitutional or invalid provision, and to this end the provisions of this act [section] are severable. (Laws 1951, ch. 94, § 4; W.S. 1957, § 30-222; Laws 1971, ch. 102, §§ 1 to 18.)

Cross reference. — As to trust, monopolies or contracts and combinations in restraint of trade generally, see §§ 40-4-101 to 40-4-123.

Effective date. — Chapter 102, Laws 1971, carried no provision as to its effective date, but was approved February 19, 1971.

Law reviews. - See comment, "Wyoming's

New Unitization Statute," 6 Land & Water L. Rev. 537 (1971).

See article, "Fieldwide Unitization in Wyoming," 7 Land & Water L. Rev. 433 (1972).
For comment, "Secondary Recovery of Oil & Gas — The Rule of Positive Dominion," see 9 Land & Water L. Rev. 457 (1974).

ALR3d reference. — Construction of oil and gas lease provision giving lessee free use of water from lessor's land, 23 ALR3d 1434.

§ 30-5-111. Rules of practice and procedure generally.

- (a) Commission to prescribe. The commission shall prescribe rules and regulations governing the practice and procedure before it.
- (b) Hearing and notice. No rule, regulation, or order, or amendment thereof, except as otherwise provided in this act, shall be made by the commission without a hearing upon at least ten (10) days notice. The hearing shall be held at such time and place as may be prescribed by the commission, and any interested person shall be entitled to be heard.
- (c) Emergency order not to require notice; effective date; time order to remain effective. When an emergency requiring immediate action is found by the commission to exist, it is authorized to issue an emergency order without notice or hearing, which shall be effective upon promulgation. No emergency order shall remain effective for more than fifteen (15) days.
- (d) Notice of hearings. Notice of all hearings before the commission shall be given by the commission by one (1) publication in a newspaper of general circulation in Natrona county, and by one (1) publication in a newspaper of general circulation in the county where the land affected, or some part thereof, is situated. In all cases where there is an application for the entry of a pooling order, the commission, in addition to such publication notice, shall cause notice of the hearing to be mailed to all owners whose interests are sought to be pooled. In all cases where a complaint is made by the commission, or by the state oil and gas supervisor or by any party that any provision of this act, or any rule, regulation or order of the commission is being violated, notice of the hearing on such complaint shall be served on the parties charged with such violation by any officer authorized by law to serve summons in civil actions or by an agent authorized and directed by the commission or its secretary, in the same manner as is provided in the code of civil procedure for service of process in civil actions in the district courts of this state; proof of such service by an officer shall be in the form provided by law with respect to civil process and proof of such service by an agent shall be by such agent's affidavit.
- (e) All notices of hearings required to be given by the commission shall issue in the name of the state, and be signed by a member of the commission or its secretary, and shall specify the style and number of the proceeding, the time and place of hearing, and shall briefly state the purpose of the proceeding.
- (f) In addition to the notice herein provided the commission may, by rule, regulation or order, require such additional notice to be given in such manner and for such time as it may deem necessary and proper.
- (g) Orders open to public inspection. All rules, regulations, and orders issued by the commission shall be in writing, shall be entered in full in books to be kept by the commission for that purpose, shall be indexed, and shall be public records open for inspection at all times during reasonable office hours. Except for orders establishing or changing rules of practice and procedure, all orders

made and published by the commission shall include and be based upon written findings of fact, which said findings of fact shall be entered and indexed as public records in the manner hereinbefore provided. A copy of any rule, regulation, or order certified by the commission or its secretary shall be received in evidence in all courts in this state with the same effect as the original.

(h) Hearing; order; right of persons to apply to commission to repeal, amend or modify order. — The commission may act upon its own motion, or upon the petition of any interested person. On the filing of a petition for a hearing concerning any matter within the jurisdiction of the commission, it shall promptly fix a date for a hearing thereon and shall cause notice of the hearing to be given. The hearing shall be held without undue delay after the filing of the petition. The commission shall enter its order within thirty (30) days after the hearing. Any person affected by any order of the commission shall have the right at any time to apply to the commission to repeal, amend, modify, or supplement the same. (Laws 1951, ch. 94, § 5; W.S. 1957, § 30-223; Laws 1967, ch. 224, § 2.)

Meaning of "this act". - See note to § 30-5-101.

Law reviews. — See comment, "Secondary Recovery Operations — Protection of Correlative Rights," 2 Land & Water L. Rev. 129 (1967). See article, "Practice Before the Wyoming Oil and Gas Conservation Commission," 10 Land & Water L. Rev. 353 (1975).

§ 30-5-112. Summoning witnesses and production of record; abridgment of rights, etc.; failure to testify.

- (a) Generally. The commission shall have the power to summon witnesses, to administer oaths, and to require the production of records, books, and documents for examination at any hearing or investigation conducted by it. No person shall be excused from attending and testifying, or from producing books, papers, and records before the commission or a court, or from obedience to the subpoena of the commission or a court, on the ground or for reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; provided, that nothing herein contained shall be construed as requiring any person to produce any books, papers, or records, or to testify in response to any inquiry not pertinent to some question lawfully before the commission or court for determination. No natural person shall be subjected to criminal prosecution or to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which, in spite of his objection, he may be required to testify or produce evidence, documentary or otherwise, before the commission or court, or in obedience to a subpoena; provided, that no person testifying shall be exempted from prosecution and punishment for perjury committed in so testifying.
- (b) Act not to abridge rights of persons; suit to enjoin threatened violation of act; notice; commission made party to suit. — Nothing in this act, and no suit by or against the commission, and no violation charged or asserted against any person under any provisions of this act, or any rule, regulation or order issued

hereunder, shall impair or abridge or delay any cause of action for damages which any person may have or assert against any other person violating any provision of this act, or any rule, regulation, or order issued thereunder. Any person so damaged by the violation may sue for and recover such damages as he otherwise may be entitled to receive. In the event the commission shall fail to bring suit to enjoin any actual or threatened violation of this act, or of any rule, regulation or order made hereunder, then any person or party in interest adversely affected and who has notified the commission in writing of such violation or threat thereof and has requested the commission to sue, may, to prevent any or further violation, bring suit for that purpose in the district court of any county in which the commission could have brought suit. If, in such suit, the court holds that injunctive relief should be granted, then the commission may be made a party and the court may in its discretion order the commission to be substituted for the person who brought the suit or the injunction issue as to the court may be deemed meet and proper in the premises.

(c) Failure to testify before commission. — In case of failure or refusal on the part of any person to comply with a subpoena issued by the commission, or in case of the refusal of any witness to testify as to any matter regarding which he may be interrogated, any district court in the state, upon the application of the commission, may in term time or vacation issue an attachment for such person and compel him to comply with such subpoena, and to attend before the commission and produce such records, books and documents for examination, and to give his testimony. Such court shall have the power to punish for contempt as in the case of disobedience to a like subpoena issued by the court, or for refusal to testify therein. (Laws 1951, ch. 94, § 6; W.S. 1957, 30-224.)

Cross reference. — As to officers authorized to administer oaths generally, see § 1-2-102.

Meaning of "this act". — See note to § 30-5-101.

Law review. — See article, "Practice Before the Wyoming Oil and Gas Conservation Commission," 10 Land & Water L. Rev. 353 (1975).

§ 30-5-113. Time within which suit to be brought by person adversely affected; appeals, etc.

- (a) Generally. Any person adversely affected by and dissatisfied with any rule, regulation, or order made or issued hereunder, may within ninety (90) days after the entry thereof bring a civil suit or action against the commission or the state oil and gas supervisor or both in the district court of Laramie county, or in the district court of the county in which the complaining person resides, or in the U.S. district court for Wyoming, (if it otherwise has jurisdiction) and not elsewhere, to test the validity of any provision of this act, or rule, regulation, or order, and to secure an injunction and other appropriate relief, including all rights to appeal under applicable rules of civil procedure. Any case on appeal shall have precedence over any other case then pending in such court.
- (b) Appeal from decision of commission. In addition to the foregoing, any person who may feel himself aggrieved by any rule, regulation, order or decision of the commission may have an appeal as provided by law, with respect to

appeals from decisions of the board of land commissioners. All proceedings on appeal, except as herein otherwise provided, shall be under the provisions of the code of civil procedure as in other civil cases.

(c) Appeal to supreme court. — Any person shall have the right to appeal from a decree or judgment of the trial court to the supreme court in accordance with the general laws of this state relating to procedure in appeals in civil cases.

- (d) Bond to be filed before order becomes effective. No temporary restraining order or injunction of any kind against the commission or its agents, employees, or representatives, or the attorney general, shall become effective until the plaintiff shall execute a bond in such amount and upon such conditions as the court may direct, and such bond is approved by the judge of the court and filed with the clerk of the court. The bond shall be made payable to the state of Wyoming, and shall be for the use and benefit of all persons who may be injured by the acts done under the protection of the restraining order or injunction, if the rule, regulation or order is upheld. No suit on the bond may be brought after six (6) months from the date of the final determination of the suit in which the restraining order or injunction was issued.
- (e) Appeals expedited; matters tried de novo; court not bound by commission's findings. A suit or an appeal involving a test of the validity of any provision of this act, or a rule, regulation, or order shall be advanced for trial and be determined as expeditiously as feasible, and no postponement or continuance thereof shall be granted unless deemed imperative by the court. The court shall consider all the evidence, shall not be bound by any finding of fact or conclusion of law made by the commission, shall hold a trial de novo, shall pass on the credibility of witnesses and the weight to be given to their testimony, and shall determine independently all issues of fact and of law with respect to the validity and reasonableness of the provision, rule, regulation, or order complained of.
- (f) One (1) year limitation in bringing suit. No suit, action or other proceeding based upon a violation of this act or any rule, regulation or order of the commission hereunder shall be commenced or maintained unless same shall have been commenced within one (1) year from the date of the alleged violation. (Laws 1951, ch. 94, § 7; W.S. 1957, § 30-225; Laws 1965, ch. 174, § 4.)

Cross reference. — As to appeals from board of land commissioners, see \$\$ 36-2-201 to Minerals \$ 240.

Meaning of "this act". - See note to § 30-5-101.

§ 30-5-114. Maintenance of suits by commission for violation or threatened violation of act; restraining violation; recovery of penalties.

Whenever it appears that any person is violating or threatening to violate any provision of this act or any rule, regulation, or order of the commission, the commission shall bring suit in the name of the state against such person in the district court in the county of the residence of the defendant, or in the county

of the residence of any defendant if there be more than one (1) defendant, or in the county where the violation is alleged to have occurred, or is threatened, to restrain such person from continuing such violation or from carrying out the threat of violation. In such suit the commission may seek to recover penalties for violations. Upon the filing of any such suit, summons issued to such person may be directed to the sheriff of any county in this state for service by such sheriff or a deputy. In any such suit, the court may grant injunctions, prohibitory and mandatory, including temporary restraining orders and temporary injunctions. Appeals may be taken from any judgment, decree or order in any such suit as provided in the code of civil procedure and all proceedings in the trial and appellate court shall have precedence over any other proceedings then pending in such courts. (Laws 1951, ch. 94, § 9; W.S. 1957, § 30-226.)

Cross reference. — For rules of civil C.J.S. reference. — 58 C.J.S. Mines and procedure governing appeals, see Rule 72 et Minerals § 242. seq., W.R.C.P.

Meaning of "this act". — See note to § 30-5-101.

§ 30-5-115. Notice of intention and permit required to drill well; fee.

A person desiring to drill a well in search of oil or gas shall notify the commission of such intent on a form prescribed by the commission, and shall pay a fee of twenty-five dollars (\$25.00) for a permit for each well. Upon receipt of notification and the fee, the commission shall promptly issue such person a permit to drill, unless the drilling of the well is contrary to law, or to a rule, regulation, or order of the commission. The drilling of a well is prohibited until a permit to drill is obtained in accordance with the provisions of this act. (Laws 1951, ch. 94, § 10; W.S. 1957, § 30-227.)

Meaning of "this act". — See note to \$ 30-5-101.

There is no law, rule, regulation, or order preventing issuance of the permit. Marathon Oil Co. v. Pan American Petroleum Corp., 473 P.2d 575 (Wyo. 1970).

C.J.S. reference. — 58 C.J.S. Mines and Minerals § 230.

§ 30-5-116. Disposition of moneys; payment of expenses; charge assessed on value of oil or gas produced.

- (a) All moneys collected by the commission or as civil penalties under the provisions of this act shall be remitted to the state treasurer for deposit in an account within the earmarked revenue fund. Expenses incident to the administration of this act shall be paid out of the account.
- (b) There is hereby levied and assessed on the value at the well of all oil and gas produced, saved and sold or transported from the premises in Wyoming where produced a charge not to exceed two-fifths of one (1) mill on the dollar. The commission shall by order fix the amount of such charge in the first instance and may, from time to time, reduce or increase the amount thereof as, in its

judgment, the expenses chargeable may require: provided that the amounts fixed by the commission shall not exceed the limit hereinabove prescribed. It shall be the duty of the commission to make collection of such assessments. All moneys so collected shall be remitted to the state treasurer for deposit in an account within the earmarked revenue fund and shall be used exclusively to pay the costs and expenses incurred in connection with the administration and enforcement of this act (chapter 94, Session Laws of Wyoming, 1951). The persons owning an interest (working interest, royalty interest, payments out of production, or any other interest) in the oil and gas, or in the proceeds thereof. subject to the charge hereinabove provided for shall be liable for such charge in proportion to their ownership at the time of production. The charge so assessed and fixed shall be payable monthly, and the sum so due shall be remitted to the commission, on or before the twenty-fifth of the month next following the month in which the charge accrued, by the producer on behalf of himself and all other interested persons; provided however in the event of a sale of oil or gas within this state said charge shall be payable by the purchaser thereof. Any such charge not paid within the time herein specified shall bear interest at the rate of one percent (1%) per month from the date of delinquency until paid, and such charge together with the interest shall be a lien upon the oil or gas against which the same is levied and assessed. The person remitting the charge as herein provided is hereby authorized, empowered and required to deduct from any amounts due the persons owning an interest in the oil and gas or in the proceeds thereof at the time for production the proportionate amount of such charge before making payment to such persons. This subsection (b) shall apply to all lands in the state of Wyoming, anything in section 15 of chapter 94, Session Laws of Wyoming, 1951 [§ 30-5-118], to the contrary notwithstanding: provided, however, there shall be exempted from the charge hereinabove levied and assessed the following, to wit:

- (i) The interest of the United States of America and the interest of the state of Wyoming and the political subdivisions thereof in any oil or gas or in the proceeds thereof;
- (ii) The interest of any Indian or Indian tribe in any oil or gas or in the proceeds thereof, produced from land subject to the supervision of the United States;
- (iii) Oil and gas used in producing operations or for repressuring or recycling purposes. (Laws 1951, ch. 94, § 11; 1953, ch. 88, § 1; W.S. 1957, § 30-228; Laws 1973, ch. 245, § 5; 1974, ch. 16, § 2.)

Cross reference. — As to interest rates generally, see § 40-1-107(e).

Meaning of "this act". - See note to \$ 30-5-101.

Appropriation, — Section 4, ch. 245. Laws 1973, provides: "If an appropriation is made to an agency from a fund abolished or affected by this act, the appropriation shall be made from the fund into which the preexisting fund was consolidated."

Effective dates. — Section 20, ch. 94, Laws 1951, makes the act effective from and after July 1, 1951.

Section 2, ch. 88, Laws 1953, makes the act effective from and after July 1, 1953.

Section 6, ch. 245, Laws 1973, makes the act effective on and after July 1, 1973.

Section 8, ch. 16, Laws 1974, makes the amendment to this section effective July 1, 1975.

Law review. — See article, "Mineral Taxation: The Wyoming Problem as Compared with Other Western States," 3 Land & Water L. Rev. 535

§ 30-5-117. Construction of act generally.

It is not the intent or purpose of this law to require, permit, or authorize the commission or supervisor to prorate or distribute the production of oil and gas among the fields of Wyoming on the basis of market demand. This act shall never be construed to require, permit or authorize the commission, the supervisor, or any court to make, enter or enforce any order, rule, regulation or judgment requiring restriction of production of any pool or of any well except to prevent waste and to protect correlative rights. (Laws 1951, ch. 94, § 14; W.S. 1957, § 30-229; Laws 1969, ch. 139, § 2; 1971, ch. 11, § 4.)

Meaning of "this law" and "this act". — The words "this law" and "this act" refer to ch. 94, Laws 1951. See note to § 30-5-101.

Effective dates. — Section 4, ch. 139, Laws 1969, makes the act effective from and after passage, Approved March 3, 1969.

Section 7, ch. 11, Laws 1971, makes the act effective from and after passage. Approved February 8, 1971. Conservation measures are permissible.— The 1971 amendment made it clear that, in order to prevent waste, conservation measures were permissible. Inexco Oil Co. v. Oil & Gas Conservation Comm'n, 490 P.2d 1065 (Wyo. 1971).

Law review. — For discussion of this section, see 13 Wyo. L.J. 7 (1958).

§ 30-5-118. Applicability of act.

The state of Wyoming being a sovereign state and not disposed to jeopardize or surrender any of its sovereign rights, this act shall apply to all lands in the state of Wyoming lawfully subject to its police powers; provided, it shall apply to lands of the United States or to lands subject to the jurisdiction of the United States only to the extent that control and supervision of conservation of oil and gas by the United States on its lands shall fail to effect the intent and purposes of this act and otherwise shall apply to such lands to such extent as an officer of the United States having jurisdiction, or his duly authorized representative, shall approve any of the provisions of this act or the order or orders of the commission which affects such lands; and, furthermore, the same shall apply to any lands committed to a unit agreement approved by the secretary of the interior or his duly authorized representative, except that the commission may, under such unit agreements, suspend the application of this act or any part of this act so long as the conservation of oil and gas and the prevention of waste as in this act provided is accomplished thereby but such suspension shall not relieve any operator from making such reports as are necessary or advised to be fully informed as to operations under such agreements and as the commission may require under this act. (Laws 1951, ch. 94, § 15; W.S. 1957, § 30-230.)

Meaning of "this act". — See note to § 30-5-101.

§ 30-5-119. Penalties for violation of act, orders of commission, etc.

- (a) Forfeiture and civil penalty for violation of act, rule, regulation or order. - Any person who violates any provision of this act or who after either actual or constructive notice thereof from the commission or its representative violates any rule, regulation, or order of the commission shall forfeit to the Wyoming oil and gas conservation fund an amount of not more than five hundred dollars (\$500.00) for each act of violation to be fixed and determined by the commission after notice and opportunity for hearing. Any person who knowingly and willfully violates any provision of this act or who after notice thereof from the commmission or its representatives knowingly and willfully violates any rule, regulation, or order of the commission shall be subject to a civil penalty to be remitted and payable into the account of the Wyoming oil and gas conservation commission fund upon order of the district court of the county in which the defendant resides, or in which any defendant resides if there be more than one defendant, or in the district court of any county in which the violation occurred, or in the district court of Laramie county, Wyoming, which said civil penalty shall not exceed the sum of one thousand dollars (\$1,000.00) for each act of violation and for each day that such violation continues.
- (b) Criminal penalty for falsifying records, etc. Any person who, for the purpose of evading this act or any rule, regulation, or order of the commission shall make or cause to be made any false entry in any report, record, account, or memorandum, required by this act, or by any such rule, regulation, or order, or shall omit, or cause to be omitted, from any such report, record, account, or memorandum, full, true, and correct entries as required by this act, or by any such rule, regulation, or order, or shall remove from this state or destroy, mutilate, alter, or falsify any such record, account, or memorandum, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than five thousand dollars (\$5,000.00) or imprisonment for a term not exceeding six (6) months, or to both such fine and imprisonment.

(c) Penalty for aiding or abetting the falsification of records, etc. — Any person knowingly aiding or abetting any other person in the violation of any provision of this act, or any rule, regulation, or order of the commission shall be subject to the same penalty and punishment as that prescribed by this act for the violation by such other person.

- (d) The penalties provided in this section for violations as prescribed herein shall be recoverable by suit filed by the attorney general, in the name and on behalf of the state, in the district court of Laramie county, Wyoming, or the county in which the defendant resides, or in which any defendant resides if there be more than one (1) defendant, or in the district court of any county in which the violation occurred.
- (e) Any person or corporation violating the provisions of this article or rules and regulations prescribed pursuant hereto or the lawful orders of the oil and gas supervisor or his assistants or representatives under said rules and regulations shall upon conviction be fined not more than five hundred dollars (\$500.00) or imprisoned not more than six (6) months.

(f) The imposition or payment of any forfeiture or civil penalty as provided in this section shall not bar or affect any other penalty or remedy prescribed in this act or by general law but such forfeiture shall be in addition to any such penalty or other remedy. (Laws 1921, ch. 157, § 4; R.S. 1931, § 78-304; Laws 1933, ch. 81, § 4; C.S. 1945, § 57-1104; W.S. 1957, § 30-231; Laws 1971, ch. 21, § 1.)

Meaning of "this act". - See note to \$ 30-5-101.

Repealing clause. — Section 5, ch. 157, Laws 1921, repealed all of ch. 274, C.S. 1920.

Effective dates. — Section 6, ch. 127, Laws 1921, makes the act effective from and after April 1, 1921.

Section 5, ch. 81, Laws 1933, makes the act effective from and after February 18, 1933.

Section 20, ch. 94, Laws 1951, makes the act effective from and after July 1, 1951.

Section 3, ch. 21, Laws 1971, makes the act effective from and after passage. Approved February 5, 1971.

C.J.S. reference. — 58 C.J.S. Mines and Minerals § 241.

§ 30-5-120. Additional forfeiture or civil penalty for flaring of gas in excess of amounts permitted by order of commission.

- (a) Whenever under the provisions of the preceding section [§ 30-5-119] a forfeiture or civil penalty is imposed for the flaring of gas in excess of the amounts permitted by an order of the commission there shall also be imposed an additional forfeiture or civil penalty which shall be the greater of either (i) ten percent (10%) of the amount of the forfeiture or civil penalty, or (ii) six and one-quarter percent (64%) of the value of the amount of gas so flared or vented. Value shall be determined by the average price being paid at the nearest point of connection.
- (b) Out of said additional forfeiture or civil penalty there shall be paid to the tax commission of the state of Wyoming an amount equal to the mineral severance tax which would have been payable if the gas had been saved and sold, and the remainder thereof shall be paid to the county treasurer of the county in which said gas was produced in lieu of any taxes which would have been payable to said county if the gas had been saved and sold. (Laws 1971, ch. 21, § 2.)

Effective date. — Section 3, ch. 21, Laws 1971, makes the act effective from and after passage. Approved February 5, 1971.

§ 30-5-121. Waste of natural gas prohibited.

The use, consumption, burning or escape into the atmosphere of natural gas taken or drawn from any natural gas well or wells, or borings from which natural gas is produced for the products where such natural gas is burned, consumed or otherwise wasted without the heat therein contained being fully and actually applied and utilized for other manufacturing purposes or domestic purposes is hereby declared to be a wasteful and extravagant use of natural gas

and it shall be unlawful to allow or permit such natural gas to pollute or contaminate the atmosphere to such an extent that injury or damage is sustained by growing crops, vegetation, livestock, wildlife, or domestic fowls, or to such an extent that the human health, welfare, or safety is in anywise impaired or damaged. (Laws 1919, ch. 125, § 1; C.S. 1920, § 4500; R.S. 1931, § 78-201; C.S. 1945, § 57-1105; Laws 1950, Sp. Sess., ch. 9, § 1; W.S. 1957, § 30-232.)

Effective date. - Section 2, ch. 9, Laws 1950, Sp. Sess., makes the act effective from and after passage and approval. Approved February 27,

Constitutionality. - Provisions hereof are a legitimate exercise of police power of the state, and not constitutionally objectionable as taking property without due process or as an unreasonable or arbitrary discrimination. Walls v. Midland Carbon Co., 254 U.S. 300, 41 S. Ct. 118, 65 L. Ed. 276 (1920) (decided prior to 1950 amendment).

C.J.S. reference. - 58 C.J.S. Mines and

Minerals § 234.

§ 30-5-122. Sale of natural gas for wasteful purposes prohibited.

No person, firm or corporation, having the possession or control of any natural gas well or wells, except as herein provided, or borings from which natural gas is produced, whether as a contractor, owner, lessee, agent or manager, shall use, sell, or otherwise dispose of natural gas, the product of any such well or wells, or borings for the purpose of manufacturing or producing carbon or other resultant products from the burning or consumption of such natural gas, without the heat therein contained being fully and actually applied and utilized for other manufacturing purposes or domestic purposes. (Laws 1919, ch. 125, § 2; C.S. 1920, § 4501; R.S. 1931, § 78-202; C.S. 1945, § 57-1106; W.S. 1957, § 30-233.)

Cited in Walls v. Midland Carbon Co., 254 U.S. 300, 41 S. Ct. 118, 65 L. Ed. 276 (1920).

§ 30-5-123. Penalty for violation of sections 30-5-121 and 30-5-122.

Any person, firm or corporation violating any of the provisions of this act [§§ 30-5-121 to 30-5-123] shall be guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100.00) or more than one thousand dollars (\$1,000.00) for each offense and each and every day in which any person, firm or corporation shall violate any of the provisions hereof shall constitute a separate offense hereunder and subject the offender to the penalty hereby provided. (Laws 1919, ch. 125, § 3; C.S. 1920, § 4502; R.S. 1931, § 78-203; C.S. 1945, § 57-1107; W.S. 1957, § 30-234.)

Effective date. - Section 4, ch. 125, Laws Cited in Walls v. Midland Carbon Co., 254 U.S. 1919, makes the act effective on September 30, 300, 41 S. Ct. 118, 65 L. Ed. 276 (1920). 1919.

20-141

§ 30-5-124. Purchase or taking ratably oil and gas for transportation without discrimination in favor of any owner or producer; oil.

Each person now or hereafter purchasing or taking for transportation oil from any owner or producer, shall purchase or take ratably without discrimination in favor of any owner or producer over any other owner or producer in the same pool offering to sell his oil produced therefrom to such person. If any such person purchasing or taking for transportation oil shall not have need for all such oil lawfully produced within a pool, or if for any reason it shall be unable to purchase all of such oil, then it shall purchase from each producer in a pool ratably, taking and purchasing the same quantity of oil from each well to the extent that each well is capable of producing its ratable portion; without waste, provided however, nothing herein contained shall be construed to require more than one (1) pipeline connection for each producing well. In the event that any such purchaser or person taking oil for transportation is likewise a producer or owner, he is hereby prohibited from discriminating in favor of his own production, or production in which he may be interested, and his own production shall be treated as that of any other producer or owner. (Laws 1967, ch. 171, § 1.)

Editor's note. — The second sentence of this section is set out herein just as it appears in the published laws.

Effective date. — Chapter 171, Laws 1967, carried no provision as to its effective date, but

was enacted at a session that adjourned on February 18, 1967.

§ 30-5-125. Same; gas.

Each person now or hereafter purchasing or taking for transportation gas produced from gas wells or from oil wells from any owner or producer shall purchase or take ratably without discrimination in favor of any owner or producer, over any other owner or producer in a pool. Such person shall not discriminate in the quantities purchased, the basis of measurement, or the gas transportation facilities afforded for gas of like quantity, quality, and pressure available from such wells. For the purpose of this act [88 30-5-124 to 30-5-126] reasonable differences in quantity taken or facilities afforded shall not constitute unreasonable discrimination if such differences bear a fair relationship to differences in quality, quantity, or pressure of the gas available or to the acreage attributable to the well, market requirements, or to the relative lengths of time during which such gas will be available to the purchaser. In the event any such purchaser or person taking gas for transportation is likewise a producer or owner, he is hereby prohibited from discriminating in favor of his own production or production in which he may be interested, and his own production shall be treated as that of any other producer or owner producing from gas wells in the same pool. (Laws 1967, ch. 171, § 2; 1971, ch. 11, § 6.)

Effective dates. — Chapter 171, Laws 1967, carried no provision as to its effective date, but was enacted at a session that adjourned on February 18, 1967.

Section 7, ch. 11, Laws 1971, makes the act effective from and after passage. Approved February 8, 1971.

§ 30-5-126. Same; oil and gas conservation commission to administer.

In addition to the powers and authority, either expressed or implied, granted to the Wyoming oil and gas conservation commission, by virtue of the statutes of the state of Wyoming, the commission is hereby authorized and empowered to administer and enforce the provisions of this act [§§ 30-5-124 to 30-5-126], in the same manner and in accordance with the same procedures provided by sections 30-216 to 30-231, Wyoming Statutes 1957 [§§ 30-5-101 to 30-5-119], as amended for the enforcement and violations of rules, regulations and orders of the commission. (Laws 1967, ch. 171, § 3.)

ARTICLE 2. INTERSTATE COMPACT ON CONSERVATION

§ 30-5-201. Governor authorized to join in interstate compact.

The governor of the state of Wyoming is hereby authorized for and in the name of the state of Wyoming to join with the other states in the interstate compact to conserve oil and gas, which was executed in the city of Dallas, Texas, on the 16th day of February, 1935, and has been extended to the 1st day of September, 1955, with the consent of congress, and that said compact and all extensions are now on deposit with the department of state of the United States. (Laws 1955, ch. 116, § 1; W.S. 1957, § 30-235.)

Cross reference. — As to oil and gas conservation commission, see § 30-5-103 et seq. Law review. — For discussion of this article, see 13 Wyo. L.J. 5 (1958).

Constitutionality of statute controlling exploitation or waste of oil and gas, 24 ALR 307; 78 ALR 834.

Am. Jur. 2d and ALR references. — 38 Am. Jur. 2d Gas and Oil §§ 145 to 162.

§ 30-5-202. Authority of governor to execute agreements; provision for withdrawal from compact.

The governor of the state of Wyoming is further authorized and empowered, for and in the name of the state of Wyoming to execute agreements for the further extension of the expiration date of said interstate compact to conserve oil and gas, and to determine if and when it shall be to the best interest of the state of Wyoming to withdraw from said compact upon sixty (60) days notice as provided by its terms. In the event that he shall determine that the state shall withdraw from said compact, he shall have the power and authority to give necessary notice and to take any and all steps necessary and proper to effect the withdrawal of the state of Wyoming from said compact. (Laws 1955, ch. 116, § 2; W.S. 1957, § 30-236.)

§ 30-5-203. Governor designated official representative; authority to appoint assistant; authority and oath of assistant.

The governor shall be the official representative of the state of Wyoming in the compact to conserve oil and gas, and shall exercise and perform for the state all of the powers and duties as such, provided, however, he shall have the authority to appoint an assistant representative who shall act in his stead as the official representative of the state of Wyoming. His official representative, if not already a state official, shall take the oath of office prescribed by the constitution and file the same with the secretary of state. (Laws 1955, ch. 116, § 3; W.S. 1957, § 30-237.)

Cross reference. — As to constitutional oath of office, see art. 6, §§ 20, 21, Wyo. Const.

§ 30-5-204. Construction of sections 30-5-201 to 30-5-204.

It is not the intent or purpose of this act [§§ 30-5-201 to 30-5-204] to require, permit, or authorize the governor, commission or supervisor to prorate or distribute the production of oil and gas among the fields of Wyoming on the basis of market demand. This act shall never be construed to require, permit or authorize the governor, commission, the supervisor or any court to make, enter or enforce any order, rule, regulation or judgment requiring restriction of any production of any pool or of any well except to prevent waste and to protect correlative rights. (Laws 1955, ch. 116, § 4; W.S. 1957, § 30-238; Laws 1969, ch. 139, § 3; 1971, ch. 11, § 5.)

Effective dates. — Section 4, ch. 139, Laws 1969, makes the act effective from and after passage. Approved March 3, 1969. Section 7, ch. 11, Laws 1971, makes the act effective from and after passage. Approved February 8, 1971.

CHAPTER 6

Explosives and Inflammables

Sec.

30-6-101. Sale of explosives.

 Storage of oils and other inflammable materials.

 Enforcement of sections 30-6-101 and 30-6-102; authority of inspector of mines, etc.

30-6-104. Penalty for violation of sections. 30-6-101 and 30-6-102.

30-6-105. Requirements as to surface magazines.

30-6-106. Rules of construction, etc., governing underground magazines.

30-6-107. Storage of flammable materials; smoking restrictions; fire doors. Sec.

30-6-108. Rules governing explosives carried underground.

30-6-109. Only permissible explosives or blasting devices to be used; rules applicable to usage.

30-6-110. Regulations applicable where Airdox used to break down coal.

30-6-111. Provisions governing explosives also applicable to heater elements of Cardox blasting devices prior to installation.

30-6-112. Specifications for Cardox charging stations.

Cross references. - For authority of cities and towns to regulate the storage and use of gun powder, high explosives, oil, gasoline, fireworks, etc., see § 15-1-103. As to safety standards for handling explosives in connection with mining operations generally, see § 30-2-415. As to storage of petroleum products in connection with mining operations generally, see § 30-2-419. As to safety precautions in regard to use of flammable liquids in connection with coal mines, see § 30-3-419. As to shot-firers in connection with coal mines, see §§ 30-3-501 to 30-3-506. For duty of driver of vehicle carrying explosive substances or flammable liquids to stop, etc., at all railroad grade crossings, see § 31-5-512. As to equipment and marking of vehicles transporting explosives, see § 31-5-960. As to storage of explosives, see §§ 35-10-301 to 35-10-303.

Am. Jur. 2d, ALR and C.J.S. references. — 31 Jur. 2d Jur.2d Explosions and Explosives § 1 et seg.

Validity of regulations as to storage of oil, gasoline, etc., in garages, 40 ALR 356; 55 ALR 376; 84 ALR 1152.

Validity of regulations as to keeping or storage of gasoline, 43 ALR 858; 128 ALR 364.

Validity of regulations as to manner of handling or distributing gasoline, 58 ALR 860.

Explosion resulting from negligence in delivery of petroleum products, 151 ALR 1261. Contributory negligence as a defense to a cause of action based upon violation of statute relating to explosives or volatile oils, 10 ALR2d

Liability for property damage by concussion from blasting, 20 ALR2d 1372.

Keeping or placing of gasoline, kerosene or similar inflammable substances on premises as increase of hazard for fire insurance, 26 ALR2d 809.

Liability in connection with fire or explosion incident to bulk storage, transportation, delivery, loading or unloading of petroleum products, 32 ALR3d 1169.

Absolute liability for damage or injury from explosion of stored explosives, 35 ALR3d 1177.

35 C.J.S. Explosives §§ 2, 3.

§ 30-6-101. Sale of explosives.

All nitroglycerine, powder or other high explosive sold in the state of Wyoming shall be properly marked with the date of manufacture on each stick of powder, and no nitroglycerine, powder or other high explosives shall be sold after twelve (12) months from date of manufacture. (Laws 1903, ch. 70, § 1; C.S. 1910, § 2964; C.S. 1920, § 3653; R.S. 1931, § 40-104; C.S. 1945, § 57-1001; W.S. 1957, § 30-239.)

§ 30-6-102. Storage of oils and other inflammable materials,

Oils and other inflammable materials shall be stored or kept in a building erected for that purpose, and at a safe distance from the main buildings, and at a safe distance from the powder magazine, and their removal from said building for use shall be in such quantities as are necessary to meet the requirements of a day, only. (Laws 1903, ch. 70, § 3; C.S. 1910, § 2969; C.S. 1920, § 3655; R.S. 1931, § 40-106; C.S. 1945, § 57-1003; W.S. 1957, § 30-240.)

Cross references. — As to storage of petroleum products in connection with mining operations generally, see § 30-2-419. As to

safety precautions in regard to use of flammable liquids in connection with coal mines, see § 30-3-419. See also § 30-6-107.

§ 30-6-103. Enforcement of sections 30-6-101 and 30-6-102; authority of inspector of mines, etc.

The inspector of mines shall have authority to regulate and limit the amount of nitro powder stored or kept in general supply stores in mining camps or mining towns, other than coal mining camps or coal mining towns, where there is no municipal law governing the same, and shall have authority to enforce the provisions of this act and to prosecute any violation thereof, as is hereinafter provided. And each of the state inspectors of coal mines, acting within their respective districts, shall have authority to regulate and limit the amount of nitro powder stored or kept in general supply stores in coal mining camps or coal mining towns, where there is no municipal law governing the same, and to enforce the provisions of this act by prosecuting violations thereof, as is hereinafter provided. (Laws 1903, ch. 70, § 5; C.S. 1910, § 2971; Laws 1919, ch. 17, § 3; C.S. 1920, § 3657; R.S. 1931, § 40-108; C.S. 1945, § 57-1005; W.S. 1957, § 30-241.)

Meaning of "this act". — The words "this act" in this section refer to \$\$ 57-1001 to 57-1006, W.C.S. 1945. Sections 57-1002 and 57-1004, W.C.S. 1945, were repealed by \$ 67, ch. 128, Laws 1951. Section 57-1006, W.C.S. 1945, provided a penalty for violation of such sections and appears herein as \$ 30-6-104. Sections 57-1001 and 57-1003, W.C.S. 1945, appear herein as \$\$ 30-6-101 and 30-6-102, respectively.

Consequently the enforcement provisions of this section apply to the 2 preceding sections (\$\frac{8}{3}\$ 30-6-101 and 30-6-102).

Repealing clause. — Section 4, ch. 17, Laws 1919, repealed all laws and parts of laws in conflict therewith.

Effective date. — Section 5, ch. 17, Laws 1919, makes the act effective from and after passage. Approved February 14, 1919.

§ 30-6-104. Penalty for violation of sections 30-6-101 and 30-6-102.

Any person or persons violating any of the provisions of this act shall be liable to a fine of not less than ten dollars (\$10.00) or not more than one hundred dollars (\$100.00) for each violation. (Laws 1903, ch. 70, § 6; C.S. 1910, § 2972; C.S. 1920, § 3658; R.S. 1931, § 40-109; C.S. 1945, § 57-1006; W.S. 1957, § 30-242.)

Meaning of "this act". — See note to makes the act effective from and after passage.

§ 30-6-103. Approved February 21, 1903.

Effective date. — Section 7, ch. 70, Laws 1903,

C.J.S. reference. — 35 C.J.S. Explosives § 12.

§ 30-6-105. Requirements as to surface magazines.

- (a) Separate surface magazines shall be provided for the storage of explosives, detonators, and Cardox heater elements.
- (b) Surface magazines for storing and distributing high explosives in amounts exceeding one hundred twenty-five (125) pounds shall be:
 - (i) Reasonably bulletproof and constructed of incombustible material or covered with fire-resistive material. The roofs of magazines so located that it is impossible to fire bullets directly through the roof from the ground, need not be bulletproof, but where it is possible to fire bullets directly through them, roofs shall be made bullet-resistant by material construction, or by a ceiling that forms a tray containing not less than a four (4) inch thickness of sand, or by other methods;
 - (ii) Provided with doors constructed of three-eighths inch steel plate lined with a two (2) inch thickness of wood, or the equivalent;
 - (iii) Provided with floors made of wood or other nonsparking material and have no metal or gravel exposed inside the magazine;
 - (iv) Provided with suitable warning signs so located that a bullet passing directly through the face of a sign will not strike the magazine;
 - (v) Provided with properly screened ventilators. Equipped with no openings except for entrance and ventilation;
 - (vi) Kept locked securely when unattended.
- (c) Surface magazines for storing black blasting powder, detonators, and Cardox heater elements shall be reasonably bulletproof, and shall be in accordance with other provisions for storing high explosives.
- (d) High explosives, black blasting powder, or Cardox heater elements in amounts of one hundred twenty-five (125) pounds or less or five thousand (5,000) detonators or less shall be stored in accordance with preceding standards or in separate box-type magazines. Box-type magazines may also be used as distributing magazines when quantities do not exceed those mentioned.

Box-type magazines shall be constructed strongly of two (2) inch hardwood or the equivalent. Metal magazines shall be lined with nonsparking material. No magazine shall be placed in a building containing oil, grease, gasoline, waste paper, or other highly flammable material, nor shall a magazine be placed less than twenty (20) feet from a stove, furnace, open fire, or flame.

(e) After the effective date of this act, main storage magazines shall be not less than one thousand (1,000) feet from any mine opening unless effectively

barricaded.

(f) The supply kept in distributing magazines shall be limited to approximately one (1) day's requirements, and such supplies of explosives and detonators may be distributed from the same magazine, if separated by at least a six (6) inch substantially fastened hardwood partition or the equivalent.

(g) The area surrounding magazines for not less than twenty-five (25) feet in all directions shall be kept free of rubbish, dry grass, or other materials of a

combustible nature.

- (h) If the explosives magazine is illuminated electrically, the lamps shall be of explosion-proof type, installed and wired so as to prevent minimum fire and contact hazards.
- (j) Only nonmetallic tools shall be used for opening containers. Extraneous materials shall not be stored in an explosives or detonator magazine.
- (k) Smoking, carrying smoker's articles, or open flame shall be prohibited in or near any magazine. (Laws 1951, ch. 128, § 18; W.S. 1957, § 30-243.)

Cross reference. — As to storage of explosives, see §§ 35-10-301 to 35-10-303.

Meaning of "this act". — See note to § 30-3-201.

Effective date. — Section 68, ch. 128, Laws 1951, makes the act effective from and after March 1, 1951.

C.J.S. reference. — 35 C.J.S. Explosives § 3.

§ 30-6-106. Rules of construction, etc., governing underground magazines.

- (a) Where underground section boxes or magazines are used, they shall be of substantial construction and placed in a crosscut or idle room neck at least twenty-five (25) feet from roadways or trolley wires and in a reasonably dry and well-rock-dusted place. The explosives and detonators shall be kept in separate boxes or magazines, or if kept in the same box they shall be separated by at least a four (4) inch substantially fastened hardwood partition or the equivalent. Not more that a forty-eight (48) hour supply of explosives, including any surplus remaining from the previous day, shall be stored underground in such boxes or magazines.
- (b) Explosives and detonators kept near the working faces shall be stored in separate, closed containers of substantial, nonconductive material located not less than fifteen (15) feet from rail or power lines, except that if kept in a niche in the rib, the distance shall be at least five (5) feet, and in a location out of line of blast where they will not likely be subjected to shock.
- (c) Explosives and detonators shall be kept in their containers until removed for use at the working faces.

(d) Only nonmetallic tools shall be used for opening explosives containers underground. (Laws 1951, ch. 128, § 21; W.S. 1957, § 30-244.)

Cross reference. — As to storage of explosives, see §§ 35-10-301 to 35-10-303.

§ 30-6-107. Storage of flammable materials; smoking restriction; fire doors.

(a) Oil, grease, and similar flammable materials shall be stored in closed containers, separate from other materials so as not to create a fire hazard to nearby buildings or mines. If oil or grease is stored in a building, the building or the room in which it is stored shall be of fire-resistive material and well ventilated. Tight metal receptacles shall be provided for oily waste.

(b) Smoking in or about surface structures shall be restricted to places where

it will not cause fire or an explosion.

(c) Unless existing structures located within one hundred (100) feet of any mine opening are of reasonably fireproof construction, fire doors shall be erected at effective points in mine openings to prevent smoke or fire from outside sources endangering men working underground. These doors shall be tested at least monthly and kept in effective operation. (Laws 1951, ch. 128, § 16; W.S. 1957, § 30-245.)

Cross reference. — See also \$ 30-6-102 and cross references thereto.

§ 30-6-108. Rules governing explosives carried underground.

- (a) Permissible explosives or detonators carried underground shall be in individual containers constructed of substantial nonconductive material, maintained in good condition, and kept closed.
- (b) When explosives or detonators are transported underground by locomotive, rope, or shuttle car, they shall be in special covered cars or in special containers.
- (c) The bodies and covers of special cars and the containers shall be constructed of nonconductive material.
- (d) If the explosives and detonators are hauled in the same explosives car or in the same special container, they shall be separated by at least a four (4) inch substantially fastened hardwood partition or the equivalent.
- (e) Explosives, detonators and Cardox shells shall not be carried on the same trip with workmen.
- (f) Where quantities of explosives and detonators are transported in special cars or in special containers in cars, they shall be hauled on a special trip, and shall not be hauled into or out of a mine within five (5) minutes preceding or following a man-trip or any other trip.
- (g) Explosives and detonators shall be transported underground by belt only under the following conditions:

- (i) In the original and unopened case, in special closed cases constructed of nonconductive material, or in suitable individual containers;
- (ii) Clearance requirements shall be the same as those for transporting men on belts;
 - (iii) Suitable loading and unloading stations shall be provided;
- (iv) There shall be an attendant at loading and unloading points and stop controls at these points.
- (h) Explosives or detonators shall not be transported on flight or shaking conveyors, scrapers, mechanical loading machines, locomotives, cutting machines, or drill trucks. (Laws 1951, ch. 128, § 20; W.S. 1957, § 30-246.)

§ 30-6-109. Only permissible explosives or blasting devices to be used; rules applicable to usage.

- (a) Only permissible explosives or permissible blasting devices shall be used in all underground coal mines for the blasting of coal or other blasting operations, except as otherwise provided for in the state mining laws.
 - (b) The use of permissible explosives shall comply with the following:
 - (i) Fired only with electric detonators of proper strength;
 - (ii) Fired with permissible blasting units unless blasting is done from the surface;
 - (iii) Boreholes in coal shall not be drilled beyond the back of the cut, nor into the solid rib, roof, or floor;
 - (iv) Boreholes shall be cleaned and checked to see that they are placed properly and are of correct depth, in relation to the cut, before being charged;
 - (v) To prevent blow-throughs, all portions of the boreholes where the height of the coal permits, shall have a burden in all directions of at least eighteen (18) inches before being fired;
 - (vi) Boreholes shall be stemmed to the collar with incombustible material;
 - (vii) In gassy mines examinations for gas shall be made immediately before and after blasting.
- (c) Charges exceeding one and one-half (1½) pounds, but not exceeding three (3) pounds, shall be used only if boreholes are six (6) feet or more in depth, and explosives are charged in a continuous train, with no cartridges deliberately deformed or crushed, with all cartridges in contact with each other, and with the end cartridges touching the back of the hole and the stemming respectively, and Class A or Class B permissible explosives are used, provided that the three (3) pound limit shall not apply to solid rock work such as solid rock tunnels, shafts, etc.
- (d) Shots shall be fired only by certified persons who shall comply with the provisions of the coal mining laws of this state pertaining to explosives, Cardox, and Airdox.
- (e) Boreholes shall not be charged while any other work is being done at the face, and the shot or shots shall be fired before any other work is done, except that which is necessary to safequard the employees.

(f) Only wooden tamping bars shall be used when charging holes.

(g) Leg wires of electric detonators shall be kept shunted or the ends twisted together until ready to connect to the firing cable.

(h) Shots shall not be fired from the power or signal circuit while any men are in the mine.

m the mine

- (j) Roof and faces of working places shall be tested immediately before and after blasting.
- (k) Ample warning shall be given before shots are fired, and care shall be taken to ascertain that all persons are in the clear. Men shall be removed from adjoining working places when there is danger of a shot blowing through.

(m) Mixed charges shall not be charged or fired in any borehole.

- (n) Adobe (mudcap) or other open, unconfined shots shall not be fired in any mine.
- (o) Blasting cables shall be well insulated, staggered as to length or kept well separated when attached to the detonator leg wires, and kept clear of power wires and other possible sources of stray currents.

(p) Power wires in face regions shall be deenergized during charging and

blasting operations.

- (q) Where misfires occur with electric detonators, waiting period of at least five (5) minutes shall elapse before anyone returns to the shot. After such failure, the blasting cable shall be disconnected from the source of power and the battery end short-circuited before electric connections are examined.
- (r) Explosives shall be removed by firing a separate charge at least two (2) feet away from, and parallel to, the misfired charge or by washing the stemming and the charge from the borehole with water, or by inserting and firing a new primer after the stemming has been washed out.

(s) A very careful search of the working place, and, if necessary, of the coal after it reaches the tipple shall be made after blasting a misfired hole, to recover any undetonated explosive.

(t) The handling of a misfired shot shall be under the direct supervision of the mine foreman or a certified person designated by him. (Laws 1951, ch. 128, § 22; W.S. 1957, § 30-247.)

Cross reference. — As to shot-firers in coal mining operations generally, see §§ 30-3-501 to 30-3-506.

§ 30-6-110. Regulations applicable where Airdox used to break down coal.

- (a) Where Airdox is used for breaking down the coal, the following shall apply:
 - (i) Compressed air shall be conducted from the compressor to within a practical working distance of the face by steel air lines tested to withstand an approximate pressure of twenty thousand (20,000) pounds a square inch;

(ii) Air lines shall be grounded at the compressor and, if possible, at other low-resistance ground connections along the lines, such as at borehole casings. They shall not be connected in any way to tracks, waterlines, or other electric power return conductors and shall be suitably insulated where they cross electric wires or underneath the track;

(iii) Unions shall be installed in steel air lines at not more than one thousand (1,000) foot intervals, and insulated couplings shall be installed at

the inby end of such lines:

(iv) Shut-off valves shall be installed every one thousand (1,000) feet in all Airdox lines and, in all branch lines, at a point near the main lines;

 (v) Airdox lines shall be protected at places where equipment passes over, under, or adjacent to them; they shall not be handled or repaired when air pressure is in the line;

(vi) Air lines shall be examined periodically for kinks or other weaknesses

and replaced immediately when defects are found;

(vii) Copper tubing shall be coiled and uncoiled properly. The part of the tubing that is affected by frequent coiling and uncoiling shall be renewed periodically because of the dangers from kinks and crystallization;

(viii) Blow-down valves shall not be less than forty-five (45) feet from the

face and shall be around a right angle;

(ix) Holes for Airdox tubes shall not be on the solid;

(x) The Airdox tube shall be pushed to the back of the drill hole and then withdrawn six (6) to twelve (12) inches to form an air cushion;

(xi) When blow-down valves are opened to discharge the Airdox tube, they shall remain open until time to place the tube in the next borehole;

(xii) After the breaking down of the coal in any one (1) place, the tube shall be disconnected at once from the air line and not reconnected until ready to be used in the next place;

(xiii) When an Airdox tube fails to discharge, the line leading to the tube shall be disconnected at the blow-down valve and the tube shall be dragged by means of the line to an abandoned place, marked with warning signs, and left for twelve (12) hours before any repair work is done thereon;

(xiv) All persons shall be removed from adjoining working places where there is danger of breaking through and shall be at a safe distance around a right angle, while coal breaking is in progress. (Laws 1951, ch. 128, § 24;

W.S. 1957, § 30-248.)

Cross reference. — As to coal mine safety regulations generally, see §§ 30-3-401 to 30-3-506.

§ 30-6-111. Provisions governing explosives also applicable to heater elements of Cardox blasting devices prior to installation.

(a) The provisions of this act governing the handling, storage, and transportation of explosives shall apply to the heater elements of Cardox

blasting devices prior to their installation in the shells.

(b) Charged Cardox shells shall be transported underground in insulated cars or in insulated boxes placed in ordinary mine cars or shuttle cars and shall be stored on wooden racks, built for that purpose, in a crosscut or an idle room neck, at least ten (10) feet from power lines and haulage tracks.

(c) Where Cardox is used for blasting, the following shall apply:

(i) Cardox shells need not be tamped or stemmed;

(ii) When Cardox is fired all persons in the vicinity, including the shot-

firer, shall be around a second corner or in an equally safe place;

(iii) Blasting cables shall be as long as may be necessary to assure the safety of the shot-firer, attached only after the charge has been placed in the borehole, and maintained in good repair;

(iv) The charge shall be detonated with a permissible shotfiring unit;

(v) Cardox shall not be shot off the solid, over heavy rock binders or shale,

or in a "tight" shot;

(vi) Cardox misfires shall not be approached until after the elapse of fifteen (15) minutes and shall be handled under the supervision of a foreman or other certified person designated by the foreman; misfired shells shall be bled off before removal from the hole, and shall be marked conspicuously upon removal from the hole. (Laws 1951, ch. 128, § 23; W.S. 1957, § 30-249.)

Cross reference. — As to explosives in mining operations generally, see § 30-2-415.

Meaning of "this act". - See note to \$ 30-3-201.

§ 30-6-112. Specifications for Cardox charging stations.

(a) A Cardox charging station shall:

(i) Be in a fireproof structure on the surface or isolated from other operations in the same building by a substantial fireproof partition;

(ii) Be provided with at least two (2) methods of relieving excess pressure in the storage tank. If one (1) of these methods is a valve, the valve shall be tested monthly;

(iii) Have a box-type magazine or equivalent for storing the daily supply of heater elements. (Laws 1951, ch. 128, § 19; W.S. 1957, § 30-250.)

Effective date. — Section 68, ch. 128, Laws 1951, makes the act effective from and after March 1, 1951.

TITLE 34

Property, Conveyances and Security Transactions

Cross references. - For constitutional prohibiting monopolies perpetuitites, see art. 1, § 30, Wyo. Const. For provision that no private property shall be taken or damaged for public or private use without just compensation, see art. 1, § 33, Wyo. Const. For provision declaring water to be state property, see art. 8, § 1, Wyo. Const. As to taxation and revenue generally, see art. 15, §§ 1 to 19, Wyo. Const. As to inapplicability of 99 1-3-101 to 1-3-119, relative to limitations of actions, in the case of a continuing and subsisting trust, or in an action by a vendee of real property in possession thereof, to obtain a conveyance, see § 1-3-101. As to eminent domain generally, see §§ 1-26-101 to 1-26-405 and Rule 71.1, W.R.C.P. As to partition of real estate, see §§ 1-32-101 to 1-32-122. For provision that failure of creditors to apply for letters testamentary, etc., shall not affect the lien upon encumbered property secured by valid mortgage or deed of trust in case of real property, or by valid pledge accompanied by delivery of possession or by chattel mortgage or by conditional sale in the case of personal property, see § 2-5-212. As to sale of real and personal property by guardian to

pay ward's expenses, see §§ 3-2-201, 3-2-203. As to offenses against property generally, see §§ 6-7-101 to 6-7-606. As to gifts, escheats and forfeitures to state generally, see §§ 9-8-601 to 9-8-608. As to ownership of airspace and intrusions therein, see §§ 10-3-105 to 10-3-107. As to sale of personal property and real estate in connection with insolvency and liquidation of banks, see § 13-4-401. As to municipal zoning generally, see §§ 15-1-701 to 15-1-709. As to assessments against property in connection with local improvements in cities and towns, see § 15-6-401 et seq. For duties of county clerk with respect to records, see § 18-3-402. As to mechanics and other similiar liens generally, see title 29. As to licensing of real estate brokers and of salemen, see §§ 33-28-101 to 33-28-117. As to property subject to taxation, see § 39-1-102 et seq. As to property exempt from taxation generally, see § 39-1-201. As to listing real property for taxation annually, see § 39-2-101. As to assessment of real and personal property at fair value, see § 39-2-105. For provision that taxes on real property as well as personal property shall constitute a lien on real estate, see § 39-3-101. As to enforcement and collection of taxes generally, see §§ 39-3-102, 39-4-102.

CHAPTER 1 General Provisions

§ 34-1-123. Admissibility of conveyance or record thereof as evidence.

All deeds, mortgages, conveyances or instruments of any character, concerning any interest in lands within this state, which shall be executed, acknowledged, attested or proved in accordance with the provisions of this act or the laws of this state, or the local laws of any mining district wherein such real estate is situate, in force at the date of such acknowledgment, attestation or proof, may be read in evidence, without in the first instance additional proof of the execution thereof, and the record of any such deed, mortgage, conveyance or instrument, whether an original record of any mining district, or a copy thereof deposited in the register's [county clerk's] office of any county, in

accordance with the laws of this state (as a part of the records of such mining district) or a record of such recorder's office, when the same appears by such record to be properly acknowledged, attested or proved in accordance with the laws of this state, or of the proper mining district in force at the date of such acknowledgment, attestation or proof, or a transcript from any such record, certified by the register [county clerk] of the proper county where such deed, mortgage, conveyance or instrument ought by law to be recorded, may, upon the affidavit of the party desiring to use the same, that the original thereof is not in his possession or power to produce, be read in evidence with like effect as the original of such deed, mortgage, conveyance or instrument properly acknowledged, attested or proved as aforesaid, but the effect of such evidence may be rebutted by other competent testimony. (Laws 1882, ch. 1, § 17; R.S. 1887, § 20; R.S. 1899, § 2739; C.S. 1910, § 3631; C.S. 1920, § 4587; R.S. 1931, § 97-112; C.S. 1945, § 66-120; W.S. 1957, § 34-23.)

Meaning of "this act." — See note to § 34-1-101.

Additional proof of execution not initially required. — A power of attorney to convey lands, as well as an executory contract for sale or purchase of lands may be read in evidence without in first instance offering additional proof of execution. Boswell v. First Nat'l Bank, 16 Wyo. 161, 92 P. 624 (1907), rehearing denied, 93 P. 661 (1908).

Tax title claimant. — Statutory provision that the records of the clerk of county commissioners is sufficient to prove tax sale did not change rule that tax title claimant has the burden of proving that statutory provisions have been complied with. Barrett v. Barrett, 46 Wyo. 84, 23 P.2d 857 (1933).

Prima facie case. — Where plaintiff introduced deed from Mrs. S. and her husband, since deceased, proved they were in possession, and filed an action wherein validity of the deed was affirmed on appeal, prima facie case was established. Atlas Realty Co. v. Rowray, 51 Wyo. 318, 65 P.2d 1122 (1937).

Cited in First Nat'l Bank v. Citizens' State Bank, 11 Wyo. 32, 70 P. 726 (1902).

C.J.S. references. — 26 C.J.S. Deeds §§ 71,78, 79; 26A C.J.S. Deeds §§ 196, 206; 76 C.J.S. Records § 33.

§ 34-1-135. Covenants; not implied in conveyances; exception.

No covenant shall be implied in any conveyance of real estate other than a conveyance of oil, gas or other minerals whether such conveyance contains special covenants or not. (Laws 1882, ch. 1, § 5; R.S. 1887, § 5; R.S. 1899, § 2734; C.S. 1910, § 3626; C.S. 1920, § 4582; R.S. 1931, § 97-107; C.S. 1945, § 66-105; Laws 1957, ch. 41, § 1; W.S. 1957, § 34-36.)

Cross references. — As to form and effect of short form of warranty deed, see §§ 34-2-102, 34-2-103. As to implied covenants in a deed, see also § 34-2-103. As to when covenants implied in form of real estate mortgage, see § 34-2-108.

This section should not be so literally applied as to defeat the clear intention of the parties as gathered from the context of the instrument. Dawson v. Meike, 508 P.2d 15 (Wyo. 1973).

Of importance is the intention of the parties as it may be gleaned from the words and expressions used in leases and contracts and of the circumstances bearing upon and incident to them. Ayres Jewelry Co. v. O & S Bldg., 419 P.2d 628 (Wyo. 1966).

Words relating to use construed as express covenant. — A paramount purpose, from a lessor's standpoint, is the amount of rent to be received, and when that amount is variable and conditioned upon the use to be made of the leased premises, words relating to the use intended are of primary importance and must be construed and interpreted to have been intended

as an express covenant that the occupancy specified shall be continued during the entire lease period so as to provide a constant base upon which the agreed rent formula may be applied and the rent computed. Ayres Jewelry Co. v. O & S Bldg., 419 P.2d 628 (Wyo. 1966).

To interpret a contract for the conveyance of an interest in oil and gas the court should consider not only the terms of the writing but also the surrounding circumstances, attendant facts showing the relations of the parties, the nature and situation of the subject matter, and the apparent purpose of making the contract. Dawson v. Meike, 508 P.2d 15 (Wyo. 1973).

Eviction by false representation. — Under five year lease containing a clause, that if any part of the real estate is sold, the lease may be terminated at any yearly period on 90 days

notice, falsely representing a sale and cancelling lease was not necessarily grounds for an action in deceit, but plaintiff might maintain an action for breach of contract or tort on theory of eviction by false representations. Diamond Cattle Co. v. Clark, 52 Wyo. 265, 74 P.2d 857 (1937).

Quoted in Laramie Printing Trustees v. Krueger, 437 P.2d 856 (Wyo. 1968).

Stated in McGinnis v. McGinnis, 391 P.2d 927 (Wyo. 1964).

Law review. — For a note dealing with implied covenants in oil and gas leases, see 11 Wyo. L.J.

Am. Jur. 2d and C.J.S. references. — 20 Am. Jur. 2d Covenants, Conditions and Restrictions 5§ 11 to 14.

21 C.J.S. Covenants §§ 9 to 11.

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CHAPTER 2

Deeds, Mortgages and Leases Generally

Cross references. - As to when lien of judgment attaches to property, see § 1-17-302. As to deed upon conveyance of real estate under enforcement of judgment lien by execution as prima facie evidence of legality and regularity of sale and as to effect thereof, see § 1-17-324. As to when judgment loses preference, and as to lien continuing for 1 year, see § 1-17-336. As to when judgment against decedent not a lien on real property, see § 2-6-205. As to mortgage, lease or sale by fiduciaries, see §§ 4-5-101 to 4-5-104. As to disposal of mortgaged property with intent to deprive mortgagee of security, see § 6-7-603. As to mortgages in connection with farm loan board generally, see §§ 11-39-101 to 11-39-408. As to loans on real estate by banks, and limitations thereon, see § 13-3-401. For

provision requiring patentee to make deeds in connection with conveyance of townsites and public lands, see § 15-1-307. For duties of county clerk with respect to land records, see § 18-3-402. As to commissioner of deeds, see 55 32-2-101 to 32-2-105. See also the cross references at the beginning of ch. 1 of this title, as many of them are also applicable to this chapter. As to power of railroads to mortgage or execute deeds of trust upon property and franchises, see §§ 37-9-101 to 37-9-106. As to tax deeds in connection with real estate sold for taxes, see §§ 39-3-108, 39-3-109. As to deeds for reservoir waters, etc., see § 41-3-323 et seq. As to fraudulent deeds for establishment or defeat of petition for organization of irrigation districts, see § 41-7-209.

§ 34-2-130. Same; expiration, etc., of oil, gas, etc., leases; failure to record cancellation, etc.

If any lessee, his personal representative, successor or assign, as the case may be, after an oil, gas or other mineral lease has expired, been cancelled, surrendered, relinquished or otherwise terminated shall for the space of twenty (20) days after being thereto requested, fail, refuse or neglect to record in the office of the county clerk and ex officio register of deeds of the county wherein the lands described in said lease are located a recordable certificate or deed of discharge or release thereof, he shall be liable to the lessor, his heirs or assigns for all damages occasioned by such failure, refusal, or neglect, to be recovered in a civil action. The lessor's request for discharge or release shall be in writing and delivered to the lessee by personal service or registered mail at his last known address. A letterpress or carbon or written copy of said demand, when shown to be such, may be used as evidence in any court with the same force and effect as the original. (Laws 1957, ch. 24, § 1; W.S. 1957, § 34-62.)

Cross reference. — See also § 34-1-135. Law review. — See article, "Forfeiture and Termination of Mining Leases," 1 Land & Water L. Rev. 201 (1966). C.J.S. references. — 51C C.J.S. Landlord and Tenant \$\$ 89 to 101; 58 C.J.S. Mines and Minerals \$\$ 198, 200, 210, 211.

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TITLE 35

Public Health and Safety

Cross references. — For constitutional provision declaring it the duty of the legislature to protect and promote the health and morality of the people, see art. 7, § 20, Wyo. Const. As to defense forces and affairs generally, see title 19. As to labor and employment generally, see title 27. As to mines generally, see title 30. As to motor vehicles generally, see title 31. As to trade and commerce generally, see title 40. As to welfare generally, see title 42. For provisions concerning safety with respect to public utilities, see ch. 3 to title 37. As to general powers of cities

and towns, see § 15-1-103. As to planning in cities and towns, see §§ 15-1-601 to 15-1-612. As to zoning for promotion of health, safety, morals and welfare in cities and towns, see §§ 15-1-701 to 15-1-709. As to duties of city manager relative to public health, comfort and safety, see § 15-5-108. As to general powers of counties, see § 18-2-101. As to planning and zoning in order to promote public health, safety, morals and welfare in counties, see §§ 18-5-101 to 18-5-107, 18-5-201 to 18-5-207 and 18-5-301 to 18-5-315.

CHAPTER 4 Health Regulations Generally

ARTICLE 2. PROTECTION OF PUBLIC WATER SUPPLY

Am. Jur. 2d, ALR and C.J.S. references. — 39 Am. Jur. 2d Health § 22; 61 Am. Jur. 2d Pollution Control § 53 et seq; 78 Am. Jur. 2d Waterworks and Water Companies §§ 31 to 46, 68 to 70.

Health board's power to prescribe methods of keeping water free from impurities, 23 ALR 228.

Constitutionality and construction of statutes for protection of municipal water supply, 72 ALR 673.

Validity, construction and effect of statute or other measure involving chemical treatment of public water supply, 43 ALR2d 453.

Validity of prohibition or regulation of bathing, swimming, boating, fishing, etc., to protect public water supply, 56 ALR2d 790. Liability of water distributor for damage caused by water escaping from main, 20 ALR3d 1294

Applicability of rule of strict or absolute liability to overflow or escape of water caused by dam failure, 51 ALR3d 965.

Liability of water supplier for damages resulting from furnishing impure water, 54 ALR3d 936.

Validity of zoning ordinance deferring residential development until establishment of public services in area, 63 ALR3d 1184.

94 C.J.S. Waters § 232.

Division 1. Generally

§ 35-4-201. Board of health to cooperate with city and town authorities, corporations and persons as to water, drainage and sewage; definition of "drainage" and "sewage."

Said board shall consult with and advise the authorities of cities and towns and persons having or about to have systems of water supply, drainage and sewage as to the most appropriate source of water supply and the best method assuring its purity or as to the best method of disposing of their drainage or sewage with reference to the existing and future needs of other cities, towns or persons which may be affected thereby. It shall also consult with and advise all corporations, companies or persons engaged or intending to engage in any manufacturing or other business whose drainage or sewage may tend to pollute any inland water as to the best method of preventing such pollution, and it may conduct experiments to determine the best methods of the purification or disposal of drainage or sewage. Cities, towns and all other corporations, companies or persons shall submit to said board for its advice and approval their proposed system of water supply or of the disposal of drainage or sewage, and no city, town or persons or company shall proceed to build or install or enlarge or extend any system of water supply, drainage or sewage disposal, without first obtaining the approval of the state board of health. In this section the term "drainage" means rainfall, surface and subsoil water only, and "sewage" means domestic and industrial filth and waste. (Laws 1923, ch. 92, § 4; R.S. 1931, § 103-247; C.S. 1945, § 64-204; W.S. 1957, § 35-187.)

Cross references. — For constitutional provision relating to construction or improvement of works for conservation or utilization of water, see art. 16, § 10, Wyo. Const. For provisions concerning drainage districts, see §§ 41-9-101 to 41-9-606. For provisions of the Water and Sewer District Law.

Cross references. — For constitutional see §§ 41-10-101 to 41-10-157. As to storage of ovision relating to construction or water for industrial and municipal uses, see uprovement of works for conservation or §§ 41-14-101 to 41-14-103.

Editor's note. — The powers, duties and authority of the board of health have been transferred to the department of health and social services, See § 9-3-102.

§ 35-4-202. Contamination of streams by sawmills, mining operations, etc., prohibited; penalty; exceptions; special permits.

Any owner or owners of any sawmill, reduction works, smelter, milling, refining or concentration works, or other manufacturing or industrial works, or any agent, servant or employee thereof, or any person or persons whomsoever, who shall throw or deposit in, or in any way permit to pass into any natural stream or lake within the state, wherein are living fish, any sawdust, chemicals, mill-tailing, or other refuse matter of deleterious substance or poisons of any kind or character whatsoever, that will or may tend to the destruction or driving away from such waters any fish, or kill or destroy any fish therein, or that will

or may tend to pollute, contaminate, render impure or unfit for domestic, irrigation, stock or other purposes for which appropriated and used, the waters of any such natural streams or lake, or that will or may tend to obstruct, fill in or otherwise interfere with the flow, channel or condition of such streams, lake or waters, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than fifty dollars (\$50.00) or more than one hundred dollars (\$100.00) or shall be imprisoned in the county jail for not less than thirty (30) days nor more than six (6) months, or by both such fine and imprisonment for each offense; and where any of the foregoing unlawful acts are committed continuously, each of the days upon which committed shall be treated and considered as a separate and distinct offense; provided, that nothing in this or the succeeding section [§ 23-3-204] shall apply to the slag from smelter furnaces; provided further, that nothing in this section nor in any of the other laws of this state shall prevent the owner or owners of any mill, concentration works, reduction works or tailings pond or basin used in connection therewith, in this state, now or hereafter to be located upon any natural stream, or lake, from operating said mill, concentration works, reduction works or tailings pond or basin used in connection therewith, where the said owner or owners thereof shall build or cause to be built a dam or dams for settling purposes; provided however that before any dam or dams shall be built for any such purposes, the director of the state department of public health, the state game and fish commissioner and the state engineer, acting as a joint committee and each member casting a vote of his department, shall review such plans and according to their findings shall approve or disapprove such plans for preventing any deleterious substances from entering any waters beyond the project area; provided, that whenever a majority of the landowners on any irrigation stream shall petition the state game and fish commissioner to allow sawdust to be put in any stream that does not reach a main body of water or living stream he shall have the power to grant such permits. (Laws 1921, ch. 83, § 98; R.S. 1931, § 49-200; C.S. 1945, § 47-507; Laws 1957, ch. 82, § 1; W.S. 1957, § 35-196.)

Editor's note. — The game and fish commissioner has been replaced by the director of the game and fish department. See \$\$ 23-1-401 to 23-1-406.

Effective date. — Section 2, ch. 82, Laws 1957, makes the act effective from and after passage. Approved February 9, 1957.

ARTICLE 3. RADIOACTIVE ISOTOPES OR MATERIAL

§ 35-4-301. Hospitals, manufacturers, processors, etc., to register with health department.

Each hospital, clinic, manufacturing establishment, research or educational institution, experiment station, processing mill, or other institution or place of business or process where radioactive isotopes or materials are used, manufactured, processed, packaged, refined, produced, disposed or concentrated shall be registered with the state department of public health. The state mine inspector will register with the department of public health any mine, which is producing or has produced radioactive substances. (Laws 1953, ch. 61, § 1; 1955, ch. 153, § 1; W.S. 1957, § 35-201.)

Am. Jur. 2d reference. — 39 Am. Jur. 2d Health §§ 22 to 25.

CHAPTER 10

Crimes and Offenses

ARTICLE 3. STORAGE OF EXPLOSIVES

§ 35-10-301. General regulations.

It shall be unlawful for any person or company to store any gunpowder or any other explosive material at a less distance than one thousand (1,000) feet from any house or habitation, when more than fifty (50) pounds are stored at the same place; but it shall be unlawful to place or to keep any powder or other explosive material, in any house or building occupied as a residence, or any outbuilding pertaining thereto. (Laws 1886, ch. 27, § 1; R.S. 1887, § 1950; R.S. 1899, § 2256; C.S. 1910, § 2964; Laws 1919, ch. 17, § 1; C.S. 1920, § 3650; R.S. 1931, § 40-101; C.S. 1945, § 9-1301; W.S. 1957, § 35-476.)

Cross reference. - As to use of explosives in mining, see §§ 30-5-204 to 30-6-112.

Am. Jur. 2d, ALR and C.J.S. references. - 31 Am. Jur. 2d Explosions and Explosives §§ 1 to 3, 6, 7, 15, 27.

Injury to child finding or having access to explosives, 10 ALR2d 22.

Contributory negligence as a defense to a cause of action based upon violation of statute relating to explosives or volatile oils, 10 ALR2d

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Municipal liability for injury due to explosion of substance stored by third persons under municipal permit, 17 ALR2d 683.

Liability of seller of firearm, explosive, or highly inflammable substance to child, 20 ALR2d 119; 75 ALR3d 825.

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Admissibility, in damage action arising out of

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Duty of possessor of land to warn adult licensee of danger of explosion, 55 ALR2d 525.

Admissibility of experimental evidence as to explosion, 76 ALR2d 402.

Criminal offense of bomb hoax or making false report as to planting of explosive, 93 ALR2d 304.

Liability for injury or damage caused by rocket testing or firing, 29 ALR3d 556.

Liability in connection with fire or explosion of explosives while being stored or transported, 35 ALR3d 1177.

Absolute liability for blasting operations as extending to injury or damage not immediately caused by debris or concussion from explosion, 56 ALR3d 1017.

Recovery of damages for emotional distress, fright, and the like, resulting from blasting operations, 75 ALR3d 770.

Criminal liability for transportation of explosives and other dangerous articles under 18 U.S.C. §§ 831-835 and implementing regulations, 8 ALR Fed. 816.

What constitutes "hazardous substance" under 15 U.S.C. § 1261 (f), and what acts involving hazardous substances are prohibited under 15 U.S.C. § .1263, 29 ALR Fed. 742.

35 C.J.S. Explosives § 1 et seq.

§ 35-10-302. Construction of powder magazine.

Hereafter, any powder magazine that may be built, shall be so constructed as to provide and maintain the storage room thereof, entirely below the natural surface of the ground adjacent; and it shall be unlawful to store such powder or explosives in any other than such storage rooms. (Laws 1886, ch. 27, § 2; R.S. 1887, § 1951; R.S. 1899, § 2257; C.S. 1910, § 2965; C.S. 1920, § 3651; R.S. 1931, § 40-102; C.S. 1945, § 9-1302; W.S. 1957, § 35-477.)

§ 35-10-303. Penalty for violation of section 35-10-301; violation of section 35-10-302 declared nuisance.

Any one violating the provisions of section one of this act [§ 35-10-301] shall be on conviction, fined in any sum not exceeding one hundred dollars (\$100.00) for each and every offense, and may be imprisoned not exceeding thirty (30) days, or both fined and imprisoned, in the discretion of the court having jurisdiction. Any violation of the provisions of section 2 [§ 35-10-302] shall be a public nuisance, and shall be abated at the suit of any person, in any court of competent jurisdiction. (Laws 1886, ch. 27, § 3; R.S. 1887, § 1952; R.S. 1899, § 2258; C.S. 1910, § 2966; C.S. 1920, § 3652; R.S. 1931, § 40-103; C.S. 1945, § 9-1303; W.S. 1957, § 35-478.)

Cross reference. — As to nuisances generally, see §§ 6-12-101 to 6-12-109.

Effective date. — Section 4, ch. 27, Laws 1886.

makes the act effective from and after passage. Approved February 27, 1886.

C.J.S. reference. - 35 C.J.S. Explosives § 13.

ARTICLE 4. MISCELLANEOUS OFFENSES

§ 35-10-401. Obstructing or injuring highways, streets, bridges or navigable streams generally; offensive manufactures or businesses; pollution of waters.

If any person, company or corporation shall obstruct or injure or cause or procure to be obstructed or injured, any public road or highway, or common street or alley of any town or village, or any public bridge or causeway, or public river or stream, declared navigable by law, or shall continue such obstruction, so as to render the same inconvenient or dangerous to pass, or shall erect or establish any offensive trade, or manufacture or business, or continue the same after it has been erected or established, or shall in anywise pollute or obstruct any watercourse, lake, pond, marsh or common sewer, or continue such obstruction or pollution, so as to render the same unwholesome or offensive to the county, city, town or neighborhood thereabouts; every person, company or corporation so offending, shall upon conviction thereof, be fined not exceeding one hundred dollars (\$100.00); and every such nuisance may, by order of the district court before whom the conviction may take place, be removed and abated by the sheriff of the proper county. (C.L. 1876, ch. 35, § 120; Laws 1886, ch. 73, § 1; R.S. 1887, § 1003; R.S. 1899, § 5107; C.S. 1910, § 5958; C.S. 1920, § 7247;

R.S. 1931, § 32-702; C.S. 1945, § 9-711; W.S. 1957, § 35-479.)

(b) Whoever, in any manner, wrongfully obstructs any public highway, or injures any bridge, culvert, or embankment, or injures any material used in the construction of any such road, shall be fined in any sum not more than one hundred dollars (\$100.00), to which may be added imprisonment in the county jail not more than three (3) months. (Laws 1890, ch. 73, § 67; R.S. 1899, § 5020; C.S. 1910, § 5864; C.S. 1920, § 7153; R.S. 1931, § 32-361; C.S. 1945, § 9-712; W.S. 1957, § 35-479.)

Cross references. — For provisions of the Wyoming Environmental Quality Act, see chapter 11 to this title. As to nuisances generally, see §§ 6-12-101 to 6-12-109. For provisions relating to highways generally, see §§ 24-1-101 to 24-1-130.

Editor's note. — Because of the similarity in the provisions of \$5 9.711 and 9.712, W.C.S. 1945, they have been combined to form a single section consisting of 2 paragraphs, each carrying its own historical citation.

Section 9-711, W.C.S. 1945, was enacted as part of ch. 35, tit. IX, C.L. 1876. See Editor's note to § 6-2-101.

Section 9-712, W.C.S. 1945, was enacted as part of the third part of ch. 73, Laws 1890, which deals with crimes against property. See Editor's note to § 6-1-101.

Am. Jur. 2d and ALR references. — 39 Am. Jur. 2d Health §§ 22 to 25; 40 Am. Jur. 2d Highways § 1 et seq.; 45 Am. Jur. 2d Intoxicating Liquors §§ 22 to 67, 123, 236, 237, 427 to 433; 56 Am. Jur. 2d Municipal Corporations §§ 423 to 488.

Health board's power to prescribe means or methods of keeping water supply free of impurities, 23 ALR 228.

§ 35-10-402. Entering mines, mills or factories while intoxicated; taking intoxicants into mines, mills, etc.

Whoever shall, while under the influence of intoxicating liquor, enter any mine, smelter, metallurgical works, machine shops or sawmills, or any of the buildings connected with the operation of the same in Wyoming where miners or workmen are employed or whoever shall carry or haul any intoxicating liquor into the same or any logging or grading camp shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not exceeding five hundred dollars (\$500.00) to which may be added imprisonment in the county jail for a term not exceeding one (1) year. (Laws 1905, ch. 58, § 1; 1909, ch. 32, § 1; C.S. 1910, § 5890; C.S. 1920, § 7179; R.S. 1931, § 32-378; C.S. 1945, § 9-713; W.S. 1957, § 35-480.)

Effective dates. — Section 2, ch. 58, Laws 1905, makes the act effective from and after passage. Approved February 20, 1905.

Section 2, ch. 32, Laws 1909, makes the act effective from and after passage. Approved February 17, 1909.

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CHAPTER 11

Wyoming Environmental Quality Act

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Liability of oil and gas lessee or operator for injuries to or death of livestock, 51 ALR3d 304.

Traffic noise and vibration from highway as element of damages in eminent domain, 51 ALR3d 860.

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Validity, construction and application of statutes requiring assessment of environmental information prior to grants of entitlements for private land use, 76 ALR3d 388.

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Construction and application of §§ 101 to 105 of National Environmental Policy Act of 1969 (42 U.S.C. §§ 4331 to 4335) requiring all federal agencies to consider environmental factors in their planning and decision making, 17 ALR Fed. 33

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Yalidity, under federal constitution, of state statute or local ordinance regulating phosphate content of detergents, 21 ALR Fed. 365.

Authority of secretary of army to deny dredging and filling permit for ecological reasons under § 10 of Rivers and Harbors Act of 1899 (33 U.S.C. § 403), 25 ALR Fed. 706.

Federal common law of nuisance as basis for relief in environmental pollution cases, 29 ALR Fed. 137.

What are "land-use and transportation controls" which may be imposed, under § 100 (a)

(2) (B) of Clean Air Act of 1970 (42 U.S.C. § 1857c-5 (a) (2) (B)), to insure maintenance of national primary ambient air quality standards, 30 ALR Fed. 156.

Orders or penalties against state or its officials for failure to comply with regulations directing state to regulate pollution-creating activities of private parties, under § 113 of Clean Air Act (42 U.S.C. § 1857c-8), 31 ÅLR Fed. 79,

39A C.J.S. Health and Environment § 61 et seq.

ARTICLE 1. GENERAL PROVISIONS

§ 35-11-101. Short title.

This act shall be known and may be cited as the "Wyoming Environmental Quality Act." (Laws 1973, ch. 250, § 1.)

Cited in Board of Trustees, Laramie County School Dist. No. 1 v. Spiegel, 549 P.2d 1161 (Wyo. 1976).

Law reviews. - For comment on the Wyoming Environmental Quality Act of 1973, see 9 Land & Water L. Rev. 65 (1974). See article, "Federal Mineral Reservations," 10 Land & Water L. Rev. 1 (1975).

§ 35-11-102. Policy and purpose.

Whereas pollution of the air, water and land of this state will imperil public health and welfare, create public or private nuisances, be harmful to wildlife, fish and aquatic life, and impair domestic, agricultural, industrial, recreational and other beneficial uses; it is hereby declared to be the policy and purpose of this act to enable the state to prevent, reduce and eliminate pollution; to preserve, and enhance the air, water and reclaim the land of Wyoming; to plan the development, use, reclamation, preservation and enhancement of the air, land and water resources of the state; to preserve and exercise the primary responsibilities and rights of the state of Wyoming; to retain for the state the control over its air, land and water and to secure cooperation between agencies of the state, agencies of other states, interstate agencies, and the federal government in carrying out these objectives. (Laws 1973, ch. 250, § 1; 1977, ch. 132, § 1.)

The 1977 amendment substituted "state" for "State" preceding "of Wyoming."

Effective date. — Section 3, ch. 132, Laws 1977, makes the act effective May 27, 1977.

§ 35-11-103. Definitions.

- (a) For the purpose of this act, unless the context otherwise requires:
 - (i) "Department" means the department of environmental quality established by this act;

- (ii) "Council" means the environmental quality council established by this act;
- (iii) "Director" means the director of the department of environmental quality;
- (iv) "Board" means one (1) or more of the advisory boards in each division of air, land or water quality;
- (v) "Administrator" means the administrator of each division of air, land and water quality;
- (vi) "Person" means an individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, municipality or any other political subdivision of the state, or any interstate body or any other legal entity;
- (vii) "Aggrieved party" means any person named or admitted as a party or properly seeking or entitled as of right to be admitted as a party to any proceeding under this act because of damages that person may sustain or be claiming because of his unique position in any proceeding held under this act;
- (viii) "Interstate agency" means an agency of two (2) or more states established by or pursuant to an agreement or compact approved by the United States Congress or any other agency of two (2) or more states, having substantial powers or duties pertaining to the control of air, land or water pollution;
- (ix) "Municipality" means a city, town, county, district, association or other public body;
- (x) "Point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which pollutants are or may be discharged;
- (xi) The singular includes the plural, the plural the singular, and the masculine and feminine or neuter, when consistent with the intent of this act and necessary to effect its purpose;
- (xii) "This act" means sections 35-502.1 through 35-502.56 [§§ 35-11-101 to 35-11-403, 35-11-405, 35-11-406, 35-11-408 to 35-11-1104] of the statutes.
- (b) Specific definitions applying to air quality:
 - (i) "Air contaminant" means odorous material, dust, fumes, mist, smoke, other particulate matter, vapor, gas or any combination of the foregoing, but shall not include steam or water vapor;
 - (ii) "Air pollution" means the presence in the outdoor atmosphere of one (1) or more air contaminants in such quantities and duration which may be injurious to human health or welfare, animal or plant life, or property, or unreasonably interferes with the enjoyment of life or property;
 - (iii) "Emission" means a release into the outdoor atmosphere of air contaminants.

(c) Specific definitions applying to water quality:

- (i) "Pollution" means contamination or other alteration of the physical, chemical or biological properties of any waters of the state, including change in temperature, taste, color, turbidity or odor of the waters or any discharge of any acid or toxic material, chemical or chemical compound, whether it be liquid, gaseous, solid, radioactive or other substance, including wastes, into any waters of the state which creates a nuisance or renders any waters harmful, detrimental or injurious to public health, safety or welfare, to domestic, commercial, industrial, agricultural, recreational or other legitimate beneficial uses, or to livestock, wildlife or aquatic life, or which degrades the water for its intended use, or adversely affects the environment. This term does not mean water, gas or other material which is injected into a well to facilitate production of oil, or gas or water, derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the state, and if the state determines that such injection or disposal well will not result in the degradation of ground or surface or water resources;
- (ii) "Wastes" means sewage, industrial waste and all other liquid, gaseous, solid, radioactive, or other substances which may pollute any waters of the state;
- (iii) "Sewerage system" means pipelines, conduits, storm sewers, pumping stations, force mains, and all other constructions, devices, appurtenances and facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal;
- (iv) "Treatment works" means any plant or other works used for the purpose of treating, stablilizing or holding wastes;
- (v) "Disposal system" means a system for disposing of wastes, either by surface or underground methods, including sewerage systems, treatment works, disposal wells, and absorption fields;
- (vi) "Waters of the state" means all surface and ground water within Wyoming;
- (vii) "Discharge" means any addition of any pollution or wastes to any waters of the state;
- (viii) "Public water supply" means any water supply being distributed by ten (10) or more service connections utilized to furnish water for human consumption either in preparing foods or beverages for inhabitants of residences or business establishments.
- (d) Specific definition applying to solid waste management:
 - (i) "Solid waste" means garbage, and other discarded solid materials, materials, including solid waste materials resulting from industrial, commercial, and agricultural operations, and from community activities, but does not include solids or dissolved material in domestic sewerage or other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial waste water effluents, dissolved materials in irrigation return flows or other common water pollutants.

- (e) Specific definitions for land quality:
 - (i) "Reclamation" means the process of reclaiming an area of land affected by mining to use for grazing, agriculture, recreational, wildlife purposes, or any other purpose of equal or greater value. The process may require contouring, terracing, grading, resoiling, revegetation, compaction and stabilization, settling ponds, water impoundments, diversion ditches, and other water treatment facilities in order to eliminate water diminution to the extent that existing water sources are adversely affected, pollution, soil and wind erosion, or flooding resulting from mining or any other activity to accomplish the reclamation of the land affected to a useful purpose;
 - (ii) "Minerals" means coal, clay, stone, sand, gravel, bentonite, scoria, rock, pumice, limestone, ballast rock, uranium, gypsum, feldspar, copper ore, iron ore, oil shale, trona, and any other material removed from the earth for reuse or further processing;
 - (iii) "Contouring" means grading or backfilling and grading the land affected and reclaiming it to the proposed future use with adequate provisions for drainage. Depressions to accumulate water are not allowed except if approved as part of the reclamation plan;
 - (iv) "Overburden" means all of the earth and other materials which lie above the mineral deposit and also means such earth and other materials disturbed from their natural state in the process of mining, or mining from exposed natural deposits;
 - (v) "Underground mining" means the mining of minerals by man-made excavation underneath the surface of the earth;
 - (vi) "Pit" means a tract of land from which overburden has been or is being removed for the purpose of surface mining or mining from an exposed natural deposit;
 - (vii) "Adjacent lands" means all lands within one-half mile of the proposed permit area;
 - (viii) "Operation" means all of the activities, equipment, premises, facilities, structures, roads, rights-of-way, waste and refuse areas, storage and processing areas, and shipping areas used in the process of excavating or removing overburden and minerals from the affected land or for removing overburden for the purpose of determing the location, quality or quantity of a natural mineral deposit or for the reclamation of affected lands:
 - (ix) "Operator" means any person, as defined in this act [§§ 35-11-101 to 35-11-104], engaged in mining, either as a principal who is or becomes the owner of minerals as a result of mining, or who acts as an agent or independent contractor on behalf of such principal in the conduct of mining operations;
 - (x) "Surface mining" means the mining of minerals by removing the overburden lying above natural deposit thereof and mining directly from the natural deposits thereby exposed, including strip, open pit, dredging, quarrying, surface leaching, and related activities;

(xi) "Mining permit" means certification by the director that the affected land described therein may be mined for minerals by a licensed operator in compliance with an approved reclamation plan. No mining may be commenced or conducted on land for which there is not in effect a valid mining permit. A mining permit shall remain valid and in force from the date of its issuance until the termination of all mining and reclamation operations, except as otherwise provided in this act;

(xii) "Spoil pile" means the overburden or any reject minerals as piled or

deposited by surface or underground mining:

(xiii) "A license to mine for minerals" means the certification from the administrator that the licensee has the right to conduct mining operations on the subject lands in compliance with this act; for which a valid permit exists; that he has deposited a bond conditioned on his faithful fulfillment of the requirements thereof; and that upon investigation the administrator has determined that the licensed mining operation is within the purposes of this act;

(xiv) "Topsoil" means soil on the surface prior to mining that will support plant life:

(xv) "Exploration by dozing" means the removal of overburden by trenching with a bulldozer or other earth moving equipment to expose possible indications of mineralization:

(xvi) "Affected land" means the area of land from which overburden is removed, or upon which overburden, development waste rock or refuse is deposited, or both, access roads, haul roads, mineral stockpiles, mill tailings, impoundment basins, and all other lands whose natural state has been or will be disturbed as a result of the operations;

(xvii) "Refuse" means all waste material directly connected with mining including overburden, reject mineral, [or] mill tailings, which have passed through a processing plant prior to deposition on affected land. (Laws 1973, ch. 250, § 1; 1974, ch. 14, § 1; 1975, ch. 198, § 2; 1977, ch. 132, § 1.)

The 1977 amendment deleted "railroads" following "roads" near the beginning of paragraph (viii) of subsection (e).

Effective dates. — Section 3, ch. 14, Laws 1974, makes the act effective immediately upon passage. Approved February 12, 1974.

Section 5, ch. 198, Laws 1975, makes the act effective immediately upon passage. Approved March 12, 1975.

Section 3, ch. 132, Laws 1977, makes the act effective May 27, 1977.

§ 35-11-104. Created.

Effective July 1, 1973, there is created a department within the executive branch entitled "The State Department of Environmental Quality." (Laws 1973, ch. 250, § 1.)

§ 35-11-105. Divisions enumerated.

- (a) The department shall consist of the following divisions:
 - (i) Air quality division;
 - (ii) Water quality division;
 - (iii) Land quality division. (Laws 1973, ch. 250, § 1.)

§ 35-11-106. Powers, duties, functions and regulatory authority.

(a) All powers, duties, functions and regulatory authority vested in the air resources council, the water pollution advisory council, the air quality section and the sanitary engineering services branches of the division of health and medical services, and the open cut land reclamation section of the office of the commissioner of public lands are transferred to the department, as of the effective date of this act. The performance of such acts or functions by the department of these respective divisions shall have the same effect as if done by the former department, councils, divisions, sections or branches as referred to or designated by law, contract or other document. The reference or designation to the former department, councils, divisions, sections or branches shall now apply to the department.

(b) All rules, regulations and orders of the former department, councils, divisions, sections or branches lawfully adopted prior to the effective date of this act are adopted as the rules, regulations and orders of the department and shall continue to be effective until revised, amended, repealed or nullified pursuant

to law. (Laws 1973, ch. 250, § 1.)

Effective date. — Section 5, ch. 250, Laws 1973, makes the act effective on July 1, 1973.

§ 35-11-107. Records and physical properties; rights of personnel; successors.

- (a) All records, physical property and personnel including their rights and privileges under the merit system, retirement system and personnel department system, and any appropriated or unused funds of the former councils, divisions, sections or branches shall be transferred to the department as of the effective date of this act. All records, lists or other information which by law are confidential or privileged in nature shall remain as such.
- (b) The air quality division is the successor to the powers, duties, regulatory authority and functions of the air resources council and air quality section of the division of health and medical services, and such council, section and branch are abolished as of the effective date of this act.
- (c) The water quality division is the successor to the powers, duties, regulatory authority and functions of the water pollution advisory council and the sanitary engineering services branch of the division of health and medical services, which council and branch are abolished as of the effective date of this act.

(d) The land quality division is the successor to the powers, duties, regulatory authority and functions of the open pit land reclamation section of the office of the commissioner of public lands and the department is the successor to the sanitary engineering service branch of the division of health and medical services, which sections and branches are abolished as of the effective date of this act. (Laws 1973, ch. 250, § 1.)

Effective date. — Section 5, ch. 250, Laws 1973, makes the act effective on July 1, 1973.

§ 35-11-108. Appointment of director and division administrators; term; salaries; employment of assistants.

The governor shall appoint a director of the department who will serve at the pleasure of the council and the governor, who is the department's executive and administrative head. The director shall appoint administrators for each of the divisions of air, water and land quality, who are the executive and administrative heads of their respective divisions and are responsible to and under the control and supervision of the director. Each appointee of the director shall serve at the pleasure of the appointing authority and his salary and qualifications shall be determined by the personnel division. The director, with the advice of the respective administrators and the approval of the council, may employ professional, technical and other assistants, along with other employees as may be necessary to carry out the purposes of this act. (Laws 1973, ch. 250, § 1.)

§ 35-11-109. Powers and duties of director.

(a) In addition to any other powers and duties imposed by law, the director of the department shall:

(i) Perform any and all acts necessary to promulgate, administer and enforce the provisions of this act and any rules, regulations, orders, limitations, standards, requirements or permits adopted, established or issued thereunder, and to exercise all incidental powers as necessary to carry out the purposes of this act;

(ii) Advise, consult and cooperate with other agencies of the state, the federal government, other states, interstate agencies, and other persons in

furtherance of the purposes of this act;

(iii) Exercise the powers and duties conferred and imposed by this act in such a manner as to carry out the policy stated in section 35-502.2 [§ 35-11-102] of the statutes;

(iv) Conduct, encourage, request and participate in, studies, surveys, investigations, research, experiments, training and demonstrations by contract, grant or otherwise; prepare and require permittees to prepare reports; and collect information and disseminate to the public such information as is deemed reasonable and necessary for the proper enforcement of this act;

(v) Conduct programs of continuing surveillance and of a regular periodic inspection of all actual or potential sources of pollution and of public water

supplies with the assistance of the administrators;

(vi) Designate authorized officers, employees or representatives of the department to enter and inspect any property, premise or place, except private residences, on or at which an air, water or land pollution source is located or is being constructed or installed. Persons so designated may inspect and copy any records required to be maintained pursuant to this act at any reasonable time upon reasonable notice for the purpose of investigating actual or potential sources of air, water or land pollution and for determining compliance or noncompliance with this act, and any rules, regulations, standards, permits or orders promulgated hereunder. The owner, occupant or operator shall receive a duplicate copy of all reports made as a result of such inspections;

(vii) Investigate violations of this act or regulations adopted hereunder and prepare and present enforcement cases before the council; to take such enforcement action as set out in articles 6 and 7 of this act; to appear before

the council on any hearing under this act;

(viii) Represent Wyoming in any matters pertaining to plans, procedures or negotiations for interstate compacts or other inter-governmental arrangements relating to environmental enhancement and protection;

(ix) Accept, receive and administer any grants, gifts, loans or other funds made available from any source for the purposes of this act. Any monies received by the director pursuant to this paragraph shall be deposited with the state treasurer in the account and fund as provided by the funds consolidation act for the purpose designated;

(x) Serve as executive secretary to the council without vote;

(xi) Designate authorized officers, employees or representatives of the department to monitor the air, water, and land quality, and solid waste management operations of all facilities which have been granted permits under W.S. 35-502.75 through 35-502.94 [§§ 35-12-101 to 35-12-121], for assuring continuing compliance with conditions and requirements of their permits and for discovering and preventing noncompliance with the permits or violations of law. (Laws 1973, ch. 250, § 1; 1977, ch. 66, § 2.)

The 1977 amendment added paragraph (xi) of subsection (a).

Effective date. - Section 3, ch. 66, Laws 1977, makes the act effective immediately upon

completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved February 23, 1977.

§ 35-11-110. Powers of administrators.

- (a) The administrators, under the control and supervision of the director, shall enforce and administer this act and the rules, regulations and standards promulgated hereunder. Each administrator shall have the following powers:
 - (i) To serve as executive secretary of their respective advisory boards without vote;

 (ii) To issue, deny, amend, suspend or revoke permits and licenses and to determine the amount of bond to be posted by the operator to insure reclamation of any affected lands;

(iii) To supervise studies, surveys, investigations, experiments and research projects assigned by the director and report all information gained

therefrom to the director and the appropriate advisory board;

 (iv) To determine the degrees of air, water or land pollution throughout the state and the several parts thereof;

(v) To administer, in accordance with this act, any permit or certification

systems which may be established hereunder:

- (vi) To require the owners and operators of any point source to complete plans and specifications for any application for a permit required by this act or regulations made pursuant hereto and require the submission of such reports regarding actual or potential violations of this act or regulations thereunder;
 - (vii) To require the owner or operator of any point source to:

(A) Establish and maintain records;

(B) Make reports:

(C) Install, use and maintain monitoring equipment or methods;

(D) Sample effluents, discharges or emissions;

(E) Provide such other information as may be reasonably required and specified.

(viii) To consult with and report to the appropriate advisory board and to make written reports of all the activities of his division to said advisory

board at each of its regularly scheduled meetings;

(ix) To recommend to the director, after consultation with the appropriate advisory board, that any rule, regulation or standard or any amendment adopted hereunder may differ in its terms and provisions as between particular types, characteristics, quantities, conditions and circumstances of air, water or land pollution and its duration, as between particular air, water and land pollution services and as between particular areas of the state;

(x) To possess such further powers as shall be reasonably necessary and incidental to the proper performance of the duties imposed upon the

divisions under this act. (Laws 1973, ch. 250, § 1.)

§ 35-11-111. Independent environmental quality council created; terms; officers; meetings; expenses.

(a) There is hereby created an independent council consisting of seven (7) members to be known as the environmental quality council. Not more than four (4) of the members shall be of the same political party. Council members shall be appointed by the governor with the advice and consent of the senate. No employee of the state, other than employees of institutions of higher education, shall be a member of the council. At all times, there shall be at least one (1) member from the minerals industry and one (1) member from agriculture. Any member receiving more than ten percent (10%) of his income from any permit applicant shall not act on a permit application from such applicant.

(b) The terms of the members shall be for four (4) years, except that on the initial appointment, members' terms shall be as follows: three (3) shall serve for two (2) years, two (2) shall serve for three (3) years and two (2) shall serve for four (4) years, as designated by the initial appointment. When a vacancy occurs, the governor shall appoint a new member for the remaining portion of the unexpired term.

(c) The first meeting of the council shall be held within sixty (60) days after the effective date of this act at which time a chairman shall be elected from among the members to serve a one (1) year term. The council shall also annually elect from its membership a vice-chairman and a secretary, each for a term of

one (1) year, and it shall keep a record of its proceedings.

(d) The council shall hold at least four (4) regularly scheduled meetings each year. Special meetings may be called by the chairman, and special meetings shall be called by the chairman, upon a written request submitted by three (3) or more members. Five (5) members shall constitute a quorum. All matters shall be decided by a majority vote of those on the council.

(e) Each member of the council shall receive the same per diem, mileage and expense allowances while attending and traveling to and from meetings of the council in the same manner and amount as employees of the state. (Laws 1973,

ch. 250, § 1; 1977, ch. 132, § 1.)

The 1977 amendment, in subsection (a), inserted "(7)" in the first sentence and "(4)" in the second sentence, deleted "or any of its political subdivisions" following "state" in the fourth sentence and added the last two sentences.

Effective dates. — Section 5, ch. 250, Laws 1973, makes the act effective on July 1, 1973. Section 3, ch. 132, Laws 1977, makes the act effective May 27, 1977.

§ 35-11-112. Powers and duties of the environmental quality council.

- (a) The council shall act as the hearing examiner for the department and shall hear and determine all cases or issues arising under the laws, rules, regulations, standards or orders issued or administered by the department or any division thereof. The council shall:
 - (i) Promulgate rules and regulations necessary for the administration of this act, after recommendation from the director of the department, the administrators of the various divisions and their respective advisory boards;
 - (ii) Conduct hearings as required by the Wyoming Administrative Procedure Act [§§ 9-4-101 to 9-4-115] for the adoption, amendment or repeal of rules, regulations, standards or orders recommended by the advisory boards through the administrators and the director. The council shall approve all rules, regulations, standards or orders of the department before they become final;
 - (iii) Conduct hearings in any case contesting the administration or enforcement of any law, rule, regulation, standard or order issued or administered by the department or any division thereof;

(iv) Conduct hearings in any case contesting the grant, denial, suspension, revocation or renewal of any permit, license, certification or

variance authorized or required by this act;

(v) Designate at the earliest date and to the extent possible those areas of the state which are very rare or uncommon and have particular historical, archaeological, wildlife, surface geological, botanical or scenic value. When areas of privately owned lands are to be considered for such designation, the council shall give notice to the record owner and hold hearing thereon, within a county in which the area, or major portion thereof, to be so designated is located, in accordance with the Wyoming Administrative Procedure Act [§§ 9-4-101 to 9-4-115].

(b) The council may contract with consultants having special expertise to

assist in the performance of its duties.

(c) Subject to any applicable state or federal law, and subject to the right to appeal, the council may:

(i) Approve, disapprove, repeal, modify or suspend any rule, regulation, standard or order of the director or any division administrator;

(ii) Order that any permit, license, certification or variance be granted,

denied, suspended, revoked or modified;

- (iii) Affirm, modify or deny the issuance of orders to cease and desist any act or practice in violation of the laws, rules, regulations, standards or orders issued or administered by the department or any division thereof. Upon application by the council, the district court of the county in which the act or practice is taking place shall issue its order to comply with the cease and desist order, and violation of the court order may be punished as a contempt.
- (d) The director and his staff shall provide the council with meeting facilities, secretarial or clerical assistance, supplies and such other assistance as the council may require in the performance of its duties.
- (e) Upon request, the attorney general shall provide such legal assistance as the council may require in the conduct of its hearings, writing of its decisions or the enforcement of its orders. The council may employ independent legal assistance as necessary to the proper performance of its duties.

(f) All proceedings of the council shall be conducted in accordance with the Wyoming Administrative Procedure Act [§§ 9-4-101 to 9-4-115]. (Laws 1973, ch.

250, § 1; 1977, ch. 184, § 1.)

Cross reference. — As to duties generally of the attorney general, see § 9-2-505.

The 1977 amendment rewrote the first sentence and added the second sentence in paragraph (v) of subsection (a). Effective date. — Section 2, ch. 184, Laws 1977, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 8, 1977.

§ 35-11-113. Advisory boards created; membership; terms; meetings; expenses.

- (a) There is created within the department three (3) advisory boards, one (1) for each division. Each advisory board shall consist of five (5) members appointed by the governor. Each board shall have one (1) member who represents industry, one (1) member who represents agriculture, one (1) member who represents political subdivisions and two (2) members who represent the public interest. Not more than three (3) members of each board shall be from the same political party.
- (b) For the initial appointments to each board, the governor shall appoint one (1) member for a six (6) year term, two (2) members for four (4) year terms and two (2) members for two (2) year terms. Thereafter all appointments shall be for four (4) year terms. No officer or employee of the state, other than employees of institutions of higher education, may be appointed to a board. A vacancy occurs if any member ceases to represent the interest group or political party for which he was originally appointed, or if any member becomes unable or fails to serve for any reason. The governor shall fill vacancies by appointment for the unexpired portion of the term.
- (c) Each advisory board shall meet within sixty (60) days after the effective date of this act to elect from among its members a chairman and a vice-chairman. Such officers shall be elected annually thereafter. Each board shall hold at least four (4) regularly scheduled meetings each year, and special meetings may be called by the chairman at any time. Three (3) members shall constitute a quorum for the purpose of conducting business, but all decisions must be approved by a majority of the total membership of the board. Each board shall keep a written record of its meetings and proceedings. Each board member shall be reimbursed for per diem, mileage and expenses for attending board meetings in the same manner and amount as state employees. (Laws 1973, ch. 250, § 1.)

Cross reference. — As to per diem and traveling expenses of state employees, see 1973, makes the act effective on July 1, 1973. §§ 9-1-115 to 9-1-117.

§ 35-11-114. Powers and duties of the advisory boards.

- (a) The advisory board shall recommend to the council through the administrator and director, comprehensive plans and programs for the prevention, control and abatement of air, water and land pollution and the protection of public water supplies.
- (b) The advisory board shall recommend to the council through the administrator and director the adoption of rules, regulations and standards to implement and carry out the provisions and purposes of this act which relate to their divisions, and variances therefrom.
- (c) The advisory boards shall counsel with and advise the administrator of their respective divisions in the administration and performance of all the duties of the division and shall make an annual written report to the governor.

(d) The advisory board shall counsel with and advise each other, the public, and the director of the department in order to coordinate the policies and activities of their respective divisions and to achieve maximum efficiency and effectiveness in furthering the objectives of the department.

(e) Each administrator and staff shall provide the appropriate board with meeting facilities, secretarial or clerical assistance, supplies and such other assistance as each board may require in the performance of its duties. (Laws

1973, ch. 250, § 1.)

§ 35-11-115. Power of director to issue emergency orders.

(a) Any other provisions of law to the contrary notwithstanding, if the director finds that a condition of air, water or land pollution exists and that it creates an emergency requiring immediate action to protect human or animal health or safety, the director, with the concurrence of the governor, shall order any persons causing or contributing to such pollution to reduce or discontinue immediately the actions causing the condition of pollution and such order shall fix a time and place for hearing before the council within forty-eight (48) hours thereafter. The council shall affirm, modify or set aside the director's order within forty-eight (48) hours following the adjournment of the hearing.

(b) If the director has evidence that any pollution source presents an immediate and substantial danger to human or animal health or safety, he may institute, through the attorney general, a civil action for immediate injunctive relief to halt any activity causing the danger. The court may issue an ex-parte order and shall schedule a hearing on the matter within three (3) working days

from the date the petition for injunctive relief is filed.

(c) Nothing in this section shall be construed to limit any power which the governor or any other officer may have to declare an emergency and act on the basis of such declaration, if such power is conferred by statute or constitutional provision or inheres in the office. (Laws 1973, ch. 250, § 1.)

Cross reference. — As to injunctions, see Rule 65, W.R.C.P.

ARTICLE 2. AIR QUALITY

§ 35-11-201. Discharge or emission of contaminants; restrictions.

No person shall cause, threaten or allow the discharge or emission of any air contaminant in any form so as to cause pollution which violates rules, regulations and standards adopted by the administrator after consultation with the advisory board. (Laws 1973, ch. 250, § 1.)

Cited in Board of Trustees, Laramie County School Dist. No. 1 v. Spiegel, 549 P.2d 1161 (Wyo. 1976). Quality Act of 1973, see 9 Land & Water L. Rev. 69 (1974).

Law review. - For comment on air quality provisions of the Wyoming Environmental

§ 35-11-202. Establishment of standards.

- (a) Without limiting the authority of the administrator as set out in section 35-502.10 [§ 35-11-110] of the statutes, he shall, after consultation with the advisory board, recommend to the director such ambient air standards or emission control requirements by rule or regulation, as may be necessary to prevent, abate, or control pollution. Such standards or requirements may be for the state as a whole or may vary from area to area, as may be appropriate to facilitate accomplishment of the purposes of this act, and in order to take account of varying local conditions.
 - (b) In recommending such standards or requirements the administrator shall:
 - (i) Consider all the facts and circumstances bearing upon the reasonableness of the emissions involved, including:
 - (A) The character and degree of injury to, or interference with the health and physical well being of the people, animals, wildlife and plant life:
 - (B) The social and economic value of the source of pollution;
 - (C) The priority of location in the area involved;
 - (D) The technical practicability and economic reasonableness of reducing or eliminating the pollution; and
 - (E) The social welfare and aesthetic value.
 - (ii) Grant such time as he shall find to be reasonable and necessary for owners and operators of air contaminant sources to comply with applicable standards or requirements.
- (c) Recommend to the director, after consultation with the advisory board, regulations to prevent construction, modification or operation of any source at any location where emissions from such source will prevent the attainment or maintenance of a state or national standard. (Laws 1973, ch. 250, § 1; 1974, ch. 14, § 1; 1975, ch. 198, § 2.)

Effective dates. — Section 3, ch. 14, Laws 1974, makes the act effective immediately upon passage. Approved February 12, 1974.

Section 5, ch. 198, Laws 1975, makes the act effective immediately upon passage. Approved March 12, 1975.

ARTICLE 3. WATER QUALITY

§ 35-11-301. Prohibited acts.

- (a) No person, except when authorized by a permit issued pursuant to the provisions of this act, shall:
 - (i) Cause, threaten or allow the discharge of any pollution or wastes into the waters of the state;
 - (ii) Alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state;

 (iii) Construct, install, modify or operate any sewerage system, treatment works, disposal system or other facility, capable of causing or contributing to pollution;

(iv) Increase the quantity or strength of any discharge;

(v) Construct, install, modify or operate any public water supply. (Laws 1973, ch. 250, § 1.)

Cited in Board of Trustees, Laramie County School Dist. No. 1 v. Spiegel, 549 P.2d 1161 (Wyo. 1976).

Pollution Control Act Amendments of 1972, see 9 Land & Water L. Rev. 79 (1974).

Law review. - For comment on the Wyoming Water Quality Act and the Federal Water

§ 35-11-302. Administrator's authority to recommend rules, regulations, etc.

- (a) The administrator, after consultation with the advisory board, shall recommend to the director rules, regulations, standards and permit systems to promote the purposes of this act. Such rules, regulations, standards and permit systems shall prescribe:
 - (i) Water quality standards specifying the maximum short-term and long-term concentrations of pollution, the minimum permissible concentrations of dissolved oxygen and other matter, and the permissible temperatures of the waters of the state;
 - (ii) Effluent standards and limitations specifying the maximum amounts or concentrations of pollution and wastes which may be discharged into the waters of the state:
 - (iii) Standards for the issuance of permits for construction, installation, modification or operation of any public water supply and sewerage system, treatment works, disposal system or other facility, capable of causing or contributing to pollution;
 - (iv) Standards for the definition of technical competency and the certification of operating personnel for public water supply and sewerage systems, treatment works and disposal systems and for determining that the operation shall be under the supervision of certified personnel;
 - (v) Standards for the issuance of permits as authorized pursuant to section 402 (b) of the Federal Water Pollution Control Act [33 U.S.C. § 1342] as amended in 1972, and as it may be hereafter amended;
 - (vi) In recommending any standards, rules, regulations, or permits, the administrator and advisory board shall consider all the facts and circumstances bearing upon the reasonableness of the pollution involved including:
 - (A) The character and degree of injury to or interference with the health and well being of the people, animals, wildlife, aquatic life and plant life affected;
 - (B) The social and economic value of the source of pollution;

(C) The priority of location in the area involved;

(D) The technical practicability and economic reasonableness of reducing or eliminating the source of pollution; and

(E) The effect upon the environment.

(vii) Such reasonable time as may be necessary for owners and operators of pollution sources to comply with rules, regulations, standards or permits. (Laws 1973, ch. 250, § 1; 1974, ch. 14, § 1.)

Effective date. — Section 3, ch. 14, Laws 1974, makes the act effective immediately upon passage. Approved February 12, 1974.

ARTICLE 4. LAND QUALITY

§ 35-11-401. Compliance generally; exceptions.

- (a) No mining operation or operation by which solid minerals are intended to be extracted from the earth shall be commenced after the effective date of the act, except in accordance with the requirements hereof. It is recognized these measures are performed in the public interest and constitute an expense to the operator, and while this act shall apply to all mining operations, no operator shall be compelled to perform at his own expense measures required hereunder with respect to operations that were completed or substantially completed prior to the effective date hereof.
- (b) All surface or underground mining operations operating at the date of enactment of this statute shall have a period of one (1) year within which to fulfill the requirements of this act. This period may be extended at the discretion of the council if the administrator has been unable to review and evaluate all operations that are presently operating under a permit issued by the state land commissioner in compliance with the "Open Cut Land Reclamation Act of 1969."
- (c) An operator presently operating under a permit issued by the state land commissioner in accordance and in full compliance with the Open Cut Land Reclamation Act of 1969 will be issued a permit upon submission to the administrator of:
 - (i) The information, maps and other exhibits required by this act; and

(ii) A reclamation plan which fulfills all of the requirements of this act and is reviewed by the advisory board.

(d) The provisions of this article [§§ 35-11-401 to 35-11-424], shall not apply to any of the following activities:

 (i) Building or expansion of utilities, soil conservation conveyances and foundation excavations for the purpose of constructing buildings and other structures not used in mining operations;

(ii) Excavations by an agency of federal, state, or local government or its authorized contractors for highway and railroad cuts and for the purpose of providing fill, sand, gravel, and other materials for use in connection with any public project if reclamation requirements of federal, state or local governments are consistent with all provisions of this act or regulations promulgated thereunder;

- (iii) The extraction of sand, gravel, dirt, scoria, limestone, dolomite, shale, ballast or feldspar by a landowner for his own noncommercial use from land owned or leased by him;
 - (iv) Archaeological excavations;
- (v) Other surface mining operations which the administrator determines to be of an infrequent nature and which involve only minor surface disturbances;
- (vi) Surface mining operations, whether commercial or noncommercial, for the removal of sand, gravel, scoria, limestone, dolomite, shale, ballast or feldspar from an area of ten (10) acres or less of affected land if the operator has written permission for the operation from the owner and lessee, if any, of the surface; provided that the operator shall notify the land quality division of the department of environmental quality of the location of the land to be mined before commencing operations;
- (vii) Before commencing any mining operations, the operator shall file a bond to insure reclamation in accordance with the purposes of this act [§§ 35-11-101 to 35-11-1104] in the amount of two hundred dollars (\$200.00) per acre of affected land. Within ninety (90) days after mining operations commence, the administrator may require the operator to post an additional bond of one hundred dollars (\$100.00) per acre of affected land if he determines that such amount is necessary to insure reclamation. The operator shall post the additional bond not later than thirty (30) days after receipt of such notification;
- (viii) After the mining operations have ceased or within thirty (30) days after abandonment of the mining operation, the operator shall notify the administrator of such fact and commence reclamation and restoration in compliance with the rules and regulations of the land quality division of the department of environmental quality. The rules and regulations for reclamation shall at all times be reasonable; and
- (ix) Immediate reclamation will not be required if the landowner advises the department in writing of his intent to further utilize the product of the mine, and if he assumes the obligation of reclamation.
- (e) In promulgating regulations to implement this section the administrator and director shall consider:
 - (i) The nature of the class, type, or types of activities involved;
 - (ii) Their magnitude (in tons and acres);
 - (iii) Their potential for adverse environmental impact; and
 - (iv) Whether the class, type, or types of activities are already subject to an existing regulatory system by state or local government or an agency of the federal government.
- (f) A single permit may be issued to all county or other local governmental entities of the state to operate noncontiguous facilities in compliance with the statutes.
- (g) A single permit may be issued for mining of noncontiguous minerals deposits at the discretion of the administrator in compliance with the statutes.

- (h) The council, after consultation with the administrator and the advisory board, may modify or suspend certain requirements of W.S. 35-502.24 [§ 35-11-406] (a), (b), (d), (e) and (f) by rules and regulations, for surface mining operations involving not more than ten thousand (10,000) yards of overburden and ten (10) acres of affected land in any one (1) year, if the application requirements insure reclamation in accordance with the purposes of this act [§§ 35-11-101 to 35-11-1104].
- (j) An operator conducting operations pursuant to W.S. 35-502.20 [§ 35-11-401]
 (d) (vi) shall file an annual report with the administrator on or within thirty (30) days prior to the anniversary date of the commencement date of initial operation.
 The report shall contain:
 - (i) The name and address of the operator;
 - (ii) The location of the mining operations;
 - (iii) The number of acres of affected lands at the conclusion of the past year's operation;
 - (iv) The number of acres of land that have been reclaimed during the past year;
 - (v) The number of yards of overburden or mined mineral removed;
 - (vi) The expected remaining life of the mining operation. (Laws 1973, ch. 250, § 1; 1974, ch. 14, § 1; 1975, ch. 198, §§ 2, 3; 1976, ch. 15, § 1; 1977, ch. 108, § 1; ch. 132, § 1.)

The 1976 amendment deleted "and" from the end of paragraph (iv) of subsection (d), deleted "Such" at the beginning of paragraph (v) and added paragraphs (vi), (vii) and (viii) of that subsection.

The 1977 amendments. - The first 1977 amendment, in subsection (d), deleted "or" preceding "dirt" in paragraph (iii), inserted "scoria, limestone, dolomite, shale, ballast or feldspar" in paragraphs (iii) and (vi) and also in paragraph (vi), deleted "and" "gravel," substituted "ten (10)" for "five (5)," inserted "of affected land" and added the proviso at the end of the paragraph. The amendment also, in subsection (d), inserted present paragraph (vii), redesignated former paragraphs (vii) and (viii) as present paragraphs (viii) and (ix) and in paragraph (viii), inserted "notify the administrator of such fact and." Finally, the amendment, in subsection (j), deleted "and" preceding "(b)," inserted "(d), (e) and (f)" and substituted "ten thousand (10,000) yards" for "four thousand (4,000) tons" and "ten (10)" for "two (2)" and added subsection (k).

The second 1977 amendment, in subsection (g), substituted "minerals" for "bentonite," inserted "at the discretion of the administrator" and deleted "when such operations are served in such an area by a single processing plant" following "statutes."

Editor's note. — The Open Cut Land Reclamation Act of 1969 was repealed by § 3, ch. 250. Laws 1973.

Effective dates. — Section 5, ch. 250, Laws 1973, makes the act effective on July 1, 1973.

Section 3, ch. 14, Laws 1974, makes the act effective immediately upon passage. Approved February 12, 1974.

Section 5, ch. 198, Laws 1975, makes the act effective immediately upon passage. Approved March 12, 1975.

Section 2, ch. 15, Laws 1976, provides that this act is effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const.

Section 2, ch. 108, Laws 1977, makes the act effective May 27, 1977.

Section 3, ch. 132, Laws 1977, makes the act effective May 27, 1977.

Cited in Board of Trustees, Laramie County School Dist. No. 1 v. Spiegel, 549 P.2d 1161 (Wyo. 1976).

Law reviews. — For comment, "Land Quality: The Regulation of Surface Mining Reclamation in Wyoming," see 9 Land & Water L. Rev. 97

See article, "Federal Mineral Reservations," 10 Land & Water L. Rev. 1 (1975).

§ 35-11-402. Establishment of standards.

- (a) The council shall, upon recommendation by the advisory board, establish rules and regulations pursuant to the following reclamation standards for the affected areas, including but not limited to:
 - (i) The highest previous use of the affected lands, the surrounding terrain and natural vegetation, surface and subsurface flowing or stationary water bodies, wildlife and aquatic habitat and resources, and acceptable uses after reclamation including the utility and capacity of the reclaimed lands to support such uses;
 - (ii) Backfilling, regrading or recontouring to assure the reclamation of the land to a use at least equal to its highest previous use;
 - (iii) A time schedule encouraging the earliest possible reclamation program consistent with the orderly and economic development of the mining property;
 - (iv) Revegetation of affected lands including species to be used, methods of planting and other details necessary to assure the development of a vegetative cover consistent with the surrounding terrain and the highest prior use standards set out in subparagraph (i) of this paragraph;
 - (v) Stockpiling, preservation and reuse of topsoil for revegetation, unless it can be demonstrated to the satisfaction of the administrator that other methods of reclamation or types of soil are superior;
 - (vi) Prevention of pollution of waters of the state from mining operations, substantial erosion, sedimentation, landslides, accumulation and discharge of acid water, and flooding, both during and after mining and reclamation;
 - (vii) In administering established rules and regulations on such standards the administrator and advisory board shall consider all the facts and circumstances bearing upon any reclamation plan. In consideration of reclamation plans for any mining operator [operation] that is presently being conducted in the state under a permit issued by the state land commission under the "Open Cut Land Reclamation Act of 1969," particular attention shall be paid to:
 - (A) The social and economic value of the product mined;
 - (B) The technological availability for economic feasibility of reclaiming the affected area.
 - (viii) Establishing methods of estimating cost of reclamation which shall be computed according to established engineering methods;
 - (ix) Establishing procedures to obtain special license to explore by dozing. Such procedures will include but not be limited to method of application, location of proposed exploration, present use of affected lands, name of surface owner, proposed reclamation program, bonding requirement, and such other procedures as are necessary to insure that the exploration work will be conducted within the intent of this act;
 - (x) Establishing such other rules and regulations necessary to insure full compliance with all requirements relating to reclamation, and the attainment of those objectives directed to public health, safety, and welfare. (Laws 1973, ch. 250, § 1.)

Editor's note. — The Open Cut Land Reclamation Act of 1969 was repealed by § 3, ch. 250, Laws 1973.

§ 35-11-403. Powers of the administrator of land quality division.

- (a) The administrator of the land quality division shall have the following powers:
 - (i) To utilize qualified experts in the field of hydrology, soil science, plant or wildlife ecology, and other related fields to advise on mining reclamation practices, and the adoption of rules. Advisors shall be reimbursed for travel and other expenses incurred in performance of official duties in the same manner and amount as state employees;
 - (ii) To fix the amount of, collect, maintain and otherwise comply with the statutory performance bond requirement set out in section 35-502.34 [§ 35-11-417] of the statutes. The council may order the forfeiture of a bond as set out in section 35-502.38 [§ 35-11-421] of the statutes;
 - (iii) To reclaim any affected land with respect to which a bond has been forfeited;
 - (iv) To recommend to the director, after consultation with the advisory board, the issuance, denial, amendment, revocation and suspension of permits, licenses and special exploration licenses in accordance with the provisions of this act. (Laws 1973, ch. 250, § 1.)

§ 35-11-404. Drill holes to be capped, sealed or plugged.

- (a) All drill holes sunk in the exploration for locatable or leasable minerals on all lands within the state of Wyoming shall be capped, sealed or plugged in the manner described hereinafter by or on behalf of the discoverer, locator or owner who drilled the hole. Prospecting and exploration drill holes shall include all drill holes except those drilled in conjunction with the expansion of an existing mine operation or wells or holes regulated pursuant to W.S. 30-216 through 30-238 [§§ 30-5-101 to 30-5-204].
- (b) "Person" means any person, firm, association or corporation who drills or is responsible for drilling holes for the purpose of exploration or development of these minerals.
- (c) "Plugging, sealing and capping upon abandonment" means any hole drilled shall be abandoned in the following manner:
 - (i) "Plugging". All artesian flow of ground water to surface shall be eliminated by a cement plug or other similar material sufficient to prevent such artesian flow;
 - (ii) "Sealing". Drill holes which have encountered any ground water shall be sealed by leaving a column of drilling mud in the hole or by such other sealing procedure which is adequate to prevent fluid communication between aquifers;

- (iii) "Surface Cap". Each drill hole is to be completely filled to the collar of the hole or securely capped at a minimum depth of two (2) feet below either the original land surface or the collar of the hole, whichever is at the lower elevation. If capped, the cap is to be made of concrete or other material satisfactory for such capping. The hole shall be backfilled above the cap to the original land surface;
- (iv) "Water Well". If any holes drilled are to be ultimately used as or converted to water wells, the user shall comply with the applicable provisions of W.S. 41-128 through 41-147 [§§ 41-3-911 to 41-3-938];
- (v) "Surface Restoration". Each drill site shall be restored as nearly as possible to its original condition, including reseeding if grass or other crop was destroyed.
- (d) Within sixty (60) days after the completion and abandonment of any hole drilled which has artesian flow at the surface, the person for whom the hole was drilled shall report the existence of the hole to the administrator, land quality division and the state engineer. The report, set forth in affidavit form, shall contain at least the location of the hole to the nearest two hundred (200) feet, the depth of the hole and estimated rate of flow, if known, and the facts of the plugging technique used.
- (e) Within twelve (12) months after the completion and proper abandonment of any hole drilled any person shall file with the administrator, land quality division and the state engineer a report which shall include the location of each hole to the nearest forty (40) acre legal subdivision and the depth of each hole drilled. Such reports are confidential.
- (f) Where plugging reports are required to conform with federal regulations, and if such reports cover all the requirements of this act [this section], they are adequate for the purposes described herein.
- (g) The administrator, land quality division may waive any of the administrative provisions of this act pertaining to aquifers, following a formal written application for a waiver of any particular provisions, if in the opinion of the administrator, land quality division waiver of any such provisions shall not adversely affect the interests of the state of Wyoming and would create an undue hardship upon application. Such waivers shall be in writing and may be appealed under the provisions of the Wyoming Administrative Procedure Act [§§ 9-4-101 to 9-4-115].
- (h) The drill hole should be capped immediately following the drilling and probing. If it is necessary to temporarily delay the capping or keep the hole open for any reason, the drill hole must be securely covered in a manner which will prevent injury to persons or animals.
- (j) Any person who fails or refuses to comply with the provisions of this act is guilty of a misdemeanor and on conviction is subject to imprisonment in a county jail for not more than ninety (90) days or a fine of not more than five thousand dollars (\$5,000.00) or both.
- (k) When exploratory d-ill holes have been abandoned in violation of these provisions, the administrator, land quality division may then cause such holes to be capped, sealed or plugged and the state of Wyoming is granted a cause of

action against the person refusing to comply with the provisions of this act for the recovery of the reasonable costs incurred by the administrator, land quality division in having the holes properly capped, sealed or plugged.

(m) All actions pursuant to subsections (j) or (k) of this section, must be initiated by the state of Wyoming within three (3) years of the date of the report

required by subsection (d) of this section. (Laws 1977, ch. 140, § 1.)

Effective date. — Section 3, ch. 140, Laws 1977, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 1, 1977.

§ 35-11-405. Permit defined; no mining operation without valid permit; when validity terminated.

A mining permit is the certification that the tract of land described therein may be mined by an operator licensed to do so in conformance with an approved reclamation plan. No mining operation may be commenced or conducted on land for which there is not in effect a valid mining permit to which the operator possesses the rights. A mining permit once granted remains valid and in force from the date of its issuance until the termination of all mining and reclamation operations, except as otherwise provided in this act. (Laws 1973, ch. 250, § 1; 1975, ch. 198, § 2.)

Effective date. — Section 5, ch. 198, Laws 1975, makes the act effective immediately upon passage. Approved March 12, 1975.

Law review, — See article, "Federal Mineral Reservations," 10 Land & Water L. Rev. 1 (1975).

§ 35-11-406. Application for permit; generally; denial; limitations.

- (a) Applications for a mining permit shall be made in writing to the administrator and shall contain:
 - (i) The name and address of the applicant, and, if the applicant is a partnership, association, or corporation, the names and addresses of all managers, partners and executives directly responsible for operations in this state:
 - (ii) A sworn statement stating that the applicant has the right and power by legal estate owned to mine from the land for which the permit is desired;
 - (iii) A sworn statement that the applicant has not forfeited a bond posted for reclamation purposes and that all the statements contained in the permit application are true and correct to the best knowledge of the applicant;
 - (iv) The names and last known addresses of the owners of record of the surface and mineral rights on the land to be covered by the proposed permit;
 - (v) The names and last known addresses of the owners of record of the surface rights of the lands immediately adjacent to the proposed permit area and for surface coal mining operations, the names and last known addresses of coal ownership immediately adjacent to the permit area;

- (vi) An identification of the land to be included in the permit area to include:
 - (A) The location of the lands by legal subdivision, section, township, range, county, and municipal corporation, if any;

(B) The name, if any, by which such lands or any part thereof are known;

(C) The approximate number of acres to be affected, including the total number of acres in the area covered by the permit application;

(D) The nearest town, village, or city.

- (vii) A general description of the land which shall include as nearly as possible its vegetative cover, the annual rainfall, the general directions and average velocities of the winds, indigenous wildlife, its past and present uses, its present surface waters, and adjudicated water rights and their immediate drainage areas and uses, and, if known, the nature and depth of the overburden, topsoil, subsoil, mineral seams or other deposits and any subsurface waters known to exist above the deepest projected depth of the mining operation;
- (viii) A United States Geological Survey topographic map, if available, of the permit area;
- (ix) A map based upon public records showing the boundaries of the land to be affected, its surrounding immediate drainage area, the location and names, where known, of all roads, railroads, public or private rights-of-way and easements, utility lines, lakes, streams, creeks, springs, and other surface water courses, oil wells, gas wells, water wells, and the probable limits of underground mines and surface mines, whether active or inactive, on or immediately adjacent to the land to be affected. The map shall also show:
 - (A) The names, last known addresses and boundary lines of the present surface landowners and occupants on the adjacent land to be affected;
 - (B) The location, ownership, and uses of all buildings on, or on lands adjacent to, the land to be affected;
 - (C) An outline of all areas previously disturbed by underground mining or that will be affected by future underground mining as a guide to potential subsidence problems;
 - (D) Any political boundaries of special districts on or near the land to be affected.
 - (x) The mineral or minerals to be mined;
- (xi) The estimated dates of commencement and termination of the proposed permit;
- (xii) A minimum fee of one hundred dollars (\$100.00) plus ten dollars (\$10.00) for each acre in the requested permit, but the maximum fee for any single permit shall not exceed two thousand dollars (\$2,000.00). The permit is amendable without public notice or hearing if the area sought to be included by amendment does not exceed twenty percent (20%) of the total permit acreage, is contiguous to the permit area, and if the operator includes

all of the information necessary in his application to amend that is required in this section including a mining and reclamation plan acceptable to the administrator. The fee for a permit amendment shall be two hundred dollars (\$200.00) plus ten dollars (\$10.00) for each acre not to exceed two thousand dollars (\$2,000.00);

(xiii) Such other information as the administrator deems necessary or as

good faith compliance with the provisions of this act require.

(b) The application shall be accompanied by a reclamation plan dealing with the extent to which the mining operation will disturb, change, or deface the lands to be affected, the proposed future use or uses and the plan whereby the operator will reclaim the affected lands to the proposed future use or uses. The reclamation plan shall be consistent with the objectives and purposes of this act and of the rules and regulations promulgated hereunder. The reclamation plan shall include the following:

(i) A statement of the present and proposed use of the land after

reclamation;

(ii) Plans for surface gradient to a contour suitable for proposed use after reclamation is completed and proposed method of accomplishment;

(iii) Type of vegetation and manner of proposed revegetation or other surface treatment of affected area;

(iv) Method of disposal of buildings and structures erected during the

operation;

- (v) One (1) or more maps as may be required by the administrator of reclamation and mining operators on an appropriate scale showing location and extent of the proposed affected lands, together with the location of any public highways, dwelling, surface drainage area, and all utility and other easements existing on the affected lands. The map shall also show the location of all proposed pits, spoil banks, haul roads, railroads, topsoil conservation areas, buildings, refuse or waste areas, shipping areas including conveyors, and shall further set forth the drainage plan on, below, above and away from the affected land including subsurface water above the mineral seam to be removed; and shall further show the location of all waste water impoundments, any settling ponds, and other water treatment facilities, constructed drainways and natural drainways, and the surface bodies of water receiving this discharge. In lieu of an original map, a reproduction of a United States Geological Survey topographic map or aerial photograph is acceptable if the required information is platted. The map of the affected lands shall be accompanied by a typical cross section, showing the elevations of the surface, top and bottom of the mineral seam. Additional cross sections at appropriate intervals may be required by the administrator. The cross sections shall show surface elevations for a distance beyond the outlines of the affected areas as may be determined by the administrator;
- (vi) An estimate of the total cost of reclaiming the affected lands as outlined in the written proposal computed in accordance with established engineering principles;

(vii) A contour map on the same scale as the reclamation map showing to the extent possible the proposed approximate contours of the affected area after completion of proposed reclamation;

(viii) The proposed method of separating topsoil, subsoil, and spoil piled, protecting and conserving them from wind and water erosion before reclamation begins by planting a quick growing cover or other acceptable methods, and the proposed method of preserving topsoil free of acid or toxic materials, as well as the manner in which topsoil shall be replaced. If topsoil is virtually nonexistent or is not capable of sustaining vegetation, then the method of removing, segregating and preserving in a like manner subsoil which is better able to support vegetation. Spoil piles are to be kept separate and apart from topsoil. All piles are to be clearly marked so as to avoid confusion. If conditions do not permit the separation, conservation and replacement of topsoil or subsoil, a full explanation of such conditions shall be given and alternate procedures proposed;

(ix) A plan for insuring that all acid forming, or toxic materials, or materials constituting a fire, health or safety hazard uncovered during or created by the mining process are promptly treated or disposed of during the mining process in a manner designed to prevent pollution of surface or subsurface water or threats to human or animal health and safety. Such method may include, but not be limited to covering, burying, impounding or otherwise containing or disposing of the acid, toxic, radioactive or other-

wise dangerous material;

(x) For a surface mining operation granted a new permit after July 1, 1973, and prior to March 1, 1975, except for an operation legally operating under the 1969 Open Cut [Land] Reclamation Act, an instrument of consent from the surface landowner, if different from the mineral owner, to the mining plan and reclamation plan. If consent cannot be obtained as to either or both, the applicant may request a hearing before the environmental quality council. The council shall issue an order in lieu of consent if it finds:

 (A) That the mining plan and the reclamation plan have been submitted to the surface owner for approval;

(B) That the mining plan and the reclamation plan is detailed so as to illustrate the full proposed surface use including proposed routes of

egress and ingress;

(C) That the use does not substantially prohibit the operations of the surface owner;

(D) The proposed plan reclaims the surface to its approved future use, in segments if circumstances permit, as soon as feasibly possible;

(xi) For an application filed after March 1, 1975, an instrument of consent from the resident or agricultural landowner, if different from the owner of the mineral estate, granting the applicant permission to enter and commence surface mining operation, and also written approval of the applicant's mining and reclamation plan. As used in this paragraph, "resident or agricultural landowner" means a natural person or persons who, or a corporation of which the majority stockholder or stockholders:

- (A) Hold legal or equitable title to the land surface directly or through stockholdings, such title having been acquired prior to January 1, 1970, or having been acquired through descent, inheritance or by gift or conveyance from a member of the immediate family of such owner; and
- (B) Have their principal place of residence on the land, or personally conduct farming or ranching operations upon a farm or ranch unit to be affected by the surface mining operation, or receive directly a significant portion of their income from such farming or ranching operations.
- (xii) For any application filed after March 1, 1975, including any lands privately owned but not covered by the provisions of W.S. 35-502.24 (b) (xi) [subdivision (b)(xi) of this section] an instrument of consent from the surface landowner, if different from the owner of the mineral estate, to the mining and reclamation plan. If consent cannot be obtained as to the mining plan or reclamation plan or both, the applicant may request a hearing before the environmental quality council. The council shall issue an order in lieu of consent if it finds:
 - (A) That the mining plan and the reclamation plan have been submitted to the surface owner for approval;
 - (B) That the mining plan and the reclamation plan is detailed so as to illustrate the full proposed surface use including proposed routes of egress and ingress;
 - (C) That the use does not substantially prohibit the operations of the surface owner;
 - (D) The proposed plan reclaims the surface to its approved future use, in segments if circumstances permit, as soon as feasibly possible.
- (xiii) The procedures proposed to avoid constituting a public nuisance, endangering the public safety, human or animal life, property, wildlife and plant life in or adjacent to the permit area including a program of fencing all stockpiles, roadways, pits and refuse or waste areas to protect the surface owner's on-going operations;
- (xiv) The methods of diverting surface water around the affected lands where necessary to effectively control pollution or unnecessary erosion;
- (xv) The methods of reclamation for effective control of erosion, siltation, and pollution of affected stream channels and stream banks by the mining operations;
- (xvi) A statement of the source, quality and quantity of water, if any, to be used in the mining and reclamation operations;
 - (xvii) A projected timetable for accomplishment of the reclamation plan.
- (c) The applicant may have the local conservation district assist in preparation of, provide data for, perform research, review and comment upon the reclamation.
- (d) The applicant shall file a copy of his reclamation plan for public inspection at the office of the administrator and in the offices of the county clerks of the counties in which the proposed permit area is located. Those parts of the

reclamation plan which contain confidential trade secrets whose disclosure would be harmful to the applicant shall be exempt from such filings.

- (e) The administrator shall notify the applicant within ninety (90) days of submission of the application whether or not it is complete. If the administrator deems an application incomplete, he shall state in writing to the applicant the information specified.
- (f) The applicant shall cause notice of the application to be published in a newspaper of general circulation in the locality of the proposed mining site once a week for four (4) consecutive weeks commencing within fifteen (15) days after filing of the completed application. The notice shall contain information regarding the identity of the applicant, the location of the proposed operation, the proposed dates of commencement and completion of the operation, the proposed future use of the affected land, the location at which information about the application may be obtained, and the location and final date for filing objections to the application. The applicant shall mail a copy of the notice within five (5) days after first publication to all owners of record of the surface and mineral rights of the land within the permit area, to the owners of record of the surface rights of immediately adjacent lands and to any other persons within one-half mile having a valid legal estate of record. Proof of notice and mailing shall be attached to and become part of the application.
- (g) Any interested person has the right to file written objections to the application with the administrator within twenty (20) days after the last publication of the above notice. If written objections are filed, the council shall hold a public hearing within twenty (20) days after the final date for filing objections unless a different period is stipulated to by the parties. The council shall publish notice of the time, date and location of the hearing in a newspaper of general circulation in the locality of the proposed operation once a week for two (2) consecutive weeks immediately prior to the hearing. The hearing shall be conducted as a contested case in accordance with the Wyoming Administrative Procedure Act [§§ 9-4-101 to 9-4-115], and right of judicial review will be afforded as provided in said act.
- (h) The requested permit shall be granted if it is established that the application complies with the requirements of this act and all applicable federal and state laws. The director shall not deny a permit except for one (1) or more of the following reasons:
 - (i) The application is incomplete;
 - (ii) The applicant has not properly paid the required fee;
 - (iii) Any part of the proposed operation, reclamation program, or the proposed future use is contrary to the law or policy of this state, or the United States;
 - (iv) The proposed mining operation would irreparably harm, destroy, or materially impair any area that has been designated by the council a rare or uncommon area and having particular historical, archaeological, wildlife, surface geological, botanical or scenic value;
 - (v) If the proposed mining operation will cause pollution of any waters in violation of the laws of this state or of the federal government;

(vi) If the applicant has had any other permit or license issued hereunder revoked, or any bond posted to comply with this act forfeited;

(vii) The proposed operation constitutes a public nuisance or endangers

the public health and safety;

(viii) The affected land lies within three hundred (300) feet of any existing occupied dwelling, home, public building, school, church, community or institutional building, park or cemetery, unless the landowner's consent has been obtained. The provisions of this subsection shall not apply to operations conducted under an approved permit issued by the state land commissioner in compliance with the "Open Cut Land Reclamation Act of 1969";

(ix) The operator is unable to produce the bonds required;

- (x) If written objections are filed by an interested person under subsection (g) of this section;
- (xi) If information in the application or information obtained through the director's investigation shows that reclamation cannot be accomplished consistent with the purposes and provisions of this act;

(xii) If the applicant has been and continues to be in violation of the

provisions of this act;

(xiii) No permit shall be denied on the basis that the applicant has been in actual violation of the provisions of this act if the violation has been corrected or discontinued.

(j) The administrator shall render a decision on the application within thirty (30) days after completion of the notice period if the application is not protested. Should the application be protested and a hearing be held, the council shall issue findings of fact and a decision on the application within sixty (60) days after the final hearing. The administrator shall issue or deny the permit no later than fifteen (15) days from receipt of any findings of fact and decision of the environmental quality council. (Laws 1973, ch. 250, § 1; 1974, ch. 14, § 1; 1975, ch. 198, § 2; 1977, ch. 132, § 1; ch. 184, § 1.)

The 1977 amendments. - The first 1977 amendment, in subsection (a), inserted "of record" and "and mineral" in subdivision (iv), deleted "and mineral" preceding "rights" and inserted "of record," "immediately" and "and for surface coal mining operations, the names and last known addresses of coal ownership immediately adjacent to the permit area" in subdivision (v) and substituted "based upon public records" for "in such detail as the administrator may specify" near the beginning of subdivision (ix). The amendment also inserted present subsection (e) and redesignated former subsections (e), (f), (g) and (h) as present subsections (f), (g), (h) and (j). Finally, the amendment, in present subsection (f), substituted "fifteen (15)" for "15" and inserted "(4)" and "completed" in the first sentence, rewrote the third sentence and deleted "such" preceding "notice" in the last sentence and rewrote present subsection (j).

The second 1977 amendment rewrote subdivision (iv) of present subsection (h).

Editor's note. — The Open Cut Land Reclamation Act of 1969 was repealed by § 3, ch. 250, Laws 1973.

Effective dates. — Section 3, ch. 14, Laws 1974, makes the act effective immediately upon passage. Approved February 12, 1974.

Section 5, ch. 198, Laws 1975, makes the act effective immediately upon passage. Approved March 12, 1975.

Section 3, ch. 132, Laws 1977, makes the act effective May 27, 1977.

Section 2, ch. 184, Laws 1977, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 8, 1977.

Law review. — See article, "Federal Mineral Reservations," 10 Land & Water L. Rev. 1 (1975).

§ 35-11-407. Water impoundments.

(a) In any plan for the creation of a permanent water impoundment the applicant must adequately demonstrate that:

(i) The size of the impoundment, contouring and revegetation, if any, are

suitable for its intended purpose and use;

(ii) Final grading will provide adequate safety and access for proposed water users:

(iii) The impoundment dam construction will be so designed to insure permanent stability and to prevent safety hazards. (Laws 1975, ch. 198, § 1.)

Severability. — Section 4, ch. 198, Laws 1975, reads: "If any portion of this act is declared invalid by a court of competent jurisdiction, such decision shall be limited to the portions found invalid, and shall not affect or invalidate the

remaining portions of this act, which shall remain in full force and effect."

Effective date. — Section 5, ch. 198, Laws 1975, makes the act effective immediately upon passage. Approved March 12, 1975.

§ 35-11-408. Permit transfer.

A permit holder desiring to transfer his permit shall apply to the administrator. The potential transferee shall file with the administrator a statement of qualifications to hold a permit as though he were the original applicant for the permit and shall further agree to be bound by all of the terms and conditions of the original permit. The administrator, after consulting with the advisory board, shall recommend approval or denial of the transfer to the director. No transfer of a permit will be allowed if the current permit holder is in violation of this act, unless the transferee agrees to bring the permit into compliance with the provisions of this act. (Laws 1973, ch. 250, § 1.)

§ 35-11-409. Permit revocation.

- (a) The director shall revoke a mining permit if at any time he determines that the permit holder intentionally misstated or failed to provide any fact that would have resulted in the denial of a mining permit and which good faith compliance with the policies, purposes, and provisions of this act would have required him to provide.
- (b) Unless an emergency exists, the revocation of a permit shall become effective upon thirty (30) days notice to the operator. In case of an emergency, a special meeting of the council may cause such revocation to become effective immediately upon receipt of notice thereof by the permit holder. (Laws 1973, ch. 250, § 1.)

§ 35-11-410. License to mine for minerals; application.

(a) A license to mine is issued for the duration of the mining operation on the permit area unless sooner revoked or suspended as provided herein. No mining operation of any kind may be commenced or conducted without a license to mine.

- (b) Any operator desiring to engage in a mining operation shall make a written application to the administrator on forms furnished by the administrator for a license to mine. A license is required for each mining operation for which a separate mining permit is issued. The application shall contain or be accompanied by:
 - (i) The name and address of the applicant;

(ii) A copy of the mining permit for the lands which are to be affected by the proposed mining operation, and if the applicant is other than the permit holder, a copy of the instrument of permission from the permit holder granting to the applicant the rights thereto;

(iii) If the applicant for the license is other than the permit holder, a statement that the applicant has never had any permit issued by the administrator revoked, or license issued by the board revoked, or bond posted to comply with the act forfeited for intentional and substantial

violation of the provisions of this act;

(iv) The location and number of acres of the area to be affected by the proposed mining operation for the first year of operation if less than the full extent of the permit area;

(v) The estimated dates of commencement and termination of the

proposed mining operation;

(vi) A fee of twenty-five dollars (\$25.00).

(c) The administrator shall promptly review the license application and if it [he] finds the application in order and consistent with the terms of the permit and any other provisions of this act, the administrator will determine the size of the bond to be posted for the purpose of insuring reclamation of the lands affected during the first year of operation and upon receipt of said bond will promptly issue the license. (Laws 1973, ch. 250, § 1.)

Cited in Board of Trustees, Laramie County School Dist. No. 1 v. Spiegel, 549 P.2d 1161 (Wyo. 1976).

§ 35-11-411. Annual report.

- (a) An operator shall file an annual report with the administrator on or within thirty (30) days prior to the anniversary date of each permit. The report shall include:
 - (i) The name and address of the operator and the permit number;
 - (ii) A report in such detail as the administrator shall require supplemented with maps, cross sections, aerial photographs, photographs, or other material indicating:
 - (A) The extent to which the mining operations have been carried out;
 - (B) The progress of all reclamation work;
 - (C) The extent to which expectations and predictions made in the original or any previous reports have been fulfilled, and any deviation therefrom, including but not limited to the quantity of overburden removed, the quantity of minerals removed, and the number of acres affected.

(iii) A revised schedule or timetable of operations and reclamation and ar estimate of the number of acres to be affected during the next one (1) year

period.

(b) Upon receipt of the annual report the administrator shall make such further inquiry as shall be deemed necessary after consultation with the advisory board. If the administrator objects to any part of the report or requires further information he shall notify the permittee as soon as possible and shall allow a reasonable opportunity to provide the required information, or take such action as shall be necessary to remove the objection.

(c) As soon as possible after the receipt of the annual report the administrator shall conduct an inspection of the site of the operation. A report of this inspection shall be made a part of the permittee's annual report and a copy shall be

delivered to the operator.

(d) Within sixty (60) days after receipt of the annual report, inspection report and other required materials, if the administrator finds the annual report in order and consistent with the reclamation plan as set forth in the permit, or as amended to adjust to conditions encountered during mining and reclamation operations as provided by law, the director shall determine the size of the bond to be posted for the purpose of insuring reclamation of the lands affected during the ensuing year. (Laws 1973, ch. 250, § 1.)

§ 35-11-412. License revocation or suspension.

- (a) The director shall revoke an operator's license:
 - (i) If at any time he becomes aware of the existence of any fact, reason, or condition that would have caused it [him] to deny an application for a mining permit whether or not such condition existed at the time of the application;
 - (ii) If he determines that the operator intentionally misstated or failed to provide any fact that would have resulted in the denial of a license and which good faith compliance with the policies, purposes and provisions of this act would have required him to provide.

(b) The director may suspend the license if he determines the operator is in substantial violation of the terms of the license or of the provisions of this act. The suspension shall be lifted when the violations have been corrected to the director's satisfaction. No suspension shall be unreasonably prolonged.

(c) Unless an emergency exists, the revocation or suspension of a license shall become effective upon thirty (30) days notice to the applicant. In the case of an emergency, the director may cause such revocation or suspension to become effective immediately upon receipt of notice. (Laws 1973, ch. 250, § 1; 1975, ch. 198, § 2.)

Effective date. — Section 5, ch. 198, Laws 1975, makes the act effective immediately upon passage. Approved March 12, 1975.

§ 35-11-413. Special license to explore for minerals by dozing.

A special license to explore for minerals by dozing may be issued by the administrator for a one (1) year period without a permit. (Laws 1973, ch. 250, § 1; 1975, ch. 198, § 2.)

Effective date. — Section 5, ch. 198, Laws 1975, makes the act effective immediately upon passage. Approved March 12, 1975.

Law review. — See article, "Federal Mineral Reservations," 10 Land & Water L. Rev. 1 (1975).

§ 35-11-414. Same; application; standards; fee; bond; denial; appeal.

(a) Any person desiring to engage in mineral exploration by dozing shall apply to the administrator for a special license. The application shall be in accordance with rules and regulations adopted by the administrator, pursuant to the standards set forth in subsection (b), after consultation with the advisory board and shall be accompanied by a fee of twenty-five dollars (\$25.00).

(b) After consultation with the advisory board, the administrator shall establish rules and regulations pursuant to the following reclamation standards

for exploration by dozing:

 Backfilling the topsoil disturbed by dozing to its approximate original contour;

(ii) Revegetation of the land affected by dozing, including species to be used;

(iii) Timetables for the accomplishment of the above reclamation program.

(c) After reviewing the application for special license to explore by dozing the administrator shall set the amount of the bond necessary to insure complete reclamation and issue the special license to explore.

(d) The administrator may deny the special license to explore if he believes the

application is in violation of the purpose of this act.

(e) The decision of the administrator may be appealed through the director to the council.

(f) All special licenses to explore issued by the administrator shall be reviewed by the council at their next regularly scheduled meeting.

(g) A bond posted under the terms of this section shall be released upon completion of the exploration, by dozing, the reclamation program, and an inspection by the administrator. Failure to comply with the provisions of this section will result in forfeiture of the bond.

(h) If the proposed exploration by dozing will substantially affect forty (40) or more acres in any four (4) contiguous sixteenth sections, the application shall conform to the reclamation standards and requirements governing surface mining, and the provisions of this section shall not apply.

(j) Any abandoned drill hole shall be subject to the reclamation provisions of subsection 30-96.16 (e) of the statutes. (Laws 1973, ch. 250, § 1; 1974, ch. 14, § 1;

1975, ch. 198, § 2.)

Editor's note. — Section 30-96.16, W.S. 1957, including subsection (e) thereof referred to in subsection (j) of this section, was repealed by § 2, ch. 140, Laws 1977. For present similar provision, see subdivision (c) (v) of § 35-11-404.

Effective dates. — Section 3, ch. 14, Laws 1974, makes the act effective immediately upon passage. Approved February 12, 1974. Section 5, ch. 198, Laws 1975, makes the act effective immediately upon passage. Approved March 12, 1975.

§ 35-11-415. Duties of operator.

- (a) Every operator to whom any permit or license is issued shall comply with all requirements of this act, the rules and regulations promulgated hereunder, and reclamation plans and other terms and conditions of any permit or license.
- (b) The operator, pursuant to an approved surface mining permit and reclamation plan, shall:
 - (i) Conspicuously post and maintain at each entrance to the operation, a sign which clearly shows the name, address and telephone number of the operator, the name of his local authorized agent, and the permit number of his operation;
 - (ii) Conduct all surface mining and reclamation activities within the permit area in conformity with his approved plan;
 - (iii) Protect the removed and segregated topsoil from wind and water erosion, and from acid or toxic materials, and preserve such in a usable condition for sustaining vegetation when restored in reclamation, or if topsoil is virtually nonexistent or is not capable of sustaining vegetation, then subsoil, which is available and suitable, shall be removed, segregated, and preserved in a like manner as may be required in the approved reclamation plan;
 - (iv) Cover, bury, impound, contain or otherwise dispose of toxic acid forming, or radioactive material or any material determined by the administrator to be hazardous to health and safety, or which constitutes a threat of pollution to surface or subsurface water as may be required in the approved reclamation plan;
 - (v) Conduct contouring operations to return the land to the use set out in the reclamation plan;
 - (vi) Backfill or grade, and replace topsoil, or approved subsoil, which has been segregated and preserved as may be required in the approved reclamation plan;
 - (vii) Replace, as nearly as possible, native or superior self regenerating vegetation on land affected, as may be required in the approved reclamation plan;
 - (viii) Prevent, throughout the mining and reclamation operation, and for a period of five (5) years after the operation has been terminated, pollution of surface and subsurface waters on the land affected by the institution of plantings and revegetation, the construction of drainage systems and treatment facilities including settling ponds and the casing, sealing of boreholes, shafts, and wells so that no pollution is allowed to drain untreated

into surface or subsurface water in accordance with state or federal water quality standards, whichever are higher, as may be required in the approved reclamation plan;

(ix) Reclaim the affected land as mining progresses in conformity with the approved reclamation plan. (Laws 1973, ch. 250, § 1.)

§ 35-11-416. Protection of the surface owner.

(a) In those instances in which the surface owner is not the owner of the mineral estate proposed to be mined by mining operations a permit shall not be issued without the execution of a bond or undertaking to the state, whichever is applicable, for the use and benefit of the surface owner or owners of the land in an amount sufficient to secure the payment for any damages to the surface estate, to the crops and forage, or to the tangible improvements of the surface owner. This amount shall be determined by the administrator and shall be commensurate with the reasonable value of the surrounding land, and the effect of the overall operation of the landowner. This bond is in addition to the performance bond required for reclamation by this act. As damage is determined it shall be paid. Financial loss resulting from disruption of the surface owner's operation shall be considered as part of the damage. A bond for surface damage shall not be required when the agreement negotiated between the surface owner and the mineral owner or developer waives any requirement therefor. Payment of damages shall be paid annually unless otherwise agreed to by the surface owner and the operator.

(b) An owner of real property and who holds a valid adjudicated water right and who obtains all or part of his supply of water for domestic, agricultural, industrial, recreational, or other legitimate use from a surface or an underground source other than a subterranean stream having a permanent distinct known channel may maintain an action against an operator to recover damages for pollution, diminution, or interruption of such water supply resulting from surface or underground mining. (Laws 1973, ch. 250, § 1; 1974, ch. 14, § 1; 1975, ch. 198, §§ 2, 3.)

Effective dates. — Section 3, ch. 14, Laws 1974, makes the act effective immediately upon passage. Approved February 14, 1974.

Section 5, ch. 198, Laws 1975, makes the act effective immediately upon passage. Approved March 12, 1975. Law review, — See article, "Federal Mineral Reservations," 10 Land & Water L. Rev. 1 (1975).

§ 35-11-417. Bonding provisions.

- (a) The purpose of any bond required to be filed with the administrator by the operator shall be to assure that the operator shall faithfully perform all requirements of this act and comply with all rules and regulations of the board made in accordance with the provisions of this act.
- (b) All bonds shall be signed by the operator as principal, by a good and sufficient corporate surety licensed to do business in the state, and be made

payable to the state of Wyoming. At the discretion of the advisory board, the record mineral owner of the land to be mined may also be required to join as principal.

(c) The amount of any bond to be filed with the administrator prior to

commencing any mining shall be:

- (i) For an initial bond the amount equal to the estimated cost of reclaiming the affected land disturbed during the first year of operation under each permit. The estimated cost shall be based on the operator's cost estimate submitted with the permit plus the administrator's estimate of the additional cost to the state of bringing in personnel and equipment should the operator fail or the site be abandoned. In no event shall the bond be less than ten thousand dollars (\$10,000.00), except for operators complying with section 35-502.20 (f) of the statutes or for sand and gravel, scoria or jade mining in which case the bond amount shall be set by the administrator with approval of the director to cover the cost of reclamation, and in no event less than two hundred dollars (\$200.00) per acre, for affected land;
- (ii) For renewal bonds the amount equal to the estimated cost of reclaiming the land to be disturbed during that renewal period, and the estimated cost of completing reclamation of unreleased lands disturbed during prior periods of time. The estimated cost shall be based on the operator's cost estimate, which shall include any changes in the actual or estimated cost of reclamation of unreleased affected lands, plus the administrator's estimate of the additional cost to the state of bringing in personnel and equipment should the operator fail or the site be abandoned. In no event shall the bond be less than ten thousand dollars (\$10,000.00), except for operators complying with section 35-502.20 (f) of the statutes or for sand and gravel, scoria or jade mining in which case the bond amount shall be set by the administrator with approval of the director to cover the cost of reclamation, and in no event less than two hundred dollars (\$200.00) per acre, for affected land.
- (d) When the reclamation plan for any affected land has been completed, the administrator, after consultation with the advisory board, may recommend to the director the release of up to seventy-five percent (75%) of the bond required for that affected land. The remaining portion of the bond shall be not less than ten thousand dollars (\$10,000.00), and shall be held for a period of at least five (5) years after the date of reduction to assure proper revegetation. The retained portion of the bond may be returned to the operator at an earlier date if a release signed by the surface owner and approved by the administrator and director is obtained.
- (e) If the area of land under permit to be disturbed is increased, then the amount of bond shall be increased to cover the added cost of reclaiming all affected lands. (Laws 1973, ch. 250, § 1; 1974, ch. 14, § 1.)

Editor's note. — Subsection (f) of § 35-502.20, W.S. 1957, referred to twice in subsection (c) of this section was repealed by § 3, ch. 198, Laws 1975. The repealed provision related to the application of this section now compiled as § 35-11-406 to surface mining operations, As amended, § 35-11-406 now applies to such operations.

Effective date. — Section 3, ch. 14, Laws 1974, makes the act effective immediately upon passage. Approved February 12, 1974.

§ 35-11-418. Cash, etc., in lieu of bond.

In lieu of a bond, the operator may deposit federally insured certificates of deposit, payable to the Wyoming department of environmental quality or cash or government securities, or all three. (Laws 1973, ch. 250, § 1; 1974, ch. 14, § 1.)

Effective date. — Section 3, ch. 14, Laws 1974, makes the act effective immediately upon passage. Approved February 12, 1974.

§ 35-11-419. Bond cancellation.

Such bond may be cancelled by the surety only after ninety (90) days notice to the director, and upon receipt of the director's written consent, which may be granted only when the requirements of the bond have been fulfilled. (Laws 1973, ch. 250, § 1.)

§ 35-11-420. Cancellation of surety's license; substitution.

If the license to do business in Wyoming of any surety upon a bond filed pursuant to this act is suspended or revoked by any state authority then the operator, within thirty (30) days after receiving notice thereof, shall substitute a good and sufficient corporate surety licensed to do business in the state. Upon failure of the operator to make substitution of surety within a reasonable period of time, not to exceed sixty (60) days, the director shall suspend the permit of the operator to conduct operations upon the land described in the permit until proper substitution has been made. (Laws 1973, ch. 250, § 1.)

§ 35-11-421. Bond forfeiture proceedings.

(a) If the director determines that a performance bond should be forfeited because of any violation of this act, he shall, with the approval of the council, make formal request of the attorney general to begin bond forfeiture proceedings.

(b) The attorney general shall institute proceedings to forfeit the bond of any operator by providing written notice to the surety and to the operator that the bond will be forfeited unless the operator makes written demand to the council within thirty (30) days after his receipt of notice, requesting a hearing before the council. If no demand is made by the operator within thirty (30) days of his receipt of notice, then the council shall order the bond forfeited.

(c) The council shall hold a hearing within thirty (30) days after the receipt of the demand by the operator. At the hearing, the operator may present for the consideration of the council statements, documents and other information with respect to the alleged violation. At the conclusion of the hearing, the council shall either withdraw the notice of violation or enter an order forfeiting the bond. (Laws 1973, ch. 250, § 1.)

§ 35-11-422. Forfeited bond inadequate; suit to recover reclamation costs.

If the forfeited bond is inadequate to cover the costs of the final reclamation program, the attorney general shall bring suit to recover the cost of the reclamation where recovery is deemed possible. (Laws 1973, ch. 250, § 1.)

§ 35-11-423. Release of bonds

- (a) No bond shall be finally released until the reclamation program has been completed and approved by the administrator. The director may retain a portion of the bond for at least five (5) years as provided in section 35-502.34 [§ 35-11-417] of the statutes, or for so long thereafter as necessary to assure proper revegetation of the reclaimed areas, as provided for in the operator's reclamation plan.
- (b) The retained portion of the bond may be returned to the operator at an earlier date if a release signed by the surface owner and approved by the administrator is obtained.
- (c) When the operator has completed successfully all surface mining and reclamation activities, he may request release of the retained bond. Upon receipt of the notification and request and within sixty (60) days, the administrator shall inspect and evaluate the reclamation work and report his findings to the director. If the director finds the reclamation meets the requirements of this act, he shall notify the operator and order the state treasurer to release that portion of the final bond. The state treasurer shall then return the bond, cash or securities constituting that portion of the bond so retained. If the director does not approve of the reclamation performed by the operator, he shall notify the operator by registered mail within a reasonable time after the request is filed. The notice shall state the reasons for denial and shall recommend corrective actions. Upon correction of the noted deficiency, the director shall order the state treasurer to release the bond, cash or securities constituting that portion of the bond so retained. (Laws 1973, ch. 250, § 1.)

§ 35-11-424. Deposit of fees and forfeitures.

- (a) All forfeitures and other monies collected under the provisions of this act shall be deposited with the state treasurer in an account within the trust and agency fund for reclamation purposes.
- (b) All fees shall be deposited with the state treasurer in the general fund. (Laws 1973, ch. 250, § 1.)



ARTICLE 5. SOLID WASTE MANAGEMENT

§ 35-11-501. Other powers and duties of director.

In addition to the other powers and duties enumerated in this act, the director of the department shall coordinate the activities of all state agencies concerned with solid waste management and disposal. In this capacity the director shall advise and consult with any person or municipality with respect to provisions of technical assistance in solid waste management technology, including collection, storage and disposal. (Laws 1973, ch. 250, § 1.)

Law review. — For comment on solid waste management provisions of the Wyoming & Water L. Rev. 133 (1974).

§ 35-11-502. Solid waste disposal requirements.

- (a) Every person or municipality that proposes to establish a new solid waste disposal site shall submit to the director its proposed plans. The plans shall include drawings, specifications and descriptive information in sufficient detail to describe the location, local ground surface, groundwater conditions, distance to roads and all-weather accesses, distances to dwellings and other such technical data sufficient for the director to analyze the conditions relevant to the disposal site. The director shall consult, advise and approve the site prior to its use.
- (b) The director may request and obtain similar information regarding present sites, for the purpose of determining the adequacy and approvability of existing solid waste disposal sites. The municipality having jurisdiction shall consult with and submit information to the director for initial review of the site with respect to its adequacy, absence of water or air quality effect, and overall utility as a disposal site. Any water quality or air quality violation at such existing sites will be cause to require abatement and relocation. Aspects of undesirable, although nonviolating character, such as poor access, aesthetic site management or other such aspects or undesirability shall be cause for the director to study the site for the purpose of recommending improvements. (Laws 1973, ch. 250, § 1.)

Cited in Board of Trustees, Laramie County School Dist. No. 1 v. Spiegel, 549 P.2d 1161 (Wyo. 1976).

§ 35-11-503. Director authorized to promulgate rules and regulations for operation of solid waste disposal sites.

The director, after consultation with the land advisory board, is authorized to promulgate rules and regulations for the operation of solid waste disposal sites. The director is also authorized to promulgate guidelines, recommend procedures and other technical information relevant to the collection, storage, and management of solid wastes. (Laws 1973, ch. 250, § 1.)

ARTICLE 6. VARIANCES

§ 35-11-601. Applications; authority to grant; hearing; limitations; renewals; judicial review; emergencies.

- (a) Any person who owns or is in control of any real or personal property, any plant, building, structure, process or equipment may apply to the administrator of the appropriate division for a variance from any rule, regulation, standard or permit promulgated under this act. A variance may be granted upon notice and hearing. The administrator shall give public notice of the request for a variance in the county in which such real or personal property, plant, building, structure, process or equipment is in existence for which the variance is sought. The notice shall designate who has applied for the variance and the nature of the variance requested and the time and place of hearing and shall be published in a newspaper of general circulation in said county once a week for four (4) consecutive weeks prior to the date of the hearing. The cost of publication shall be paid by the person applying for the variance. The administrator of the division shall promptly investigate the request, consider the views of the persons who may be affected by the grant of the variance, and all facts bearing on the request, and make a decision with the approval of the director within sixty (60) days from the date the hearing for a variance is held.
- (b) If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, abatement or control of the pollution, or mining operation involved, it shall continue in effect only until the necessary means for prevention, abatement or control become known and available, and subject to the taking of any substitute or alternate measures that the director may prescribe.
- (c) If the variance is granted on the ground that compliance with the particular requirement or requirements from which variance is sought will necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time as, in the view of the director is requisite for the taking of the necessary measures. A variance granted on the ground specified herein shall contain a timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to such timetable.
- (d) A variance may be granted by the council from standards established by the council for sulfur oxide emissions, if the council determines that the state of the technology for removal of sulfur oxides from the stack gasses is insufficiently advanced to achieve the objective level without causing undue economic hardship on the owner of the facility or the consumer of the product produced by the facility or if the council determines that the developing technology offers promise that superior equipment might, in the near future, be available which would render presently available equipment obsolete and that the best interests of the state would be served by the issuance of the variance. In considering such a variance, the council must consider the health and well being of the citizens in the vicinity of the facility and the effect upon livestock

and agricultural production in the area. In no event shall the variance permit emissions less stringent than existing federal standards covering the emission of sulfur oxides. Each application for a variance will be issued on a case by case basis considering the state of the technology at the time of each application.

(e) If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in subsections (b), (c)

and (d) of this section, it shall be for not more than one (1) year.

- (f) Any variance granted pursuant to this section may be renewed on terms and conditions and for periods which would be appropriate on initial granting of a variance. If complaint by an aggrieved party is made to the director on account of the variance, no renewal thereof shall be granted, unless following public hearing on the complaint on due notice, the council finds that renewal is justified. No renewal shall be granted except on application therefor. Any such application shall be made at least sixty (60) days prior to the expiration of the variance.
- (g) Any variance or renewal thereof granted by the director pursuant to this section shall become final unless within thirty (30) days after date of notice as provided in subsection (a) of this section an aggrieved party as defined by this act in writing may request a hearing before the council. Upon the filing of such a request for a hearing, the variance shall be stayed pending the council's final determination thereon.
- (h) If, after a hearing held pursuant to this section, the council finds that a variance is required, it shall affirm or modify the order previously issued by the director or issue an appropriate order for variance as it deems necessary. If, after a hearing held pursuant to this section, the council finds that there is no need for a variance, it shall rescind the issuance of a variance.
- (j) In connection with any hearing held pursuant to this section, the council has the power and upon application by any aggrieved party, it has the duty to compel the attendance of witnesses, and the production of evidence on behalf of all parties.
- (k) Any aggrieved party adversely affected by a variance or renewal of same or the denial of same may obtain judicial review thereof in the manner prescribed by the Wyoming Administrative Procedure Act [§§ 9-4-101 to 9-4-115].

(m) Failure to comply with the conditions imposed by any variance shall be cause for modification or termination of the variance by the director.

(n) Nothing in this section and no variance or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of W.S. 35-502.15 [§ 35-11-115] to any person or property.

(o) Nothing in this section shall be construed to permit an application for a water variance. The application for water permits must be made solely under the provisions of W.S. 35-502.19 [§ 35-11-302]. (Laws 1973, ch. 250, § 1; 1975, ch. 198, § 2.)

Effective date. — Section 5, ch. 198, Laws 1975, makes the act effective immediately upon passage. Approved March 12, 1975.

Cited in Board of Trustees, Laramie County School Dist. No. 1 v. Spiegel, 549 P.2d 1161 (Wyo. 1976).

ARTICLE 7. COMPLAINTS

§ 35-11-701. Complaint; investigations; conference; cease and desist order; hearing; referee.

(a) If the director or the administrators have cause to believe that any persons are violating any provision of this act or any rule, regulation, standard, permit, license, or variance issued pursuant hereto, or in case any written complaint is filed with the department alleging a violation, the director, through the appropriate administrator, shall cause a prompt investigation to be made. If, as a result of the investigation, it appears that a violation exists, the administrator of the proper division may, by conference, conciliation and persuasion, endeavor promptly to eliminate the source or cause of the violation.

(b) In case of failure to correct or remedy an alleged violation, the director shall cause to be issued and served upon the person alleged to be responsible for any such violation a written notice which shall specify the provision of this act, rule, regulation, standard, permit, license, or variance alleged to be violated and the facts alleged to constitute a violation thereof, and may require the person so complained against to cease and desist from the violation within the time the

director may determine.

(c) Any order is final unless, not later than ten (10) days after the date the notice is served, the person or persons named therein request, in writing, a hearing before the council. Upon the filing of a request the order complained of

shall be stayed pending the council's final determination thereon.

(d) If after a hearing held pursuant to this section, the council finds that a violation has occurred, it shall affirm or modify such order previously issued, or issue an appropriate order or orders for the prevention, abatement or control of the violation involved or for the taking of other corrective action. If, after a hearing on an order contained in a notice, the council finds that no violation has occurred, it shall rescind the order. Any order issued as part of a notice or after hearing may prescribe the date or dates by which the violation shall cease and may prescribe timetables for action. Nothing contained in this subsection (d) shall be construed as preventing any person from applying for a variance as provided in section 35-502.45 [§ 35-11-601] of the statutes.

(e) At any hearing before the council, it may designate a person to be a referee and may authorize the referee to receive evidence, administer oaths, examine witnesses and issue subpoenas requiring the testimony of witnesses and the production of evidence and to make reports and recommendations with respect thereto. Any final determination based on the evidence received by any such

referee shall be made solely by the council.

(f) Nothing in this section shall be interpreted to in any way limit or contravene any other remedy available under this act, nor shall this section be interpreted a condition precedent to any other enforcement action under this act. (Laws 1973, ch. 250, § 1; 1975, ch. 198, § 2.)

1975, makes the act effective immediately upon 549 P.2d 1161 (Wyo. 1976). passage. Approved March 12, 1975.

Cited in Roberts Constr. Co. v. Vondriska, 547 P.2d 1171 (Wyo. 1976); Board of Trustees,

Effective date. - Section 5, ch. 198, Laws Laramie County School Dist. No. 1 v. Spiegel,

ARTICLE 8, PERMITS

§ 35-11-801. Issuance of permits.

(a) When an administrator, after consultation with the appropriate advisory board, has, by rule or regulation, required a permit to be obtained it is the duty of the director to issue such permits upon proof by the applicant that the procedures of this act and the rules and regulations promulgated hereunder have been complied with. In granting permits, the director may impose such conditions as may be necessary to accomplish the purpose of this act which are not inconsistent with the existing rules, regulations and standards.

(b) The director shall take final action on any application for permit or extension thereof within sixty (60) days after receipt of same unless public notice

or hearing is required by state or federal statute.

(c) A permit to construct is required before construction or modification of any industrial facility capable of causing or increasing air or water pollution in excess of standards established by the department is commenced. (Laws 1973, ch. 250, § 1; 1975, ch. 198, § 2.)

Effective date. - Section 5, ch. 198, Laws 1975, makes the act effective immediately upon passage. Approved March 12, 1975.

§ 35-11-802. Refusal to grant permits; applicant's rights.

If the director refuses to grant any permit under this act, the applicant may petition for a hearing before the council to contest the decision. The council shall give a public notice of such hearing. At such hearing, the director and appropriate administrator shall appear as respondent and the rules of practice and procedure adopted by the council pursuant to this act and the Wyoming Administrative Procedure Act [§§ 9-4-101 to 9-4-115] shall apply. The burden of proof shall be upon the petitioner. The council must take final action on any such hearing within thirty (30) days from date of hearing. (Laws 1973, ch. 250, § 1.)

ARTICLE 9. PENALTIES

§ 35-11-901. Violations of act; penalties.

(a) Any person who violates any provision of this act, or any rule, regulation, standard or permit adopted hereunder or who violates any determination or order of the council pursuant to this act or any rule, regulation, standard, permit, license, or variance is liable to a penalty of not to exceed ten thousand dollars

(\$10,000.00) for each day during which violation continues, which may be recovered in a civil action, and such person may be enjoined from continuing the violation as hereinafter provided. Damages are to be assessed by the court.

(b) Any person who violates this act, rule, regulation, and thereby causes the death of fish, aquatic life or game or bird life is, in addition to other penalties provided by this act, liable to pay to the state, an additional sum for the reasonable value of the fish, aquatic life, game or bird life destroyed. Any monies so recovered shall be placed in the general fund of Wyoming, state treasurer's office. All actions pursuant to this article [§§ 35-11-901, 35-11-902] shall be brought in the county in which the violation occurred or in Laramie county by

the attorney general in the name of the people of Wyoming.

(c) Any person who willfully or negligently violates any provision of this act or any rule, regulation, standard, permit, license, or variance or limitations adopted hereunder or who willfully violates any determination or order of the council pursuant to this act or any rule, regulation, standard, permit or limitation issued under this act shall be fined not more than twenty-five thousand dollars (\$25,000.00) per day violation, or imprisoned for not more than one (1) year, or both. If the conviction is for a violation committed after a first conviction of such person under this act, punishment shall be by a fine of not more than fifty thousand dollars (\$50,000.00) per day of violation or by imprisonment of not more than two (2) years, or by both.

(d) Any person who knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained under this act or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this act, shall upon conviction, be fined not more than ten thousand dollars (\$10,000.00) or imprisoned for not more than six (6) months, or

both.

(e) Nothing in this act shall be construed to abridge, limit, impair, create, enlarge or otherwise affect substantively or procedurally the right of any person to damages or other relief on account of injury to persons or property and to maintain any action or other appropriate proceeding therefor. (Laws 1973, ch. 250, § 1; 1974, ch. 14, §§ 1, 2; 1975, ch. 198, § 2.)

Cross references. — As to penalty for contamination of streams or lakes by manufacturing or industrial works, see § 35-4-202. As to injunctions, see Rule 65, W.R.C.P.

Effective dates. — Section 3, ch. 14, Laws 1974, makes the act effective immediately upon passage. Approved February 12, 1974.

Section 5, ch. 198, Laws 1975, makes the act effective immediately upon passage. Approved March 12, 1975.

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§ 35-11-902. Civil or criminal remedy.

Nothing in this act shall in any way limit any existing civil or criminal remedy for any wrongful action arising out of a violation of any provision of this act or any rule, regulation, standard, permit, license, or variance or order adopted hereunder. (Laws 1973, ch. 250, § 1.)

ARTICLE 10. JUDICIAL REVIEWS

§ 35-11-1001. Judicial review.

- (a) Any aggrieved party under this act, any person who filed a complaint on which a hearing was denied, and any person who has been denied a variance or permit under this act, may obtain judicial review by filing a petition for review within thirty (30) days after entry of the order or other final action complained of pursuant to the provisions of the Wyoming Administrative Procedure Act [§§ 9-4-101 to 9-4-115].
- (b) Any person having a legal interest in the mineral rights or any person or corporation having a producing mine or having made substantial capital expenditures and commitments to mine mineral rights with respect to which the state has prohibited mining operations because the mining operations or proposed mining operations would irreparably harm, destroy or materially impair an area that has been designated to be of a unique and irreplaceable historical, archeological, scenic or natural value, may petition the district court for the district in which the mineral rights are located to determine whether the prohibition so restricts the use of the property as to constitute an unconstitutional taking without compensation. Upon a determination that a taking has occurred the value of the investment in the property or interests condemned shall be ascertained and damages shall be assessed as in other condemnation proceedings. (Laws 1973, ch. 250, § 1.)

Cross reference. - For judicial review of administrative action, see Rule 72.1, W.R.C.P.

§ 35-11-1002. Publication of rules and regulations.

Any rule, regulation or standard promulgated under this act shall be published and distributed to members of the legislature and any other interested party. (Laws 1973, ch. 250, § 1.)

ARTICLE 11. MISCELLANEOUS PROVISIONS

§ 35-11-1101. Records available to the public; restrictions.

- (a) Any records, reports or information obtained under this act or the rules, regulations and standards promulgated hereunder are available to the public. Upon a showing satisfactory to the director by any person that his records, reports or information or particular parts thereof, other than emission and pollution data, to which the director and administrators have access under this act if made public would divulge trade secrets, the director and administrators shall consider the records, reports or information or particular portions thereof confidential in the administration of this act.
- (b) Nothing herein shall be construed to prevent disclosure of any records, reports or information to federal, state or local agencies necessary for the purposes of administration of any federal, state or local air, water or land control measures or regulations or when relevant to any proceedings under this act. (Laws 1973, ch. 250, § 1; 1975, ch. 198, § 2.)

Cross reference. — For provisions governing public records generally, see §§ 9-9-1 to 9-9-5.

Effective date. — Section 5, ch. 198, Laws 1975, makes the act effective immediately upon passage. Approved March 12, 1975.

§ 35-11-1102. Hearing unnecessary prior to issuance of emergency order.

Nothing in this act shall be construed to require a hearing prior to the issuance of an emergency order. (Laws 1973, ch. 250, § 1.)

§ 35-11-1103. Property exempt from ad valorem taxation.

The following property is exempt from ad valorem taxation pursuant to the provisions of this act and includes facilities, installations, machinery or equipment attached or unattached to real property and designed, installed and utilized primarily for the elimination, control or prevention of air, water or land pollution, or in the event such facility, installation, equipment or machinery shall also serve other beneficial purposes and use, such portion of the assessed valuation thereof as may be reasonably calculated to be necessary for and devoted to elimination, control or prevention of air, water and land pollution. The state board of equalization shall determine such exempt portion, and shall not include as exempt any portion of any facilities which have value as the specific source of marketable byproducts. (Laws 1973, ch. 250, § 1; 1975, ch. 198, § 2.)

Cross reference. — As to exemptions from taxation generally, see §§ 39-1-201 to 39-1-204.

Editor's note. — The powers, duties and functions of the board of equalization were transferred to the department of revenue and taxation by § 1, ch. 248, Laws 1973. For present

provisions as to powers and purpose of state board of equalization, see § 39-1-304.

Effective date. — Section 5, ch. 198, Laws 1975, makes the act effective immediately upon passage. Approved March 12, 1975.

§ 35-11-1104. Limitation of scope of act.

Nothing in this act:

 (a) Grants to the department or any division thereof any jurisdiction or authority with respect to pollution existing solely within commercial and industrial plants, works or shops;

(b) Affects the relations between employers and employees with respect to or

arising out of any condition of pollution;

(c) Limits or interferes with the jurisdiction, duties or authority of the state engineer, the state board of control, the game and fish commissioner, the state mine inspector, the oil and gas supervisor or the oil and gas conservation commission, or the occupational health and safety commission. (Laws 1973, ch. 250, § 1; 1974, ch. 14, §§ 1, 2; 1975, ch. 198, § 3.)

Editor's Note. — The game and fish commissioner has been replaced by the director of game and fish department. See §§ 23-1-401 to 23-1-406.

Appropriation. -- Section 2. ch. 250. Laws 1973, provides: "There is hereby appropriated out of any funds in the state treasury not otherwise appropriated, the sum of \$200,000 or so much thereof as may be necessary to carry out the purposes of this act."

Severability. — Section 4, ch. 250, Laws 1973, provides: "If any provision of this act or the applicability thereof to any person or

circumstance is held invalid, the remainder of this act and the application of such provision to other persons or circumstances shall not be affected thereby."

Effective dates. — Section 5, ch. 250, Laws 1973, makes the act effective on July 1, 1973.

Section 3, ch. 14, Laws 1974, makes the act effective immediately upon passage. Approved February 12, 1974.

Section 5, ch. 198, Laws 1975, makes the act effective immediately upon passage. Approved March 12, 1975.

ARTICLE 12. Abandoned mine reclamation program. § 35-11-1201 through § 35-11-1207



CHAPTER 12

Wyoming Industrial Development and Siting Act

Sec. 35-12-101. Citation. 35-12-113. Record of hearing; procedure and 35-12-102. Definitions. rules of evidence. 35-12-114. Decision of council: 35-12-103. Office of industrial findings siting necessary for permit conditions administration created. 35-12-104. Industrial siting council created; imposed; service of decision on parties. composition; terms; compensation. 35-12-115. Review of grant or denial of permit. 35-12-105. Appointment and duties of director; staff; rules and regulations. 35-12-116. Additional requirements by other 35-12-106. Permit from council required prior to governmental agencies construction permitted after issuance of permit; commencing facility; amendments; exceptions. exceptions. 35-12-107. Quantity of water available; analysis; 35-12-117. Revocation or suspension of permit. public comment. 35-12-118. Monitoring of facilities. 35-12-108. Application for permit; form; initial 35-12-119. Penalties for violations; civil action by attorney general. 35-12-109. Study and evaluation; service of 35-12-120. Annual long-range plan submitted; notice of application. contents. 35-12-110. Fees for additional study. 35-12-121. Waiver of permit; exemptions;

§ 35-12-101. Citation.

This act is the "Industrial Development Information and Siting Act." (Laws 1975, ch. 169, § 1.)

information required.

Cited in Board of Trustees, Laramie County School Dist. No. 1 v. Spiegel, 549 P.2d 1161 (Wyo. 1976).

35-12-111. Studies; evaluation and report on

proposed facility.
35-12-112. Parties to permit proceeding; waiver by failure to participate.

§ 35-12-102. Definitions.

- (a) As used in this act:
 - (i) "Office" means the state office of industrial siting administration;
 - (ii) "Council" means the industrial siting council;
 - (iii) "Industrial facility" or "facility" means:
 - (A) Any energy generating and conversion plant:
 - (I) Designed for, or capable of, generating one hundred (100) megawatts of electricity or more or any addition thereto (except pollution control facilities approved by the department of environmental quality added to an existing plant) increasing the initial design capacity of the facility by at least one hundred (100) megawatts of electricity;
 - (II) Designed for, or capable of, producing one hundred million (100,000,000) cubic feet of synthetic gas per day or more or any addition (except pollution control facilities approved by the

department of environmental quality added to an existing plant) increasing the initial design capacity of the facility by at least one hundred million (100,000,000) cubic feet of synthetic gas per day;

(III) Designed for, or capable of, producing fifty thousand (50,000) barrels of liquid hydrocarbon products per day or more by any extraction process or any addition thereto (except pollution control facilities approved by the department of environmental quality added to an existing plant) increasing the initial design capacity of the facility by at least fifty thousand (50,000) barrels of liquid hydrocarbon products per day by any extraction process; or

(IV) Designed for, or capable of, enriching uranium minerals from U308 (yellow cake) in quantities exceeding five hundred (500)

pounds of U308 per day;

(B) Any industrial facility with an estimated construction cost of least fifty million dollars (\$50,000,000.00). The council shall adjust this amount, up or down, each year using recognized construction cost indices as determined by the council to be relevant to the actual change in construction cost applicable to the general type of construction covered under this act.

(iv) "Applicant" means any person who applies for a permit pursuant to

the provisions of this act;

(v) "Advisory member" means an advisory member of the council provided by W.S. 35-502.78 (f) [§ 35-12-104 (f)];

(vi) "Director" means the director of the office;

(vii) "Impacted area" means an area of Wyoming in which sudden or prolonged population growth may occur or may cause environmental, social or economic stresses of such nature that the total local, state and federal resources available are not sufficient to resolve them properly and effectively as determined by the council;

(viii) "Commence to construct" means:

(A) Any clearing of land, excavation, construction or other action that would affect the environment of the site of any facility, but does not include changes needed for temporary use of sites for less than ninety (90) days, changes required to conduct required studies and tests under this act, or any other state or federal act or regulation or routes for nonutility purposes or for uses in securing geological data but not limited to necessary borings or drillings to ascertain foundation conditions;

(B) The nuclear fracturing of underground formation, if any such activity is related to the possible future development of a facility subject to this act, but does not include the gathering of geological data by boring of test holes or other underground exploration, investigation or experimentation.

(ix) "Local government" means any county, city, town or school district or any combination of the above as formed under the provisions of the

Wyoming Joint Powers Act [§§ 9-1-129 to 9-1-136];

(x) "Permit" means the permit issued by the council and required for the

construction or operation of any industrial facility or facilities;

(xi) "Person" includes an individual, group, firm, partnership, corporation, cooperative, association or other entity excluding the state, federal government and local government;

(xii) "This act" means W.S. 35-502.75 through 35-502.94 [§§ 35-12-101 to

35-12-121]. (Laws 1975, ch. 169, § 1.)

§ 35-12-103. Office of industrial siting administration created.

There is hereby created within the governor's office, "the state office of industrial siting administration." (Laws 1975, ch. 169, § 1.)

Effective date. - Section 4, ch. 169, Laws 1975, makes this section effective immediately upon passage. Approved March 8, 1975.

§ 35-12-104. Industrial siting council created; composition; terms; compensation.

(a) There is hereby created the industrial siting council consisting of seven (7)

members who are residents of Wyoming.

(b) The terms of the members selected under subsection (a) of this section shall be for six (6) years, except that on the initial appointment three (3) members shall serve for six (6) years, two (2) members shall serve for four (4) years and two (2) members shall serve two (2) years as designated by the initial appointment.

(c) Members shall be appointed by the governor with the advice and consent of the senate. When a vacancy occurs the governor shall appoint a new member for the remaining portion of the unexpired term. Not more than four (4) members

shall be of the same political party.

(d) The council shall meet within thirty (30) days after the initial appointments to elect a chairman, vice-chairman and secretary from among its members. Officers shall be elected annually thereafter. The council shall have at least four (4) regularly scheduled meetings each year and may meet at the call of the chairman or upon request of a majority of the members at other times. For the purpose of conducting council business four (4) members constitute a quorum but no action taken is valid unless approved by at least four (4) members.

(e) Council members appointed pursuant to subsection (c) of this section shall be reimbursed for per diem, mileage and expenses and receive salary for attending meetings and hearings of the council in the same manner and amount

as members of the Wyoming legislature.

(f) The administrative head of each state agency enumerated in W.S. 35-502.84 (b) [§ 35-12-111 (b)], or the designated representative, shall attend meetings of the council and serve in an advisory capacity to facilitate and expedite the decision making process of the council. The council may request any administrative head to pursue, evaluate and submit reports relative to any study which may be required in the evaluation of an application for a permit.

(g) If construction of a facility would have required approval from any state agency but for the provisions of this act, the council shall authorize that agency to review that portion of the application formerly subject to the jurisdiction of the agency and request the agency to render a decision relative thereto which is binding on the council but only as to that portion of the application formerly subject to the jurisdiction of the agency. The finding in the certificate of the public service commission as to the present or future public convenience and necessity of the proposed facility shall be binding on the council, but such finding shall not be binding on the council with respect to issuance or denial of a permit under this act. (Laws 1975, ch. 169, § 1.)

Cross reference. — As to compensation, per diem and travel expenses of members of the legislature, see §§ 28-5-101, 28-5-102.

Effective date. — Section 4, ch. 169, Laws 1975, makes this section effective immediately upon passage. Approved March 8, 1975.

§ 35-12-105. Appointment and duties of director; staff; rules and regulations.

(a) The council, with the consent of the governor, shall appoint a director of the office who will serve at the pleasure of the council and the governor as the executive and administrative head of the office. Qualifications of the director shall be determined by the council. The director with the approval of the council shall employ such staff as deemed necessary by the director to carry out the functions and responsibilities of the office.

(b) The council shall promulgate rules and regulations pursuant to the Wyoming Administrative Procedure Act [§§ 9-4-101 to 9-4-115], implementing this act. The director shall administer and enforce the provisions of this act and any rules, regulations and orders approved or issued by the council. (Laws 1975, ch. 169, § 1.)

Effective date. — Section 4, ch. 169, Laws 1975, makes this section effective immediately upon passage. Approved March 8, 1975.

§ 35-12-106. Permit from council required prior to commencing construction of facility; amendments; exceptions.

- (a) No person shall commence to construct a facility, as defined in this act, in the state without first having obtained a permit issued with respect to such facility by the council. Any facility, with respect to which a permit is required, shall thereafter be constructed, operated and maintained in conformity with such permit and any terms, conditions and modifications contained therein. A permit may only be issued pursuant to this act.
- (b) A permit may be transferred, subject to the approval of the council, to a person who agrees to comply with the terms, conditions and modifications contained therein.

- (c) The council may allow the amendment of a permit or application for a permit if the holder or applicant thereof is unable to comply with the terms and conditions thereof due to circumstances beyond his control and if the holder thereof demonstrates to the council at its next meeting that the requested change is in compliance with local ordinances and applicable land use plans and will not significantly add to adverse environmental, social and economic impact in the county.
- (d) The application and permit provisions of this act, may be waived by the council in the event the applicant establishes by clear and convincing proof that an emergency exists created by the loss or damage to an existing facility controlled by a legal obligation to serve the public which seriously threatens the health, safety and welfare of the public.
- (e) If after the applicant has submitted his application in compliance with W.S. 35-502.80 (a) [subsection (a) of this section] and has furnished the council clear and convincing proof that the proposed facility is in compliance with all local ordinances and land use plans, and there is evidence that the facility would alleviate environmental, social and economic impact in the county of the proposed facility, the council may waive all further provisions of this act. (Laws 1975, ch. 169, § 1.)

§ 35-12-107. Quantity of water available; analysis; public comment.

- (a) Whenever an applicant applies for an industrial siting permit, pursuant to W.S. 35-502.80 [§ 35-12-106] for a facility which requires the use of the waters of the state, the applicant shall prepare and submit to the state engineer a water supply and water yield analysis with a request for a preliminary and final opinion as to the quantity of water available for the proposed facility.
- (b) Within thirty (30) days after the applicant has submitted the water supply and yield analysis, the state engineer shall cause to be made, at the applicant's expense, a comprehensive review of the water supply and water yield analysis submitted.
- (c) Within five (5) days after completion of the review, the state engineer shall render a preliminary opinion as to the quantity of water available for the proposed facility. The preliminary opinion, or a reasonable summary, shall be published for three (3) consecutive weeks in a newspaper of general circulation in the county in which the proposed facility is to be located. The expense of the publication shall be borne by the applicant.
- (d) In rendering a final opinion as to the quantity of water available for the proposed facility, the state engineer shall consider any comments which are submitted in writing within twenty (20) days of the last date of publication.
- (e) Within thirty (30) days after the last date of publication, the state engineer shall render a final opinion.
- (f) The final opinion of the state engineer shall be submitted to the industrial siting council and the public service commission. The final opinion shall be binding on the industrial siting council for the purposes of issuing an industrial

siting permit, and shall be reviewed by the public service commission prior to its

issuance of a certificate of public convenience and necessity.

(g) The preliminary and final opinion of the state engineer shall not create a presumption concerning injury or noninjury to water rights, nor shall the opinions of the state engineer be used as evidence in any administrative proceeding or in any judicial proceeding concerning water right determinations or administration. (Laws 1977, ch. 166, § 1.)

Effective date. — Section 3, ch. 66, Laws 1977, makes the act effective immediately upon completion of all acts necessary for a bill to

become law as provided by art. 4, § 8, Wyo. Const. Approved February 23, 1977.

§ 35-12-108. Application for permit; form; initial fee.

- (a) An application for a permit shall be filed with the office, in such form as prescribed by rules and regulations, and shall contain the following information:
 - (i) The name and address of the applicant, and, if the applicant is a partnership, association or corporation, the names and addresses of all managers, partners and executives directly responsible for operations in Wyoming;
 - (ii) Specific description of the nature and location of the facility;
 - (iii) Estimated time of commencement of construction and construction time;
 - (iv) Estimated number and job classifications, of employees of the applicant, or contractor or subcontractor of the applicant, during the construction phase, and during the operating life of the facility. Estimates shall include the number of employees who will be utilized but who do not currently reside within the area to be affected by the facility;
 - (v) Future additions and modifications to the facility which the applicant may wish to be approved in the permit;
 - (vi) A statement of why the proposed location was judged superior;
 - (vii) A copy of any studies which may have been made of the environmental impact of the facility;
 - (viii) Inventory of estimated discharges including physical, chemical, biological and radiological characteristics;
 - (ix) Inventory of estimated emissions and proposed methods of control;
 - (x) Inventory of estimated solid wastes and proposed disposal program;
 - (xi) The procedures proposed to avoid constituting a public nuisance, endangering the public health and safety, human or animal life, property, wildlife or plant life, or recreational facilities which may be adversely affected by the estimated emissions or discharges;
 - (xii) Preliminary evaluations of or plans and proposals for alleviating social, economic or environmental impacts upon local government or any special districts which may result from the proposed facility, which evaluations, plans and proposals shall cover the following:

- (A) Scenic resources;
- (B) Recreational resources;
- (C) Archeological and historical resources;
- (D) Land use patterns;
- (E) Economic base;
- (F) Housing;
- (G) Transportation;
- (H) Anticipated growth of satellite industries;
- (J) Sewer and water facilities;
- (K) Solid waste facilities;
- (M) Police and fire facilities;
- (N) Educational facilities;
- (0) Health and hospital facilities;
- (P) Water supply;
- (Q) Other relevant areas.

(xiii) Estimated construction cost of the facility;

(xiv) What other state or federal permits and approvals are required by the facility, if the permits and approvals have been applied for, and, if not, when the permits and approvals will be applied for;

(xv) Compatibility of the facility with state or local land use plans, if any;

(xvi) Such other information as the applicant may consider relevant or may be required by rule or regulation.

(b) At the time of filing an application, or as subsequently required by the director, an applicant shall pay an initial fee to be determined by the director based upon the estimated cost of investigating, reviewing, processing and serving notice of an application. The fee shall be credited to an account within the earmarked revenue fund and shall be used by the office as required to investigate, review, process and serve notice of the application. Unused fees shall be refunded to the applicant. The maximum initial fee chargeable shall not exceed one half of one percent of the estimated construction cost of the facility or one hundred thousand dollars (\$100,000.00), whichever is less.

(c) The director shall provided the applicant with a full financial accounting, including but not limited to all materials, labor and overhead costs relating to the expenditures of the initial fee at the time of the council's initial decision as provided in W.S. 35-502.82 (e) [§ 35-12-109 (e)]. (Laws 1975, ch. 169, § 1.)

§ 35-12-109. Study and evaluation; service of notice of application.

(a) Not less than twenty (20) nor more than thirty (30) days following receipt of an application for a permit, the director shall:

 (i) Serve notice of the application upon the governing bodies of local government which will be primarily affected by the proposed facility;

 (ii) Cause a summary of the application to be published in one (1) or more newspapers of general circulation within the area to be primarily affected by the proposed facility;

(iii) File a copy of the application with the county clerk of the county or counties in which the proposed facility will be constructed.

(b) Not less than ninety (90) nor more than one hundred twenty (120) days

after receipt of an application for a permit, the director shall:

(i) Schedule and conduct a public hearing, provided that no hearing shall be held until the state engineer has submitted a preliminary and final opinion as to the quantity of water available for the proposed facility pursuant to W.S. 35-502.80:2 [§ 35-12-107];

(ii) Notify the applicant and local governments of the hearing:

(iii) Cause notice of the hearing to be published in one (1) or more newspapers of general circulation within the area to be primarily affected by the proposed facility; and

(iv) Hold the hearing at a community as close as practicable to the proposed facility. The provisions of W.S. 35-502.85 [§ 35-12-112], 35-502.86

and 35-502.88 [§§ 35-12-113 and 35-12-115] apply to the hearing.

(c) The applicant may present such evidence as necessary to demonstrate to the council:

(i) That the proposed facility complies with all applicable law;

(ii) That the facility will not pose a threat of serious injury to the environment nor to the social and economic condition of inhabitants or expected inhabitants in the affected area; and

(iii) That the facility will not substantially impair the health, safety or

welfare of the inhabitants.

- (d) The council shall also hear and receive evidence presented by any other state department or agency relative to the environmental, social and economic conditions and projected changes therein. The council shall within sixty (60) days after the date of the public hearings make its initial determination.
- (e) The council shall issue an order at the time of the initial determination authorizing one (1) of the following actions:
 - (i) Approving the application and issuing a permit with no conditions;
 - (ii) Approving the application and issuing a permit conditioned upon commencing the construction at a reasonable time specified by the council:
 - (iii) Approving the application and issuing a permit conditioned upon specified changes in the application; or

(iv) Rejecting the application pending further study as required by the council if the applicant is not able to demonstrate to the council that the

requirements of subsection (c) of this section have been met.

(f) Notice of the council's initial decision shall be given as provided by W.S. 35-502.82 (a) [subsection (a) of this section], to the applicant and to parties to the hearing within ten (10) days following the decision. (Laws 1975, ch. 169, § 1: 1977, ch. 66, § 2.)

Cross reference. - As to publication of notices generally, see §§ 1-6-201 to 1-6-203.

The 1977 amendment, in subsection (b), substituted "ninety (90) nor more than one hundred twenty (120) days" for "forty (40) nor

more than sixty (60) days" in the introductory language and added the proviso at the end of paragraph (i).

Effective date. - Section 3, ch. 66, Laws 1977, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved February 23, 1977.

§ 35-12-110. Fees for additional study.

- (a) If additional study is required by the council, the applicant shall pay an additional fee to be determined by the director, after consultation with the applicant and approved by the council based upon the estimated cost of an intensive study and evaluation of the proposed facility as hereafter provided. Fees shall be deposited in an account within the earmarked revenue fund and shall be used by the office as required to conduct the study and hearings on the application, utilizing to the fullest extent necessary the staff and resources of all state agencies, boards and commissions. An applicant may withdraw his application prior to payment of fee for additional study. Fees not required for additional study shall be refunded to the applicant. Subject to subsection (b) of this section, the fee chargeable shall be based upon the estimated cost of the facility according to the following schedule:
 - (i) One half of one percent (0.5%) up to one hundred million dollars (\$100,000,000.000); plus
 - (ii) One quarter of one percent (0.25%) over one hundred million dollars (\$100,000,000.000).
- (b) Total fees paid under this act for one (1) facility shall not exceed one million dollars (\$1,000,000.00).
- (c) The director shall provide the applicant with a full financial accounting, including but not limited to all materials, labor and overhead costs relating to the expenditures of the additional fee at the time of the council's decision as provided in W.S. 35-502.87 [§ 35-12-114]. (Laws 1975, ch. 169, § 1.)

§ 35-12-111. Studies; evaluation and report on proposed facility.

- (a) Before commencing the study the director shall prepare and review, with the applicant, a study design within thirty (30) days after the initial decision. Thereafter, the office shall commence an intensive investigation, study and evaluation of the proposed facility and its effects as specified in the preliminary decision called for in W.S. 35-502.82 (d) (iv) [§ 35-12-109 (e) (iv)]. Further study may be assigned if specific areas of study are needed. The office shall utilize to the necessary extent the staff and resources of all state agencies, boards and commissions relative to the following factors insofar as the aforesaid preliminary decision has specifically found such factors to be relevant and necessary, which may be supplemented by regulation. The following is a list of topics which the council may designate as necessary for further study:
 - (i) The purpose of the facility:
 - (A) Consumer demand and future energy needs;
 - (B) Tax base including the potential short and long range demands on any tax revenues generated by the facility for the extension or expansion of public services within the impacted area;

(C) Efficient use of energy form;

(D) Diversification of employment and job availability.

(ii) Land use impacts:

(A) Area of land required and ultimate use;

- (B) Consistency with state, intrastate regional, county and local land use plans if any;
 - (C) Compatibility with existing and projected nearby land utilization;

(D) Alternative uses of the site;

- (E) Impact on population already in the area; population attracted by construction or operation of the facility itself; impact of availability of energy from this facility on growth patterns and population dispersal;
 - (F) Geologic suitability of the site or route;

(G) Construction practices;

(H) Extent of erosion, scouring, wasting of land at the site;

 (J) Corridor design and construction precautions for transmission lines or aqueducts;

(K) Scenic impacts;

(M) Effects on natural systems, wildlife, plant life;

- (N) Impacts on important historic architectural, archeological and cultural areas and features;
 - (O) Extent of recreation opportunities and related compatible uses;
 - (P) Public recreation plan for the project if any;

(Q) Public facilities and accommodation.

(iii) Water resources impacts:

 (A) Hydrologic studies of adequacy of water supply and impact of facility on stream flow, lakes, reservoirs and underground waters;

(B) Hydrologic studies of impact of facilities on ground waters and

underground waters;

- (C) Cooling system evaluation including consideration of alternatives;
- (D) Inventory of effluents including physical, chemical, biological and radiological characteristics:
- (E) Hydrologic studies of effects of effluents on receiving waters, including mixing characteristics of receiving waters, changed evaporation due to temperature differentials and effect of discharge on bottom sediments;

(F) Relationship to water quality standards;

(G) Effects of changes in quantity and quality on water use by others, including both withdrawal and in situ uses; relationship to projected uses; relationship to water rights;

(H) Effects on plant and animal life, including algae,

microinvertebrates and fish population;

(J) Monitoring programs.

(iv) Air quality impacts:

(A) Meteorology, wind direction and velocity, ambient temperature ranges, precipitation values, inversion occurrence, other effects on dispersion;

(B) Topography and factors affecting dispersion;

- (C) Standards in effect and projected for emissions, design capability to meet standards;
 - (D) Emissions and controls:
 - (I) Stack design;
 - (II) Particulates;
 - (III) Sulfur oxides;
 - (IV) Oxides of nitrogen;
 - (V) Heavy metals, trace elements, radioactive materials and other toxic substances.
 - (E) Relationship to present and projected air quality of the area;
 - (F) Monitoring program.
- (v) Solid wastes impact:
 - (A) Solid waste inventory;
 - (B) Disposal program;
 - (C) Relationship of disposal practices to environmental quality criteria;
 - (D) Capacity of disposal sites to accept projected waste loadings.

(vi) Radiation impacts:

(A) Land use controls over development and population;

 (B) Wastes and associated disposal program for solid, liquid, radioactive and gaseous wastes;

(C) Analysis and studies of the adequacy of engineering safeguards and operating procedures;

(D) Monitoring, adequacy of devices and sampling techniques.

(vii) Noise impacts:

- (A) Construction period levels;
- (B) Operational levels;
- (C) Relationship of present and projected noise levels to existing noise standards;
 - (D) Monitoring, adequacy of devices and methods.

(viii) Social and economic impacts:

- (A) Economic base;
- (B) Housing;
- (C) Transportation;
- (D) Anticipated growth of satellite industries;
- (E) Sewer and water facilities;
- (F) Solid waste facilities;
- (G) Police and fire facilities;
- (H) Educational facilities;
- (J) Health and hospital facilities;
- (K) Rate of population growth.
- (b) The office shall obtain information and recommendations from the following state agencies relative to the impact of the proposed facility on each agency's area of expertise insofar as such information and recommendations are specifically required by the preliminary decision as relevant and necessary:

(i) Wyoming highway department;

(ii) Public service commission;

(iii) Department of economic planning and development;

(iv) Game and fish department;

(v) Department of health and social services;

(vi) Department of education;

(vii) Office of state engineer;

(viii) Wyoming recreation commission;

(ix) Wyoming state geologist;

- (x) Wyoming department of agriculture;
- (xi) Department of environmental quality;
- (xii) Wyoming state conservation commission;

(xiii) The University of Wyoming.

(c) The information required by subsection (b) of this section shall include opinions as to the advisability of granting or denying the permit, but only as to the areas subject to the jurisdiction of the agency.

(d) The study shall be completed and a report submitted to the council within one hundred eighty (180) days. The council may grant two (2) extensions not to

exceed sixty (60) days in unusual circumstances.

(e) Upon receipt of the office's report submitted under subsection (d) of this section, the council shall set a hearing date not more than sixty (60) days after such receipt. The hearing shall be held at a community as close as is practicable to the proposed facility as provided in W.S. 35-502.85 [§ 35-12-112].

(f) On an application for an amendment of a permit, the council shall hold a hearing in the same manner as a hearing is held on an application for a permit if in the opinion of the council the proposed change in the facility would result in any material increase in any environmental, social or economic impact of the facility or a change in the location of all or a portion of such facility except as otherwise provided in the original application for alternate locations for the facility. (Laws 1975, ch. 169, § 1.)

§ 35-12-112. Parties to permit proceeding; waiver by failure to participate.

- (a) The parties to a permit proceeding include:
 - (i) The applicant;

(ii) Each local government entitled to receive service of a copy of the

application under W.S. 35-502.82 (a) (i) [§ 35-12-109 (a) (i)];

(iii) Any person residing in a local government entitled to receive service of a copy of the application under W.S. 35-502.82 (a) (i) and any nonprofit organization with a Wyoming chapter, concerned in whole or in part to promote conservation or natural beauty, to protect the environment, personal health or other biological values, to preserve historical sites, to promote consumer interests, to represent commercial and industrial groups, or to promote the orderly development of the areas in which the facility is to be located. In order to be a party the person or organization must file with

the office a notice of intent to be a party not less than ten (10) days before the date set for the hearing.

(b) Any party identified in W.S. 35-502.85 (a) (iii) [§ 35-12-112 (a) (iii)] waives his right to be a party if he does not participate orally at the hearing.

(c) Any person may make a limited appearance in the proceeding by filing a statement in writing with the office not more than five (5) days after the date set for the hearing. A statement filed by a person making a limited appearance shall become part of the record and shall be made available to the public. No person making a limited appearance under this subsection is a party to the proceeding. (Laws 1975, ch. 169, § 1.)

§ 35-12-113. Record of hearing; procedure and rules of evidence.

Any studies, investigations, reports or other documentary evidence, including those prepared by the office, which any party wishes the council to consider or which the council itself expects to utilize or rely upon, shall be made a part of the record. A complete record shall be made of the hearing and of all testimony taken. The contested case procedures of the Wyoming Administrative Procedure Act [§§ 9-4-101 to 9-4-115] shall apply to the hearing. (Laws 1975, ch. 169, § 1.)

§ 35-12-114. Decision of council; findings necessary for permit conditions imposed; service of decision on parties.

(a) Within sixty (60) days of completion of hearing the council shall make complete findings, issue an opinion and render a decision upon the record, either granting or denying the application as filed, or granting it upon such terms, conditions or modifications of the construction, operation or maintenance of the facility as the council may deem appropriate. The council shall grant a permit either as proposed or as modified by the council if it finds and determines:

(i) The nature of the probable environmental impact is acceptable, including a specification of the predictable adverse effect on the normal environment, public health and safety, aesthetics, scenic, historic and recreational value, forest and parks, air quality, water supply and quality, fish, wildlife and agricultural resources;

(ii) That by the design and location of the facility, any adverse environmental impact is reduced to the extent deemed acceptable considering:

(A) The state of available technology;

(B) The nature and economics of the various alternatives:

(C) Preservation of historic sites, forest and parks, fish and wildlife, air quality, water supply and quality, agriculture resources and land areas possessing sensitive ecological conditions; and

(D) Other pertinent considerations.

(iii) That the facility is compatible with the public health and safety;

 (iv) That the facility is compatible with the state, intrastate regional, county and local land use plans, if any, and with existing and projected nearby land utilization; (v) That the facility is designed in compliance with applicable state and local laws and regulations issued thereunder, except that the council may refuse to apply any local law or regulation if it finds that, as applied to the proposed facility, such law or regulation is unreasonably restrictive in view of the existing technology, or of factors of cost or economics;

(vi) That the department of environmental quality has determined that the proposed facility or cumulative effects intensified by the facility will not violate state and federally established standards and implementation plans. The judgments of the department are conclusive on all questions related to

the satisfaction of state and federal standards;

(vii) That the facility represents an acceptable impact upon the environmental, social and economic well being of the municipality and people in the area where the facility is proposed to be located, considering the factors enumerated in W.S. 35-502.81 (a) (xii) [§ 35-12-108 (a) (xii)].

(b) No permit shall be granted if:

 (i) The estimated emissions or discharges of the proposed facility will exceed state or federal standards, either individually or because of the cumulative effect with other sources;

(ii) The location of the facility conflicts with or violates state, intrastate

regional, county and local land use plans;

(iii) The cumulative effect of the facility on the environmental, social and economic conditions in the area in conjunction with other facilities will substantially impair the health, safety and welfare of people even though paragraph (i) of this subsection is not applicable.

(c) If the council determines that the location of all or part of the proposed facility should be modified, it may condition its permit upon such modification, provided that the local governments, and persons residing therein, affected by the modification, have been given reasonable notice of the modification.

- (d) The council shall issue with its decision, an opinion stating in detail its reasons for the decision. If the council decides to grant a permit for the facility, it shall issue the permit embodying the terms and conditions in detail, including the time specified to commence construction, which time shall be determined by the council's decision as to the reasonable capability of the local government, most substantially affected by the proposed facility, to implement the necessary procedures to alleviate the impact. A copy of the decision shall be served upon each party.
- (e) A permit may be issued conditioned upon the applicant furnishing a bond to the office in an amount determined by the director from which local governments may recover expenditures in preparation for impact to be caused by a facility if the permit holder does not complete the facility proposed. The permit holder shall not be liable under the bond if the holder is prevented from completing the facility proposed by circumstances beyond his control.
- (f) A copy of the study, findings and the council's decision shall be served upon parties to the hearing and local governments to be substantially affected by the proposed facility and filed with the county clerk of the county or counties to be primarily affected by the proposed facility. Notice of the decision shall be

published in one (1) or more newspapers of general circulation within the area to be affected by the proposed facility. (Laws 1975, ch. 169, § 1.)

Cross references. — As to publication of notices generally, see §§ 1-6-201 to 1-6-203. For 4, W.R.C.P.

§ 35-12-115. Review of grant or denial of permit.

- (a) Any party as defined in W.S. 35-502.85 [§ 35-12-112] aggrieved by the final decision of the council on an application for a permit may obtain judicial review by the filing of a petition in any state district court in which the major portion of the proposed facility is to be located within thirty (30) days after the issuance of a final decision. The petition for appeal by any party must include an express assumption of the cost of preparation of the complete written transcripts and record for the court. Upon receipt of a petition, the office shall deliver to the court a copy of the complete written transcript of the record of the proceeding before it and a copy of the council's decision and opinion entered therein which shall constitute the record on judicial review. At the same time the office shall deliver an itemized statement of the cost of preparing the complete written transcript and record for the court who shall pay the office this cost within forty-five (45) days or forfeit the right as a party. A copy of the transcript, decision and opinion shall remain on file with the office and shall be available for public inspection.
- (b) When a decision is issued after a hearing on an application for a permit, the decision is final for purposes of judicial review. The judicial review procedure shall be the same as that for contested cases under the Wyoming Administrative Procedure Act [§§ 9-4-101 to 9-4-115]. (Laws 1975, ch. 169, § 1.)

Cross reference. — For judicial review of administrative action, see Rule 72.1, W.R.C.P.

§ 35-12-116. Additional requirements by other governmental agencies not permitted after issuance of permit; exceptions.

Notwithstanding any other provision of law, no state, intrastate regional agency or local government may require any approval, consent, permit, certificate or other condition for the construction, operation or maintenance of a facility authorized by a permit issued pursuant to the provisions of this act except that the department of environmental quality shall retain authority which it has or which it may be granted to determine compliance of the proposed facility with state and federal standards and implementation plans and to enforce those standards and the public service commission shall retain authority which it has or may be granted relative to certificates of convenience and necessity, rates, interchange of services and safety regulations. Nothing in this act shall prevent the application of state laws for the protection of employees engaged in the construction, operation or maintenance of such facility. (Laws 1975, ch. 169, § 1.)

§ 35-12-117. Revocation or suspension of permit.

(a) A permit may be revoked or suspended for:

 (i) Any material false statement in the application or in accompanying statements or studies required of the applicant, if a true statement would have warranted the council's refusal to grant a permit;

(ii) Failure to comply with the terms or conditions of the permit after notice of the failure from the office and reasonable opportunity to correct

the failure; or

(iii) Violation of the provisions of this act, the regulations issued thereunder or orders of the council or office. (Laws 1975, ch. 169, § 1.)

§ 35-12-118. Monitoring of facilities.

The council and the office, utilizing to the fullest extent possible the staff and resources of all state agencies, boards and commissions, shall have continuing authority and responsibility for monitoring the operations of all facilities which have been granted permits under this act, for assuring continuing compliance with this act and permits issued hereunder, and for discovering and preventing noncompliance with this act and the permits, except that the department of environmental quality shall have continuing authority and responsibility for monitoring and assuring compliance with laws and regulations pertaining to air, water, and land quality, and solid waste management, and for monitoring and assuring compliance with any permit conditions ordered by the council relating to matters of air, water, and land quality, and solid waste management. (Laws 1975, ch. 169, § 1; 1977, ch. 66, § 2.)

The 1977 amendment added the language beginning "except that the department of environmental quality" to the end of the section.

Effective date. — Section 3, ch. 66, Laws 1977, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, \$ 8, Wyo. Const. Approved February 23, 1977.

§ 35-12-119. Penalties for violations; civil action by attorney general.

- (a) No person shall:
 - (i) Commence to construct a facility after the effective date of this act without first obtaining a permit required under this act;
 - (ii) Construct, operate or maintain a facility, after having first obtained a permit, other than in specific compliance with the permit; or
 - (iii) Cause any of the aforementioned acts to occur.
- (b) Any person violating the provisions of subsection (a) of this section is liable to a civil penalty of not more than ten thousand dollars (\$10,000.00) for each violation. Each day of a continuing violation constitutes a separate offense. The penalty shall be recoverable in a civil suit brought by the attorney general on behalf of the state in the district court in and for the county of Laramie.

- (c) Whoever knowingly and willfully violates subsection (a) of this section shall be fined not more than ten thousand dollars (\$10,000.00) for each violation or imprisoned for not more than one (1) year, or both. Each day of a continuing violation shall constitute a separate offense.
- (d) In addition to any penalty provided in subsection (b) or (c) of this section, whenever the office determines that a person is violating any of the provisions of this section, it shall refer the matter to the attorney general who may bring a civil action on behalf of the state in the district court in and for the county of Laramie for injunctive or other appropriate relief against the violation and to enforce the act or a permit issued hereunder, and upon a proper showing a permanent or preliminary injunction or temporary restraining order shall be granted without bond.
- (e) All fines collected pursuant to subsection (b) of this section shall be deposited in the state general fund. (Laws 1975, ch. 169, § 1.)

Cross reference. — As to injunctions, see Rule 65, W.R.C.P.

§ 35-12-120. Annual long-range plan submitted; contents.

- (a) Each person operating a facility as defined by W.S. 35-502.76 (c) (i) [§ 35-12-102 (a) (iii) (A)] shall furnish annually to the office for its review, a long-range plan for the construction, expansion and operation of the facility. The plan shall be submitted on April 1 of each year. The plan shall include the following:
 - (i) The general location, size and type of all facilities to be owned and operated by the person whose construction is projected to commence during the ensuing five (5) years, as well as those facilities to be removed from service during the planning period in conjunction with the facilities authorized by the original permit;
 - (ii) A description of the efforts to involve environmental protection and land use planning agencies in the planning process, as well as other efforts to identify and minimize environmental, social and economic problems at the earliest possible stage in the planning process;
 - (iii) Additional information that the office on its own initiative or upon the advice of interested state agencies might request in order to carry out the purposes of this act.
 - (b) The plans shall be held in strictest confidence by the office and council.
- (c) Plans submitted under this section are advisory only and the office may allow reasonable deviations from the plan with no penalty attaching thereto. (Laws 1975, ch. 169, § 1.)

§ 35-12-121. Waiver of permit; exemptions; information required.

(a) A permit is not required for facilities defined by W.S. 35-502.76 (c) (ii) and (iii) [§ 35-12-102 (a) (iii) (B)] under construction or in operation as of ninety (90)

days after adjournment of the session of the legislature at which this act was enacted or for which all applications for permits, certificates or approvals necessary for the activity have been granted or approved by state or federal agencies prior to said date.

(b) A permit is not required for facilities defined by W.S. 35-502.76 (c) (i) [§ 35-12-102 (a) (iii) (A)] under construction or in operation as of March 1, 1975, or for which all applications for permits, certificates or approvals necessary for the activity have been granted or approved by state or federal agencies prior to March 1, 1975.

(c) Nonmineral processing facilities to be constructed in existing industrial parks, as designated by local governments, are exempt from payment of fees and certification procedures but shall furnish the information required by W.S. 35-502.81 (a) (ii), (iii) and (iv) [§ 35-12-108 (a) (ii), (iii) and (iv)] to the office if included in W.S. 35-502.76 (c) (ii) [§ 35-12-102 (a) (iii) (B)].

(d) State and local governmental units and agencies are exempt from the application and permit procedures of this act, but prior to commencing any activity which will result in an annual daily average employment as provided in W.S. 35-502.76 [§ 35-12-102], such units and agencies shall furnish to the office information required by W.S. 35-502.81 (a) (ii), (iii) and (iv) [§ 35-12-108 (a) (ii), (iii) and (iv)] if included in W.S. 35-502.76 (c) (ii) [§ 35-12-102 (a) (iii) (B)].

(e) Construction of railroads, electric transmission lines not exceeding one hundred fifteen thousand (115,000) volts, oil and gas piplines, coal slurry pipelines and natural gas pipelines, and construction or operation of oil and gas producing, drilling and field processing facilities are not activities subject to the application and permit procedures of this act but the owner or operator thereof shall furnish the information required by W.S. 35-502.81 (a) (ii), (iii), (iv) and (vii) [§ 35-12-108 (a) (ii), (iii), (iv) and (viii)]. (Laws 1975, ch. 169, § 1.)

Editor's note. — Subsection (c) of § 35-502.76, W.S. 1957 (now § 35-12-102 (a) (iii)), as enacted did not contain a subdivision designated "(iii)" as referred to in subsection (a) of this section.

Severability. — Section 3, ch. 169, Laws 1975, reads: "If any provision of this act or the applicability thereof to any person or circumstances is held invalid, the remainder of this act and the application of such provision to

other persons or circumstances shall not be affected thereby."

Repealing clause. — Section 2, ch. 169, Laws 1975, reads: "If any provision of this act is in conflict with any other law of this state, or any rule or regulation promulgated thereunder, this act shall govern and control, and such other law, rule or regulation shall be deemed superseded for the purpose of this act."



TITLE 36

Public Lands

Cross references. - As to public lands and donations generally, see art. 18, \$\\$ 1 to 6, Wyo. Const. As to disclaimer of ownership in public lands in connection with title of United States, see art. 21, § 26, Wyo, Const. As to public land rights of settlers, in connection with eminent domain by railroad companies, see § 1-26-207. As to appropriation of public grounds as ways of necessity for certain purposes, see §§ 1-26-401 to 1-26-405, and Rule 71.1, W.R.C.P. As to right of occupant to bring action for title, see § 1-32-216. As to procedure for determining heirship to land when applicant for public land dies before patent is issued, see § 2-6-504. As to injuring natural objects or formations with reference to natural caves, mineral springs, hot springs, etc., see § 6-10-106. As to state department of economic planning and development, see §§ 9-3-301 to 9-3-321. As to authority and powers of department of economic planning and development, see § 9-3-311. As to duties of state geologist with respect to public lands generally, see § 9-3-1406. As to disposition of public land revenues, and establishment of permanent land fund, see §§ 9-7-605 to 9-7-610. As to Taylor Grazing Act funds generally, see §§ 9-7-701 to 9-7-704. As to forest reserve funds generally, see §§ 9-7-801 to 9-7-804. As to the inclusion of public lands within a weed and pest control district, see § 11-5-104. As to soil conservation districts, see §§ 11-19-101 to 11-19-118. For duty of agencies having jurisdiction over public lands to cooperate with supervisors of soil conservation districts, and as to applicability of conservation ordinances to such lands, see § 11-19-118. As to requirements for keeping livestock on open range, see \$\$ 11-23-101 to 11-23-127. As to estrays generally, see §§ 11-30-101 to 11-30-118. As to appropriation of horse or mule on open range without permission, see § 11-35-111. As to penalty for permitting dogs to run livestock on public land, see § 11-36-108. As to townsites and public lands in connection with cities and towns generally, see \$\$ 15-1-301 to 15-1-312. As to establishment of public parks, playgrounds and recreational areas in cities and towns, see §§ 15-7-301 to 15-7-305. As to vacation of land from public use in connection with the establishment of parks, etc., in cities and towns, see § 15-7-302 et seq. For duty of county clerk to issue state land certificates relating to the selection or relinquishment of state or school lands without fee, see § 18-3-402. As to authority of counties to establish and maintain parks, see §§ 18-9-101 to 18-9-202. For authority

of adjutant general to acquire or accept gifts of land in name of state, see § 19-2-203. As to acceptance of federal appropriations for agricultural experiment stations and soil conservation programs, see § 21-17-304 et seq. For provision that federal game preserves shall also be state preserves, see § 23-1-104. For power of state game and fish commission to sell or exchange land, water or other property which is no longer of any practical use to the commission, see § 23-1-302 (a) (v). As to petition by freeholders to county commissioners with reference to the establishment of access roads to waterways or timber stands, see § 24-9-104. As to applicability of §§ 30-5-101 to 30-5-204, relative to oil and gas, to state lands and to United States lands, subject to certain limitations, see § 30-5-118. As to recording of instruments conveying public lands and their use as evidence, see §§ 34-1-121, 34-1-124, 34-1-125. As to right-of-way of sanitary and improvement districts over public lands, see § 35-3-112. For authority of department of health and social services relative to the protection of the public water supply, see §§ 35-11-101 et seq., 35-11-302. As to formation of power districts with respect to public lands, see § 37-7-101 et seq. For authority of railroads to mortgage, etc., lands or other property granted by the United States, see § 37-9-101, As to rights-of-way of railroads over state lands, see § 37-9-201 et seq. For duty of county commissioners to obtain transcript of sales of public land for purposes of taxation, see § 39-1-102. For provision excepting federal and state lands from listing for tax purposes, see §§ 39-2-102, 39-2-103. As to authority of directors of water conservancy districts to construct works along or across vacant public lands, see § 41-3-742. For requirements relative to the acquisition of the beneficial use of public water generally, see § 41-4-501 et seq. As to right of persons in lawful possession of public lands to vote in election of irrigation district commissioners, see § 41-7-317. As to authority of public irrigation and power districts with reference to public lands generally, see § 41-7-808. As to rights of persons lawfully in possession of public lands to participate in election to change public irrigation and power district to irrigation district, see § 41-7-832. As to lands which may be included in drainage districts, see § 41-9-103. As to assessments on state lands in connection with drainage districts, see § 41-9-240 et seq. For procedure under contracts between drainage districts and the United States when a majority of the lands are unentered public lands, see § 41-9-504.

CHAPTER 1 General Provisions

Law review. — For note on easements of necessity to reach public lands, see 13 Wyo. L.J. 51 (1958).

Am. Jur. 2d, ALR and C.J.S. references, — 63 Am. Jur. 2d Public Lands § 1 et seq.

Right of grantee to improvements placed on land by adverse claimant, 6 ALR 95.

Necessity of judicial proceeding as to escheat of land granted to alien, 23 ALR 1247; 79 ALR 1366.

Right to crops grown by trespasser, as against purchaser of the land, 39 ALR 961, 968; 57 ALR 584. Estoppel of one not party to sale or mortgage of public land by failure to disclose his interest in the property, 50 ALR 790.

Statutes relating to grazing and pasturing sheep or goats on public land, 70 ALR 410.

Estoppel by apparent acquiescence in, or silence concerning, improvements on public lands, to assert antagonistic title or interest, 76 ALR 316.

Rights in respect of crops on public lands as between persons neither of whom has any authority from the government, 153 ALR 508. 73 C.J.S. Public Lands § 1 et seq.

§ 36-1-101. Definitions.

(a) In this act:

(i) The term "board" shall mean the board of land commissioners;

(ii) The term "commissioner" shall mean the commissioner of public lands;

(iii) The term "state" shall mean the state of Wyoming;

(iv) The terms "state lands," "land" or "lands" shall mean and include all lands under the jurisdiction of the board of land commissioners:

(v) The terms "school land" or "school lands" shall mean and include all lands granted to the state of Wyoming by the United States of America for the benefit and support of public schools, either directly or through exchange for other lands;

(vi) The term "institutional lands" shall mean state lands selected for the benefit of state institutions or any lands other than school lands;

(vii) The term "old lessee" shall mean the person, firm, association or corporation in whose name the expiring lease appeared of record in the office of the commissioner of public lands at the time of its expiration. (Laws 1929, ch. 108, § 1; R.S. 1931, § 91-101; C.S. 1945, § 24-101; W.S. 1957, § 36-1.)

Meaning of "this act". — The words "this act," appearing in this section, refer to ch. 108, Laws 1929, which is codified herein as this

section and §§ 36-1-103 to 36-1-105, 36-1-112, 36-2-101 to 36-2-107, 36-5-101 to 36-5-105 and 36-5-108 to 36-5-113.

§ 36-1-102. Recording and filing documents of title.

Every department, institution, board and commission of the state of Wyoming which now has or shall hereafter acquire an interest in real property, except leases, easements and rights-of-way for a term not exceeding three (3) years, shall record the document of title with the appropriate county clerk, unless previously recorded, and after such recording, shall file the original document with the commissioner of public lands excepting, however, easement and right-of-way conveyances heretofore obtained by the state highway department or state highway commission. This section shall have no effect on existing recording statutes. (Laws 1975, ch. 140, § 1.)

Effective date. — Section 3, ch. 140, Laws 1975, makes the act effective immediately upon passage. Approved March 7, 1975.

§ 36-1-103. Computation of time after registered notice.

When the provisions of this act [§§ 36-1-101 to 36-1-105, 36-1-112, 36-2-101 to 36-2-107, 36-5-101 to 36-5-105, 36-5-108 to 36-5-113] or the rules and regulations of the board require registered notice to be given, the time shall be reckoned from the date of delivery of such notice by the United States post office, or in the event of nondelivery thereof, from the date of the return thereof to the board by the United States post office. (Laws 1929, ch. 108, § 19; R.S. 1931, § 91-119; C.S. 1945, § 24-120; W.S. 1957, § 36-2.)

Cross reference. — For rule of civil procedure as to computation of time, see Rule 6, W.R.C.P.

§ 36-1-104. Acceptance of school lands.

Under the provisions of article 18 of the constitution of the state of Wyoming, the state of Wyoming hereby accepts the lands granted to it by the act of congress entitled "An act to provide for the admission of the state of Wyoming into the union, and for other purposes," approved July 10, 1890 [26 U.S. Stat. at Large, ch. 664, p. 222], for the purposes in the said act specified; and hereby accepts the grant of numbered school sections mineral in character as made by the act of congress entitled "An act confirming in states and territories title to lands granted by the United States of America in aid of common or public schools," approved January 25, 1927 [43 U.S.C. §§ 870, 871], subject to the provisions and conditions of the said act, and the said lands so granted by the United States of America to the state of Wyoming are hereby solemnly set apart to the purposes specified in the said acts. (Laws 1929, ch. 108, § 6; 1931, ch. 40, § 1; R.S. 1931, § 91-106; C.S. 1945, § 24-106; W.S. 1957, § 36-3.)

Cross references. — As to sale of state lands generally, see §§ 36-9-101 to 36-9-119. As to terms of payment for school and state lands sold, see § 36-9-107.

Editor's note. — Following the words "constitution of the state of Wyoming," this section as enacted contained the words "as amended by amendment No. 8." They were omitted by the 1931 compiler.

Meaning of "this act". - See note to § 36-1-101.

Effective date. — Section 2, ch. 40, Laws 1931, makes the act effective from and after passage. It became a law without the signature of the governor February 17, 1931.

Cited in Mayor v. Board of County Comm'rs, 64 Wyo. 409, 192 P.2d 403, rehearing denied, 64 Wyo. 430, 195 P.2d 752 (1948).

§ 36-1-105. Exchange of land granted by federal government.

Whenever, in the judgment of a majority of the members of the board, the interests of the state will be advanced by granting, conveying or deeding to the United States of America, any lands which have been heretofore granted, selected by, and patented to the state, then, in such case said board is hereby authorized and empowered to so grant, convey and deed to the United States of America, such lands. And the president of said board, and the commissioner are authorized and empowered to execute and deliver all necessary instruments to complete such grant, or conveyance; provided, always, that no such lands shall be so granted, conveyed and deeded, unless the United States of America shall, and will permit and allow this state to select, and have patented to it, an equal area of other lands in lieu of the lands so reconveyed to the United States of America; provided, however, that the state shall not give both surface and mineral rights with any lands exchanged unless it receives the same from the federal government. (Laws 1929, ch. 108, § 22; R.S. 1931, § 91-122; C.S. 1945, § 24-123; W.S. 1957, § 36-4.)

§ 36-1-106. Exchange of state-owned and federal-owned lands.

The state of Wyoming, in accordance with the provisions of the Taylor Grazing Act [43 U.S.C. §§ 315 to 315n] and other acts of congress authorizing the exchange of federal-owned lands, is hereby authorized and empowered to exchange state-owned lands for federal-owned lands. (Laws 1935, ch. 76, § 1; C.S. 1945, § 24-126; Laws 1955, ch. 30, § 1; W.S. 1957, § 36-5.)

Cross reference. — As to Tuylor Grazing Act funds, see §§ 9-7-701 to 9-7-704.

§ 36-1-107. Exchange of state-owned and privately owned lands.

The state of Wyoming is also authorized to exchange state-owned lands for privately owned lands. (Laws 1935, ch. 76, § 2; C.S. 1945, § 24-127; W.S. 1957, § 36-6.)

Cross reference. — As to sale of state lands, see ch. 9 of this title.

§ 36-1-108. Pole Mountain district of Medicine Bow national forest; history and relinquishment of legislative jurisdiction by federal government.

- (a) By section 19-90, Wyoming Statutes 1957 [§ 19-4-101], the legislature of the state of Wyoming ceded exclusive jurisdiction to what was then known as Fort Francis E. Warren, now referred to as Warren Air Force Base and at the same time, exclusive jurisdiction was extended to future additions to such post. The Pole Mountain district of the Medicine Bow national forest was set aside for military purposes by Executive Order No. 4245, dated June 5, 1925, as amended by Public Land Order No. 1897, dated July 10, 1959. Use for military purposes terminated in accordance with Public Land Order No. 2446, dated July 20, 1961.
- (b) By the act of August 27, 1964 (Public Law 88-94, 78 Stat. 611) the secretary of agriculture was authorized to relinquish to the state of Wyoming such measure of legislative jurisdiction as he deemed desirable over such lands. On December 24, 1964, Orville L. Freeman, secretary of the department of agriculture, United States of America, notified the governor of the state of Wyoming that the United States relinquishes and retrocedes to the state of Wyoming any and all legislative jurisdiction heretofore acquired by the United States over lands within the Medicine Bow national forest constituting the area known as the Pole Mountain district, created as above stated, to take effect upon acceptance of such jurisdiction by the state of Wyoming. (Laws 1965, ch. 182, § 1.)

§ 36-1-109. Same; acceptance by state.

The state of Wyoming hereby accepts legislative jurisdiction over the Pole Mountain district of the Medicine Bow national forest. (Laws 1965, ch. 182, § 2.)

Effective date. — Section 3, ch. 182, Laws 1965, makes the act effective from and after passage. Approved March 1, 1965.

§ 36-1-110. Authority of commissioner to effect and complete exchanges.

The commissioner of public lands of Wyoming is hereby authorized and empowered, subject to the approval of the state board of land commissioners, to effect and complete such exchange of state-owned lands for federal-owned lands; and also to effect and complete such exchange of state-owned lands for privately-owned lands; and to do any and all things necessary or required to be done by the state of Wyoming in order to enable said state to comply with the provisions of said Taylor Grazing Act [43 U.S.C. §§ 315 to 315n] and other acts of congress authorizing the exchange of federal-owned lands, and any order, rule or regulation passed or promulgated in pursuance thereof; and to do any and all things necessary to effect and complete the exchange of state-owned lands for privately-owned lands. (Laws 1935, ch. 76, § 3; C.S. 1945, § 24-128; Laws 1955, ch. 30, § 2; W.S. 1957, § 36-7.)

Cross reference. — As to selection and and as to notice of selections, see §§ 36-3-103, location of lands by commissioner of public lands 36-3-104.

§ 36-1-111. Orders, rules and regulations relative to exchange of lands.

The board of land commissioners is hereby authorized and empowered to pass and promulgate all such orders, rules and regulations as may be necessary or required relative to the appraisal and valuation of said lands to be exchanged as provided in this act [§§ 36-1-106, 36-1-107, 36-1-110, 36-1-111], and to provide for the execution of conveyances, contracts and other instruments pertaining to the exchange of said lands, and to enable said commissioner to effect and complete such exchange of said lands. (Laws 1935, ch. 76, § 4; C.S. 1945, § 24-129; W.S. 1957, § 36-8.)

Repealing clause. — Section 5, ch. 76, Laws 1935, repealed all laws and parts of laws in conflict therewith.

Effective date. — Section 6, ch. 76, Laws 1935, makes the act effective from and after passage. Approved February 18, 1935.

§ 36-1-112. Cutting of timber by lessee of state lands prohibited; exceptions.

The lessee of state lands shall in no case be allowed to cut or use more timber therefrom, than shall be necessary for the improvement of such lands, or for fuel for the use of the family of the lessee, and the cutting and hauling of timber from state lands for other purposes is prohibited; provided, that the board may, in its discretion, sell and dispose of all timber located or growing on state lands, at not less than the reasonable market value thereof. (Laws 1929, ch. 108, § 23; R.S. 1931, § 91-123; C.S. 1945, § 24-124; W.S. 1957, § 36-9.)

Cross references.—As to filing description of land before cutting timber, and as to disposal of slashings and debris on timber lands, see § 36-3-109. As to driving or floating logs, timber or lumber on streams, see § 41-5-108.

Repealing clauses. — Section 24, ch. 108, Laws 1929, reads: "Sections 695, 696, 697, 698, 699, 700, 704, 705, 706, 707, 708, 709, 710, 711, 713, 714, and 715 of chapter 57, Wyoming Compiled Statutes, 1920, and section 712, Wyoming Compiled Statutes, 1920, as amended and re-enacted by section 1, chapter 62, Session Laws of Wyoming, 1921, be and the same are hereby repealed."

Section 25, ch. 108, Laws 1929, repealed all laws and parts of laws in conflict therewith.

Effective date. — Section 26, ch. 108, Laws 1929, makes the act effective April 1, 1929.

ALR2d reference. — Constitutionality of reforestation or forest conservation legislation, 13 ALR2d 1095.

§ 36-1-113. Conditional right to cut and use timber from public lands.

Settlers on the public lands, miners, farmers, and other bona fide residents in this state, who have not a sufficient supply of timber on their own claims for firewood, fencing or building purposes, or for other necessary use in the development of the mineral, agricultural and other natural resources of the lands owned or occupied by them, shall be permitted to cut timber from the lands owned by this state, or under the control of the state, strictly for the purposes

enumerated in this act [section]; that is, for firewood, fencing and building purposes, or other necessary purposes in the use, improvement or development of the lands owned or occupied by them, but not for sale, or to be otherwise disposed of to other persons or for use on other lands than their own, or those occupied by them. (Laws 1897, ch. 77, § 1; R. S. 1899, § 787; C.S. 1910, § 3720; C.S. 1920, § 4680; R.S. 1931, § 91-607; C.S. 1945, § 24-125; W.S. 1957, § 36-10.)

Cross reference. — As to filing description of land before cutting timber, and as to disposal of slashings and debris on timber lands, see § 36-3-109.

Repealing clause. — Section 2, ch. 77, Laws 1897, repealed all laws and parts of laws in conflict therewith.

Effective date. — Section 3, ch. 77, Laws 1897, makes the act effective from and after passage. Approved March 4, 1897.

§ 36-1-114. Protection of prehistoric ruins, etc.; permits to excavate, regulations and violations.

Before any excavation on any prehistoric ruins, pictographs, hieroglyphics, or any other ancient markings, or writing or archaeological and paleontological deposits in the state of Wyoming on any public lands, either state or federal, shall be undertaken, a permit shall first be obtained from the state board of land commissioners. The state board of land commissioners is hereby authorized to promulgate and enforce such regulations as it may deem needful to protect from vandalism or injury the prehistoric ruins, relics, archaeological and paleontological deposits of the state, as well as all natural bridges and natural scenic features and formations. Any violation of such regulations shall be a misdemeanor. (Laws 1935, ch. 37, § 1; C.S. 1945, § 24-131; W.S. 1957, § 36-11.)

§ 36-1-115. Same; consent to removal from state.

No person shall remove from the state of Wyoming any part of any such ruins or deposit except with the consent of the state board of land commissioners. Said board may require, as a condition to such consent, that such portion of such relics, materials, or deposit as said board shall require, shall forever remain the property of the state of Wyoming. (Laws 1935, ch. 37, § 2; C.S. 1945, § 24-132; W.S. 1957, § 36-12.)

CHAPTER 2

Board of Land Commissioners

Cross references. - As to writ of mandamus issued in name of the state to an inferior tribunal, a corporation, board or person commanding the performance of an act, see §§ 1-30-101 to 1-30-118. As to actions by or against the state, state agencies and political subdivisions of the state generally, see §§ 1-35-101 to 1-35-107. As to officer being interested in contracts, see § 6-8-508. As to selection and salary of clerk of board of land commissioners, see §§ 9-1-106, 9-1-108. For duty of state geologist to make examinations and reports on any state or school lands when so requested by the board of land commissioners, see § 9-3-1406. For provision constituting the board of land commissioners as the Wyoming farm loan board, see § 11-39-102. For duty of sanitary and improvement districts to file plats of lands and plats of its proposed improvements with state board of land commissioners, in connection with right-of-way over public lands, see § 35-3-112. For authority of board to grant, convey and deed lands to the United States, see § 36-1-105. As to approval of state board of land commissioners with reference to the exchange of lands, see §§ 36-1-110, 36-1-111. As to powers and duties of board relative to protection of prehistoric ruins, etc., see \$9 36-1-114 to 36-1-116. As to powers and duties of board of land commissioners with respect to leases of state lands, see chs. 5 and 6 of this title. As to filing of application for lease of state lands with commissioner and as to approval thereof by

board, see § 36-5-103. As to the selection, management and disposal of Carey Act lands, see § 36-7-102 and note thereto. For particular provisions relative to board of land commissioners in connection with Carey Act lands, see §§ 36-7-201 to 36-7-207. For provision that office of board shall be in Chevenne, see § 36-7-203. As to duty of board relative to the issuance of patents in connection with land settlement under Carey Act, see § 36-7-407. For authority of board of land commissioners as to purchase of water rights for the purpose of reclaiming school and other granted lands and to lease or sell lands for which water rights become appurtenant, see § 36-7-509. For duty of board of land commissioners to secure reports from state engineer relative to lands for which it is proposed to secure water rights in connection with lands under Carey Act, see § 36-7-510. As to powers and duties of board of land commissioners and commissioner of public lands as to transfer of lands of Hot Springs State Park to United States, see § 36-8-306. For authority of state board of land commissioners relative to sale of lands and improvements known as and included in Saratoga Hot Springs reserve, see § 36-8-404. For provision prohibiting the sale of state lands which have been reserved in any way to public use or for the use of public institutions. to members of the board of land commissioners, see § 36-9-101. As to conveyance of public lands to railroads and oil and gas companies for rights-of-way, see §§ 37-9-201 to 37-9-204.

ARTICLE 1. IN GENERAL

§ 36-2-101. Composition; powers generally.

The governor, secretary of state, state treasurer, state auditor, and superintendent of public instruction, being constituted a "board of land commissioners" by the provisions of section 3, article 18, of the constitution of the state of Wyoming, shall as such board, have the direction, control, leasing, care and disposal of all lands heretofore or hereafter granted or acquired by the state for the benefit and support of public schools or for any other purpose whatsoever, subject to the limitations contained in the constitution of the state, and the laws enacted by the legislature. The board shall have the power and authority to take such official action as may be necessary in securing title to land grants, or any other lands acquired by the state. (Laws 1929, ch. 108, § 2; R.S. 1931, § 91-102; C.S. 1945, § 24-102; W.S. 1957, § 36-14.)

Editor's note. — Following the words "constitution of the state of Wyoming," this section as enacted contained the words "as amended by amendment No. 8." They were omitted by the 1931 compiler.

Authority to lease state lands. — Under art. 18, 5 3, Wyo. Const., and this section, constitutional and statutory authority is granted to the board of land commissioners to lease lands of the state. Reese v. Bruegger Ranches, Inc.,

463 P.2d 23 (Wyo, 1969).

Notice to old lessee. — Section 36-5-108 must be read in pari materia with art. 18, § 3, Wyo. Const., and with this section and § 36-3-102. When so read, it becomes clear that § 36-5-108 requires 15 days' notice to be given to the old lessee after the rental has been finally fixed — either by the board approving the recommendation of the commissioner or by taking some other action. There can be no doubt that the board is free to follow, or to modify or to disregard what the commissioner has recommended. Reese v. Bruegger Ranches, Inc., 463 P.2d 23 (Wyo. 1969).

Mandamus to require lease issuance not available. — Where mineral lease applicant had adequate remedy by appeal from contest proceeding before the board to determine priority of applications for mineral prospectors' leases under board rules, mandamus to require issuance of lease would not lie. State ex rel. Walls v. State Bd. of Land Comm'rs, 36 Wyo. 302, 254 P. 491 (1927). See provisions under article 2 of this chapter as to appeals.

Lease without competitive bidding not against public policy. — State oil land lease issued to developing occupant without competitive bidding was not against public policy under former C.S. 1920, §§ 699 and 706, as it was proper exercise of board's discretion to encourage improvement of the property, Miller v. Hurley, 37 Wyo. 344, 262 P. 238 (1927).

Authority to sell surface rights first, — Under existing statutes, land board was authorized to sell surface rights first, reserving minerals by requirement that purchaser convey mineral rights to state. State ex rel. Cross v. Board of Land Comm'rs, 50 Wyo. 181, 58 P.2d 423, rehearing denied, 62 P.2d 516 (1936).

Cited in Mayor v. Board of County Comm'rs, 64 Wyo, 409, 192 P.2d 403, rehearing denied, 64

Wyo. 430, 195 P.2d 752 (1948).
Am. Jur. 2d, Al.R and C.J.S. references. — 63

Am. Jur. 2d Public Lands \$\\$ 108 to 116.
Prohibition to control actions of land officers,

115 ALR 31; 159 ALR 636.
73 C.J.S. Public Lands § 237.

§ 36-2-105. Appraisal and classification of lands.

The board shall cause all lands under its jurisdiction to be appraised and classified by agents appointed for that purpose, as rapidly as appropriation for the work will permit. Such appraisals and classification, when approved by the board, shall be the basis for determining the minimum and maximum agricultural and grazing rental, as well as the sale value of the lands, and when once approved, may be changed only in the manner provided by the rules adopted by the board. The expense of such appraisals and classification shall be paid from the available contingent funds appropriated for the use of the commissioner, or funds expressly appropriated for that purpose. (Laws 1929, ch. 108, § 7; R.S. 1931, § 91-107; C.S. 1945, § 24-107; W.S. 1957, § 36-18.)

Cross references. — As to leasing state lands generally, see ch. 5 of this title. As to mineral leases, see ch. 6 of this title. As to sale of state land, see ch. 9 of this title.

Lease without competitive bidding not against public policy. — State oil land lease issued to developing occupant without competitive bidding was not against public policy under former C. S. 1920, §§ 699 and 706, as it was proper exercise of board's discretion to

encourage improvement of the property. Miller v. Hurley, 37 Wyo. 344, 262 P. 238 (1927).

Rental offered must be considered by board, — Under statute, amount of rental offered must be considered by state land board in leasing state lands, notwithstanding that offer exceeds reasonable rental value fixed by board. Sullivan Co. v. Meer, 58 Wvo. 90, 125 P.2d 168 (1942).

Quoted in Hoy v. Frederick, 70 Wyo, 496, 252 P.2d 112 (1953).

CHAPTER 3

Commissioner of Public Lands

Cross references. - For constitutional provision that all state officers shall be paid fixed and definite salaries, and for duty of said officers to pay all fees collected into the proper treasury, see art. 14, \$\$ 1, 2, Wyo. Const. As to officer being interested in contracts, see § 6-8-508. As to designation of commissioner of public lands as ex officio farm loan commissioner, chief executive officer and secretary of Wyoming farm loan board, see §§ 11-39-102, 11-39-104. As to duties of farm loan commissioner, see §§ 11-39-106, 11-39-107. For duties of commissioner of public lands as member of Wyoming oil and gas conservation commission, see § 30-5-103. See generally cross references at beginning of this title.

For authority of commissioner to exchange lands, see \$\$ 36-1-110, 36-1-111. For duty of clerk of district court to certify findings and judgments to commissioner of public lands when case is reserved to court, see \$ 36-2-205. For duty of clerk to issue notice to commissioner of public lands as to appeal, and as to service of. notice, see § 36-2-209. As to duties of commissioner with respect to leases of public lands, see \$\$ 36-5-103, 36-5-104, 36-5-109 to 36-5-112. For duties of commissioner of public lands with reference to Carey Act lands generally, see § 36-7-203 et seq. For duty of commissioner of public lands as to reclamation of land under Carey Act, see § 36-7-304 et seq. For duly of commissioner as secretary to board of land commissioners with reference to issuance of patents in connection with Carey Act lands, see § 36-7-407. As to powers and duties of board of land commissioners and commissioner of public lands as to transfer of lands of Hot Springs state park to United States, see § 36-8-306. For duty of commissioner as to sale of state lands generally, see §§ 36-9-105 to 36-9-120.

§ 36-3-101. Appointment; term; salary.

There shall be a commissioner of public lands of Wyoming, who shall be appointed by the governor by and with the consent of the state senate. The term of his office shall be for two (2) years and until his successor shall have been appointed and shall have qualified. He shall receive an annual salary as provided by law, to be paid monthly by the state treasurer on the warrant of the state auditor. (Laws 1905, ch. 36, § 1; 1909, ch. 65, § 1; C.S. 1910, § 224; Laws 1919, ch. 40, § 4; C.S. 1920, § 235; Laws 1921, ch. 95, § 4; R.S. 1931, § 91-201; Laws 1933, ch. 103, § 11; 1937, ch. 149, § 6; C.S. 1945, § 24-201; Laws 1947, ch. 97, § 1; 1949, ch. 65, § 14; 1951, ch. 44, § 10; 1953, ch. 139, § 10; 1957, ch. 157, § 17; W.S. 1957, § 36-32; Laws 1961, ch. 148, § 45; 1963, ch. 116, § 13; 1965, ch. 115, § 45; 1967, ch. 181, § 15; 1969, ch. 168, § 27.)

Cross references. — For amount of salary, see § 9-1-105. As to receiving other compensation, see § 9-1-113.

Effective dates. — Section 2, ch. 65, Laws 1909, makes the act effective from and after passage. Approved February 20, 1909.

Section 5, ch. 40, Laws 1919, makes the act effective from and after passage. Approved February 18, 1919.

Section 11, ch. 149, Laws 1937, makes the act effective on April 1, 1937.

Section 3, ch. 97, Laws 1947, makes the act effective from and after passage. Approved February 21, 1947. Section 33, ch. 65, Laws 1949, makes the act effective on April 1, 1949.

Section 30, ch. 44, Laws 1951, as amended by ch. 101, Laws 1951, makes ch. 44 effective from and after passage. Chapter 44 was approved February 12, 1951, and ch. 101 was approved February 17, 1951.

Section 33, ch. 139, Laws 1953, makes the act effective on April 1, 1953.

Section 41, ch. 157, Laws 1957, makes the act effective from and after passage. Approved February 15, 1957.

Section 52, ch. 148, Laws 1961, makes the act effective from and after passage. Approved February 18, 1961.

Section 19, ch. 116, Laws 1963, makes the act effective from and after passage. Approved February 20, 1963.

Section 54, ch. 115, Laws 1965, makes \$ 45 of the act effective on and after March 1, 1965.

Section 37, ch. 181, Laws 1967, makes \$ 15 of the act effective on and after March 1, 1967.

Improper delegation of powers. - Contract hiring auditing firm to ascertain whether state had been paid all royalties due under mineral leases was invalid as delegating to others duly impliedly imposed on state officials by statute. MacDougall v. Board of Land Comm'rs, 48 Wyo. 493, 49 P.2d 663 (1935).

Am. Jur. 2d, ALR and C.J.S. references. —72 Am.: Jur. 2d States, Territories and Dependencies § 62.

Prohibition to control actions of land officers, 115 ALR 31; 159 ALR 636.

73 C.J.S. Public Lands § 237.

§ 36-3-102. Duties generally.

(a) The commissioner of public lands shall keep the records of the board of land commissioners, and be the secretary thereof. He shall make out and countersign all patents, contracts or other instruments issued by him to purchasers and others, and make out and sign all leases. He shall keep a record of all such leases, patents or other instruments in books or other records. He shall file and preserve in his office all bonds, contracts, leases, and other instruments given by lessees, purchasers and others. He shall have the custody of the seal of the board, and shall keep the minutes of the proceedings thereof. and shall perform such other duties concerning the business transactions of the board as it may direct. He shall receive all applications for purchasing, leasing, entering, locating or in any manner acquiring title to, interest in, or any benefit from or use of any lands belonging to or under the control of the state of Wyoming, and he shall allow or disallow, subject to the approval of the board of land commissioners, such applications to purchase, lease, enter or otherwise acquire title to, interest in, benefit from or use of the lands, or the appurtenances thereof, and in all cases where there have been no conflicting applications, he shall report his decisions to the board for its approval at its next ensuing regular or special meeting, but in all cases where there have been conflicting applications to lease or otherwise acquire interests or benefits in the lands, he shall, before reporting his decisions to the board, give each of the applicants notice of what his decision is with reference to their applications, and if none of the applicants files an appeal in writing from the decisions of the commissioner to the board within a period of thirty (30) days, except in the case of oil and gas leases when the period shall be not less than ten (10) days nor more than thirty (30) days at the discretion of the board, after the date of the notice, the commissioner shall report his decision to the board for approval at its next meeting and in case an appeal in writing is taken from the decision of the commissioner to the board of land commissioners within the time provided, the commissioner shall give each of the applicants at least ten (10) days' notice, except in the case of oil and gas leases when the period shall be five (5) days' notice in writing of the date on which the appeal will be heard by the board. The commissioner shall keep on file in his office the original of all documents filed as required by W.S. 36-1.1 [§ 36-1-102]. He shall insure that these documents are properly indexed for reasonable public access, and to show ownership by each state commission, institution, department or board.

(b) Upon application and the annual payment of ten dollars (\$10.00) by any person qualified to lease oil and gas lands of the state of Wyoming, the commissioner shall place the name and address of the person on a mailing list and shall mail to the person a complete list of lands open for filing prior to the date upon which the lands become subject to filing. All sums paid by the persons shall be placed in the general fund. (Laws 1905, ch. 36, § 3; C.S. 1910, § 226; Laws 1919, ch. 121, § 1; C.S. 1920, § 237; R.S. 1931, § 91-203; C.S. 1945, § 24-203; W.S. 1957, § 36-34; Laws 1961, ch. 164, § 1; 1965, ch. 120, § 1; 1974, ch. 16, § 2; 1975, ch. 140, § 2.)

Cross references. - As to duties of state geologists generally, see § 9-3-1406. For provision that all maps, plats, plans or designs necessary to be filed in the office of commissioner of public lands shall be made and certified by a professional engineer or land surveyor registered under \$\$ 33-29-101 to 33-29-113, relative to surveyors and engineers, see § 33-29-111. As to duties and powers of open cut land reclamation section of the office of the commissioner of public lands being transferred to the department of environmental quality, see § 35-11-106. See also the cross references at the beginning of this chapter. As to commissioner's official seal, see § 36-3-108. For additional duties, see § 36-7-202. As to filing of all plats of survey of railroads' and oil and gas companies' rights-of-way, see §§ 37-9-201 to 37-9-205.

Editor's note. — Section 1, ch. 78, Laws 1903, (C.S. 1920, § 695), officially designated the board of land commissioners provided for in art. 7, § 13, Wyo. Const., as "the state board of school land commissioners." This law was repealed by § 24, ch. 108, Laws 1929, and the board of land commissioners provided for in art. 7, § 13, and art. 18, § 3, Wyo. Const., was designated the board of land commissioners. See §§ 36-1-101, 36-2-101. This section, as amended in 1919, referred to both the "state board of land commissioners" and the "state board of school land commissioners."

Chapter 33, Laws 1935, directed the commissioner to obtain patents from the federal government for school lands owned by the state.

Effective dates. — Section 2, ch. 121, Laws 1919, makes the act effective from and after passage. Approved February 25, 1919.

Section 8, ch. 16, Laws 1974, makes the amendment to this section effective on July 1, 1975. Section 3, ch. 140, Laws 1975, makes the act effective immediately upon passage. Approved March 7, 1975.

Commissioner as secretary of board. — The commissioner of public lands is the secretary of the board and, as such, receives applications for mineral leases, with the power to grant or refuse such applications, subject to the right of appeal to the board. Walls v. Evans. 38 Wyo. 103, 265 P. 29 (1928).

Improper delegation of powers. — Contract hiring auditing firm to ascertain whether state had been paid all royalties due under mineral leases was invalid as delegating to others duty impliedly imposed on state officials by statute. MacDougall v. Board of Land Comm'rs, 48 Wyo. 493, 49 P.2d 663 (1935).

Notice required by section is different and distinct from the notice required by § 36-5-108. Reese v. Bruegger Ranches, Inc., 463 P.2d 23 (Wyo. 1969).

Notice to old lessee. - Section 36-5-108 must be read in pari materia with art. 18, § 3, Wyo. Const., and with § 36-2-101 and this section. When so read, it becomes clear that ₹ 36-5-108 requires 15 days' notice to be given to the old lessee after the rental has been finally fixed by the board approving recommendation of the commissioner or by taking some other action. There can be no doubt that the hoard is free to follow or to modify or to disregard what the commissioner has recommended, Reese v. Bruegger Ranches, Inc., 463 P.2d 23 (Wyo. 1969).

Cited in State ex rel. Walls v. State Bd. of Land Comm'rs, 36 Wyo. 302, 254 P. 491 (1927).

Law review. — "Rights of Way to Mining Claims Across Public Lands," 12 Wyo. L.J. 162 (1958).

§ 36-3-103. Selection and location of lands.

The commissioner of public lands shall select and locate all lands which are now or may be hereafter granted to the state of Wyoming by the United States for any purpose whatever. (Laws 1905, ch. 36, § 4; C.S. 1910, § 227; C.S. 1920, § 238; R.S. 1931, § 91-204; C.S. 1945, § 24-204; W.S. 1957, § 36-35.)

Quoted in Wyoming v. United States, 310 F.2d 566 (10th Cir. 1962), cert. denied, 372 U.S. 953, 83 S. Ct. 952, 9 L.Ed.2d 977 (1963).

§ 36-3-104. Notice of selection.

Before any selection of lands granted to the state is made, it shall be the duty of the commissioner of public lands to publish in at least one (1) newspaper of general circulation in each county in the state a notice giving the area of the said lands so to be selected, and the time on or about when the commissioner will receive applications for and begin the selection of said lands, and before any lands so selected shall be leased, sold or otherwise disposed of, a description of such lands together with the name of the person for whom selected, shall be published at least once in a newspaper of general circulation in each county wherein said lands are located, and such lands shall thereafter be sold, leased or otherwise disposed of in the same manner and under the same restrictions as provided by law for the disposition of other state lands. (Laws 1905, ch. 36, § 5; C.S. 1910, § 228; C.S. 1920, § 239; R.S. 1931, § 91-205; C.S. 1945, § 24-205; W.S. 1957, § 36-36.)

* * *

§ 36-3-106. Arid land fund.

As provided in the said acts of congress, all moneys collected by the commissioner of public lands from the sale of lands selected under the provisions of such acts of congress shall be deposited by said commissioner with the state treasurer, and shall constitute a trust fund in the hands of said treasurer to be used only for the reclamation of other arid lands when appropriated by the legislature for that purpose in the manner that other appropriations are made. (Laws 1905, ch. 36, § 7; C.S. 1910, § 230; C.S. 1920, § 241; R.S. 1931, § 91-207; C.S. 1945, § 24-207; W.S. 1957, § 36-38.)

Cross reference. — As to meaning of "said acts of congress," see § 36-3-105.

§ 36-3-110. Fees.

(a) The commissioner of public lands shall collect the following administrative
fees:
(i) For filing each application to lease or purchase \$15.00
(ii) For recording each surface lease of less than one (1)
section
(iii) For recording each surface lease of one (1) section \$ 3.00
(iv) For recording each surface lease containing more than one
(1) section, for each additional section or fraction thereof \$ 2.00
(v) For filing each right-of-way \$10.00
(vi) For issuing each certificate of purchase
(vii) For issuing each patent \$10.00
(viii) For filing each assignment of lease or certificate of pur-
chase
(ix) For issuing each post and pole permit \$ 3.00
(x) For issuing each timber permit \$10.00
(xi) For issuing each sand and gravel permit
(xii) For issuing each sign board permit \$10.00
(xiii) For filing each power of attorney
(xiv) For filing each declaration of trust \$ 5.00
(xv) For filing each letter of administration \$ 5.00
(xvi) For affixing the commissioner's seal to certified copies \$ 2.00
(xvii) For preparing each oil lease where application is with-
drawn or not completed \$10.00
(xviii) For filing each final decree of distribution \$10.00
(xix) For filing each collateral assignment \$10.00
(xx) For filing each application for construction of improve-
ments
(xxi) For filing each sublease agreement \$10.00
(xxii) For filing each subordination agreement \$10.00
(xxiii) For filing each change of name \$20.00
(xxiv) For filing each operating agreement for mineral leases \$10.00
(xxv) For filing each unit agreement \$10.00
(xxvi) For filing each fossil permit \$10.00
(xxvii) For recording each "special use lease" \$10.00
(b) All money collected for fees shall be paid to the treasurer of the state
monthly and shall be credited to the general fund. (Laws 1909, ch. 42, § 1; C.S.
1910, § 233; Laws 1919, ch. 101, § 1; C.S. 1920, § 244; Laws 1921, ch. 130, § 1;
1925, ch. 62, § 1; R.S. 1931, § 91-210; C.S. 1945, § 24-211; W.S. 1957, § 36-42;
Laws 1977, ch. 35, § 1.)

Cross reference. — As to collection of fees, etc., by the department of revenue and taxation, see § 39-1-303.

The 1977 amendment increased the fee for recording each surface lease of less than 1 section, for recording each surface lease of 1 section, for filing each assignment of lease or certificate of purchase, for issuing each post and pole permit and for filing each change of name.

Effective dates. — Section 2, ch. 42, Laws 1909, makes the act effective from and after passage. Approved February 18, 1909.

Section 2, ch. 101, Laws 1919, makes the act effective from and after passage. Approved February 25, 1919.

Section 2, ch. 130, Laws 1921, makes the act effective from and after passage. Approved February 22, 1921.

Section 2, ch. 62, Laws 1925, makes the act effective from and after passage. Approved February 20, 1925.

Section 2, ch. 35, Laws 1977, makes the act effective on May 27, 1977.

CHAPTER 5 Leasing State Lands Generally

Cross references. - As to restrictions on cutting of timber by lessee of state lands, see §§ 36-1-112, 36-1-113. As to appraisal of lands as basis for determining rentals and as to fees for rentals, see §§ 36-2-105, 36-2-106. For duties of commissioner of public lands with reference to the leasing of state lands, see §§ 36-3-102, 36-3-104, 36-3-105. As to fees in connection with lease or sale of state lands, see § 36-3-110. For provision that mineral leases shall be separate and distinct from each lease of the same land for grazing or agricultural purposes, with reference to leasing state land, see § 36-6-101. For authority of board to lease or sell lands for which water rights become appurtenant, and as to requirements for sale, see § 36-7-509. As to

leases and grounds for cancellation of leases in Hot Springs state park, see \$\$ 36.8-304, 36.8-309, 36.8-314. As to lease of lands and improvements in connection with Saratoga Hot Springs state reserve by state board of charities and reform, see \$ 36.8-405. For provisions of ch. 9 of this title, covering the sale of state lands, see \$\$ 36.9-101, 36.9-105, 36.9-106, 36.9-114, 36.9-116. As to taxation of public land leaseholds, see \$\$ 39.1-102, 39-1-201.

Am. Jur. 2d and C.J.S. references. — 63 Am. Jur. 2d Public Lands § 116; 72 Am. Jur. 2d States, Territories and Dependencies §§ 66 to 72.

73 C.J.S. Public Lands § 259.

* * *

§ 36-5-114. Leasing for industrial, commercial and recreational purposes; authority.

(a) The board of land commissioners may lease for a term of not more than twenty-five (25) years, with a preferential right to renew for successive like periods, state lands for industrial, commercial and recreational purposes.

(b) The board may lease state lands for purposes which shall bring about the multiple use of the surface area and shall inure to the greatest benefit of the state. Provided, however, that nothing herein contained shall result in the substantive impairment of existing leases or the preferential right to the renewal thereof. (Laws 1963, ch. 187, § 1; 1971, ch. 179, § 1.)

CHAPTER 6

Mineral Leases

Article 1. In General

Sec.

36-6-101. Terms: renewals: rules regulations; rent and royalties; assignment; accommodation with grazing and agricultural leases; cooperation with United States or its lessees, etc.; termination of cooperative or unit extensions.

36-6-102. Submission. custody confidentiality of subsurface log reports.

36-6-103. Existing oil and gas leases ratified,

36-6-104. Payment for improvements; "improvements" defined. 36-6-105. Reports.

Article 2. Counties, Cities, Towns and School Districts

36-6-201. Authority to lease or otherwise contract.

36-6-202. Power to modify or change leases or contracts.

36-6-203. Rules and regulations; requisites of leases or contracts.

36-6-204. Existing leases, contracts agreements validated.

Cross references. - As to granting of mineral rights with reference to lands exchanged between state and United States, see § 36-1-105. See also the cross references at the beginning of ch. 5 as they are also applicable to mineral leases. For provision that ch. 5 of this title, relative to leasing state lands generally, shall not be applicable to the leasing of state mineral lands, under the provisions of ch. 6 of this title. see § 36-5-105. As to reservation of mineral rights with reference to lands acquired by the United States, see § 36-10-101.

Am. Jur. 2d. ALR3d and C.J.S. references. -38 Am. Jur. 2d Gas and Oil §§ 54 to 99; 54 Am. Jur. 2d Mines and Minerals §§ 11 to 96; 72 Am. Jur. 2d States, Territories and Dependencies §§ 66 to 72.

Validity of prohibition or regulation of removal or exploitation of oil, minerals, soil, sand, gravel, stone or other natural products within municipal limits, 10 ALR3d 1226.

73 C.J.S. Public Lands § 259.

ARTICLE 1. IN GENERAL.

- § 36-6-101. Terms; renewals; rules and regulations; rent and assignment; accommodation royalties: grazing and agricultural leases; cooperation with United States or its lessees, etc.; termination of cooperative or unit plans; extensions.
- (a) The board of land commissioners is hereby authorized to lease any state or state school lands for oil and gas for a primary term up to ten (10) years and as long thereafter as oil or gas may be produced in paying quantities, and to extend the term of existing oil and gas leases in good standing for as long as oil or gas may be produced in paying quantities; and for coal and other mineral purposes for terms not exceeding ten (10) years, with preferential right in each coal or other mineral purpose lessee to renew such lease for successive periods of ten (10) years each.

- (b) The board is further authorized to make and establish rules and regulations governing the issuance of such leases and covering the conduct of development and mining operations to be carried on thereunder.
- (c) Mineral leases may be issued upon such monthly or annual minimum rental payment basis as shall be fixed by the board, which payment shall be annually applied against such royalty as shall accrue for the same lease year by the terms of such lease, which royalty, as to lands leased for oil or gas shall not be less than five percent (5%) of all oil and gas produced and saved from and not used in operations on said lands under said lease, and royalty of not less than five cents (\$.05) per ton on coal produced from the lands under any such lease for coal purposes, such royalty to be paid on mine run of coal. No mineral lease issued under the provisions of this section shall be assignable or transferable except with written consent of the board and it shall require the lessee's full compliance with and observance of all rules and regulations adopted by said board and for the lessee's compliance with all other terms of said lease. All mineral leases issued pursuant to this section shall be separate and distinct from each lease of the same land for grazing or agricultural purposes, issued by the board, and rules and regulations adopted by the board as herein authorized, shall provide for joint use of such lands for grazing and agricultural or mineral purposes without undue interference by the lessees under any such class of leases with lessees under any other such class.
- (d) The board, on behalf of the state, and its lessee or lessees in any such mineral lease are hereby further authorized to join, in the interest of conservation and greater ultimate recovery of oil and gas, in fair and equitable cooperative or unit plans of development or operation of oil and gas pools, with the United States government and its lessees, or permittees, or others, or any of them, and the board is hereby authorized to modify and change any and all terms and conditions of any such oil and gas lease or leases, heretofore or hereafter issued, as mutually agreed by the lessor and lessee in any such lease, as required to conform to the terms of any such lease to such cooperative or unit plan and as required to effectuate proper operations thereunder, which changes may include extension of the term of years otherwise applicable to any such lease, for the full period of time during which such cooperative or unit plan may remain in effect.
- (e) When a cooperative or unit agreement is terminated or ceases to be effective as to lands upon which there is no production of oil or gas, the lease covering such lands shall remain in effect for a period of two (2) years from the date such lands ceased to be subject to said agreement, or for the remaining length of the term of the original lease, whichever shall be the greater, and so long thereafter as oil or gas is produced from said lands in accordance with the requirements of the original lease.
- (f) The terms of any lease issued under this section for land on which actual drilling operations were commenced prior to the end of its primary term and are being diligently prosecuted at that time shall be extended for one (1) year and so long thereafter as oil or gas is produced in paying quantities. (Laws 1907, ch. 81, § 2; C.S. 1910, § 619; C.S. 1920, § 716; Laws 1931, ch. 95, § 1; R.S. 1931,

§ 91-801; C.S. 1945, § 24-701; Laws 1951, ch. 157, § 1; 1955, ch. 84, § 1; W.S. 1957. § 36-74; Laws 1963, ch. 98, § 1; 1965, ch. 150, § 1.)

Repeal of prior statutory provisions. — Former § 24-702, W.C.S. 1945, relating to cooperation with United States or its lessess, former § 24-703, W.C.S. 1945, which provided a minimum royalty, former § 24-705, W.C.S. 1945, providing that mineral and grazing leases should be distinct, and former § 24-706, W.C.S. 1945, relating to assignment or transfer of mineral leases, were all repealed by § 2, ch. 157, Laws 1951.

Effective dates. — Section 3, ch. 157, Laws 1951, makes the act effective from and after passage. Approved February 20, 1951.

Section 3, ch. 84, Laws 1955, makes the act effective from and after passage. Approved February 10, 1955.

Act in effect in 1945 did not authorize preferential right for oil and gas leases. In re Hagood, 356 P.2d 135 (Wyo. 1960).

Legislature by failing to mention preference right in 1951 amendment of section did not abolish right but did remove any authority therefor previously extended, and the board of land commissioners may not now, by the pronouncement of a policy, grant preferences for which there is no constitutional or statutory authority. In re Hagood, 356 P.2d 135 (Wyo. 1960).

Land board may sell surface rights first, reserving minerals by requirement that purchaser convey mineral rights to state. State ex rel. Cross v. Board of Land Comm'rs, 50 Wyo. 181, 58 P.2d 423, rehearing denied, 62 P.2d 516 (1936).

Preference right of first applicant. — No preference right to the first applicant can be found in either Wyoming constitution or this section, Henderson v. Midwest Ref. Co., 43 F.2d 23 (10th Cir. 1930).

Rule of board of land commissioners that first application for mineral lease accompanied by fees and rental will be granted is reasonable. Walls v. Evans, 38 Wyo. 103, 265 P. 29 (1928).

Mandamus would not lie to compel the issuance of mineral lease, as there was adequate remedy by appeal from board. State ex rel. Walls v. State Bd. of Land Comm'rs, 36 Wyo. 302, 254 P. 491 (1927).

Sale at auction. — Order of land board for sale of lease at auction was valid, and notice of appeal did not stay action thereunder. If appeal was successful, all action under the order and sale would be nullified: if not, sale and lease issued pursuant thereto would be valid. Wyodak Chem. Co. v. Board of Land Comm'rs, 51 Wyo. 265, 65 P.2d 1103 (1937).

Cash deposit required. — Old lessee seeking a renewal or new lease on offering to comply with the terms of the highest bidder at the auction sale must accompany his offer with the cash deposit required by the rules of the board; otherwise the offer may be ignored. Wyodak Chem. Co. v. Board of Land Comm'rs, 51 Wyo. 265, 65 P.2d 1103 (1937).

Disposition of rents and royalties. — Under § 36-9-113, all rents received from lands sold or leased shall be paid by state land board to state treasurer, and this undoubtedly includes royalties from mineral lands received by it. MacDougall v. Board of Land Comm'rs, 48 Wyo. 493, 49 P.2d 663 (1935).

"Renewal" should not be narrowly construed, and old lessee must meet all reasonable terms and conditions which may be laid down from time to time by board, and which others are willing to meet, thus making the lease not a continuing one in violation of the enabling act and constitution, but in fact a new one. Wyodak Chem. Co. v. Board of Land Comm'rs, 51 Wyo. 265, 65 P.2d 1103 (1937).

"Renewal," as used in this section giving original lessee preferential right to renew, does not mean renewal under identical terms and conditions, but old lessee must meet all reasonable terms and conditions promulgated by land commissioners which others are willing to meet. Wyodak Chem. Co. v. Board of Land Comm'rs, 51 Wyo. 265, 65 P.2d 1103 (1937).

Law reviews. — For an address on drafting conveyances of mineral and royalty interests, see 14 Wyo. L.J. 91 (1960).

For an address on surface damages; claims by surface estate owners against mineral estate owners, see 14 Wyo. L.J. 99 (1960).

See articles, "Forfeiture and Termination of Mining Leases," 1 Land & Water L. Rev. 201 (1966); "Judicial Review of Administrative Decisions Under the Mineral Leasing Act of 1920," 1 Land & Water L. Rev. 423 (1966).

ALR references. — Validity of compulsory pooling or unitization statute or ordinance requiring owners or lessees of oil and gas lands to develop their holdings as a single drilling unit and the like, 37 ALR2d 434.

Duty of oil or gas lessee to restore surface of leased premises, 65 ALR2d 1356.

Meaning of "paying quantities" in oil and gas lease, 43 ALR3d 8.

What constitutes reasonably necessary use of the surface of the leasehold by a mineral owner, lessee or driller under an oil and gas lease or drilling contract, 53 ALR3d 16.

§ 36-6-102. Submission, custody and confidentiality of subsurface log reports.

(a) Contingent upon the leasing of any state or state school lands for coal, uranium or other mineral exploration, the board of land commissioners shall require copies of all electrical, gamma-ray neutron, resistivity or other types of subsurface log reports to be submitted to the office of the state geologist within three (3) years after completion of drilling. All copies thereof will become the property of the state to be retained within the permanent files of the Wyoming geological survey for the exclusive use of the staff, as required by law for evaluation purposes. Reports received by the oil and gas conservation commission shall qualify for this provision.

(b) All subsurface log reports will be held confidential for a period of seven (7) years after received by the state geologist or until the expiration of the lease, whichever is the lesser period of time. If the lease is being held by production, all reports will be held confidential until the lease is terminated. (Laws 1977, ch.

151, § 1.)

Effective date. — Section 3, ch. 151, Laws 1977, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 2, 1977.

§ 36-6-103. Existing oil and gas leases ratified, etc.

The issuance of all oil and gas leases upon any state or school lands heretofore issued by the board of land commissioners for primary terms up to ten (10) years and as long thereafter as oil or gas may be produced in paying quantities, and the granting of all extensions heretofore granted by the board of land commissioners of the terms of existing oil and gas leases upon any state or state school lands for as long after the primary term as oil or gas may be produced in paying quantities, are hereby ratified, confirmed, and validated. Each joinder by the board of land commissioners on behalf of the state of Wyoming in any cooperative or unit plan of development or operation of any oil or gas pool, and all modifications and changes in any of the terms or conditions of any oil or gas lease arising from any such joinder, or incident thereto, and all thereof, are hereby ratified, confirmed, and validated. (Laws 1955, ch. 84, § 2; W.S. 1957, § 36-75.)

Effective date. — Section 3, ch. 84, Laws 1955, makes the act effective from and after passage. Approved February 10, 1955.

§ 36-6-104. Payment for improvements; "improvements" defined.

If mineral lands upon which improvements have been made shall be sold or if such lands shall be leased to other than the owner of the improvements thereon, then such purchaser or such new lessee shall pay to the owner thereof the value of said improvements, at an agreed price with the owner thereof; or if such agreement cannot be reached, then at such price as shall be fixed by appraisement under the authority of the board of land commissioners. The word "improvements" shall be construed to mean surface improvements, machinery and other equipment used and necessary for the operation of the plant on such land, and work performed in the development of the property for operation and mining when such development work is of practical use in future mineral operations on such land. Wells drilled for oil which do not produce oil in commercial quantities, shafts, tunnels or drifts from which coal or other minerals have been practically exhausted, shall not be considered as improvements. (Laws 1907, ch. 81, § 5; C.S. 1910, § 622; Laws 1915, ch. 80, § 2; C.S. 1920, § 718; R.S. 1931, § 91-804; C.S. 1945, § 24-704; W.S. 1957, § 36-76.)

Cross reference. — As to sale of state lands generally, see ch. 9 of this title.

Repealing clause. — Section 3, ch. 80, Laws 1915, repealed C.S. 1910, §§ 621, 623. Effective date. — Section 4, ch. 80, Laws 1915, makes the act effective from and after passage. Approved February 25, 1915.

§ 36-6-105. Reports.

The state geologist or any state coal mine inspector shall, when requested by the board of land commissioners, visit and make a report upon any lands held under coal and mineral leases. Such report shall be made without any fee to the officer making same. (Laws 1907, ch. 81, § 9; C.S. 1910, § 626; C.S. 1920, § 721; R.S. 1931, § 91-807; C.S. 1945, § 24-707; W.S. 1957, § 36-77.)

Cross references. — As to state geologist, see §§ 9-3-1403 to 9-3-1408. As to state coal mine inspectors, see §§ 30-3-220 to 30-3-225.

Repealing clause. — Section 10, ch. 81, Laws 1907, repealed all laws and parts of laws in conflict therewith. Effective date. — Section 11, ch. 81, Laws 1907, makes the art effective from and after passage. Approv. February 20, 1907.

ARTICLE 2. COUNTIES, CITIES, TOWNS AND SCHOOL DISTRICTS

§ 36-6-201. Authority to lease or otherwise contract.

The governing body of any county, city, town or school district authorized to acquire and hold real property, may, upon determining that such action will be in the best interests of such county, city, town or school district, lease any lands owned in fee by such county, city, town or school district, for the exploration for and development and production of oil, gas or other hydrocarbons, and otherwise contract for such exploration, development and production, upon such terms as such governing body may determine and as are not inconsistent with the provisions of this act [§§ 36-6-201 to 36-6-204]; providing the exploration for, development and production of oil, gas or other hydrocarbons shall in no way interfere with the public use of said lands or the purpose for which said lands were acquired. (Laws 1949, ch. 86, § 1; W.S. 1957, § 36-79.)

§ 36-6-202. Power to modify or change leases or contracts.

Any such governing body may, by such lease or contract or by other agreement, include, or provide for the inclusion of, the lands of such county, city, town or school district, or any part or portion of such lands, with other lands in any plan or agreement for cooperative or unit development or operation for oil, gas or other hydrocarbons, and modify and change any and all terms of any lease or contract heretofore entered into or hereafter entered into under the provisions of this act [§§ 36-6-201 to 36-6-204], including the extension of the term of any such lease or contract for the full period of time such cooperative or unit plan or agreement may remain in effect, as required to conform the terms of any such lease or contract to such cooperative or unit plan or agreement. (Laws 1949, ch. 86, § 2; W.S. 1957, § 36-80.)

§ 36-6-203. Rules and regulations; requisites of leases or contracts.

- (a) Any such governing body may, in its discretion, make and establish such rules and regulations governing the issuance of such leases and contracts as are not inconsistent with the provisions of this act [§§ 36-6-201 to 36-6-204]. Any such lease or contract:
 - (i) Shall be entered into pursuant to resolution duly adopted by the governing body;
 - (ii) May cover parcels of land of such size and shape as the governing body may determine:
 - (iii) May be for a term not exceeding ten (10) years and as long thereafter as oil, gas or other hydrocarbons shall be, or can be, produced in commercial quantities from the lands included in such lease, except as such term may be extended pursuant to the provisions of section 2 of this act [§ 36-6-202]; and
 - (iv) Shall reserve to the governing body a royalty of not less than one-eighth of all oil, gas or other hydrocarbons produced from said lands. (Laws 1949, ch. 86, § 3; W.S. 1957, § 36-81.)

§ 36-6-204. Existing leases, contracts and agreements validated.

Nothing in this act [§§ 36-6-201 to 36-6-204] contained shall operate or be construed as in anywise limiting or affecting the power or authority of the governing body of any county, city, town, or school district, to have entered into any lease or contract for the exploration for the development and production of oil, gas or other hydrocarbons, or any agreement for cooperative or unit development or operation for oil, gas or other hydrocarbons, entered into by such governing body prior to the passage of this act, and all such leases, contracts

and agreements previously entered into in substantial compliance with the above provision are hereby validated and confirmed. (Laws 1949, ch. 86, § 4; W.S. 1957, § 36-82.)

Effective date. — Section 5, ch. 86, Laws 1949, makes the act effective from and after passage. Approved February 24, 1949.

CHAPTER 9 Sale of State Lands

Cross references. - As to sale of municipal property and unused park lands by cities and towns generally, see § 15-1-103. For duty of county clerk to issue state land certificates relating to the selection or relinquishment of state or school lands without fee, see § 18-3-402. For authority of state military board as to sale of certain lands, see §§ 19-1-107, 19-1-108. As to exchange of state-owned and privately owned lands, see § 36-1-107. As to appraisal and classification of lands as the basis for determining the sale value thereof, see § 36-2-105. As to duties of commissioner of public lands with respect to sale of public lands, see §§ 36-3-102, 36-3-105. As to fees in connection with lease or sale of state lands, see § 36-3-110. As to advertising lands for sale and open for settlement under Carey Act, see § 36-7-401. For authority of board to lease or sell lands for which water rights become appurtenant and as to requirements for sale, see § 36-7-509. As to sale of lands and improvements known as and included in Saratoga Hot Springs reserve, see §§ 36-8-403, 36-8-404. As to taxation of purchaser's equity or interest under contract for sale of state lands, see § 39-1-201. As to property exempt from taxation generally, see § 39-1-201.

Editor's note. — Sections 1 to 26, ch. 79, Laws 1890-91, provided for a board of land commissioners for the selection of lands donated and granted to the state and for the leasing of state lands. These sections are no longer in effect. For present laws on these subjects, see \$\$ 36-1-101 to 36-2-108, 36-3-101 to 36-3-111, 36-5-101 to 36-5-116.

Repeal of preference in favor of settlers. — Section 2, ch. 32, Laws 1945, repealed § 28, ch. 79, Laws 1890-91 (R.S. 1931, § 91-502), which provided for a preference in favor of settlers.

Am. Jur. 2d and C.J.S. references. — 63 Am. Jur. 2d Public Lands §§ 108 to 114; 72 Am. Jur. 2d States, Territories and Dependencies §§ 66 to 72

73 C.J.S. Public Lands §§ 235 to 276.

§ 36-9-101. Authority; restrictions.

The board of land commissioners may at any time direct the sale of state lands subject to any lease thereof. Such lands which have been reserved in any way to the public use, or for the use of public institutions, shall not be sold to any member of the board. The board shall sell such lands according to the subdivisions of sections as established by the United States survey thereof, or by metes and bounds, as may appear to be to the interest of the state of Wyoming. The board shall sell such subdivisions as it shall deem for the best interests of the state; provided, that a lessee of state land, or a person holding an expiring lease at the time of sale, shall have the right to purchase such land for the amount of the highest responsible bid made under the provisions of section 91-503 hereof [§ 36-9-102], upon giving notice of his election to exercise his right at the conclusion of the sale and making the payment required by law. (Laws 1890-1891, ch. 79, § 27; 1895, ch. 120, § 1; R.S. 1899, § 819; Laws 1907, ch. 12, § 1; C.S. 1910, § 627; C.S. 1920, § 722; Laws 1929, ch. 81, § 1; R.S. 1931, § 91-501; Laws 1945, ch. 32, § 1; C.S. 1945, § 24-501; W.S. 1957, § 36-181.)

Cross references. — As to leasing state lands generally, see ch. 5 of this title. As to mineral leases in connection with state lands, see ch. 6 of this title. As to execution of leases of lands sold, see § 36-9-106.

Effective dates, — Section 50, ch. 79, Laws 1890-91, makes the act effective from and after passage. Approved January 10, 1891.

Section 2, ch. 12, Laws 1907, makes the act effective from and after passage. Approved February 13, 1907.

Section 2, ch. 81, Laws 1929, makes the act effective from and after passage. Approved February 19, 1929.

Section 3, ch. 32, Laws 1945, makes the act effective from and after passage. Approved February 3, 1945.

Supreme court will not substitute its judgment for judgment of board of land commissioners on the question of what is for the best interests of the state in land matters. Curtis v. Center Realty Co., 502 P.2d 365 (Wyo, 1972)

Except for fraud, etc. — Discretion of stateland board in renewal of leases should not be interfered with by courts except in cases of fraud or grave abuse resulting in manifest wrong or injustice. Baker v. Brown, 12 Wyo. 198, 74 P. 94 (1903).

Reservation of mineral rights., — It being legislative policy to reserve to state right to execute leases for extraction of petroleum, etc., land commissioner can make same reservation in contract for sale of agricultural or grazing lands. State ex rel. Cross v. Board of Land Comm'rs, 50 Wyo. 181, 58 P.2d 423, rehearing denied, 62 P.2d 516 (1936).

Under existing statutes land board was authorized to sell surface rights first, reserving minerals by requirement that purchaser convey mineral rights to state. State ex rel. Cross v. Board of Land Comm'rs, 50 Wyo, 181, 58 P.2d 423, rehearing denied, 62 P.2d 516 (1936).

§ 36-9-102. Manner of sale; minimum price.

All state lands shall be disposed of only at public auction to the highest responsible bidder after having been duly appraised by the board, except as provided in section 36-181, Wyoming Statutes, 1957 [§ 36-9-101], and shall be sold at not less than the appraised value thereof, and for not less than ten dollars (\$10.00) per acre. (Laws 1890-91, ch. 79, § 29; R.S. 1899, § 821; C.S. 1910, § 629; C.S. 1920, § 724; R.S. 1931, § 91-503; C.S. 1945, § 24-502; W.S. 1957, § 36-182; Laws 1961, ch. 229, § 1.)

Editor's note. — Prior to the 1961 lands at not less than "three-fourths of" its amendment, this section allowed sale of state appraised value.

§ 36-9-112. Granting of patents; reservation of minerals.

(a) Whenever the purchaser of any state land, or his assign, has complied with all the conditions of this act and has paid all the purchase money therefor, together with the lawful interest thereon, he shall receive a patent for the land purchased. Such patent shall run in the name of the state of Wyoming, it shall be signed by the governor, and countersigned by the commissioner of public lands, and attested by the seal of the board. Such patent signed and executed as aforesaid shall convey a good and sufficient title to the patentee therein named. A fee interest in any state land may be perfected only as herein provided and only by express grant by the state of Wyoming for that purpose.

(b) Patents issued by the state of Wyoming shall contain a reservation to the state of all the minerals, whether or not now known, or which may be discovered

hereafter, together with the right of ingress and egress to prospect for, mine, and remove such minerals. (Laws 1890-91, ch. 79, § 36; R.S. 1899, § 830; C.S. 1910, § 638; C.S. 1920, § 734; R.S. 1931, § 91-513; C.S. 1945, § 24-510; W.S. 1957, § 36-191; Laws 1971, ch. 176, § 1.)

Meaning of "this act". — The words "this act" refer to ch. 79, Laws 1890-91. So much of that law as is still in effect is compiled herein as this section and \$\$ 36-9-101, 36-9-102, 36-9-104 to 36-9-107, 36-9-109, 36-9-111, 36-9-113 and 36-9-115 to 36-9-119.

In general. — Where certificate of sale of state lands provided that before patent should issue, purchaser must convey to the state all mineral and mining rights, mandamus would not issue to compel issuance of patent until such reconveyance of mineral and mining rights was

made. Word "land" used in statute does not refer only to land as having an indefinite extent upwards and downwards so as to prevent sale of surface rights only; statute providing for conveyance of title in fee simple does not establish title in fee simple cannot exist to the surface rights separate from the mineral and mining rights. State ex rel. Cross v. Board of Land Comm'rs, 50 Wyo. 181, 58 P.2d 423, rehearing denied, 62 P.2d 516 (1936).

Cited in Olds v. Little Horse Creek Cattle Co.,

22 Wyo, 336, 140 P. 1004 (1914).

* * *

§ 36-9-118. Rights-of-way for public conveyances.

The board of land commissioners may, at their discretion, grant permanent rights-of-way or easements across or upon any portion of state or school lands, upon such terms as the board may determine, for any ditch, reservoir, railroad, public highway, telegraph and telephone lines, or other public conveyances. (Laws 1890-91, ch. 79, § 48; R.S. 1899, § 841; C.S. 1910, § 649; Laws 1915, ch. 35, § 1; C.S. 1920, § 745; R.S. 1931, § 91-523; C.S. 1945, § 24-520; W.S. 1957, § 36-202.)

Cross reference. — As to rights-of-way of United States across state lands, see § 36-10-105.

Editor's note. — Section 1, ch. 78, Laws 1903 (C.S. 1920, \$ 695), officially designated the board of land commissioners provided for in art. 7, \$ 13, Wyo. Const., as "the state board of school land commissioners." This law was repealed by \$ 24, ch. 108, Laws 1929, and the board of land commissioners provided for in art. 7, \$ 13, and art. 18, \$ 3, Wyo. Const., was designated the board of land commissioners. See

§§ 36-1-101, 36-2-101. This section as amended in 1915 referred to the "state board of school land commissioners."

Effective date. — Section 2, ch. 35, Laws 1915, makes the act effective from and after passage. Approved February 15, 1915.

University lands. — State may grant rights-of-way across university lands. Ross v. Trustees of Univ. of Wyo., 30 Wyo. 433, 222 P. 3, rehearing denied, 31 Wyo. 464, 228 P. 642 (1924).

§ 36-9-119. Rights of ditch owners.

Nothing in this act shall be construed so as to impair the rights of any ditch company, or any person owning any ditch or ditches, on or passing through any of the lands included herein. (Laws 1890-91, ch. 79, § 49; R.S. 1899, § 842; C.S. 1910, § 650; C.S. 1920, § 747; R.S. 1931, § 91-525; C.S. 1945, § 24-521; W.S. 1957, § 36-203.)

Meaning of "this act". — The words "this act" refer to ch. 79, Laws 1890-91. So much of that law as is still in effect is compiled herein as this section and \$8 36-9-101, 36-9-102, 36-9-104 to 36-9-107, 36-9-109, 36-9-111 to 36-9-113, 36-9-115 to 36-9-118.

Effective date. — Section 50, ch. 79, Laws 1890-91, makes the act effective from and after passage. Approved January 10, 1891.

§ 36-9-120. Rights-of-way to counties.

Upon application of the board of county commissioners of any county, the board of land commissioners shall have authority to grant either a temporary or permanent right-of-way for ditches owned by the county or for county roads over and across any of the state or school lands, upon such terms as said board may determine, and to issue to such county a certificate therefor; no charge shall be exacted for the filing of such application or for the issuance of such certificate or for granting and recording a right-of-way. (Laws 1913, ch. 10, § 1; C.S. 1920, § 746; R.S. 1931, § 91-524; C.S. 1945, § 24-524; W.S. 1957, § 36-204.)

Effective date. — Section 2, ch. 10, Laws 1913, makes the act effective from and after passage. Approved February 15, 1913.

Grant not a sale. — State board's grant for road was not a sale but an easement only. Ross v. Trustees of Univ. of Wyo., 31 Wyo. 464, 228 P. 642, rehearing denied, 30 Wyo. 433, 222 P. 3 (1924).

State board authorized to grant easement only across lands. Ross v. Trustees of Univ. of Wyo., 31 Wyo. 464, 228 P. 642, rehearing denied, 30 Wyo. 433, 222 P. 3 (1924).

Grant by state of road across university lands is authorized. Ross v. Trustees of Univ. of Wyo., 31 Wyo. 464, 228 P. 642, rehearing denied, 30 Wyo. 433, 222 P. 3 (1924).

Disposition of university lands lies in state land board. Ross v. Trustees of Univ. of Wyo., 31 Wyo. 464, 228 P. 642, rehearing denied, 30 Wyo. 433, 222 P. 3 (1924). Constitution does not confer on university trustees power of disposition over university lands. Ross v. Trustees of Univ. of Wyo., 31 Wyo. 464, 228 P. 642, rehearing denied, 30 Wyo. 433, 222 P. 3 (1924).

County acquires for state. — County acquiring easement over state land for road held to acquire it for state. Ross v. Trustees of Univ. of Wyo., 31 Wyo. 464, 228 P. 642, rehearing denied, 30 Wyo. 433, 222 P. 3 (1924).

State cannot surrender its trust by transfer of lands to university. Ross v. Trustees of Univ. of Wyo., 31 Wyo. 464, 228 P. 642, rehearing denied, 30 Wyo. 433, 222 P. 3 (1924).

Insufficient pleading. — Loss by grant of road over university land held, insufficiently averred. Ross v. Trustees of Univ. of Wyo., 31 Wyo. 464, 228 P. 642, rehearing denied, 30 Wyo. 433, 222 P. 3 (1924).

CHAPTER 10

United States Lands

Cross references. - For constitutional provision that no taxes shall be imposed on lands or property within the state belonging to, or which may hereafter be purchased by, the United States, or reserved for its use, see art. 21, § 26, Wyo, Const. As to contracts and agreements between department of economic planning and development and United States for the construction of water development projects, see § 9-3-311. For authority of state geologist to cooperate with the United States, departments of the state, the University of Wyoming or private corporations in the matter of geological, topographic, soil and mineral surveys, see § 9-3-1406. As to Taylor Grazing Act funds generally, see §§ 9-7-701 to 9-7-704. As to forest reserve funds generally, see §§ 9-7-801 to 9-7-804. As to state and federal office building, see §§ 9-8-201, 9-8-202.

As to exchange of land granted by United States, see § 36-1-105. For authority of recreation commission to contract with United States relative to state parks, etc., see § 36-4-106. For duty of board of land commissioners to cooperate with United States, or its lessees, in the interests of conservation and greater ultimate recovery of oil and gas, in granting, etc., mineral leases on state lands, see § 36-6-101. For authority of Wyoming Yellowstone park commission, relative to Yellowstone national park, see §§ 36-8-201 to 36-8-238. As to transfer of lands of Hot Springs state park to United States, see § 36-8-306. As to

property exempt from taxation generally, see § 39-1-201. For provision exempting United States property as to tax liens with reference to real estate, see § 39-3-102. As to exemption of property of United States from use tax, see § 39-6-505. As to contracts between United States and irrigation and water conservancy districts, see §§ 41-3-742, 41-7-303, 41-7-401, 41-7-601 to 41-7-603.

Law reviews. — For note on easements of necessity to reach public lands, see 13 Wyo. L.J. 51 (1958).

See article, "The Administration of Law in Yellowstone National Park," 14 Wyo, L.J. 9 (1959).

See article, "The Public Land Law Review Commission — A Challenge to the West," 1 Land & Water L. Rev. 355 (1966).

See comment, "Criminal Jurisdiction in the National Parks — A Clarification," 2 Land & Water L. Rev. 151 (1967).

See article, "The Public Land Law Review Commission — Identifying and Defining the Problems," 2 Land & Water L. Rev. 251 (1967).

See comment, "The Status of Visitors in the National Parks Located in Wyoming — Federal Liability Under Current Applicable Wyoming Law," 2 Land & Water L. Rev. 447 (1967).

Am. Jur. 2d and C.J.S. references. 63 Am. Jur. 2d Public Lands § 1 et seq.; 72 Am. Jur. 2d States. Territories and Dependencies §§ 66 to 72; 77 Am. Jur. 2d United States §§ 76 to 84.

73 C.J.S. Public Lands \$\$ 24 to 234.

ARTICLE 1. IN GENERAL

§ 36-10-101. Authority to acquire state lands; reservation of mineral rights.

The United States shall be and is authorized to acquire by purchase or condemnation or otherwise, any land in this state required for public buildings, custom houses, arsenals, national cemeteries, or other purposes essential to the national defense in necessary use of said land by armed naval, air or land forces, or land to be physically occupied by the Boysen Dam, its reservoir, power plant and distribution systems, or lands to be physically occupied by dams, reservoirs, power plants and distribution systems in United States reclamation service projects, and the state of Wyoming hereby consents thereto, provided that the mineral content of lands so acquired, if owners thereof so elect, shall be reserved to such owners. (Laws 1897, ch. 17, § 1; R.S. 1899, § 2657; C.S. 1910, § 697; C.S. 1920, § 810; R.S. 1931, § 118-101; Laws 1941, ch. 97, § 1; C.S. 1945, § 24-801; W.S. 1957, § 36-207.)

Effective dates. — Section 5, ch. 17, Laws 1897, makes the act effective from and after passage. Approved February 13, 1897.

Section 2, ch. 97, Laws 1941, makes the act effective from and after passage. Approved February 24, 1941.

* * *

§ 36-10-105. Rights-of-way.

There is hereby granted over all the lands now owned by the state of Wyoming, and which may hereafter be owned by the state of Wyoming, a right-of-way for ditches, tunnels, telephone and transmission lines constructed by and under the authority of the United States; provided, always, that any such right-of-way desired by the United States shall be surveyed and platted and certified maps and plats of such right-of-way filed with the board of land commissioners, such maps and plats to be in conformity with the requirements of section 37-202, Wyoming Statutes, 1957 [§ 37-9-201], regarding rights-of-way for railroad corporations, and no fee shall be requested for the filing of any such said maps and plats; and, provided, further, that all conveyances by the state of any of its lands, which may hereafter be made, shall contain a reservation for rights-of-way provided for in this section. (Laws 1905, ch. 85, § 1; C.S. 1910, § 3890; C.S. 1920, § 4954; R.S. 1931, § 91-404; C.S. 1945, § 24-805; W.S. 1957, § 36-211; Laws 1965, ch. 156, § 1.)

Effective date. — Section 2, ch. 85, Laws 1905, makes the act effective from and after passage. Approved February 21, 1905.

State is not prohibited from granting rights-of-way across university lands. Ross v. Trustees of Univ. of Wyo., 30 Wyo. 433, 222 P. 3, rehearing denied, 31 Wyo. 464, 228 P. 642 (1924).

Legislature is not precluded from authorizing land board to grant rights-of-way across university lands. Ross v. Trustees of Univ. of Wyo., 30 Wyo. 433, 222 P. 3, rehearing denied, 31 Wyo. 464, 228 P. 642 (1924).

Lands granted for university purposes, within statute, are "state lands," authorizing state board of land commissioners to grant rights-of-way across them. Ross v. Trustees of Univ. of Wyo., 30 Wyo. 433, 222 P. 3, rehearing denied, 31 Wyo. 464, 228 P. 642 (1924).

Right to construct and operate irrigation ditches. — Lands conveyed with provisions for right-of-way to the United States are subject to the right of the United States thereafter to construct and operate irrigation ditches for a reclamation project. Ide v. United States, 263 U.S. 497, 44 S. Ct. 182, 68 L. Ed. 407 (1923).

TITLE 39 Taxation and Revenue

* * *

CHAPTER 1 Generally

* * *

ARTICLE 2. EXEMPTIONS

§ 39-1-201. Exemptions enumerated.

(a) The following property is exempt from property taxation:

* * *

(xxviii) Lands for mines or mining claims as prescribed by section 3, article 15, Wyoming constitution;

* * *

CHAPTER 2

Assessment

Cross reference. — As to exemption from taxation of bonds and other securities issued by University of Wyoming, see § 21-17-446. Am. Jur. 2d and C.J.S. references. — 72 Am. Jur. 2d State and Local Taxation §§ 704 to 833. 84 C.J.S. Taxation §§ 349 to 488.

ARTICLE 1. GENERALLY

Cross references. — For constitutional provision as to assessment of lands and improvements thereon, see art. 15, § 1, Wyo. Const. For constitutional provision as to assessment of coal lands for taxation, see art. 15, § 2, Wyo. Const. For constitutional provision requiring uniformity of assessment, see art. 15, § 11, Wyo. Const. As to assessment by cities and towns for local improvements, and as to collection thereof generally, see § 15-6-401 to 15-6-449. As to special assessments for construction of sewer and water mains by cities and towns, see § 15-7-442. As to determination of assessed valuation of county, and as to procedure in case of default, etc., of county

assessor or county commissioners, see § 18-3-109. As to county tax assessors generally, see §§ 18-3-201 to 18-3-204. As to penalty for interfering with county assessor, see § 18-3-205. As to assessment of tax for maintaining nuisance when permanent injunction issues, see § 6-12-107. As to methods of levying, etc., taxes and assessments in connection with water conservancy districts, see §§ 41-3-770 to 41-3-779. As to dividing counties into assessment districts, see § 39-2-301. For duty of board of county commissioners to furnish suitable assessment rolls to county assessor, see § 39-2-301. As to county boards of equalization, see § 39-2-302.

* * *

ARTICLE 2. STATE ASSESSMENTS

§ 39-2-201. Generally; reports.

- (a) The board shall annually value the following property for taxation:
 - (i) The gross product of all mines and mining claims;
 - (ii) Property of pipeline companies;
 - (iii) Property of electric utilities;
 - (iv) Property of railroad companies;
 - (v) Property of car companies;
 - (vi) Property of telephone and telegraph companies which have more than two thousand dollars (\$2,000.00) in assessed value;
 - (vii) Property of other public utilities.
- (b) Annually, on or before the dates hereafter indicated, any person whose property is subject to subsection (a) of this section shall sign under oath and submit a statement listing such information relative to the property and affairs of the company as the board may require to assess the property:
 - (i) Second Monday in February, mine or mining claim;

(ii) March 1, car companies;

(iii) April 1, pipeline companies, electric utilities, telephone and telegraph companies and other public utilities;

(iv) May 1, railroad companies.

(c) If the statement provided by subsection (b) of this section is not filed, the board shall value and assess the property from the best information available. The board may use information other than contained in the statement provided by subsection (b) of this section to determine the taxable value of the property provided by subsection (a) of this section.

(d) Following determination of the taxable value of property subject to subsection (a) of this section, the board shall notify the taxpayer of the value assessed by mail. The person assessed may file written objections to the assessment within fifteen (15) days following receipt of notice and appear before

the board at a time specified by the board.

(e) Annually, on or before the dates hereafter indicated, or as soon thereafter as the taxable value is determined, the board shall certify the valuation determined by the board to the county assessor of the county in which the property is located, to be entered upon the assessment rolls of the county:

(i) June 1, mines and mining claims, pipeline companies, electric utilities

and other public utilities;

(ii) First Monday in June, telephone and telegraph companies;

(iii) First Monday in July, railroad companies. (Laws 1901, ch. 81, §§ 1, 2; 1903, ch. 81, §§ 2, 4; C.S. 1910, §§ 2362, 2363, 2450, 2452; Laws 1917, ch. 11, § 3; C.S. 1920, §§ 2816, 2817, 2907, 2909; Laws 1921, ch. 77, §§ 1 to 3; ch. 84, §§ 1, 2; 1923, ch. 57, §§ 2, 9; ch. 71, §§ 2, 4 to 6, 8; 1931, ch. 73, §§ 42, 43, 46, 48, 152, 154, 155, 157, 160, 162; R.S. 1931, §§ 115-517, 115-518, 115-602, 115-604, 115-1601, 115-1602, 115-1701 to 115-1703, 115-1802, 115-1809, 115-2002, 115-2004 to 115-2006, 115-2008; Laws 1937, ch. 27, § 1; ch. 98, § 1; C.S. 1945, §§ 32-1002, 32-1004, 32-1101, 32-1102, 32-1201 to 32-1203, 32-1302, 32-1309, 32-1402, 32-1404 to 32-1406, 32-1408, 32-2101, 32-2102; Laws 1957, ch. 49, §§ 2, 5; W.S. 1957, §§ 39-223, 39-225, 39-333, 39-334, 39-246 to 39-248, 39-252, 39-254, 39-257, 39-258, 39-264, 39-268, 39-269, 39-272, 39-274, 39-276 to 39-278; Laws 1975, ch. 12, § 1; 1977, ch. 45, § 1.)

Repealing clause. — Section 9, ch. 71, Laws 1923, repealed § 2813, ch. 173, C.S. 1920, and all laws and parts of laws in conflict therewith.

Effective dates. — Section 10, ch. 71, Laws 1923, makes the act effective from and after passage. Approved February 26, 1923.

Section 2, ch. 12, Laws 1975, provides: "This

act is effective January 1, 1976."

Local assessments. — Act which required auditor to furnish board of equalization list for assessment of railroad and telegraph property, and required board to value and assess such property, withdrew duty of assessing fractional parts of companies' property from local assessors. Union Pac. Ry. v. Cheyenne, 113 U.S. 516, 5 S. Ct. 601, 28 L. Ed. 1098 (1885).

Discretion of board. — The weight to be given factors in the unit system or to items otherwise to be valued in arriving at valuation of the whole is a matter exclusively within the discretion of the board, and when that discretion is exercised without impropriety, the district court could not, and the supreme court will not, disturb it. Chicago, B. & Q.R.R. v. Bruch, 400 P.2d 494 (Wyo. 1965).

Refusal to accept returns not proof of failure to consider them. — That the board would not accept returns or statements either in the amounts shown therein or in their bearing upon the ultimate valuation established for tax purposes is not proof that they were not considered. Chicago, B. & Q.R.R. v. Bruch, 400

P.2d 494 (Wyo. 1965).

Overvaluation by state tax officials resulting from error of judgment will not support claim of discrimination, but there must be something equivalent to fraudulent purpose or intent to disregard fundamental principle of uniformity before collection of part of tax will be enjoined. Rowley v. Chicago & N.W. Rv., 293 U.S. 102, 55 S. Ct. 55, 79 L. Ed. 222 (1934).

Opportunity to object. - Levy of tax before owner of property has had an opportunity to object to the assessment is invalid. Hecht v.

Boughton, 2 Wyo. 385.

Law review. - For article, "Administration of

the General Property Tax in Wyoming," see 4 Wyo. L.J. 227.

Am. Jur. 2d, Al. R and C.J.S. references, -71 Am. Jur. 2d State and Local Taxation 55 402 to 420, 438 to 442.

Taxation of foreign-owned railroad rolling stock temporarily within state, 49 ALR 1099.

Property within provision in relation to local taxation of railroad property under statute or constitution providing for assessment or taxation of railroad property by state commission or board, 80 ALR 252.

84 C.J.S. Taxation §§ 184, 354, 396, 400, 420,

427, 429, 430, 432, 442, 538.

§ 39-2-202. Valuation of mine products.

(a) Based upon the information received or procured pursuant to W.S. 39-2-201 (b) or (c), the board shall annually value the gross product for the preceding calendar year, in appropriate unit measures of all mines and mining claims from which valuable deposits are produced, at the fair cash market value of the product at the mine or mining claim where produced, after the mining or production process is completed.

(b) The mining or production process is deemed completed when the mineral product is removed from the pit, shaft, mine or well, and prior to any benefication or further processing is placed in storage prior to transportation to market, or in the case of natural gas, in the pipeline for transportation to market.

(c) If the product as defined in subsection (b) of this section is sold at the mine or mining claim, the fair cash market value shall be deemed to be the price

established by bona fide arms-length sale.

(d) In the event the product as defined in subsection (b) of this section is not sold at the mine or mining claim by bona fide arms-length sale, or if the product of the mine is used without sale, the department shall determine the fair cash market value by application of recognized appraisal techniques, (Laws 1903, ch. 81, § 3; C.S. 1910, § 2451; Laws 1917, ch. 11, § 3; C.S. 1920, § 2908; Laws 1913, ch. 73, § 47; R.S. 1931, § 115-603; C.S. 1945, § 32-1003; W.S. 1957, § 39-224; Laws 1974, ch. 12, § 1; 1975, ch. 125, § 2; 1977, ch. 45, § 1.)

Cross references. - As to mines and minerals generally, see title 30. As to mine products taxes, see §§ 39-6-301 to 39-6-307.

Repealing clause. - Section 4, ch. 11, Laws 1917, repealed all laws and parts of laws in conflict therewith.

Effective dates. - Section 5, ch. 11, Laws 1917, makes the act effective from and after passage. Approved February 8, 1917.

Section 2, ch. 12, Laws 1974, makes the act effective immediately upon passage. Approved February 12, 1974.

Section 4, ch. 125, Laws 1975, makes the act effective immediately upon passage. Approved March 5, 1975.

Requirements of valuation. - While there may be different valuations for different property, the method or system used must lead to a fair value, and the properties must be assessed at a uniform rate. Hillard v. Big Horn Coal Co., 549 P.2d 293 (Wyo. 1976).

Method of valuation upheld. - A method of valuation which, as applied, had the effect of arriving at the value of the mineral at the mine by separating, as components of the total sales. price, the value attributable to processing or transportation and the value of the mineral at the mine was not arbitrary, capricious or an abuse of discretion, and its application was proper and legally justified. Hillard v. Big Horn Coal Co., 549 P.2d 293 (Wyo. 1976).

Market value defined. — The market value is not cost but the price which would be paid upon a sale between a willing seller and a willing buyer. C F & I Steel Corp. v. State Bd. of Equalization, 492 P.2d 529 (Wyo, 1972).

Where the property has no market value the value must be ascertained as nearly as possible by considering facts which would have weight between persons bargaining for the property. C F & I Steel Corp. v. State Bd. of Equalization, 492 P.2d 529 (Wyo. 1972).

All factors related to value are to be considered, and this requirement must be limited in terms of time. Hillard v. Big Horn Coal Co., 549 P.2d 293 (Wyo. 1976).

Element of profit. — One of the facts which would have weight as to the seller would be an element of profit. C F & 1 Steel Corp. v. State Bd. of Equalization, 492 P.2d 529 (Wyo. 1972).

The value of personal property includes the usual and reasonable profit to a mine operator. C F & I Steel Corp. v. State Bd. of Equalization, 492 P.2d 529 (Wyo. 1972); Hillard v. Big Horn Coal Co., 549 P.2d 293 (Wyo. 1976).

Royalty. - As a component of the value of coal as it comes from the mine, royalty must be included at its actual, not an artificial, amount. Hillard v. Big Horn Coal Co., 549 P.2d 293 (Wyo. 1976).

Royalty is a full component of the value of the coal at the mine, and is not to be apportioned between mining and processing as indirect costs may be. Hillard v. Big Horn Coal Co., 549 P.2d 293 (Wyo. 1976).

Factor of cost. — Cost is one of several factors which may be shown as an aid and guide to the court's evaluation of the proof of market value. C F & 1 Steel Corp. v. State Bd. of Equalization, 492 P.2d 529 (Wyo. 1972).

Cost of loading coal in a strip mine should be considered a mining expense rather than an expense of transportation and processing. Hillard v. Big Horn Coal Co., 549 P.2d 293 (Wyo. 1976).

Failure to consider cost of trucking to selling point is discriminatory. J. Ray McDermott & Co. v. Hudson, 370 P.2d 364 (Wyo. 1962).

Expenses of production and severance taxes from the prior year were properly included in making its allocation of indirect costs to arrive at the estimated true value of the coal at the mouth of the mine. Hillard v. Big Horn Coal Co., 549 P.2d 293 (Wyo. 1976).

CHAPTER 6 Specific Taxes

* * *

ARTICLE 3. MINE PRODUCTS TAXES

§ 39-6-301. Definitions.

(a) As used in this article:

(i) "Average daily production" means the qualified maximum total production of domestic crude petroleum and petroleum condensates including natural gas liquids produced from a property or lease during the preceding calendar year divided by the number of calendar days in that year times the number of wells which produced crude petroleum and petroleum condensates including natural gas liquids from that property or lease in that year. To qualify as maximum total production each well must have been maintained at the maximum feasible rate of production in accordance with recognized conservation practices and not significantly curtailed by reason of mechanical failure or other disruption in production;

(ii) "Stripper production" means a property or lease whose average daily production of crude petroleum and petroleum condensates including natural gas liquids did not exceed ten (10) barrels per day per well during the

preceding calendar year;

(iii) "Value of the gross product" means the valuation of the gross product for the preceding calendar year of all mines and mining claims as determined pursuant to W.S. 39-2-202;

(iv) "This article" means W.S. 39-6-301 through 39-6-306. (Laws 1977, ch.

51, § 1.)

Cross references.— As to mines and minerals generally, see title 30. As to oil and gas generally, see §§ 30-5-101 to 30-5-204. As to valuation of mine products, see § 39-2-202. As to

valuation of pipeline companies, see § 39-2-203. As to standards for natural gas, see §§ 40-9-101 to 40-9-105.

§ 39-6-302. Excise taxes on extraction of minerals.

- (a) There is levied an excise tax of two percent (2%) of the value of the gross product extracted upon the privilege of severing or extracting uranium, trona, coal, petroleum, natural gas, oil shale or any other fossil fuel in the state. The proceeds from this tax shall be deposited into the permanent Wyoming mineral trust fund.
- (b) In addition to the excise tax imposed by subsection (a) of this section there is levied an excise tax of two percent (2%) of the value of the gross product extracted upon the privilege of severing or extracting any valuable deposit in the state except stripper production. The proceeds from this tax shall be deposited

into the general fund.

(c) In addition to the other excise taxes provided by this section there is levied upon the privilege of extracting coal an excise tax of one and one-half percent (1½%) of the value of the gross product extracted. The proceeds from this tax shall be deposited in the Wyoming water development account or the general fund pursuant to W.S. 39-6-305.

(d) In addition to the other excise taxes provided by this section there is levied an excise tax on the privilege of extracting coal of one percent (1%) of the value of the gross product extracted. The proceeds from this tax shall be transferred

to the highway fund.

(e) In addition to the other excise taxes provided by this section, there is levied an excise tax on the privilege of extracting coal of one-half of one percent (.5%) of the value of the gross product extracted. The proceeds from the tax shall be

deposited into the permanent Wyoming mineral trust fund.

(f) In addition to the other excise taxes provided for in this section, there is hereby levied upon the privilege of extracting trona, coal and uranium an excise tax of one and one-half percent (1½%) of the value of the gross product extracted. The proceeds from the tax are payable to the department of revenue and taxation and shall be deposited in the capital facilities revenue account within the earmarked revenue fund. The tax levied in this subsection shall expire on January 1 next following the year in which the taxes collected pursuant to this subsection total two hundred fifty million dollars (\$250,000,000.00). (Laws 1975, ch. 125, § 1; 1977, ch. 51, § 1; ch. 155, §§ 2, 4; ch. 189, §§ 1, 2.)

Cross references. — As to authorization for excise tax on severing or extracting minerals, see art. 15, § 19, Wyo. Const. As to the Wyoming Funds Consolidation Act, see §§ 9-7-501 to 9-7-516.

The 1977 amendments. — Section 2, ch. 155, Laws 1977, amended § 39-227.1:1, W.S. 1957, the subject matter of which section appears in the revised title as this section. The amendment added subsection (h) which levied an excise tax upon the privilege of extracting trona, coal and uranium.

Section 4, ch. 155, Laws 1977, effective January 1, 1978, redesignated § 39-227.1:1 (h), W.S. 1957, as added by § 2, ch. 155, Laws 1977,

as subsection (f) of this section.

Section 1, ch. 189, Laws 1977, amended 5 39-227.1:1, W.S. 1957, the subject matter of which section appears in the revised title as this section. The amendment deleted "uranium" following "saline" and inserted "uranium" following "except" in subsection (a), inserted

"uranium" in both of the first sentences of subsections (b) and (c) and added subsections (e), (f) and (g).

Section 2, ch. 189, Laws 1977, inserted "uranium" in the first sentence of subsection (a) and added subsections (c), (d) and (e).

Effective dates. — Section 4, ch. 125, Laws 1975, makes the act effective immediately upon

passage. Approved March 5, 1975.

Section 5, ch. 155, Laws 1977, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 4, 1977.

Section 4, ch. 189, Laws 1977, reads: "Section 2 of this act is effective January 1, 1978."

Section 5, ch. 189, Laws 1977, reads: "Section 1 of this act is effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. and is repealed effective January 1, 1978." Approved March 14, 1977.

§ 39-6-303. Severance tax on extraction or production of coal; expiration of tax.

(a) In addition to other taxes provided by law there is levied a severance tax upon the privilege of extracting or producing coal in the state of a percentage of the value of the gross product of the coal extracted or produced according to the following schedule:

(i) For coal produced in calendar year 1975, a tax of eight-tenths of one

percent (.8%);

(ii) For coal produced in calendar year 1976, a tax of one and two-tenths percent (1.2%);

(iii) For coal produced in calendar year 1977, a tax of one and six-tenths percent (1.6%);

(iv) For coal produced in calendar year 1978 and all subsequent years

until the expiration of this tax, a tax of two percent (2%).

(b) The tax levied in this section expires on January 1 following the year in which the cumulative taxes collected pursuant to this section total one hundred sixty million dollars (\$160,000,000.00). (Laws 1969, ch. 193, § 1; 1974, ch. 19, § 1; 1975, ch. 67, § 1; ch. 120, § 1; ch. 125, § 3; 1977, ch. 51, § 1; ch. 189, §§ 1, 2.)

Cross references. — As to authorization for excise tax on severing or extracting minerals, see art. 15, § 19, Wyo. Const. As to coal mines generally, see §§ 30-3-101 to 30-3-605.

The 1977 amendments. — Section 1, ch. 189, Laws 1977, amended § 39-227.1, W.S. 1957, the subject matter of which section appears in the revised title as this section. The amendment substituted "is levied an excise" for "shall be a severance" and inserted "of the gross product extracted or" in the introductory paragraph of subsection (f) and substituted "one hundred sixty million dollars (\$160,000,000.00)" for "one hundred twenty million dollars (\$120,000,000.00)" at the end of subsection (g).

Section 2, ch. 189, Laws 1977, substituted "one hundred sixty million dollars (\$160,000,000.00)" for "one hundred twenty million dollars (\$120,000,000.00)" at the end of subsection (b).

Effective dates. - Section 3, ch. 19, Laws

1974, makes the act effective immediately upon passage. Approved February 13, 1974.

Section 3, ch. 120, Laws 1975, makes the act effective immediately upon passage. Approved March 5, 1975.

Section 4, ch. 125, Laws 1975, makes the act effective immediately upon passage. Approved March 5, 1975.

Section 4, ch. 189, Laws 1977, reads: "Section 2 of this act is effective January 1, 1978."

Section 5, ch. 189, Laws 1977, reads: "Section 1 of this act is effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. and is repealed effective January 1, 1978." Approved March 14, 1977.

Law review. — For comment, "Coping with Expansion: The State as Local Government Financier," see 10 Land & Water L. Rev. 577

(1975).

§ 39-6-304. Computation of valuation and tax; notification; when payable; appeal and refund provisions; deduction of taxes from amounts due interest owners.

- (a) The department shall compute the value of the gross production returned for the preceding calendar year, shall compute the amount of tax levied and shall notify each taxpayer of the amount due on or before the first weekday in July.
- (b) The taxes imposed by this article are due and payable to the department on August 1 and are delinquent if unpaid by September 1.

- (c) Any taxpayer who feels aggrieved by the valuation and taxes levied by this article may appeal to the board. The appeal does not relieve the taxpayer from paying the tax when due and payable nor does the payment invalidate the appeal. No restraining order or injunction shall be granted or issued by any court or judge to restrain or enjoin the collection of any tax, interest or penalty imposed by this article.
- (d) Any excess tax found to have been paid, whether as the result of an appeal or erroneous assessment shall be refunded to the person paying the tax. All applications for refunds shall be made within two (2) years from the payment of the erroneous tax.
- (e) Any taxpayer paying the taxes imposed by this article on any valuable deposit may deduct the taxes paid from any amounts due or to become due to the interest owners of such valuable deposit in proportion to the interest ownership. (Laws 1969, ch. 193, §§ 2, 4, 5, 7; 1974, ch. 19, § 1; 1975, ch. 120, § 1; 1977, ch. 51, § 1.)

Cross references. — As to valuation of mine products, see § 39-2-202. As to actions to enjoin collection of or to recover back taxes, see § 39-3-203.

Effective dates. - Section 3, ch. 19, Laws

1974, makes the act effective immediately upon passage. Approved February 13, 1974. Section 3, ch. 120. Laws 1975, makes the

act effective immediately upon passage.

Approved March 5, 1975.

§ 39-6-305. Disposition of revenue collected.

- (a) All revenue received under this article shall be transferred to the state treasurer.
- (b) The state treasurer shall transfer revenue collected under W.S. 39-6-302 (a) to the permanent mineral trust fund.
- (c) The state treasurer shall transfer revenue collected under W.S. 39-6-302 (b) to the general fund.
- (d) The state treasurer shall transfer revenue collected under W.S. 39-6-303 to an account within the earmarked revenue fund. Any unexpended balance in the account may be invested by the state treasurer and interest earned shall be credited to the account.
- (e) The monies in the account under subsection (d) of this section shall be administered by the Wyoming farm loan board and dispersed by the board for use in areas which are directly or indirectly impacted by the production of coal to assist in financing public water, sewer, highway, road or street projects. Not less than fifty percent (50%) of the revenue to the account shall be used to finance state highway, county road or city street projects. The Wyoming farm loan board may make grants, or may pledge or otherwise contract with any county, city, town, sewer district, water district or other political subdivision of the state, or the state highway department, with respect to the use of the revenues under W.S. 39-6-303. Any recipient of revenues or a pledge of future revenues under this subsection, may, with the approval of the Wyoming farm loan board pledge wholly or in part for the payment of any obligation to the Wyoming community development authority or other obligee the monies derived or to be derived from the excise tax subject to any existing pledges or other

contractual limitations theretofore imposed.

(f) All applications for project assistance under subsection (e) of this section shall be made directly to the Wyoming farm loan board in whatever form the board may prescribe. The board may submit any application to the state highway department, the department of economic planning and development or any other state agency for review and recommendation before approving or disapproving the application. Before any application is approved the Wyoming farm loan board shall determine by proper investigation:

(i) That the applicant has fully utilized or will fully utilize all local revenue sources reasonably available for financing the project for which application

is made:

(ii) That local revenue sources reasonably available for financing the project are insufficient to finance the project; and

(iii) That the project applied for is necessary.

- (g) The state treasurer shall transfer revenue collected under W.S. 39-6-302 (c) to the Wyoming water development account within the earmarked revenue fund until the account reaches a balance of one hundred million dollars (\$100,000,000.00). When the one hundred million dollars (\$100,000,000.00) balance is reached the revenue collected shall be deposited into the general fund. Each time the balance in the Wyoming water development account is reduced to fifty million dollars (\$50,000,000.00), the revenue collected shall again be deposited into the Wyoming water development account. Any expenditures for any water development project shall be authorized by the legislature in a separate bill.
- (h) The state treasurer shall transfer revenue collected under W.S. 39-6-302 (d) to the highway fund.
- (j) The state treasurer shall transfer revenue collected under W.S. 39-6-302 (e) to the permanent Wyoming mineral trust fund. (Laws 1969, ch. 193, §§ 10, 11; 1974, ch. 16, § 2; ch. 19, § 1; 1975, ch. 120, § 1; 1977, ch. 51, § 1; ch. 189, §§ 1, 2.)

Cross references. - As to disposition of tax collections generally, see § 39-4-101. As to the state department of economic planning and development, see §§ 9-3-301 to 9-3-321. As to the Wyoming Funds Consolidation Act, see §§ 9-7-501 to 9-7-516. As to the Wyoming community development authority. §§ 9-18-101 to 9-18-123. As to the Wyoming farm loan board, see §§ 11-39-101 to 11-39-408. As to the state highway department, see §§ 24-2-101 to 24-2-113. As to approval of advances to school districts from permanent Wyoming mineral trust fund for anticipated capital construction entitlements, see § 21-15-104.

The 1977 amendments. — Section 1, ch. 189, Laws 1977, amended § 39-227.10, W.S. 1957, the subject matter of which section appears in the revised title as this section. The amendment substituted "fifty percent (50%)" for "sixty percent (60%)" in the second sentence of subsection (b).

Section 2, ch. 189, Laws 1977, substituted "fifty percent (50%)" for "sixty percent (60%)" in the second sentence of subsection (e) and added subsections (g), (h) and (j).

Effective dates. — Section 12, ch. 193, Laws 1969, makes the act effective from and after passage. Approved March 6, 1969.

Section 8, ch. 16, Laws 1974, makes the act effective July 1, 1975.

Section 3, ch. 19, Laws 1974, makes the act effective immediately upon passage. Approved February 13, 1974.

Section 3, ch. 120, Laws 1975, makes the act effective immediately upon passage. Approved March 5, 1975.

Section 4, ch. 189, Laws 1977, reads: "Section 2 of this act is effective January 1, 1978."

Section 5, ch. 189, Laws 1977, reads: "Section 1 of this act is effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. and is repealed effective January 1, 1978." Approved March 14, 1977.

Law review. — For comment, "Coping with Expansion: The State as Local Government Financier," see 10 Land & Water L. Rev. 577 (1975).

§ 39-6-306. Same; disposition of money received and collected under section 39-6-302 (f).

- (a) All revenues received under W.S. 39-6-302 (f) shall be deposited in the capital facilities revenue account within the earmarked revenue fund. Any unexpended balance in the capital facilities revenue account may be invested by the state treasurer and interest earned shall be credited to the capital facilities revenue account.
- (b) The monies in the capital facilities revenue account shall be administered by the capitol building commission and disbursed by the commission for the following purposes:
 - (i) Refunding, repurchase and retirement of any bonds which are presently outstanding against that certain state office building known as the Hathaway building;
 - (ii) Planning, designing, maintaining, repairing, operating, leasing, managing, equipping, and financing permanent capital facilities for the governmental operations of the state of Wyoming. The University of Wyoming board of trustees and the community colleges of the state acting through the community college commission, may request the capitol building commission to assist them in planning, designing, repairing, equipping, and financing permanent capital facilities in whole or in part, and the capitol building commission may make grants, or may pledge or otherwise contract with the university or any community college or the state highway department with respect to the revenues deposited in the account. The capitol building commission shall submit a report to each session of the legislature establishing priorities for the capital facilities revenue account and recommend which facilities should be authorized by that session of the legislature. For this report the capitol building commission may expend up to a total of one hundred thousand dollars (\$100,000.00) for initial planning and design for capital facilities being recommended. Any other capital facility expenditures shall be authorized by the legislature in a separate bill;
 - (iii) Fifteen percent (15%) of the tax revenues deposited in the capital facilities revenue account shall be transferred to a school district capital construction account within the earmarked revenue fund to finance the school districts capital construction entitlements authorized by W.S. 21.1-290 through 21.1-293 [§§ 21-15-101 to 21-15-104], or such proportionate part of each entitlement as the revenues available under this paragraph bears to the total of all such entitlements;
 - (iv) Ten percent (10%) of the tax revenues deposited in the capital facilities revenue account shall be transferred to a community college

construction account which account shall be created within the community college commission to finance in whole or in part community college construction according to a formula which shall consider need and priorities which shall be set by the community college commission after application to the community college commission by the community colleges of the state of Wyoming and which shall be submitted to the legislature for approval as part of the general community college budget. Nothing provided herein shall prevent the use of additional funds available under this act to finance community college construction; and

(v) Constructing, repairing and acquiring highways and related facilities, in an amount not to exceed six million dollars (\$6,000,000.00) and authorized to the state highway commission by separate bill. Upon authorization and expenditure of such six million dollars (\$6,000,000.00), this paragraph shall

be null and void.

(c) The state treasurer of the state of Wyoming is authorized to invest any part of the funds known as the permanent land fund and the permanent Wyoming mineral trust fund in the bonds authorized by subsection (d) of this section.

- (d) To accomplish the purpose of this section, the capitol building commission may accept donations and grants-in-aid from any source, and in addition thereto may borrow money in an amount not to exceed one hundred million dollars (\$100,000,000.00) principal amount and shall evidence such loan or loans by the issuance of revenue bonds. The bonds shall be in denominations of five thousand dollars (\$5,000.00) or multiples thereof, each, and shall be numbered from one (1) upwards and, except as hereinafter provided are payable in numerical order with interest at a rate not exceeding eight percent (8%) per annum, payable annually. The bonds may be issued for a term not exceeding thirty (30) years and bonds in substantially equal amounts shall be retired in each year of the term for which issued. The capitol building commission may elect to defer any payment of principal until such building is occupied. The bonds shall be known as "Wyoming capital facilities bonds." The bonds are payable only from and secured by an irrevocable pledge of rental revenues other than monies to be appropriated by the legislature or excise tax revenues provided by this section and the bonds shall so provide. If in any year the pledged income exceeds the amount necessary to retire the bonds and interest due during that year, the excess shall be used to retire bonds with the largest number then outstanding on any interest-paying date, and the bonds shall so provide.
- (e) The capitol building commission may adopt such rules as are necessary to implement this section. (Laws 1977, ch. 155, §§ 1, 4.)

Cross references. — As to disposition of tax collections generally, see § 39-4-101. As to the Wyoming Funds Consolidation Act, see §§ 9-7-501 to 9-7-516. As to the capital building commission generally, see §§ 9-8-101, 9-8-102. As to the university of Wyoming board of trustees, see §§ 21-17-201 to 21-17-206. As to the community college commission, see §§ 21-18-210, 21-18-211. As to the state highway department and state highway commission, see

§§ 24-2-101 to 24-2-113.

Editor's note. — Chapter 133, Laws 1977, authorized certain capital facilities expenditures from the capital facilities revenue account.

The 1977 amendment, effective January 1, 1978, redesignated § 39-227.12, W.S. 1957, as enacted by § 1, ch. 155, Laws 1977, as § 39-6-305(k). Section 39-6-305(k) was redesignated as § 39-6-306 and § 39-6-306, enacted by § 1, ch. 51, Laws 1977, was

redesignated as § 39-6-307.

Effective date. — Section 5, ch. 155, Laws 1977, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 4, 1977.

§ 39-6-307. Penalty; exception; interest; collection; persons liable; tax is a lien.

(a) If any person fails to make or file a return as required by this article the department may impose a penalty of twenty-five percent (25%) of the taxes due unless the person shall for good cause obtain from the department an extension of time for filing prior to the due date for filing.

(b) Interest at the rate of eleven percent (11%) per annum shall be added to

all delinquent taxes.

(c) Taxes due together with interest, penalties and costs shall be collectible by

the department by appropriate judicial proceedings.

(d) Any person extracting valuable products subject to this article and any person owning an interest in the valuable products to the extent of their interest ownership are liable for the payment of the taxes imposed by this article together with any penalties and interest. The tax is a lien upon the interest of any owner and the interest of any person extracting any valuable deposit from and after the time they are extracted until the taxes are paid. (Laws 1969, ch. 193, §§ 8, 9; 1974, ch. 19, § 1; 1977, ch. 51, § 1.)

Cross references. — As to tax collections generally, see §§ 39-3-101 to 39-3-203. As to penalties generally, see § 39-5-101.

Effective date. — Section 3, ch. 19, Laws 1974, makes the act effective immediately upon passage. Approved February 13, 1974.

ARTICLE 4. SALES TAX

§ 39-6-404. Tax imposed.

(a) Except as provided by W.S. 39-6-405, there is levied and shall be paid by the purchaser on all sales of twenty-five cents (\$.25) or more an excise tax of three percent (3%) upon:

* * *

(x) The sales price paid for contract seismographic surveying, contract geophysical surveying and other contract geophysical exploration operations calculated to reveal the existence of geologic conditions favorable to the accumulation of oil or gas, and for all services rendered in and all types of coring, logging, testing, stimulating, perforating, cementing, completing, recompleting, repairing, equipping for production or

abandonment, and all other services in completing or attempting to complete any well for production of oil or gas or as an injection or disposal well for the injection of water, gas, air, steam or other substances into any underground stratum, including but not limited to all types of logging, testing, stimulating, perforating or cementing any such well or formation encountered therein;

* * *

§ 39-6-405. Exemptions.

(a) The following sales are exempt from the excise tax imposed by this article:

* * *

(vii) Sales of the services of professional engineers, geologists or members of similar professions and charges made by contractors, whether on a per diem, lineal footage, fee or other contract basis for the drilling of any wells for the production or attempted production of oil or gas, or for the deepening of any wells previously drilled for oil or gas below the maximum depth to which they were initially drilled, or for the drilling of stratigraphic test or core holes for the sole purpose of obtaining geologic information;

ARTICLE 5. USE TAX

* * *

§ 39-6-504. Tax imposed; liability; exception.

(a) Except as otherwise provided, there is levied and shall be paid by the purchaser an excise tax of three percent (3%) upon sales in Wyoming. The vendor shall collect the tax and give the purchaser a receipt therefor displaying the tax paid separately.

(b) Persons storing, using or consuming tangible personal property are liable for the tax imposed by this article. The liability is not extinguished until the tax has been paid to the state but a receipt given to the person by a registered vendor in accordance with subsection (a) of this section is sufficient to relieve the purchaser from further liability.

(c) Tangible personal property sold by any person for delivery in this state is deemed sold for storage, use or consumption herein and is subject to the tax imposed by this article unless the person selling the property has received from the purchaser a signed certificate stating the property was purchased for resale and showing his name and address. (Laws 1937, ch. 118, § 3; C.S. 1945,

§ 32-2603; Laws 1951, ch. 153, § 1; W.S. 1957, § 39-311; Laws 1959, ch. 82, § 1; 1963, ch. 144, §§ 1, 2; 1965, ch. 119, § 1; 1967, ch. 211, §§ 1, 2; 1975, ch. 97, § 2; 1977, ch. 46, §§ 1, 2, 6; ch. 51, § 1.)

* * *

§ 39-6-505. Exemptions.

(a) The following sales are exempt from the excise tax imposed by this article:

* * *

(x) Rolling stock including locomotives purchased by interstate railroads, aircraft purchased by interstate air carriers and trucks and trailers purchased by interstate carriers which are holders of valid United States interstate commerce commission or civil aeronautics board permits or authorities or which are operating in interstate commerce under exemption clauses in federal law if they are to be substantially used in interstate commerce;

* * *

Doing business in state. — Sending engineer into state for purpose of supervising installation of equipment is merely incidental to interstate commerce, and does not constitute doing business in this state. Creamery Package Mfg. Co. v. State Bd. of Equalization, 62 Wyo. 265, 166 P.2d 952 (1946).

Goods purchasable in state. — Mining machinery not generally stocked in state and bought outside state for use in Wyoming but which at time of purchase was promptly purchasable in Wyoming through regularly established agency was not exempt from use tax under this act. Manning & Martin, Inc. v. State Bd. of Equalization, 58 Wyo. 425, 133 P.2d 373 (1943).



1980 Cumulative Supplement

Constitution of the State of Wyoming ARTICLE 1. DECLARATION OF RIGHTS

* * *

§ 32. Eminent domain.

Intended purpose of this section and § 1-26-401 is to facilitate development of this state's resources. Coronado Oil Co. v. Grieves, 603 P.2d 406 (Wyo. 1979).

Public policy against landlocking property. — The right to condemn a way of necessity under constitutional and statutory provisions is an expression of public policy against landlocking property and rendering it useless. Coronado Oil Co. v. Grieves, 603 P.2d 406 (Wyo. 1979).

Eminent domain defined. — Eminent domain is the right and power of the state to appropriate private property to a particular user for the purpose of promoting the general welfare, Coronado Oil Co. v. Grieves, 603 P.2d 406 (Wyo, 1979).

Quoted in Associated Enterprises, Inc. v. Toltec Watershed Imp. Dist., 578 P.2d 1359 (Wyo. 1978).

ALR3d references. — Good will as element of damages for condemnation of property on which private business is conducted, 81 ALR3d 198.

Right of owner of land not originally taken or purchased as part of adjacent project to recover, on enlargement of project to include adjacent land, enhanced value of property by reason of proximity to original land, 95 ALR3d 752.

* * *

ARTICLE 7. EDUCATION; STATE INSTITUTIONS; PROMOTION OF HEALTH AND MORALS; PUBLIC BUILDINGS

* * *

§ 2. School revenues.

School district not entitled to Eleventh Amendment immunity. — Although a school district obtains more than one-fourth of its funds from the state of Wyoming, the school district on balance is not entitled to an Eleventh Amendment immunity as an arm of the state of Wyoming. Stoddard v. School Dist. No. 1, 429 F. Supp. 890 (D. Wyo. 1977).

Since school board is more like county

than arm of state. — The characteristics of Wyoming school districts demonstrate that in Wyoming on balance a local school board is more like a county or city than it is like an arm of the state. Stoddard v. School Dist. No. 1, 429 F. Supp. 890 (D. Wyo. 1977).

Cited in Witzenburger v. State ex rel. Wyoming Community Dev. Auth., 575 P.2d 1100 (Wyo. 1978).

ARTICLE 8. IRRIGATION AND WATER RIGHTS

§ 1. Water is state property.

Applied in Thayer v. City of Rawlins, 594 P.2d 951 (Wyo. 1979).

Quoted in State ex rel. Christopulos v. Husky Oil Co., 575 P.2d 262 (Wyo. 1978).

Law reviews.

See comment, "Marketing of Surplus Water

from Federal Reservoirs," 13 Land & Water L. Rev. 835 (1978).

See case note, "Importation Doctrine Applied to Water Transfers Within a River System: A Step Too Far," 15 Land & Water L. Rev. 99

§ 2. Board of control.

Power to insure maximum beneficial use of all water. - The board of control must, in order to insure proper administration and use of the state's water, be said to possess such powers as will insure the maximum beneficial use of all water without regard to its source. John Meier & Son v. Horse Creek Conservation Dist., 603 P.2d 1283 (Wyo. 1979).

Authority to change diversion point. -The authority of the board of control to change a point of diversion when they have no direct statutory authority is not subject to doubt as the board has broad powers, direct and implied. John Meier & Son v. Horse Creek Conservation Dist., 603 P.2d 1283 (Wyo. 1979).

Board's rights not in conflict with incident of land commissioners' trustee The board commissioners may, under § 36-7-322, accept from a defaulting water permittee the right to contract with other permittees as to the priority of water rights under a common permit as an incident of the board's trustee obligations and this right of contract is not related to, or in conflict with, the rights granted the board of control by this section. Dechert v. Christopulos. 604 P.2d 1039 (Wyo. 1980).

Unrestricted city right to use imported waters. - Where a city has the unrestricted right to reuse, successively use and make disposition of certain imported waters, there is nothing for the state engineer or the board to consider. Thayer v. City of Rawlins, 594 P.2d 951 (Wyo. 1979).

Stated in State ex rel. Christopulos v. Husky Oil Co., 575 P.2d 262 (Wyo. 1978).

Law reviews.

For article, "Industrial Siting Legislation: Wyoming Industrial Development Information and Siting Act - Advance or Retreat?" see 11 Land & Water L. Rev. 27 (1976).

See case note, "Importation Doctrine Applied to Water Transfers Within a River System: A Step Too Far," 15 Land & Water L. Rev. 99 (1980).

§ 3. Priority of appropriation.

Beneficial use is dependent upon particular circumstance of each case. John Meier & Son v. Horse Creek Conservation Dist., 603 P.2d 1283 (Wyo. 1979).

Effect of statutory shortcomings on right of water user. - While ideally efficient management of the state's water is desirable,

because of statutory or administrative shortcomings, a water user should not be required to suffer the loss of a valuable water right when there has been beneficial use. Snake River Land Co. v. State Bd. of Control, 560 P.2d 733 (Wyo. 1977).

§ 5. State engineer.

This provision was intended to give the engineer an unlimited uncontrolled authority over state waters. State ex rel. Christopulos v. Husky Oil Co., 575 P.2d 262 (Wyo. 1978).

Unrestricted city right to use imported waters. - Where a city has the unrestricted right to reuse, successively use, and make disposition of certain imported waters, there is nothing for the state engineer or the board to consider. Thayer v. City of Rawlins, 594 P.2d 951 (Wyo. 1979).

Stated in John Meier & Son v. Horse Creek Conservation Dist., 603 P.2d 1283 (Wyo. 1979).

Law reviews. - For article, "Industrial Siting Legislation: The Wyoming Industrial Development Information and Siting Act -

Advance or Retreat?" see 11 Land & Water L. Rev. 27 (1976).

See case note, "Importation Doctrine Applied to Water Transfers Within a River System: A Step Too Far," 15 Land & Water L. Rev. 99 (1980).

ARTICLE 9. MINES AND MINING

Sec.

3. Restrictions on employment in mines. [Repealed.]

§ 3. Restrictions on employment in mines. [Repealed.]

Section repealed. - The section was repealed by a constitutional amendment proposed by Laws 1977, House Joint Resolution

No. 3, p. 929, and adopted by a vote of the people on November 7, 1978.

§ 4. Right of action for injuries.

Compensation benefits take place of tort suit. - An injured miner whose employer has complied with the Wyoming law regarding worker's compensation does not have an

independent cause of action against his employer as compensation benefits take the place thereof. Jackson v. Dravo Corp., 603 F.2d 156 (10th Cir. 1979).

ARTICLE 10. CORPORATIONS

* * *

§ 7. What corporations are common carriers.

loquitur doctrine to accidents incurred by

ALR3d reference. - Application of res ipsa passenger while boarding or alighting from a carrier, 93 ALR3d 776.

* * *

ARTICLE 15. TAXATION AND REVENUE

§ 4. State levy limited.

Applied in Witzenburger v. State ex rel. Wyoming Community Dev. Auth., 575 P.2d 1100 (Wyo. 1978).

§ 19. Mineral excise tax; distribution.

Quoted in Witzenburger v. State ex rel. Wyoming Community Dev. Auth., 575 P.2d 1100 (Wyo. 1978).

* * *

ARTICLE 18. PUBLIC LAND AND DONATIONS

§ 1. Acceptance of lands from United States; sale of such lands.

Quoted in Witzenburger v. State ex rel. Wyoming Community Dev. Auth., 575 P.2d 1100 (Wyo. 1978).

* * *

Wyoming Statutes

TITLE 1 Code of Civil Procedure

* * *

CHAPTER 26 Eminent Domain

ALR3d references. — Eminent domain: right to condemn property owned or used by private educational, charitable, or religious organization, 80 ALR3d 833.

Eminent domain: validity of appropriation of property for anticipated future use, 80 ALR3d Good will as element of damages for condemnation of property on which private business is conducted, 81 ALR3d 198.

* * *

ARTICLE 4. WAYS OF NECESSITY FOR CERTAIN PURPOSES

§ 1-26-401. Right of eminent domain granted.

Intended purpose of art. 1, \$ 32, Wyo. Const., and this section is to facilitate the development of this state's resources. Coronado Oil Co. v. Grieves, 603 P.2d 406 (Wyo. 1979).

Obvious purpose of constitutional and statutory provisions is to provide a means whereby a landowner or owner of an interest in lands, enclosed on all sides by lands of others and unable to get to the land from a public road or highway, can get relief by condemning a right-of-way to it across intervening land. Coronado Oil Co. v. Grieves, 603 P.2d 406 (Wyo. 1979).

Public policy against landlocking property.

— The right to condemn a way of necessity under constitutional and statutory provisions is

an expression of public policy against landlocking property and rendering it uscless. Coronado Oli Co. v. Grieves, 603 P.2d 406 (Wyo. 1979).

Eminent domain defined. — Eminent domain is the right and power of the state to appropriate private property to a particular user for the purpose of promoting the general welfare. Coronado Oil Co. v. Grieves, 603 P.2d 406 (Wyo. 1979).

Eminent domain statutes strictly construed in favor of landowners. — Statutes conferring the power of eminent domain are to be strictly construed in favor of landowners so that no person will be deprived of the use and enjoyment of his property except by a valid exercise of the

power; however, this doctrine does not preclude the reasonable and sound construction of such statutes in light of the objectives and purposes sought to be attained. Coronado Oil Co. v. Grieves, 603 P.2d 406 (Wyo. 1979).

Activities included within "mining". — The exploration for oil and gas is "mining" within the meaning of this section and a "mine truck haul road" is included as a way of necessity in that it is necessary to haul out the mined petroleum

product, as well as to haul in the necessary oil well drilling equipment and supplies. Coronado Oil Co. v. Grieves, 603 P.2d 406 (Wyo. 1979).

Remedies not exclusive. — Where an appellant pursues some remedy under § 24-9-101 and does not seek redress by way of appeal from an unfavorable determination of that action, he is not precluded from pursuing a remedy under this section. Coronado Oil Co. v. Grieves, 603 P.2d 406 (Wyo. 1979).

§ 1-26-402. Condemnation and certificate of public necessity and convenience.

ALR3d reference. — Right of owner of land not originally taken or purchased as part of adjacent project to recover, on enlargement of project to include adjacent land, enhanced value of property by reason of proximity to original land, 95 ALR3d 752.

§ 1-26-405. Procedure for condemnation of property.

Eminent domain procedure. — Through this section, Rule 71.1, W.R.C.P. governs the procedure to be taken in the exercise of the

power of eminent domain. Coronado Oil Co. v. Grieves, 603 P.2d 406 (Wyo. 1979).

TITLE 9

Administration of the Government

* * *

CHAPTER 3

Agencies, Boards, Commissions and Departments Generally

ARTICLE 3. STATE DEPARTMENT OF ECONOMIC PLANNING AND DEVELOPMENT

§ 9-3-301. Created; purpose; composition.

Law review. — For comment, "Competitive Bidding on Public Works in Wyoming: Determination of Responsibility and

Preference," see 11 Land & Water L. Rev. 243 (1976).

* * *

§ 9-3-311. Authority and powers of department.

(b) In relation to water development projects authorized as provided in W.S. 41-1.45 [§ 41-2-115] and subsequent to specific legislative authorization for each project, the department shall have the authority and power:

Editor's note. — The introductory paragraph in subsection (b) has been set out to correct a typographical error in the main pamphlet.

Law review. — For comment, "Competitive Bidding on Public Works in Wyoming:

Determination of Responsibility and Preference," see 11 Land & Water L. Rev. 243 (1976).

ARTICLE 14. GEOLOGIST, GEOLOGICAL SURVEY AND TOPOGRAPHIC MAPPING

Division 1. State Geologist Generally

§ 9-3-1403. Office created; appointment; term.

(a) There shall be a state geologist of the state of Wyoming who shall be appointed by the governor by and with the consent of the senate. He shall hold his office for the term of six (6) years or until his successor is appointed and qualified.

(b) Effective July 1, 1979, appointments and terms shall be in accordance with W.S. 28-12-101 through 28-12-103.

(Laws 1979, ch. 17, § 2.)

The 1979 amendment designated the formerly undesignated provisions of this section as subsection (a), substituted "is" for "shall have been" in the second sentence of that subsection and added subsection (b).

Effective date. — Section 4, ch. 17, Laws 1979, makes the act effective on July 1, 1979.

Division 2. Geological Survey

§ 9-3-1422. State geologist as executive director; salary; duties; appointment and compensation of employees.

The state geologist shall also be the executive director of the geological survey, hereinafter referred to as the executive director. The executive director shall receive a salary to be fixed by the governor after consultation with the advisory board but not to exceed twelve thousand dollars (\$12,000.00). The executive director shall supervise and direct the day-to-day functions of the geological survey and with the advice and aid of the advisory board shall establish policy for the geological survey. When the public interest will be served thereby, the executive director, after consultation with the advisory board, may appoint such other employees as are found to be necessary to assist the executive director and the advisory board. All employees or assistants authorized by this act [§§ 9-3-1420 to 9-3-1429] shall be paid their necessary traveling and living expenses while traveling on official business at such rate and within such limits as may be applicable to other employees of the state of Wyoming.

(Laws 1979, ch. 44, § 1.)

The 1979 amendment substituted "The" for "Such" preceding "executive" and "twelve thousand dollars (\$12,000.00)" for "five thousand dollars (\$5,000.00)" in the second

sentence and "traveling" for "travelling" twice in the last sentence.

Effective date. — Section 2, ch. 44, Laws 1979, makes the act effective on July 1, 1979.

§ 9-3-1424. Same; appointment of members; vacancies.

The governor, by and with the consent of the senate, shall appoint the five (5) public members of the board in accordance with the provisions of this act [§§ 9-3-1420 to 9-3-1429]. Any vacancy caused by the death, removal, resignation or disqualification of any member of the board shall be filled as provided in W.S. 28-12-101.

(Laws 1979, ch. 17, § 2.)

The 1979 amendment deleted "shall" following "governor" and inserted "shall" in the first sentence and substituted the specific statutory reference for "by the governor for the

unexpired term wherein the vacancy occurred" at the end of the second sentence.

Effective date. — Section 4, ch. 17, Laws 1979, makes the act effective on July 1, 1979.

TITLE 18 Counties

CHAPTER 5 Planning and Zoning

ALR references.

Zoning: regulations creating and placing

"floating zones," 80 ALR3d 95.

Validity and construction of state or local regulation prohibiting off-premises advertising structures, 81 ALR3d 486.

Validity and construction of state or local regulation prohibiting the erection maintenance of advertising structures within a specified distance of street or highway, 81 ALR3d 564.

Application of zoning regulation to radio or television facilities, 81 ALR3d 1086.

Validity of zoning for senior citizen communities, 83 ALR3d 1084.

Zoning regulations as applied to homes or housing for the elderly, 83 ALR3d 1103.

Applicability of zoning regulation to nongovernmental lessee of government-owned property, 84 ALR3d 1187.

Applicability of zoning regulations to projects of nongovernmental public utility as affected by utility's having power of eminent domain, 87 ALR3d 1265.

ARTICLE 2. PLANNING AND ZONING COMMISSION

Law review. - For article, "Wyoming's Local Preliminary Discussion," see 14 Land & Water Governments and the Quality of Growth - A L. Rev. 491 (1979).

§ 18-5-201. Authority vested in board of county commissioners; inapplicability of chapter to incorporated cities and towns and mineral resources.

Application of article. - This article must be applied in such a way as to reasonably restrict the actions of boards of county commissioners. At the same time, however, to make the theories of planning meaningful, there must be a means to prevent changes in the conditions of a county pending the formulation of a comprehensive plan under § 18-5-202(b). The means necessary to maintain the status quo can be supplied by reference to the powers expressly and impliedly conferred by the County Zoning Act, taken in a light which is consistent with a reasonable exercise of police powers. Schoeller v. Board of County Comm'rs, 568 P.2d 869 (Wyo. 1977).

Board can adopt recommendations freezing building and land uses in unincorporated areas. - The express power of the board of county commissioners under this section to regulate and restrict the use of buildings and land in unincorporated areas of the county is sufficient in and of itself, or, in the alternative, necessarily implies the authority to adopt recommendations which would freeze such building and land uses. Schoeller v. Board of County Comm'rs, 568 P.2d 869 (Wyo. 1977).

And can enact freeze resolution without notice and hearing. - In order to make meaningful such a power as that to adopt recommendations which would freeze building land uses, the board of county commissioners necessarily must have the appurtenant power to enact a freeze resolution without notice and hearing. Schoeller v. Board of County Comm'rs, 568 P.2d 869 (Wyo. 1977).

But such power is subject to restrictions. — See Schoeller v. Board of County Comm'rs, 568 P.2d 869 (Wyo. 1977).

Law reviews.

As to the development of land use planning in Wyoming, see 12 Land & Water L. Rev. 73 (1977).

For article, "Wyoming's Local Governments

and the Quality of Growth — A Preliminary Discussion," see 14 Land & Water L. Rev. 491 (1979).

ALR3d reference. — Validity of zoning ordinances prohibiting or regulating outside storage of house trailers, motor homes, campers, vans and the like, in residential neighborhoods, 95 ALR3d 378.

TITLE 27 Labor and Employment

CHAPTER 1 General Provisions

Am. Jur. 2d, ALR and C.J.S. references.

Modern status as to duration of employment
where contract specifies no term but fixes daily
or longer compensation, 93 ALR3d 659.

Validity, construction and application of regulation regarding outside employment of governmental employees or officers, 94 ALR3d 1230.

§ 27-1-102. Doors at public places to open outward; handrails on stairs; enforcement.

ALR3d reference. — Liability for injuries in connection with revolving door on nonresidential premises, 93 ALR3d 132.

* * *

CHAPTER 4

Wages

Article 4. Prevailing Wage Act of 1967

Sec.

27-4-402. Definitions.

27-4-413. Inapplicability and exemptions from article.

Am. Jur. 2d, ALR and C.J.S. references. Modern status as to duration of employment where contract specifies no term but fixes daily or longer compensation, 93 ALR3d 659.

ARTICLE 1. IN GENERAL

§ 27-4-104. Payment of employee quitting or discharged; suit for wages.

Attorneys' fees are recoverable if there is v. Lampert Lumber Co., 591 P.2d 1225 (Wyo. specific statutory authority therefor. Schaefer 1979).

CHAPTER 5

Hours of Labor

§ 27-5-102. Working day in mines generally.

- (a) The lawful working day in all underground mines is eight (8) hours per day, except:
 - (i) In case of emergency;
- (ii) By mutual agreement between an employer and employee or employees' representative for a longer period of employment, but not to exceed sixteen (16) hours in any twenty-four (24) hour period. (Laws 1979, ch. 87, § 2.)

The 1979 amendment rewrote this section to the extent that a detailed comparison is impracticable.

Editor's note. — There is no subsection (b) in this section as it appears in the printed acts.

Construction of act. - Section 3, ch. 87, Laws

1979, reads: "Nothing in this act may be construed so as to alter the provisions of any collective bargaining contract."

Effective date. — Section 5, ch. 87, Laws 1979, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved February 21, 1979.

§§ 27-5-103 to 27-5-107.

Repealed by Laws 1979, ch. 87, § 4.

Construction of act. — Section 3, ch. 87, Laws 1979, reads: "Nothing in this act may be construed so as to alter the provisions of any collective bargaining contract."

Effective date. - Section 5, ch. 87, Laws 1979, makes the act effective immediately upon

completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved February 21, 1979.

TITLE 30 Mines and Minerals

CHAPTER 1

General Provisions

Substantial compliance with law sufficient to make claims. — Under the doctrine of pedis possessio, a trial court may depart from the strict requirements of actual physical possession of the properties in question and give recognition to the theory of a mining company that it could make claim to a large number of claims provided that it substantially complied with the requirements of the law. Continental Oil Co. v. Natrona Serv., Inc., 588 F.2d 792 (10th Cir. 1978).

Meaning of "pedis possessio". — Under the doctrine of pedis possessio, the party who makes

the first discovery of valuable minerals and who substantially complies with the location requirements of this chapter is entitled to the exclusive possession of the lands covered by the claim so long as the claimant continues in possession and performs the annual assessment work or the annual assessment work has been suspended during litigation. Continental Oil Co. v. Natrona Serv., Inc., 588 F.2d 792 (10th Cir. 1978).

Am. Jur. 2d, ALR and C.J.S. references. Validity and construction of statutes regulating strip mining, 86 ALR3d 27.

§ 30-1-101. Recording mining claims required; requisites of certificate.

Prime requisites for establishment of valid possessory title to a lode and/or placer mining claim are the discovery of a valuable mineral, the distinct marking on the ground of the boundaries, the actual taking of possession of the claim and the performance of the requisite amount of development work. Rasmussen Drilling, Inc. v. Kerr-McGee Nuclear Corp., 571 F.2d 1144 (10th Cir.), cert. denied, 439 U.S. 862, 99 S. Ct. 183, 58 L. Ed. 2d 171 (1978).

Careful, thorough inspection of ground required to ascertain whether any statutory steps have been previously undertaken before valid lode claim established. Rasmussen Drilling, Inc. v. Kerr-McGee Nuclear Corp., 571 F 2d 1144 (10th Cir.), cert. denied, 439 U.S. 862, 99 S. Ct. 183, 58 L. Ed. 2d 171 (1978).

Purpose of location certificates. — The location certificates on record take the place of the location notices, rendering proof of the posting of the notices unnecessary as against adverse claimants. The purpose to be thus served would seem to be predicated upon the possibility that the boundary markers, just as the posted notice, may very likely be lost or destroyed on the ground. Under such circumstances, constructive notice is provided by the location certificate to be recorded in accordance with this section. Rasmussen

Drilling, Inc. v. Kerr-McGee Nuclear Corp., 571 F.2d 1144 (10th Cir.), cert. denied, 439 U.S. 862, 99 S. Ct. 183, 58 L. Ed. 2d 171 (1978).

Effect of failure to record within prescribed period. — Failure to record a location certificate within the period prescribed by this section, i.e., 60 days from the date of discovery does not render the certificate invalid or void. Rasmussen Drilling, Inc. v. Kerr-McGee Nuclear Corp., 571 F.2d 1144 (10th Cir.), cert. denied, 439 U.S. 862, 99 S. Ct. 183, 58 L. Ed. 2d 171 (1978).

As courts liberal with good faith locators. — Where a mining locator attempts, in good faith, to comply with the law, courts are inclined to be liberal in construing his acts so as not to defeat his claim by technical criticism. Rasmussen Drilling, Inc. v. Kerr-McGee Nuclear Corp., 571 F.2d.1144 (10th Cir.), cert. denied, 439 U.S. 862, 99 S. Ct. 183, 58 L. Ed. 2d 171 (1978); Continental Oil Co. v. Natrona Serv., Inc., 588 F.2d 792 (10th Cir. 1978).

Effect of actual notice of claim. — The function of recording the location notice in the office of the county clerk is that of giving constructive notice, and one who has actual notice will not be heard to complain, even if no recordings have been made in the county records. One who has actual notice may not rely upon or take advantage of defects in

recordation. Rasmussen Drilling, Inc. v. Cir.), cert. denied, 439 U.S. 862, 99 S. Ct. 183, 58 Kerr-McGee Nuclear Corp., 571 F.2d 1144 (10th L. Ed. 2d 171 (1978).

§ 30-1-103. Prerequisites to filing location certificates.

Posting of notice on ground gives sufficient notice to all subsequent prospectors of the prior locator's intent to occupy, hold and possess the ground claimed. Rasmussen Drilling, Inc. v. Kerr-McGee Nuclear Corp., 571 F.2d 1144 (10th Cir.), cert. denied, 439 U.S. 862, 99 S. Ct. 183, 58 L. Ed. 2d 171 (1978).

Cited in Continental Oil Co. v. Natrona Serv., Inc., 588 F.2d 792 (10th Cir. 1978).

§ 30-1-104. Additional location certificate to be filed upon change of surface boundaries or addition of new territory.

Purpose of posting notice of location of mining claims and marking boundaries is designed to inform others who may wish to locate claims on the same lands of the prior actions, and those with such knowledge cannot prevail in a quiet title action predicated upon the first locator's failure to properly describe quarter sections and failure to affix a special name to a claim in the location certificate. Rasmussen Drilling, Inc. v. Kerr-McGee Nuclear Corp., 571 F.2d 1144 (10th Cir.), cert. denied, 439

U.S. 862, 99 S. Ct. 183, 58 L. Ed. 2d 171 (1978). Amendment of location certificate will relate back to original certificate so as to perfect the location. But it cannot cut off valid rights which may have been acquired by a subsequent locator. Rasmussen Drilling, Inc. v. Kerr-McGee Nuclear Corp., 571 F.2d 1144 (10th Cir.), cert. denied, 439 U.S. 862, 99 S. Ct. 183, 58 L. Ed. 2d 171 (1978).

§ 30-1-106. When open cut equivalent to discovery shaft; drilled hole in lieu of discovery shaft; requirements as to drilled hole.

Courts liberal with good faith locator. -Where a locator attempts in good faith to comply with the law, courts are inclined to be liberal in construing his acts so as not to defeat his claim by technical criticism. Continental Oil Co. v.

Natrona Serv., Inc., 588 F.2d 792 (10th Cir. 1978); Rasmussen Drilling, Inc. v. Kerr-McGee Nuclear Corp., 571 F.2d 1144 (10th Cir.), cert. denied, 439 U.S. 862, 99 S. Ct. 183, 58 L. Ed. 2d 171 (1978).

§ 30-1-107. Period allowed for sinking discovery shaft or drilling hole.

Stated in Continental Oil Co. v. Natrona Serv., Inc., 588 F.2d 792 (10th Cir. 1978).

§ 30-1-131. Provisions for indemnity in certain contracts: invalidity.

Intent of section. The clear language of this section voids and makes unenforceable any agreement to the extent that it seeks to indemnify an indemnitee for his own negligence

- regardless of the character of the negligence sought to be protected. Mountain Fuel Supply Co. v. Emerson, 578 P.2d 1351 (Wyo. 1978).

This section does not violate the state or federal equal protection clauses. Mountain Fuel Supply Co. v. Emerson, 578 P.2d 1351 (Wyo, 1978).

And no unconstitutional infringement on freedom to contract. — Since this section has

only an incidental effect on the main agreement between the parties and the state interest in adopting the statute is significant, no constitutional infirmity arises with respect to the freedom to contract. Mountain Fuel Supply Co. v. Emerson, 578 P.2d 1351 (Wyo. 1978).

CHAPTER 2

Mining Operations Generally

Article 2. Board of Mines

Sec.

30-2-203. Composition; qualifications, appointment and term of members; vacancies; officers; rules; quorum.

Article 3. Inspector of Mines; Deputy Inspectors

30-2-301. Appointment and qualifications of

inspector and deputy inspectors; terms of office; powers and duties of mine inspector generally.

ARTICLE 2. BOARD OF MINES

§ 30-2-203. Composition; qualifications, appointment and term of members; vacancies; officers; rules; quorum.

- (a) The board of mines shall consist of ten (10) members appointed from among the management and employees of the mining industry, other than coal mining, and serving for a term of four (4) years and until their successors have been appointed and qualified. Each member of the board shall be a qualified elector of the state of Wyoming and shall have been interested in the mining industry for at least five (5) years next preceding his appointment. The members shall be appointed by the governor by and with the advice and consent of the senate and from among the management and employees of the mining industry. The board shall at no time contain more than two (2) members from any one (1) category of mining, based upon products mined. The tenure of the members of the board shall be so arranged that the terms of not more than five (5) of the members shall expire in any one (1) year, and, to that end, with respect to those members first appointed, the governor shall appoint five (5) for a four (4) year term and five (5) for a two (2) year term. The terms of the members of the board shall commence on the first day of April of each year and shall continue until the ending of their term and until their successors have been appointed and qualified for the office.
- (b) Vacancies occurring in the board shall be filled by appointment by the governor as provided in W.S. 28-12-101.
- (c) The officers of the board shall be a president and a vice-president, elected by the board from among its own members, and a secretary who need not be a member of the board. The board has the power and duty to formulate and adopt rules not inconsistent with the provisions of law to govern its own operation and

functions, provided, that a quorum necessary to transact business shall be not less than a majority of the entire board.

(d) Effective July 1, 1979, appointments and terms shall be in accordance with W.S. 28-12-101 through 28-12-103. (Laws 1979, ch. 17, § 2.)

The 1979 amendment designated the formerly undesignated provisions of this section as subsections (a), (b) and (c), added subsection (d), made minor stylistic changes throughout subsections (a) and (c) and substituted the specific statutory reference for "any such appointment shall be for the remainder of the unexpired term, subject, nevertheless, to confirmation by the senate at its session next

following such appointment" in subsection (b). Effective date. — Section 4, ch. 17, Laws 1979, makes the act effective on July 1, 1979.

Law review. — For article, "Industrial Siting Legislation: The Wyoming Industrial Development Information and Siting Act — Advance or Retreat?" see 11 Land & Water L. Rev. 27 (1976).

ARTICLE 3. INSPECTOR OF MINES; DEPUTY INSPECTORS

§ 30-2-301. Appointment and qualifications of inspector and deputy inspectors; terms of office; powers and duties of mine inspector generally.

(a) The inspector of mines shall be appointed by the governor by and with the advice and consent of the senate from among persons qualified therefor and shall hold office for a term of two (2) years and until his successor is appointed and qualified as provided in W.S. 28-12-101 through 28-12-103. He may be discharged at any time during his term by the governor for failure to properly discharge the duties of his office. He shall be a qualified elector of the state of Wyoming, at least thirty-five (35) years of age. He shall be of good repute and temperate habits. He shall possess the degree of a graduate engineer from an accredited school, or the equivalent thereof, and shall have had not less than fifteen (15) years mining experience. He shall have had experience in underground mining operations, shall have knowledge of the various problems involving the health and safety of employees in both underground and open-pit mining, and in the upgrading, processing, milling and beneficiation of the various minerals mined or produced within this state. He shall be thoroughly familiar with the working and ventilating of such operations; the nature, chemistry, detection and control of noxious, poisonous or explosive gases or emanations; the dangers incident to blasting and the prevention thereof; the application and use of electricity in mining operations as herein defined; the methods for prevention of mine fires and gas or dust explosions and the control and extinguishment of mine fires; the health and safety problems involved in small and large scale open-pit mining operations and earth-removal or excavation carried on as part thereof; the methods of rescue and recovery work following mine disasters; and a thorough knowledge of the mining laws and acquaintance with the nature of mining operations of the state of Wyoming. He shall not be an employee, owner or part owner of any mine or mining company in this state.

(Laws 1979, ch. 17, § 2.)

Sec.

The 1979 amendment, in the first sentence of subsection (a), deleted "of the state" following "governor" and "duly" following "is" and substituted the specific statutory reference for "provided, however, that."

Only part of section set out. - As the rest of

the section was not affected by the amendment, it is not set out in this Supplement.

Effective date.

Section 4, ch. 17, Laws 1979, makes the act effective on July 1, 1979.

CHAPTER 3

Coal Mines

Article 2. Inspection

Division 2. Inspectors

30-3-220. Deputy inspector for coal mines; qualifications; examination: appointment; term; office of mine inspector.

Article 3. Examining Board

30-3-302. Appointment, term and compensation of members.

Article 4. Safety Regulations 30-3-445. Power lines, circuits and electric wiring generally.

ARTICLE 2. INSPECTION

Division 2. Inspectors

- § 30-3-220. Deputy inspector for coal mines; qualifications; examination; appointment; term; office of mine inspector.
- (a) The governor shall nominate and by and with the advice and consent of the senate appoint a deputy inspector qualified for coal mines who shall hold office for a term of four (4) years and until his successor is appointed and qualified as provided in W.S. 28-12-101 through 28-12-103. The deputy inspector qualified for coal mines shall be not less than thirty-five (35) years of age, a citizen of the United States and a qualified elector of this state, of good repute and temperate habits, shall have had not less than fifteen (15) years mining experience, ten (10) of which shall have been underground in coal mines or other underground mines of this state, and shall have passed an examination by the coal mining examining board. The examinations shall disclose that the applicant possesses a practical knowledge of the different systems of working and ventilating coal mines; the nature, chemistry, detection and control of noxious, poisonous and explosive gases; the dangers incident to blasting and the prevention thereof; the application of electricity in mining operations; the methods for the prevention of mine fires and gas or dust explosions; the methods for control and

extinguishment of mine fires; the methods of rescue and recovery work following mine disasters; a thorough knowledge of the coal mining laws of this state and mining engineering.

(Laws 1979, ch. 17, § 2.)

The 1979 amendment, in subsection (a), deleted "duly" following "is" and added the specific statutory reference in the first sentence and substituted "the" for "such" at the beginning of the third sentence.

Only part of section set out. — As the rest of the section was not affected by the amendment, it is not set out in this Supplement.

Effective date. — Section 4, ch. 17, Laws 1979, makes the act effective on July 1, 1979.

ARTICLE 3, EXAMINING BOARD

§ 30-3-302. Appointment, term and compensation of members.

(a) The governor shall nominate and by and with the consent of the senate appoint the members of the board, who shall hold their offices for a term of two (2) years and until their successors are appointed and qualified. Each member of the board shall receive as compensation the sum of twelve dollars (\$12.00) a day while going to, attending or returning from the meetings of the board, together with their actual and necessary expenses.

(b) Effective July 1, 1979, appointments and terms shall be in accordance with W.S. 28-12-101 through 28-12-103.

(Laws 1979, ch. 17, § 2.)

The 1979 amendment designated the formerly undesignated provisions of this section as subsection (a), deleted "respective" preceding "offices" and "duly" preceding "appointed" in the first sentence of that subsection and added subsection (b).

Effective date.

Section 4, ch. 17, Laws 1979, makes the act effective on July 1, 1979.

ARTICLE 4. SAFETY REGULATIONS

§ 30-3-445. Power lines, circuits and electric wiring generally.

(c) Electric wiring in surface buildings shall be installed so as to present minimum fire and contact hazards.

Editor's note. — Subsection (c) of this section is set out above to correct a typographical error in the main pamphlet.

CHAPTER 5 Oil and Gas

Article 1. In General

Sec.

Sec.

30-5-103. Composition of oil and gas conservation commission; terms of office; travel expenses; chairman; quorum; meetings and hearings generally; powers and duties of state oil and gas supervisor as ex officio director of oil and gas conservation; duties of attorney general and county attorneys as legal advisors.

30-5-104. Powers and duties of commission. 30-5-110. Agreements for water flooding or other recovery operations, repressuring or pressuremaintenance operations, cycling or recycling operations; operation as a unit of 1 or more pools or parts thereof and pooling of interests in oil and gas therein.

30-5-113. Time within which suit to be brought by person adversely affected; appeals, etc.

30-5-116. Disposition of moneys; payment of expenses; charge assessed on value of oil or gas produced.

30-5-119. Penalties for violation of act, orders of commission, etc.

ARTICLE 1. IN GENERAL

§ 30-5-101. Definitions.

"Economic waste" is not to be contemplated by the statutory definition of "waste" under this section. Larsen v. Oil & Gas Conservation Comm'n, 569 P.2d 87 (Wyo. 1977). Law review. — For article, "Industrial Siting

Legislation: The Wyoming Industrial Development Information and Siting Act — Advance or Retreat?" see 11 Land & Water L. Rev. 27 (1976).

- § 30-5-103. Composition of oil and gas conservation commission; terms of office; travel expenses; chairman; quorum; meetings and hearings generally; powers and duties of state oil and gas supervisor as ex officio director of oil and gas conservation; duties of attorney general and county attorneys as legal advisors.
- (f) Effective July 1, 1979, appointments and terms under this section shall be in accordance with W.S. 28-12-101 through 28-12-103. (Laws 1979, ch. 17, § 2.)

The 1979 amendment added subsection (f).
Only part of section set out. — As the rest of
the section was not affected by the amendment,
it is not set out in this Supplement.

Effective date. Section 4, ch. 17, Laws 1979, makes the act effective on July 1, 1979.

§ 30-5-104. Powers and duties of commission.

(d) The commission has authority:

(iii) To classify wells as oil or gas wells for purposes material to the interpretation or enforcement of this act, to make the determination of wells required by the Natural Gas Pricing Policy Act of 1978, Public Law 95-621 [15 U.S.C. §§ 3301 to 3432, 42 U.S.C. § 7255] and to make any other determination of wells that be required by the United States department of

energy;

(iv) When required, in order to protect correlative rights, to establish drilling units affording each owner an opportunity to drill for and produce as a prudent operator, and so far as it is reasonably practicable to do so without waste, his just and equitable share of the oil or gas or both in the pool and to restrict or limit the production of oil and gas from any well which is allowed, after the effective date of this act, as an exception to the location requirements of or as an additional well permitted under any order of the commission establishing drilling units for a pool or part thereof or of any general well spacing rule or order adopted by the commission for conservation purposes, upon such terms and conditions as the commission may determine, upon the commission's own motion or upon application of any interested person and after notice and hearing as provided by chapter 6, Wyoming Statutes 1957 [§§ 30-5-101 to 30-5-204], as amended, and by the commission's rules.

(Laws 1979, ch. 130, § 1.)

The 1979 amendment, in subsection (d), added "to make the determination of wells required by the Natural Gas Pricing Policy Act of 1978, Public Law 95-621 and to make any other determination of wells that be required by the United States department of energy" at the end of paragraph (iii) and inserted "to establish drilling units affording each owner an opportunity to drill for and produce as a prudent operator, and so far as it is reasonably practicable to do so without waste, his just and equitable share of the oil or gas or both in the

pool and" near the beginning of paragraph (iv).

Only part of section set out. — As the rest of the section was not affected by the amendment, it is not set out in this Supplement.

Effective dates.

Section 2, ch. 130, Laws 1979, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved February 27, 1979.

§ 30-5-109. Rules and regulations governing drilling units.

Finding mandated by subsection (a). — The statutory language of subsection (a) mandates that before a drilling unit can be established, the commission must first find that such a unit is necessary to protect correlative rights or to prevent waste. Larsen v. Oil & Gas Conservation Comm'n, 569 P.2d 87 (Wyo. 1977).

The process of making the various findings and decisions under subsections (a) and (b) of this section is constrained by fundamental rules of administrative law. Larsen v. Oil & Gas Conservation Comm'n, 569 P.2d 87 (Wyo. 1977).

Conclusion not supported by findings of fact. — Commission's conclusion that 80 acre drilling and spacing units would protect correlative rights of each owner in the field and would prevent or assist in preventing the various types of waste defined in this chapter was not supported by findings of underlying or basic facts. Larsen v. Oil & Gas Conservation Comm'n, 569 P.2d 87 (Wyo. 1977).

- § 30-5-110. Agreements for water flooding or other recovery operations, repressuring or pressure-maintenance operations, cycling or recycling operations; operation as a unit of 1 or more pools or parts thereof and pooling of interests in oil and gas therein.
- (f) No order of the commission authorizing the commencement of unit operations shall become effective until the plan of unitization has been signed or in writing ratified or approved by those persons who own at least eighty percent (80%) of the unit production or proceeds thereof that will be credited to royalty and overriding royalty interests which are free of costs, and unless both the plan of unitization and the operating plan, if any, have been signed, or in writing approved or ratified, by those persons who will be required to pay at least eighty percent (80%) of the cost of unit operations. However, to the extent that overriding royalty interests are in excess of a total of twelve and one-half percent (121/2%) of the production from any tract, such excess interests shall not be considered in determining the percentage of approval or ratification by such cost-free interests. If such consent has not been obtained at the time the commission order is made, the commission shall, upon application, hold such supplemental hearings and make such findings as may be required to determine when and if such consent has been obtained. Notice of such supplemental hearing shall be given by regular mail at least fifteen (15) days prior to such hearing to each person owning interests in the oil and gas in the proposed unit area whose name and address was required by the provisions of subsection (c) (ii) of this section to be listed in the application for such unit operations. If the required percentages of consent have not been obtained within a period of six (6) months from and after the date on which the order of approval is made, such order shall be ineffective and revoked by the commission, unless, for good cause shown, the commission extends that time. Any interested person may file an application with the commission requesting an order applicable only to the proposed unit area described in the application which shall provide for the percentage of approval or ratification by either cost-free or cost-bearing interests, or both, to be reduced from eighty percent (80%) to seventy-five percent (75%). The application shall contain the information required by subsection (c) of this section and any order of the commission entered pursuant to the application must comply with subsection (e) of this section. Notice of the hearing on the application shall be given in the same manner and to the same persons as required by subsection (d) of this section. If the commission finds that negotiations were being conducted on the effective date of this act or have been conducted for a period of at least nine (9) months prior to the filing of the application, that the applicant has participated in the negotiations diligently and in good faith, and that the percentage of approval or ratification required by this subsection cannot be obtained, the commission may reduce any percentage of approval or ratification required by this section from eighty percent (80%) to seventy-five percent (75%). Such an order shall affect only the unit area

described in the application and shall operate only to approve the proposed plan of unitization and proposed operating plan and to reduce the required percentage of approval or ratification thereof and shall not change any other requirement contained in this section.

(Laws 1980, ch. 45, § 1.)

The 1980 amendment, in subsection (f), substituted "the" for "such" preceding "plan of unitization" near the beginning of that subsection, deleted "provided," following "unit operations" at the end of the first sentence thereby dividing the former first sentence into two sentences, substituted "subsection (c) (ii)" for "section 3(b)" following "by the provisions of" near the middle of the subsection, substituted "section" for "act" preceding "to be listed" and added the last five sentences

beginning with "Any interested person may file."

Only part of section set out. — As the rest of the section was not affected by the amendment, it is not set out in this Supplement.

Effective date.

Section 2, ch. 45, Laws 1980, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 7, 1980.

§ 30-5-113. Time within which suit to be brought by person adversely affected; appeals, etc.

(a) Generally. — Any person adversely affected by and dissatisfied with any rule, regulation, or order made or issued hereunder, may within ninety (90) days after the entry thereof bring a civil suit or action against the commission or the state oil and gas supervisor or both in the district court of Laramie county, or in the district court of the county in which the complaining person resides, or in the U.S. district court for Wyoming, (if it otherwise has jurisdiction) and not elsewhere, to test the validity of any provision of this act, or rule, regulation, or order, and to secure an injunction and other appropriate relief, including all rights to appeal under applicable rules of civil procedure. Any case on appeal shall have precedence over any other case then pending in such court.

Editor's note. — Subsection (a) of this section is set out above to correct a typographical error in the main pamphlet.

§ 30-5-116. Disposition of moneys; payment of expenses; charge assessed on value of oil or gas produced.

(b) There is hereby levied and assessed on the value at the well of all oil and gas produced, saved and sold or transported from the premises in Wyoming where produced a charge not to exceed two-fifths of one (1) mill on the dollar. The commission shall by order fix the amount of such charge in the first instance and may, from time to time, reduce or increase the amount thereof as, in its judgment, the expenses chargeable may require; provided that the amounts fixed by the commission shall not exceed the limit hereinabove prescribed. It shall be the duty of the commission to make collection of such assessments. All moneys so collected shall be remitted to the state treasurer for deposit in an

account within the earmarked revenue fund and shall be used exclusively to nay the costs and expenses incurred in connection with the administration and enforcement of this act (chapter 94, Session Laws of Wyoming, 1951). The persons owning an interest (working interest, royalty interest, payments out of production, or any other interest) in the oil and gas, or in the proceeds thereof. subject to the charge hereinabove provided for shall be liable for such charge in proportion to their ownership at the time of production. The charge so assessed and fixed shall be payable monthly, and the sum so due shall be remitted to the commission. on or before the twenty-fifth of the month next following the month in which the charge accrued, by the producer on behalf of himself and all other interested persons; provided however in the event of a sale of oil or gas within this state said charge shall be payable by the purchaser thereof. Any such charge not paid within the time herein specified shall bear interest at the rate of one percent (1%) per month from the date of delinquency until paid, and such charge together with the interest shall be a lien upon the oil or gas against which the same is levied and assessed. The person remitting the charge as herein provided is hereby authorized, empowered and required to deduct from any amounts due the persons owning an interest in the oil and gas or in the proceeds thereof at the time of production the proportionate amount of such charge before making payment to such persons. This subsection (b) shall apply to all lands in the state of Wyoming, anything in section 15 of chapter 94, Session Laws of Wyoming, 1951 [§ 30-5-118], to the contrary notwithstanding; provided, however, there shall be exempted from the charge hereinabove levied and assessed the following, to wit:

Editor's note. — The introductory paragraph to subsection (b) is set out above to correct a typographical error in the main pamphlet.

§ 30-5-119. Penalties for violation of act, orders of commission, etc.

(a) Forfeiture and civil penalty for violation of act, rule, regulation or order. — Any person who violates any provision of this act or who after either actual or constructive notice thereof from the commission or its representative violates any rule, regulation, or order of the commission shall forfeit to the Wyoming oil and gas conservation fund an amount of not more than five hundred dollars (\$500.00) for each act of violation to be fixed and determined by the commission after notice and opportunity for hearing. Any person who knowingly and willfully violates any provision of this act or who after notice thereof from the commission or its representatives knowingly and willfully violates any rule, regulation, or order of the commission shall be subject to a civil penalty to be remitted and payable into the account of the Wyoming oil and gas conservation commission fund upon order of the district court of the county in which the defendant resides, or in which any defendant resides if there be more than one

defendant, or in the district court of any county in which the violation occurred, or in the district court of Laramie county, Wyoming, which said civil penalty shall not exceed the sum of one thousand dollars (\$1,000.00) for each act of violation and for each day that such violation continues.

Editor's note. — Subsection (a) of this section is set out above to correct a typographical error in the main pamphlet.

* * *

TITLE 34

Property, Conveyances and Security Transactions

ALR3d reference. — Sufficiency of real estate buyer's efforts to secure financing upon which sale is contingent, 78 ALR3d 880.

CHAPTER 1

General Provisions

§ 34-1-123. Admissibility of conveyance or record thereof as evidence.

Law review. — For discussion of Fed. R. Evid. 902, which relates to self-authentication, see 12 Land & Water L. Rev. 601 (1977).

TITLE 35

Public Health and Safety

CHAPTER 11

Wyoming Environmental Quality Act

Article 1. General Provisions

Sec.

35-11-103. Definitions.

 Independent environmental quality council created; terms; officers; meetings; expenses.

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35-11-427. In situ mining permit; permit required; authority of land quality division exclusive.

 Same; requirements for application; contents of application.

35-11-429. Same; contents of permit.

35-11-430. Duties of in situ mining operator; records; annual report.

 Research and development license; renewal; application.

35-11-432. Same; grounds for denial; appeal. 35-11-433. Same; bond required; release or forfeiture; review of license.

35-11-434. Same; notice of incomplete application; when application deemed complete.

35-11-435. Records to be filed on completion; abandoned drill holes.

35-11-436. Existing in situ mining permits.

Article 5. Solid Waste Management

35-11-502. Solid waste disposal requirements.

Article 6. Variances

35-11-601. Applications; authority to grant; hearing; limitations; renewals; judicial review; emergencies.

Law review. — For article, "Industrial Siting Legislation: The Wyoming Industrial Development Information and Siting Act — Advance or Retreat?" see 11 Land & Water L. Rev. 27 (1976).

Am. Jur. 2d, ALR and C.J.S. references.
Validity of state statutory provision
permitting administrative agency to impose
monetary penalties for violation of
environmental pollution statute, 81 ALR3d 1258.

ARTICLE 1. GENERAL PROVISIONS

§ 35-11-101. Short title.

Law reviews.

For article, "Accommodation or Preemption?

State and Federal Control of Private Coal Lands

in Wyoming," see 12 Land & Water L. Rev. 78 (1977).

§ 35-11-102. Policy and purpose.

Legal obligation of environmental quality council. — The legal obligation imposed on the council by the legislature is to promulgate rules and regulations necessary to prevent, reduce and eliminate pollution. Tri-State Generation & Transmission Ass'n v. Environmental Quality Council, 590 P.2d 1324 (Wyo. 1979).

Law review. — For article, "Industrial Siting Legislation: The Wyoming Industrial Development Information and Siting Act — Advance or Retreat?" see 11 Land & Water L. Rev. 27 (1976).

§ 35-11-103. Definitions.

(c) Specific definitions applying to water quality:

(iv) "Treatment works" means any plant or other works used for the purpose of treating, stabilizing or holding wastes;

(e) Specific definitions for land quality:

(xi) "Mining permit" means certification by the director that the affected land described may be mined for minerals by a licensed operator in compliance with an approved mining plan and reclamation plan. No mining may be commenced or conducted on land for which there is not in effect a valid mining permit. A mining permit shall remain valid and in force from the date of its issuance until the termination of all mining and reclamation operations, except as otherwise provided in this act;

(xviii) "Alluvial valley floors" means the unconsolidated stream laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities but does not include upland areas which are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits by unconcentrated runoff or slope wash, together with talus, other mass

movement accumulation and windblown deposits;

(xix) "Prime farmland" shall have the same meaning as that previously prescribed by the United States secretary of agriculture on the basis of such factors as moisture availability, temperature regime, chemical balance, permeability, surface layer composition, susceptibility to flooding and erosion characteristics, and which historically have been used for intensive agricultural purposes, and as published in the federal register; and

(xx) "Surface coal mining operation" means:

(A) Activities conducted on the surface of lands in connection with a surface coal mine or with the surface impacts incident to an underground coal mine as provided in Section 516 of P.L. 95-87. These activities include excavation for the purpose of obtaining coal including common methods as contour, strip, auger, mountaintop removal, box cut, open pit and area mining, the use of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating or other processing or preparation, and the loading of coal; and

(B) The areas upon which these activities occur or where these activities disturb the land surface. These areas shall also include any adjacent land the use of which is incidental to any of these activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of these activities and for haulage, and excavations, workings, impoundments, dams, ventilation shafts, entry ways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities or other property or materials on the surface, resulting from or incident to these activities.

(xxi) "Steep slope surface coal mining operation" means a surface coal mining operation where mining occurs along the contour of a steep slope generally exceeding twenty (20) degrees and which, because of the steepness of the terrain, requires special spoil handling procedures;

(xxii) "Complete application" under W.S. 35-11-406 (e) means that the application contains all the essential and necessary elements and is acceptable for further review for substance and compliance with the provisions of this chapter.

(f) Specific definitions applying to in situ mining are:

(i) "Best practicable technology" means a technology based process justifiable in terms of existing performance and achievability in relation to health and safety which minimizes, to the extent safe and practicable, disturbances and adverse impacts of the operation on human or animal life, fish, wildlife, plant life and related environmental values;

(ii) "Excursion" means any unwanted and unauthorized movement of recovery fluid out of the production zone as a result of in situ mining

activities;

(iii) "Groundwater restoration" means the condition achieved when the quality of all groundwater affected by the injection of recovery fluids is returned to a quality of use equal to or better than, and consistent with the uses for which the water was suitable prior to the operation by employing the best practicable technology;

(iv) "In situ mining" means a method of in-place surface mining in which limited quantities of overburden are disturbed to install a conduit or well and the mineral is mined by injecting or recovering a liquid, solid, sludge or gas that causes the leaching, dissolution, gasification, liquefaction or extraction of the mineral. In situ mining does not include the primary or enhanced recovery of naturally occurring oil and gas or any related process regulated by the Wyoming oil and gas conservation commission;

(v) "Production zone" means the geologic interval into which recovery

fluids are to be injected or extracted:

(vi) "Reclamation" includes groundwater restoration:

(vii) "Recovery fluid" means any material which flows or moves, whether semi-solid, liquid, sludge, gas or other form or state, used to dissolve, leach, gasify or extract a mineral:

(viii) "Research and development testing" means conducting research and development activities to indicate mineability or workability of and

develop reclamation techniques for an in situ operation.

(Laws 1978, ch. 33, § 2; 1979, ch. 96, § 2; 1980, ch. 64, § 2; ch. 67, § 1.)

The 1979 amendment added subsection (f).
The 1980 amendment added paragraph (xxi)
of subsection (e).

Only part of section set out. — As the rest of the section was not affected by the 1978, 1979 and 1980 amendments, it is not set out in this Supplement.

Editor's notes. — Section 2, ch. 64, Laws 1980, effective upon final approval of the state program pursuant to P.L. 95-87 (30 U.S.C. § 1201 et seq.), amends the following section: "§ 35-11-103. Definitions.

"(e) Specific definitions for land quality:

(xxi) "Steep slope surface coal mining operation" means a surface coal mining operation where mining occurs along the contour of a steep slope generally exceeding twenty (20) degrees and which, because of the steepness of the terrain, requires special spoil handling procedures."

Paragraph (iv) of subdivision (c) has been set out to correct a typographical error which appears in the main pamphlet.

Effective dates.

Section 3, ch. 33, Laws 1978, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 9, 1978.

Section 3, ch. 96, Laws 1979, makes the act

effective on May 25, 1979.

Section 2, ch. 67, Laws 1980, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 18, 1980.

Applied in Town of Torrington v. Environmental Quality Council, 557 P.2d 1143

(Wyo. 1976).

§ 35-11-109. Powers and duties of director.

Editor's note. — Section 2, ch. 64, Laws 1980, effective upon final approval of the state program pursuant to P.L. 95-87 (30 U.S.C. § 1201 et seq.), amends the following section: "§ 35-11-109. Powers and duties of director. (a) In addition to any other powers and duties imposed by law, the director of the department shall:

(iv) Conduct, encourage, request and participate in, studies, surveys, investigations, research. experiments, training and demonstrations by contract, grant or otherwise; prepare and require permittees to prepare reports and install, use and maintain any monitoring equipment or methods reasonably necessary for compliance with the provisions of this act; and collect information and disseminate to

the public such information as is deemed reasonable and necessary for the proper enforcement of this act;

(vi) Designate authorized officers, employees or representatives of the department to enter and inspect any property, premise or place, except private residences, on or at which an air, water or land pollution source is located or is being constructed or installed, or any premises in which any records required to be maintained by a surface coal mining permittee are located. Persons so designated may inspect and copy any records during normal office hours, and inspect any monitoring equipment or method of operation required to be maintained pursuant to this act at any reasonable time upon presentation of

appropriate credentials, and without delay, for the purpose of investigating actual or potential sources of air, water or land pollution and for determining compliance or non-compliance with this act, and any rules, regulations, standards, permits or orders promulgated hereunder. For surface coal mining operations, right of entry to or inspection of any operation, premises, records or equipment shall not require advance notice. The owner, occupant or operator shall receive a duplicate copy of all reports made as a result of such inspections within thirty (30) days. The department shall reimburse any operator for the

reasonable costs incurred in producing copies of the records requested by the department under this section:"

This section and § 35-11-112 discuss the general powers and responsibilities of the director and council respectively, and are general provisions which provide authority for the promulgation of regulations and standards "necessary," and not on an assembly-line basis which would cause an undesirable inflexibility in the agency's functioning and impair its ability to deal with specialized problems. Town of Torrington v. Environmental Quality Council, 557 P.2d 1143 (Wyo. 1976).

§ 35-11-111. Independent environmental quality council created; terms; officers; meetings; expenses.

(a) There is created an independent council consisting of seven (7) members to be known as the environmental quality council. Not more than four (4) of the members shall be of the same political party. Council members shall be appointed by the governor with the advice and consent of the senate. No employee of the state, other than employees of institutions of higher education, shall be a member of the council. At all times, there shall be at least one (1) member from the minerals industry and one (1) member from agriculture. Any member receiving more than ten percent (10%) of his income from any permit applicant shall not act on a permit application from that applicant.

(b) The terms of the members shall be for four (4) years, except that on the initial appointment, members' terms shall be as follows: three (3) shall serve for two (2) years, two (2) shall serve for three (3) years and two (2) shall serve for four (4) years, as designated by the initial appointment. If a vacancy occurs, the governor shall appoint a new member as provided in W.S. 28-12-101.

(f) Effective July 1, 1979, appointments and terms under this section shall be in accordance with W.S. 28-12-101 through 28-12-103. (Laws 1979, ch. 17, § 2.)

The 1979 amendment deleted "hereby" preceding "created" in the first sentence and substituted "that" for "such" in the last sentence of subsection (a), substituted "if" for "when" and the specific statutory reference for "for the remaining portion of the unexpired term" in the second sentence of subsection (b) and added subsection (f).

Only part of section set out. — As the rest of the section was not affected by the amendment, it is not set out in this Supplement.

Editor's note. — Section 2, ch. 64, Laws 1980, effective upon final approval of the state program pursuant to P.L. 95-87 (30 U.S.C. § 1201 et seq.), amends the following section: "§ 35-11-111. Independent environmental

quality council created; terms; officers;

meetings; expenses.

(d) The council shall hold at least four (4) regularly scheduled meetings each year. Special meetings may be called by the chairman, and special meetings shall be called by the chairman, upon a written request submitted by three (3) or more members. Four (4) members shall constitute a quorum. All matters shall be decided by a majority vote of those on the council."

Effective dates.

Section 4, ch. 17, Laws 1979, makes the act effective on July 1, 1979.

§ 35-11-112. Powers and duties of the environmental quality council.

Legal obligation imposed on council by legislature is to promulgate rules and regulations necessary to prevent, reduce and eliminate pollution. Tri-State Generation & Transmission Ass'n v. Environmental Quality Council, 590 P.2d 1324 (Wyo. 1979).

Section 35-11-109 and this section discuss the general powers and responsibilities of the director and council respectively, and are general provisions which provide authority for the promulgation of regulations and standards "necessary," and not on an assembly-line basis which would cause an undesirable inflexibility in the agency's functioning and impair its ability to deal with specialized problems. Town of Torrington v. Environmental Quality Council, 557 P.2d 1143 (Wyo. 1976).

§ 35-11-114. Powers and duties of the advisory boards.

(a) The advisory boards shall recommend to the council through the administrator and director, comprehensive plans and programs for the prevention, control and abatement of air, water and land pollution and the protection of public water supplies.

(b) The advisory boards shall recommend to the council through the administrator and director the adoption of rules, regulations and standards to implement and carry out the provisions and purposes of this act which relate to

their divisions, and variances therefrom.

(d) The advisory boards shall counsel with and advise each other, the public, and the director of the department in order to coordinate the policies and activities of their respective divisions and to achieve maximum efficiency and effectiveness in furthering the objectives of the department.

Editor's note. — Subsections (a), (b) and (c) have been set out to correct typographical errors in the main pamphlet.

ARTICLE 2. AIR QUALITY

§ 35-11-202. Establishment of standards.

Consideration of factors in section not mandatory. — The council does not act contrary to law in failing to consider the factors set forth in this section. Tri-State Generation & Transmission Ass'n v. Environmental Quality Council, 590 P.2d 1324 (Wyo. 1979).

ARTICLE 3. WATER QUALITY

§ 35-11-301. Prohibited acts.

Law reviews.

For article, "Industrial Siting Legislation: The Wyoming Industrial Development Information and Siting Act — Advance or Retreat?" see 11 Land & Water L. Rev. 27 (1976).

See case note, "Importation Doctrine Applied to Water Transfers Within a River System: A Step Too Far," 15 Land & Water L. Rev. 99 (1980).

§ 35-11-302. Administrator's authority to recommend rules, regulations, etc.

Applied in United States Steel Corp. v. Wyoming Environmental Quality Council, 575 P.2d 749 (Wyo. 1978).

Law reviews. — For article, "Industrial Siting Legislation: The Wyoming Industrial Development Information and Siting Act — Advance or Retreat?" see 11 Land & Water L. Rev. 27 (1976).

For comment, "Enforcement of Section 208 of the Federal Water Pollution Control Act Amendments of 1972 to Control Nonpoint Source Pollution," see 14 Land & Water L. Rev. 419 (1979).

ARTICLE 4. LAND QUALITY

Law review. — For article, "Strip Mining, the West and the Nation," see 12 Land & Water L. Rev. 1 (1977).

§ 35-11-401. Compliance generally; exceptions.

(h) The council, after consultation with the administrator and the advisory board, may modify or suspend certain requirements of W.S. 35-502.24 [§ 35-11-406] (a), (b), (d), (f) and (g) by rules and regulations, for surface mining operations involving not more than ten thousand (10,000) yards of overburden and ten (10) acres of affected land in any one (1) year, if the application requirements insure reclamation in accordance with the purposes of this act [§§ 35-11-101 to 35-11-104].

Editor's notes. — Subsection (h) has been set out above to correct a typographical error in the main pamphlet.

Section 2, ch. 64, Laws 1980, effective upon final approval of the state program pursuant to P.L. 95-87 (30 U.S.C. § 1201 et seq.), amends the following section: "§ 35-11-401. Compliance

generally; exceptions.

"(d) Within two (2) months following the final approval of a state program pursuant to Section 503 of P.L. 95-87 [30 U.S.C. § 1253], all operators of surface coal mining operations operating under a permit issued in accordance with the terms of this act shall apply for a new mining permit covering those lands expected to be mined or reclaimed after eight (8) months from state program approval. Within eight (8) months from the date of state program approval, the administrator shall approve or deny an application for a surface coal mining permit. No person shall engage in or carry out surface coal mining operations unless the person has first obtained a permit pursuant to this section except as hereafter provided. A person conducting operations consistent with this act may continue operating beyond eight (8) months from state program approval if an application for a permit has been filed in accordance with this act but the administrator's decision on the application has not been rendered.

"(e) The provisions of this article shall not

apply to any of the following activities:

 (i) Building or expansion of utilities, soil conservation conveyances and foundation excavations for the purpose of constructing buildings and other structures not used in

mining operations;

(ii) Excavations other than for the extraction of coal by an agency of federal, state or local government or its authorized contractors for highway and railroad cuts and for the purpose of providing fill, sand, gravel and other materials for use in connection with any public project if reclamation requirements of federal, state or local governments are consistent with all provisions of this act or regulations promulgated thereunder. Excavations for the extraction of coal as an incidental part of federal, state or local government financed highway or other construction shall be conducted in accordance with regulations established by the council;

(iii) The extraction of sand, gravel, dirt, scoria, limestone, dolomite, shale, ballast or feldspar by a landowner for his noncommercial use from land owned or leased by him;

(iv) Archaeological excavations;

(v) Other surface mining operations which the administrator determines to be of an infrequent nature and which involve only minor surface disturbances:

(vi) Surface mining operations, whether commercial or noncommercial, for the removal of sand, gravel, scoria, limestone, dolomite, shale, ballast or feldspar from an area of ten (10) acres or less of affected land if the operator has written permission for the operation from the owner and lessee, if any, of the surface; provided that the operator shall notify the land quality division of the department of environmental quality of the location of the land to be mined before commencing operations;

(vii) Before commencing any mining operations, the operator shall file a bond to insure reclamation in accordance with the purposes of this act in the amount of two hundred dollars (\$200.00) per acre of affected land. Within ninety (90) days after mining operations commence. administrator may require the operator to post an additional bond of one hundred dollars (\$100.00) per acre of affected land if he determines that such amount is necessary to insure reclamation. The operator shall post the additional bond not later than thirty (30) days after receipt of such notification;

(viii) After the mining operations have ceased or within thirty (30) days after abandonment of the mining operation, the operator shall notify the administrator of such fact and commence reclamation and restoration in compliance with the rules and regulations of the land quality division of the department of environmental quality. The rules and regulations for reclamation shall at all times be reasonable; and

(ix) Immediate reclamation will not be required if the landowner advises the department in writing of his intent to further utilize the product of the mine, and if he assumes the obligation of reclamation.

"(f) In promulgating regulations to implement this section the administrator and director shall consider:

(i) The nature of the class, type, or types of activities involved;

(ii) Their magnitude (in tons and acres);

(iii) Their potential for adverse environmental impact; and

(iv) Whether the class, type, or types of activities are already subject to an existing regulatory system by state or local government or an agency of the federal government.

"(g) A single permit may be issued to all county or other local governmental entities of the state to operate noncontiguous facilities in

compliance with the statutes.

"(h) A single permit may be issued for mining of noncontiguous minerals deposits at the discretion of the administrator in compliance with the statutes.

"(j) The council, after consultation with the administrator and the advisory board, may modify or suspend certain requirements of W.S. 35-11-406 (a), (b), (d), (f) and (g) by rules and regulations, for surface mining operations involving not more than ten thousand (10,000) yards of overburden and ten (10) acres of affected land in any one (1) year, if the application requirements insure reclamation in accordance with the purposes of this act.

"(k) An operator conducting operations pursuant to W.S. 35-11-401 (d) (vi) shall file an annual report with the administrator on or within thirty (30) days prior to the anniversary date of the commencement date of initial

operation. The report shall contain:

(i) The name and address of the operator;

(ii) The location of the mining operations;

(iii) The number of acres of affected lands at the conclusion of the past year's operation;

(iv) The number of acres of land that have been reclaimed during the past year:

(v) The number of yards of overburden or mined mineral removed;

(vi) The expected remaining life of the mining operation.

"(m) No steep slope surface coal mining operation shall be commenced until the council has promulgated rules and regulations establishing steep slope mining performance standards."

Law reviews.

For article, "Accommodation or Preemption? State and Federal Control of Private Coal Lands in Wyoming," see 12 Land & Water L. Rev. 73 (1977).

§ 35-11-402. Establishment of standards.

(a) The council shall, upon recommendation by the advisory board, establish rules and regulations pursuant to the following reclamation standards for the affected areas, including but not limited to:

(x) Rules and regulations for the criteria for review and information and

public notice requirements for permit revisions;

(xi) Establishing such other rules and regulations necessary to insure full compliance with all requirements relating to reclamation, and the attainment of those objectives directed to public health, safety, and welfare.

(Laws 1978, ch. 33, § 2.)

Editor's note. — There is no subsection (b)'in this section as it appears in the printed acts.

Section 2, ch. 64, Laws 1980, effective upon final approval of the state program pursuant to P.L. 95-87 (30 U.S.C. § 1201 et seq.), amends the following section: "§ 35-11-402. Establishment of standards. (a) The council shall, upon recommendation by the advisory board, establish rules and regulations pursuant to the following reclamation standards for the affected areas, including but not limited to:

(x) Rules and regulations for the criteria for review and information and public notice requirements for permit revisions. A permit may be revised without public notice or hearing for revisions, including incidental boundary revisions to the area covered by the permit, if these do not propose significant alterations in the reclamation

plan;

(xi) Rules and regulations for conducting coal exploration operations which shall include prior notice of intention to explore, written approval by the administrator for the removal of more than two hundred fifty (250) tons of coal and reclamation provisions for new and existing operations in accordance with the reclamation standards governing surface mining;

(xii) Rules and regulations governing new and existing special bituminous surface coal mines as recognized in P.L. 95-87 [30 U.S.C. § 1201 et seq.], which shall be controlling notwithstanding other provisions of this act to the contrary. The regulations shall pertain only to standards governing onsite handling of spoils, elimination of depressions capable of collecting water, creation of impoundments and regrading to the approximate original contour, and shall specify that all remaining highwalls be stable. All other performance standards contained in this act shall apply to such mines;

(xiii) Establishing such other rules and regulations necessary to insure full compliance with all requirements relating to reclamation, and the attainment of those objectives directed to public health, safety,

and welfare."

Effective date. — Section 3, ch. 33, Laws 1978, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 9, 1978.

§ 35-11-404. Drill holes to be capped, sealed or plugged.

- (j) Before drilling on lands within the state of Wyoming, any person conducting coal exploration operations shall give notice to the administrator along with a legal description of the area and the number of holes to be drilled. This excludes drilling within an existing permit area approved prior to August 3, 1977.
- (k) Any person who fails or refuses to comply with the provisions of this act is guilty of a misdemeanor and on conviction is subject to imprisonment in a county jail for not more than ninety (90) days or a fine of not more than five thousand dollars (\$5,000.00) or both.

(m) When exploratory drill holes have been abandoned in violation of these provisions, the administrator, land quality division may then cause such holes to be capped, sealed or plugged and the state of Wyoming is granted a cause of action against the person refusing to comply with the provisions of this act for the recovery of the reasonable costs incurred by the administrator, land quality division in having the holes properly capped, sealed or plugged.

(n) All actions pursuant to subsections (k) or (m) of this section, must be initiated by the state of Wyoming within three (3) years of the date of the report

required by subsection (d) of this section.

(Laws 1978, ch. 33, § 2.)

Only part of section set out. — As the rest of the section was not affected by the 1978 amendment, it is not set out in this Supplement.

Editor's note. — Section 2, ch. 64, Laws 1980, effective upon final approval of the state program pursuant to P.L. 95-87 (30 U.S.C. § 1201 et seq.), amends the following section: "§ 35-11-404. Drill holes to be capped, sealed or

plugged.

"(g) Except for drilling in conjunction with coal mining or coal exploration operations, the administrator, land quality division, may waive any of the administrative provisions of this act pertaining to aquifers following a formal written application for a waiver of any particular provisions, if in the opinion of the administrator, land quality division, waiver of any such provisions shall not adversely affect the interests of the state of Wyoming and would create an undue hardship upon application. Waivers shall be in writing and may be appealed under the provisions of the Wyoming Administrative Procedure Act [§§ 9-4-101 to 9-4-115].

"(j) Before drilling on lands within the state of Wyoming, any person conducting coal

exploration operations shall give notice to the administrator which shall, at a minimum include a legal description of the area, the approximate number of holes to be drilled and a reclamation plan for proper abandonment in accordance with regulations promulgated by the council. This excludes drilling within an existing permit area approved prior to August 3, 1977.

"(k) Except as follows, any person who fails or refuses to comply with the provisions of this section is guilty of a misdemeanor and on conviction is subject to imprisonment in a county jail for not more than ninety (90) days or a fine of not more than five thousand dollars (\$5,000.00), or both. Any person who drills in conjunction with coal mining or coal exploration operations in violation of this section or regulations promulgated pursuant hereto is subject to the provisions of W.S. 35-11-901."

Effective date.

Section 3, ch. 33, Laws 1978, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 9, 1978.

§ 35-11-405. Permit defined; no mining operation without valid permit; when validity terminated.

(a) A mining permit is the certification that the tract of land described may be mined by an operator licensed to do so in conformance with an approved mining plan and reclamation plan. No mining operation may be commenced or conducted on land for which there is not in effect a valid mining permit to which the operator possesses the rights.

(b) A mining permit once granted remains valid and in force from the date of its issuance until the termination of all mining and reclamation operations,

except as otherwise provided in this act.

(c) All surface coal mining permits issued subsequent to approval of the state program pursuant to P.L. 95-87 shall be issued for a term of five (5) years. If the applicant demonstrates that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and the opening

(d) A surface coal mining permit shall terminate if the permittee has not commenced the surface coal mining operations covered by the permit within three (3) years of the issuance of the permit, except as provided in P.L. 95-87.

(e) Any valid surface coal mining permit issued pursuant to this act is entitled to a right of successive renewal upon expiration with respect to areas within the boundaries of the existing permit if public notice has been given and

the permit is in compliance with applicable laws and regulations.

(f) If an application for renewal of a valid surface coal mining permit includes a proposal to extend the mining operation beyond the boundaries authorized in the existing permit, the portion of the application for renewal which addresses any new land areas shall be subject to the standards applicable to new applications under this act. However, areas previously identified in the mining plan and reclamation plan of those surface coal mining operations not subject to the standards in W.S. 35-11-406 (h) (xiii) will not be subject to those standards in the renewal application.

(g) An application for renewal of a valid surface coal mining permit shall be made at least one hundred twenty (120) days prior to expiration of a valid coal

permit.

(Laws 1978, ch. 33, § 2.)

Editor's note. — Section 2, ch. 64, Laws 1980, effective upon final approval of the state program pursuant to P.L. 95-87 (30 U.S.C. § 1201 et seq.), amends the following section: "\$ 35-11-405. Permit defined; no mining operation without valid permit; when validity terminated.

"(c) All surface coal mining permits issued subsequent to approval of the state program pursuant to P.L. 95-87 [30 U.S.C. § 1201 et seq.] shall be issued for a term of not to exceed five (5) years. If the applicant demonstrates that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and the opening of the operation and if the application is complete for this specified longer term, the administrator shall grant a permit for a longer term.

"(e) Any valid surface coal mining permit issued pursuant to this act is entitled to a right of successive renewal upon expiration with respect to areas within the boundaries of the existing permit if public notice has been given, any additional revised or updated information has been provided and the operation is in compliance with applicable laws and regulations and if the renewal requested will not substantially jeopardize the operator's responsibility on existing affected land."

Effective date.

Section 3, ch. 33, Laws 1978, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 9, 1978.

§ 35-11-406. Application for permit; generally; denial; limitations.

(a) Applications for a mining permit shall be made in writing to the administrator and shall contain:

(xiii) A certificate issued by an insurance company authorized to do business in the United States certifying that the applicant has a public liability insurance policy in force for the surface mining and reclamation operations for which this permit is sought, or evidence that the applicant has satisfied other state or federal self-insurance requirements. This policy shall provide for personal injury and property damage protection in an amount adequate to compensate any persons damaged as a result of surface coal mining and reclamation operations including use of explosives and entitled to compensation under the applicable provisions of state law. This policy shall be maintained in full force and effect during the terms of the permit or any renewal, including the length of all reclamation operations.

(xiv) Such other information as the administrator deems necessary or as good faith compliance with the provisions of this act require [requires].

(b) The application shall include a mining plan and reclamation plan dealing with the extent to which the mining operation will disturb, change or deface the lands to be affected, the proposed future use or uses and the plan whereby the operator will reclaim the affected lands to the proposed future use or uses. The mining plan and reclamation plan shall be consistent with the objectives and purposes of this act and of the rules and regulations promulgated. The mining plan and reclamation plan shall include the following:

(xi) For an application filed after March 1, 1975, an instrument of consent from the resident or agricultural landowner, if different from the owner of the mineral estate, granting the applicant permission to enter and commence surface mining operation, and also written approval of the applicant's mining plan and reclamation plan. As used in this paragraph "resident or agricultural landowner" means a natural person or persons who, or a corporation of which the majority stockholder or stockholders:

(xii) For any application filed after March 1, 1975, including any lands privately owned but not covered by the provisions of subdivision (b) (xi) of this section an instrument of consent from the surface landowner, if different from the owner of the mineral estate, to the mining plan and reclamation plan. If consent cannot be obtained as to the mining plan or reclamation plan or both, the applicant may request a hearing before the environmental quality council. The council shall issue an order in lieu of consent if it finds:

(xvii) A blasting plan which shall outline the procedures and standards by which the operator of a surface coal mine will meet the provisions of W.S. 35-11-415 (b) (xi):

(xviii) For surface coal mining operations, a plan to minimize the disturbances to the prevailing hydrologic balance at the minesite and in associated offsite areas and to the quality and quantity of water in surface and ground water systems both during and after mining operations and during reclamation. This paragraph does not alter the authority granted under any other section of this act with respect to requirements for maintaining the hydrologic balance in the minesite, or associated offsite areas, of other mining operations;

(xx) For surface coal mining operations, a request for approval of any alternatives which may be proposed to the provisions of the regulations

promulgated by the council. For each alternative provision the applicant shall:

(A) Identify the provision in the regulations promulgated by the

council for which the alternative is requested;

(B) Describe the alternative proposed and provide an explanation including the submission of data, analysis and information in order to demonstrate that the alternative is in accordance with the applicable provisions of the act and consistent with the regulations promulgated by the council. In addition, the applicant shall demonstrate that the proposed alternative is necessary because of local requirements or local environmental or agricultural conditions;

(C) Paragraph (xx) of this section shall not take effect until approved by the secretary of the interior as an amendment to a state program approved pursuant to section 503 of P.L. 95-87 [30 U.S.C.

9 1253].

- (c) The applicant may have the local conservation district assist in preparation of, provide data for, perform research, review and comment upon the reclamation. For those lands in a surface coal mining permit application which a reconnaissance inspection suggests may be prime farmlands, a soil survey shall be made or obtained according to standards established by the United States secretary of agriculture in order to confirm the exact location of these prime farmlands, if any. If the United States secretary of agriculture or his representative has determined that the state, area or exact location within the permit area does not contain prime farmlands this subsection is inapplicable.
- (d) The applicant shall file a copy of his application for public inspection at the office of the administrator and in the offices of the county clerks of the counties in which the proposed permit area is located. Those parts of the application which contain confidential trade secrets whose disclosure would be harmful to the applicant are exempt from these filings.
- (e) The administrator shall notify the applicant within sixty (60) days of submission of the application whether or not it is complete. If the administrator deems the application incomplete, he shall so advise and state in writing to the applicant the information required. All items not specified as incomplete at the end of the first sixty (60) day period shall be deemed complete for the purposes of this subsection.
- (f) If the applicant resubmits an application or further information, the administrator shall review the application or additional information within sixty (60) days of each submission and advise the applicant in writing if the application or additional information is complete.
- (g) After the application is determined complete, the applicant shall publish a notice of the filing of the application once each week for two (2) consecutive weeks in a newspaper of general circulation in the locality of the proposed mining site.

- (h) The administrator shall review the application and advise the applicant within one hundred fifty (150) days from the date of determining that the application is complete, that it is suitable for publication under subsection (j) of this section or that the application is denied. All reasons for denial shall be stated in writing to the applicant.
- (j) The applicant shall cause notice of the application to be published in a newspaper of general circulation in the locality of the proposed mining site once a week for four (4) consecutive weeks commencing within fifteen (15) days after being notified by the administrator. The notice shall contain information regarding the identity of the applicant, the location of the proposed operation, the proposed dates of commencement and completion of the operation, the proposed future use of the affected land, the location at which information about the application may be obtained, and the location and final date for filing objections to the application. The applicant shall mail a copy of the notice within five (5) days after first publication to all owners of record of the surface and mineral rights of the land within the permit area, to the owners of record of the surface rights of immediately adjacent lands and to any other persons within one-half (½) mile having a valid legal estate of record. Proof of notice and mailing shall be attached to and become part of the application.
- (k) Any interested person has the right to file written objections to the application with the administrator within thirty (30) days after the last publication of the above notice. For surface coal mining operations, the administrator may hold an informal conference if requested and take action on the application in accordance with the department's rules of practice and procedure, with the right of appeal to the council which shall be heard and tried de novo. A conference shall be held if the administrator determines that the nature of the complaint or the position of the complainants indicates that an attempt to informally resolve the disputes is preferable to a contested case proceeding. An informal conference or a public hearing shall be held within twenty (20) days after the final date for filing objections unless a different period is stipulated to by the parties. The council or administrator shall publish notice of the time, date and location of the hearing or conference in a newspaper of general circulation in the locality of the proposed operation once a week for two (2) consecutive weeks immediately prior to the hearing or conference. The hearing shall be conducted as a contested case in accordance with the Wyoming Administrative Procedure Act [§§ 9-4-101 to 9-4-115], and right of judicial review shall be afforded as provided in that act.
- (m) The requested permit shall be granted if the applicant demonstrates that the application complies with the requirements of this act and all applicable federal and state laws. The director shall not deny a permit except for one (1) or more of the following reasons:
 - (xii) The area is proposed to be mined as a surface coal mining operation and is included within an area designated unsuitable for surface coal mining pursuant to W.S. 35-11-425, or within an area under review for this designation under an administrative proceeding, unless in such an area as to which an administrative proceeding has commenced pursuant to W.S.

35-11-425 of this act, the operator making the permit application demonstrates that, prior to January 1, 1977, he has made substantial legal and financial commitments in relation to the operation for which he is applying for a permit;

(xiii) The applicant has not affirmatively demonstrated that the

proposed surface coal mining operation would:

(A) Not interrupt, discontinue or preclude farming on alluvial valley floors that are irrigated or naturally subirrigated, excluding undeveloped range lands which are not significant to farming on those alluvial valley floors and those lands where a regulatory authority finds that farming is of such small acreage as to be of negligible impact on the farming agricultural production and

the farm's agricultural production; and

(B) Not materially damage the quantity or quality of water in surface or underground systems that supply alluvial valley floors. This paragraph shall not affect those surface coal mining operations which in the year preceding August 3, 1977, (I) produced coal in commercial quantities and were located within or adjacent to alluvial valley floors, (II) or had obtained specific permit approval by the administrator to conduct surface coal mining operations within those alluvial valley floors; and provided further that if coal deposits are precluded from being mined by this paragraph, the administrator shall certify to the secretary of the interior that the coal owner or lessee may be eligible for participation in a coal exchange program pursuant to section 510 (b) (5) of P.L. 95-87;

(xiv) The applicant has not affirmatively demonstrated that the proposed surface coal mining operation has been designed to prevent material damage to the hydrologic balance outside the permit area;

(n) The administrator shall render a decision on the application within thirty (30) days after completion of the notice period if no informal conference or hearing is requested. If an informal conference is held, all parties to the conference shall be furnished with a copy of the final written decision of the administrator and director issuing or denying the permit within sixty (60) days of the conference. If a hearing is held, the council shall issue findings of fact and a decision on the application within sixty (60) days after the final hearing. The administrator shall issue or deny the permit no later than fifteen (15) days from receipt of any findings of fact and decision of the environmental quality council. (Laws 1978, ch. 33, § 2; 1980, ch. 64, § 2, 3; ch. 65, § 1; ch. 67, § 1.)

The 1980 amendments. — The first 1980 amendment added paragraph (xx) in subsection (b).

The second 1980 amendment, in subsection (e), substituted "sixty (60)" for "ninety (90)" preceding "days of submission," substituted "the" for "an" preceding "application and complete," inserted "so advise and" preceding "state in writing," substituted "required" for "specified" at the end of the second sentence,

added the last sentence in that subsection, added paragraphs (f), (g), (h), redesignated former subsection (f) as present subsection (j), in present subsection (j), substituted "being notified by the administrator" for "filing of the completed application" at the end of the first sentence in that subsection, redesignated former subsection (g) as present subsection (k), rewrote present subsection (k), redesignated former subsection (h) as present subsection (m),

redesignated former subsection (j) as present subsection (n) and, in subsection (n), substituted "no informal conference or hearing is requested" for "the application is not protested. Should the application be protested and" at the end of the first sentence and added the second sentence.

Only part of section set out. — As the rest of the section was not affected by the 1978 and 1980 amendments, it is not set out in this

Supplement.

Editor's note. — Chapter 67, Laws 1980, redesignated former subsection (h) but did not specify its new designation. Former subsections (g) and (j) were specifically redesignated by the act as present subsections (k) and (n). Former subsection (h) has been redesignated as present subsection (m) and there is no present subsection (l).

Section 2, ch. 64, Laws 1980, effective upon final approval of the state program pursuant to P.L. 95-87 (30 U.S.C. § 1201 et seq.), amends the

following section:

"\$ 35-11-406. Application for permit; generally; denial; limitations. (a) Applications for a mining permit shall be made in writing to

the administrator and shall contain:

(xii) A minimum fee of one hundred dollars (\$100.00) plus ten dollars (\$10.00) for each acre in the request permit, but the maximum fee for any single permit shall not exceed two thousand dollars (\$2,000.00). The permit is amendable, excepting permits for surface coal mining operations, without public notice or hearing if the area sought to be included by amendment does not exceed twenty percent (20%) of the total permit acreage, is contiguous to the permit area, and if the operator includes all of the information necessary in his application to amend that is required in this section including a mining and reclamation plan acceptable to the administrator. The fee for a permit amendment shall be two hundred dollars (\$200.00) plus ten dollars (\$10.00) for each acre not to exceed two thousand dollars (\$2,000.00);

(xiv) For surface coal mining permit applications, a schedule listing all notices of violation which resulted in enforcement action of this act, and any law, rule or regulation of the United States, or of any department or agency in the United States pertaining to air or water environmental protection incurred by the applicant in connection with any surface coal mining operation during the three (3) year period prior to the date of application;

(xv) Such other information as the administrator deems necessary or as good faith compliance with the provisions of this act require.

"(b) The application shall include a mining plan and reclamation plan dealing with the extent to which the mining operation will disturb or change the lands to be affected, the proposed future use or uses and the plan whereby the operator will reclaim the affected lands to the proposed future use or uses. The mining plan and reclamation plan shall be consistent with the objectives and purposes of this act and of the rules and regulations promulgated. The mining plan and reclamation plan shall include the following:

(xii) For any application filed after March 1, 1975, including any lands privately owned but not covered by the provisions of paragraph (b)(xi) of this section an instrument of consent from the surface landowner, if different from the owner of the mineral estate, to the mining plan and reclamation plan. If consent cannot be obtained as to the mining plan or reclamation plan or both, the applicant may request a hearing before the environmental quality council. The council shall issue an order in lieu of consent if it finds:

(E) For surface coal mining operations, that the applicant has the legal authority to extract coal by

surface mining methods.

(xx) For surface coal mining operations, a request for approval of any alternatives which may be proposed to the provisions of the regulations promulgated by the council. For each alternative provision the applicant shall:

> (A) Identify the provision in the regulations promulgated by the council for which the alternative is requested;

(B) Describe the alternative proposed and provide an explanation including the submission of data, analysis and information in order to demonstrate that the alternative is in with accordance the applicable provisions of the act and consistent with the regulations promulgated by the council. In addition, the applicant shall demonstrate that the proposed alternative is necessary because of local requirements or local environmental or agricultural conditions;

(C) Paragraph (xx) of this section shall not take effect until approved by the secretary of the interior as an amendment to a state program approved pursuant to section 503 of

P.L. 95-87 [30 U.S.C. § 1253].

"(e) The administrator shall notify the applicant with sixty (60) days of submission of the application whether or not it is complete. If the administrator deems the application incomplete, he shall so advise and state in writing to the applicant the information required. All items not specified as incomplete at the end of the first sixty (60) day period shall be deemed complete for the purposes of this subsection.

"(f) If the applicant resubmits an application or further information, the administrator shall review the application or additional information within sixty (60) days of each submission and advise the applicant in writing if the application

or additional information is complete.

"(g) After the application is determined complete, the applicant shall publish a notice of the filing of the application once each week for two (2) consecutive weeks in a newspaper of general circulation in the locality of the proposed

mining site.

"(h) The administrator shall review the administrator shall review the application and advise the applicant within one hundred fifty (150) days from the date of determining that the application is complete, that it is suitable for publication under subsection (j) of this section or that the application is denied. All reasons for denial shall be stated in writing to the applicant.

"(j) The applicant shall cause notice of the application to be published in a newspaper of general circulation in the locality of the proposed mining site once a week for four (4) consecutive weeks commencing within fifteen (15) days after being notified by the administrator. The notice shall contain information regarding the identity of the applicant, the location of the proposed operation, the proposed dates of commencement and completion of the operation, the proposed future use of the affected land, the location at which information about the application may be obtained, and the location and final date for filing objections to the application. The applicant shall mail a copy of the notice within five (5) days after first publication to all owners of record of the surface and mineral rights of the land within the permit area, to the owners of record of the surface rights of immediately adjacent lands and to any other persons within one-half (12) mile having a valid legal estate of record. Proof of notice and mailing shall be attached to and become part of the application.

"(k) Any interested person has the right to file written objections to the application with the administrator within thirty (30) days after the last publication of the above notice. For surface coal mining operations, the administrator may hold an informal conference if requested and take action on the application in accordance with the department's rules of practice and procedure, with the right of appeal to the council which shall be heard and tried de novo. A conference shall be held if the administrator determines that the nature of the complaint or the position of the complainants indicates that an attempt to informally resolve the disputes is preferable to a contested case proceeding. An informal conference or a public hearing shall be held within twenty (20) days after the final date of filing objections unless a different period is stipulated to by the parties. The council or administrator shall publish notice of the time, date and location of the hearing or conference in a newspaper of general circulation in the locality of the proposed operation once a week for two (2) consecutive weeks immediately prior to the hearing or conference. The hearing shall be conducted as a contested case in accordance with the Wyoming Administrative Procedure Act 188 9-4-101 to 9-4-1151 and right of judicial review shall be afforded as provided in that act

"(m) The requested permit, other than a surface coal mining permit, shall be granted if the applicant demonstrates that the application complies with the requirements of this act and all applicable federal and state laws. The director shall not deny a permit except for one (1)

or more of the following reasons:

(xii)-(xiv) Repealed by Laws 1980, ch. 64,

"(n) The applicant for a surface coal mining permit has the burden of establishing that his application is in compliance with this act and all applicable states laws. No surface coal mining permit shall be approved unless the applicant affirmatively demonstrates and the administrator finds in writing:

(i) The application is accurate and

complete;

(ii) The reclamation plan can accomplish reclamation as required by this act;

(iii) The proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area;

(iv) The area proposed to be mined is not included with an area designated unsuitable for surface coal mining pursuant to W.S. 35-11-425, within an area where mining is prohibited pursuant to section 522(e) of P.L. 95-87 [30 U.S.C. § 1272(e)] or within an area under review for this designation under an administrative proceeding, unless in such an area as to which an administrative proceeding has commenced pursuant to to W.S. 35-11-425 of this act, the operator making the permit application demonstrates that, prior to January 1, 1977, he has made substantial legal and financial commitments in relation to the operation for which he is applying for a permit;

(v) The proposed operation would:

(A) Not interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally subirrigated, but, excluding undeveloped range lands which are not significant to farming on said alluvial valley floors and those lands as to which the administrator finds that if the farming that will be interrupted, discontinued or precluded is of such small acreage as to be of negligible impact on the farm's agricultural production; or

(B) Not materially damage the quantity or quality of water in surface or underground water systems that supply these alluvial valley floors. Paragraph (j)(v) of this section shall not affect those surface coal mining operations which in the year preceding August 3, 1977, produced coal in commercial quantities, and located within or adjacent to alluvial valley floors or had obtained specific permit approval by the administrator to conduct surface coal mining operations within said alluvial valley floors. If coal deposits are precluded from being mined by this paragraph. administrator shall certify to the secretary of the interior that the coal owner or lessee may be eligible for participation in a coal exchange program pursuant to section 510(b)(5) of P.L. 95-87.

(vi) If the area proposed to be surface coal mined contains prime farmland, the operator has the technological capability to such mined area, within a restore reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management and can meet the soil reconstruction standards of this act and the regulations promulgated pursuant thereto;

(vii) The schedule provided in W.S. 35-11-406 (a)(xiv) indicates that all surface coal mining operations owned or controlled by the applicant are currently in compliance with this act and all laws referred to in paragraph (a)(xiv) of this section or that any violation has been or is in the process of being corrected to the satisfaction of the authority, department or agency which has jurisdiction over the violation.

"(o) No permit shall be issued to an applicant after a finding by the administrator or council, after opportunity for hearing, that the applicant or operator specified in the application controls or has controlled mining operations with a demonstrated pattern of willful violations of such nature and duration with such resulting irreparable harm to the environment as to indicate reckless, knowing or intentional conduct.

"(p) The administrator shall render a decision on the application within thirty (30) days after completion of the notice period if no informal conference or hearing is requested. If an informal conference is held, all parties to the conference shall be furnished with a copy of the final written decision of the administrator and director issuing or denying the permit within sixty (60) days of the conference. If a hearing is held, the council shall issue findings of fact and a decision on the application within sixty (60) days after the final hearing. The administrator shall issue or deny the permit no later than fifteen (15) days from receipt of any findings of fact and decision of the environmental quality council."

Section 3, ch. 64, Laws 1980, effective upon final approval of the state program pursuant to P.L. 95-87 (30 U.S.C. § 1201 et seq.), repeals paragraphs (xii), (xiii) and (xiv) of present subsection (m) of this section.

Effective dates.

Section 3, ch. 33, Laws 1978, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 9, 1978.

Section 2, ch. 65, Laws 1980, makes the act

effective on September 1, 1980.

Section 2, ch. 67, Laws 1980, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 18, 1980.

Law review.

See article, "The Surface Mining Control and Reclamation Act of 1977: An Overview of Reclamation Requirements and Implementation," 13 Land & Water L. Rev. 703 (1978).

§ 35-11-406. Application for permit; generally; denial; limitations.

(a) Applications for a mining permit shall be made in writing to the administrator and shall contain:

 (i) The name and address of the applicant, and, if the applicant is a partnership, association, or corporation, the names and addresses of all managers, partners and executives directly responsible for operations in this state;

(ii) A sworn statement stating that the applicant has the right and power by

legal estate owned to mine from the land for which the permit is desired;

(iii) A sworn statement that the applicant has not forfeited a bond posted for reclamation purposes and that all the statements contained in the permit application are true and correct to the best knowledge of the applicant;

(iv) The names and last known addresses of the owners of record of the

surface and mineral rights on the land to be covered by the proposed permit;

(v) The names and last known addresses of the owners of record of the surface rights of the lands immediately adjacent to the proposed permit area and for surface coal mining operations, the names and last known addresses of coal ownership immediately adjacent to the permit area;

(vi) An identification of the land to be included in the permit area to in-

clude:

(A) The location of the lands by legal subdivision, section, township, range, county, and municipal corporation, if any;

(B) The name, if any, by which such lands or any part thereof are

known;

(C) The approximate number of acres to be affected, including the total number of acres in the area covered by the permit application;

(D) The nearest town, village, or city;

(vii) A general description of the land which shall include as nearly as possible its vegetative cover, the annual rainfall, the general directions and average velocities of the winds, indigenous wildlife, its past and present uses, its present surface waters, and adjudicated water rights and their immediate drainage areas and uses, and, if known, the nature and depth of the overburden, subsoil, topsoil,

mineral seams or other deposits and any subsurface waters known to exist above the deepest projected depth of the mining operation;

 (viii) A United States Geological Survey topographic map, if available, of the permit area;

- (ix) A map based upon public records showing the boundaries of the land to be affected, its surrounding immediate drainage area, the location and names, where known, of all roads, railroads, public or private rights-of-way and easements, utility lines, lakes, streams, creeks, springs, and other surface water courses, oil wells, gas wells, water wells, and the probable limits of underground mines and surface mines, whether active or inactive, on or immediately adjacent to the land to be affected. The map shall also show:
- (A) The names, last known addesses and boundary lines of the present surface landowners and occupants on the adjacent land to be affected;

(B) The location, ownership, and uses of all buildings on, or on lands adjacent to, the land to be affected:

- (C) An outline of all areas previously disturbed by underground mining or that will be affected by future underground mining as a guide to potential subsidence problems;
- (D) Any political boundaries of special districts on or near the land to be affected;
 - (x) The mineral or minerals to be mined;
- (xi) The estimated dates of commencement and termination of the proposed permit;
- (xii) A minimum fee of one hundred dollars (\$100.00) plus ten dollars (\$10.00) for each acre in the requested permit, but the maximum fee for any single permit shall not exceed two thousand dollars (\$2,000.00). The permit is amendable, excepting permits for surface coal mining operations, without public notice or hearing if the area sought to be included by amendment does not exceed 20% of the total permit acreage, is contiguous to the permit area, and if the operator includes all of the information necessary in his application to amend that is required in this section including a mining and reclamation plan acceptable to the administrator. The fee for a permit amendment shall be two hundred dollars (\$200.00) plus ten dollars (\$10.00) for each acre not to exceed two thousand dollars (\$2,000.00);
- (xiii) A certificate issued by an insurance company authorized to do business in the United States certifying that the applicant has a public liability insurance policy in force for the surface mining and reclamation operations for which this permit is sought, or evidence that the applicant has satisfied other state or federal self-insurance requirements. This policy shall provide for personal injury and property damage protection in an amount adequate to compensate any persons damaged as a result of surface coal mining and reclamation operations including use of explosives and entitled to compensation under the applicable provisions of state law. This policy shall be maintained in full force and effect during the terms of the permit or any renewal, including the length of all reclamation operations;

(xiv) For surface coal mining permit applications, a schedule listing all notices of violation which resulted in enforcement action of this act, and any law, rule or regulation of the United States, or of any department or agency in the United States pertaining to air or water environmental protection incurred by the applicant in connection with any surface coal mining operation during the three (3) year period prior to the date of application:

(xv) Such other information as the administrator deems necessary or as good faith compliance with the provisions of this act require.

(b) The application shall include a mining plan and reclamation plan dealing

with the extent to which the mining operation will disturb or change the lands to be affected, the proposed future use or uses and the plan whereby the operator will reclaim the affected lands to the proposed future use or uses. The mining plan and reclamation plan shall be consistent with the objectives and purposes of this act and of the rules and regulations promulgated. The mining plan and reclamation plan shall include the following:

 (i) A statement of the present and proposed use of the land after reclamation;

 (ii) Plans for surface gradient to a contour suitable for proposed use after reclamation is completed and proposed method of accomplishment;

(iii) Type of vegetation and manner of proposed revegetation or other sur-

face treatment of affected area;

- (iv) Method of disposal of buildings and structures erected during the operation;
- (v) One (1) or more maps as may be required by the administrator of reclamation and mining operators on an appropriate scale showing location and extent of the proposed affected lands, together with the location of any public highways, dwelling, surface drainage area, and all utility and other easements existing on the affected lands. The map shall also show the location of all proposed pits, spoil banks, haul roads, railroads, topsoil conservation areas, buildings, refuse or waste areas, shipping areas including conveyors, and shall further set forth the drainage plan on, below, above and away from the affected land including subsurface water above the mineral seam to be removed; and shall further show the location of all waste water impoundments, any settling ponds, and other water treatment facilities, constructed drainways and natural drainways, and the surface bodies of water receiving this discharge. In lieu of an original map, a reproduction of a United States Geological Survey topographic map or aerial photograph is acceptable if the required information is platted. The map of the affected lands shall be accompanied by a typical cross section, showing the elevations of the surface, top and bottom of the mineral seam. Additional cross sections at appropriate intervals may be required by the administrator. The cross sections shall show surface elevations for a distance beyond the outlines of the affected areas as may be determined by the administrator;

(vi) An estimate of the total cost of reclaiming the affected lands as outlined in the written proposal computed in accordance with established engineering

principles;

(vii) A contour map on the same scale as the reclamation map showing to the extent possible the proposed approximate contours of the affected area after

completion of proposed reclamation;

- (viii) The proposed method of separating topsoil, subsoil, and spoil piles, protecting and conserving them from wind and water erosion before reclamation begins by planting a quick growing cover or other acceptable methods, and the proposed method of preserving topsoil free of acid or toxic materials, as well as the manner in which topsoil shall be replaced. If topsoil is virtually nonexistent or is not capable of sustaining vegetation, then the method of removing, segregating and preserving in a like manner subsoil which is better able to support vegetation. Spoil piles are to be kept separate and apart from topsoil. All piles are to be clearly marked so as to avoid confusion. If conditions do not permit the separation, conservation and replacement of topsoil or subsoil, a full explanation of such conditions shall be given and alternate procedures proposed;
- (ix) A plan for insuring that all acid forming, or toxic materials, or materials constituting a fire, health or safety hazard uncovered during or created by the mining process are promptly treated or disposed of during the mining process in

a manner designed to prevent pollution of surface or subsurface water or threats to human or animal health and safety. Such method may include, but not be limited to covering, burying, impounding or otherwise containing or disposing of the acid, toxic, radioactive or otherwise dangerous material:

- (x) For a surface mining operation granted a new permit after July 1, 1973, and prior to March 1, 1975, except for an operation legally operating under the 1969 Open Cut Reclamation Act, an instrument of consent from the surface landowner, if different from the mineral owner, to the mining plan and reclamation plan. If consent cannot be obtained as to either or both, the applicant may request a hearing before the environmental quality council. The council shall issue an order in lieu of consent if it finds:
- (A) That the mining plan and the reclamation plan have been submitted to the surface owner for approval;
- (B) That the mining plan and the reclamation plan is detailed so as to illustrate the full proposed surface use including proposed routes of egress and ingress;
- (C) That the use does not substantially prohibit the operations of the surface owner;

(D) The proposed plan reclaims the surface to its approved future use,

in segments if circumstances permit, as soon as feasibly possible;

- (xi) For an application filed after March 1, 1975, an instrument of consent from the resident or agricultural landowner, if different from the owner of the mineral estate, granting the applicant permission to enter and commence surface mining operation, and also written approval of the applicant's mining plan and reclamation plan. As used in this paragraph "resident or agricultural landowner" means a natural person or persons who, or a corporation of which the majority stockholder or stockholders:
- (A) Hold legal or equitable title to the land surface directly or through stockholdings, such title having been acquired prior to January 1, 1970, or having been acquired through descent, inheritance or by gift or conveyance from a member of the immediate family of such owner; and

(B) Have their principal place of residence on the land, or personally conduct farming or ranching operations upon a farm or ranch unit to be affected by the surface mining operation, or receive directly a significant portion of their income

from such farming or ranching operations.

- (xii) For any application filed after March 1, 1975, including any lands privately owned but not covered by the provisions of paragraph (b)(xi) of this section an instrument of consent from the surface landowner, if different from the owner of the mineral estate, to the mining plan and reclamation plan. If consent cannot be obtained as to the mining plan or reclamation plan or both, the applicant may request a hearing before the environmental quality council. The council shall issue an order in lieu of consent if it finds:
- (A) That the mining plan and the reclamation plan have been submitted to the surface owner for approval;
- (B) That the mining plan and the reclamation plan is detailed so as to illustrate the full proposed surface use including proposed routes of egress and ingress;
- (C) That the use does not substantially prohibit the operations of the surface owner;
- (D) The proposed plan reclaims the surface to its approved future use, in segments if circumstances permit, as soon as feasibly possible;

(E) For surface coal mining operations, that the applicant has the legal authority to extract coal by surface mining methods.

- (xiii) The procedures proposed to avoid constituting a public nuisance, endangering the public safety, human or animal life, property, wildlife and plant life in or adjacent to the permit area including a program of fencing all stockpiles, roadways, pits and refuse or waste areas to protect the surface owner's on-going operations;
- (xiv) The methods of diverting surface water around the affected lands where necessary to effectively control pollution or unnecessary erosion;
- (xv) The methods of reclamation for effective control of erosion, siltation, and pollution of affected stream channels and stream banks by the mining operations;
- (xvi) A statement of the source, quality and quantity of water, if any, to be used in the mining and reclamation operations;
- (xvii) A blasting plan which shall outline the procedures and standards by which the operator of a surface coal mine will meet the provisions of W.S. 35-11-415(b)(xi);
- (xviii) For surface coal mining operations, a plan to minimize the disturbances to the prevailing hydrologic balance at the minesite and in associated offsite areas and to the quality and quantity of water in surface and ground water systems both during and after mining operations and during reclamation. This paragraph does not alter the authority granted under any other section of this act with respect to requirements for maintaining the hydrologic balance in the minesite, or associated offsite areas, of other mining operations;
 - (xix) A projected timetable for accomplishment of the reclamation plan.
- (xx) For surface coal mining operations, a request for approval of any alternatives which may be proposed to the provisions of the regulations promulgated by the council. For each alternative provision the applicant shall:
- (A) Identify the provision in the regulations promulgated by the council for which the alternative is requested;
- (B) Describe the alternative proposed and provide an explanation including the submission of data, analysis and information in order to demonstrate that the alternative is in accordance with the applicable provisions of the act and consistent with the regulations promulgated by the council. In addition, the applicant shall demonstrate that the proposed alternative is necessary because of local requirements or local environmental or agricultural conditions;
- (C) Paragraph (xx) of this section shall not take effect until approved by the secretary of the interior as an amendment to a state program approved pursuant to section 503 of P.L. 95-87.
- (c) The applicant may have the local conservation district assist in preparation of, provide data for, perform research, review and comment upon the reclamation. For those lands in a surface coal mining permit application which a reconnaissance inspection suggests may be prime farm lands, a soil survey shall be made or obtained according to standards established by the United States secretary of agriculture in order to confirm the exact location of these prime farm lands, if any. If the United States secretary of agriculture or his representative has determined that the state, area or exact location within the permit area does not contain prime farm lands this subsection is inapplicable.
- (d) The applicant shall file a copy of his application for public inspection at the office of the administrator and in the offices of the county clerks of the counties in which the proposed permit area is located. Those parts of the application which contain confidential trade secrets whose disclosure would be harmful to the applicant are exempt from these filings.
 - (e) The administrator shall notify the applicant within sixty (60) days of sub-

mission of the application whether or not it is complete. If the administrator deems the application incomplete, he shall so advise and state in writing to the applicant the information required. All items not specified as incomplete at the end of the first sixty (60) day period shall be deemed complete for the purposes of this subsection.

(f) If the applicant resubmits an application or further information, the administrator shall review the application or additional information within sixty (60) days of each submission and advise the applicant in writing if the application or ad-

ditional information is complete.

(g) After the application is determined complete, the applicant shall publish a notice of the filing of the application once each week for two (2) consecutive weeks in a newspaper of general circulation in the locality of the proposed mining site.

(h) The administrator shall review the application and advise the applicant within one hundred fifty (150) days from the date of determining that the application is complete, and that it is suitable for publication under subsection (j) of this section or that the application is denied. All reasons for denial shall be stated in

writing to the applicant.

- (j) The applicant shall cause notice of the application to be published in a newspaper of general circulation in the locality of the proposed mining site once a week for four (4) consecutive weeks commencing within fifteen (15) days after filing of the completed application. The notice shall contain information regarding the identity of the applicant, the location of the proposed operation, the proposed dates of commencement and completion of the operation, the proposed future use of the affected land, the location at which information about the application may be obtained, and the location and final date for filing objections to the application. The applicant shall mail a copy of the notice within five (5) days after first publication to all owners of record of the surface and mineral rights of the land within the permit area, to the owners of record of the surface rights of immediately adjacent lands and to any other persons within one-half (½) mile having a valid legal estate of record. Proof of notice and mailing shall be attached to and become part of the application.
- (k) Any interested person has the right to file written objections to the application with the administrator within thirty (30) days after the last publication of the above notice. For surface coal mining operations, the administrator may hold an informal conference if requested and take action on the application in accordance with the department's rules of practice and procedure, with the right of appeal to the council which shall be heard and tried de novo. A conference shall be held if the administrator determines that the nature of the complaint or the position of the complainants indicate that an attempt to informally resolve the disputes is preferable to a contested case proceeding. An informal conference or a public hearing shall be held within twenty (20) days after the final date for filing objections unless a different period is stipulated to by the parties. The council or administrator shall publish notice of the time, date and location of the hearing or conference in a newspaper of general circulation in the locality of the proposed operation once a week for two (2) consecutive weeks immediately prior to the hearing or conference. The hearing shall be conducted as a contested case in accordance with the Wyoming Administrative Procedure Act, and right of judicial review will be afforded as provided in that act.
- (m) The requested permit, other than a surface coal mining permit, shall be granted if the applicant demonstrates that the application complies with the requirements of this act and all applicable federal and state laws. The director shall not deny a permit except for one (1) or more of the following reasons:

(i) The application is incomplete;

(ii) The applicant has not properly paid the required fee;

 (iii) Any part of the proposed operation, reclamation program, or the proposed future use is contrary to the law or policy of this state, or the United States;

(iv) The proposed mining operation would irreparably harm, destroy, or materially impair any area that has been designated by the council a rare or uncommon area and having particular historical, archaeological, wildlife, surface geological, botanical or scenic value;

(v) If the proposed mining operation will cause pollution of any waters in

violation of the laws of this state or of the federal government;

(vi) If the applicant has had any other permit or license issued hereunder revoked, or any bond posted to comply with this act forfeited;

(vii) The proposed operation constitutes a public nuisance or endangers the

public health and safety;

(viii) The affected land lies within three hundred (300) feet of any existing occupied dwelling, home, public building, school, church, community or institutional building, park or cemetery, unless the landowner's consent has been obtained. The provisions of this subsection shall not apply to operations conducted under an approved permit issued by the state land commissioner in compliance with the "Open Cut Land Reclamation Act of 1969";

(ix) The operator is unable to produce the bonds required;

- (x) If written objections are filed by an interested person under subsection (g) of this section.
- (xi) If information in the application or information obtained through the director's investigation shows that reclamation cannot be accomplished consistent with the purposes and provisions of this act;

(xii) If the applicant has been and continues to be in violation of the provi-

sions of this act;

- (xiii) No permit shall be denied on the basis that the applicant has been in actual violation of the provisions of this act if the violation has been corrected or discontinued.
- (n) The applicant for a surface coal mining permit has the burden of establishing that his application is in compliance with this act and all applicable state laws. No surface coal mining permit shall be approved unless the applicant affirmatively demonstrates and the administrator finds in writing:

(i) The application is accurate and complete;

(ii) The reclamation plan can accomplish reclamation as required by this act;

(iii) The proposed operation has been designed to prevent material damage

to the hydrologic balance outside the permit area;

(iv) The area proposed to be mined is not included within an area designated unsuitable for surface coal mining pursuant to W.S. 35-11-425, within an area where mining is prohibited pursuant to section 522(e) of P.L. 95-87, or within an area under review for this designation under an administrative proceeding, unless in such an area as to which an administrative proceeding has commenced pursuant to W.S. 35-11-425 of this act, the operator making the permit application demonstrates that, prior to January 1, 1977, he has made substantial legal and financial commitments in relation to the operation for which he is applying for a permit;

(v) The proposed operation would:

(A) Not interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally subirrigated, but, excluding undeveloped range lands which are not significant to farming on said alluvial valley floors and those lands as to which the administrator finds that if the farming that will be interrupted, discontinued or precluded is of such small acreage as to be of negligible impact on the farm's agricultural production; or

- (B) Not materially damage the quantity or quality of water in surface or underground water systems that supply these alluvial valley floors. Paragraph (j)(v) of this section shall not affect those surface coal mining operations which in the year preceding August 3, 1977, produced coal in commercial quantities, and were located within or adjacent to alluvial valley floors or had obtained specific permit approval by the administrator to conduct surface coal mining operations within said alluvial valley floors. If coal deposits are precluded from being mined by this paragraph, the administrator shall certify to the secretary of the interior that the coal owner or lessee may be eligible for participation in a coal exchange program pursuant to section 510(b)(5) of P.L. 95-87.
- (vi) If the area proposed to be surface coal mined contains prime farmland. the operator has the technological capability to restore such mined area, within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management and can meet the soil reconstruction standards of this act and the regulations promulgated pursuant thereto;
- (vii) The schedule provided in W.S. 35-11-406(a)(xiv) indicates that all surface coal mining operations owned or controlled by the applicant are currently in compliance with this act and all laws referred to in paragraph (a)(xiv) of this section or that any violation has been or is in the process of being corrected to the satisfaction of the authority, department or agency which has jurisdiction over the violation.
- (o) No permit shall be issued to an applicant after a finding by the administrator or council, after opportunity for hearing, that the applicant or operator specified in the application controls or has controlled mining operations with a demonstrated pattern of willful violations of such nature and duration with such resulting irreparable harm to the environment as to indicate reckless, knowing or intentional conduct.
- (p) The administrator shall render a decision on the application within thirty (30) days after completion of the notice period if no informal conference or hearing is requested. If an informal conference is held, all parties to the conference shall be furnished with a copy of the final written decision of the administrator and director issuing or denying the permit within sixty (60) days of the conference. If a hearing is held, the council shall issue findings of fact and a decision on the application within sixty (60) days after the final hearing. The administrator shall issue or deny the permit no later than fifteen (15) days from receipt of any findings of fact and decision of the environmental quality council.

Editor's note. - Chapter 67, Laws 1980, redesignated former subsection (h) but did not specify its new designation. Former subsections (g) and (i) were specifically redesignated by the act as present subsections (k) and (n). Former subsection (h) has been redesignated as present subsection (m) and there is no present subsection (1).

Section 2, ch. 64, Laws 1980, effective upon final approval of the state program pursuant to P.L. 95-87 (30 U.S.C. § 1201 et seq.), amends the following section:

§ 35-11-406 (a)(xii), (xiv), (xv); (b)(xii), (xx); (e); (f); (g); (h); (j); (k); (m)(xii), (xiv); (n)(i), (ii], (iv), (v), (vi), (viii); (o), and (p). In the event final approval is not secured, W.S. 35-11-406 as amended

through and including Session Laws 1979 will ap-

Effective dates.

Section 3, ch. 33, Laws 1978, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 9, 1978.

Section 2, ch. 65, Laws 1980, makes the act effective on September 1, 1980.

Section 2, ch. 67, Laws 1980, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 18, 1980.

002-40-7

Law review. See article, "The Surface Mining Control and Reclamation Act of 1977: An Overview of Recla-

mation Requirements and Implementation," 13 Land & Water L. Rev. 703 (1978).

§ 35-11-409. Permit revocation.

(b) Unless an emergency exists, and except as otherwise provided in this act, the revocation of a permit shall become effective upon thirty (30) days' notice to the operator. In an emergency, a special meeting of the council may cause a revocation to become effective upon receipt of notice by the permit holder.

(c) When an inspection carried out pursuant to the enforcement of this act reveals that a pattern of violations by any surface coal mine operator of any requirements of this act or any permit conditions required by this act has existed, and that these violations were caused by the unwarranted failure of the operator to comply with these requirements or permit conditions, or that these violations are willfully caused by the operator, the director shall issue an order to the operator to show cause why the permit should not be suspended or revoked. Opportunity for a public hearing before the council shall be provided. If a hearing is requested the director shall inform all interested parties of the time and place of the hearing. Upon failure of the operator to show cause why the permit should not be suspended or revoked, the council shall suspend or revoke the permit.

(Laws 1978, ch. 33, § 2.)

Only part of section set out. - As the rest of the section was not affected by the 1978 amendment, it is not set out in this Supplement. Effective date. - Section 3, ch. 33, Laws 1978.

makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 9, 1978.

§ 35-11-415. Duties of operator.

(b) The operator, pursuant to an approved surface mining permit and mining

plan and reclamation plan, or any approved revisions thereto, shall:

(x) For surface coal mining operations, preserve throughout the mining and reclamation process the essential hydrologic functions of alluvial valley floors if these areas are classified within a permit. This paragraph does not alter the authority granted under any other section of this act with respect to requirements for preserving throughout the mining and reclamation process the essential hydrologic functions of the minesite, or associated offsite areas, of other mining operations;

(xi) For surface coal mining operations, insure that explosives are used only in accordance with existing state and federal law and the rules and regulations promulgated by the council, which shall include but are not

limited to provisions to:

(A) Provide adequate advance written notice to local governments and residents who might be affected by the use of these explosives by publication of the planned blasting schedule in a newspaper of general circulation in the locality and by mailing a copy of the proposed blasting schedule to every resident within one-half (1/2) mile of the proposed blasting site and by providing daily notice to the resident or occupiers in these areas prior to any blasting;

- (B) Maintain for a period of at least three (3) years and make available for public inspection upon request a log detailing the location of the blasts, the pattern and depth of the drill holes, the amount of explosives used per hole, and the order and length of delay in the blast;
- (C) Limit the types of explosives and detonating equipment, the size, timing and frequency of blasts based upon the physical conditions of the site so as to prevent:
 - (I) Injury to persons;
 - (II) Damage to public and private property outside the permit area;
 - (III) Adverse impacts on any underground mine:
 - (IV) A change in the course, channel or availability of ground or surface water outside the permit area;
- (D) Require that all blasting operations be conducted by trained and competent persons as certified by the administrator;
- (E) Provide that upon the request of a resident or owner of a man-made dwelling or structure within one-half (½) mile of any portion of the permitted area the applicant or permittee shall conduct a preblasting survey of these structures and submit the survey to the administrator and a copy to the resident or owner making the request. The area of the survey shall be decided by the administrator and shall include provisions as the United States secretary of the interior shall promulgate.

(Laws 1978, ch. 33, § 2.)

Only part of section set out. — As the rest of the section was not affected by the 1978 amendment, it is not set out in this Supplement.

Editor's note. — Section 2, ch. 64, Laws 1980, effective upon final approval of the state program pursuant to P.L. 95-87 (30 U.S.C. § 1201 et seq.), amends the following section: "§ 35-11-415. Duties of operator.

"(b) The operator, pursuant to an approved surface mining permit and mining plan and reclamation plan, or any approved revisions thereto, shall:

(xii) For surface coal mining operations, replace in accordance with state law the water supply of an owner of interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial or other legitimate use from an underground or surface source where the supply has been affected by contamination, diminution or interruption proximately resulting from the surface coal mine operation."

Effective date. — Section 3, ch. 33, Laws 1978, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 9, 1978.

§ 35-11-416. Protection of the surface owner.

(b) An owner of real property and who holds a valid adjudicated water right and who obtains all or part of his supply of water for domestic, agricultural, industrial, recreational, or other legitimate use from a surface or an underground source other than a subterranean stream having a permanent distinct known channel may maintain an action against an operator to recover damages for pollution, diminution, or interruption of such water supply resulting from surface, in situ mining or underground mining. (Laws 1979, ch. 96, § 2.)

The 1979 amendment inserted "in situ mining" near the end of subsection (b).

Only part of section set out. — As the rest of the section was not affected by the amendment, it is not set out in this Supplement. Effective dates. Section 3, ch. 96, Laws 1979, makes the act effective on May 25, 1979.

§ 35-11-417. Bonding provisions.

- (c) The amount of any bond to be filed with the administrator prior to commencing any mining shall be:
 - (i) For an initial bond the amount equal to the estimated cost of reclaiming the affected land disturbed and restoring, as defined in W.S. 35-11-103 (f) (iii), any groundwater disturbed by in situ mining during the first year of operation under each permit. The estimated cost shall be based on the operator's cost estimate submitted with the permit plus the administrator's estimate of the additional cost to the state of bringing in personnel and equipment should the operator fail or the site be abandoned. In no event shall the bond be less than ten thousand dollars (\$10,000.00), except for sand and gravel, pumice, scoria or jade mining in which case the bond amount shall be set by the administrator with approval of the director to cover the cost of reclamation, and in no event less than two hundred dollars (\$200.00) per acre, for affected land;
 - (ii) For renewal bonds the amount equal to the estimated cost of reclaiming the land to be disturbed during that renewal period, and the estimated cost of completing reclamation of unreleased lands and groundwater disturbed during prior periods of time. The estimated cost shall be based on the operator's cost estimate, which shall include any changes in the actual or estimated cost of reclamation of unreleased affected lands, plus the administrator's estimate of the additional cost to the state of bringing in personnel and equipment should the operator fail or the site be abandoned. In no event shall the bond be less than ten thousand dollars (\$10,000.00), except for sand and gravel, pumice, scoria or jade mining in which case the bond amount shall be set by the administrator with approval of the director to cover the cost of reclamation, and in no event less than two hundred dollars (\$200.00) per acre, for affected land.
- (d) The council may promulgate rules and regulations for a self-bonding program for surface mining operations under which the administrator may accept the bond of the operator itself without separate surety when the operator demonstrates to the satisfaction of the administrator the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient for authorization to self-insure or bond this amount. This subsection shall not become operative until the council has promulgated rules and regulations for the self-bonding program which require that the protection provided by self-bonding shall be consistent with the objectives and purposes of this act.

- (e) When the reclamation plan for any affected land has been completed, the administrator, after consultation with the advisory board, may recommend to the director the release of up to seventy-five percent (75%) of the bond required for that affected land. The remaining portion of the bond shall be not less than ten thousand dollars (\$10,000.00), and shall be held for a period of at least five (5) years after the date of reduction to assure proper revegetation and restoration of groundwater. The retained portion of the bond may be returned to the operator at an earlier date if a release signed by the surface owner and approved by the administrator and director is obtained.
- (f) If the area of land or groundwater under permit to be disturbed is increased, then the amount of bond shall be increased to cover the added cost of reclaiming all affected lands or groundwater.

 (Laws 1979, ch. 96, § 2; 1980, ch. 66, § 1.)

The 1979 amendment inserted "and restoring, as defined in W.S. 35-11-103 (f) (iii), any groundwater disturbed by in situ mining" in the first sentence of paragraph (i) and "and groundwater" in the first sentence of paragraph (ii) of subsection (c), added "and restoration of groundwater" at the end of the second sentence in subsection (e) and inserted "or groundwater" twice in subsection (f).

The 1980 amendment deleted "coal" preceding "mining operations" near the

beginning of subsection (d).

Only part of section set out. — As the rest of the section was not affected by the 1978 and 1979 amendments, it is not set out in this Supplement.

Editor's note. — The reference to W.S. 35-11-103 (f) (iii), in paragraph (c) (i), read as W.S.

35-11-103 (a) (iii) in the printed acts but was renumbered to accurately reflect the contents of § 35-11-103.

Effective dates.

Section 3, ch. 33, Laws 1978, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 9, 1978.

Section 2, ch. 49, Laws 1978, makes the act effective on May 27, 1978.

Section 3, ch. 96, Laws 1979, makes the act

effective on May 25, 1979.

Section 2, ch. 66, Laws 1980, makes the act effective on June 2, 1980.

§ 35-11-418. Cash, etc., in lieu of bond.

In lieu of a bond, the operator or its principal may deposit federally insured certificates of deposit payable to the Wyoming department of environmental quality, or cash or government securities, or irrevocable letters of credit issued by a bank organized to do business in the United States, or all four. (Laws 1980, ch. 66, § 1.)

The 1980 amendment inserted "or its principal" following "the operator," inserted "or irrevocable letters of credit issued by a bank organized to do business in the United States" following "government securities" and

substituted "four" for "three" at the end of the section.

Effective date.

Section 2, ch. 66, Laws 1980, makes the act effective on June 2, 1980.

§ 35-11-423. Release of bonds.

(d) The council shall promulgate rules and regulations governing the release of bonds for surface coal mining operations in compliance with P.L. 95-87. (Laws 1978, ch. 33, § 2.) Only part of section set out. — As the rest of the section was not affected by the 1978 amendment, it is not set out in this Supplement.

Editor's note. — Section 2, ch. 64, Laws 1980, effective upon final approval of the state program pursuant to P.L. 95-87 (30 U.S.C. § 1201 et seq.), amends the following section: "§ 35-11-423. Release of bonds.

(d) The council shall promulgate rules and regulations governing the release of bonds for surface coal mining operations in compliance with P.L. 95-87 [30 U.S.C. § 1201 et seq.] as that law is worded on August 3, 1977, which shall be controlling notwithstanding other provisions of W.S. 35-11-417 and 35-11-423 to the contrary."

Effective date. — Section 8, ch. 33, Laws 1978, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, 5 8, Wyo. Const. Approved March 9, 1978.

§ 35-11-424. Deposit of fees and forfeitures.

Law review. — See article, "The Surface Mining Control and Reclamation Act of 1977: An Overview of Reclamation Requirements and Implementation," 13 Land & Water L. Rev. 703

§ 35-11-425. Designation of areas unsuitable for surface coal mining.

(a) Any person having an interest which is or may be adversely affected may petition the council to have an area designated as unsuitable for surface coal mining operations, or to have a designation terminated. The petition shall contain allegations of facts with supporting evidence which would tend to establish the allegations. Within ten (10) months after receipt of the petition the council shall hold a public hearing in the locality of the affected area, after appropriate notice and publication of the date, time and location of the hearing. After having filed a petition and before the hearing, any person may intervene by filing allegations of facts with supporting evidence which would tend to establish the allegations. Within sixty (60) days after the hearing, the council shall issue and furnish to the petitioner and any other party to the hearing, a written decision with reasons regarding the petition. The hearing need not be held if all petitioners reach agreement prior to the requested hearing and withdraw their request.

(b) If petitioned, the council will review the particular area and:

- (i) Shall designate it as an area unsuitable for all or certain types of surface coal mining operations if it is determined that reclamation pursuant to the requirements of this act is not technologically and economically feasible; and
- (ii) May designate it as an area unsuitable for surface coal mining if the proposed coal mining operations will:

 (A) Be incompatible with existing state or local land use plans or programs; or

(B) Affect fragile or historic lands in which these operations could result in significant damage to important historic, cultural, scientific and esthetic values and natural systems; or

(C) Affect renewable resource lands in which these operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products, and these lands to include aquifers and aquifer recharge areas; or

(D) Affect natural hazard lands in which these operations could substantially endanger life and property; these lands to include areas subject to frequent flooding and areas of unstable geology.

(c) Prior to designating any land areas as unsuitable for surface coal mining

operations, the administrator shall prepare a detailed statement on:

(i) The potential coal resources of the area;

(ii) The demand for coal resources; and

(iii) The impact of this designation on the environment, economy and supply of coal.

(d) The above process will include proper notice, opportunities for public and agency participation including land use planning bodies and a public hearing prior to designation or redesignation, pursuant to this section.

(e) Any designation shall not prevent the mineral exploration pursuant to

this act of any area so designated.

- (f) The requirements of this section shall not apply to lands on which surface coal mining operations are being conducted on the date of enactment of this act or under a permit issued pursuant to this act, or where substantial legal and financial commitments in these operations were in existence prior to January 4, 1977.
- (g) This section shall not become effective until approval of a state program pursuant to P.L. 95-87.
- (h) This section shall operate independently of all other sections of the act except as to the application of the Wyoming Administrative Procedure Act [§§ 9-4-101 to 9-4-115]. (Laws 1978, ch. 33, § 1.)

Editor's note. — Section 2, ch. 64, Laws 1980, effective upon final approval of the state program pursuant to P.L. 95-87 (30 U.S.C. § 1201 et seq.), amends the following section: "§ 35-11-425. Designation of areas unsuitable for surface coal mining.

"(b) If petitioned, the council will review the

particular area and:

(ii) May designate it as an area unsuitable for surface coal mining if the coal mining operation will:

"(f) The requirements of this section shall not apply to lands on which surface coal mining

operations were being conducted on August 3, 1977 or under a permit issued pursuant to this act, or where substantial legal and financial commitments in these operations were in existence prior to January 4, 1977."

Effective date. — Section 3, ch. 33, Laws 1978, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo.

Const. Approved March 9, 1978.

§ 35-11-426. In situ mineral mining permits and testing licenses.

Any person desiring to engage in in situ mineral mining or research and development testing is governed by this act [§§ 35-11-426 to 35-11-436]. (Laws 1979, ch. 96, § 1.)

Editor's note. — Section 2, ch. 64, Laws 1980, effective upon final approval of the state program pursuant to P.L. 95-87 (30 U.S.C.

§ 1201 et seq.), amends the following section:
"§ 35-11-426. In situ mineral mining permits and testing licenses. Any person desiring to engage

in in situ mineral mining or research and development testing is governed by this act. Any general provisions of the act which are more stringent than the particular requirements

contained in W.S. 35-11-427 through 35-11-436 shall control for purposes of the regulation of coal in situ processing activities."

§ 35-11-427. In situ mining permit; permit required; authority of land quality division exclusive.

Application for an in situ mining permit shall be made to the director. The director shall designate the land quality administrator as his representative on all matters concerning the application and all communications concerning review of and final action on the application for land, air and water quality divisions and solid waste management. Nothing herein shall be construed to limit the authority of the director on making the final decision on the permit application. No in situ mining operation shall be commenced or conducted unless a valid mining permit has been issued to the operator. Construction and completion of wells may be authorized prior to issuance of a mining permit or a research and development license pursuant to W.S. 35-11-404 (g). (Laws 1979, ch. 96, § 1.)

§ 35-11-428. Same; requirements for application; contents of application.

(a) Application for an in situ mining permit shall meet the requirements of W.S. 35-11-406 (a) (i) through (vi) and (viii) through (xiv), and shall contain a description of the proposed permit area including the following information

relating to the applicable in situ technology:

(i) Soils, vegetation, wildlife and surface hydrologic information consistent with the extent and nature of the proposed surface disturbance including descriptions of the soil, indigenous wildlife, natural gamma radiation background for lands to be impacted by radioactive materials, the vegetative cover, meteorological information and a description of any surface water and adjudicated water rights within the proposed permit area or on adjacent lands;

(ii) Geologic and groundwater hydrologic information including:

(A) A description of the general geology including geochemistry

and lithology of the permit area;

(B) A characterization of the production zone and aquifers that may be affected including applicable hydrologic and water chemistry data to describe the projected effects of the mining activities.

(iii) A mine plan and a reclamation plan containing the information

required by W.S. 35-11-406 (b) (ii), (iv) and (viii) through (xix) and:

(A) A description of the mining techniques;

(B) A statement of the past, present and proposed post-reclamation use of the land, groundwater and surface water:

(C) A site facility description of the typical design criteria relevant to environmental protection:

(D) A contour map which locates proposed equipment, facilities and

appurtenances necessary to insure environmental protection;

(E) An assessment of impact to water resources on adjacent lands that may reasonably be expected and the steps that will be taken to mitigate the impact:

(F) Plans and procedures for environmental surveillance and

excursion detection, prevention and control programs;

(G) Procedures for land reclamation including preparation procedures, proposed seeding lists and methods, reestablishment details, post-mining contour map, methods to be used to conduct post-mining radiological evaluations and the methods for mitigating any significant subsidence which may occur as a result of the mining operation:

(H) Procedures for groundwater restoration; and

(J) Estimated costs of reclamation computed in accordance with established engineering principles. (Laws 1979, ch. 96, § 1.)

Editor's note. - There is no subparagraph (I) subsection (b) in this section as it appears in the in paragraph (iii) of subsection (a) and no printed acts.

§ 35-11-429. Same; contents of permit.

(a) Every permit shall:

(i) Require the operator to give verbal notice of an excursion to the administrator as soon as practical after the excursion is confirmed, followed by reasonable written notice:

(ii) Authorize the administrator to terminate or modify the mining operation if an excursion cannot be controlled or mitigated within the

constraints specified in the permit:

- (iii) Authorize the council upon the recommendation of the administrator to modify water quality criteria used for groundwater restoration when information made available after issuance of the permit warrants a modification:
- (iv) Prohibit any significant change in mining technique, method of operation, recovery fluid used, mining and reclamation plans or other activities that would jeopardize reclamation or protection of any waters of the state unless a permit revision has been approved by the administrator pursuant to this act [§§ 35-11-426 to 35-11-436];

(v) Contain other conditions and requirements established by the director to employ the best practicable technology in carrying out this act. (Laws

1979, ch. 96, § 1.)

Editor's note. - There is no subsection (b) in this section as it appears in the printed acts.

§ 35-11-430. Duties of in situ mining operator; records; annual report.

- (a) The operator shall submit an annual report containing the general categories of environmental protection and reclamation information pursuant to W.S. 35-11-411.
- (b) The operator shall maintain records at the mine site of all information resulting from monitoring activities required in the permit. The records shall state:
 - (i) The date, place, time and method of sampling and the personnel responsible for sampling:
 - (ii) The date on which analysis was performed and the personnel who performed the analysis:

(iii) Analytical techniques used; and

(iv) The results of the analysis. (Laws 1979, ch. 96, § 1.)

§ 35-11-431. Research and development license; renewal; application.

- (a) A special license to conduct research and development testing may be issued by the administrator for a one (1) year period without a permit and may be renewed annually. An application for a research and development testing license shall be accompanied by a fee of twenty-five dollars (\$25.00) and shall include:
 - (i) The information required by W.S. 35-11-406 (a) (i) through (vi), (viii) and (x):
 - (ii) A description of the nature and scope of the testing activity, of general groundwater hydrology and general geology including the production zone;
 - (iii) A statement of the present and proposed post-reclamation use of the land;
 - (iv) A reclamation plan which includes the method for groundwater restoration, a statement of the type of vegetation and manner of proposed revegetation or other surface treatment of the affected area and an estimate of the costs of reclamation;
 - (v) A timetable for the accomplishment of the reclamation plan;

(vi) Proof of notice and mailing to all persons within one-half (1/2) mile of the license area having a valid legal estate of record; and

(vii) Such other information as the administrator deems necessary or as good faith compliance with the provisions of this act [§§ 35-11-426 to 35-11-436] requires. (Laws 1979, ch. 96, § 1.)

Editor's note. — There is no subsection (b) in this section as it appears in the printed acts.

§ 35-11-432. Same; grounds for denial; appeal.

The administrator may deny the special license to conduct research and development testing if he believes the application violates the purpose of this act [§§ 35-11-426 to 35-11-436]. The decision of the administrator may be appealed through the director to the council. (Laws 1979, ch. 96, § 1.)

§ 35-11-433. Same; bond required; release or forfeiture; review of license.

(a) If a special license to conduct research and development testing is granted, the administrator shall require the licensee to provide a bond in an amount necessary to insure complete reclamation.

(b) A bond posted under the terms of this section shall be released upon completion of the reclamation program and an inspection by the administrator. Failure to comply with this act shall result in forfeiture of the bond. (Laws 1979, ch. 96, § 1.)

§ 35-11-434. Same; notice of incomplete application; when application deemed complete.

The administrator shall notify an applicant within ninety (90) days of submission of the application whether or not it is complete. If an application is incomplete, the administrator shall state in writing to the applicant the additional substantive information required. (Laws 1979, ch. 96, § 1.)

§ 35-11-435. Records to be filed on completion; abandoned drill holes.

(a) Upon completion of reclamation and abandonment by the operator, the operator shall record with the state engineer's office the location and nature of aquifers that have been affected by the in situ operation.

(b) Any abandoned drill hole shall be subject to the provisions of W.S.

35-11-404. (Laws 1979, ch. 96, § 1.)

§ 35-11-436. Existing in situ mining permits.

Any operator who possesses an in situ mining permit and license to mine shall have a period of one (1) year within which to show compliance with the requirements of W.S. 35-11-426 through 35-11-436. (Laws 1979, ch. 96, § 1.)

Effective date. — Section 3, ch. 96, Laws 1979, makes the act effective on May 25, 1979.

§ 35-11-437. Enforcement for surface coal mining operations.

Editor's note. — Section 1, ch. 64, Laws 1980, effective upon final approval of the state program pursuant to P.L. 95-87 (30 U.S.C. § 1201 et seq.), creates the following section: "§ 35-11-437. Enforcement for surface coal mining operations. (a) The director or his designated authorized representative shall issue a cessation order covering that portion of the operation relevant to the violation or hazard and impose any necessary affirmative obligations if:

(i) On the basis of an inspection, it is determined that a condition or practice exists, or violation is occurring, which creates an imminent danger to the public or which is causing or may reasonably be expected to cause significant, imminent environmental harm to land, air or water resources; or

(ii) Any violation of this article, land quality division regulations or permit conditions has not been abated within the time specified in the notice for abatement described in subsection (b) of this section, which period shall not exceed ninety (90) days.

"(b) The director or his designated authorized representative shall issue a notice fixing a reasonable time for abatement and impose any

necessary affirmative obligations if:

 (i) On the basis of an inspection, it is determined that a permittee is in violation of this article, land quality division regulations or any permit conditions; and

(ii) A cessation order is not required under subsection (a) of this section.

"(c) Any notice or order issued pursuant to this section may be affirmed, modified, vacated or terminated by:

(i) The director or his authorized

representative; or

(ii) The council, if the operator or any person having an interest which is or may be adversely affected files a petition for review within thirty (30) days of the receipt of the notice or order. The council shall order any necessary investigation and provide a public hearing, if requested. Any public hearing shall be conducted as a contested case proceeding in accordance with the Wyoming Administrative Procedure Act [§§ 9-4-101 to 9-4-115].

"(d) The director or, in his absence, the administrator shall affirm, modify, vacate or terminate any notice or order issued pursuant to this section which results in or requires cessation of mining within forty-eight (48) hours of its issuance. If cessation is affirmed, the operator shall be notified of the decision and be afforded an opportunity to request a hearing within ten (10) days of the decision. If a hearing is requested, the director shall fix a time and place for hearing before the council within five (5) calendar days of the request. The council shall affirm, modify or set aside the director's decision within forty-eight (48) hours following the adjournment of the hearing.

"(e) Any notice or order issued pursuant to this section may be temporarily stayed pending review by the council if requested by the operator. Any request for a stay shall contain a detailed statement giving reasons for granting the stay. The council shall issue a decision granting or denying the stay in accordance with rules and regulations promulgated by the

council

"(f) Whenever an order is issued under this section, at the request of any person, a sum equal to the aggregate amount of all costs and expenses (including attorney's fees) as determined by the director to have been reasonably incurred by such person for or in connection with his participation in such proceedings, including any judicial review of agency actions, may be assessed against either party as the court or the director deems proper. This subsection shall apply to any administrative proceeding under this act as it provides for the regulation of surface coal mining and reclamation operations in accordance with P.L. 95-87, as that law is worded on August 3, 1977."

ARTICLE 5. SOLID WASTE MANAGEMENT

§ 35-11-501. Other powers and duties of director.

Applied in Town of Torrington v. Environmental Quality Council, 557 P.2d 1143 (Wyo. 1976).

§ 35-11-502. Solid waste disposal requirements.

(b) The director may request and obtain similar information regarding present sites, for the purpose of determining the adequacy and approvability of existing solid waste disposal sites. The municipality having jurisdiction shall consult with and submit information to the director for initial review of the site with respect to its adequacy, absence of water or air quality effect, and overall utility as a disposal site. Any water quality or air quality violation at such existing sites will be cause to require abatement and relocation. Aspects of undesirable, although nonviolating character, such as poor access, aesthetic site management or other such aspects of undesirability shall be cause for the director to study the site for the purpose of recommending improvements.

Editor's note. — Subsection (b) is set out above to correct a typographical error in the main pamphlet.

Statutory notice of requirements for establishing new solid waste disposal. — A municipality has the statutory notice of this section that it cannot establish a new solid waste disposal without prior approval and before establishment must be analyzed for adequacy. Town of Torrington v. Environmental Quality Council, 557 P.2d 1143 (Wyo. 1976).

Waste disposal site held "new site". — Where second waste disposal site was on same tract of land as first site but was more than a quarter of a mile away and was reached by a different highway, second site was a "new site" within the meaning of this section. Town of Torrington v. Environmental Quality Council, 557 P.2d 1143 (Wyo. 1976).

§ 35-11-503. Director authorized to promulgate rules and regulations for operation of solid waste disposal sites.

Rules for establishment of solid waste sites not required. — There is no requirement that with respect to solid waste sites there must be rules and regulations for their establishment. This section provides only for rules pertaining to operation, not establishment of solid waste sites. Town of Torrington v. Environmental Quality Council, 557 P.2d 1143 (Wyo. 1976).

ARTICLE 6. VARIANCES

§ 35-11-601. Applications; authority to grant; hearing; limitations; renewals; judicial review; emergencies.

(f) Any variance granted pursuant to this section may be renewed on terms and conditions and for periods which would be appropriate on initial granting of a variance. If complaint by an aggrieved party is made to the director on account of the variance, no renewal thereof shall be granted, unless following public hearing on the complaint on due notice, the council finds that renewal is justified. No renewal shall be granted except on application therefor. Any such application shall be made at least sixty (60) days prior to the expiration of the variance.

Editor's note. — Subsection (f) has been set out to correct a typographical error which appears in the main pamphlet.

Section 2, ch. 64, Laws 1980, effective upon final approval of the state program pursuant to P.L. 95-87 (30 U.S.C. § 1201 et seq.), amends the following section: "§ 35-11-601. Applications; authority to grant; hearing; limitations;

renewals; judicial review; emergencies.

"(p) Nothing in this act or regulations under this act shall be construed to permit an application for a variance which would result in less stringent land use or environmental controls or regulations of surface coal mining and reclamation operations than authorized by P.L. 95-87 [30 U.S.C. § 1201 et seq.], as that law is worded on August 3, 1977, or the federal regulations promulgated pursuant thereto.

(q) In order to encourage advances in mining reclamation practices or to allow post-mining land use for industrial, commercial, residential or public use (including recreational facilities), the administrator, with approval by the secretary, may authorize departures in individual cases on an experimental basis from the environmental protection performance standards promulgated by the council under this act. Such departures may be authorized if:

(i) The experimental practices are potentially more or at environmentally protective, during and after mining operations, as those required

by promulgated standards;

(ii) The mining operations approved for particular land-use or other purposes are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practices; and

(iii) The experimental practices do not reduce the protection afforded public health and safety below that provided by

promulgated standards.

"(r) The secretary of interior, acting through the office of surface mining reclamation and enforcement, shall assist the state in the development of a state program for surface coal mining and reclamation operations which meet the requirements of this act and P.L. 95-87, and at the same time, reflect local requirements and environmental and agricultural conditions."

All permits under this chapter allow

variances, with the exception of water quality permits. United States Steel Corp. v. Wyoming Environmental Quality Council, 575 P.2d 749

(Wvo. 1978).

The basic reason for this distinction is that it is required to bring the act into compliance with the federal regulations, which only provide for "schedules of compliance" - not variances. United States Steel Corp. v. Wyoming Environmental Quality Council, 575 P.2d 749 (Wyo. 1978).

Prohibition of water variances is not unconstitutional. - A prohibition of water variances does not violate art. 1, § 7, Wyo. Const., in that it is an exercise of absolute and arbitrary power; does not deny due process by denying a fair opportunity to challenge applicable water quality standards; and does not deny equal protection of the laws by discriminating between water and other pollutant dischargers. United States Steel Corp. v. Wyoming Environmental Quality Council, 575 P.2d 749 (Wyo. 1978).

Given various means by which a corporation could present its views as to a water turbidity standard, including opportunity to participate in the promulgation process and to assure that there was procedural compliance, opportunity to obtain judicial review, if it was affected in fact by the rule adopted, and opportunity to seek the amendment or repeal of the rule, the corporation's rights to procedural due process were not infringed by the prohibition of water variances under subsection (o) of this section. United States Steel Corp. v. Wyoming Environmental Quality Council, 575 P.2d 749 (Wyo. 1978).

There are rational reasons to distinguish between water and other pollutant dischargers, including: the different nature of the natural resources; the difference in the number of pollutant dischargers within each class; and the difference in the extent of damage which can result from the various discharges. United States Steel Corp. v. Wyoming Environmental Quality Council, 575 P.2d 749 (Wyo. 1978).

ARTICLE 7. COMPLAINTS

§ 35-11-701. Complaint; investigations; conference; cease and desist order; hearing; referee.

Editor's note. - Section 2, ch. 64, Laws 1980, effective upon final approval of the state program pursuant to P.L. 95-87 (30 U.S.C. § 1201 et seq.), amends the following section: "§ 35-11-701. Complaint; investigations; conference; cease and desist order; hearing; referee. (a) If the director or the administrators have cause to believe that any persons are violating

any provision of this act or any rule, regulation, standard, permit, license, or variance issued pursuant hereto, or in case any written complaint is filed with the department alleging a violation, the director, through the appropriate administrator, shall cause a prompt

investigation to be made.

"(b) For surface coal mining operations, in the instance of a written complaint by any person which provides a reasonable basis to believe that a violation of this act exists, the investigation shall include a prompt inspection. In such event the director shall notify the person when the inspection is proposed to be carried out and the person shall be allowed to accompany the inspector during the inspection, subject to reasonable control by the inspector. The operator shall have a duty to exercise reasonable care for the person's safety only if his presence is known. However, this duty shall not include the duty to inspect the premises to discover dangers which are unknown to the operator, nor giving warning or protection against conditions which are known or should be obvious to the person. The operator or his designee shall be allowed to be present for any such inspection.

"(c) For other than surface coal mining operations, if, as a result of the investigation, it appears that a violation exists, the administrator of the proper division may, by conference, conciliation and persuasion, endeavor promptly to eliminate the source or cause of the violation:

(i) In case of failure to correct or remedy an alleged violation, the director shall cause to be issued and served upon the person alleged to be responsible for any such violation a written notice which shall specify the provision of this act, rule, regulation, standard, permit, license, or variance alleged to be violated and the facts alleged to constitute a violation thereof, and may require the person so complained against to cease and desist from the violation within the time the director may determine;

(ii) Any order is final unless, not later than ten (10) days after the date the notice is served, the person or persons named therein request, in writing, a hearing before the council. Upon the filing of a request the order complained of shall be stayed pending the council's final determination thereon;

(iii) If after a hearing held pursuant to this section, the council finds that a violation has occurred, it shall affirm or modify such order previously issued, or issue an appropriate order or orders for the prevention, abatement or control of the violation involved or for the taking of other corrective action. If, after a hearing on an order contained in a notice, the council finds that no violation has occurred, it shall rescind the order. Any order issued as part of a notice or after hearing may prescribe the date or dates by which the violation shall cease and may prescribe timetables for action. Nothing contained in this subsection shall be construed as preventing any person from applying for a variance as provided in W.S. 35-11-601:

(iv) At any hearing before the council, it may designate a person to be a referee and may authorize the referee to receive evidence, administer oaths, examine witnesses and issue subpoenas requiring the testimony of witnesses and the production of evidence and to make reports and recommendations with respect thereto. Any final determination based on the evidence received by any referee shall be

made solely by the council.

"(d) Nothing in this section shall be interpreted to in any way limit or contravene any other remedy available under this act, nor shall this section be interpreted as a condition precedent to any other enforcement action under this act."

Applied in Town of Torrington v. Environmental Quality Council, 557 P.2d 1143 (Wyo. 1976).

ARTICLE 9. PENALTIES

§ 35-11-901. Violations of act; penalties.

Editor's note. — Section 2, ch. 64, Laws 1980, effective upon final approval of the state program pursuant to P.L. 95-87 (30 U.S.C. § 1201 et seq.), amends the following section: "§ 35-11-901. Violations of act; penalties. (a) Any person who violates, or any director, officer or agent of a corporate permittee who willfully and knowingly authorizes, orders or carries out the

violation of any provision of this act, or any rule, regulation, standard or permit adopted hereunder or who violates any determination or order of the council pursuant to this act or any rule, regulation, standard, permit, license or variance is liable to either a penalty of not to exceed ten thousand dollars (\$10,000.00) for each day during which violation continues, or, for

multiple violations by surface coal mining operations, a penalty of not to exceed five thousand dollars (\$5,000.00) for each violation for each day during which the violation continues, which may be recovered in a civil action, and the person may be enjoined from continuing the violation as hereinafter provided.

"(b) Except for surface coal mining operations, damages are to be assessed by the court. For surface coal mining operations, all notices for abatement and cessation orders shall be reported to the director. The director shall:

(i) Issue a notice of assessment, if a

cessation order was issued:

(ii) Make a determination on whether a notice of assessment will be issued, if a

notice for abatement was issued.

"(c) Upon issuance of a notice of abatement or cessation order, the director shall inform the operator of the proposed amount of the penalty within thirty (30) days. The amount shall be determined in accordance with rules and regulations promulgated by the council. The person charged with the penalty shall have fifteen (15) days to request a conference with the director for informal disposition of any dispute over either the amount of the penalty or the occurrence of the violation.

"(d) If a conference is held and after the director has determined that a violation did occur and the amount of the penalty which is warranted, the person charged with the penalty shall, within fifteen (15) days, either:

(i) Pay the proposed penalty in full; or (ii) Petition the council for review of either the amount of the penalty or the fact of the violation, submitting a bond equal to the proposed amount of the penalty at the time of filing the petition. The bond shall be conditioned for the satisfaction of the penalty in full, or as modified by the council. if the director's determination as to the occurrence of the violation and the assessment of a penalty are affirmed. The petition is effective when the bond is approved by the council. If the bond is not approved, the person charged with the penalty has ten (10) days to forward the proposed amount to the council for placement in an escrow account in order to make the petition effective.

"(e) If a conference is not requested, the person charged with the penalty has thirty (30) days to take the action described in subsection

(c) of this section.

"(f) After a petition is effective, the council shall hold a hearing, which shall be conducted as a contested case proceeding, as required by the Wyoming Administrative Procedure [§§ 9-4-101 to 9-4-115]. The council shall either:

(i) Determine the occurrence of the violation and the amount of penalty which is warranted for the purpose of ordering that

the penalty be paid; or

(ii) Determine that no violation occurred. or that the amount of penalty should be reduced. If such a determination is made either through administrative or judicial review, the director shall within thirty (30) days remit the appropriate amount to the person, if any deposit has been made, with interest at the rate of six percent (6%), or at the prevailing department of the treasury rate, whichever is greater. Failure to file an effective petition shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.

"(g) Any person aggrieved or adversely affected in fact by a final decision of the council pursuant to this section is entitled to judicial review in accordance with the Wyoming

Administrative Procedure Act.

"(h) Any person who violates this act, or any rule or regulation promulgated thereunder, and thereby causes the death of fish, aquatic life or game or bird life is, in addition to other penalties provided by this act, liable to pay to the state, an additional sum for the reasonable value of the fish, aquatic life, game or bird life destroyed. Any monies so recovered shall be placed in the general fund of Wyoming, state treasurer's office. All actions pursuant to this article shall be brought in the county in which the violation occurred or in Laramie county by the attorney general in the name of the people of Wyoming.

"(j) Any person who willfully and knowingly violates, or any director, officer or agent of a corporate permittee who willfully knowingly authorizes, orders or carries out the violation of any provision of this act or any rule. regulation, standard, permit, license, or variance or limitations adopted hereunder or who willfully violates any determination or order of the council or court issued pursuant to this act or any rule, regulation, standard, permit or limitation issued under this act shall be fined not more than twenty-five thousand dollars (\$25,000.00) per day of violation, or imprisoned for not more than one (1) year, or both. If the conviction is for a violation committed after a first conviction of such person under this act, punishment shall be by a fine of not more than fifty thousand dollars (\$50,000.00) per day of violation or by imprisonment of not more than two (2) years, or both.

"(k) Any person who knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained under this act or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this act, shall upon conviction, be fined not more than ten thousand dollars (\$10,000.00) or imprisoned for not more than one (1) year, or both.

"(m) Any person who shall, except as permitted by law, willfully resist, prevent, impede, or interfere with the director, any administrator, or any of their agents in the performance of duties in the regulation of surface coal mining operations shall be punished by a fine of not more than five thousand dollars (\$5,000.00) or by imprisonment for not more than one (1) year in county jail, or both.

"(n) Any operator of a surface coal mining operation who fails to correct a violation within the period permitted for its correction, or after a final order or decision issues requiring correction when either the department or a court has relieved the operator from the abatement requirements of the notice or order, shall be

assessed a civil penalty of not less than seven hundred and fifty dollars (\$750.00) for each day during which the failure or violation continues.

"(o) Except as provided in subsection (p) of this section, nothing in this act shall be construed to abridge, limit, impair, create, enlarge or otherwise affect substantively or procedurally the right of any person to damages or other relief on account of injury to persons or property and to maintain any action or other

appropriate proceeding therefor.

(p) Any person who is injured in his person or property through the violation by any operator of any rule, regulation, order or permit issued pursuant to this act as it provides for the regulation of surface coal mining and reclamation in accordance with the requirements of P.L. 95-87 [30 U.S.C. § 1201 et seq.] may bring an action for damages (including reasonable attorney and expert witness fees) only in the judicial district in which the surface coal mining operation complained of is located."

§ 35-11-902. Civil or criminal remedy.

Editor's note. - Section 2, ch. 64, Laws 1980. effective upon final approval of the state program pursuant to P.L. 95-87 (30 U.S.C. § 1201 et seq.), amends the following section: "§ 35-11-902. Civil or criminal remedy. (a) Except as provided in subsection (c) of this section, any person having an interest which is or may be adversely affected, may commence a civil action on his own behalf to compel compliance with this act only to the extent that such action could have been brought in federal district court under Section 520 of P.L. 95-87 (30 U.S.C. § 1270], as that law is worded on August 3, 1977:

(i) Against any governmental entity, for alleged violations of any provisions of this act or of any rule, regulation, order or permit issued pursuant thereto, or against any other person for alleged violations of any rule, regulation, order or permit issued

pursuant to this act; or

(ii) Against the state of Wyoming, department of environmental quality, for alleged failure of the department to perform any act or duty under this act which is not discretionary with the

department.

"(b) Actions against the state of Wyoming, department of environmental quality, pursuant to this section shall be filed in the district court for Laramie county. Actions against any governmental entity, or any other person pursuant to this section shall be filed in the district court for the county in which the violation is alleged to have occurred.

"(c) No action pursuant to this section may be commenced:

(i) Prior to sixty (60) days after the plaintiff has given notice in writing of the violation and of his intent to commence the civil action to the department and the alleged violator, except that such action may be brought immediately after such notification if the violation complained of constitutes an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff; or

(ii) If the department, through the attorney general, has commenced a civil action to require compliance with the provisions of this act, or any rule, regulation, order or permit issued pursuant to this act, but in any such action any person may intervene as a matter of right.

"(d) The state of Wyoming, department of environmental quality, may intervene as a matter of right in any action filed pursuant to

this section.

'(e) The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation, (including attorney and expert witness fees), to any party whenever the court determines such award is appropriate.

"(f) The availability of judicial review established pursuant to W.S. 9-4-114 shall not be construed to limit the operation of rights

established in this section.

"(g) Nothing in this act shall in any way limit any existing civil or criminal remedy for any

wrongful action arising out of a violation of any provision of this act or any rule, regulation,

standard, permit, license, or variance or order adopted hereunder."

ARTICLE 11. MISCELLANEOUS PROVISIONS

§ 35-11-1104. Limitation of scope of act.

Cited in Town of Torrington v. Environmental Quality Council, 557 P.2d 1143 (Wyo. 1976).

ARTICLE 12. ABANDONED MINE RECLAMATION PROGRAM

§§ 35-11-1201 to 35-11-1207. Abandoned mine reclamation program.

Editor's note. - Section 1, ch. 64, Laws 1980. effective upon final approval of the state program pursuant to P.L. 95-87 (30 U.S.C. § 1201 et seq.), creates the following sections: 5 35-1201. Abandoned mine reclamation program. In addition to any other powers and duties imposed by law, the governor, through the administrator of the land quality division shall perform any and all acts necessary or expedient to implement and administer an abandoned mine reclamation program pursuant to section 405 of P.L. 95-87 [30 U.S.C. § 1235] in accordance with an approved state reclamation plan and annual approved applications for implementation of specific reclamation projects.

"§ 35-11-1202. State reclamation plan. (a) The state reclamation plan may provide for any or all

of the following activities:

(i) The acquisition, reclamation or restoration of land and water resources which were mined for coal or affected by coal mining processes and left or abandoned in an unreclaimed or inadequately reclaimed condition prior to August 3, 1977, and for which there is no continuing reclamation responsibility under state or federal statutes. Any of the activities under this paragraph shall reflect the following priorities in the order stated:

(A) The protection of public health, safety, general welfare and property from extreme danger of adverse effects of coal mining practices;

(B) The protection of public health, safety and general welfare from adverse effects of coal mining practices;

(C) The restoration of the mined or affected land and water and the environment previously degraded by adverse effects of coal mining practices, including measures for the conservation and development of soil, water (excluding channelization), woodland, fish, and wildlife, recreation resources and agricultural productivity;

(D) Research and demonstration projects relating to the development of surface coal mining reclamation and water quality control program methods

and techniques;

(E) The protection, repair, replacement, construction or enhancement of public facilities adversely affected by

past coal mining practices; and

(F) The development of publicly owned land adversely affected by coal mining practices, including land acquired as provided in this article for recreation and historic purposes, conservation and reclamation purposes

and open space benefits.

(ii) The acquisition and filling of voids and sealing tunnels, shafts and entryways resulting from any previous mining operation, and the reclamation of the adverse surface impacts of underground or surface mines, which constitute a hazard to the public health and safety or degrade the environment. The plan shall not, however, provide for this activity until, at a minimum, subparagraph (C) of paragraph (i) of this subsection has been accomplished, or the governor has certified and the secretary of the interior determined that reclamation is necessary for the protection of the public health or safety:

(A) In those instances where mine waste piles are being reworked for conservation purposes, the incremental costs of disposing of the wastes from such operations by filling voids and sealing tunnels may be included in the

(iii) The acquisition, reclamation and transfer of land to the state or to a political subdivision thereof, or to any person after a determination by the governor that such is an integral and necessary element of an economically feasible plan for a project to construct or rehabilitate housing for persons disabled as the result of employment in the mines or work incidental thereto, persons displaced by acquisition of land pursuant to this article, persons dislocated as a result of adverse effects of coal mining practices which constitute an emergency, or persons dislocated as the result of natural disasters or catastrophic failures from any cause. However, no part of the abandoned mine reclamation funds may be used to pay the actual construction costs of housing:

(iv) The construction of specific public facilities in communities impacted by coal development, after the governor certifies and the secretary of the interior concurs

that:

(A) The reclamation requirements in paragraphs (i) and (ii) of this subsection have been accomplished;

(B) The specific facilities are needed the community due to coal

development; and

(C) Impact funds which may be available under the Federal Mineral Leasing Act of 1920 [Mineral Lands Leasing Act], as amended, or the act of October 20, 1976, P.L. 94-565 (90 Stat. 2662) [31 U.S.C. §§ 1601 to 1607] are inadequate for such construction.

"(b) The state reclamation plan shall be developed by the governor, after recommendation from the administrator of the land quality division. The administrator shall make this recommendation only after he has prepared a proposed plan and afforded, at a minimum, an opportunity for the public to inspect and comment on this proposed plan in each county having land and water resources which qualify for acquisition, reclamation or restoration under paragraph (a)(i) of this section. All comments shall be recorded and considered in the development of the plan.

"§ 35-11-1203. Abandoned mine reclamation account. (a) Upon approval of the state reclamation plan, the state treasurer shall create an abandoned mine reclamation account within the trust and agency fund for the purpose of accounting for monies received by the state from the secretary of the interior and any other monies authorized to be deposited in the account. The account shall be administered in compliance

with the approved plan.

"(b) Revenue to the account shall include amounts granted by the secretary of the interior under Title IV of P.L. 95-87 [30 U.S.C. §§ 1231 to 1243], monies received by the state for the use of [or] sale of lands acquired with monies from the account and such other monies which may be deposited in the account for use in carrying out the state reclamation program.

"§ 35-11-1204. Right of entry. (a) The administrator or his designated authorized representative shall have the right to enter upon or have access to any property adversely affected by past coal mining practices to restore, reclaim, abate, control or prevent the adverse effects if the administrator makes a finding that:

(i) The adverse effects on land or water resources are such that, in the public interest, the action should be taken; and

(ii) The owners of the property either are not known or readily available or refuse to

give permission to enter.

"(b) Prior to entry, notice shall be given by mail to the owners, if known, or if not known, by posting notice upon the premises and advertising once in a newspaper of general

circulation in the locality of the land.

"(c) Monies expended for work on or to the premises and the benefits accruing to any premises entered upon shall be chargeable against the land and shall mitigate or offset any claim of or any action brought by any owner of any interest in the premises for any alleged damages by virtue of the entry. However, this provision is not intended to create new rights of action or eliminate existing immunities.

"(d) The administrator shall have the right to enter upon any property for the purpose of conducting exploratory work to determine the feasibility to restore, reclaim, abate, control or

prevent the adverse effects.

"(e) Any entry under this section shall be construed as an exercise of the state's police power and shall not be construed as an act of condemnation or trespass.

"§ 35-11-1205. Land acquisition and disposal. (a) The state may acquire any land, by purchase, donation or condemnation, which is adversely affected by past coal mining practices if the administrator, with the concurrence of the governor, finds that acquisition of the land is necessary to successful reclamation and that:

(i) The acquired land, after restoration, reclamation. abatement, control prevention of the adverse effects of past

coal mining practices, will serve recreation and historic purposes, conservation and reclamation purposes or provide open space

benefits; and

(ii) Permanent facilities such as a treatment plant or a relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control or prevention of the adverse effects of past coal mining practices; or

(iii) Acquisition of coal refuse disposal sites and all coal refuse thereon will serve the purposes of this article or that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal mining

practices.

"(b) Title to all lands acquired pursuant to this section shall be in the name of the state. The price paid for land acquired under this section shall reflect the market value of the land as adversely affected by past coal mining practices.

"(c) Where land acquired pursuant to this section is deemed to be suitable for industrial, commercial. residential or recreational development, the administrator, with the approval of the governor and the secretary of the interior, may sell the land for at least fair market value by public sale under a system of

competitive bidding.

"(d) The administrator, when requested after appropriate public notice, shall hold a public hearing, with appropriate notice, in the county or counties in which lands acquired pursuant to this section are located in order to afford all persons an opportunity to participate in the decision concerning the use or disposition of the lands after restoration, reclamation, abatement, control or prevention of the adverse effects of past coal mining practices.

"§ 35-11-1206. Liens for reclamation on private lands. (a) Within six (6) months after the completion of projects to restore, reclaim, abate, control or prevent adverse effects of past coal mining practices on privately owned land, the

administrator shall itemize the monies expended and may file a lien against the property with the appropriate county clerk. If the monies expended result in a significant increase in property value, a notarized appraisal by an independent appraiser shall be filed with the lien. The lien shall not exceed the amount determined by the appraisal to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control or prevention of the adverse effects of past coal mining practices. No lien shall be filed under this section against the property of any person who owned the surface prior to May 2, 1977, and who neither consented to, participated in, nor exercised control over the mining operation which necessitated the reclamation project.

"(b) The landowner may petition the district court for the district in which the majority of the land is located within sixty (60) days of the filing of the lien to determine the increase in the market value of the land. The amount reported to be the increase in value of the premises shall constitute the amount of the lien and shall be

recorded with the lien.

"(c) The lien provided in this section shall constitute a lien upon the land as of the date of the expenditure of the monies and shall have priority as a lien second only to the lien of real estate taxes imposed upon the land.

"§ 35-11-1207. Miscellaneous authority. (a) The governor may promulgate any rules and regulations which may be necessary or expedient to implement and administer the provisions of this article.

"(b) The administrator may construct and operate any plants, including major interceptors and other facilities appurtenant to the plant for the control and treatment of water pollution

resulting from mine drainage.

"(c) The governor may transfer funds to other appropriate state or federal agencies in order to carry out the reclamation activities authorized by this article."

CHAPTER 12

Wyoming Industrial Development and Siting Act

Sec.

35-12-104. Industrial siting council created; composition; terms; compensation. 35-12-108. Application for permit; form; initial fee.

35-12-121. Waiver of permit; exemptions; information required.

Law reviews. — For article, "Industrial Siting Legislation: The Wyoming Industrial Development Information and Siting Act — Advance or Retreat?" see 11 Land & Water L. Rev. 27 (1976).

For case note, "The Scope of Judicial Review of Administrative Actions, Laramie River Conservation Council v. Industrial Siting Council, 588 P.2d 1241 (Wyo. 1978)," see 14 Land & Water L. Rev. 607 (1979).

§ 35-12-101. Citation.

This chapter provides especially for public participation in the decisions on projects such as the Laramie River Station. Indeed, a purpose of establishing the Industrial Siting Council and Administration was to receive from and disseminate to Wyoming citizens information upon which future industrial growth can be intelligently developed. Laramie River Conservation Council v. Dinger, 567 P.2d 731 (Wyo. 1977).

§ 35-12-102. Definitions.

Law review. — For article, "Industrial Siting Legislation: The Wyoming Industrial Development Information and Siting Act — Advance or Retreat?" see 11 Land & Water L. Rev. 27 (1976).

§ 35-12-103. Office of industrial siting administration created.

Law reviews. — For article, "Industrial Siting Legislation: The Wyoming Industrial Development Information and Siting Act — Advance or Retreat?" see 11 Land & Water L. Rev. 27 (1976).

For case note, "The Scope of Judicial Review of Administrative Actions, Laramie River Conservation Council v. Industrial Siting Council, 588 P.2d 1241 (Wyo. 1978)," see 14 Land & Water L. Rev. 607 (1979).

§ 35-12-104. Industrial siting council created; composition; terms; compensation.

(a) There is created the industrial siting council consisting of seven (7) members who are residents of Wyoming.

(c) Members shall be appointed by the governor with the advice and consent of the senate. If a vacancy occurs the governor shall appoint a new member as provided in W.S. 28-12-101. Not more than four (4) members shall be of the same political party.

(h) Effective July 1, 1979, appointments and terms under this act shall be in accordance with W.S. 28-12-101 through 28-12-103. (Laws 1979, ch. 17, § 2.)

The 1979 amendment deleted "hereby" preceding "created" in subsection (a), substituted "if" for "when" and the specific statutory reference for "for the remaining portion of the unexpired term" in the second

sentence of subsection (c) and added subsection (h).

Only part of section set out. — As the rest of the section was not affected by the amendment, it is not set out in this Supplement. Effective date.

Section 4, ch. 17, Laws 1979, makes the act effective on July 1, 1979.

Law review. — For article, "Industrial Siting Legislation: The Wyoming Industrial Development Information and Siting Act — Advance or Retreat?" see 11 Land & Water L. Rev. 27 (1976).

§ 35-12-105. Appointment and duties of director; staff; rules and regulations.

Law reviews. — For article, "Industrial Siting Legislation: The Wyoming Industrial Development Information and Siting Act — Advance or Retreat?" see 11 Land & Water L. Rev. 27 (1976).

For case note, "The Scope of Judicial Review of Administrative Actions, Laramie River Conservation Council v. Industrial Siting Council, 588 P.2d 1241 (Wyo. 1978)," see 14 Land & Water L. Rev. 607 (1979).

§ 35-12-106. Permit from council required prior to commencing construction of facility; amendments; exceptions.

Law reviews. — For article, "Industrial Siting Legislation: The Wyoming Industrial Development Information and Siting Act — Advance or Retreat?" see 11 Land & Water L. Rev. 27 (1976).

For case note, "The Scope of Judicial Review of Administrative Actions, Laramie River Conservation Council v. Industrial Siting Council, 588 P.2d 1241 (Wyo. 1978)," see 14 Land & Water L. Rev. 607 (1979).

§ 35-12-108. Application for permit; form; initial fee.

(c) The director shall provide the applicant with a full financial accounting, including but not limited to all materials, labor and overhead costs relating to the expenditures of the initial fee at the time of the council's initial decision as provided in W.S. 35-502.82 (e) [§ 35-12-109 (e)].

Editor's note. — Subsection (c) has been set out above to correct a typographical error in the main pamphlet.

Stated in Laramie River Conservation Council v. Industrial Siting Council, 588 P.2d 1241 (Wyo. 1978). Law review. — For article, "Industrial Siting Legislation: The Wyoming Industrial Development Information and Siting Act — Advance or Retreat?" see 11 Land & Water L. Rev. 27 (1976).

§ 35-12-109. Study and evaluation; service of notice of application.

Purpose of subsection (b) (iv). — Subsection (b) (iv) of this section and subsection (e) of section 35-12-111, under which all hearings on facilities as proposed by an electric power cooperative are required to be held "at a community as close as practicable to the proposed facility," are designed to prevent the situation in which the hearing is held at a considerable distance from the area affected by the development. Laramie River Conservation Council v. Dinger, 567 P.2d 731 (Wyo. 1977).

Concern with collective welfare of inhabitants of area. — The industrial siting council is to be concerned with the collective, not individual, social and economic welfare of present and expected inhabitants of the areas of site influence. Laramie River Conservation Council v. Industrial Siting Council, 588 P.2d 1241 (Wyo. 1978).

Additional study and hearings not required.

— An argument that the additional intensive investigation, study and evaluation contem-

plated by paragraph (e) (iv), §§ 35-12-110 and 35-12-111 and the second hearing contemplated by §§ 35-12-111 (e) and 35-12-114 are required before the granting of a permit is contrary to the express language of this section: that rule would deprive the council of its statutory discretion to grant permits under this section. Laramie River Conservation Council v. Industrial Siting Council, 588 P.2d 1241 (Wyo. 1978).

Only significance of further intensive study, pursuant to paragraph (e) (iv), is that it leads to a difference in the quantum of information which the siting council has concluded is necessary to making a determination of acceptability of impacts associated with a proposed project. Laramie River Conservation Council v. Industrial Siting Council, 588 P.2d 1241 (Wyo. 1978).

May grant application to build but withhold permit for transmission lines. — There is no statutory barrier to the industrial siting council's granting of an application to build a generating plant, while withholding a permit for transmission lines until further study can be made concerning them. Laramie River Conservation Council v. Industrial Siting Council, 588 P.2d 1241 (Wyo. 1978).

Law reviews. — For article, "Industrial Siting Legislation: The Wyoming Industrial Development Information and Siting Act — Advance or Retreat?" see 11 Land & Water L.

Rev. 27 (1976).

For case note, "The Scope of Judicial Review of Administrative Actions, Laramie River Conservation Council v. Industrial Siting Council, 588 P.2d 1241 (Wyo. 1978)," see 14 Land & Water L. Rev. 607 (1979).

§ 35-12-110. Fees for additional study.

Stated in Laramie River Conservation Council v. Industrial Siting Council, 588 P.2d 1241 (Wyo. 1978).

Law reviews. — For article, "Industrial Siting Legislation: The Wyoming Industrial Development Information and Siting Act — Advance or Retreat?" see 11 Land & Water L. Rev. 27 (1976).

For case note, "The Scope of Judicial Review of Administrative Actions, Laramie River Conservation Council v. Industrial Siting Council, 588 P.2d 1241 (Wyo. 1978)," see 14 Land & Water L. Rev. 607 (1979).

§ 35-12-111. Studies; evaluation and report on proposed facility.

Purpose of subsection (e). — Subsection (b) (iv) of section 35-12-109 and subsection (e) of this section, under which all hearings on facilities as proposed by an electric power cooperative are required to be held "at a community as close as practicable to the proposed facility," are designed to prevent the situation in which the hearing is held at a considerable distance from the area affected by the development. Laramie River Conservation Council v. Dinger, 567 P.2d 731 (Wyo. 1977).

Stated in Laramie River Conservation Council v. Industrial Siting Council, 588 P.2d 1241 (Wyo. 1978). Law reviews. — For article, "Industrial Siting Legislation: The Wyoming Industrial Development Information and Siting Act — Advance or Retreat?" see 11 Land & Water L. Rev. 27 (1976).

For case note, "The Scope of Judicial Review of Administrative Actions, Laramie River Conservation Council v. Industrial Siting Council, 588 P.2d 1241 (Wyo. 1978)," see 14 Land & Water L. Rev. 607 (1979).

§ 35-12-112. Parties to permit proceeding; waiver by failure to participate.

Quoted in Laramie River Conservation Council v. Dinger, 567 P.2d 731 (Wyo. 1977); Laramie River Conservation Council v. Industrial Siting Council, 588 P.2d 1241 (Wyo. 1978).

Law review. — For article, "Industrial Siting Legislation: The Wyoming Industrial Development Information and Siting Act —

Advance or Retreat?" see 11 Land & Water L. Rev. 27 (1976).

§ 35-12-113. Record of hearing; procedure and rules of evidence.

Complete record to be kept. — Both the Wyoming Administrative Procedure Act, §§ 9-4-101 to 9-4-115 and this section of the Wyoming Industrial Information and Siting Act require the keeping of a complete record. Laramie River Conservation Council v. Dinger, 567 P.2d 731 (Wyo. 1977).

Transcript deemed part of record of proceedings. — A transcript of a tape recording of a public meeting of the industrial siting council held to discuss a decision of the council

is a part of the record of the proceedings in a contested case under the provisions of the Administrative Procedure Act, as incorporated in this section. Laramie River Conservation Council v. Industrial Siting Council, 588 P.2d 1241 (Wyo. 1978).

Law review. — For article, "Industrial Siting Legislation: The Wyoming Industrial Development Information and Siting Act — Advance or Retreat?" see 11 Land & Water L. Rev. 27 (1976).

§ 35-12-114. Decision of council; findings necessary for permit conditions imposed; service of decision on parties.

Stated in Laramie River Conservation Council v. Industrial Siting Council, 588 P.2d 1241 (Wyo. 1978).

Law reviews. — For article, "Industrial Siting Legislation: The Wyoming Industrial Development Information and Siting Act — Advance or Retreat?" see 11 Land & Water L. Rev. 27 (1976).

For case note, "The Scope of Judicial Review of Administrative Actions, Laramie River Conservation Council v. Industrial Siting Council, 588 P.2d 1241 (Wyo. 1978)," see 14 Land & Water L. Rev. 607 (1979).

§ 35-12-115. Review of grant or denial of permit.

Official determination of industrial siting council is expressed in formal findings of fact and conclusions of law, and it is that action only which is to be tested upon review under the law; it cannot be impeached by reliance upon the dialogue of a public decisional meeting. Laranie River Conservation Council v. Industrial Siting Council, 588 P.2d 1241 (Wyo. 1978).

Supported by substantial evidence. — For purposes of review, the findings of the industrial siting council must be supported by substantial evidence pursuant to § 9-4-114 (c) (iv); that is, there must be present such relevant evidence as might lead a reasonable mind to the conclusion

manifested in the questioned finding. Laramie River Conservation Council v. Industrial Siting Council, 588 P.2d 1241 (Wyo. 1978).

Law reviews. — For article, "Industrial Siting Legislation: The Wyoming Industrial Development Information and Siting Act — Advance or Retreat?" see 11 Land & Water L. Rev. 27 (1976).

For case note, "The Scope of Judicial Review of Administrative Actions, Laramie River Conservation Council v. Industrial Siting Council, 588 P.2d 1241 (Wyo. 1978)," see 14 Land & Water L. Rev. 607 (1979).

§ 35-12-116. Additional requirements by other governmental agencies not permitted after issuance of permit; exceptions.

Law review. — For article. "Industrial Siting Legislation: The Wyoming Industrial Development Information and Siting Act —

Advance or Retreat?" see 11 Land & Water L. Rev. 27 (1976).

§ 35-12-117. Revocation or suspension of permit.

Stated in Laramie River Conservation Council v. Industrial Siting Council, 588 P.2d 1241 (Wyo. 1978).

§ 35-12-118. Monitoring of facilities.

Stated in Laramie River Conservation Council v. Industrial Siting Council, 588 P.2d 1241 (Wyo. 1978).

§ 35-12-119. Penalties for violations; civil action by attorney general.

Stated in Laramie River Conservation Council v. Industrial Siting Council, 588 P.2d 1241 (Wyo. 1978).

§ 35-12-121. Waiver of permit; exemptions; information required.

- (d) State and local government units and agencies are exempt from the application and permit procedures of this act, but prior to commencing any activity which will result in an annual daily average employment as provided in W.S. 35-502.76 [§ 35-12-102], such units and agencies shall furnish to the office information required by W.S. 35-502.81 (a) (ii), (iii) and (iv) [§ 35-12-108 (a) (ii), (iii) and (iv)] if included in W.S. 35-502.76 (c) (ii) [§ 35-12-102 (a) (iii) (B)].
- (e) Coal slurry pipelines authorized by the legislature prior to January 1, 1979 and construction of railroads, electric transmission lines not exceeding one hundred fifteen thousand (115,000) volts, oil and gas pipelines, natural gas pipelines, and construction or operation of oil and gas producing, drilling and field processing facilities are not activities subject to the application and permit procedures of this act but the owner or operator thereof shall furnish the information required by W.S. 35-12-108 (a) (ii), (iii), (iv) and (vii). (Laws 1979, ch. 97, § 2.)

The 1979 amendment, in subsection (e), added "Coal slurry pipelines authorized by the legislature prior to January 1, 1979 and" at the beginning of the subsection, deleted "coal slurry pipelines and" preceding "natural" and substituted "pipelines" for "piplines" and "35-12-108" for "35-502.81."

Only part of section set out. - As the rest of

the section was not affected by the amendment, it is not set out in this Supplement.

Editor's note. — Subsection (d) has been set out to correct a typographical error which appears in the main pamphlet.

Effective date. — Laws 1979, ch. 97, became law without the signature of the governor, in

accordance with art. 4, § 8, Wyo. Const., and carried an effective date which made the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const.

Law review. — For article, "Industrial Siting Legislation: The Wyoming Industrial Development Information and Siting Act — Advance or Retreat?" see 11 Land & Water L. Rev. 27 (1976).

TITLE 36 Public Lands

CHAPTER 1

General Provisions

§ 36-1-114. Protection of prehistoric ruins, etc.; permits to excavate, regulations and violations.

Law review. — For article, "Industrial Siting Legislation: The Wyoming Industrial Development Information and Siting Act — Advance or Retreat?" see 11 Land & Water L. Rev. 27 (1976).

CHAPTER 3

Commissioner of Public Lands

Sec

36-3-101. Appointment; term; salary.

36-3-102. Duties generally.

§ 36-3-101. Appointment; term; salary.

(a) There shall be a commissioner of public lands of Wyoming, who shall be appointed by the governor by and with the consent of the state senate. The term of his office shall be for two (2) years and until his successor is appointed and qualified. He shall receive an annual salary as provided by law, to be paid monthly by the state treasurer on the warrant of the state auditor.

(b) Effective July 1, 1979, appointments and terms under this section shall

be in accordance with W.S. 28-12-101 through 28-12-103.

(Laws 1979, ch. 17, § 2.)

The 1979 amendment designated the formerly undesignated provisions of this section as subsection (a), substituted "is" for "shall have been" and deleted "shall have" preceding "qualified" in the second sentence of that subsection and added subsection (b).

Effective dates. Section 4, ch. 17, Laws 1979, makes the act effective on July 1, 1979.

§ 36-3-102, Duties generally.

(b) Upon application and the annual payment of fifteen dollars (\$15.00) by any person qualified to lease oil and gas lands of the state of Wyoming, the commissioner shall place the name and address of the person on a mailing list and mail to the person a complete list of lands open for filing prior to the date when the lands become subject to filing. The payments shall be placed in the general fund.

(Laws 1978, ch. 2, § 1.)

Only part of section set out. — As the rest of the section was not affected by the 1978 amendment, it is not set out in this Supplement. Effective dates. Section 2, ch. 2, Laws 1978, makes the act effective on May 27, 1978.

CHAPTER 5 Leasing State Lands Generally

Sec.

36-5-114. Leasing for industrial, commercial and recreational purposes; authority.

§ 36-5-114. Leasing for industrial, commercial and recreational purposes; authority.

(c) The board shall fix a minimum rental on the basis of a definite amount per acre, based upon a percentage of the appraised value of each class of land. Except as provided by this subsection, the minimum annual rental shall at no time be less than two percent (2%), and the maximum not more than five and one-half percent (5½%) of the appraised value of the lands as approved by the board. The board, in its discretion, may assess as an annual rental fee on lands leased by political subdivisions and nonprofit corporations maintaining facilities for nonprofit camps less than two percent (2%) of appraised value for leases issued pursuant to this section or one hundred dollars (\$100.00), whichever is less, regardless of the amount of acreage involved. (Laws 1979, ch. 60, § 1.)

The 1979 amendment added subsection (c).

Only part of section set out. — As the rest of
the section was not affected by the amendment,
it is not set out in this Supplement.

Effective date. - Section 2, ch. 60, Laws 1979, makes the act effective immediately upon

completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved February 19, 1979.

CHAPTER 6

Mineral Leases

Article 1. In General

Sec.

36-6-101. Terms of leases; extensions; rules and regulations; rent and royalties; assignment of leases; grazing and

agricultural leases; cooperation with United States or its lessees, etc., in cooperative or unit plans.

ARTICLE 1. IN GENERAL

§ 36-6-101. Terms of leases; extensions; rules and regulations; rent and royalties; assignment of leases; grazing and agricultural leases; cooperation with United States or its lessees, etc., in cooperative or unit plans.

(g) All natural gas leases executed hereunder shall provide that the state of Wyoming may require the lessee to dedicate all the natural gas produced on lands owned by the state for the use or benefit of the people of the state of

Wyoming.

(h) If the state board of land commissioners determines it would benefit the people of the state to have the natural gas dedicated, the board may arrange for the sale of the natural gas for the use of the people of the state or arrange for the exchange of the natural gas produced with producers of natural gas produced from lands not owned by the state if the exchange will benefit the people of the state. If the board determines the dedication would not be in the public interest; or would cause waste as defined by W.S. 30-5-101; or would unreasonably deny the lessee the opportunity to economically market the natural gas, it may waive dedication.

(j) The board shall adopt and promulgate necessary rules and regulations to carry out the provisions of subsections (g), (h) and (j).

(Laws 1978, ch. 24, § 1.)

Only part of section set out. — As the rest of the section was not affected by the 1978 amendment, it is not set out in this Supplement. Effective dates. Section 2, ch. 24, Laws 1978, makes the act effective on July 1, 1978.

CHAPTER 9 Sale of State Lands

§ 36-9-118. Rights-of-way for public conveyances.

Law review. — For article, "Industrial Siting Advance or Retreat?" see 11 Land & Water L. Legislation: The Wyoming Industrial Rev. 27 (1976).

Development Information and Siting Act —

* * *

TITLE 39

Taxation and Revenue

* * *

CHAPTER 2

Assessment

Article 4. Tax Levies

Sec.

39-2-402. Authorized mill levies.

ARTICLE 2. STATE ASSESSMENTS

§ 39-2-202. Valuation of mine products.

Application of subsection (b) not foreclosed where mine products not stored. - While a mining company may not place mine products in bins, tanks, tipples, silos, stockpiles or other storage prior to transportation to market, this does not foreclose the application of subsection (b). In re Monolith Portland Midwest Co., 574

P.2d 757 (Wyo. 1978).

Phrase at end of subsection (a) is ambiguous. - The phrase "at the fair cash market value of the product at the mine or mining claim where produced, after the mining or production process is completed," as used in subsection (a) of this section, is ambiguous, since different conclusions may be reached as to when the mining or production process is completed in an instance in which all of the factors mentioned in subsection (b) are not present. In re Monolith Portland Midwest Co., 574 P.2d 757 (Wyo. 1978).

When mining process deemed completed. -The first phrase of subsection (b) makes it quite clear that the mining or production process is deemed completed when the product is removed from the mine and not before. In re Monolith Portland Midwest Co., 574 P.2d 757 (Wyo. 1978).

Mining products are not to be valued until they actually have been removed from the mine in either the railroad cars or trucks. In each instance that point is determinable. In re-Monolith Portland Midwest Co., 574 P.2d 757

(Wyo. 1978).

Cost to be determined where minerals not stored. - Although storage of minerals prior to transportation is the normal situation contemplated by subsection (b), where minerals are not so stored, the actual cost of removing the minerals from the several points where they are loaded to the first points where they are no longer in the mines must be determined. In re Monolith Portland Midwest Co., 574 P.2d 757

(Wyo. 1978).

Cost-of-production technique is recognized method of appraisal. - While the supreme has not considered directly cost-of-production technique as a recognized method of appraisal it does appear to be an acceptable method of determining fair market value where there is no sale of personal property. In re Monolith Portland Midwest Co., 574 P.2d 757 (Wyo. 1978).

But hypothetical costs cannot be included. - In pursuing a cost-of-production technique for appraisal of the value of the product of a mine, the department of revenue and taxation and the board of equalization cannot include hypothetical costs. In re Monolith Portland Midwest Co., 574 P.2d 757 (Wyo. 1978).

Only actual costs may be utilized in the formula when a cost-appraisal technique is applied for purposes of fixing the value according to this section. In re Monolith Portland Midwest Co., 574 P.2d 757 (Wyo. 1978).

Costs of transportation are not to be included in the value fixed for mineral products. In re Monolith Portland Midwest Co., 574 P.2d

757 (Wyo. 1978).

In fixing the value of the gross product of several mines, the department of revenue and taxation of the state of Wyoming cannot include a presumed cost for transporting the mineral products to and placing them in a hypothetical storage facility. In re Monolith Portland Midwest Co., 574 P.2d 757 (Wyo. 1978).

CHAPTER 6

Specific Taxes

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ARTICLE 3. MINE PRODUCTS TAXES

Application of this tax is not necessarily retroactive merely because it draws on antecedent facts for its operation. Belco

Petroleum Corp. v. State Bd. of Equalization, 587 P.2d 204 (Wyo. 1978).

§ 39-6-301. Definitions.

(a) As used in this article:

(iii) "Value of the gross product" means the valuation of the gross product for the preceding calendar quarter of all mines and mining claims as calculated on the same basis as is prescribed by W.S. 39-2-202 for determination by the department of the value of the gross product for the preceding calendar year;

(Laws 1980, ch. 17, § 1.)

The 1980 amendment substituted "quarter" for "year" following "preceding calendar" and substituted "calculated on the same basis as is prescribed by W.S. 39-2-202 for determination by the department of the value of the gross product for the preceding calendar year;" for "determined pursuant to" in paragraph (iii) of subsection (a).

Only part of section set out. — As the rest of the section was not affected by the amendment, it is not set out in this Supplement.

Effective date. — Section 2, ch. 17, Laws 1980, makes the act effective on January 1, 1981.

§ 39-6-302. Excise taxes on extraction of minerals.

Validity of capital facilities bonds not decided. — See Witzenburger v. State ex rel. Wyoming Community Dev. Auth., 577 P.2d 1386 (Wyo. 1978).

Cited in Appeal of Monolith Portland Midwest Co., 574 P.2d 757 (Wyo. 1978); Witzenburger v. State ex rel. Wyoming Community Dev. Auth., 575 P.2d 1100 (Wyo. 1978).

§ 39-6-303. Severance tax on extraction or production of coal; expiration of tax.

(a) In addition to other taxes provided by law there is levied a severance tax upon the privilege of extracting or producing coal in the state of two percent (2%) of the value of the gross product extracted. (Laws 1980, ch. 17, § 1.) The 1980 amendment substituted "two percent (2%)" for "a percentage" preceding "of the value," deleted "of the coal" preceding "extracted" and deleted "or produced according to the following schedule" at the end of the sentence and deleted paragraphs (i) through (iv), relating to severance and excise tax payments.

Only part of section set out, — As the rest of the section was not affected by the amendment it is not set out in this Supplement.

Effective dates.

Section 2, ch. 17, Laws 1980, makes the act effective on January 1, 1981.

Revenue bonds held unconstitutional. — Revenue bonds issued by the Wyoming community development authority, for the payment of which coal tax revenue to be derived in future years was committed under the so-called "special" fund theory, came within the debt limit prohibitions of art. 16, §5 1 and 2, Wyo. Const. Witzenburger v. State ex rel. Wyoming Community Dev. Auth., 575 P.2d 1100 (Wyo. 1978).

§ 39-6-304. Computation of valuation and tax; notification; when payable; appeal and refund provisions; deduction of taxes from amounts due interest owners.

(a) Except as provided in subsection (c) of this section, each taxpayer liable for a tax under W.S. 39-6-302 or 39-6-303 shall remit quarterly tax payments to the department. The payment shall be determined by the taxpayer based on actual production during the quarter, values computed in accordance with subsection (b) of this section, and the tax rates prescribed in this article. The quarterly tax payments are due and delinquent if not paid:

(i) On or before May 1 for production during the first quarter of the

current calendar year;

(ii) On or before August 1 for production during the second quarter of the current calendar year;

(iii) On or before November 1 for production during the third quarter of the current calendar year; and

(iv) On or before March 1 for production during the fourth quarter of

the preceding calendar year.

(b) On or before April 1 of each year the board shall furnish each known taxpayer under this article a basis for computing the value of his product as prescribed in W.S. 39-2-202 and 39-6-301. The department may revise a basis as necessary and shall furnish the revised basis to each known taxpayer. A taxpayer shall not use less than the most recent basis furnished under this subsection in computing his quarterly payments.

(c) The department may waive the requirement of quarterly tax payments for taxpayers whose tax under this article for the preceding calendar year was

less than two thousand dollars (\$2,000.00).

(d) On or before May 15 of each year beginning with the year 1982 based upon information received pursuant to W.S. 39-2-201, 39-2-202 and 39-6-304 (a), the department shall determine the amount of the gross production returned for the preceding calendar year, shall compute the amount of tax liability and shall credit the amount paid under W.S. 39-6-304 (a) and shall notify each taxpayer of the amount so determined and the balance or refund, if any, due.

(e) The balance is due and delinquent if not paid to the department thirty (30) days after the taxpayer receives the notice under subsection (d) of this section.

- (f) Any taxpayer who feels aggrieved by the valuation and taxes levied by this article may appeal to the board. The appeal does not relieve the taxpayer from paying the tax when due and payable nor does the payment invalidate the appeal. No restraining order or injunction shall be granted or issued by any court or judge to restrain or enjoin the collection of any tax, interest or penalty imposed by this article.
- (g) Any excess tax found to have been paid, whether as the result of overpayment, an appeal or an erroneous assessment shall be refunded to the person paying the tax. All applications for refunds shall be made within two (2) years from the payment of the erroneous tax.
- (h) Any taxpayer paying the taxes imposed by this article on any valuable deposit may deduct the taxes paid from any amounts due or to become due to the interest owners of such valuable deposit in proportion to the interest ownership.

(Laws 1980, ch. 17, § 1.)

The 1980 amendment added subsections (a) through (c), redesignated former subsections (a) through (e) as present subsections (d) through (h), in present subsection (d), inserted "on or before May 15 of each year beginning with the year 1982 based upon information received pursuant to W.S. 39-2-201, 39-2-202 and 39-6-304 (a), the" at the beginning of the subsection, substituted "determine the amount" for "compute the value" following "department shall," substituted "liability and shall credit the amount paid under W.S. 39-6-304 (a)" for "levied" following "the amount of tax," inserted "so determined and the balance or refund, if any," preceding "due" at the end of that subsection, in present subsection (e), substituted

"balance is" for "taxes imposed by this article are" near the beginning of the subsection, substituted "delinquent if not paid" for "payable" preceding "to the department," substituted "thirty (30) days after the taxpayer receives the notice under subsection (d) of this section" for "on August 1 and are delinquent if unpaid by September 1" at the end of that subsection, in present subsection (g), inserted "overpayment," preceding "an appeal or" and inserted "an" preceding "erroneous assessment."

Effective dates.

Section 2, ch. 17, Laws 1980, makes the act effective on January 1, 1981.

§ 39-6-305. Disposition of revenue collected.

- (a) All quarterly payments received pursuant to W.S. 39-6-304 (a) (i) and (ii) shall be transferred to an account of the trust and agency fund. The monies in this account shall be invested or deposited in accordance with W.S. 9-7-1001 through 9-7-1137, and any interest earned shall be credited to the general fund. On or before September 1 of each year, the revenue received under W.S. 39-6-304 (a) (i) and (ii) shall be distributed in accordance with subsections (b), (c), (d), (g), (h) and (j) of this section and W.S. 39-6-306 (a). All other revenue received under this article shall be transferred to the state treasurer.
- (e) The monies in the account under subsection (d) of this section shall be administered by the Wyoming farm loan board and disbursed by the board for use in areas which are directly or indirectly impacted by the production of coal, to assist in financing public water, sewer, highway, road or street projects. Not less than fifty percent (50%) of the revenue to the account shall be used to finance state highway, county road or city street projects. The Wyoming farm loan board may make grants from current revenues to any county, city, town, sewer district, water district or other political subdivision of the state, or the

state highway department, with respect to the use of the revenues under W.S. 39-6-303 subject to the following conditions. Any recipient of revenues under this subsection, may, with the approval of the Wyoming farm loan board annually reapply for and receive an additional grant under this subsection for the payment of any obligation to the state or other obligee. For new projects to be commenced after March 1, 1980, grants shall only be used to finance not more than fifty percent (50%) of the cost of any portion of a project and projects for street, curb, gutter or storm drainage improvements provided the farm loan board may make grants in excess of fifty percent (50%) of the cost of a project if the board finds that the applicant either levied at least seven (7) mills in the case of a city or town for operating expenses including special district levies chargeable against the general city or town levy during the current fiscal year or levied at least eleven (11) mills in the case of a county for operating expenses during the current fiscal year or the city, town or county is imposing the optional tax permitted by W.S. 39-6-412 at the time of the application and is utilizing all other local revenue sources reasonably and legally available to finance the project, and:

(i) If the project is for water facilities, that the city or town, either individually or as a member of a joint powers board, has installed or during the project will install, or require the installation of water meters if required by the farm loan board, has or will require the owners of all new additions of land to the city or town to pay all costs of expanding the water system within and to the boundaries of the addition, is enforcing an appropriate water tap fee as determined by the farm loan board and has or will adopt water rates which will be adequate to finance the operation and maintenance of the system;

(ii) If the project is for sewer facilities, that the city or town, either individually or as a member of a joint powers board, has or will require the owners of all new additions of land to the city or town to pay all costs of expanding the sewer system within and to the boundaries of the addition, is enforcing an appropriate sewer tap fee as determined by the farm loan board and has or will adopt sewer rates which will be adequate to finance the operation and maintenance of the system:

(iii) The fifty percent (50%) limitation on grants does not apply to improvements to county or state highways within city or town boundaries unless otherwise required by the farm loan board.

(Laws 1979, ch. 113, § 1; 1980, ch. 17, § 1; ch. 74, § 1.)

The 1979 amendment, in subsection (e), substituted "disbursed" for "dispersed" in the first sentence and "from current revenues to" for "or may pledge or otherwise contract with" in the third sentence, and in the last sentence, deleted "or a pledge of future revenues" following "revenues" and "the monies derived or to be derived from the excise tax subject to any existing pledges or other contractual limitations theretofore imposed" following "obligee" and substituted "annually reapply for and receive an additional grant under this

subsection" for "pledge wholly or in part" and "state" for "Wyoming community development authority."

The 1980 amendments. — The first 1980 amendment rewrote subsection (a) to the extent that a detailed comparison is impracticable.

The second 1980 amendment, in subsection (e), added "subject to the following conditions" following "W.S. 39-6-303," added the last sentence and added paragraphs (i) to (iii) in that subsection.

Amendment of subsection (a) effective January 1, 1981. — The provisions of subsection (a), amended by chapter 17, Laws 1980, are effective on January 1, 1981.

Only part of section set out. — As the rest of the section was not affected by the amendments, it is not set out in this Supplement.

Appropriation. - Section 2, ch. 74, Laws 1980, reads: "Five million dollars (\$5,000,000.00) is appropriated from the general fund to the farm loan board for the purposes of W.S. 9-7-904 (g) (ii) and (h) (ii). Three million seven hundred fifty thousand dollars (\$3,750,000.00) is appropriated to the farm loan board from the general fund to be distributed on July 15, 1980 by the farm loan board to incorporated cities and towns which either levied at least seven (7) mills for operating expenses including special districts levies chargeable against the general city or town levy during the current fiscal year or which is imposing the optional tax permitted by W.S. 39-6-412 at the time of the distribution, each qualified city and town to receive an amount in the proportion which the population of the city or town bears to the population of all qualifying cities or towns. One million two hundred fifty thousand dollars (\$1,250,000.00) is appropriated to the farm loan board to be distributed on July 15, 1980 by the farm loan board to counties which either levied at least eleven (11) mills for operating expenses during the current fiscal year or which is imposing the optional tax permitted by W.S. 39-6-412 at the time of the distribution, each county to receive an amount in the proportion which the population of the county bears to the population of all qualifying counties. Three million three hundred ninety thousand dollars (\$3,390,000.00) is appropriated from the general fund to the farm loan board to be distributed to incorporated cities and towns and counties, each city, town and county to receive fifteen thousand dollars (\$15,000.00) on July 15, 1980 and again on July 15, 1981."

Effective dates.

Section 2, ch. 113, Laws 1979, makes the act effective on May 25, 1979.

Section 2, ch. 17, Laws 1980, makes the act effective on January 1, 1981.

Section 3, ch. 74, Laws 1980, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 19, 1980.

Former § 39-227.10 was held unconstitutional insofar as it authorized future excise revenues to be pledged indirectly and actually used for the satisfaction of revenue bond obligations created by the Wyoming community development authority. Witzenburger v. State ex rel. Wyoming Community Dev. Auth., 575 P.2d 1100 (Wyo. 1978).

It was the use of excise tax money granted by the Wyoming farm loan board under authority of former § 39-227.10 to liquidate bonds of the authority over extended periods of years that created a debt prohibited by the limitations of art. 16, § 2, Wyo. Const. Witzenburger v. State ex rel. Wyoming Community Dev. Auth., 575 P.2d 1100 (Wyo. 1978).

§ 39-6-306. Same; disposition of money received and collected under W.S. 39-6-302 (f).

- (b) The monies in the capital facilities revenue account shall be administered by the capital building commission and disbursed by the commission for the following purposes:
 - (i) and (ii) Repealed by Laws 1979, ch. 159, § 3.
 - (iii) Thirty percent (30%) of the tax revenues deposited in the capital facilities revenue account shall be transferred to a school district capital construction account within the earmarked revenue fund to finance the school districts' capital construction entitlements authorized by W.S. 21-15-101 through 21-15-104, or such proportionate part of each entitlement as the revenues available under this paragraph bears to the total of all such entitlements:
 - (iv) Ten percent (10%) of the tax revenues deposited in the capital facilities revenue account shall be transferred to an earmarked revenue fund account to finance in whole or in part new or preexisting community college construction. Allocations by the community college commission to the community colleges shall be made as soon as practicable following:

receipt of deposit information, and shall be made according to a distribution formula as follows:

- (A) Fifty percent (50%) of the amount deposited shall be distributed to the community colleges in the same proportion as full time equivalency enrollment for the individual college bears to the total enrollment for all the colleges. Full time equivalency enrollment, as defined by the community college commission, shall be determined at the semester end for the most recently completed semester prior to the deposit;
- (B) Twenty-five percent (25%) of the amount deposited shall be distributed to the community colleges in equal amounts;
- (C) Twenty-five percent (25%) of the amount deposited shall be distributed to the colleges or a college as may be determined by the community college commission based upon a consideration of need and priorities within the community college system. The colleges shall submit construction proposals and funding requests to the commission to facilitate these discretionary distributions;
- (D) While processing the discretionary distribution provided by subparagraph (iv) (C) of this subsection, the community college commission may specify its intention to allocate future discretionary portions to specific projects or purposes;
- (E) Nothing provided under this paragraph shall prevent the use of other funds available under W.S. 39-6-302 (f) and this section to finance community college construction.
- (v) The balance of the revenues shall be credited to the state highway fund for constructing, repairing and acquiring highways and related facilities.
- (c) and (d) Repealed by Laws 1979, ch. 159, § 3. (Laws 1978, ch. 53, § 1; 1979, ch. 159, §§ 2, 3.)

The 1979 amendment, in subsection (b), repealed paragraphs (i) and (ii), substituted "thirty percent (30%)" for "fifteen percent (15%)" and "21-15-101 through 21-15-104" for "21.1-290 through 21.1-293" in paragraph (iii) and rewrote paragraphs (iv) and (v), and repealed subsections (c) and (d).

Only part of section set out. — As the rest of the section was not affected by the 1978 and 1979 amendments, it is not set out in this Supplement.

Editor's note.

Chapter 133, Laws 1977, as amended by ch. 3, Laws 1978, Sp. Sess., authorized certain capital facilities expenditures from the capital facilities revenue account.

Section 1, ch. 70, Laws 1979, modified and limited ch. 133, Laws 1977, to provide that up to eight tennis courts may be constructed and equipped at the university.

Purpose of act. — Section 7, ch. 159, Laws 1979, reads: "The purpose of this act is to restructure, refinance and to create state grant and loan programs for school districts and community colleges and create capital for state projects without increasing or creating new state taxes."

Appropriations. - Section 4, ch. 159, Laws 1979, reads: "All emergency school loans made pursuant to W.S. 21-13-601 through 21-13-609 shall be immediately repaid into the permanent land fund from the general fund, two million (\$2,000,000.00) being hereby appropriated from the general fund for that purpose. Annual entitlements of any school district under W.S. 21-15-101 whose loan is being retired under this section shall be credited to the general fund until the amount of the loan paid off is reimbursed to the general fund. No interest is payable on the general fund advance to repay the permanent land fund loan."

Section 5, ch. 159, Laws 1979, reads: "Fifty thousand dollars (\$50,000.00) is appropriated from the general fund to the farm loan board for the purpose of this act."

Section 6, ch. 159, Laws 1979, reads: "One million nine hundred thousand dollars (\$1,900,000.00) is appropriated from the general fund to be distributed by the farm loan board as advance entitlements to Fremont County School District #25 and Teton County School District #1 following the provisions and requirements of W.S. 21-15-104 except that if the advance entitlements are granted by the farm loan board, future entitlements of Fremont County School District #25 and Teton County School District #1 shall be credited to the general fund until the advances are repaid or if the last sentence of W.S. 21-15-104 (a) becomes operable, the bond proceeds shall be credited to the general fund."

Effective dates.

Section 2, ch. 53, Laws 1978, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 21, 1978.

Section 9, ch. 159, Laws 1979, makes §§ 4, 5 and 6 of the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 8, 1979. The balance of the act is effective July 1, 1979.

Validity of capital facilities bonds not decided. — See Witzenburger v. State ex rel. Wyoming Community Dev. Auth., 577 P.2d 1386

(Wyo. 1978).

§ 39-6-307. Penalty; exception; interest; collection; persons liable; tax is a lien.

(b) If any person remits less than ninety percent (90%) of the amount due for any quarterly tax payment under W.S. 39-6-304 the department may impose a penalty of not more than twenty-five percent (25%) of the amount due.

(c) Interest at the rate of eleven percent (11%) per annum shall be added to

all delinquent taxes.

(d) Taxes due together with interest, penalties and costs shall be collectible

by the department by appropriate judicial proceedings.

(e) Any person extracting valuable products subject to this article and any person owning an interest in the valuable products to the extent of their interest ownership are liable for the payment of the taxes imposed by this article together with any penalties and interest. The tax is a lien upon the interest of any owner and the interest of any person extracting any valuable deposit from and after the time they are extracted until the taxes are paid. (Laws 1980, ch. 17, § 1.)

The 1980 amendment added subsection (b) and redesignated former subsections (b) through (d) as present subsections (c) through (e).

Only part of section set out. — As the rest of the section was not affected by the amendment, it is not set out in this Supplement. Effective date.

Section 2, ch. 17, Laws 1980, makes the act effective on January 1, 1981.



APPENDIX A-1

State Offices and Agencies

State Information Operator	777-7220	
Attorney General		
Capitol Building		
Cheyenne, Wyoming 82002		
Attorney General	777-7841	
Legal Division		
Department of Economic Plann	ing and Development	
Barrett Building	ing and beveropment	
Cheyenne, Wyoming 82002		
dieyemie, wyoming ozooz		
Executive Director	777-7287	
Administrative Assistar		
Assistant Budget Office		
Water Division	777-7284	
Industrial Division	777-7285	
Mineral Division	777-7361	
Planning Division	777-7286	
Department of Environmental (Quality	
Equality State Bank Build	ing	
401 West 19th Street		
Cheyenne, Wyoming 82002		
Director	777 7037	
Air Quality	777-7937 777-7391	
Land Quality	777-7351	
Solid Waste	777-7752	
Water Quality	777-7781	
nacez quarte)	111 1101	
Geological Survey of Wyoming		
P.O. Box 3008		
University Station		
Laramie, Wyoming 82071		
State Geologist and Exc	ecutive Director 742-2054	
Oil and Gas Geologist		
Coal Geologist		
Mineral Geologist		
Environmental Geologis	t	
Stratigrapher		
Publications		

Office of Industrial Siting Administration Suite 500, Boyd Building Cheyenne, Wyoming 82002	
Administrator	777-7368
Oil and Gas Conservation Commission 123 South Durbin P.O. Box 2640 Casper, Wyoming 82601	
State Oil and Gas Supervisor	234-7147
State Board of Land Commissioners Pioneer Building 2424 Pioneer Avenue Cheyenne, Wyoming 82002	
Commissioner	777-7331
Chief Auditor	
State Engineer Barrett Building Cheyenne, Wyoming 82002	
State Engineer Deputy State Engineer Assistant State Engineer Ground Water Geologist Administrative Assistant	777-7354
State Inspector of Mines P.O. Box 1094 North Side State Bank Building Rock Springs, Wyoming 82901	
State Inspector of Mines	362-5222
State Planning and Coordination 2320 Capitol Avenue Cheyenne, Wyoming 82002	
State Planning Coordinator	777-7574

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