

LQD Meeting

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BEFORE THE LAND QUALITY ADVISORY BOARD
STATE OF WYOMING

IN RE: LQD MEETING

TRANSCRIPT OF MEETING PROCEEDINGS

PURSUANT TO NOTICE duly given to all parties
in interest, this matter came on for meeting
on the 19th day of August, 2021, at the hour of
10:00 a.m., at 200 West 17th Street, Conference Room 211,
Cheyenne, Wyoming, before the Land Quality Advisory Board,
Chairman Jim Gampetro presiding, with Mr. Gene Legerski,
Ms. Natalia Macker, Mr. John Hines and Mr. Blake Jones,
advisory board members, all present by videoconference,
and Mr. MacKenzie Williams and Mr. James Peters from the
Attorney General's Office

Mr. Matthew VanWormer, Wyoming Attorney
General's Office, for the Board; Mr. Craig Hults, LQD
Natural Resource Program Principal, attending in person.

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A P P E A R A N C E S

Also Present: MS. SHANNON ANDERSON
MS. LAURA ACKERMANN
(By videoconference)

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

2 (Meeting proceedings commenced
3 10:00 a.m., August 19, 2021.)

4 CHAIRMAN GAMPETRO: I'm going to declare
5 the meeting is now open, and we'll -- if Natalia checks in,
6 we'll know.

7 MR. HULTS: There she is.

8 CHAIRMAN GAMPETRO: She's there?

9 MR. HULTS: Yep.

10 CHAIRMAN GAMPETRO: Okay. We have
11 everybody. I'm going to simply ask everyone to introduce
12 themselves as we go around. And I'm Jim Gampetro, chairman
13 of the Land Quality Advisory Board, public representative
14 from Buffalo, Wyoming.

15 MR. LEGERSKI: I'm Gene Legerski, public
16 representative from Sweetwater County.

17 BOARD MEMBER MACKER: I'm Natalia Macker,
18 and I'm a public representative from Teton County.

19 BOARD MEMBER JONES: I'm Blake Jones. I'm
20 industry rep from Gillette, Wyoming.

21 CHAIRMAN GAMPETRO: Hey, John, are you out
22 there?

23 BOARD MEMBER HINES: Yes.

24 CHAIRMAN GAMPETRO: You want to introduce
25 yourself?

1 BOARD MEMBER HINES: This is John Hines,
2 but I'm not working it right.

3 CHAIRMAN GAMPETRO: Craig, do you want to
4 introduce the other attendees?

5 MR. HULTS: Sure. Here in Cheyenne, this
6 is Craig Hults from the Land Quality Division. And also
7 with us is Kathy Kendrick from Wyoming Reporting and
8 Matt VanWormer from the Wyoming Attorney General's Office.

9 I'm also seeing MacKenzie Williams from the
10 Wyoming Attorney General's Office. He's standing in today
11 for representation for the advisory board.

12 I'm also seeing Shannon Anderson from Powder
13 River Basin Resource Council. And I believe Laura
14 Ackermann is also on the line.

15 MS. ACKERMANN: Yes, I am. I'm from NTEC,
16 just kind of listening in, back into Wyoming a little bit.

17 CHAIRMAN GAMPETRO: Okay. I would like to
18 welcome you all to the meeting. And our first order of
19 business here is to get approval of the June 24th meeting
20 minutes.

21 Would anyone like to propose that?

22 BOARD MEMBER MACKER: Mr. Chairman, I move
23 to approve the June 24th meeting minutes.

24 CHAIRMAN GAMPETRO: Is there a second?

25 BOARD MEMBER LEGERSKI: I'll second. This

1 is Gene.

2 CHAIRMAN GAMPETRO: Okay. All those in
3 favor of approving the minutes from the June 24th meeting,
4 please signify by saying aye.

5 BOARD MEMBER MACKER: Aye.

6 BOARD MEMBER BLAKE: Aye.

7 BOARD MEMBER LEGERSKI: Aye.

8 CHAIRMAN GAMPETRO: Any opposed, please
9 indicate so. Seeing no opposed, the minutes are approved.

10 I am now going to turn this over to Mr. Hults,
11 who is going to guide us through what we're doing today.

12 Go ahead, Craig.

13 MR. HULTS: Thanks, Mr. Chairman.

14 Today we have before you two rule packages. I
15 had to split them apart due to the fact that the impact to
16 separate programs, our Coal and Noncoal programs. I could
17 have presented them to you in one package, but later on
18 down the line I'm going to be constrained to have to split
19 them apart, so just getting ahead of the game a little bit.

20 We have before us -- the changes that we have are
21 in Response 1 to statutory changes that were made to
22 Wyoming Statute 35-11-406. We introduced that last meeting
23 the changes that were made to that statute, but it impacts
24 the procedures for objections on permitting actions and
25 some of the timelines to the decision-making process on

1 those permitting actions.

2 Also, in Noncoal chapters, I think it's only one,
3 Noncoal Chapter 9, there was a legislative change in 2021
4 under House Bill 49 that increased the fees for some
5 permitting actions. I noticed that while I was going
6 through Chapter 9. That seems to be really the only
7 reference to fees in our -- the chapters that I've noticed.
8 But I've included those changes as well.

9 And then in Noncoal Chapter 11, we received
10 comments from the Attorney General's Office during their
11 statutory review, and we've incorporated a number of those
12 changes. That's kind of our biggest chapter. It looks
13 like a lot of changes, but, realistically, it's grammatical
14 and organizational and not substantive in nature.

15 What I would like to do is just start you off
16 easy. I can go through the Coal Statement of Reasons. You
17 should all have those files. If not, they're posted up on
18 the LQD's website on the proposed rules page.

19 If that sounds amenable, Mr. Chairman, I'd jump
20 into the Coal Statement of Reasons.

21 CHAIRMAN GAMPETRO: Sounds good. Let's
22 talk about the coal.

23 MR. HULTS: All right. So like I said,
24 these changes were in response to the legislative change
25 made in 2020 that was in Senate File 44. Again, that

1 impacted the procedures for the decision making on
2 permitting actions.

3 In Coal Chapter 10, we revised one section to
4 make some corrections to the statutory citations, and also
5 included some references to statutes that were repealed, so
6 we made those corrections.

7 And then in Coal Chapter 13, a similar thing. We
8 revised Section 3(b) to correct the statutory citations.
9 And also it was in Section 4 we had to make some changes
10 because the decision-making process was detailed a little
11 more in the chapter. So we've updated those to comply with
12 the legislative changes.

13 So what I'll do is jump into Coal Chapter 10.
14 And this is on page 1 of the Coal Exploration chapter in
15 the Statement of Reasons. The first change I made was to
16 edit the chapter header. That is so it conforms to the
17 statute -- Secretary of State's rules on rules. So I just
18 deleted the Department of Environmental Quality and the
19 Division reference.

20 And then moving to Section 3, the change here --
21 this is in 3(b). Again, we made one correction to conform
22 to rules on rules. Whenever you reference a statute in the
23 rules the first instance, the Wyoming statute should be
24 spelled out. We made that correction.

25 The other change was that we had a reference to a

1 repealed section in the statute that has been replaced with
2 the current section. And that's (p).

3 And the final correction was we had a reference
4 to, if there were no objections, the Administrator shall
5 promptly approve. I wanted to make that a little bit more
6 specific, and the decision-making process is spelled out in
7 Wyoming Statute 35-11-406(p). So we've included that
8 reference in Section 3(b). Those are the only changes to
9 Chapter 10.

10 And then in Coal Chapter 13, this one had a
11 little bit more revision. This spells out the procedures
12 a little bit more in rule. Chapter 13 is our Coal
13 permit revisions chapter. So in Section 3(b), we had a
14 reference -- and I'm noticing this now. I missed a
15 reference to the repealed section of the statute in the
16 first line of that section. So I would propose that I will
17 change that, update that to section (p) instead of (k),
18 which it currently references.

19 The second change was in the second sentence,
20 there was a reference to the public hearing. Currently, as
21 the process is written, if we do receive objections and
22 there's a request for an informal conference, that
23 conference will be then held instead of the public hearing.
24 And that, again, is in conformity with Wyoming Statute
25 35-11-406(p). And there was a reference to the Council

1 issuing findings of fact and make a decision within
2 60 days. That doesn't match the procedures that are
3 currently in statute, so that reference was deleted.

4 Then moving on to Section 4. Here, again, this
5 is the Administrator's and Director's decision. Here the
6 changes we made -- there is reference if notice is
7 required. Not all revisions require public notice and a
8 comment period. When that does occur, in (ii)(A), made a
9 correction -- a grammatical correction, basically. The
10 original language was that if somebody protested, the
11 statutory language refers to objections. So we made that
12 change.

13 In (b), we also had that same issue, protest
14 versus object. We made that change. We also included the
15 informal conference process within the rule. Again, there
16 is a reference to the hearing. The only time there would
17 be a hearing now is if an objector or the applicant
18 appealed the Director's decision. So that reference was
19 removed.

20 And then, finally, the last sentences that were
21 inserted in the Section B, this is more of the procedure.
22 It's basically replacing the sentence that was deleted
23 above. And it spells out that the objector or the
24 applicant may appeal the decision, and spells out the
25 timelines for a hearing, if one is held.

1 And that concludes the revisions to Chapter 10
2 and 13 for the Coal program.

3 CHAIRMAN GAMPETRO: Any comments or
4 questions, suggestions on that section?

5 Okay. Hearing none, can we move on?

6 MR. HULTS: Sure. So now I'm going to jump
7 into the one that's going to test your ability to stay
8 awake maybe a little bit. This chapter -- or this rule
9 package for the Noncoal. Chapter 11's a rather lengthy
10 chapter, but I will try and move through this as quickly as
11 possible and bearing with Kathy, so I don't talk too fast.

12 But this one I sent out this morning a revised
13 Statement of Reasons that includes Chapter 7, which, again,
14 is our Revisions chapter, but this is for Noncoal. That's
15 the file I'm going to be working off of. It's very similar
16 to the original one I sent out, except that there's an
17 extra two pages. We included Noncoal Chapter 7.

18 I was working on another project yesterday and
19 realized that there was language that dealt with the
20 35-11-406 changes. So I've included that in this package.
21 Those were the changes in Chapter 7 that we were working
22 on.

23 In Chapter 9, which is our small mine permit
24 application requirements. This one, again, was revised to
25 incorporate the changes to 35-11-406. And Chapter 9 also

1 had a section on the fees --

2 (Board Member Hines leaves
3 the meeting.)

4 MR. HULTS: -- that was changed. Those
5 were the changes in House Bill 49 that were made in 2021.
6 So we've updated the fee amounts.

7 The fee amounts, when we were originally
8 researching this, I found out that the fees haven't changed
9 since our program was initially stood up back in the late
10 '70s. So seems like they were ripe for change. So those
11 changes are included as well.

12 And then in Chapter 11, the In Situ Mining
13 chapter, again, we made revisions to conform with the
14 35-11-406 changes. And this chapter also was originally
15 proposed -- you had seen this language -- to insert a
16 sentence I had deleted inadvertently when I filed the final
17 rules with the Secretary of State. It also added some
18 corrections to statutory references that were suggested by
19 the Legislative Service Office. We made those corrections
20 as well.

21 And then, finally, we included the proposed
22 changes from the Attorney General's Office. Again, most of
23 those are grammatical or organizational in nature, but I'll
24 try and point those out as I go along.

25 So what I'd like to do is jump into, starting on

1 page 1, the Chapter 7 revisions. So in Chapter 7, this is
2 the Noncoal mine permit or research and development testing
3 license revisions. Did not propose any changes to Sections
4 1 or 2. And then in Section 3 -- again, this is Section
5 3(b), we made a reference again to a public hearing if
6 objections were filed. That's no longer the procedure.
7 And also had a description of the Environmental Quality
8 Council issuing findings of fact. Again, that requirement
9 is changed, and so those sections -- or those two sentences
10 were deleted.

11 In Section 4, this one, again, it details the
12 decision-making process. In (a), there is a revision to
13 mirror the language in 35-11-406. And then in (a)(ii),
14 again, the same kind of language where it was protested
15 versus objected. We made that similar change.

16 And then in (b), we spelled out the procedure a
17 little bit more accurately. It looks like that got cut off
18 possibly. Hmm. So this will mirror -- and I apologize. I
19 just did this on the fly this morning. This will mirror
20 what the language is in 406(q). And I will add the rest of
21 that sentence as soon as I can. Oh, here it is. Never
22 mind. I just flipped a page. My apologies.

23 So the remainder of the section includes the
24 language on the close of the comment period. We also again
25 deleted when it was protested to, there was a 15-day

1 requirement. And that's actually been removed from
2 the statute and new timelines were put in place. And
3 that was why we added a new (c) that spells out how the
4 decision-making process will go, and also describes that
5 the objector or an applicant may appeal the Director's
6 decision in accordance with 35-11-406(q)(iii). And those
7 are the only changes to Chapter 7.

8 Moving on to Chapter 9. This is our small mine
9 permit application requirements. Again, this one hasn't
10 been revised since the Secretary of State changed the rules
11 on rules. So we've removed part of the section header.
12 The requirements are that you just list the chapter number
13 and the title. So we've removed that language. Again, in
14 Section 1, we made a change to the reference in the Wyoming
15 statute. Again, this is the first instance where a
16 statute's referenced, so we spelled out the word.

17 And then in Section 2, this is a section that had
18 the fees discussed. The previous filing fee for a small
19 mine permit was \$100 plus \$10 for each additional acre.
20 That's been raised to \$200 with a maximum not to exceed
21 \$2,000. So we've updated that.

22 There is a reference to permit amendments. The
23 statutes didn't change that, so that language has remained
24 the same.

25 And then in (b), this is the notification of

1 publication requirements. It had some outdated references
2 to the statute after the revisions were made. We've made
3 those corrections in (b).

4 And then, finally, in Section 7, this was dealing
5 with the conversion of a small mine permit to a regular
6 mine permit. Again, there was reference to statutory
7 section that has been repealed. We've added (q), which
8 replaced the previously repealed subsection. So we've
9 updated that reference.

10 And those are the only changes to subsection --
11 or Chapter 9. And I will say both our Coal chapters and --
12 Chapters 9 and 7 still will be going through a review by
13 the Attorney General's Office for statutory authority. And
14 that also includes some of the organizational and
15 grammatical corrections we've received on Chapter 11. So
16 there is a possibility you may see these rules again if we
17 feel like we're outside the scope of the public notice and
18 the changes are bigger than we anticipate. Most of these
19 chapters are pretty small, so we're hopeful that it won't
20 require much.

21 So moving into Chapter 11. This is a long
22 chapter, but, like I said, I'll try and walk through this,
23 but if anybody has questions, feel free to interrupt me
24 along the way or if you need to pause for a minute to catch
25 up.

1 In Section 1, which is the definitions section of
2 Chapter 11, which deals with the in situ mining, we deleted
3 a bunch of statutory -- or definitions that were listed
4 within the definitions section. And the reason for the
5 deletion was we were merely referencing the statute. That
6 was a suggestion from the Attorney General's, and it fits
7 with what other agencies are doing. Those definitions are
8 available. If you see the terms in the chapter, they can
9 be looked up within the statutory language. So we've
10 deleted quite a few of those.

11 Also, based on that, as you can see in Chapter --
12 on page 5 of the document I'm working on, because we are
13 deleting those definitions, the subsection headers had to
14 be updated throughout the chapter. So Beyond Excursion,
15 that was the last one that was deleted as we're moving
16 through this section, just because it was a statutory
17 reference.

18 Then we move to Exempted Aquifer. Here a
19 grammatical change was made.

20 Then moving on to Fact Sheet. This one was
21 revised to strike some language that was better suited for
22 later in the chapter. So we've shortened the definition
23 and beginning with the "administrator shall" language and
24 then the romanette subsections beyond that, those have been
25 moved to later portion of the chapter.

1 And then moving down again, mostly on page 7 of
2 the document I'm working from. Again, just updating the
3 section headers. In situ mining definition was just a
4 statutory reference that's been removed.

5 Then we move to the definition for mechanical
6 integrity testing. This definition was revised, one, to
7 update the reference. We don't use the acronym anywhere in
8 the chapter.

9 And then the final sentence was removed. Mining
10 Permit, that definition was also deleted. Moving down to
11 production well, this was updated to include a full
12 reference to the Wyoming Department of Environmental
13 Quality. That was the first instance where the term
14 Department was used within the chapter.

15 Two more definitions were removed, as they were
16 statutory references. And then moving to sealing, the
17 definition for sealing, we removed the final sentence that
18 included a definition for sealant materials. That
19 definition was deleted as that's covered by Chapter 8 of
20 the Noncoal rules and spells out greater detail of what
21 sealant materials are. So the definition is now just
22 dealing with sealing.

23 Moving on to the next section. We updated the
24 Division definition and made that conform to the changes we
25 made in reference to the Department.

1 The topsoil definition, again, was just a
2 statutory reference, so that's been removed. Some
3 grammatical changes were made to the Underground Source of
4 Water definition.

5 Again, Waters of the State was removed, as that
6 was just a statutory reference. And then the final three
7 definitions, just updates to the section headers for those
8 chapters.

9 That takes us to Section 2. This section is
10 General Requirements. In (a), we added the subsection,
11 just the section header. This was initially just an
12 opening paragraph within the chapter. It seems suited that
13 it should be a subsection of its own. The first sentence
14 was struck. This requirement about the submission of the
15 application in accordance with our regulations, that's
16 already spelled out in statute.

17 Then in (b), made some minor revisions to the
18 grammar. One of these you'll see throughout is when we
19 referred to the rules and regulations, it was suggested by
20 the Attorney General's Office that we just say "rules" and
21 not "and regulations." So we made that correction
22 throughout the chapter. And also changed an "and" to an --
23 or an "or" to an "and," just to make a grammatical
24 correction.

25 (c), again, references the rules and regulations

1 as updated. We also deleted the reference to the date of
2 the U.S. Environmental Protection Agency rules. That's
3 consistent with what's been suggested by the Attorney
4 General's Office and practice of other divisions. So we're
5 removing those references to dates like that.

6 In (d), again, this was a section that was
7 revised to remove language that's already in statute. And
8 then there was a final revision to the last sentence to
9 remove some redundant language.

10 Subsection -- or former (d) was removed to delete
11 language that's already in statute. And then the final
12 sentence of that section is moved to a new subsection later
13 in the chapter. A new subsection (e) was added. And this
14 is the language that was removed from the Facts Sheet
15 definition. It fits better in this location, so we've
16 added it here.

17 And then in (f), (g) and (h), those were just
18 revised to update the headers to conform to -- or addition
19 of the earlier subsection.

20 Also, we made a grammatical change to the
21 definition -- or the reference to a responsible corporate
22 officer and made that change.

23 Also, included an updated reference to the United
24 States EPA. A similar revision was made to the reference
25 to the duly authorized representative in (ii), with the

1 grammatical change there.

2 Moving on to (c) of (ii), we made a change from a
3 reference to the Director, to the Division. Typically when
4 things that are submitted in relationship to permit
5 applications, they don't go directly to the Director. They
6 would go to our Division. So we've updated that reference.

7 Also, we made in (iii) a revision to the section
8 designation, because we were changing all of the headers to
9 those, we had to update those based on our previous changes
10 within the section.

11 And that would move us to Section 3. This is the
12 Application Content Requirements. We made some grammatical
13 changes to subsection (a). We had referenced to Chapter 1,
14 which just contains the definitions in the Noncoal rules.
15 And to say that -- that the permit application must contain
16 those definitions didn't make sense, so we removed that
17 section -- or reference to Chapter 1 and updated some of
18 the language in the other references to further
19 subsections.

20 And, finally, made a change to the rules and
21 regulations to become just rules.

22 Moving on, we added a new (b). This was added
23 from language that we struck previously within the chapter.
24 It just seemed to fit better here.

25 And moving on to Section 4. Again, we made some

1 similar revisions to subsection (a) that we had just
2 discussed in the previous section. There were some
3 updated -- I'm on page 15. Kind of moving along.

4 There was a reference to a (x) that seemed to fit
5 better under (ix), so we've designated that section as (C).
6 The same goes for (D), (E) and (F). So that was just
7 reorganization.

8 Moving on to Section 5. Again, (a) was revised
9 to remove the Chapter 1 references and we updated the
10 statutory reference there.

11 Then in (ii) of (a), made a grammatical change to
12 (B).

13 And then moving on to (iv), which is on page 17.
14 We struck the acronym for the State Engineer's Office. We
15 don't use that term later in the chapter, so that's
16 unnecessary to have that there.

17 And then we also spelled out Nuclear Regulatory
18 Commission instead of the acronym that was referenced.
19 This is the first instance, and we don't use it again later
20 in the chapter, so there wasn't need to keep the acronym in
21 there.

22 And then in (ix), we had a -- the language was a
23 description of a location within the permit where
24 underground injection is -- the language is originally
25 authorized. We replaced that with the term "planned." The

1 reasoning behind that is this is describing a permanent
2 application process, so they wouldn't necessarily have
3 authorization at that point. So we made that grammatical
4 change.

5 Moving to the bottom of page 18. We had a
6 reference to Sections 16 and 15. We just flipped them so
7 it made numerical order and removed the term "respectively"
8 at the end of the chapter -- or at the end of the sentence.

9 And then the final correction in this section is
10 under (xxii). The way this sentence was structured
11 originally was it said "a maintenance plan to ensure," and
12 then (E) was "spill response and reporting plan." We just
13 updated that to make the language work better. So now it
14 reads a maintenance plan to ensure effective spill response
15 and reporting.

16 Then moving on to Section 6. We updated, again,
17 the statutory reference in (a) and removed the reference to
18 the Chapter 1 definitions.

19 We made a grammatical change in (i)(b).

20 In (ii), we made another grammatical correction
21 to that subsection.

22 Then in (II), we made some more grammatical
23 changes. There was a reference to animals. However, the
24 next term in that sentence was "wildlife." We changed the
25 term "animals" to "livestock." That seems to fit how these

1 terms are usually referenced in statute.

2 And then we also corrected a typo where it said
3 "aquatic like," we changed that to "aquatic life."

4 Moving on to page 21. And this is in (D).
5 Again, we removed the date in the reference to the EPA
6 regulations. And then also we made a change to (E). We
7 added the language that was in the subsections in (I) and
8 (II) below, and just brought that into the rest of (E).

9 In romanette -- or in (F), we just updated -- we
10 had the figure number 1. We replaced that with the word.

11 In (iv), we removed the term "time." The
12 sentence read "a proposed time schedule." We removed the
13 word "time." I think that's implied when you talk about a
14 schedule, that you're dealing with time.

15 And that takes us to Section 7. This one was
16 revised to make the grammatical corrections, and then also
17 provide consistency with the other subsections that we
18 revised those opening paragraphs. I'm not seeing any
19 further changes within Section 7.

20 So Section 8 is our Well Construction
21 Requirements. This section was revised -- we added the
22 language in the introductory paragraph and placed it as a
23 new opening paragraph. The language that's here was taken
24 from language that will be struck -- or was struck in
25 previous sections. So it's not all new language that was

1 here in the chapter already. We just placed it at the
2 beginning of the Section 8.

3 And then on the next page, that's where you see
4 (iii) and (iv) were struck to create the previous paragraph
5 I was just talking about. A grammatical change was made to
6 (B). We added the "and" term so that it fit grammatically.

7 Moving on to page 25, (iv). Again, we updated
8 the reference to the rules and regulations to Noncoal
9 Rules. There were some further -- it's kind of hard to see
10 within there, but we also made some grammatical corrections
11 to the punctuation within the chapter -- or within the
12 section.

13 And moving down on the next page to (f) -- or
14 (h). I'm sorry. This was revised, again, to create -- or
15 correct some grammatical errors.

16 And on page 27, the next page, you'll notice here
17 there's some redline text. I left that in there. This was
18 one of the original sections that we were proposing for
19 revision. This particular sentence was deleted when I
20 filed the final rules the last time we revised this. I had
21 deleted that sentence, and the EPA pointed that out to us
22 and we've stuck that back in. But I just wanted to
23 highlight that was one of the original reasons, and you,
24 the advisory board, have already seen that language. But I
25 just wanted to designate that a little bit differently.

1 Then moving on to Section 9. This is the
2 Mechanical Integrity Testing section. We made some
3 revisions. We -- just capitalization change in (a).

4 Moving on to page 29. Again, in (iii), this,
5 again, is just a grammatical change. Then in (iv), you'll
6 notice again there's some redline text. This was another
7 term that was mistakenly left out of the final version of
8 Chapter 11. That was actually approved by the Board in
9 that version and by the EQC, so we've added that back in.

10 And then in (vi) or (vi), again, grammatical
11 corrections and changed how we were referencing mechanical
12 integrity to be consistent throughout the chapter.

13 Moving on to Section 10. In (b), we again
14 updated the way the rules and regulations were referenced
15 in (c), made some grammatical changes to the section.

16 Moving on to (e). We updated how the references
17 to later sections was initially put into this chapter,
18 provides consistency with the way we usually do it.

19 Then in (f), in -- or (I), we reorganized that.
20 It seemed like there was some missing language to the list
21 that followed, so we've added the language "The operator
22 shall log," and then the list that follows.

23 Let's see. There were a couple of punctuations
24 that were updated. And then in (g), we updated the
25 capitalization for Underground Sources of Water. We also

1 added in (h) some introductory language so that it
2 corrected the grammar again. We added "The operator
3 shall," and then that follows with the two subsections. We
4 wanted to ensure that the operator knows that that's his
5 responsibility or their responsibility.

6 And then in (j), again, that same kind of thing
7 where we've added "the operator shall report," again, to
8 make it clear that that's the operator's responsibility.

9 Then in subsection 11 -- or Section 11, this is
10 our Aquifer Classification Exemption section. Again, made
11 updates to how we referred to the Department and the
12 Division and the rules and regulations. Updated an EPA
13 reference. At the bottom of the page on 32, again, rules
14 and regulations change to just say rules.

15 And then finally at the bottom of the section in
16 (c), again, we updated a reference to the Water Quality
17 Division. And, again, removed date in reference to EPA
18 regulations.

19 Which takes us to Section 12. (a), again, was
20 revised to improve the organization and correct some
21 grammatical errors within that paragraph. No changes were
22 proposed on page 34, that I can see, unless there's a
23 grammar change, but it doesn't look like it.

24 That takes us to page 35. We did make a
25 correction to (B) at the top of the page. This was a

1 grammatical correction, again.

2 (ix), this also was updated to make a grammatical
3 correction. In (C) of (ix), we've updated the reference to
4 the mechanical integrity again. In (x), we added the
5 term -- or the word "and" between (A) and (B), to make it
6 clear that both applied.

7 And that takes us to Section 13. Here, again,
8 you'll see a bit of redline text. This was actually put in
9 at the suggestion of the Legislative Service Office when
10 they reviewed our chapter when we had last submitted it.
11 They just wanted us to update how we were referencing
12 statutes. So we've added that language.

13 (c) of 13, this was proposed for deletion to
14 remove the redundant statutory language and requirements.
15 There isn't any reason to state something again that's just
16 in statute.

17 That moves us to Section 14. (a), again, was
18 revised grammatically. We removed subsection -- or (i) and
19 reorganized this section. Mostly this is grammar and
20 organization that seems to read better in this format.
21 Again, we removed -- or reorganized that section so that
22 entailed us updating the organization for the remainder of
23 this section. So we've updated the section headers on
24 those.

25 We also deleted the final sentence of what was

1 (ii) that -- this was based on comments from the Attorney
2 General's Office that nonsubstantive revisions are not
3 subject to the notice and comment. So we weren't sure why
4 that was in there initially.

5 Then in (c), again, this is revised to more
6 clearly state the duties of the operator, so we revised the
7 grammar of that section. Same with (d). In (i) of (d),
8 we've made additional grammatical changes and incorporated
9 what was (A) into subsection -- or (i).

10 We also reorganized the remaining romanettes in
11 that section. And -- or subsection. And also made a
12 grammatical change to (v). There were -- finally, on the
13 bottom of the page on 38, we made another grammatical
14 correction.

15 Moving to (e) on page 39. Again, we were
16 removing redundant language here. The sentence that we
17 struck had stated in the case that a portion of the permit
18 is in violation of the law, that portion of the permit
19 shall be open for review. That's already spelled out in
20 statute or certainly implied.

21 Section 15 was revised on page 40 in (iv).
22 Again, what we've done here is remove the subsection
23 language and just incorporated it into that sentence to
24 improve the organization, and actually shortens the chapter
25 a little bit. We also made some corrections to (B), just

1 to improve the grammar.

2 In (c), we updated that subsection to remove the
3 "and" that was in (i), and moved it down later into (ii),
4 just to follows the structure of that section.

5 (Mr. Peters joins the meeting.)

6 MR. HULTS: There were also on page 41 some
7 more grammatical changes. Again, we had to remove the term
8 "and." We moved it down one subsection.

9 And then, finally, in (ii) of (e), we added the
10 term "other" just to improve the clarity of that section
11 and sentence. And then also added "of" in between "depth
12 the well" to correct a typo.

13 In Section 16, this is our Monitoring
14 Requirements, made it clear in (a) we had a reference to
15 "the permit" only. This also applies to research and
16 development license, so we added "or license." Then in
17 (i)(a), we removed some redundant language.

18 Moving on to page 42. Again, added the term
19 "and" between the subparagraphs. In (ii)(A), we removed
20 the language "with sufficient frequency," and just made it
21 clear that an operator was responsible to monitor the
22 nature of the injected fluids at least monthly instead of
23 the language with sufficient frequency.

24 And then we also removed (c). And this language
25 was actually placed elsewhere within the chapter, so it

1 isn't deleted per se, just moved.

2 Moving on to page 43. This is where you see the
3 language that was previously indicated as deleted. It's
4 just been moved to the bottom of the section. And we also
5 updated the (b) -- it used to be (v) -- just to improve the
6 organization of that section.

7 In Section 17, which is our Maintenance and
8 Retention of Records section, (C) was revised to change
9 some of the grammatical language there and update some of
10 the following sections. (ii) was updated to -- for
11 consistency with how we referred to section references
12 within the chapter. And then also updated the second to
13 last sentence in (ii) to improve the clarity of that
14 subsection and to make clear that the records must be
15 retained no less than three years.

16 Moving on to Section 18. We made a grammatical
17 correction in (A) and then in (ii), again another
18 grammatical correction in the way referred to the different
19 divisions. Our division -- I guess in this case -- yeah,
20 it's our division as well.

21 And that takes us to the bottom of that page.
22 Again, at the very end of Section 18, you'll notice there's
23 a slight bit of red text in the reference to Section 18.
24 That, again, was pointed out -- I believe this was by the
25 Legislative Services Office that we had an incorrect

1 reference, so we've updated that.

2 In subsection -- or Section 19, we revised the
3 language of the confirmation, just to update the grammar of
4 that. And also in (i), again, you'll see a little bit of
5 red language. This, again, was suggested by the LSO to
6 improve the clarity of our reference. And the same is --
7 occurs in (ii) below. So, again, were recommended by the
8 LSO, so we updated that.

9 In (b)(ii), we deleted the final sentence and
10 improved the clarity of that section by changing the
11 references as we did in previous sections.

12 Moving on to page 46. (iii), we just made some
13 grammatical changes. We did -- I still kind of chuckle
14 about this one. Somehow we had left the "operator will"
15 language in there, which is a rule writing no-no.
16 Surprised nobody caught it along the way. But the "will"
17 has been replaced with "shall."

18 And, finally, just one grammatical change to the
19 very bottom of the section to include the "and" to make it
20 clear that (i), (ii) and (iii) all apply.

21 In Section 20, we, again, made an organizational
22 change here with the subsections of (a) to just make it one
23 sentence instead of many subsections. And that change
24 required us on page 47 to update the section headers again
25 and update the organization of the following -- or the

1 subsections that followed that. A subsection was proposed
2 as (c) at the bottom of the page, again was updated for
3 grammar and consistency with previous sections when we
4 refer to permits and licenses. We consistently updated
5 that throughout the chapter, so this section follows that
6 format.

7 And then the rest of the subsections, again, had
8 to be updated to organize the full section properly. And
9 one correction was made again where we had the figure 3
10 that's been replaced with the word "three."

11 In subsection 20 -- or Section 21, this one,
12 again, this section is similar to the other revisions that
13 we did. The changes here were made to conform to the
14 legislative changes to 406 regarding notice and comment and
15 decision making.

16 So on (a), we updated the reference to include
17 (q) instead of the repealed (k). And we also updated a
18 section reference that was incorrect.

19 Moving on to page 49, not seeing any changes
20 unless there's a semicolon, but it doesn't look like it.
21 That takes us to page 50. (b) was revised. This deals
22 with how objections will be handled. This language, we
23 just inserted or referenced to the new (q) with -- that
24 deals with notice and comments or notice and objections,
25 instead of spelling out the requirements.

1 And then we also updated (c) to conform to the
2 statutory language, and removed the prior (i) and (ii) of
3 (c), which no longer matched the statutory language.

4 We also updated new (d) with the current appeals
5 process in the statutory language. We also deleted that
6 language that followed previously in the chapter as that
7 was no longer applicable.

8 And then, finally, we did -- for the
9 subsection -- or new (e), that's just reorganization. And
10 then, finally, we deleted (d). We couldn't find where this
11 requirement was coming from. We don't believe it's in
12 statutes or rule anywhere, so that subsection was deleted.

13 In Section 22, there were no changes.

14 In Section 23, no changes until (b)(iv). Again,
15 you'll see a little bit of red text that was at the
16 suggestion of the Legislative Service Office. So we've
17 included that.

18 And then, finally, in (c) of Section 23, we
19 updated the reference to Chapter 7, Section 3 to make it
20 conform with other references similar to that.

21 And that brings us to the end of that chapter,
22 and I appreciate everyone bearing with me on that one.

23 CHAIRMAN GAMPETRO: That was a heroic
24 presentation.

25 MR. HULTS: Well, thank you, Mr. Chairman.

1 CHAIRMAN GAMPETRO: Do we have questions?
2 comments? suggestions?

3 MS. ANDERSON: Mr. Chairman, this is
4 Shannon Anderson. I don't know if this is the time that
5 you would want to take any public comment, or do you want
6 to have the Board discussion first? I wasn't sure.

7 CHAIRMAN GAMPETRO: Let's let the Board
8 have their comments first, and then we'll invite you back
9 in. How's that sound?

10 MS. ANDERSON: That sounds great. Thank
11 you.

12 CHAIRMAN GAMPETRO: So from the Board,
13 comment, suggestions, questions?

14 BOARD MEMBER MACKER: Mr. Chairman, I have
15 none. I just want to echo the gratitude to Craig for the
16 presentation and the work on this.

17 CHAIRMAN GAMPETRO: Definitely a heroic
18 presentation.

19 MR. HULTS: Thank you, Board Members.

20 CHAIRMAN GAMPETRO: Okay. Seeing no other
21 comments, anyone else have comments?

22 MS. ANDERSON: Yeah, Mr. Chairman. Hi.
23 This is Shannon Anderson representing Powder River Basin
24 Resource Council. We'd also like to express our gratitude
25 to the DEQ staff and the Attorney General's Office for

1 moving the set of rules forward. We're particularly
2 appreciative of the work that was done on the Coal side of
3 things, and both in terms of the statutory development as
4 well as the rules. We believe they'll really simplify the
5 process and make it clear to everybody what's going
6 forward.

7 As you may know, there was a need to address that
8 because of some litigation. So it was really important
9 that this rule package does move forward.

10 On the Noncoal side of things, we -- we have some
11 concerns. I think you received a letter from us on the
12 last Board meeting that you had. And my apologies for not
13 being able to make it. There was a legislative committee
14 meeting that day. But we -- you know, we were involved in
15 the legislative process, and at the time there was an
16 interest from some legislators to make sure there was
17 consistency on an informal conference option for Noncoal
18 mines. And that was something that the DEQ staff at the
19 time had represented to legislators that they could resolve
20 during the rulemaking process.

21 So we're looking, I think, to the DEQ now to
22 think about how to build in an informal conference option
23 for Noncoal mines of all types, but particularly sand and
24 gravel. And the reason that we think this is important and
25 necessary is if you look at the Environmental Quality

1 Council docket, you'll be -- you know, you'll be aware that
2 the majority of hearings requested are on noncoal mines and
3 particularly those small mines, sand and gravel mines in
4 particular.

5 And we believe that, you know, the informal
6 conference has a lot of value, not just for coal mines, but
7 also for these noncoal mines to resolve difficulties and
8 objections in a very, you know, informal cultural way. I
9 did a review of the Environmental Quality Council docket
10 over, you know, the decades of the docket during the
11 legislative process for the 406 revisions and found that
12 the majority of the hearings that were requested were
13 actually not held, because what it did is requesting a
14 hearing drove the parties to talk to each other, and there
15 was often a resolution between the objecting landowner and
16 mining company that allowed, you know, resolutions of the
17 objections and the project to go forward.

18 And that's really what the informal conference
19 process does, is it allows an objecting neighboring
20 landowner and the mining company and the DEQ to all get
21 together, air their grievances, talk about the issues and
22 have the director, you know, make a decision after that
23 oral presentation and informal conference.

24 So, you know, we appreciate the ability to submit
25 comments to the DEQ in writing, but we don't believe that

1 that has the same impact and opportunity to resolve
2 objections in meaningful ways for landowners, because you
3 just don't -- you're not able to participate in the process
4 the same way. You know, writing is different than talking,
5 just like it is now with the letter I sent you versus
6 speaking to you orally. You know, there's a different
7 impact and effect that way.

8 So we would just encourage the Board to give
9 guidance to the DEQ staff to allow for the option for an
10 informal conference and see if there's a way to build that
11 into the noncoal portion of the rules. And I'd be happy to
12 answer any questions you have.

13 CHAIRMAN GAMPETRO: Craig, do you have any
14 response to that?

15 MR. HULTS: Mr. Chairman, I think that was
16 discussed in the previous meeting. The legislature was
17 pretty clear in the division between the Coal and Noncoal
18 programs, and did indeed settle on the fact that there was
19 not an informal conference process within the Noncoal
20 realm. At this time the Land Quality Division would not be
21 pursuing any regulatory changes. We believe that would be
22 outside the scope of our authority, and our recommendations
23 would be that if there are -- or is that desire to have
24 that option, that the cochairs of the minerals committee be
25 contacted. We just feel like that if we pursued that

1 option, we'd be legislating through rulemaking, and we
2 don't want to go down that path at this time.

3 Also, there's nothing to preclude us during the
4 comment period from setting up a meeting between parties.
5 We discussed that that had occurred in the past and would
6 likely still be an option, although not formally recognized
7 within the rules. I know that happened up in District 3
8 near Sheridan in the past. So at this time, we wouldn't
9 propose any regulatory changes.

10 CHAIRMAN GAMPETRO: Any other comments?

11 BOARD MEMBER MACKER: Mr. Chairman, can I
12 ask a question of Craig in reaction to the comments he just
13 made?

14 CHAIRMAN GAMPETRO: Go ahead.

15 BOARD MEMBER MACKER: Craig, so the comment
16 that there could be a meeting arranged, even if it's not
17 written into the rules, how would a landowner know that
18 that option could be available if it's not written in the
19 rules?

20 MR. HULTS: As far as I know -- I wasn't
21 involved in the process, Board Member. As far as I know,
22 we received an objection to a permit. The Administrator
23 waived that comment and the objection and felt like it
24 would be productive. It isn't something that necessarily
25 they would have notice of, unless they read the transcript

1 from this meeting. But it currently just isn't a procedure
2 that we can really write into rule without some kind of
3 statutory authority. So we're kind of in that position
4 right now.

5 MS. ANDERSON: Yeah. And Board Member
6 Duncan, if -- Duncan-Macker, if I may. This is Shannon
7 again.

8 In response to Craig's comments, that was I think
9 the informal conference he's speaking about here in
10 Sheridan. District 3 is one our organization, our members,
11 participated in. And, really, it came at the request of
12 the company. The gravel mining company wanted to have that
13 meeting with the objecting landowners. It wasn't something
14 that the objecting landowners, as you indicate, had any
15 idea that it was something that they could request or
16 participate in, but it came at the request of the company.

17 And so I would encourage the DEQ staff, if it is
18 an option to them, and if they are receiving objections, to
19 think about working with the permit applicants to hold such
20 a meeting, even if it's not required by the regulations,
21 because it is an incredibly productive process to be able
22 to, you know, get together and have a conversation about
23 objections, and in different ways to mitigate impacts that
24 would be acceptable to everybody.

25 There's -- again, there's ways to move a project

1 forward and resolve objections and have, you know, that
2 win-win opportunity for the mining companies and for the
3 neighbors.

4 And I do -- you know, I would just mention I take
5 issue with the DEQ's history on the legislative process on
6 having been involved in lobbying and talking directly with
7 legislators. Again, there was an amendment that would have
8 written in an informal conference option. I cited to that
9 amendment in the letter that I sent you all. That
10 amendment was defeated because of the representation
11 directly from the DEQ that this is something that could be
12 resolved in the rulemaking process.

13 And I feel personally let down from the DEQ, and
14 I think the legislators that, you know, were involved in
15 that would be as well. And, you know, I wish there would
16 have been a representation from the staff at that time,
17 that if they felt that an informal conference was outside
18 the scope of the current statutory language, that, you
19 know, we could have moved forward with statutory language
20 to allow this rulemaking to happen.

21 But I guess, you know, we are where we are now.
22 And, again, I hope the staff recognizes that there is this
23 option available to them to have meetings to resolve these
24 issues with landowners and mining companies. And thanks
25 again for the opportunity and the time. And, again, we do

1 appreciate all the work the DEQ staff has done.

2 CHAIRMAN GAMPETRO: Any other comments or
3 questions or any other issues that anyone wants to discuss?

4 Well, I'm seeing on my list here, that the next
5 meeting that we're going to have is in early December.

6 Craig, do you have anything on that?

7 MR. HULTS: Mr. Chairman, before we move
8 on, I would like a recommendation from the Board, if you're
9 so inclined, to move these to the formal rulemaking
10 process.

11 CHAIRMAN GAMPETRO: Sure. Can we get a
12 motion on that?

13 BOARD MEMBER JONES: This is Blake,
14 industry rep. I move to move the process forward with
15 these rules as Craig outlined.

16 CHAIRMAN GAMPETRO: Thank you.

17 How about a second to that motion?

18 BOARD MEMBER LEGERSKI: I'll second. This
19 is Gene.

20 CHAIRMAN GAMPETRO: It's been moved and
21 seconded. All those in favor, please indicate by saying
22 aye.

23 BOARD MEMBER LEGERSKI: Aye.

24 BOARD MEMBER MACKER: Aye.

25 BOARD MEMBER JONES: Aye.

1 CHAIRMAN GAMPETRO: Any opposed?

2 Seeing none, the motion carries.

3 BOARD MEMBER MACKER: Mr. Chairman, would
4 it be --

5 CHAIRMAN GAMPETRO: Yes.

6 BOARD MEMBER MACKER: -- possible to see if
7 there is an opportunity to look at -- I understand that the
8 position is legally rulemaking related to the informal
9 conference can't -- the informal conference can't be
10 included in the rulemaking for Noncoal, or that the
11 position being taken. But is there an option to suggest or
12 request if there are other ways of notifying that there's
13 an opportunity available for an informal conference so that
14 awareness of that is there and it could be requested by
15 members of the public through an objection or otherwise?
16 And what that type of noticing for the public would look
17 like if it's not included in the rules? And any ideas that
18 there might be around that from the team at the DEQ?

19 CHAIRMAN GAMPETRO: I guess I would like
20 you to summarize what you just said.

21 BOARD MEMBER MACKER: Not -- so my request
22 would be can the DEQ provide some sort of notice if it's
23 not part of the rulemaking package through some other
24 avenue that an informal conference is an option that may be
25 available?

1 CHAIRMAN GAMPETRO: Okay. Craig, do you
2 have a response to that?

3 MR. HULTS: Mr. Chairman, again, I think
4 the informal conference term was specific to the coal
5 process. Now, again, there isn't anything that precludes
6 the administrator from meeting with concerned citizens
7 along the way. I'm not sure how we would go about noticing
8 that without putting it in rules some way.

9 CHAIRMAN GAMPETRO: Craig, could you talk
10 to the Administrator on this and see if he has any ideas on
11 how to accomplish this?

12 MR. HULTS: I can bring that to his
13 attention, but I will say I think the position's been
14 pretty clear from the Administrator that it would require
15 some legislative change to formally recognize that.

16 MR. VANWORMER: Mr. Chairman and Board
17 Member Duncan-Macker, this is Matt VanWormer with the
18 Attorney General's Office. I represent Land Quality, and I
19 had a chance to meet you guys here and there a couple of
20 times.

21 If I could just add one consideration I think is
22 important for the Division on this question of an informal
23 conference and noncoal permit appeals. The new Section
24 406(q) only allows a 30-day period after the close of
25 public comment, in which the Administrator has to put

1 together a report on the objections, a report on the
2 application itself, forward that on to the director, and
3 the director has to render a decision within that same
4 30-day period.

5 And having spoken with Administrator Wendtland on
6 this, I think there's a concern that if there was any kind
7 of formal -- a formal process set up to allow for an
8 informal conference, it would cut into that 30-day window
9 so much that the administrator and director might not be
10 able to meet their statutory obligation of getting the
11 decision out within that time period.

12 So I appreciate the comments from Shannon and
13 from Board Member Duncan-Macker, but it's just something
14 that when Craig was talking about the legislature not
15 allowing much rulemaking authority on this, one of the
16 concerns is is there even time to get this done in any
17 standardized format.

18 CHAIRMAN GAMPETRO: Thank you. Thank you.

19 Any other comments? suggestions?

20 Craig, you can speak to the Administrator and
21 just see -- let him know that, you know, there is concern
22 around this issue.

23 MR. HULTS: Absolutely, Mr. Chairman.

24 CHAIRMAN GAMPETRO: Any other comments?
25 suggestions? questions?

1 Okay. I see that our next meeting is early
2 December. I have no idea where I'll be or what I'll be
3 doing in early December. I don't know how one can schedule
4 such things, particularly early December. So how do we --
5 how do we move forward in terms of getting a date?

6 MR. HULTS: Mr. Chairman, Board Members. I
7 guess what I would request is in the next few weeks, if you
8 can give me any dates that would be blacked out for sure.
9 It seems like Thursdays usually work for meetings, and
10 maybe we can target that for, say, December 2nd or 9th or
11 possibly even the 16th, but I think that might be getting
12 too far into the month. And so what I can do is I'll send
13 out an email to the board members kind of giving you a date
14 range between there and if you can let me know of any
15 blacked-out dates, we can come to a conclusion on that
16 physical date then.

17 CHAIRMAN GAMPETRO: Sounds like a plan,
18 Craig.

19 Any other suggestions or comments?

20 Any other issues anyone wants to bring up?

21 Well, seeing none, I'm going to declare this
22 meeting adjourned. And I want to thank everyone for your
23 participation, your patience, your suggestions, your
24 comments.

25 MR. HULTS: Thank you, Mr. Chairman, and

1 public, interested parties.

2 (Meeting proceedings concluded

3 11:28 a.m., August 19, 2021.)

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C E R T I F I C A T E

I, KATHY J. KENDRICK, a Registered Professional Reporter, do hereby certify that I reported by machine shorthand the foregoing proceedings contained herein, constituting a full, true and correct transcript.

Dated this 9th day of September, 2021.


KATHY J. KENDRICK
Registered Professional Reporter

