

1 P R O C E E D I N G S

2 (Hearing proceedings commenced
3 10:00 a.m., December 6, 2017.)

4 CHAIRMAN GAMPETRO: The meeting is now
5 open. And in terms of the agenda, we'll go through
6 introductions. We'll then approve or we'll vote whether
7 to approve the minutes from the last meeting from
8 September 12th. Then we're going to discuss the proposed
9 revisions to the Land Quality Department in situ mining
10 regulations in the noncoal II [sic] chapter. Then we'll
11 go to the primer and presentation of initial draft of
12 regulations regarding financial assurances for
13 reclamation, Number 4, liability for mining operations.
14 We are just going to discuss that. There will be no vote
15 on that. And then the proposed revisions to DEQ's rules
16 of practice and procedure Chapter 1 rules regarding the
17 incorporation by reference of the Wyoming Department of
18 Administration and Information rules for uniform
19 procedures, fees, costs and charges for inspection,
20 copying and producing public records as required by that
21 statute. And then we'll have a period for other items
22 for discussion.

23 So let's begin with introductions.

24 BOARD MEMBER HINES: John Hines
25 representing agriculture from Campbell County.

1 BOARD MEMBER DINSMOOR: Phil Dinsmoor
2 representing the mining industry from Devil's Tower.

3 CHAIRMAN GAMPETRO: I'm Jim Gampetro, a
4 public representative from Buffalo, Wyoming.

5 BOARD MEMBER SHOBER: Micky Shober,
6 Campbell County commissioner representing the public
7 elected.

8 BOARD MEMBER MACKER: Natalia Macker,
9 public representative from Teton County.

10 MR. WENDTLAND: Kyle Wendtland, Land
11 Quality administrator.

12 MR. HULTS: Craig Hults with Land Quality
13 Division in Cheyenne.

14 MS. O'BRIEN: Brandi O'Brien with Wyoming
15 DEQ, Land Quality.

16 MS. MOODRY: Shannon Moodry with Land
17 Quality Division in Sheridan.

18 MS. ANDERSON: Good morning. Shannon
19 Anderson with Powder River Basin Resource Council.

20 MR. COHN: And I'm Dan Cohn with the
21 Western Organization of Resource Councils.

22 MR. SCHIERMAN: Scott Schierman with
23 Uranium One.

24 MR. BELDEN: Scott Belden with Peabody
25 Energy.

1 MR. HELMS: Brent Helms, Dry Fork Mine.

2 MS. HEUCK: Doreen Heuck, Western Fuels.

3 MS. GOODNOUGH: Beth Goodnough, Western
4 Fuels Association.

5 MR. EMME: Doug Emme, Land Quality
6 Division.

7 MS. LOWE: Wendy Lowe, Peabody Energy.

8 MS. CRAFT: Lecia Craft, Thunder Basin
9 Coal Company.

10 CHAIRMAN GAMPETRO: Thank you all very
11 much, and welcome. When we get to the point where people
12 want to make actual comments, I'm going to ask you to
13 come up and get a little closer to the microphone here,
14 such as it is.

15 So the first issue is the approval of the
16 minutes from the last meeting. Do I have any motions
17 there?

18 BOARD MEMBER SHOBER: So moved.

19 BOARD MEMBER HINES: Second.

20 CHAIRMAN GAMPETRO: Been moved and
21 seconded. All those who wish -- any discussion of the
22 minutes from the last meeting?

23 (No response.)

24 CHAIRMAN GAMPETRO: All those in favor of
25 approving the minutes from the last meeting please

1 signify by saying aye.

2 (All members vote aye.)

3 CHAIRMAN GAMPETRO: Seeing no opposed, the
4 minutes are approved.

5 Discussions of the proposed revisions to Land
6 Quality Division's in situ mining regulations contained
7 in the noncoal Chapter II [sic], who is going to lead
8 that discussion?

9 MS. O'BRIEN: I will.

10 Before I start, Craig, is there anything that
11 you want me to lead off with on it, or am I okay to just
12 jump into it?

13 MR. HULTS: I think you're just fine to
14 just jump into it.

15 CHAIRMAN GAMPETRO: Let me interrupt for
16 one second. I have two little dashes here that look like
17 a 2, and it's an 11. This is noncoal Chapter 11.

18 Thank you, Phil.

19 Do you want us to move? Are you going to put
20 things up on the screen?

21 MS. O'BRIEN: Yes.

22 MS. MOODRY: So, if you guys wouldn't
23 mind, watch the step here and go to the side. There's
24 actually steps on either side of the platform. And you
25 can come up front and see the screen.

1 MS. O'BRIEN: So, Mr. Chairman,
2 Representatives, I'm going to be sharing Chapter 11. We
3 had discussed this in the last meeting. And due to some
4 comments received, we needed to make some changes and
5 revisit the chapter. And so there have been changes made
6 to this since the last time you saw it in the previous
7 meeting. And I'm just going to go through the statement
8 of principal reasons for adoption, this document. I'm
9 just going to guide you page by page where those changes
10 are.

11 The changes since the last version that we went
12 over are actually in color. The changes from the
13 previous version are in black and white. And so, if
14 there are no objections, I'm just going to go over those
15 new changes rather than revisiting everything that we had
16 discussed last time. So, if you have any questions or
17 want me to stop anywhere, please feel free to stop me at
18 any point.

19 Yes, sir?

20 BOARD MEMBER DINSMOOR: Before you start,
21 Brandi, are the changes all in response to comments from
22 the board and the public at the last meeting, or were
23 there changes in addition to those comments?

24 MS. O'BRIEN: Mr. Chairman,
25 Representative, the changes were in one way or another

1 related to those comments. Some were kind of somewhat of
2 a branch-off from those comments. But they did originate
3 from the comments we received.

4 And so the first change is actually on page 4
5 of the PDF, page IV of the document number.

6 So I hope no one gets motion sick with me
7 scrolling through this.

8 Some of the proposed amendments, I'm just going
9 to highlight the changes since the last time I covered
10 this. The term -- this one actually was not in the
11 response to a comment. This was just in review. The
12 term "groundwaters" has been changed to "groundwater,"
13 without the S, throughout the document to be consistent
14 with how other chapters refer to this.

15 If I scroll down further on this page in
16 Section 1, the numbering system has been changed
17 slightly. This was also not in response to comment. But
18 upon reviewing the chapter, it was noticed that it didn't
19 follow the format of other Land Quality chapters. So,
20 when we get past (z) and the numbering gets to (aa),
21 (bb), (cc), that was changed to match other chapters
22 where it goes (aa), (ab), (ac). So it's a small change
23 but made to match the other chapters within Land Quality.

24 In Section 2, per a comment in the last
25 meeting, we removed the language that stated that

1 operators need to obtain and grant access to the
2 administrator or authorized representatives. That
3 language was taken out. And, instead, Land Quality will
4 rely on the Department of Environmental Quality's
5 trespass policy that we have in place.

6 And then the next change is on the next page,
7 page 5 of the PDF, page 8 in the document numbering. And
8 in Section 9, this was a branch-off of comments received.
9 It was not exactly a comment. But in discussions with
10 the work group while settling the comments, this came up.
11 And production wells have now been included in the
12 five-year MIT schedule requirement. Most of the
13 companies are already required to do this. And I will --
14 I'll go through that language in detail when we get to
15 Section 9 and explain those changes.

16 We've removed any details on the formatting and
17 frequency that MIT results are going to be submitted, as
18 it's covered elsewhere in the document and also in our
19 Guideline 4 documents. So, for a comment received that
20 has been removed, the reference is to our Guideline 4
21 document.

22 In Section 11 there was some language that
23 almost word for word repeated the Code of Federal
24 Regulations. And so, rather than -- to be consistent
25 with the other changes that we made in referencing those

1 types of things, we referenced it rather than repeated
2 it. So you'll see that as well in Section 11.

3 The next change isn't until page 8 of the PDF.
4 This is in Section 1. And it is page 1 of the document
5 numbering. And this was caught by Craig, actually. To
6 be consistent with styles used within DEQ, we needed to
7 first spell out "Wyoming Statute" when the WS was first
8 used just to define the acronym. So that change was
9 made.

10 And then at the bottom of the page, this
11 definition for area permit has been changed slightly to
12 remove -- in Section (v) to remove the reference to other
13 Class VI wells. And this was done because this statement
14 isn't necessary. If you look above in the definition
15 here, it states that it is for Class III wells. This
16 definition, I think, was drawn from Water Quality. And
17 in there it's broader than just Class III. And so that
18 language is brought in. And it wasn't necessary, so it
19 was taken out.

20 And then on page 9(f), Ms. Kolkman commented on
21 this in the last meeting, that best practical technology
22 is actually defined in the statute. And so, rather than
23 redefining it here, we referenced the statute where this
24 is defined.

25 The next change is on page 12 of the PDF,

1 page 5 of the document. And it is (w). And this was --
2 I don't believe this was a comment that was received.
3 But in discussions with the work group when resolving
4 those comments, it came up with members of the work group
5 and also some of Land Quality. This definition is not
6 clear. It used to read that "Mechanical integrity
7 testing means the determination that there are no
8 significant leaks or fluid movement is based on the
9 results of mechanical integrity testing." This
10 definition wasn't really clear or straightforward. Since
11 it was a new definition, we thought we want to get it
12 right. And so this was changed to "Mechanical integrity
13 testing means the testing used to determine that a well
14 has mechanical integrity as required in Section 9 of this
15 chapter." So this was changed to be more clear, as we
16 felt the previous attempt at defining it was clumsy.
17 That was me. I'm owning that one.

18 And the next change is on page 13 of the PDF,
19 page 6 of the document, and it is (ab). This is where
20 the numbering starts to change to be consistent with how
21 Land Quality used numbers of other chapters. So, rather
22 than the (bb) or (cc), it is now (ab), (ac). So you'll
23 see that through the rest of Section 1.

24 The next change is on page 14 of the PDF,
25 page 7 of the document. And it is under (am). It's the

1 definition for upper control limit. We had previously
2 proposed to add the language "Upper control limits are
3 derived as outlined in Reference Document 4." Per a
4 comment received from Mr. Kolkman in the last meeting,
5 this has been removed, as we didn't want unintended
6 consequences of referencing such a document and somehow
7 making it part of the rules. So that was removed per a
8 comment received.

9 On page 16 of the PDF, page 9 of the document,
10 this is where the right-of-access language has been
11 removed. As discussed in the last meeting, it was
12 suggested that this be removed, so we have done that.
13 And we will instead be relying on the DEQ trespass policy
14 that we have in place.

15 On page 20 of the PDF, page 13 of the document,
16 the next change is -- this is the first instance of
17 "groundwaters" being changed to "groundwater." You'll
18 see that throughout the rest of the document as well.
19 But this is the only instance where I pointed it out.

20 The next change is on page 21 of the PDF,
21 page 14 of the document. And it is (A)(iii). And this
22 was added per a comment received by Ms. Kolkman in the
23 last meeting where she didn't think it was appropriate
24 for us to state that "using a format prescribed by the
25 administrator." And in the work group, we had

1 discussions that adding the language "and/or acceptable
2 to" gave flexibility that might be necessary as format --
3 as recording styles change, say, from paper to
4 electronic. Or it gives industry the flexibility to
5 propose a format.

6 The next change is on page 35 of the PDF,
7 page 28 of the document. And this is in Section 9. This
8 is the MIT Class III injection, production and monitoring
9 wells. So this is where we had included the production
10 wells in that five-year requirement for MITs being
11 required. Previously we had a somewhat lengthy
12 discussion about that thirteen-day requirement, that a
13 company cannot start up their well within thirteen days
14 unless they hear from the administrator that it's okay.
15 And we had discussed that the Division doesn't
16 necessarily have time to go out there. Don't have the
17 resources to go look at all these. And we rely on the
18 MIT tests that are done to ensure that they are secure.

19 And it was somewhat related to that discussion
20 in other changes that were made from this section. And
21 most of the companies are currently required to MIT both
22 their production and their injection wells by the Nuclear
23 Regulatory Commission. And so we added this language in
24 here. So we massaged it somewhat to allow for production
25 wells. So now it reads "Maintenance of the mechanical

1 integrity of each Class III and production well shall be
2 demonstrated at least once every five years or on a
3 schedule approved by the administrator."

4 We want to leave this flexibility for the "or
5 on a schedule approved by the administrator" just because
6 it's a new rule, and we want to allow for any
7 flexibility, circumstances that arise, repercussions from
8 us requiring those production wells that we may not see.
9 So we wanted to just add that language. It doesn't mean
10 that a company doesn't have to automatically. They would
11 still be considered on a case-by-case basis.

12 And then, also, we removed the language "and
13 reported in the annual report." That was per a comment
14 received by Dawn Kolkman that those reporting
15 requirements are described elsewhere, and so it wasn't
16 appropriate to dictate it here as well. And our
17 Guideline 4 document also tells that. So we removed that
18 language.

19 And then this language, "which has not been
20 plugged or converted as required by Section 10 of this
21 chapter," that was removed because it was not necessary.
22 If a well has been plugged, of course it's not going to
23 need MIT. And with us also requiring production wells in
24 this five-year schedule, if it's converted to a
25 production well, that doesn't change it. It still needs

1 to be tested. So that language was removed.

2 If we go to (iv) below, this language has just
3 been modified to include -- to be appropriate for the
4 inclusion of production wells. So resuming operation of
5 any well rather than resuming injection into a Class III
6 well.

7 And this part is about -- I'll just read the
8 statement and then explain the change. "Before resuming
9 operation of any well that has been damaged by surface or
10 subsurface activity or that has undergone an activity
11 that may jeopardize the mechanical integrity of the well,
12 such as the use of downhole cutting and under reaming
13 tools, the operator must demonstrate mechanical integrity
14 of that well" -- and then we added this at the end -- "or
15 with the approval of the administrator, demonstrate the
16 ability to prevent the movement of fluid into
17 unauthorized zones or onto the surface."

18 And, again, since this is something new that
19 we're adding, we don't want to have repercussions that we
20 didn't foresee in this requirement. So we want to allow
21 any potential case-by-case basis for not renewing that
22 test.

23 Yes, sir?

24 BOARD MEMBER DINSMOOR: Mr. Chairman,
25 Brandi, does that refer to only injection wells, or could

1 that also refer to recovery or monitoring wells?

2 MS. O'BRIEN: Mr. Chairman,
3 Representative, that last statement, "or on the approval
4 of the administrator," that was intended only for
5 production wells, not for injection wells. With the
6 pressures that the injection wells are under, you
7 couldn't -- I mean, if it has failed a mechanical
8 integrity test, you couldn't necessarily demonstrate that
9 there won't be contamination into other aquifers. With a
10 production well, depending on where the well has failed,
11 whether it's well above the underlying aquifer or in the
12 pressures -- I'm sorry -- how far below it is above an
13 overlying aquifer, just where that fails, it might not
14 have the ability to contaminate other aquifers.

15 So, just with those pressures -- it would be on
16 a case-by-case basis that they would look at this. But
17 we just wanted to leave that flexibility for production
18 wells. I can't imagine this ever being approved for an
19 injection well just because they wouldn't be able to
20 demonstrate that.

21 If we scroll down on the next page, on page 36
22 of the PDF, in (v) we again adjust the language to
23 include production wells in these requirements, again,
24 taking out the Class III verbiage and adding "or
25 production wells" in two places.

1 If you go below, this was in response to a
2 comment in (vi) from Ms. Kolkman. And, again, just
3 changing the language for reporting, adding some
4 flexibility. So now it reads "Results of MIT testing
5 shall be reported quarterly in electronic format
6 acceptable to the administrator," rather than "as
7 prescribed by."

8 And the next change, again, is (c) below. This
9 is talking about wells needing to be repaired within a
10 certain amount of time and resuming operation of that
11 well. This was just adjusted to also include production
12 wells, so just taking out the word "injection," adding
13 "use of the well."

14 The next change is on page 39 of the PDF, 32 of
15 the document. And this is Section 11. This is the
16 aquifer classification and exemption. This portion
17 especially affects Water Quality since they are the ones
18 who do the aquifer exemptions. And we worked with them
19 on that. And so we received comments on the document
20 from Water Quality. Not during public comment period.
21 But after we were revisiting this, we got a call from the
22 Water Quality Division that there were a few things that
23 needed to be adjusted with Chapter 11, especially this
24 section.

25 In (a) (ii) (A) we reference "underground source

1 of drinking water." However, in Section 1 that
2 definition had been changed to "underground source of
3 water." So we removed "drinking" to be consistent with
4 Section 1.

5 If we go to the next page, page 40 of the PDF,
6 page 33 of the document, if we go to (b) (i) (A), we took
7 out the words "drinking water" again to be consistent
8 with that change that had been made. And then we also
9 removed these specific examples for classes of wells, as
10 it was just confusing and not necessary. So, to make it
11 read more clearly, it now states "It does not currently
12 serve as a source of water for uses as described in
13 Chapter 8 of the Water Quality rules and regulations."
14 So that change has been made to help it read more
15 clearly.

16 If you go down to (B), this is the language
17 that had almost verbatim been pulled from 40 CFR
18 146.4(b). So, if you look in (I), (II), (III) and (IV),
19 all of these are almost verbatim in that CFR. So it's
20 almost word for word. And this part (V) is actually
21 redundant with language that is in Section 1(a)(1)(i),
22 which is the definition for underground source of water.
23 So this language is already covered elsewhere. So we
24 felt okay getting rid of this. And this is verbatim of
25 that 10 CFR language. And I'll just pull up that

1 language so you can see the comparison of the two and how
2 close it is.

3 So the 10 CFR language is extremely similar.
4 The first section is word for word. This and the CFR
5 language -- this is the Chapter 11 language. So that
6 first part is word for word. The second part only has
7 changes where it references the permit application here.
8 We also reference research and development license
9 application and just very slight changes like those. So
10 it is almost verbatim. So we felt it appropriate to just
11 reference that 40 CFR language.

12 The next change is on page 41 of the PDF,
13 page 34 of the document. And this is under (c). We
14 changed this reference to Code of Federal Regulations to
15 be consistent with the style used elsewhere in the
16 document. So, rather than spelling out "Code of Federal
17 Regulations," we actually just do 40 CFR 145.32.

18 And then per a comment received from
19 Ms. Kolkman at the last meeting, this reference to the
20 working agreement between Water Quality and Land Quality,
21 that has been removed, similar to how the reference to
22 Guidance Document 4, Reference Document 4, how that has
23 been removed where it was not necessarily -- she didn't
24 feel it was appropriate to bring it into the chapter.
25 And we are fine not referencing that here. So that has

1 been removed.

2 The next change is on page 46 of the PDF,
3 page 39 of the document. And this is under (e) of
4 Section 14. And per a comment received from Ms. Kolkman,
5 we decided to change this language. She felt that this
6 language was confusing and not clear. And so we worked
7 with the uranium work group on how to construct this
8 language that was both clear to them and to the Land
9 Quality Division. And so now it reads "In the case that
10 a portion of the permit is in violation of law, that
11 portion of the permit shall be opened for review." It
12 says the same thing as before, just language that was
13 more agreeable to both parties. And that was the last
14 change since the last time I proposed this.

15 So are there any questions?

16 BOARD MEMBER DINSMOOR: Mr. Chair and
17 Brandi, can you tell me, is the change in subsection (e)
18 there on the screen consistent with other portions of
19 Land Quality regulations that deal with the other forms
20 of mining, not just uranium, or does it need to be?

21 MS. O'BRIEN: Mr. Chairman,
22 Representative, this didn't -- this made it clear that if
23 something is in violation, we'll change it. There's
24 usually a grace period that companies are allowed to come
25 into compliance with new rules within X amount of time.

1 But this just gave Land Quality the flexibility to say
2 that we're reviewing something and, "Hey, this never got
3 brought up." We can go ahead and change it at that
4 point.

5 But as to the other forms of mining, I'd have
6 to defer to the folks in Cheyenne on that one.

7 Craig, Kyle, do either of you guys have
8 comments on that?

9 MR. WENDTLAND: Brandi, if Phil could
10 speak up a little bit and restate his question. We
11 didn't hear quite all of it.

12 BOARD MEMBER DINSMOOR: Yes. Kyle, my
13 question was this portion (e), section (e) of the rule.
14 And I'm not sure --

15 MS. O'BRIEN: Section 14.

16 BOARD MEMBER DINSMOOR: Section 14(e). It
17 talks about portions of the permit, unless they're in
18 violation or if they're in violation, shall be opened for
19 review. And I was just curious whether that was
20 consistent with other -- the other regulatory programs in
21 Land Quality Division, such as for noncoal and coal and
22 so on and so forth.

23 MR. WENDTLAND: Phil, the answer to that
24 question is, moving forward with it where Chapter 11
25 applies, yes. You know, we're trying to make this

1 language clear. It doesn't really say anything different
2 than what's already there and what's already being
3 applied. It just is a -- it's a more clear description
4 of what actually is occurring.

5 BOARD MEMBER DINSMOOR: Okay. Thank you.

6 MS. O'BRIEN: Are there any more
7 questions, Mr. Chairman, Representatives?

8 (No response.)

9 CHAIRMAN GAMPETRO: If there are no other
10 questions, I want to thank you very much for your
11 presentation.

12 MR. HULTS: Brandi, sorry to interrupt.
13 It looks like we lost -- never mind. They just came back
14 on.

15 MR. WENDTLAND: The Internet connection
16 dropped, but we should be good now.

17 MR. HULTS: Thanks.

18 CHAIRMAN GAMPETRO: I think we can move on
19 to the primer on the presentation of initial draft of
20 regulations regarding financial assurances for
21 reclamation liability for mining operations. Who's going
22 to lead that discussion?

23 MR. WENDTLAND: Chairman, that will be me,
24 Kyle Wendtland. I'm wondering, do you want to take
25 action on and finalize Chapter 11 before we move forward?

1 CHAIRMAN GAMPETRO: Do I have a motion
2 here?

3 BOARD MEMBER DINSMOOR: I'll move to
4 approve Chapter 11 as revised as it reflects previous
5 comments.

6 BOARD MEMBER SHOBER: Second.

7 CHAIRMAN GAMPETRO: It's been moved and
8 seconded to approve Chapter 11 as revised. All those in
9 favor please indicate by saying aye.

10 (All members vote aye.)

11 CHAIRMAN GAMPETRO: Any opposed?

12 (No response.)

13 CHAIRMAN GAMPETRO: Seeing no opposed, it
14 is approved.

15 Now, this next one is just for discussion on
16 bonding, basically.

17 MR. WENDTLAND: Chairman, yes. I would --
18 I don't mean to back up, but I would ask if there was any
19 other comment from the public or industry on Chapter 11.
20 We might want to ask that question.

21 CHAIRMAN GAMPETRO: It was asked here
22 locally, and no one said anything. We'll ask it again.

23 MR. WENDTLAND: Okay. We just wanted to
24 have clarification on that. I'm seeing no one ask here.
25 It's all no here. How about with Natalia and Matthew in

1 Jackson?

2 MR. HULTS: They're giving us the thumbs
3 up.

4 MR. WENDTLAND: Okay. So we're good. All
5 right, Chairman. Sorry. I wanted to make sure we had
6 addressed all three locations there.

7 So, with the primer with the bonding rules,
8 we're going to move forward with that. And I'd like to
9 put some background on this in putting this out. And the
10 first part of that background is part of the reason
11 they're being presented as the primer and in draft format
12 today is so that we can have discussion and comment.
13 Land Quality and DEQ are looking for that input. And
14 if -- we would like to receive that. And if there are
15 individuals or organizations that want to have further
16 discussion with me following this meeting, my office is
17 open, and I would be happy to be taking appointments for
18 those discussions.

19 So the bottom line here is we are looking for
20 input, and we hope that we get that from folks today and
21 possibly between now and March, as we're finalizing the
22 rule. We'll have a better product if we do get that
23 input.

24 With that in mind, then, just for some history
25 and background, the review of --

1 Yes?

2 (No response.)

3 MR. WENDTLAND: The review of the bonding
4 rules started or was initiated back, actually, in late
5 2014. The action to look at them had been in place when
6 I took the position in April of 2015. So this was not
7 something that was new on the plate. And I want to make
8 sure folks understand that. Because we did have
9 bankruptcies in the mining sector and oil and gas sectors
10 that certainly highlighted aspects of the financial
11 assurance, but it was not the driving force. We actually
12 had been, through the governor's initiatives, asked to
13 look at the rules and regulations and were so doing prior
14 to the bankruptcies. So that's where that shakes out.

15 Now, based on the research and review that we
16 did and interaction with the industry, interaction with
17 the public, and then we also spent quite a bit of time
18 with the IMCC 26-member states in looking at what other
19 state programs do and how Wyoming compares to that and
20 where we're going in the future, and we took all of that
21 together and put together this initial draft that you're
22 seeing today.

23 And those different things really helped us to
24 take a look at the focus of the rewrite. And the
25 principal focus there is to address current corporate

1 structures today. They are vastly different today than
2 they were in 1982 when Wyoming's, in particular,
3 self-bond rules were put in place. And we've had a lot
4 of changes since then, and a lot of those changes are the
5 result of federal and -- basically federal actions like
6 the Frank-Dodd banking act, Sarbanes-Oxley regulations.
7 A lot of these rules have changed the dynamics of how
8 corporate structures are in place today.

9 So, looking at that and looking at how to --
10 rather than pick one financial instrument and say it's
11 better than another, looking at all of the instruments
12 out there and saying how can the State of Wyoming rewrite
13 these rules and regulations such that we mitigate the
14 risk to the State to the extent possible? You're never
15 going to have a zero risk. And it doesn't matter what
16 financial instrument you use. There's never a zero-risk
17 option. But can we mitigate that risk to the extent
18 possible and lower the overall risk of liability to the
19 State? And we believe that can be accomplished through
20 this rule rewrite.

21 Now, a few of the key points of the rule
22 rewrite that are out there, the first one is a change to
23 move away from the ratio calculations of the balance
24 sheets. And what we found in our research is that in
25 today's reporting environment, a couple things are

1 happening, and one of those is, the way the rules are
2 currently written, we rely on the last year's -- or, the
3 current year audited financials. And we can have a time
4 delay because of when a particular permit may have been
5 approved. Let's say that's August. We're looking at
6 year-end financials. We're already looking at an
7 eight-month delay in those data. So, in order to get
8 those data closer or more real time, we want to look at
9 the actual investment credit rate and move away from the
10 ratios. That's the first part of that.

11 The second part of that aspect is, in today's
12 balance sheet reporting, it doesn't necessarily address
13 all of the liabilities. There are certain liabilities
14 that are off-balance sheet. And what we learned through
15 looking at these corporate structures and the
16 bankruptcies across all of the sectors of not just
17 mining, but oil and gas as well, looking at a broader
18 spectrum of this, is that a lot of companies have large
19 revolvers that are sitting in the off-balance sheet or
20 accesses to credit -- access to credit.

21 And when a forfeiture is filed, they then draw
22 on -- or a Chapter 11 is filed, they then draw on those
23 revolving credit that's showing in the off-balance sheet.
24 They don't show -- those debits don't show in the balance
25 sheet until they're drawn on. So you could have a

1 million-dollar revolver or a 100-million-dollar revolver
2 out there that is sitting in the off-balance sheet that
3 does not show in your balance sheet. And that is an
4 exposure of risk that we have become uncomfortable with.
5 So, again, that's another reason we want to move to the
6 third-party credit rating, is we see in real time the
7 company performance and whether they're making the credit
8 rating or not.

9 Second key point here is we looked at capping
10 the limits on self-bonding. And the reason for that and
11 how we got to the 70/30 split for the A-rated companies
12 and the 50/50 splits for the B-rated companies is, if a
13 company goes into forfeiture, there are assets on the
14 ground, like buildings, structures, those type of things,
15 that can have repurpose value, that if they are not
16 maintained, like the heat goes out and we freeze the
17 pipes in the shops or we don't keep the mice out of the
18 buildings, we don't have some general maintenance, we
19 will devalue those assets.

20 So we want to have the ability to seek out some
21 liquid operational cash in the event of a forfeiture
22 that's in some other instrument that we can access
23 quickly while we're working through the forfeiture
24 proceedings for the self-bond. So, with the A-rated
25 companies, that split is the 70/30.

1 In addition to that, we want to have capital --
2 liquid capital to start pre-feasibility design criterias
3 for final reclamation. Anytime you close an operation
4 prematurely, the dirt balances are not accurate. The
5 dirt isn't where it needs to be or other assets out there
6 may not be in their final form where they were planned.
7 So you're going to have to reengineer the project. And
8 we want pre-feasibility-level capital to get through that
9 redesign and engineering design. And then we also want
10 feasibility-level capital to look at issuing fuel
11 contracts and those types of things such that when the
12 forfeiture is complete and we access the assets of the
13 company that's in forfeiture, we can immediately go to
14 construction of the reclamation, and we do not have an
15 erosion of capital or a time delay or time value of
16 money. So that's where those splits come out.

17 And then with the B-rated company, we're saying
18 simply that there's a higher risk there, and we're going
19 to mitigate that risk by having a little more liquid
20 capital on hand.

21 The next key point is also in self-bonding, and
22 that is a change to only self-bonding at the parent
23 level. What we've seen, and especially with the balance
24 sheet things, is that parent companies reached in and
25 grabbed the assets of the subsidiaries, and that is

1 problematic. If we want to have clear access to the
2 forfeiture capital, we need to be able to access the
3 parent in today's corporate structure tree. So that is
4 the reason for that change as well.

5 The other change that we had is removal of the
6 standby letter of credit. That's a letter of credit that
7 only funds when it's drawn on. The State simply wants to
8 have the cash out there and accessible and not have to be
9 dependent upon it being drawn before it's funded. We
10 want a funded instrument -- fully funded instrument in
11 place.

12 The last change that is proposed -- and this
13 one also goes to a statutory change that's been
14 proposed -- is moving real property collateral to its own
15 financial instrument and out of the self-bond component.
16 This more closely mirrors the 800.223 regs in the federal
17 regulations for SMCRA. And it also makes us a little
18 cleaner in the process where we have used real property
19 in the last few years in a couple of occasions. This
20 would make it a cleaner process for us.

21 What would happen in this case -- and it is not
22 in the draft because the statute language is proposed, so
23 we don't know if we can get that through. And if it's
24 approved, essentially, what we'll do is we'll put the
25 provisions that are now in self-bond into its own -- in

1 the self-bond real property, and it will move to its own
2 real property instrument. And those provisions will just
3 move out of the self-bond section into its own section
4 under real property. And that's where we go with that
5 one.

6 And then kind of the last thing I have here is,
7 on the timeline that we're looking at, we address the
8 coal rules first because of their relation with OSM and
9 SMCRA. They're the more complicated rules. But as we
10 move toward a final product here, the noncoal self-bond
11 rules, Chapter 6, will also resemble what these changes
12 in coal look like. So the application of these
13 requirements would be equally both to coal and noncoal
14 alike.

15 And our plan is that right now where we sit
16 with it is to take the feedback between now and hopefully
17 in late January, early February, kind of close that out
18 if we have some more additional comments, see what the
19 legislature does with the proposed real property
20 statutory change and then finalize these rules and bring
21 a final package to the board at the end of March or the
22 end of the first quarter, Q-1, in 2018.

23 So that's where we are. That's how we got
24 where we are. And that's where we're headed, Chairman.

25 CHAIRMAN GAMPETRO: I have a question on

1 your third-party credit ratings. What kind of confidence
2 and how do we measure their reliability?

3 MR. WENDTLAND: Mr. Chairman, that's a
4 very good question. And we've looked into that in some
5 detail. And based on our analysis, had our rules and
6 regulations using credit ratings been in place, we would
7 have seen the -- the issues with the balance sheet on the
8 bankruptcies in -- and we had bankruptcies in coal and
9 noncoal in that time period about sixteen months ahead of
10 when we did. And we could have taken action earlier.

11 The credit ratings are real time, and we can
12 request that rating at any time. So we have -- you know,
13 any type of a stock value decline or credit value decline
14 of a private company, we can see that in real time and
15 see that much sooner than we would on the annual audited
16 financials that we currently have been under rule and
17 regulation and using.

18 CHAIRMAN GAMPETRO: On your final point on
19 real estate values, again, where is that going to come
20 from, and what kind of confidence can we have when
21 determining --

22 MR. WENDTLAND: Mr. Chairman, under the
23 provisions right now, we have to have a qualified
24 certified appraisal. We look at a market value
25 assessment. And what the practice has been, we usually

1 see a high, mid and low value. And our policy has been
2 to utilize the mid value. And we're looking at -- at
3 least right now it's an annual requirement, and not much
4 changes on the annual basis, based on our research, a
5 three-year cycle. So we would be looking to review those
6 values moving forward on the three-year cycle for that.

7 And most of the real property we've looked at
8 has been large ranch property. So those values are a
9 little more stable, you know, than you normally see like
10 in the housing market. We're looking at larger tracts of
11 land and larger properties that have a little more stable
12 value.

13 CHAIRMAN GAMPETRO: Would you go to more
14 than one appraiser?

15 MR. WENDTLAND: At this time, if it's a
16 certified qualified appraiser that's licensed, no. We
17 feel that if it's a licensed and credible organization,
18 we would only need the one appraisal and the three market
19 values.

20 CHAIRMAN GAMPETRO: Thank you.

21 Any other questions? Comments?

22 BOARD MEMBER HINES: Mr. Chairman?

23 CHAIRMAN GAMPETRO: John.

24 BOARD MEMBER HINES: On the letter of
25 credit, if I'm following this correctly, if a bank should

1 go bankruptcy, then the permittee has 90 days to get
2 either a letter of credit or bonding from another
3 institution. If they cannot do that, what's the
4 procedure?

5 MR. WENDTLAND: Mr. Chairman, Board Member
6 Hines, that is correct. We have -- nothing is changing
7 with regard to the replacement requirements. If we have
8 a deficiency in a bank -- and we've had that, where we
9 have banks that closed, merge, change -- those letters of
10 credit and CDs as well have to be reissued under the new
11 authorizing or leveling bank. That is a practice that is
12 already in place.

13 BOARD MEMBER HINES: My question,
14 Mr. Chairman, then, if that should happen and the
15 permittee cannot or has a problem getting the current
16 bond or credit, what's the procedure after 90 days?

17 MR. WENDTLAND: Mr. Chairman and Board
18 Member Hines, if they cannot achieve or qualify for
19 liability coverage for their reclamation, then we would
20 be forced into a situation of enforcement, and probably
21 the operation would need to go into reclamation. I mean,
22 the statutes are pretty clear that if you can't provide
23 reclamation liability coverage, that you're not going to
24 be able to continue to operate.

25 BOARD MEMBER HINES: Then, Mr. Chairman,

1 in that case, the State would take over, more or less, in
2 reclamation or operation or whatever. That would be up
3 to the State?

4 MR. WENDTLAND: Mr. Chairman, Board Member
5 Hines, that's correct. And that's why I made the
6 statement earlier that there is no zero-risk option, but
7 we can minimize the risk. And that and the letters of
8 credit is why we're moving away from that standby letter
9 of credit. There's value in retaining that instrument
10 but retaining that instrument only as a funded -- fully
11 funded instrument, not as a standby funded instrument.

12 BOARD MEMBER HINES: Thank you.

13 BOARD MEMBER SHOBER: Mr. Chairman, Kyle,
14 in relation to your appraisals on real property, my
15 question, I guess, is related back to the county tax
16 values. Agriculture properties are taxed at a different
17 rate, but industrial properties are taxed at a percentage
18 of value. That appraisal is going to become public
19 knowledge, or how is that going to be handled?

20 MR. WENDTLAND: Mr. Chairman, Board Member
21 Shober, we keep those values as confidential because we
22 feel that there is market risk to any given county or
23 entity. And we're going to keep those values as
24 confidential. That's been the practice. And we
25 certainly would not want those appraisals to be

1 negatively or positively influencing grounds that
2 surround that property. So our intent is to keep those
3 values confidential.

4 BOARD MEMBER SHOBER: Thank you.

5 BOARD MEMBER DINSMOOR: Mr. Chairman,
6 Kyle, going back to the self-bond discussion for a
7 moment, the current rule is available to all operators
8 who may qualify under the various ratio calculations. My
9 understanding, which it may be quite limited, is that
10 perhaps not everybody has a credit rating, and perhaps
11 not everybody can get a credit rating. And so I guess I
12 would ask are we taking away the opportunity to self-bond
13 from those operators who cannot get a credit rating or
14 who have a credit rating that is below the proposed
15 thresholds?

16 MR. WENDTLAND: Chairman, Board Member
17 Hines [sic], the way that that works is anybody can go to
18 Moody's and ask for a credit rating. It is a paid fee to
19 obtain that credit rating. So it doesn't matter whether
20 you're private or public. That credit rating can be
21 obtained. And that is largely why we're going to that
22 third-party independent assessment of the valuation and
23 strength of a particular company. And that is why we
24 want to go to that credit rating.

25 In the draft rules, you'll see we've listed all

1 three major credit rating agencies so that people have a
2 spread of who they can obtain and who will accept those
3 ratings from.

4 CHAIRMAN GAMPETRO: Kyle, that question
5 was from Mr. Dinsmoor, not Mr. Hines.

6 MR. WENDTLAND: Oh, I'm sorry. Sorry,
7 Mr. Chairman and Mr. Dinsmoor. I apologize for that.

8 BOARD MEMBER DINSMOOR: That's okay. I'm
9 content to hide behind Board Member Hines.

10 MR. WENDTLAND: I'd like to hide behind
11 anybody on all this.

12 CHAIRMAN GAMPETRO: I'm going to just turn
13 around here a minute.

14 Does anybody else have any questions or
15 comments on this in the audience?

16 MS. ANDERSON: Thank you, Mr. Chairman.
17 Shannon Anderson on behalf of Powder River Basin Resource
18 Council. We'll be brief.

19 We support the rules, and we really applaud the
20 DEQ's efforts in moving forward with them. Thank you for
21 your hard work and consideration of the public interest.
22 We'll provide more technical comments when it comes to
23 the official time in March.

24 Thank you.

25 CHAIRMAN GAMPETRO: Thank you.

1 Any other comments? Questions?

2 (No response.)

3 CHAIRMAN GAMPETRO: Anything else that you
4 want to add, Kyle?

5 MR. WENDTLAND: Mr. Chairman, I would
6 simply restate the statement I made earlier. My door is
7 open. We would like to hear from folks. That is why we
8 present the primer to the board today and the public.
9 And we would like to hear from those who have --
10 stakeholders that have an interest. And I would really
11 encourage folks to make an appointment and come talk to
12 me. We'd like to hear from you.

13 CHAIRMAN GAMPETRO: Kyle, thank you.
14 Thank you for all your work and presentation.

15 Unless there's anything else on this, I'm going
16 to move on to the DEQ presentation of proposed revisions
17 to the rules of practice and procedure, Chapter 1 rules
18 regarding the incorporation by references of the Wyoming
19 Department of Administration and Information rules for
20 uniform --

21 MR. HULTS: Mr. Chairman, my suggestion
22 would be that we take a fifteen-minute break so I can get
23 the presenters down here and get them organized.

24 CHAIRMAN GAMPETRO: That will be just
25 fine.

1 MR. HULTS: I'll be back at 11:15.

2 CHAIRMAN GAMPETRO: I can go out and check
3 the weather and see if I'm going to be able to get home
4 or not.

5 (Hearing proceedings recessed
6 10:57 a.m. to 11:14 a.m.)

7 MR. FRANKEN: Good morning, Mr. Chairman
8 and Board Members. My name is Joe Franken. I'm the
9 management services administrator for DEQ. And we have a
10 few other new folks here. We'll let them introduce
11 themselves.

12 MR. GUILLE: I'm Keith Guille, public
13 information officer for DEQ.

14 MS. KVIEN: I'm Allison Kvien. I'm with
15 the Attorney General's Office. I do most of the Air
16 Quality work, but I'm here today with the Land Quality
17 folks.

18 MS. THOMPSON: And I'm Gina Thompson. I
19 actually work with the Water Quality Division, but I'm
20 assisting Joe with this rule-making on the rules of
21 practice and procedure.

22 MR. FRANKEN: All right. Thank you for
23 giving us the opportunity to discuss the incorporation by
24 reference of the Department of Administration and
25 Information, A and I, uniform rule.

1 This statutorily mandated rule titled "Uniform
2 Procedures, Fees, Costs and Charges for Inspection,
3 Copying and Producing Public Records" is a standardized
4 approach for all state agencies to charge a fee for the
5 production and construction of electronic public records
6 and also establishes a copy and transmittal fee.

7 A and I conducted the public notice and public
8 comment process concerning the uniform rule. Therefore,
9 the rule has been vetted through a public review and
10 public comment period. Incorporation by reference allows
11 agencies to incorporate the rule in its entirety, given
12 the required public review and comment processes have
13 been completed. A and I's public comment period is
14 16 February of 2016 through 8 April of 2016, and they
15 ended up extending the comment period until 9 May of 2016
16 and held a public hearing on 12 May of 2016.

17 Is the board's recommendations to the council
18 for approval to incorporate by reference the uniform rule
19 into DEQ's rules of practice and procedure, Chapter 1,
20 general rules. A and I proposed the uniform rule to
21 comply with the legislative mandate outlined in Wyoming
22 Statute 16-2-204(e), which directed that A and I shall
23 adopt uniform rules for use of state agencies
24 establishing procedures, fees, costs and charges for
25 inspection and production of public records under Wyoming

1 Statute 16-4-204(d) (i), 16-4-203(h) (i) and 16-4-204. The
2 rule complies with that mandate and creates uniform rules
3 for use by state agencies.

4 Additionally, Wyoming Statute 16-3-103(j) (ii)
5 requires that each state agency ultimately adopt these
6 uniform rules. These uniform rules establish production
7 and construction costs related to electronic public
8 records authorized under Wyoming Statute 16-4-202(d) (i).
9 Production and construction costs may include, but are
10 not limited to, the time spent retrieving, compiling,
11 sorting, reviewing, converting or copying electronic
12 public records as well as activities required to create
13 or construct a new electronic public record for existing
14 data sources.

15 Additionally, these uniform rules also
16 established production and construction costs at \$15.50
17 per hour for clerical staff time, \$30 per hour for IT
18 staff time and \$40 per hour for professional staff time.

19 In addition, these uniform rules create a
20 minimum dollar threshold that must be met prior to any
21 production or construction costs being charged for an
22 electronic public records request. If production and
23 construction costs for an electronic public record are
24 less than or equal to \$180, the applicant or requester
25 will not be charged any production or construction cost.

1 And we believe within DEQ that the majority of the
2 electronic public records requests -- the vast majority
3 of electronic public records requests would fall within
4 the threshold. Therefore, there would be no charge.

5 Additionally, under Wyoming Statute
6 16-4-204(a), the uniform rules establish copy and
7 transmittal fees. During their public hearing, A and I
8 addressed several commenters that opposed the rules and
9 had concern about A and I's legal authority to create
10 these uniform rules. A and I explained that during the
11 2014 legislative session, the legislature created Wyoming
12 Statute 16-4-204(e). A and I could adopt uniform rules
13 for electronic public records and nonelectronic public
14 records. Wyoming Statute 16-4-202(d)(i) specifically
15 addresses electronic record inspection and copying and
16 requires a reasonable cost of producing a copy of the
17 electronic public record by the party making the request.
18 The cost may include the cost of producing a copy of the
19 public record and the cost of constructing the record.

20 Others commented to A and I that it is
21 unreasonable to ask the public to pay to review a public
22 record and that doing so is an unreasonable obstruction.
23 A and I stated, as part of those comments, it appears
24 commenters believe that the production and construction
25 costs apply to both electronic and nonelectronic public

1 records. The production and construction costs outlined
2 in the rules only apply to electronic public records
3 requests. Those costs do not apply to nonelectronic
4 public records requests.

5 A and I and DEQ does not believe requiring an
6 applicant to pay production and construction costs for
7 electronic public records is unreasonable. In fact, the
8 requirement that the applicant or requester pay the
9 production and construction cost has been around since
10 2002, when the legislature --

11 MS. KVIEN: I think that was 2014.

12 MR. FRANKEN: I'm sorry.

13 -- been around since 2014, when the legislature
14 specifically created Wyoming Statute 16-4-202(d)(i).
15 These rules simply create uniform rules for use by state
16 agencies. A and I was very accommodating when it created
17 in the rules a \$180 cost threshold or credit that will
18 apply to all electronic public records requests. Based
19 on the statute, A and I could have created rules with no
20 threshold. However, A and I wanted to strike a fair
21 balance between the statutory requirement that the
22 applicant reimburse an agency its production and
23 construction cost, the public's right to inspect
24 electronic public records and the burdens placed upon
25 state agencies when responding to the electronic public

1 records request.

2 DEQ believes these rules make electronic public
3 records requests and the subsequent production or
4 construction of those more efficient by encouraging
5 specific and detailed requests which help both the
6 requester and the state agency.

7 Some commenters expressed concern that the cost
8 for the production of electronic public records could
9 lead to less transparency in government. A and I stated
10 that the fees are not designed to create less
11 transparency in government; rather, to follow the
12 legislative mandate to create more specific and detailed
13 requests for electronic public records and to alleviate
14 the burden on state agencies.

15 Further, A and I believes by creating the
16 threshold, the belief is that the electronic public
17 records process will become more efficient to the
18 requester and state agency.

19 DEQ received numerous comments in September
20 before the Water and Wastewater Advisory Board and
21 several before this Land Quality Advisory Board. The
22 comments included that DEQ should comply with the
23 Environment Quality Act's core mandate of open records to
24 make all agency information available without charging an
25 access fee. DEQ believes the incorporation by reference

1 of the uniform rule is not in conflict with the
2 Environmental Quality Act, specifically 35-11-1101.

3 Another comment DEQ received stated DEQ should
4 not charge to the public -- excuse me -- not charge a fee
5 to the public related to records that are part of the
6 [unintelligible] enforcement or rule-making process. We
7 would note that there was no fee for the inspection of
8 public records. Anybody can come in and inspect a public
9 record. These fees talk about the production and
10 construction of electronic public records. The proposed
11 uniform rule allows for a reasonable fee for the
12 production and construction of electronic public records.

13 Another commenter stated DEQ needs to develop
14 internal procedures that produce records faster and is
15 available to the public as opposed to limiting access to
16 public records. DEQ is developing a process software to
17 manage public records requests. And I think Keith might
18 talk about that in a moment.

19 Finally, a commenter suggested adopting the
20 uniform rule will violate the terms of DEQ's primacy
21 agreements with both EPA and OSM. DEQ does not believe
22 the uniform rule violates the terms of primacy. In fact,
23 44 other state DEQs or environmental agencies charge for
24 records in some capacity. So in no way is DEQ attempting
25 to limit access to public records. Voluminous public

1 records requests stretch agency resources, and this
2 legislatively mandated uniform rule will lessen the
3 burden on state agencies and assist the applicant in
4 narrowing the request.

5 So today DEQ is requesting the board's
6 recommendation to the council for approval to incorporate
7 by reference the rule in the DEQ's rules of practice and
8 procedure. We propose adding a new Section 11 titled
9 "Public Records Request."

10 So I don't know, Keith, if you wanted to talk a
11 little bit about some of the examples you have where this
12 would be --

13 MR. GUILLE: Certainly. Good morning.
14 One of the -- this really is into three different areas
15 that we're facing and what we're doing here at the
16 agency. First is going paperless. You can probably
17 imagine 40 years' worth of documents, a lot of physical
18 documents. We have our main documents here in Cheyenne.
19 Obviously, that access is still open to the public, and
20 we have field offices that have copies of a lot of
21 records. The main documents reside here. And we've been
22 working to make them electronic.

23 Just recently all of our Abandoned Mine Land
24 records are now paperless, and they're available through
25 our website. It's a portal that they can view those

1 records. The Solid and Hazardous Waste Division has
2 almost completed making all of our records electronic,
3 and then at some point, we'll have a portal for them to
4 review those. That's really the idea -- the way going
5 forward for the public where they wouldn't have to come
6 to our agency. They could do it from work or from their
7 home computer to view those records.

8 The majority of our records requests are really
9 more of the [unintelligible] ones or doing due diligence
10 on property. They want to know, okay, what type of
11 environmental impacts are to property or property I'm
12 looking at. So offering these type of services, I think,
13 to the public will really reduce the amount of records
14 requests we have. We have about 500 a year. 90 to 95
15 percent of those requests will probably be reduced once
16 we have most of our records available online.

17 The second step that we're doing, we're
18 incorporating a new software the public will be able to
19 request online, which they can now, but it's a portal
20 that they can also communicate with us, and we can
21 communicate with them when a request has been made, and
22 then we make it available to them as an actual record.
23 And it can be all done through that system.

24 Our hope also is that it will reduce the amount
25 of records requests, as an alert will pop up to the

1 requester when they start typing. Let's say they're
2 looking for an Abandoned Mine Land type of record. If
3 they put in "AML" or "Abandoned Mine Land," an alert will
4 pop up and will give them a link of those records to
5 review. So that's the next step.

6 And, finally, really, where we're facing a lot
7 of our time spent on records requests are these
8 electronic correspondence, e-mails. And certainly that's
9 been a challenge for us. Recently we had a records
10 request for five power plants in the state. And,
11 obviously, it brought forth correspondence that they were
12 looking for.

13 And just one division -- and this actually
14 brings in three divisions. Just one division and one
15 power plant, our first initial pool of e-mails was 45,000
16 e-mails. We were able to get with the requester and
17 reduce that to 7,500. But if you start doing the math on
18 that, you're looking at 7,500 e-mails. If you went,
19 let's say, two minutes an e-mail that you reviewed --
20 because some may be long. Some may have attachments --
21 and you do the math, and after a while, you would come to
22 31 -- a little over 31 weeks' worth of work. That's 40
23 hours a week. And certainly that puts a lot of time on
24 our staff.

25 And what we hope through this practice and

1 procedure is that we can actually reduce the amount of
2 those type of requests we get as well as maybe get them a
3 little bit more detailed, as we want to make those open.
4 But certainly if these type of requests come in, that if
5 they start really putting a lot of time constraints on
6 our staff, that certainly the requester is going to help
7 fund that as well.

8 That's all I had.

9 CHAIRMAN GAMPETRO: Is that it?

10 MR. GUILLE: That's it.

11 CHAIRMAN GAMPETRO: Comments? Questions?

12 Let's start with the board.

13 BOARD MEMBER DINSMOOR: Mr. Chairman, I'm
14 kind of curious. So, when you charge a fee, what happens
15 to that money? Do you get to spend it on part-time help
16 to help you address this manpower issue?

17 MR. FRANKEN: Mr. Chairman, as we're in
18 the preliminary process of coming up with how we're going
19 to -- once we go through and we meet all the advisory
20 boards and go through the EQC, we're in the process of
21 working with fiscal folks to figure out, once we get that
22 fee, how that fee will be -- whether we within DEQ can
23 keep the fee, or will that fee go to the general fund?
24 And that's something that we need to have that discussion
25 with the fiscal folks.

1 In my opinion, it would be great if we were
2 able to use that fee to help offset some of those
3 manpower costs, but that hasn't been decided yet.

4 BOARD MEMBER DINSMOOR: As a follow-up, if
5 it were to go -- if the money were to go to the general
6 fund, I presume that it then becomes a decision on the
7 part of the legislature and not the agency as to how
8 those funds were disposed of?

9 MR. GUILLE: That would be our
10 understanding, yes.

11 BOARD MEMBER HINES: Mr. Chairman, it's my
12 understanding that all fees and money collected from
13 agencies go to the general fund unless the legislature
14 authorized that agency to keep those funds for a certain
15 purpose. And I think there's very few agencies that have
16 that authority currently.

17 BOARD MEMBER MACKER: Mr. Chairman?

18 CHAIRMAN GAMPETRO: Natalia.

19 BOARD MEMBER MACKER: I'm wondering --
20 maybe I just misunderstood the timeline. But if the
21 intent of charging a fee for paper copies is because
22 there will eventually be a more streamlined electronic
23 process, I'm just wondering about the timing of enacting
24 this rule. Why not wait until we have the electronic
25 process so there is the streamlined approach and then

1 enact this rule? Or will that sync up?

2 MR. GULLE: Mr. Chairman, the process of
3 scanning documents is taking time, and it will take a
4 while. We are part of seven divisions, so you can
5 probably imagine. We finally finished AML. We're
6 working towards Solid and Hazardous Waste. Our Water
7 Quality and Air Quality are going to take some time.
8 Documents have added up in the years. So we're talking
9 years to get this project done.

10 Also, we're going to have to develop that
11 online portal. And so that's going to take some time.
12 My understanding is around ten agencies, state agencies,
13 have now incorporated this rule. There may be more
14 within that ten. But we are, as Joe said, required to
15 adopt these rules to make it uniform across all state
16 agencies.

17 BOARD MEMBER MACKER: Thank you.

18 MS. KVIEN: Additionally, I might add that
19 some of the fees in this rule would be applying to
20 electronic records that might not be available on a
21 database that we ultimately make accessible through the
22 website. For example, I don't believe that the current
23 intention is to save every single e-mail that every
24 employee has to an electronic database. So a lot of
25 these requests that we get could ask for e-mail

1 correspondence which wouldn't necessarily be uploaded in
2 its entirety, anyway, to an electronic database.

3 BOARD MEMBER SHOBER: Mr. Chairman, I'm a
4 county commissioner. So we've been through some requests
5 for public information pertaining to e-mails. And we've
6 always had to have the county attorney review those and
7 make sure there wasn't any employee information that was
8 contained in some of those e-mails that was confidential.
9 And so there was a legal time aspect that is applied to
10 those e-mails also. And I would assume it's probably
11 going to be the same thing unless you separate certain
12 kinds of e-mails out.

13 MR. GULLE: Mr. Chairman, that is correct.
14 How the process works now, when we get this request for
15 e-mail correspondence, we actually have to put it forth
16 to the AG's office. I mean, the Attorney General's
17 Office then gets ahold of our IT, our state IT, which is
18 called ETS. They pull those records. And, ultimately,
19 the e-mail records come to us. We do our review. But,
20 ultimately, then we need to hand that over to the AG's
21 office to make sure that how we maybe redacted some or
22 didn't redact some is correct.

23 BOARD MEMBER SHOBER: Thank you.

24 BOARD MEMBER DINSMOOR: Mr. Chairman?

25 CHAIRMAN GAMPETRO: Phil.

1 BOARD MEMBER DINSMOOR: Could I ask
2 another question here? The comedian in me wants to say
3 if the size of the permits and the annual reports that we
4 submit as the industry wasn't so large that you wouldn't
5 have such a paper problem to deal with. But I know
6 that's not realistic. But let me ask you this. Can the
7 agency go to procedures or processes that minimizes the
8 production of those kinds of records which give you the
9 most problem to reproduce, for example, e-mails?

10 MR. GUILLE: Mr. Chairman, I might have to
11 ask a question. Are you pertaining to like a permitting
12 system that's electronic, or are you just talking about
13 correspondence?

14 BOARD MEMBER DINSMOOR: The easy answer is
15 this. I'm a little bit old-fashioned, and I don't like
16 to communicate by e-mail. I want to see communication on
17 paper. And so, if I can minimize e-mails and instead do
18 it through snail mail, we've got hard-copy records which
19 are, if I understand your presentation, easier to
20 produce.

21 MR. GUILLE: Mr. Chairman, we do --
22 certainly official correspondence is still done through
23 memos and letters. E-mail is usually -- there will be
24 some communication, certainly, with outside sources, an
25 applicant, whatnot. But the official correspondence is

1 certainly still a paper copy, a memo or letter.

2 BOARD MEMBER DINSMOOR: Thank you.

3 MS. ANDERSON: So I would rather look at
4 all of you than them, if that's okay.

5 So, thank you, Mr. Chairman. Shannon Anderson
6 with Powder River Basin Resource Council. I think you
7 received our written comments. They were provided on
8 behalf of conservation groups in Wyoming. All the
9 organizations in Wyoming have significant concerns about
10 these proposed rules that the agency is putting forward.
11 You've also probably received comments from some of our
12 members and other citizens from around the state that
13 regularly rely on DEQ records to find information about
14 potential impacts that could affect their quality of
15 life, their home, their property values. These records
16 are very important to people and their livelihoods.

17 They're also important because, in DEQ world,
18 there's often comment periods where people can actually
19 participate in the decision-making process of the agency.
20 And that will become hindered if access to these records
21 is cost-prohibitive for individual citizens and
22 organizations like ours.

23 So I bring comments on behalf of our
24 organization, on behalf of our members and on behalf of
25 other organizations we work with in the state to really

1 express some concern about these proposed rules, and
2 particularly in the context of DEQ. You've been told
3 that these rules are uniform. Other agencies in the
4 state have passed them. But I really want you to focus
5 on DEQ. And that's really your charge today.

6 So there's specific language in the
7 Environmental Quality Act that requires that records of
8 DEQ have to be available. So that word "available" has
9 meaning. And if you're going to charge someone over \$180
10 to view records, is that record really available? We
11 would say no. We would say that it's no longer available
12 because it's going to become cost-prohibitive for people
13 to access those records, for our organization, for other
14 citizen groups in the state. So you would be violating
15 that charge of the Environmental Quality Act which
16 requires those records to be available.

17 Now, DEQ tells you that other states have
18 similar rules. 44 states, I think, were mentioned both
19 today and in Jackson before the Water Quality Advisory
20 Board. I've been talking to some of my colleagues in
21 other states. And I would just point out that some
22 states had fee waiver provisions for public interest
23 requests. Wyoming does not. Some states don't require
24 costs for inspection of records, and that includes
25 compiling electronic records and e-mails for inspection.

1 That used to be the case here in Wyoming under our law,
2 but it has changed.

3 So there's other provisions in other states
4 that allow public interest requesters and particularly
5 requesters of environmental agencies to limit fees and
6 time spent. We don't have those provisions here in
7 Wyoming. We don't have a fee waiver provision. We don't
8 have an ability to get compensation and reimbursement for
9 some of those charges. Ohio even waives copying fees if
10 it's less than 250 copies. So the Ohio EPA, most of
11 their records are electronic. I think that's what DEQ is
12 striving to do with these databases that would be
13 publicly available. But you've heard it will take years
14 to do that. So that's not the current state here. So I
15 would just encourage you to take that 44 number with a
16 grain of salt in understanding that different states have
17 very different rules on fees.

18 I would also mention that there is active
19 litigation going on in several states related to fees.
20 It's a very contentious area of the law. It's an
21 evolving area of the law related to electronic records.
22 It's certainly not set, by any means, here in Wyoming or
23 across the nation.

24 I think you had my comments from the Water
25 Quality Advisory Board, so I won't repeat those, assuming

1 you did read through them. But I would highlight one
2 portion of that just for you today. So recently our
3 organization intervened in a permit proceeding for a new
4 coal mine in Sheridan County. And through the discovery
5 process for that hearing, we received 10,000-plus pages
6 of correspondence. This correspondence was not the
7 official correspondence we were just talking about. It
8 wasn't what was printed out and available for inspection
9 in the DEQ office in Sheridan, which I regularly looked
10 at during the permitting proceeding. It had to be
11 requested separate.

12 And 10,000-plus pages, I can only imagine the
13 time it would have taken DEQ staff to compile that, the
14 attorney generals to review them and redact them. So we
15 would have been charged, had we not been in a contested-
16 case proceeding, hundreds of dollars for a request like
17 that. And that would have hindered our public
18 participation in the process. We used a lot of those
19 e-mails as exhibits in the proceeding. They were really
20 influential in terms of the Environmental Quality Council
21 review. And I think you probably all heard the
22 Environmental Quality Council ended up siding with our
23 organization in that proceeding. So our public
24 participation mattered for the review of that permit
25 application.

1 I would also just -- there was some talk again
2 about inspection of records. And now it changed with
3 DEQ. And we do appreciate the staff time, their
4 attention. When we go in and we ask to see records,
5 they're always very helpful. But, again, it's these
6 e-mails and meeting notes, calendar appointments, things
7 like that that are very important to review also. And
8 they're not available for inspection. I can't just go up
9 to a DEQ staff member and say, "Hey, can I look at your
10 computer and see your e-mail and go through that e-mail
11 list?" It's not going to work.

12 So it is going to continue to be an issue. I
13 question the fees amounts. We'll just have to see how
14 that all shakes out, I guess. But, again, if you're
15 being charged \$180 to access fees, we believe those
16 records are no longer available and would be in violation
17 of the Environmental Quality Act.

18 I'd be happy to answer any questions you have.
19 Thanks.

20 BOARD MEMBER SHOBER: I have a question,
21 Mr. Chairman.

22 Shannon, when you request information, is it
23 broad-based or is it narrowly defined? And an example,
24 on the e-mail and that mining reference to it, do you
25 request from the beginning to the end all e-mails, or do

1 you have to confine it to a certain time period?

2 MS. ANDERSON: Mr. Chairman, it depends on
3 the request, I would say. You can make it as broad as
4 you want. I personally always try to limit my requests
5 to the extent I can, if there's a particular time frame,
6 if you know this particular DEQ staff member or division.
7 But sometimes, honestly, you don't even know what you're
8 looking for until you actually get it. So I always try
9 and limit my requests, but sometimes you just can't.

10 BOARD MEMBER SHOBER: So the narrower that
11 request is the less -- the fewer the number of pages of
12 e-mails or whatever that is required to be presented?

13 MS. ANDERSON: Mr. Chairman, that is
14 correct. But I would note again, AG time \$40 an hour,
15 you're going to hit that \$180 threshold fairly fast.

16 BOARD MEMBER DINSMOOR: Mr. Chairman,
17 Ms. Anderson, your use of the \$180 thing, one of us
18 doesn't understand it. It may be me. But I thought the
19 \$180 was a credit they were giving you right up front and
20 they weren't going to charge you for that first 180, that
21 they were merely going to count it. But I hear you using
22 that as a threshold to say this is much too expensive.
23 Am I misunderstanding you?

24 MS. ANDERSON: Mr. Chairman, it could just
25 be a clarification on the way the rules are written. But

1 my understanding is, up until \$180, you are not charged.
2 But if it's more than \$180, you are charged for that
3 amount. That's my understanding of it. And, again,
4 that's for compiling, inspection. There's a separate set
5 of fees that is charged regardless of the threshold. And
6 one of those that we commented on in our written comments
7 we're particularly concerned about is a scanning fee.
8 You're now charged ten cents a page for scanning, which
9 we don't really understand how that would be an actual
10 cost of the agency. But I guess if they have a limited
11 number of scans you can do on your scanner or something,
12 maybe there would be a cost there.

13 But copying and printing, we get. But scanning
14 doesn't make sense to us in terms of actual cost. And
15 we've never been charged for scanning at the agency.
16 We've scanned hundreds and hundreds and thousands of
17 pages of documents, permit files. And we've never been
18 charged to date. But going forward with these rules, we
19 will be charged ten cents a page.

20 BOARD MEMBER DINSMOOR: And was the work
21 done by you or your colleagues, or was it done by agency
22 personnel?

23 MS. ANDERSON: Mr. Chairman, Board Member
24 Dinsmoor, generally, it is done by us. So the way it has
25 worked before is we walk into the Sheridan office. We

1 work with the staff to make sure we're looking at the
2 right files. And then they give us access to those
3 files. And then you go over to the agency scanner, which
4 is a copy machine. You have a little thumb drive. And
5 you scan those documents into our thumb drive. And I
6 walk out of the office with a little thumb drive. I
7 don't have any paper copies.

8 Going forward, there's something called
9 supervision of copying, where someone's going to have to
10 watch me at the copier/scanner. A DEQ staff member is
11 going to have to watch me in the file room. And DEQ has
12 already started to try and implement this, but there's
13 been some challenges. So there's going to be staff time
14 associated even with just the inspection of records when
15 you're in the record room and trying to get copies of
16 those records.

17 BOARD MEMBER DINSMOOR: Thank you.

18 CHAIRMAN GAMPETRO: Mr. Hines, anything?

19 BOARD MEMBER HINES: No.

20 MR. GAMPETRO: Natalia, do you have
21 anything? No?

22 Any responses?

23 MR. GUILLE: Yeah, if I could,
24 Mr. Chairman, a couple things. I might need some help
25 here. One of the concerns was scanning and the cost for

1 scanning. Because our scanners are also copiers, we get
2 charged for each one whether it's a scan or a copy.
3 Certainly when it's a copy, we also would have to pay for
4 the paper. But every scan, every copy, we're going to
5 get charged for through the agency. So there is a cost
6 to us. And so that's why they went through the process
7 to actually charge per scan.

8 Help me if I'm wrong here. We have -- the
9 concern was about having a staff member at these field
10 offices watch while someone is making copies or scans. I
11 think we're working towards a process if -- if there's no
12 one there, we need to make sure that the documents are
13 put back whole. And that's really important for us.
14 Certainly when we talk about Land Quality, those are
15 large permits. And we want to make that accessible to
16 all parties and make sure they're all looking at the same
17 documents and they found them the same way.

18 So, possibly, we've been exploring having maybe
19 cameras in the room so if, by chance, something went
20 missing, we would be able to go back and find out what
21 happened to a record. I believe that can certainly help.
22 It would not take our time any longer and certainly
23 provide access -- more or better access to the public.

24 CHAIRMAN GAMPETRO: Any other responses or
25 comments?

1 MR. FRANKEN: Mr. Chairman, I was
2 reviewing A and I's comments because they addressed this
3 specifically and actually changed the rule to try to
4 clarify the intention of the supervising of the copies.
5 And in the rule, they state that the custodian's fee to
6 supervise copying only applies if someone other than the
7 custodian makes the copies. Custodian may need to
8 supervise the copying to make sure that the documents are
9 not harmed, stolen or destroyed, which I'm sure that
10 would be the exception and not the rule. But that's how
11 A and I had written the rule.

12 The Department also specified that the
13 custodian's fee could be any of the hourly rates outlined
14 in the rules, not just the \$40-per-hour rate which was
15 initially stated in the proposed rule. So, essentially,
16 from my understanding what A and I is saying in this
17 uniform rule is that, depending on who is observing that
18 copying, if it's clerical, it would be \$15 per hour, and
19 if it's something else, it could be up to \$40 per hour.

20 But I think the intent there, again, was just
21 to maintain chain of custody and understanding that the
22 documents, especially these elaborate documents, are put
23 back correctly and everything is there. And that was,
24 from my understanding, the intent of how A and I
25 developed this rule, this portion of the rule.

1 BOARD MEMBER DINSMOOR: Mr. Chairman, one
2 comment and one question. Earlier in the presentation, I
3 believe our representative from the Attorney General's
4 Office mentioned that there are no primacy issues for
5 Land Quality Division in regards to this proposed rule.
6 Is that correct?

7 MS. KVIEN: I'm sorry. I just wanted to
8 make sure I heard your question correctly. Was your
9 question whether there were any primacy issues that we
10 found at the AG's Office for Land Quality specifically?

11 BOARD MEMBER DINSMOOR: That's correct,
12 yes.

13 MS. KVIEN: Yes. I spoke with Andrew
14 Kuhlmann, who is the Land Quality attorney, and he said
15 that he could not find anything in the primacy agreements
16 or the relevant federal statutes that would prohibit the
17 adoption of these rules. And, likewise, the Water
18 Quality attorney, when we were before the Water
19 Quality -- Water and Waste Advisory Board, did not find
20 anything in the primacy agreements or statutes that
21 necessitate changing the rule or prohibited us from
22 adopting the rule. And I've made the same assessment as
23 the Air attorney for the meeting that hasn't happened
24 yet. That will happen next week.

25 BOARD MEMBER DINSMOOR: Thank you. Now a

1 comment for you, Mr. Chairman, and the other board
2 members.

3 MR. WENDTLAND: Mr. Chairman, I'm sorry.

4 Board Member Dinsmoor, we need you to speak up
5 a little or get a little closer, please. I know it's
6 cold, and we're getting old. Right?

7 BOARD MEMBER DINSMOOR: No, not a problem.

8 I just want to make a comment to the other
9 board members that I've experienced, as a member of the
10 industry that submits permit applications to the Land
11 Quality Division -- and some of those permit applications
12 are quite voluminous, sometimes on the order of 40, 50,
13 60 three- or four-inch volumes -- that we've had
14 experiences where an agency person went to our permit for
15 a particular reason, discovered that sections were either
16 missing or the permit was jumbled up in some way. Not
17 pointing fingers at anybody as this being intentional.

18 But the fix is I had to put a staff member on
19 the road to drive 100 miles, spend three or four hours
20 trying to determine what the problem was, come back,
21 create all the pages to fix the problem and then ship
22 them over for Land Quality to put together. So the
23 fallout from simply opening things up and letting people
24 have a free rein is pretty significant to somebody.

25 BOARD MEMBER SHOBER: Absolutely right.

1 CHAIRMAN GAMPETRO: Thank you,
2 Mr. Dinsmoor.

3 Any other comments? Questions?

4 (No response.)

5 CHAIRMAN GAMPETRO: Okay. We're being
6 asked to vote on this. Any more discussion prior to
7 voting?

8 (No response.)

9 CHAIRMAN GAMPETRO: If not, I would
10 entertain a motion.

11 BOARD MEMBER DINSMOOR: I propose that the
12 advisory board adopt the proposed language from the
13 Department of A and I and suggest that the administrator
14 move forward with whatever the appropriate next action
15 is.

16 BOARD MEMBER SHOBER: Second.

17 CHAIRMAN GAMPETRO: It's been moved and
18 seconded.

19 BOARD MEMBER MACKER: I'm sorry. I just
20 didn't hear what the motion was.

21 BOARD MEMBER DINSMOOR: I proposed that
22 the administrator adopt the -- or, that the advisory
23 board adopt the proposed rule and that the administrator
24 move forward with whatever the next action should be.

25 BOARD MEMBER SHOBER: Second.

1 BOARD MEMBER MACKER: Thank you. I still
2 have some concerns. Hopefully they can be addressed. I
3 think I just have some concerns generally around some of
4 the comments raised in public comment. I get them and I
5 understand both sides. So I'm having a tough time with
6 this. And it's possible -- I'm happy to vote. I'm
7 uncomfortable in voting for it. But it sounds like it
8 may pass anyway. But I do have some concerns, I think,
9 also around the question of where the money is going and
10 how it's going to be spent in terms of the fee
11 collection, which I know is up to the legislature if that
12 is going into the general fund. So I just wanted to
13 raise that in the event we do vote [unintelligible].

14 CHAIRMAN GAMPETRO: Any other discussion?

15 (No response.)

16 CHAIRMAN GAMPETRO: It's been moved and
17 seconded. Let's use a raising of the hands. All those
18 in favor of passing and adopting this please signify by
19 raising your hand.

20 (Members Hines, Shober and Dinsmoor
21 raise hands.)

22 CHAIRMAN GAMPERO: Opposed?

23 (Member Macker raises hand.)

24 CHAIRMAN GAMPETRO: We have a vote of
25 three to one. So it is passed.

1 MR. HULTS: And that would conclude our
2 meeting unless Kyle has anything else as far as LQD
3 business.

4 MR. WENDTLAND: Mr. Chairman, I do have a
5 couple of closing comments. One, I want to thank the
6 board and the public today for continuing to participate
7 in the more remote access to the meeting. As the board
8 knows, it is my intention to continue to try and develop
9 this technology so that we can have better participation
10 and more access for interested parties as well as the
11 board. So I do appreciate your patience. We hope this
12 went better than the second quarter meeting this year.
13 And we'll continue to work on improving that part of the
14 technology.

15 CHAIRMAN GAMPETRO: I was just going to
16 ask is there any other comments or questions or business
17 to be brought before us?

18 BOARD MEMBER SHOBER: Mr. Chairman, just a
19 comment.

20 Kyle, from here, your connection to Cheyenne is
21 a good connection, but it seemed like the connection to
22 Jackson with Natalia, it was a little difficult, harder
23 to understand her. And I think it's maybe more of that
24 connection. But it seems like the connection between
25 Gillette and Cheyenne is a great connection.

1 CHAIRMAN GAMPETRO: I second that. I had
2 trouble understanding what Natalia was saying sometimes.

3 MR. WENDTLAND: Mr. Chairman, we will work
4 on that part of the technology moving forward, for sure.
5 And those are the kind of comments we need to hear so we
6 can make it better.

7 BOARD MEMBER SHOBER: Thank you.

8 CHAIRMAN GAMPETRO: With that, the meeting
9 is adjourned.

10 (Hearing proceedings concluded
11 12:00 p.m., December 6, 2017.)

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C E R T I F I C A T E

I, RANDY A. HATLESTAD, a Registered Merit Reporter, do hereby certify that I reported by machine shorthand the proceedings contained herein constituting a full, true and correct transcript.

Dated this 18th day of December, 2017.



RANDY A. HATLESTAD
Registered Merit Reporter