

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 22nd day of September, 2022, at Thyra Thomson
Building, Turntable Room 444 West Collins Street, Casper,
Wyoming, before the Land Quality Advisory Board, Chairman
Jim Gampetro presiding, with Ms. Dawn Kolkman, and
Ms. Natalia Macker attending by videoconference. And
Mr. Carl Edelman, Wyoming Attorney General's Office, also
present by videoconference.

Mr. David DeWald, Wyoming Attorney General's
Office, present by videoconference; Mr. Kyle Wendtland,
Land Quality Administrator and Mr. Craig Hults, LQD
Natural Resource Program Principal; attending in person.
And various individuals attending in person and by
videoconference.

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

2 (Meeting proceedings commenced
3 10:02 a.m. September 22, 2022.)

4 CHAIRMAN GAMPETRO: It's time we're going
5 to declare the meeting now open, and we're going to go
6 through introductions. Please state who you're
7 representing. And if you're a board member, what kind of
8 board member are you.

9 Should I go down the list here?

10 MR. HULTS: Mr. Chairman, maybe if we just
11 go around the room here. I know we have a bunch of EQC
12 employees from District 3 online as well, and then jump to
13 them would probably be best.

14 CHAIRMAN GAMPETRO: Okay. I'm Jim
15 Gampetro. I'm the chairman of the Land Quality Advisory
16 Board. I'm from Buffalo, Wyoming, and I'm a public member.

17 MR. HULTS: I'm Craig Hults. I'm with the
18 Land Quality Division out of Cheyenne.

19 MR. WENDTLAND: Kyle Wendtland, the
20 Administrator of the Land Quality Division.

21 BOARD MEMBER KOLKMAN: Dawn Kolkman, and
22 I'm from Douglas, Wyoming. And I am the industry
23 representative on the LQD Advisory Board.

24 MR. ANDERSON: Hi. Shannon Anderson with
25 Powder River Basin Resource Council.

1 MR. HULTS: And Kevin, you mind introducing
2 yourself?

3 MR. ROMPOLA: Sure. I'm Kevin Rompola,
4 Natural Resources Analyst, Wildlife Specialist in District
5 3.

6 MR. HULTS: Thanks, Kevin.

7 Luke, if you wouldn't mind introducing yourself.

8 MR. McMahan: This is Luke McMahan. I'm a
9 project geologist with the Land Quality Division in
10 District 3 up in Sheridan.

11 MR. HULTS: And Mark, if you wouldn't mind
12 introducing yourself.

13 MR. ROGACZEWSKI: Good morning. Mark
14 Rogaczewski, Land Quality Division District 3 Supervisor in
15 Sheridan.

16 MR. HULTS: And Natalia.

17 BOARD MEMBER MACKER: Hi. Natalia Macker,
18 and I am a board member, and I live in Teton County. And I
19 am a public at large board member.

20 MR. HULTS: Thank you.

21 David DeWald.

22 MR. DEWALD: Good morning. David DeWald,
23 Wyoming Attorney General's Office.

24 MR. HULTS: And then Carl Edelman.

25 MR. EDELMAN: Carl Edelman, Wyoming

1 Attorney General's Office.

2 MR. HULTS: Thanks so much.

3 CHAIRMAN GAMPETRO: That's everybody? And
4 Kathy.

5 MR. HULTS: Oh. And Kathy.

6 THE REPORTER: Kathy Kendrick, Wyoming
7 Reporting service, court reporter.

8 CHAIRMAN GAMPETRO: Okay. We have the
9 minutes of -- from the meeting of June 23rd. And I would
10 entertain a motion to approve those minutes.

11 BOARD MEMBER MACKER: I move to approve
12 those minutes.

13 BOARD MEMBER KOLKMAN: I second that
14 motion.

15 CHAIRMAN GAMPETRO: All those in favor,
16 please signify by saying aye.

17 BOARD MEMBER KOLKMAN: Aye.

18 BOARD MEMBER MACKER: Aye.

19 CHAIRMAN GAMPETRO: Any opposed?

20 Seeing none opposed, the minutes are approved.

21 So now we're to the presentation of discussion of the
22 revisions to Coal Chapter 14.

23 Kyle or Craig, which one of you wants to go?

24 MR. WENDTLAND: Sure. Mr. Chairman, I'd be
25 happy to introduce that. We actually -- just kind of a

1 quick overview here. We have three rule packages in front
2 of the Board today. We'll go over the individual changes
3 of those within each of the rule -- respective rule
4 packages. We're going to start with the revision -- and
5 it's really revision -- to Coal Chapter 14. We received
6 some feedback from the Office of Surface Mining from their
7 solicitor's office, and they would like us to add a word
8 "fish" to this language. So in order to do that and
9 accommodate that, we have to run this all the way back
10 through the rulemaking process.

11 Craig, if you want to go line by line of where we
12 are with this one --

13 MR. HULTS: Sure.

14 MR. WENDTLAND: -- that would be great.

15 MR. HULTS: Board Members, everybody else
16 on the line. This is the -- this Chapter 14 revision is
17 due to a formal amendment that we had submitted the Office
18 of Surface Mining, Reclamation and Enforcement. We had
19 submitted that in June of 2021, we got their review back,
20 and they had one concern. This chapter dealt with -- when
21 we revised this a couple years ago, we had installed
22 detailed plugging and abandonment procedures for drilling.
23 This is the Coal Exploration by Drilling. And we also
24 added best management practices to the chapter. They had
25 one concern.

1 We received their response letter on August 12th
2 of 2022, and the issue they noted -- and I'm not going to
3 pull anything up for this. I think I can explain it pretty
4 well. This related to the Chapter 14, Section 2(i). And
5 what that section read was that all drill holes should be
6 backfilled to the surface with dry nonslurry materials that
7 were capped with a concreted cap set at least two feet
8 below the ground surface and then backfilled to the surface
9 with native earthen materials to ensure the safety of
10 people, livestock, wildlife, and machinery in the area.

11 The Office of Surface Mining is asking us to add
12 the term "fish" before "wildlife." The rationale behind
13 that was they said, well, an argument could be made that
14 the term "wildlife" describes all fauna, including fish.
15 The Endangered Species Act and SMCRA consistently use the
16 term "fish and wildlife" or "fish or wildlife."

17 And then they also said because we'd incorporated
18 some best practices relating to the protections for surface
19 and groundwater quality within the area of drilling, we
20 felt -- they felt that the inclusion of fish adjacent to
21 wildlife is particularly important. So that final portion
22 of the sentence will read "ensure the safety of people,
23 livestock, fish, wildlife, and machinery in the area."
24 That's the only change that we would be doing to that
25 chapter.

1 CHAIRMAN GAMPETRO: So any comments or
2 questions or suggestions?

3 MR. WENDTLAND: Mr. Chairman, we would ask
4 for the Board to make a vote on this in order to move it
5 forward today, so --

6 CHAIRMAN GAMPETRO: Okay. We'll entertain
7 a motion to approve this change.

8 BOARD MEMBER MACKER: So moved.

9 CHAIRMAN GAMPETRO: Second?

10 BOARD MEMBER KOLKMAN: I'll second that.

11 CHAIRMAN GAMPETRO: All those in favor,
12 signify by saying aye.

13 BOARD MEMBER KOLKMAN: Aye.

14 BOARD MEMBER MACKER: Aye.

15 CHAIRMAN GAMPETRO: Aye.

16 It has been moved, seconded, and approved.

17 So now we go to number 4 -- the first number 4 on
18 my list of two number 4s. Presentation and discussion
19 regarding the revised draft of Noncoal Chapter 2.

20 MR. WENDTLAND: Mr. Chairman, thank you.
21 We are bringing this back to the Board. If you remember,
22 in our prior meeting, we scoped this, took some feedback.
23 And this is related to the inert materials statute change
24 that was made in the last session of the legislature. And
25 we have taken those rules back, looked at them. We have

1 taken the comment we received from the prior meeting, and
2 we also went back to the Solid & Hazardous Waste Division,
3 and the Attorney General's Office has looked at those
4 again. We believe that with the minor changes and updates
5 we have here, this rule package should be able to be voted
6 on today as well and possibly moved forward.

7 So with that, I'll let Craig walk you through the
8 minor edits. I shouldn't say minor, but we did have some
9 edits to this. They didn't seem to be very extensive from
10 what we had in the scoping meeting earlier in the year, but
11 I'll let Craig walk you through those.

12 MR. HULTS: Thank you, Kyle.

13 Board members, I'm going to -- just give me a
14 second and I will share my screen here. Somewhere.

15 So you should be seeing the beginnings of NonCoal
16 Chapter 2. And what I've done is this chapter that you saw
17 last month -- or last meeting, the new changes that we did
18 from the initial changes that we presented in June, are
19 indicated in red text. And this is the section that we
20 added for the disposal of inert materials as backfill.

21 We did send them to the Solid & Hazardous Waste
22 Division again to ask for their opinion on the revised
23 draft that you'll be seeing here. They didn't really have
24 any comments. They did ask for some clarifications on one
25 of the citations we added, and I'll speak to that a little

1 more here as we get to it.

2 The first change -- and this is in subsection 6,
3 this actually was the comment that had come from the Solid
4 & Hazardous Waste Division. They did just ask if surface
5 owner consent would be required during the permitting
6 process. We believed that that would be required.
7 However, we put it into rule as well just to --

8 THE REPORTER: Sorry.

9 MR. HULTS: -- just to make that -- all
10 right. So we've added the surface owner consent onto the
11 back of subsection 4(a) there.

12 The next revision that we did from last June,
13 there was a question about the citation that we had to the
14 Solid & Hazardous Waste regulations. In this instance, we
15 had a more generic reference initially. The reference now,
16 and based on comments from the Solid & Hazardous Waste
17 Division, all we had cited to was the installation of the
18 monitor wells. This that we have now includes the
19 monitoring as well.

20 The other comment that Solid & Hazardous Waste
21 had was that they asked, after we had shown them this
22 revision, whether we wanted to include the statistical
23 analysis, constituents list, and things like that. After
24 some internal discussions, we felt like each of these
25 operations were going to be kind of a one-off, and so we

1 think that we need the flexibility each time to determine
2 those constituents and possibly the monitoring frequency,
3 reporting, those kind of things. So we only established
4 the monitoring characteristics here.

5 MR. WENDTLAND: I might elaborate on that
6 just a little more. Let's say we have shredded tires in a
7 bentonite pit. That might be one set of constituents.
8 Let's say we have wood disposal at another bentonite pit.
9 That might be a different set of constituents. So we need
10 that flexibility to be able to tailor it to the site and
11 the material when we look at both constituents that we want
12 to look at and monitoring time frames. So that's a little
13 more helpful on that.

14 MR. HULTS: The other revision that we do,
15 I had a reference to the Solid & Hazardous Waste Division
16 rules based on the comments of their division. There's
17 different sets of rules within their division, so we wanted
18 to make clear and make sure we were making a reference to
19 the correct unit, so we're in the section of their
20 chapters, which is the -- Chapter 4 is the Solid Waste
21 Rules within the division.

22 And then in c., again, this is -- you know, we
23 didn't want to list a set of constituents to be monitored,
24 knowing that some of those lists are pretty extensive,
25 would be tough to narrow that down. We felt like the

1 groundwater constituents to be monitored would be based on
2 the type of material that we used as backfill. The
3 enabling legislation gives us the opportunity to consult
4 with Solid & Hazardous Waste. So I'm assuming we would do
5 that as well as part of the review process if we do get a
6 permit revision that would request this.

7 And then in d., this is a bit of our monitoring,
8 so we added a new d. that states if the monitoring data
9 demonstrates that any groundwater contamination associated
10 with the disposed backfill materials, the Administrator may
11 require the operator to characterize the nature and extent
12 of the release and conduct an assessment of the corrective
13 measures and institute corrective actions approved by the
14 Administrator.

15 So, again, these are going to be done on a
16 one-by-one basis, so this will give us some flexibility.

17 (6.), there were no changes.

18 And in (7.), there were no changes there.

19 So that was the extent of the changes we had made
20 since the last advisory board based on some of the comments
21 we had received.

22 CHAIRMAN GAMPETRO: Any comments,
23 suggestions, additions?

24 BOARD MEMBER KOLKMAN: Chairman, I have a
25 few questions, if I may?

1 Kyle, I was wondering as I was reading through
2 this, is there a discussion of duration for monitoring?

3 MR. WENDTLAND: Yeah, that's through the
4 Solid Waste Rules. That's a five-year requirement. So
5 just for everybody to be clear on this, you know, under --
6 under Noncoal Rules right now, you really have a two-year
7 vegetation requirement, right, that you're familiar with,
8 Member Kolkman. This would extend that three more years.
9 So you are looking at a five-year -- it is -- I believe
10 it's (5)c., if I remember right.

11 MR. HULTS: Yeah.

12 MR. WENDTLAND: We'll see a reference to
13 the five-year.

14 MR. HULTS: Right there.

15 BOARD MEMBER KOLKMAN: Thank you.

16 MR. WENDTLAND: Yeah.

17 BOARD MEMBER KOLKMAN: That leads me into
18 my second question. When I was reading (5.)c., groundwater
19 constituents to be monitored shall be based on the type of
20 material. As that is stated, does that give you enough
21 flexibility, based on what is stated in (5.)b. that
22 monitoring shall be done in accordance with, and
23 specifically Chapter 4, Section 8(b)(iv)(A), which, when
24 you go back to that chapter, specifies testing of the
25 constituents in Chapter 2, Appendix C.

1 MR. WENDTLAND: Right. And that's where
2 we -- that's why we put in the extra language in c. is
3 because we -- the thing you don't want here, for example,
4 would be like asphalt shingles in a sand and gravel pit.

5 BOARD MEMBER KOLKMAN: Right.

6 MR. WENDTLAND: We know that would be a
7 problem. So the way the rules are drafted, there's
8 suitability of the site to the suitability of the material.
9 And then we also need to be able to establish the right
10 constituents for the material and the geology that it would
11 be suited for.

12 BOARD MEMBER KOLKMAN: Okay.

13 MR. WENDTLAND: Again, I'd go back to the
14 example of if we're putting shredded tires in a bentonite
15 clay pit in a tight formation, we know the geochemistry of
16 the clay that it's in, and the overburden material would be
17 the cap, and we know the chemistry of the shredded tires,
18 so we would set the constituents based on what we would --
19 what we think we would see in that case, right?

20 So we're not asking the operator in this case to,
21 let's say, monitor for uranium when they may need to be
22 monitoring for a hydrocarbon. Okay?

23 BOARD MEMBER KOLKMAN: Perfect. Perfect.

24 Thank you.

25 CHAIRMAN GAMPETRO: Any more questions?

1 MR. WENDTLAND: She's still writing, Jim.

2 BOARD MEMBER KOLKMAN: No more questions.

3 Thank you.

4 CHAIRMAN GAMPETRO: Any one else,
5 questions, comments, suggestions?

6 Hearing none, then I would ask for a motion for
7 these changes.

8 BOARD MEMBER KOLKMAN: I make a motion to
9 approve these changes.

10 CHAIRMAN GAMPETRO: Thank you.

11 Second? I'm not sure I can second it.

12 Natalia, are you there?

13 MR. WENDTLAND: Did we lose her?

14 MR. HULTS: One minute. Natalia, you still
15 there? Oh, she came back.

16 BOARD MEMBER MACKER: Sorry. Second. For
17 some reason it keeps kicking my audio off.

18 MR. WENDTLAND: Mr. Chairman, if that's
19 seconded, I would like to interject a comment here. I'd
20 like to add a comment here, if we have a second.

21 CHAIRMAN GAMPETRO: We have a second. Go
22 ahead. Comment.

23 MR. WENDTLAND: I think you have two
24 actions here, maybe: accepting those changes and moving
25 this rule forward to the Council, please. So you may want

1 to do that in one motion. You may want to do it in two.

2 It's your call.

3 CHAIRMAN GAMPETRO: Let's do it in one
4 motion.

5 MR. WENDTLAND: So you may need to amend
6 your motion, then.

7 BOARD MEMBER KOLKMAN: I amend my motion to
8 accept the changes, as well as move this forward for
9 rulemaking.

10 CHAIRMAN GAMPETRO: Thank you.

11 BOARD MEMBER MACKER: Accepted by the
12 second.

13 CHAIRMAN GAMPETRO: Okay. All these in
14 favor please -- and signify by saying aye, please.

15 BOARD MEMBER KOLKMAN: Aye.

16 BOARD MEMBER MACKER: Aye.

17 CHAIRMAN GAMPETRO: Aye.

18 It has been moved, seconded, and approved. We
19 will move forward with it.

20 MR. WENDTLAND: Mr. Chairman, thank you.

21 And with that action, we'll move to our third set
22 of rules today. And these are on the assigned trust.
23 Again, these were statute language that was put forward in
24 the most recent legislative session. And we have, again,
25 taken the comment we received from our prior advisory board

1 meeting and digested that comment. We also went back to
2 the Department of Treasury and received additional comments
3 from the treasurer and their office. And we have also
4 routed this back through the Attorney General's Office one
5 more time prior to what the Board is seeing today.

6 What I would say is the biggest comment we had
7 was regarding the transfer of the trust if you have a new
8 owner. And beings it's a voluntary trust, the requirement
9 of "shall" and the language to require -- requiring
10 operator to participate in the trust, though it's
11 voluntary, didn't marry up. We definitely had some legal
12 discussion about that.

13 So in changing that to "may," though, then, that
14 somewhat changes the concept of -- of the trust, because
15 the whole idea is there is a certain amount of stability
16 with this and lowering the risk to the State as a company
17 would move into final reclamation. So what we looked at,
18 then, was saying can we set a time frame around that, and
19 that's how we came to the five years or less, then the
20 trust can't transfer. You have to take the trust as part
21 of the sale. The new owners would have to negotiate that
22 in their buy/sell, because that is the time frame when we
23 are most likely to need the money, and the highest risk to
24 the state when we are closing that operation.

25 So I just wanted to put a little framework around

1 that, and then Craig's going to walk back through this
2 again with the changes and go back over that. If we need
3 to come back to that for some additional discussion, I'm
4 happy to do that. I just wanted to set some framing around
5 how we got to that point in the discussion around the
6 transfer.

7 CHAIRMAN GAMPETRO: Quick question. And
8 everyone in the legal and treasury areas is on board with
9 these changes?

10 MR. WENDTLAND: Mr. Chairman, that is
11 correct. We did run this back through the treasury, and we
12 did run this back through the AG once we had final
13 language. With that, I'm going to let Craig walk you
14 through, because we have a couple of minor additional
15 changes here, but I did want to set out that really is the
16 big -- big item in the -- in the updates to this go-round
17 with the rules.

18 MR. HULTS: Thank you, Administrator.

19 I'm going to be walking through the Chapter 11,
20 which is our Coal Rules. There are some slight differences
21 between Noncoal and Coal, and I'll point those out. I
22 don't think I need to go through each one separately.

23 The revisions we made to both chapters are
24 basically the exact same for each chapter, but I will point
25 out where there are differences.

1 So, again, this is our Coal Chapter 11 for
2 Financial Assurance. We had originally put in this
3 definition for the voluntary irrevocable assigned trust.
4 We did not make any revisions to that since the last
5 advisory board.

6 We did add in Section 2 -- this is our Acceptable
7 Financial Instruments. We had a request from the bonding
8 group that all of our acceptable bonding instruments that
9 we include language that it has to be submitted on forms
10 provided by the Department where appropriate. So that was
11 something we added to this Section 3.

12 And we've done it in I believe one other
13 instance. The other sections related to the acceptable
14 bonding instruments all seem to be okay and had that
15 language already.

16 MR. WENDTLAND: And what I would add to the
17 Board on that is that has always been the practice. We're
18 just clarifying that practice is basically codified into
19 rule.

20 MR. HULTS: And then moving down to the
21 Assigned Trust language. Hope I don't make anybody dizzy
22 or seasick.

23 So this is our new subsection -- or Section 6.
24 This is the Voluntary Irrevocable Assigned Trust. When we
25 ran this past the treasuries -- state treasurer, one of the

1 things that they had indicated was we had some inconsistent
2 capitalization on the term "Department," and so in (b), we
3 just capitalized Department for consistency sake. There's
4 actually a couple more instances, and I'll point those out
5 as I go through that were missed on the first revision.

6 Scrolling down, everything here so far has been
7 okay. Here in subsection 4, this is a request I believe by
8 the treasury, that the assigned trust can't be substituted
9 by another bonding instrument.

10 MR. WENDTLAND: This is -- and I'll add
11 some color around this. The treasurer has to have
12 certainty when he's investing this money. And if you have
13 somebody come in to the trust, provide, let's say, a surety
14 bond, and then withdraw the cash, that can be problematic.
15 And so -- and if you read the language of the assigned
16 trust throughout, it's once in, always in.

17 So the treasurer asked for some clarifying
18 language on that so that it's clear that you're once in,
19 always in. And that those funds are the last funds to come
20 out, because that's what gives the State that security
21 here. And it also gives the treasurer certainty into his
22 investments for the trust. Hopefully that makes sense.

23 MR. HULTS: I do need to back up a touch
24 here. So on this list, here's an example. I do have it on
25 the revised edition. I'm just not sharing that at the

1 moment on the screen. I don't have that access to that
2 file on this computer. So here is a "department" that
3 wasn't capitalized. That will be capitalized in the draft
4 that I have.

5 And also there was a request from the treasurer's
6 office, and it was consistently there's a few locations
7 where we talk about the total annual reclamation cost
8 estimate. The treasurer did suggest removing the term
9 "annual." We don't believe that's consistent with the way
10 the LQD calculates the reclamation cost, and we are
11 proposing that we would keep that language in the rule, due
12 to we have the annual director's bond letter, which is
13 typically an annual reevaluation of that reclamation cost
14 due to the annual report system. So we are leaving that
15 language in there.

16 Then one final edit in (d), the treasurer was
17 very good and pointed out that we did need an "and" in (d),
18 so we would be adding that as well.

19 I think that gets us caught up on the draft that
20 I have.

21 And then following the insertion of (iv), that
22 requires us to renumber the remaining sections to those
23 that have been added.

24 Our revised draft that we had sent over the
25 second time to the treasurer's office, we did have some

1 question about whether it was going to be the Department or
2 the Treasurer in (vii). Their suggestion was that it
3 should be the Department and the Treasurer. So we made
4 that correction.

5 MR. WENDTLAND: I'm going to add a little
6 color around this too. It just -- they're wanting to make
7 sure that we're -- the Treasurer and the Department are on
8 the same page. This is a brand-new instrument. This is a
9 new -- we have created a new bonding instrument here. And
10 when we talk about those forms where both agencies are
11 going to have to create some specific forms for this. So
12 that is not one -- not just one side of this as far as the
13 Department, we're going to have to do creation forms, so is
14 the Treasurer. So that's why we went to an "and." I hope
15 that helps clarify that.

16 MR. HULTS: And also in (vii), here after
17 trust, they also pointed out we need the word "is." That's
18 been added to the new draft as well. I'm working off of
19 one that was published initially. So it would read "once
20 the trust is fully funded," so we -- we'll make that
21 correction as well.

22 Then moving to (e). This is of the Assigned
23 Trust Transfers, and this is where we have the most
24 comments. The first revision we did in (i), that initially
25 said "shall be transferred." We've changed that to "may."

1 And the "may" will be spelled out a little further down
2 below.

3 So we've added a new (ii). And this is the
4 assigned trust transfer requirements, and those include
5 that the assigned trust may not be substituted and shall be
6 transferred along with the permit transfer if the estimated
7 life of mine is equal to five years or less, and all
8 expenses and penalties associated with the transfer of the
9 assigned trust are the responsibility of the license or
10 permit holder.

11 The treasury -- or treasurer department also
12 requested a revision to (A). They had some better
13 language. They asked that we remove the word "along" and
14 "transfer." And so it would read the assigned trust may
15 not be substituted and shall be transferred with the permit
16 if the license of the mine is -- if the estimated life of
17 the mine is equal to five years or less. Right? I think
18 that reads much better, so we would propose to add that
19 revision as well.

20 MR. WENDTLAND: And I would add on (B)
21 there, that if there is a transfer and they decide to use
22 an alternative bond instrument and withdraw the trust, if
23 they withdraw that trust before the maturity of the
24 financial instruments, there could be penalties and
25 expenses. And the State does not want to hold the

1 liability for those penalties and expenses, and that's why
2 there's the clarifying language on that.

3 And just to put that into a real example, let's
4 say the assigned trust is on a fiscal year. It matures --
5 the bonds or the securities in there mature on June 30th,
6 and a company comes in and transfers this permit in the
7 trust, and they decide to not carry the trust and close it
8 out, and they do it on January 1, you would have a six-
9 month gap and you would have premature withdrawal
10 penalties. So we just want to make sure those are on
11 that -- that burden falls on the buy/sell agreement between
12 the parties that may be transferring and selling and
13 transferring the permit.

14 MR. HULTS: Board Members, moving on from
15 there. I do see I need to shift (B) over for formatting as
16 well.

17 Then because of the addition of the new (ii),
18 again, we had to renumber these. Those changes have been
19 made as well. And that takes us to the end of that section
20 in the transfer language.

21 We did have language that was revised in
22 subsection -- or Section 7. We didn't make any changes
23 there. And then just to point out some of the differences
24 between Coal and Noncoal. This particular chapter only
25 applies to Coal. The Noncoal version has an added

1 subsection at the beginning of Section 6. Let me scroll up
2 there quick. Here in A, it just talks about all coal
3 permits and licenses are eligible.

4 In the Noncoal version, there is a subset of
5 minerals that are eligible to use the irrevocable trust.
6 In the Noncoal version, I would say minerals eligible for a
7 voluntary irrevocable trust, assigned trust, includes
8 bentonite, trona, and uranium.

9 And the other change or difference between the
10 two chapters is related to -- it's related to how the
11 corpus is managed. I'm trying to locate it here.

12 MR. WENDTLAND: It's (C) and (D).

13 MR. HULTS: Yep. So in (D) that is up on
14 the screen, again this is the Coal version, there's a
15 requirement under SMCRA that we preserve a hundred percent
16 of the corpus. We don't want the reclamation funds
17 declining in value, whereas in -- so that -- this
18 investment grade here, that will always have to be the
19 case. That whatever's invested, that value is not going to
20 go down.

21 In the Noncoal realm, the way that reads in (D)
22 is that the funds shall be invested in a manner that
23 preserves a corpus and obtains the highest net return
24 possible less any administrative fees required by the state
25 treasurer and the department. So that's the other big

1 difference between the two chapters. Otherwise, they're
2 very consistent.

3 And that's all I have on these.

4 MR. WENDTLAND: And I would just add in the
5 Noncoal too, it means that if you have a year that your
6 values go down, you would have to add back to the trust to
7 make up the difference, or provide an alternative
8 instrument to make up that difference. But it does
9 allow -- we don't have the SMCRA federal requirements as in
10 Coal. It does allow the treasurer to look at possibly
11 higher earning investments through the State funds for the
12 assigned trust for Noncoal.

13 And then, Mr. Chairman, I would suggest, if
14 you -- if it's the Board's desire to move these forward,
15 that you do it in two separate motions. I would do Chapter
16 11 as one motion, and I would do the Noncoal Chapter 6 as
17 one motion. So that there's a clear distinction between
18 the Coal chapter and Noncoal chapter.

19 BOARD MEMBER KOLKMAN: Question, Chairman.

20 In making the motion, do we also have to do a
21 motion to accept the changes and to move it forward?

22 MR. WENDTLAND: Mr. Chairman. That's
23 correct. I would recommend that we do both, because there
24 are some pretty substantial changes here, and I think you
25 want to be on the record of both.

1 CHAIRMAN GAMPETRO: If there are
2 questions --

3 BOARD MEMBER KOLKMAN: Mr. Chairman, I make
4 a motion.

5 MR. WENDTLAND: I think -- Board Member
6 Kolkman, I think there's -- the chairman needs to open it
7 for any questions, because we do have folks on the line and
8 in the room here.

9 CHAIRMAN GAMPETRO: Are there any questions
10 or suggestions regarding this?

11 Seeing none, we would entertain a motion for --
12 or two motions, I guess.

13 BOARD MEMBER KOLKMAN: Mr. Chairman, I make
14 a motion to accept the changes and move the rule -- Chapter
15 11 rule forward for rulemaking.

16 Is that right?

17 BOARD MEMBER MACKER: Second.

18 CHAIRMAN GAMPETRO: So it's been moved and
19 seconded that we accept the changes and move the rule
20 package forward.

21 Anybody -- what's the vote? All those approved,
22 please signify by saying aye.

23 BOARD MEMBER KOLKMAN: Aye.

24 BOARD MEMBER MACKER: Aye.

25 CHAIRMAN GAMPETRO: Aye.

1 It's been moved, seconded, and approved.

2 Are there any other motions?

3 MR. WENDTLAND: Chapter 6.

4 BOARD MEMBER KOLKMAN: Okay. Chapter 6
5 too. I make a motion to accept the changes in Chapter 6
6 and move that forward for rulemaking as well.

7 BOARD MEMBER MACKER: Second.

8 CHAIRMAN GAMPETRO: Been moved and seconded
9 to accept the changes in Chapter 6 and move that forward.
10 All those signi -- all those in favor, signify by saying
11 aye.

12 BOARD MEMBER KOLKMAN: Aye.

13 BOARD MEMBER MACKER: Aye.

14 CHAIRMAN GAMPETRO: Any opposed? Seeing no
15 opposed, it is passed.

16 MR. WENDTLAND: Mr. Chairman, that
17 concludes our rule packages for the day. We do have an
18 Other category, and I have just a couple of general
19 business items that Craig and I would like to go over with
20 the Board, if we could.

21 CHAIRMAN GAMPETRO: Sure.

22 MR. WENDTLAND: First one is is right now I
23 think the Board is full, and the terms are not -- I don't
24 believe anyone is expiring soon.

25 MR. HULTS: We have two members,

1 Administrator Wendtland and Board Members, two members in
2 2023 -- would be September 30, 2023. Would be Gene
3 Legerski and John Hines, their terms to be expiring. But
4 we've got a year yet.

5 MR. WENDTLAND: So Mr. Chairman, yeah, with
6 your board members -- next year we will have those two
7 coming up, for information purposes.

8 And then the second item of business is is in our
9 next meeting we'll run that one virtual. We're going to
10 try to at least have one meeting in person a year. We
11 think that's prudent. But we'll hold a December meeting
12 virtual. And usually at the December meeting that's when
13 we set the board chair and the various positions. So I
14 would just encourage the Board to be thinking about those
15 as we move to the December meeting.

16 Mr. Chairman, you're always welcome to continue
17 to be the chairman as long as you choose, I'm sure, but I
18 know there's a vice chair position and those things, and
19 if -- just have folks thinking along those lines between
20 now and December.

21 Craig, did we have anything else?

22 MR. HULTS: Mr. Wendtland, we did -- should
23 probably just remind everybody we had tentatively scheduled
24 the next meeting for December 15th. I don't know if
25 there's any discussion on that at this point? But that was

1 the schedule we had set tentatively earlier this year.

2 CHAIRMAN GAMPETRO: Natalia, any comments
3 on the schedule?

4 BOARD MEMBER MACKER: That timing works me.

5 CHAIRMAN GAMPETRO: Dawn?

6 BOARD MEMBER KOLKMAN: Myself as well.

7 CHAIRMAN GAMPETRO: Fine with me.

8 MR. WENDTLAND: Mr. Chairman, I think that
9 concludes DEQ's portion. If the Board has any other
10 business, that's certainly at your pleasure.

11 CHAIRMAN GAMPETRO: Any other business that
12 anyone wants to bring before this Board, now would be the
13 time to speak up.

14 BOARD MEMBER KOLKMAN: Mr. Chairman, I was
15 just going to ask about Chapter 9 on the agenda, as spoken
16 to.

17 MR. HULTS: Yes. I completely ran by that.

18 MR. WENDTLAND: Mr. Chairman, our
19 apologies. I was so focused on the other two rule
20 packages, I totally missed. My absolute apologies. We do
21 have one more rule package.

22 MR. HULTS: My apologies as well. And
23 thank you, Board Member Kolkman.

24 We did have a comment, and let me pull it up
25 quick. This is related to the inert materials. We had one

1 comment from one of our employees in the Lander office.
2 Just going to bring it up here quick. This, again, is our
3 reference in relationship to the inert materials.

4 Our coworker in Lander had pointed out, and
5 we had discussed this during the previous meeting, that
6 this could apply to small mining operations. He had
7 pointed out that in Chapter 9, which is our small mine
8 chapter, it stated that the sections in Chapter 2 did not
9 apply to small mine applications. So we added a clarifying
10 piece to the sentence here that now reads this chapter sets
11 out the information required for small mine permit
12 applications, the requirements of Chapter 2, regular
13 Noncoal mine permit applications shall not apply to
14 small mine operations except the application requirements
15 for the use of inert materials as backfill contained in
16 Section 2(b)(iii)-(b)(vi), which is a reference back to
17 Chapter 2.

18 And I totally apologize for missing that.

19 MR. WENDTLAND: My apologies too. I was so
20 focused on the other language. Mr. Chairman, my sincere
21 apologies.

22 CHAIRMAN GAMPETRO: I didn't catch it,
23 either, because I can't bring it up on my screen.

24 MR. WENDTLAND: So Mr. Chairman, we are
25 asking for this change, for the Board to review this change

1 as well, and make a motion to accept the change and move
2 this chapter, as well, forward so it coordinates correctly
3 with the Chapter 2 changes.

4 CHAIRMAN GAMPETRO: We will accept that.
5 Any motions at this point?

6 BOARD MEMBER KOLKMAN: Mr. Chairman, I make
7 a motion to accept the changes and move this forward for
8 rulemaking.

9 BOARD MEMBER MACKER: Second.

10 CHAIRMAN GAMPETRO: All those in favor of
11 this change -- any discussion on this change?

12 MR. WENDTLAND: Mr. Chairman, you may want
13 to back up one more and open it for public comment real
14 quick too.

15 CHAIRMAN GAMPETRO: We will open it for
16 public comment. Speak now or forever hold your peace.
17 Okay.

18 BOARD MEMBER KOLKMAN: Mr. Chairman, I make
19 a motion to accept the changes as made and move this
20 forward for rulemaking.

21 CHAIRMAN GAMPETRO: Thank you.

22 BOARD MEMBER MACKER: Second.

23 CHAIRMAN GAMPETRO: All those in favor of
24 this change, please signify by saying aye.

25 BOARD MEMBER MACKER: Aye.

1 BOARD MEMBER KOLKMAN: Aye.

2 CHAIRMAN GAMPETRO: Aye.

3 Any opposed?

4 Hearing none, it passes.

5 MR. WENDTLAND: Mr. Chairman, thank you.

6 And, again, thank you for indulging our error today. And
7 the board members as well. Again, my apologies. I do not
8 have -- the Division does not have anything further for the
9 Board today.

10 CHAIRMAN GAMPETRO: Any other issues,
11 business to come before this Board, please signify right
12 now by letting me know.

13 Hearing none, the meeting is adjourned.

14 (Meeting proceedings concluded
15 10:54 a.m., September 22, 2022.)

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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 11th day of October, 2022.


KATHY J. KENDRICK
Registered Professional Reporter

