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## Despite coal pushback, rules limiting self-bonding advance in Wyoming

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Haul trucks transport coal at Peabody Energy's North Antelope Rochelle mining complex in the Powder River Basin in 2012. Despite some objections from the coal industry, state rules that would limit the practice of self-bonding are moving forward.

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Wyoming's largest coal mines would effectively be banned from self-bonding if the proposed rules that passed an advisory board Wednesday make it through one more round of public input and onto the governor's desk.

At a sparsely attended meeting in Casper, citizen members of the Land Quality Advisory Board voted 4-1 to require strong credit ratings for companies that want to self-bond.

The credit rating would determine whether a company is financially healthy enough to guarantee millions of dollars in cleanup costs without securing a form of insurance. Wyoming has the largest open surface coal mines in the country and the money required to return those mine sites to open prairie or ranchland someday is significant — both as a potential risk to the state and as a cost carried by companies in a difficult coal market.

The state is also proposing that mines have at least five years of production remaining in order to qualify for self-bonds, and that even companies that qualify for self-bonds hold a percentage of their reclamation obligation in more secure channels so the state has faster access to cash if a company dissolves.

Under the new rules, the massive mines in Wyoming that produce about half the country's thermal coal are less likely to become a state liability if companies bust, regulators say.

Kyle Wendtland, administrator of the state's Land Quality Division, said the credit rating would give Wyoming foresight into the projected financial health of mining firms. Credit ratings also consider the market and using them would hopefully mitigate the financial and environmental risk to the state posed by a firm heading for insolvency.

Chairman Phil Dinsmoor was the one dissenting vote Wednesday. Dinsmoor works for Peabody Energy — the international coal firm that owns and operates the North Antelope Rochelle mining complex outside Wright.

There's a tipping point at which Wyoming could insulate itself from risk without having an undue impact on the coal industry, he said.

“It's a conundrum that I can't wrap my mind around,” he said.

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Wyoming has debated the self-bonding issue for a few years, though it's been an option for companies since the mid-80s. Peak division over self-bonding hit during the downturn. It was under current rules that companies like Peabody Energy and Arch Coal entered bankruptcy, debt laden in a shrinking coal market in 2016.

State regulators, and distressed companies, were hamstrung at that point in the coal crisis from dealing with the hundreds of millions of dollars in unsecured cleanup costs represented by the large mines.

The state could either allow the firms to keep operating despite no longer qualifying for self-bonds or upset an already strangled coal industry that employed more than 6,000 full-time miners in the state. They chose the former, despite pushback from environmental groups.

Those firms lost their ability to qualify for self-bonds due to their insolvency. Bankruptcy judges, the Department of Justice and landowner groups pushed for those self-bonds to be secured as a part of restructuring process. Later, Cloud Peak Energy, which did not enter bankruptcy during the downturn, replaced its self-bonds.

No Wyoming coal firm failed in its reclamation obligations during the downturn, but the risk did leave a mark on regulators, both state and federal.

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Wednesday was the second time the board considered the department's proposed updates to financial assurance rules. The Land Quality Advisory Board punted on the proposed changes at a March meeting after pushback from the coal industry.

Pat Joyce, assistant director of the Wyoming Mining Association, said Wednesday that the rules were edging closer to a compromise, but needed more work.

"It would be much easier to take a bit more time now than it would be to have it come back in one or two years and have to fix it again," she said. "Meanwhile, real businesses will be affected negatively."

Board member John Hines, from Gillette, asked if Wyoming couldn't take into account that some companies have self-bonded for years and been good eggs in the industry.

Wendtland said they had considered this but alluded to the downturn in coal in recent years, when the large, stable companies that dominate Wyoming's coal industry fell rapidly into insolvency.

But, the crucial point from coal's perspective is that the new rules will end self-bonding.

Dinsmoor, of Peabody, noted that a credit rating is not just a look at the company's financial health, but the thermal coal industry, an approach he criticized.

Peabody Energy is financially healthier than it's ever been, Dinsmoor said. But under Wyoming's proposed changes, the coal giant would not be eligible for self-bonding.

Peabody Energy had \$728 million in self-bonds in Wyoming before its bankruptcy, part of \$1.1 billion in self-bonds across four states. The company shed \$5 billion in debt during restructuring and has come out leaner than some of its competitors that never filed for Chapter 11. However, CEO Glenn Kellow noted last year that Peabody intended to keep self-bonding as an option going forward.

Dinsmoor said the ability to self-bond is tied to competitiveness in the market.

“In the grand scheme of things, it's probably not going to make or break any of the companies, in my opinion, anyway. But it's significant,” he said. “Without that tool available, we won't be as competitive as we might otherwise have been.”

Wendtland of Land Quality countered that there are other options available for companies that are more appropriate for their financial situation. The proposed changes will meet the key responsibility for the department— diminishing risk to the state.

“You have to consider the physical size of the mines in Wyoming. Nowhere else in the country are they talking about \$250, \$350 million liability,” he said. “Wyoming is not a bank. We’re not in the business of bankrolling reclamation ... If you cannot make that minimum, self-bonding just isn’t the right choice.”

The Land Quality Advisory Board’s Wednesday decision kicks the proposed rule changes to the Environmental Quality Council – a board of seven that is appointed by the governor and confirmed by the Wyoming Senate.

If that board approves of the changes, the new rules will be sent to the governor for final approval.

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Heather Richards writes about energy and the environment. A native of the Blue Ridge Mountains in Virginia, she moved to Wyoming in 2015 to cover natural resources and government in Buffalo. Heather joined the Star Tribune later that year.

