

1 BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
2 LAND QUALITY DIVISION

3 -----
4 HEARING ON PROPOSED REVISIONS TO NONCOAL CHAPTER 11
5 -----

6 TRANSCRIPT OF HEARING PROCEEDINGS

7 Transcript of Hearing Proceedings in the above-
8 entitled matter before the Department of Environmental
9 Quality, Land Quality Division, commencing on the 6th day
10 of December, 2017, at 10:00 a.m. at Gillette College,
11 Room 120, 300 West Sinclair, Gillette, Wyoming, Mr. Jim
12 Gampetro presiding, with Board Members Mr. Philip
13 Dinsmoor, Mr. John Hines and Mr. Michael Shober in
14 attendance, with Ms. Natalia Macker appearing via
15 videoconferencing.

16 Also in attendance via videoconferencing from
17 Cheyenne were Mr. Craig Hults, Mr. Kyle Wendtland,
18 Mr. Joe Franken, Ms. Gina Thompson, Mr. Keith Guille and
19 Ms. Allison Kvien. Appearing from Jackson via
20 videoconferencing was Mr. Matthew Dillon.

21 Present in Gillette were Ms. Shannon Moodry,
22 Ms. Wendy Lowe, Ms. Shannon Anderson, Ms. Brandi O'Brien,
23 Ms. Lecia Craft, Ms. Beth Goodnough, Mr. Brent Helms,
24 Ms. Doreen Heuck, Mr. Scott Belden, Mr. Scott Schierman,
25 Mr. Dan Cohn and Mr. Doug Emme.

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.)

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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