

1                   BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
2                   LAND QUALITY DIVISION

3 -----  
4 HEARING TO DISCUSS PROPOSED REVISIONS TO LQD'S IN SITU  
5 REGULATIONS CONTAINED IN NONCOAL CHAPTER 11 AND COAL  
6 CHAPTER 18  
7 -----

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9                   TRANSCRIPT OF HEARING PROCEEDINGS

10                   Transcript of Hearing Proceedings in the above-  
11 entitled matter before the Department of Environmental  
12 Quality, Land Quality Division, commencing on the 12th  
13 day of September, 2017, at 10:00 a.m. at the Wyoming  
14 Contractors Association Regional Training Center, 2220  
15 Bryan Stock Trail, Classroom 10, Casper, Wyoming, Mr. Jim  
16 Gampetro presiding, with Board Members Mr. Philip  
17 Dinsmoor, Mr. John Hines and Mr. Michael Shober in  
18 attendance, with Ms. Natalia Macker appearing  
19 telephonically.

20                   Also in attendance were Mr. Craig Hults,  
21 Ms. Carol Bilbrough, Mr. B. J. Kristiansen, Mr. Kyle  
22 Wendtland, Mr. Mark Rogaczewski, Ms. Brandi O'Brien,  
23 Mr. Gilbert Yapo, Mr. Ken Garoutte, Ms. Dawn Kolkman,  
24 Ms. Shannon Moodry, Mr. John Cash, Ms. Lori Stegink and  
25 Ms. Shannon Anderson.

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

2 (Hearing proceedings commenced  
3 10:00 a.m., September 12, 2017.)

4 CHAIRMAN GAMPETRO: The meeting is now in  
5 session. The first thing on the agenda is the approval  
6 of the minutes from the last meeting. Let me look and  
7 see if I'm accurate on that. I think that is.  
8 Introductions. Why don't we start with Phil since you're  
9 way out on the end there. Everybody please introduce  
10 yourself, who you're with, and we'll go from there.

11 MR. DINSMOOR: My name is Phil Dinsmoor.  
12 I'm with Peabody Energy, the industry representative on  
13 the Land Quality Advisory Board.

14 MR. SHOBER: Mickey Shober, Campbell  
15 County commissioner. I represent the public official, is  
16 technically what it is.

17 CHAIRMAN GAMPETRO: I'm Jim Gampetro. I'm  
18 a public representative on the committee.

19 MR. HINES: John Hines, Campbell County,  
20 representing agriculture.

21 MR. WENDTLAND: Kyle Wendtland, the  
22 administrator of Land Quality.

23 MR. HULTS: Craig Hults, Land Quality  
24 Division.

25 MR. KRISTIENSEN: B. J. Kristiansen, Land

1 Quality in Sheridan.

2 MR. ROGACZEWSKI: Mark Rogaczewski, Land  
3 Quality Division, District 3, out of Sheridan.

4 MR. GAROUTTE: Ken Garoutte, Cameco.

5 MS. KOLKMAN: Dawn Kolkman, Energy Fuels.

6 MR. YAPO: Gilbert Yapo, Land Quality.

7 MS. MOODRY: Shannon Moodry with Land  
8 Quality in Sheridan.

9 MR. CASH: John Cash with Ur-Energy.

10 MS. STEGINK: Lori Stegink with Strata  
11 Mine.

12 MS. O'BRIEN: Brandi O'Brien with Land  
13 Quality.

14 MS. ANDERSON: And I'm Shannon Anderson  
15 with Powder River Basin Resource Council.

16 CHAIRMAN GAMPETRO: Thank you all very  
17 much.

18 We can now entertain a motion to approve the  
19 minutes from the June 13th advisory board meeting.

20 MR. HINES: So moved.

21 MR. DINSMOOR: Seconded.

22 CHAIRMAN GAMPETRO: It's been moved and  
23 seconded. All those who approve of those meeting  
24 minutes, please signify by saying aye.

25 (All members vote aye.)

1 CHAIRMAN GAMPETRO: Opposed?

2 (No response.)

3 CHAIRMAN GAMPETRO: Approval passes.

4 We're ready for the annual election of the  
5 advisory board officers. Do we have any nominations?

6 MR. DINSMOOR: I move to continue our  
7 current leadership with Chairman Gampetro.

8 MR. SHOBER: Second.

9 CHAIRMAN GAMPETRO: Any other nominations?

10 (No response.)

11 CHAIRMAN GAMPETRO: Seeing none, I guess  
12 we could approve that by acclimation.

13 MR. SHOBER: By default, whatever you  
14 would like to call it.

15 CHAIRMAN GAMPETRO: How about vice  
16 president? We do have a vice president.

17 MR. SHOBER: Who is currently the vice  
18 president?

19 CHAIRMAN GAMPETRO: Who is currently the  
20 vice president? I think he's gone. I don't think we  
21 elected another vice president.

22 MR. WENDTLAND: No. I think you're free  
23 to nominate and move forward with whoever you would like  
24 that to be, Mr. Chairman.

25 CHAIRMAN GAMPETRO: Let's have a

1 nomination.

2 MR. WENDTLAND: I would nominate  
3 Mr. Dinsmoor.

4 MR. SHOBER: I'll second.

5 CHAIRMAN GAMPETRO: Any other nominations?

6 (No response.)

7 CHAIRMAN GAMPETRO: Seeing none, again, by  
8 acclimation, you're it, Phil. Congratulations.

9 MR. SHOBER: Congratulations.

10 CHAIRMAN GAMPETRO: I don't think we have  
11 any other officers on this board. Seems like a long time  
12 ago, we had a secretary. But the secretary really  
13 doesn't do anything.

14 MR. WENDTLAND: No. I think it's --  
15 Mr. Chairman, my recommendation would be for a chair and  
16 vice president or co-chair so that if we have someone  
17 absent, we still have a quorum and can move forward.

18 CHAIRMAN GAMPETRO: Sounds good to me. If  
19 everybody is happy with that, we'll move on.

20 MR. WENDTLAND: Natalia, can you hear us a  
21 little bit?

22 MS. MACKER: I can hear you wonderfully.

23 Thank you.

24 MR. WENDTLAND: We'll go with that until  
25 we can improve our technology.

1 MS. MACKER: Sounds good.

2 CHAIRMAN GAMPETRO: Okay. Natalia, can  
3 you hear me?

4 MS. MACKER: I can.

5 CHAIRMAN GAMPETRO: I just want to update  
6 you on what has occurred. We went forward because we  
7 have a quorum. Everyone has introduced themselves, so  
8 we'll start with your introducing yourself.

9 MS. MACKER: Natalia Macker, public  
10 representative, Teton County.

11 CHAIRMAN GAMPETRO: Thank you. We've  
12 approved the minutes from the June 13th meeting. Did you  
13 have any comments or questions or changes on that?

14 MS. MACKER: I did not. Thank you.

15 CHAIRMAN GAMPETRO: And we've had the  
16 annual election of the advisory board officers. I was  
17 tagged to stay here and be the chairman, and Phil  
18 Dinsmoor is now the vice chairman.

19 MS. MACKER: Excellent.

20 CHAIRMAN GAMPETRO: So we're ready to go  
21 over the in situ rules presentation and discussion of the  
22 proposed revisions to the Land Quality Division's in situ  
23 regulations contained in the noncoal Chapter 11 and coal  
24 Chapter 18. Who is going to lead that discussion?

25 MR. KRISTIANSSEN: I will lead the

1 discussion on that topic.

2 CHAIRMAN GAMPETRO: Thank you.

3 MR. KRISTIANSEN: All right. We'll  
4 discuss Chapter 18, primarily. Chapter 18 was the one  
5 that was most modified. Chapter 11's modifications  
6 were -- have been calculated and created over a fairly  
7 long period of time. In the Chapter 18 rules and  
8 regulations -- excuse me. The chapter itself had not had  
9 a lot of improvement or much done to it over quite a few  
10 years. And so what I want to do is summarize the  
11 proposed revisions to Chapter 18 to give us a sense of  
12 where we're at right now with the rules and regulations  
13 and what we see in the future.

14 The history of the chapter is varied. In 2002  
15 Chapter 18 was last updated. From that point on, it was  
16 not updated, regardless of some of the information we got  
17 in later, because it didn't seem to be of highest  
18 priority at that point in time. There were no  
19 applications that existed at that time. There were no  
20 active permits. And we didn't know of any plans, any  
21 straightforward plans, to actually create in situ coal  
22 mining through the UIC program. Chapter 18 also wasn't  
23 updated in 2005 when there were major changes to some of  
24 the federal UIC regulations expounded by the EPA.

25 Link Energy got involved in the picture when

1 they first put in for their permit. And then subsequent  
2 to that, they made us have to stand up and take a look at  
3 Chapter 18 and the way it was put together. It didn't  
4 seem to fit very well for a lot of these topics that came  
5 up and a lot of proposals that showed up at our doorstep.  
6 So we had to take a good, hard look at the chapter at  
7 that point in time.

8 About 2009 Link approached us to obtain a  
9 permit for their underground coal gasification project.  
10 During the early discussions, we noticed a lot of  
11 deficiencies in Chapter 18 and some significant ones.  
12 There were some areas where there was not good agreement  
13 between Chapter 18 and some of the other rules, and there  
14 were other places where there were major deficiencies we  
15 had to correct.

16 For example, Chapter 18, Section 2(a) refers to  
17 the coal chapter, 2 (a)(vi). There is no 2(a)(vi). And  
18 so that was simply an outdated reference. So utilizing  
19 that to calculate what we needed to bring into the rules  
20 by reference didn't work very effectively.

21 The definitions are not specified, either, for  
22 underground operations, not very clearly in Chapter 18  
23 nor in Chapter 1 of the coal regulations. For example,  
24 there wasn't any terminology or anything in place in the  
25 definitions that would describe what an excursion was.



1 At the point in time these were created in 2002 and  
2 moving forward at that point in time, we had no -- most  
3 of us didn't know what an excursion was. It was a fairly  
4 uncommon occurrence that was primarily coming from  
5 uranium ISL operations, and we just did not have any in  
6 the state at that point in time other than some of these  
7 smaller operators that were busy working on the southern  
8 part of the Powder River Basin.

9 Chapter 18 did not contain a section of well  
10 construction on producing mechanical integrity or aquifer  
11 exemption concepts. Those are some of the major problems  
12 that occurred in Chapter 18. By and large, a lot of  
13 these are very significant to law. And so what we had to  
14 do was take a good, hard look at what did not exist and  
15 then try to cover all these different concepts that were  
16 not involved in the chapter itself.

17 There were also ambiguities in Chapter 18.  
18 Some of the references didn't seem to make a lot of  
19 sense. Some of the language and the verbiage appeared  
20 like it was cut and pasted together. And so what we were  
21 trying to do is also create a document that was at least  
22 easy to understand and simple to work with.

23 So, at that point in time, what we decided with  
24 Link was to use Chapter 11, the in situ mining for  
25 noncoal, as a guide for permit application as well as the

1 applicable sections in the Environmental Quality Act.  
2 We're utilizing a noncoal in situ mining concept to do it  
3 for the coal in situ concept, and there are some major  
4 differences between those two ways of looking at the  
5 different rules and regulations.

6           What we see in that is the fact that we're  
7 dealing with a liquid in one and a gas in the other one.  
8 And, by and large, they behave differently. The wells  
9 are the same, and downhole essentially is the same, the  
10 conditions of cementing in your well, your well UIC  
11 implementation and that. But, unfortunately, the  
12 secondary effects from whether it be water or gas were  
13 something we weren't allowed -- or, we couldn't take into  
14 account.

15           So why now? Why do we do this now? Link  
16 received their development testing license in 2014.  
17 Though there were a lot of other issues besides some of  
18 the deficiencies in Chapter 18, the lack of any kind of  
19 updated in situ coal mine regulations caused some delays  
20 in the permit review and also caused some delays in the  
21 approval process. And so, based on the fact that we were  
22 working with a document that had been kind of grabbed  
23 from different pieces of other documents and attempted to  
24 make that something usable, we found a lot of  
25 deficiencies in the document itself as we were trying to

1 implement it.

2           And, by and large, a lot of these weren't  
3 obvious at first. As we began going down through  
4 Chapter 18, some of those areas that we didn't think were  
5 a big deal began to show up glaringly when we actually  
6 had a UCG program that we were taking a look at. There  
7 were some concepts there in underground -- in the coal  
8 gasification process that did not fit from that  
9 Chapter 11 noncoal. And so what we had to do is step  
10 back and evaluate where are we at in this point? Can we  
11 get some agreement on what we need to do and then move  
12 forward with what the content needs to be?

13           The Chapter 11 regulations were also being  
14 updated over these last number of years. And so, since  
15 those are being updated simultaneously, it seemed like it  
16 would be mostly effective to work with both in situ  
17 mining operations, whether it will be coal or noncoal.

18           So the following changes in this package we see  
19 here were initiated by a lot of the accounts that we have  
20 from the end of the program for the Link Energy  
21 permitting process, a lot of deficiencies we found in  
22 that process, and a lot of suggestions that were made by  
23 all kinds of folks. All kinds of stakeholders actually  
24 had input into this thing.

25           First of all, we had to update the regulations

1 to be consistent with the Environmental Protection  
2 Agency. The underground injection control regulations  
3 for Class III wells were the ones that we were looking at  
4 for the EPA regulations. We had to reorganize the  
5 chapter to correlate with other key LQD regulations so  
6 that they were in approximately the same location within  
7 the document so that if Chapter 14 was talking about  
8 drill hole reclamation in coal, we would hope that  
9 Chapter 14 would talk about drill hole reclamation in  
10 noncoal. So what we're trying to do is get these  
11 reorganized so they line up fairly effectively across the  
12 two different sets of regulations.

13 We also want to make these consistent with the  
14 other regulations that we have that we work with over  
15 time, different regulations that are pertaining to well  
16 construction, abandonment, aquifer exemption boundaries  
17 and concepts. What we needed to do was make sure there  
18 was consistency there across the regulations so they  
19 weren't getting mixed messages.

20 Also trying to include best management  
21 practices in the regulation itself. Very specific to in  
22 situ coal mining, underground coal gasification is  
23 considered coal mining for our context. And so we wanted  
24 to make sure that the best practices available were  
25 actually in the law itself.

1           We also needed to bring in some administrative  
2 experience from different sides of LQD and other agencies  
3 and groups of individuals who we're dealing with, trying  
4 to utilize past experience in in situ mining programs to  
5 get enough information that we could come up with good,  
6 practical applications for Chapter 18.

7           Some of the major modifications are, first one,  
8 to increase the length of the document from 9 pages to 46  
9 pages. It mirrors the revision of Chapter 11 and the  
10 Chapter 11 program that took place in order to update  
11 that. So what we're doing in the process of bringing in  
12 a lot of Chapter 11 sections would increase the size of  
13 the document.

14           I would say it's not necessarily an  
15 accomplishment that we increased it, but it is a  
16 reflection of how much we think was missing out of the  
17 document itself and how difficult it was to work with the  
18 original document. Because there were a lot of these  
19 things, they weren't in place. And so we had to do the  
20 best we could with what we had, making sure that the in  
21 situ regulations within LQD, both 11 and 18, were  
22 consistent in how they were presented, how they were  
23 utilized and what approaches were going to be taken in  
24 order to live up to those regulations.

25           Had to update the relevant UIC permitting

1 requirements. A lot of the UIC stuff that had been  
2 required by EPA, for example, in the past was fairly old,  
3 and there were a lot of concepts that come into being  
4 from the noncoal in situ operations. And so what we had  
5 to do was make sure we were still relevant to what the  
6 EPA was doing. We're trying to reorganize the chapters  
7 to be more consistent, as I said before, with Chapter 11,  
8 as well as the coal regulations, Chapter 2, which is  
9 permit applications.

10 We needed to make sure a lot of this was  
11 included in Chapter 18. There were a lot of, I should  
12 say, blank spots in the document that related to  
13 Chapter 2. Some of the references that were made that we  
14 saw earlier that reference parts of Chapter 2  
15 specifically no longer exist because Chapter 2 has been  
16 in the process of updating itself. And so we got away  
17 from that document further and further as time went by.

18 We're trying to revise these regulations to be  
19 very consistent with current practices that are being  
20 utilized in the field. We were utilizing referencing for  
21 some of these rules and regulations and referring to  
22 other regulations in the process, other statutes, so we  
23 might have the influences as applicable. What we're  
24 trying to do is make it consistent with all the programs  
25 out there that are working in these kinds of arenas. And

1 so we want to make sure that we're all in the same boat  
2 for underground coal.

3           Here's a real simple side-by-side table of  
4 contents. The first page isn't quite as daunting as the  
5 second page. But what it does is it tries to help  
6 outline where the different sections went. Section 1,  
7 for example, definitions, that was simple. We left that  
8 in place. We put a couple of new definitions in there,  
9 but we left that as part of the chapter.

10           Number 2, the general requirements for the  
11 regulation, we left that in place as well because it was  
12 not -- it wasn't as deficient as we had thought it might  
13 be initially, so we left it alone. We put a couple of  
14 modifications, a little bit of language in there to make  
15 it a little bit more appropriate, a little bit more  
16 modern. But, by and large, it's essentially the same  
17 thing.

18           Getting into Section 3 is when we began to open  
19 this up. Section 3 covered permit applications and  
20 everything related to it in Chapter 18. So we had to  
21 rely on Section 3 for any of the information we needed to  
22 permit a mine for Chapter 18. And so what we have done  
23 with this is we have opened up Section 3 into Sections 3,  
24 4, 5 and 6 and specifically addressed issues that were in  
25 Section 3 and given them their own section number so that

1 we can take a good, hard look at those on a one-by-one  
2 basis.

3           You see right there some of what we consider to  
4 be the most important applications were the adjudication  
5 files. Pretty critical in a lot of the permits and  
6 documents that we work with. Some of the baseline  
7 information had to be defined. We had the mine operation  
8 plan or the mine plan that also had to be narrowed down  
9 and identified. And then we had the reclamation plan,  
10 finishing out with the Section 6. Section 5 then moved  
11 over to 7.

12           Here's the second page of this. I'm not going  
13 to go over this in any detail. I will have a  
14 presentation of this particular talk. I'll put it into a  
15 PDF file and make it available so you can take a look at  
16 this later to get a sense of what's changing here. We  
17 began moving things into different sections, and we also  
18 came up with all the new sections that I described  
19 earlier that correlate to Chapter 11, noncoal.

20           Some notable new definitions where we needed  
21 what we considered to be more clarity. Baseline versus  
22 background is an interesting concept. Land Quality  
23 Division utilizes those two concepts in a slightly  
24 different manner than, for example, the federal  
25 government does, quite a bit different than the EPA does



1 and, in some cases, different than other aspects of other  
2 agencies. What we utilize baseline for is information  
3 generated prior to any mining taking place. It's  
4 pristine information. Baseline data is to reflect the  
5 conditions as they exist prior to any disturbance to the  
6 environment at all whatsoever. And so that information  
7 is gathered and produced and created, placed into the  
8 permit application.

9           Once mining commences, baseline data ceases to  
10 exist. We utilize that data set to determine what it  
11 was, but then we begin to modify our gathering of data  
12 and putting that into what we call background  
13 information. Background information is what happens  
14 during mining. And you can see these short-term and  
15 long-term effects for background as you observe the wells  
16 and see what's taking place. And this is the kind of  
17 thing that we have to be careful of, because background  
18 information takes a very long period of time to generate.  
19 Coal mines, not nearly as difficult to get that database  
20 because they've been in operation for a very long period  
21 of time. But the newer in situ mines are a lot more  
22 difficult because we don't have a lot of background  
23 information. We're getting it now. We're gaining at  
24 this point in time.

25           Class III well. We wanted to make sure that we

1 defined this as openly as we possibly could that would  
2 relate to some of the definitions we're utilizing of what  
3 constitutes a Class III well. We have made these  
4 consistent now with some of the other agencies, and we've  
5 also made it consistent with the Water Quality Division  
6 rules and regulations.

7 Mechanical integrity also has been modified to  
8 include recovery and monitor wells as well as injection  
9 wells. And so recovery and monitor wells could be  
10 classified as Class III wells if they're utilized for  
11 injection. And one of the aspects of the in situ mining  
12 we found is a lot of times they'll switch the operations  
13 in the wells. All the wells that are determined to be  
14 sufficiently adequate to pass their MITs can be utilized  
15 for injection. And we see the operators out there moving  
16 sometimes the flow within the well zone back and forth  
17 based upon where they're injecting and where they're  
18 removing materials. And so what we're trying to do is  
19 open this up so all the wells that they do with  
20 mechanical integrity testing will be qualified to act as  
21 injection wells.

22 This one's a pretty big one, the underground  
23 source of water. The definition we're going to use in  
24 Chapter 18 is the one that we now have for noncoal,  
25 Chapter 11. This has been a point of contention between

1 LQD, Water Quality and the EPA. What we have in our  
2 definition that we're utilizing here, the underground  
3 source of water is very much more protective of sources  
4 of groundwater that may be used for other purposes than  
5 drinking water. EPA is only concerned with drinking  
6 water. They are not concerned about any other water.  
7 So, when they give the aquifer exemption, it's for what  
8 they consider to be a drinking water standard.

9 We have more purposes than that for the water  
10 we generally utilize in the in situ operation. This can  
11 be stock water. This can be wildlife watering when it's  
12 discharged into a pond. There are a lot of different  
13 uses that we have for the water that we encounter during  
14 in situ. So what we had to do was open up that  
15 definition of what we consider to be something worth  
16 protecting. And so, by doing this, by being more  
17 stringent than EPA, we've been able to cover a lot of  
18 those other applications that may not have been noticed  
19 in the past, so a rancher could still get his water.

20 Given the old rules and regulations, if it  
21 wasn't an underground source of drinking water, you  
22 generally couldn't get that back. It had to be filled  
23 in. So what we've done is we've made this a lot more  
24 tolerant of utilizations of water.

25 Also, upper control limits. Our term that's

1 usually related to data in the industry, the physical  
2 characteristics, the chemical characteristics of the  
3 materials that are being monitored are also included in  
4 the definition. Excursion detection differs very much on  
5 the well chemistry. Every well is not the same as any  
6 other well as far as geochemistry is concerned.  
7 Obviously, every well has it's own unique geochemistry.  
8 Some wells have a geochemistry that would indicate  
9 excursion because they're high in chlorides, for example.  
10 These are one of the targets we look for in excursion.

11           It may be high in chlorides because it's high  
12 in chlorides. It may be because that's what exists in  
13 that hole in that little area. There may be something  
14 different there. This would give you an excursion -- a  
15 false excursion report seeing those. And so what we had  
16 to do was begin to open up some of these upper control  
17 limit definitions to gain an idea of what we can use as  
18 excursion parameters. So they're almost on a well-field-  
19 by-well-field basis. And on a couple of mines that I've  
20 worked with, they're on a hole-by-hole basis, well-by-  
21 well basis, because of the difference.

22           Go ahead.

23                   CHAIRMAN GAMPETRO: You do have baselines  
24 on this to start with?

25                   MR. KRISTIANSEN: Yes, we do.

1                   CHAIRMAN GAMPETRO: So, if it's an  
2 excursion from the baseline, whatever the chemical  
3 situation is, you can tell?

4                   MR. KRISTIANSEN: Well, one of the  
5 problems you have with that is the baseline is data  
6 generated from a lot smaller number of holes. So, when  
7 we start putting the holes out in the well field,  
8 whatever it happens to be, we may pick up something that  
9 is really tiny, maybe the size of this room, for example.  
10 There's a sulfur or something like that in there that  
11 wasn't picked up in the baseline data gathering but is  
12 then picked up in the background. That's why we have  
13 that background in the equation, because then we can  
14 observe it over time. You have to act as if it's an  
15 excursion if it continues forward or determine what the  
16 chemical parameters are that are creating the  
17 geochemistry down there. But there are a lot of  
18 ramifications for these things, and so we're still  
19 working our way into this to the best of our ability.

20                   General requirements. The updated materials in  
21 Section 2 revised in two primary ways. The existing  
22 paragraphs that existed that were already in place, some  
23 of them were removed and placed in other parts of the  
24 rule. They didn't seem to fit very well in the  
25 chapter -- or, excuse me -- the section they were in. So

1 we picked them up and moved them into a different  
2 section. We updated the submittal requirements, what we  
3 had to have for submittal of information.

4           There were also new paragraphs in Section 2.  
5 We defined what a responsible corporate officer is. We  
6 had to have a definition in there that was binding so  
7 that we had someone that was responsible for signing a  
8 lot of these Form 1s, Form 11s and the other paperwork.

9           Concept of area permit, what that was. EPA has  
10 a concept of an area permit. It's not the same concept  
11 that we have, and so we had to redefine our concept to  
12 match that a little bit more closely.

13           And last but not least, surface owner access  
14 consent, very timely, a bone of contention in a lot of  
15 areas, as we've seen in the news. But we've incorporated  
16 that into Section 2 to take care of that access consent.

17           The adjudication, Section 3, as I said, is  
18 broken out into four sections on its own. 3, 4, 5 and 6,  
19 we discussed these previously. But those are the four  
20 that were created from Section 3. The new Section 3  
21 itself where it says "adjudication" is only adjudication.  
22 There's nothing else in there. It's much more like a  
23 coal permit in that respect, where we have very well  
24 defined sections of a permit application. We have broken  
25 down Section 3 to cover some of those things. So they're

1 more like coal permitting. There are a lot of  
2 similarities and a lot of very basic bits and pieces of  
3 information that come out of a coal permit that weren't  
4 coming out of this. So this really gives us a  
5 significantly greater document that we can work with.

6           Baseline information. We discussed baseline  
7 information in the new Section 4 and what requirements we  
8 have for permit application. We also require baseline  
9 information incorporated by reference to coal Chapter 2  
10 where it is applicable. Added very specific requirements  
11 pertaining to geology and groundwater. A lot of the  
12 geology and groundwater constituents from Chapter 18 were  
13 not defined.

14           Back in the day, when a lot of these permits  
15 were being put together, we didn't have a good handle on  
16 even the geology out there at the time. A lot of these  
17 permits were promulgated back in the '80s and '90s when  
18 the mines were going gangbusters and information was  
19 coming in overnight. We were getting information and  
20 data from the coal mines that just continually were  
21 coming at us in a barrage of information, all the permits  
22 out there, all the permit applications. And once it  
23 slowed down, we began to take a harder look at some of  
24 these. Also added some additional requirements related  
25 to the EPA's UIC program.

1           5 and 6, mine plan and rec plan, discussed the  
2 requirements for a mine plan. Very similar to what we  
3 see in coal mine permitting. The requirements that are  
4 shown in Chapter 2, coal Chapter 2, are also referenced  
5 in that particular section, 5 and 6. We updated the UIC  
6 program requirements, especially for the mine plan. We  
7 also promulgated additional regulations in Section 5 as  
8 was necessary after we had gone over the UIC program  
9 requirements and responsibilities of the operators and  
10 the State itself. No additional regulations in  
11 Section 6. It's a reclamation plan. And so we're  
12 utilizing what we had existing in the reclamation plan,  
13 plus Chapter 2, to make it more like coal mines, like I  
14 said.

15           R and D, development license applications. The  
16 regulations from the Section 5 were moved to this  
17 section. So the Section 5 that was broken down, part of  
18 it went off to a different part of the document, and the  
19 other part that was regulations that were related to the  
20 development license application -- R and D, I should  
21 say -- went to this particular election.

22           Minor revisions, we were doing updating  
23 referencing. There was some referencing taking place in  
24 the mine plan -- excuse me -- in the research and  
25 development licenses. And we had to update references so



1 they were on top of what we have right now. No new  
2 additional regulations in this section. Clarified and  
3 made good assumptions based on what we had in front of us  
4 that we were able to generate good baseline information  
5 as well as getting enough information to work with a  
6 permit.

7           This is where it gets kind of wordy. I'm going  
8 to go through this fairly quickly. As I said, you have a  
9 PDF file to look at later if you want to. Suffice it to  
10 say that these are all the new sections in here, Section  
11 8, 9, 10, 11 going through there. And they actually very  
12 specifically are being addressed in these different  
13 sections. And I put the Reader's Digest version on there  
14 as to what they are specifically related to. The one --  
15 I think the drill hole abandonment was one that we didn't  
16 have almost any guidance at all for in Chapter 18.  
17 Chapter 11 did to a certain extent, noncoal. But Chapter  
18 18 didn't have any abandonment procedures. And we have  
19 developed that over the last 15 to 20 years. We've  
20 gotten better and better and better at it.

21           And at the time that this was promulgated in  
22 the old language, there wasn't anything in the  
23 information base or anything else that we had that would  
24 indicate how to do this. And so we've incorporated the  
25 items that we see in the State Engineer's Office, Water

1 Quality office, EPA regulations, and blended them all  
2 together to be consistent with our regulations as far as  
3 hole abandonment.

4 12, 13, 14 and 15. Again, there are  
5 modifications there. We're utilizing sometimes new  
6 language, and sometimes we're utilizing new references.

7 16. I wanted to pull 16 out because it's been  
8 fairly heavily discussed in the past. It was one of  
9 those sections that we don't have a lot of requirements  
10 for right now, monitoring requirements for underground  
11 coal gasification. And so what we decided to do was  
12 bring this into its own section and make it very  
13 substantive so there's something there we could work  
14 with, based in part from the Link Energy application and  
15 the Link Energy utilization of their permit. There was a  
16 lot of information there we did not have when we first  
17 started with the Link process that we had after a three-  
18 or four- or five-year period. You know, put it into our  
19 database, into our data set that we're going to be able  
20 to utilize.

21 Brought some text in from noncoal Chapter 11  
22 that wasn't related to ISR. It related to other in situ  
23 programs but not related to ISR specifically.

24 Last but not least, we utilized some Department  
25 of Energy information created by the University of

1 California in teaming up with Lawrence Livermore National  
2 Laboratory and what the best practices were for  
3 underground coal mine gasification. This is a hot link  
4 right here. If you get to this point in the PDF file,  
5 this link will go to that particular document right  
6 there. So the document will open up, and you can take a  
7 look at the document, see what's inside of it and see  
8 what we're going to try to utilize for this particular  
9 chapter. It's all-encompassing. It's fairly effective.  
10 It's pretty well put together. There's a lot of  
11 information there we did not have before because there  
12 just was not any generated until that point in time.

13           The last section is 17 through 21. Again, we  
14 have changes taking place to these sections related to  
15 all these different -- you know, records in Section 17,  
16 we were one of -- finding out that the records-keeping in  
17 Chapter 18 wasn't very well defined as to what we had to  
18 have as far as paper was concerned. So we had to  
19 formalize some of that stuff.

20           Public notice hearing comments and decisions.  
21 What we had to do was make ours more compatible with the  
22 EPA UIC program as well as our own regulations in other  
23 aspects and other chapters and try to make these all  
24 consistent among themselves so that we have the same  
25 requirements for public notice hearing and comment

1 decision process.

2           Last but not least, we have confidential  
3 records brought out into their own section. Confidential  
4 records are something that we maintain fairly strictly.  
5 We have locked file cabinets that we keep these in so  
6 that we don't have some of these being perused by the  
7 competitors for the companies that are trying to utilize  
8 this information. When they're in the expiration phase  
9 particularly, there are a lot of constraints that they  
10 have and a lot of bits and pieces of information they're  
11 trying to generate that is proprietary to that company  
12 and some of their expertise that they've developed over  
13 the decades. So, in most cases, we have to keep this  
14 confidential until such time as the permit is issued and  
15 much of this is brought into the permit.

16           That is the presentation in a nutshell.  
17 There's now time for questions.

18           MR. WENDTLAND: Mr. Chairman, what I would  
19 recommend to the board is that we address the Chapter 18  
20 items first. B. J. indicated there's a lot of links  
21 between that and Chapter 11. But we do Chapter 18, and  
22 then I'll have Craig highlight the Chapter 11 changes if  
23 we need some assistance from Brandi O'Brien to do that as  
24 well. But I think in order to kind of walk through them  
25 in a reasonable fashion here, I would suggest we look at

1 18 first and then 11.

2 CHAIRMAN GAMPETRO: Does that work for  
3 what you were going to ask, John?

4 MR. HINES: Yes, I think so, Mr. Chairman.  
5 My questions have been on Chapter 11. So we'll come back  
6 to that.

7 MR. DINSMOOR: Mr. Chairman, I have a lot  
8 of questions, I guess. But I don't want to monopolize if  
9 there's any other discussion that needs to occur in the  
10 course of my questions.

11 CHAIRMAN GAMPETRO: Go with Mickey first?

12 MR. SHOBER: I don't have any questions  
13 right now.

14 MR. DINSMOOR: First of all, there was  
15 a -- B. J., you made a comment about this qualifies as  
16 coal mining, and I believe you said something like "under  
17 our program" or whatever. I'm uncertain as to how -- how  
18 this relates to the OSM primacy program. And I'm asking  
19 the question primarily from a liability standpoint that  
20 is as a representative of a coal mining company. The  
21 primacy the State of Wyoming has is very important to us,  
22 and anything that could potentially jeopardize that  
23 becomes a head-scratcher.

24 So I'd like to ask whether or not OSM, through  
25 SMCRA, also recognizes this as coal mining and,

1 therefore, is this a liability under that program?

2 MR. KRISTIANSEN: I have to defer to Kyle  
3 or Mark.

4 MR. ROGACZEWSKI: Yes. OSM -- this is in  
5 the CFR. Underground coal gasification is a requirement  
6 for our primacy through that program. So it is  
7 considered coal mining through OSM's SMCRA program and  
8 the CFR.

9 MR. WENDTLAND: Thank you, Mark.

10 MR. DINSMOOR: The follow-on to that is,  
11 if it's considered necessary for primacy, are all of  
12 these changes reviewed and approved by OSM at this point  
13 in time, or is that process still to be navigated?

14 MR. WENDTLAND: Member Dinsmoor, what  
15 happens is we go through this process, and we go through  
16 the EQC. Then the governor would sign, and we coordinate  
17 a review prior. But, when we put them out, then OSM has  
18 to do their review as well and make sure we're in  
19 compliance. So there is a process for that. We've been  
20 through that process with coal rules a number of times.  
21 So I don't see that we would change that process for  
22 working these through.

23 MR. DINSMOOR: Typically, it's been my  
24 understanding, though, that you might speak with OSM kind  
25 of in an unofficial way and say, "This is where we're

1 headed. Any concerns?" Has that kind of conversation  
2 occurred?

3 MR. WENDTLAND: Not until we get through  
4 the advisory board. But, when we get to where we're  
5 going to go to the EQC and we have something final that  
6 we can propose, yes, then we'll start that engagement  
7 with OSM.

8 MR. DINSMOOR: Thank you.

9 MR. WENDTLAND: Mr. Dinsmoor, I'm going to  
10 back up, though. OSM is not current with their program  
11 amendments like this, though. So we have -- we  
12 essentially are placed in a situation where we have to  
13 move forward within the State. Our last program  
14 amendment that is sitting with OSM has been sitting since  
15 2014. So, long answer to your question, if we want these  
16 rules to be in place and be functional, we need to move  
17 forward with the rule package, because OSM, I can't tell  
18 you when they would process this particular amendment.

19 MR. DINSMOOR: Will you be prohibited from  
20 using these?

21 MR. WENDTLAND: No. The answer is no.  
22 We've done this in the past with coal rules. If  
23 there's -- if OSM declines the program amendment, we can  
24 come back and address it then. But, like I said, OSM is  
25 not processing program amendments in a timely manner, so

1 we can't depend on the federal counterpart to get it done  
2 timely.

3 MR. DINSMOOR: I guess, then, that goes to  
4 the question about the status of any applications out  
5 there. Do you have any? There's reference to the Link  
6 Energy project. I don't know whether that was ever  
7 approved. Can you update us on that?

8 MR. WENDTLAND: Yeah. Board Member  
9 Dinsmoor, the Link Energy project was permitted under the  
10 R and D license. That license has since expired and is  
11 now in suspension. And Link is actually in forfeiture.  
12 We hold adequate bond to plug the wells. There is not a  
13 lot of surface disturbance. But we are working with  
14 credit trust, and they have indicated that they have a  
15 desire to plug and complete the reclamation on that site.  
16 So, at this point, Link Energy is somewhat of a moot  
17 point. These rules would be in place to address a new  
18 application, and we do not have any new applications on  
19 the plate at this point in time.

20 MR. DINSMOOR: Okay. Thank you for that.  
21 That really helps. One of the bigger concerns I had when  
22 I tried to review this -- and I have to acknowledge that  
23 I've not read everything that I feel I should have to act  
24 on these knowledgeably. And here's the dilemma. Every  
25 time you refer to something that I suspect or know is in



1 a Water Quality rule or EPA rule, I keep wanting to go  
2 and grab that Water Quality rule or that EPA rule and do  
3 some kind of a side-by-side or comparison or  
4 consideration. And I've been unable to do that. And I  
5 suspect that you guys did. And one of the biggest  
6 questions that I've not been able to resolve is the  
7 underground source of water.

8 Now, if I understood what B. J. said earlier,  
9 the underground source of water as compared to EPA rules  
10 was necessarily expanded in the State of Wyoming -- or,  
11 rather, in the Land Quality Division rule -- because the  
12 perception was that the EPA rule was limited only to  
13 drinking water sources. So then my question goes to the  
14 other leg of the triangle, which would be the Water  
15 Quality Division. And I would ask what's the  
16 relationship between the definition of the underground  
17 source of water in the proposed Land Quality rule and I  
18 presume an existing definition for the underground source  
19 of water in the Water Quality rule?

20 MR. WENDTLAND: B. J., would you like to  
21 answer that one?

22 MR. KRISTIANSEN: That's a good question.  
23 We've had discussion about this for a while now. Water  
24 Quality is a lot closer to EPA's classifications since  
25 Water Quality ultimately is responsible for the UIC

1 program and some of the aspects. And so a lot of theirs  
2 follows the USDW, the drinking water standards. We are  
3 kind of unique in the sense that we want to expand that  
4 from beyond what Water Quality and EPA are looking at.  
5 We're not necessarily sure we're in full agreement yet  
6 with how that's taking place. Got a lot of work to do on  
7 that among the agencies.

8 But, by and large, we came from a sense of  
9 direction that this board promulgated in 2005 and went  
10 ahead and made this protective of all uses. And we  
11 believe that this is something that we need to follow up  
12 on. So we are -- to a certain extent, we comply with the  
13 EPA as well as Water Quality. But, in some other  
14 extents, we don't reach the definitions they have. And  
15 we're trying to figure out how to approach that as far as  
16 relationships between the organizations.

17 CHAIRMAN GAMPETRO: Can I ask a question  
18 within this? Let me give you an example. You're going  
19 to protect the water quality of a well on my property  
20 which I am using to put on the ground for irrigation.  
21 It's not drinking water quality, but it's great for what  
22 I'm doing. If there's an excursion in that well that no  
23 longer makes it available or useful, usable to put on the  
24 ground for irrigation, let's say without adding some  
25 chemicals or whatever to fix whatever is wrong with it

1 now, would this be considered an excursion? Since the  
2 water quality has changed, it was never drinking water  
3 quality, but it was fine for irrigation, but now it's not  
4 fine for irrigation. Is this an excursion?

5 MR. ROGACZEWSKI: Mr. Gampetro, what we're  
6 going to be protecting is more stringent than EPA  
7 requires. Because you are seeing that it's going to be  
8 irrigation, not drinking. And if your well was actually  
9 in the same coal seam to be burned, we would actually  
10 have the company plug your well and provide you another  
11 water source for that irrigation water either above that  
12 aquifer-exempted coal seam or below it.

13 So, in that aquifer exemption boundary, if you  
14 can imagine a big square in your irrigation water or your  
15 stock water well is in that same coal that's been  
16 exempted through the EPA aquifer exemption process, you  
17 are now protected for that, and the company must come in  
18 and plug it.

19 CHAIRMAN GAMPETRO: So, if it's changed by  
20 something that the company does, it's an excursion.

21 MR. ROGACZEWSKI: Well, actually, your  
22 well would no longer exist in that -- and it would be  
23 replaced by our rules and regs so that you don't lose  
24 that water, but they can go on and mine with this  
25 underground coal gasification. Your well would be

1 replaced before they actually even get in there. And  
2 that is also required in our uranium in situ operations.  
3 We have one in southern Johnson County, a livestock well  
4 that was within the boundary. Before they can even start  
5 drilling and putting the wells in place for any  
6 production, it was required by our rules and regs to have  
7 that plugged and that water source replaced by the  
8 applicant for that uranium in situ mine.

9           So your well cannot actually receive an  
10 excursion inside the aquifer exemption boundary because  
11 it would no longer -- under our rules, which are more  
12 stringent than EPA, it would not exist. You would have a  
13 different well in a different aquifer of similar quality,  
14 and you would not be affected as a rancher.

15           MR. WENDTLAND: Mr. Chairman and Board  
16 Member Dinsmoor, a couple of things you have to factor  
17 into this is Wyoming does not have primacy for its SDWA.  
18 So, therefore, it relies on EPA's definition, which is  
19 more nationally based. So, in this instance, we've had  
20 the experience with Link, and we have quite a bit of  
21 experience with in situ operations for uranium. It's an  
22 attempt to better protect those groundwater sources that  
23 may be for a domestic livestock well that may not meet  
24 the SDWA definition for EPA. That's where this  
25 regulation is -- rule and requirement is.

1                   I don't know if that helps, Board Member  
2 Dinsmoor. But you have to bear that in mind, that we  
3 fall under that EPA definition because Wyoming does not  
4 have primacy for SDWA.

5                   MR. DINSMOOR: I think that that -- yes,  
6 that certainly helps, and that provides part of the  
7 explanation for my concern. But my concern stems from  
8 this. The Land Quality Division is a unique sort of  
9 program in the United States. There aren't too many that  
10 protect land uses and, therefore, the use of water in  
11 that land use and so on and so forth. Instead, they  
12 protect a specific resource, drinking water or air  
13 quality or something similar to that.

14                   So the use of the same definition in two  
15 programs, one that's resource-wide land use and one  
16 that's specific to a resource, a decision made by one  
17 agency using that definition could have a precedence, for  
18 lack of a better term, on the other agency, or vice  
19 versa. And there's a third agency in this triangle.  
20 That's where my question is coming from.

21                   MR. WENDTLAND: Well, Mr. Chairman and  
22 Board Member Dinsmoor, maybe another way to look at that  
23 is we still are working through the update of the MOU  
24 between Land Quality and Water Quality. And I think  
25 that's where you would find that clarification. I don't

1 see where there's a conflict between the programs because  
2 EPA still has the SDWA. This is above and beyond and  
3 outside. So I think that where that conflict that you're  
4 referencing -- or potential conflict maybe is a better  
5 way to phrase that -- that would best be addressed in the  
6 MOU between Land Quality and Water Quality. And you're  
7 right. The state engineer has a play in this because of  
8 the adjudicated water.

9 MR. DINSMOOR: As an applicant, when I go  
10 to the Water Quality Division and they make a  
11 determination with regard to the underground source of  
12 water, drinking water, is that determination in some  
13 way -- does that set a precedent with the Land Quality  
14 Division and prohibit you from pursuing all of your  
15 obligations under this wider population of resources that  
16 you're obligated to try and protect?

17 MR. WENDTLAND: Board Member Dinsmoor, if  
18 I understand your question correctly -- so bear with me  
19 if I don't -- if it falls under the SDWA definition, it's  
20 going to be regulated under the EPA quality standards.  
21 So we don't have a say, really, per se, in that, other  
22 than we have to default to that. So these would fall  
23 more under Wyoming's specific requirements for protection  
24 of the land use. And, like I say, if it's domestic  
25 livestock grazing and joint wildlife surface use, that's

1 what you're protecting.

2           So I don't -- I guess I don't see the conflict  
3 that you're seeing. I think I understand what you're  
4 asking, but I don't see where that conflict resides  
5 because of that lack of primacy in the SDWA.

6           MR. DINSMOOR: Okay. I'm going to have to  
7 let that one sink in, I guess. Thank you. Appreciate  
8 that. I've still got a list here if nobody else is --  
9 I'm a little concerned about the access issues that you  
10 talked about, B. J., in one of the sections. I don't  
11 remember which one. And my concern is very, very recent.  
12 Because I understand there was a court case that I know  
13 about that much about [indicating]. And that court case  
14 may or may not have impact on any rule that the Land  
15 Quality Division proposes. So I guess part of my concern  
16 would be whether or not that could be removed in  
17 deference to whatever that court case is. Or are there  
18 subsequent actions that we expect from that court case?

19           MR. WENDTLAND: Board Member Dinsmoor,  
20 I'll respond to that one. I know we did receive a letter  
21 just prior to the meeting from WMA on the Chapter 11  
22 issue with access consent. And I also am aware of the  
23 recent court ruling on the access or trespass law for  
24 Wyoming. Can't say that I've had enough time to digest  
25 what that actually means yet. But what I would recommend

1 to the advisory board is we would redact in Chapter 11,  
2 Chapter 18, that section of the access consent because of  
3 that uncertainty, and we would default to the director's  
4 policy on access right now until we get better  
5 clarification from the court what's ultimately going to  
6 happen.

7 I will say, though, in response to the WMA  
8 letter, that there is an inaccuracy that I would like to  
9 clarify for the record, and that is there's a statement  
10 in the letter that this was new to industry and they had  
11 not had opportunity to review it through the uranium work  
12 group. That language that is in Chapter 11 has resided  
13 in that document, and the work group's been working on  
14 that chapter since the 9th of August of 2016. So there  
15 is an inaccuracy in the WMA letter, that the industry did  
16 have opportunity, and they have reviewed this. I think  
17 it's more based on the recent court ruling from last week  
18 that there may be some disagreement on how to move  
19 forward with that.

20 So I'd just like to get that clarified for the  
21 record.

22 MR. DINSMOOR: I think it's the moving  
23 forward now as new things happen, and we have to respond.  
24 And I think maybe your suggestion is the approach we  
25 ought to consider.



1                   MR. WENDTLAND: My recommendation is we  
2 don't allow that to preclude moving forward with a vote  
3 on the rule packages today. I would just simply suggest  
4 we redact that piece and we default to the director's  
5 policy on trespass until we get clarification. Then we  
6 can come back in and readdress that.

7                   MR. DINSMOOR: Those are the two options I  
8 saw also.

9                   MR. WENDTLAND: And, Craig, I believe we  
10 can do that redaction. Is that correct?

11                  MR. HULTS: Yeah. It would be as part of  
12 the motion. If we decide to move forward with this, that  
13 would be one of the elements of it, that we would remove  
14 that until we had clarification and revisited it. So it  
15 would just be one of the revisions that was agreed upon  
16 during the meeting.

17                  MR. DINSMOOR: My next question maybe is a  
18 semantics issue. But, B. J., in your presentation, you  
19 talked about baseline, and you were very specific and  
20 said baseline is pristine conditions. And I think I want  
21 to take issue with that. I'm not sure if that's how it's  
22 defined anywhere. But baseline, in my experience, has  
23 always been considered the conditions that you encounter  
24 before you begin your mining operation or, in this case,  
25 your recovery, your goal gasification.

1           And so the surface, for example, the baseline  
2 conditions may be all disturbed. It could be a paved  
3 parking lot. It's not pristine, by any means. But it's  
4 the condition that you inherit when you come in.

5           MR. KRISTIANSEN: Yeah. Makes sense,  
6 yeah. When you get into, particularly now, with looking  
7 at groundwater in the eastern part of the Powder River  
8 Basin, you've got all those influences taking place. And  
9 so it's more and more difficult to get what you might  
10 consider to be baseline if we're looking at water that's  
11 not been affected at any point in time.

12           So it does get difficult and problematic like  
13 that. It's a point-by-point call, I think, depending  
14 upon what you're finding and where you're at. Trying to  
15 sit down, define the variables, see what kind of  
16 variables you need to modify or change and go from there.  
17 Tough, though, for baseline. Tough in some areas,  
18 particularly if you don't know it's been affected.

19           MR. DINSMOOR: And a really good example  
20 might be Chairman Gampetro's question, which is, he's got  
21 this stock well sitting there or this irrigation well  
22 sitting there on his property, and I come in with an  
23 application to set up an in situ operation or a coal  
24 gasification operation. The groundwater levels and  
25 groundwater quality in that area are what they are at the

1 time I come in, and he may have already lowered the water  
2 level by ten feet.

3 CHAIRMAN GAMPETRO: Phil, I wouldn't get  
4 hung up on the word "pristine." They are what they are.

5 MR. KRISTIANSEN: Probably shouldn't have  
6 used that word. It's indicative of a lot different  
7 than --

8 CHAIRMAN GAMPETRO: They're pristine in  
9 the sense that they are what they always have been, as  
10 far as we know.

11 MR. KRISTIANSEN: As far as we know.  
12 That's key right there.

13 MR. DINSMOOR: I'm getting near the end  
14 here. These are kind of small questions now.

15 In your conversation -- or, your presentation  
16 about responsible corporate officer, I was a little  
17 concerned about that because that term is, if not  
18 defined, at least well understood or well taken care of  
19 for all other forms of mining. Is it any different for a  
20 gasification project?

21 MR. KRISTIANSEN: I didn't work on that  
22 specific piece of it, so I don't have an answer for that.

23 MR. WENDTLAND: Mr. Chairman,  
24 Mr. Dinsmoor, I believe that it's more an artifact that  
25 that wasn't carried into that section of the rules. So

1 it was brought forward in clarification.

2 CHAIRMAN GAMPETRO: What I would think is  
3 that it's whatever is defined by the corporation. In  
4 other words, if you have the CEO define here are the  
5 people that can be considered corporate approvers of  
6 whatever it is, I don't see a problem with that as long  
7 as you get that approval from the corporate entity with  
8 which you are dealing.

9 MR. KRISTIENSEN: I don't know that the  
10 concept is even addressed in that area. I have a  
11 suspicion we're just bringing in some information here  
12 that helps clarify who is -- who you deal with. Here it  
13 says the responsible individual.

14 MR. DINSMOOR: No reason for us to believe  
15 it's any different than --

16 MR. KRISTIENSEN: No. I don't think so,  
17 no.

18 MR. WENDTLAND: It's just brought forward,  
19 Board Member Dinsmoor. It's just brought forward to  
20 clarify that that applies to UCG.

21 MR. DINSMOOR: We didn't see a section on  
22 bonding, and I'm wondering if -- I suspect I know the  
23 answer to this. But, with all the work on bonding rules  
24 right now, there's nothing in this proposed package that  
25 would cause those bonding rules not to be equally as

1 applicable to coal gasification as to any other bonding  
2 operation. Is that correct?

3 MR. WENDTLAND: That's correct. Board  
4 Member Dinsmoor, that's correct.

5 MR. DINSMOOR: And reporting -- there was  
6 a section on reporting. And I'm wondering if that is  
7 handled much differently than the reporting rules for  
8 other mining operations. Again, a lot of the reporting  
9 details are not handled in rule but are handled in  
10 guidance. And I see that as really helpful to the agency  
11 as well as to the industry because it can accommodate  
12 changes, as opposed to --

13 MR. KRISTIANSEN: Broad range, exactly.

14 MR. ROGACZEWSKI: Mr. Dinsmoor, what we  
15 are planning to do, since this is such a major change to  
16 Chapter 18, once these rules are hopefully approved, we  
17 are already working on, as you say, a guideline  
18 specifically how to put a UCG application together  
19 similar to our other Land Quality Division guidelines and  
20 then also then draft a specific UCG, underground coal  
21 gasification, annual report format. We have that for the  
22 bentonite operators. We have that for the uranium  
23 operators, sand and gravel. So we would follow that  
24 course once we have this as our anchor point to move  
25 forward.

1                   Hopefully that explains that a little bit  
2     better.

3                   MR. DINSMOOR: You bet. Thank you. Okay,  
4     last question. A hot link on a rule. Now, it's my  
5     understanding that hot links can change. And so, by  
6     promulgating a rule, are you setting something in stone,  
7     or could that change without your knowledge?

8                   MR. KRISTIENSEN: Board Member Dinsmoor,  
9     that is actually a demo from one of our slides. It's not  
10    part of the rule. It's just informational. It's not  
11    going in the rule. That's just there for if you're  
12    interested in what took place in this well-drawn-out,  
13    well-defined report, then there it is. It's part of the  
14    presentation I made. So it will be a link to it.

15                  MR. DINSMOOR: I defer back to you,  
16    Mr. Chairman.

17                  CHAIRMAN GAMPETRO: I thought Lawrence  
18    Livermore mostly dealt with radiation and atomic energy.

19                  MR. KRISTIENSEN: Apparently not.

20                  CHAIRMAN GAMPETRO: That's where the hot  
21    link went. Right?

22                  All right. John, if it hasn't been covered.

23                  MR. HINES: Mr. Chairman, one of my  
24    questions was about the exemptions and aquifers. Is  
25    there more than the one that we've heard so much about,

1 Link, Link Energy? Is there more of those approved in  
2 the state?

3 MR. WENDTLAND: Mr. Chairman, Board Member  
4 Hines, Link is the only approved -- recently approved  
5 coal gasification. There were some R and Ds that were  
6 the Department of Energy over in Rock Springs, but those  
7 predate the Link UCG. The only other aquifer exemptions  
8 that are really out there are for in situ uranium. And  
9 we have a number of those that are in place.

10 MR. HINES: Mr. Chairman, then throughout  
11 these definitions, rules and things, there's a lot of  
12 requirements that if they're abandoned or what a company  
13 has to do. And I guess my thinking on this comes from  
14 working with a lot of CBM companies that just  
15 disappeared. So what is the process? Some of these look  
16 like, to me, would be fairly important for someone to be  
17 responsible. And, in these cases, then, has the State  
18 ended up being responsible when a company goes out of  
19 business?

20 MR. WENDTLAND: Mr. Chairman, Board Member  
21 Hines, I think Link would be the best example on that,  
22 where they went into receivership. We hold adequate  
23 bond. We calculated that. We have adequate bond. We're  
24 also engaged with the creditor's trust, and they've  
25 indicated they want to do the reclamation to receive the

1 bond back. But we have bond not only on the operation,  
2 but also on the drilling modification wells as well. So  
3 we have a responsible party. We have bond. We wouldn't  
4 see moving forward doing that any differently.

5 MR. HINES: Mr. Chairman, I would follow  
6 up on the bonding issue. I'm not familiar at all with  
7 the mining bonding, or not very familiar. But I know a  
8 lot of the other -- getting into the oil and gas area,  
9 bonds are not sufficient. We have a policy of blanket  
10 bonds that, in a lot of cases, are not sufficient. The  
11 same way with the in situ mining. If the bond isn't  
12 sufficient to cover everything, then the State's the one  
13 that --

14 MR. WENDTLAND: Mr. Chairman, Board Member  
15 Hines, Land Quality has pretty extensive calculation for  
16 the bond requirements in coal. They have a specific  
17 Chapter 12 and 12A.

18 Did I remember those numbers correctly?

19 MR. ROGACZEWSKI: Yeah. Guideline 12,  
20 12A, yes.

21 MR. WENDTLAND: Guidelines 12 and 12A.  
22 And they really detail out right down to the hours it  
23 takes to reclaim the well or reclaim the surface, how  
24 many wells or hours. It's a rather extensive document.  
25 So we apply those requirements and timely work the



1 calculation for a bond. And the companies are required  
2 to provide that information to us. They propose a bond.  
3 DEQ then reviews that bond amount and either concurs or  
4 does not concur. Sometimes we agree. Sometimes we  
5 disagree. And sometimes that bond amount increases based  
6 on our analysis.

7 CHAIRMAN GAMPETRO: I've got a question  
8 along those lines. Are we holding the bag on anything  
9 right now where we approved a bond and it's inadequate?

10 MR. WENDTLAND: Mr. Chairman, we are  
11 always at some level of risk. The best way for me to  
12 define that is we went through the bankruptcies with  
13 self-bonds. Those companies are now surety bonded. But  
14 we have seen recent erosion of the surety companies with  
15 the two hurricanes, so there is question now in the  
16 reinsurance market for that where we shifted those  
17 dollars from self-fund to surety. You have to remember  
18 that surety is a third-party agreement when you get into.

19 So they're really -- you have a variety of  
20 instruments we can use. Is there zero risk option? I  
21 don't believe that's the case. There is always some  
22 level of risk.

23 CHAIRMAN GAMPETRO: We've discussed this  
24 before, you and I. And I know that. I guess the  
25 question is, right now, do you feel that there are any

1 out there where we're going to end up holding the bag?

2 MR. WENDTLAND: Mr. Chairman, I think that  
3 we've addressed that risk and really worked hard to  
4 accurately calculate the bonds that are out there. I  
5 think to go beyond that would be a reach in my statement.

6 MR. ROGACZEWSKI: Chairman Gampetro, I was  
7 just going to add that we have -- in the case of the one  
8 that I know about that's Link that's out of my district,  
9 I am the actual coordinator of that. We have actually  
10 analyzed their proposed bond hole by hole, well by well,  
11 for not only their drilling notification, but this  
12 research and development license. And we have continued  
13 to do quarterly inspections on that site in compliance  
14 with our SMCRA program.

15 So we are well aware of any -- and there hasn't  
16 been any vandalism to the wells, to the well chambers.  
17 So we are as up to date as we can be with that. And I  
18 just want to stress we know the depths of the wells,  
19 where their screening is, and so we did that bond  
20 calculation for the Link R and D on a well-by-well basis.  
21 And we believe we do have, on today's economics, enough  
22 money to go in and reclaim that as necessary with the  
23 money we have.

24 MR. WENDTLAND: Mr. Chairman, what I might  
25 add to my statement is, on the mining operations in

1 Wyoming, we recalculate and rerun the bond calculation  
2 annually. So I believe that we are probably as current  
3 as we possibly could be with 750 permits.

4 MR. HINES: Mr. Chairman, does the  
5 Wyoming, on the in situ mining of any their products,  
6 have the conservation tax like the oil and gas?

7 MR. WENDTLAND: Mr. Chairman, Board Member  
8 Hines, I would have to research that to know, unless  
9 Carol or Craig may know that answer.

10 MR. HULTS: I don't.

11 MR. HINES: And, Mr. Chairman, why I ask  
12 that, because what I understand, referring to the CBM  
13 issues, the conservation tax or any issue with the oil  
14 and gas wells or something where there's not bonding,  
15 that supposedly takes care of the State where the general  
16 fund is not liable. And I just wondered if that  
17 collected -- I should know, I guess, after the many years  
18 I looked at it, but I don't offhand.

19 MR. WENDTLAND: Mr. Chairman, Board Member  
20 Hines, I would have to research to give you a solid  
21 answer.

22 MR. HINES: Thank you.

23 CHAIRMAN GAMPETRO: I should know too, but  
24 I don't.

25 MR. WENDTLAND: I don't. And I would not

1 want to misrepresent that.

2 CHAIRMAN GAMPETRO: Thank you, John.

3 Thank you, Phil.

4 Anything else?

5 MR. HINES: Mr. Chairman, are we open to  
6 question now on Chapter 11, or are we waiting?

7 MR. WENDTLAND: Mr. Chairman, again, I  
8 would recommend we go -- I believe we have public comment  
9 on Chapter 18, or may have. I would suggest we hear that  
10 and then move to Chapter 11. And, also, I don't know if  
11 Board Member Macker has any questions at this point.

12 MS. MACKER: I appreciate those questions.  
13 I don't have any additional questions.

14 CHAIRMAN GAMPETRO: I have a request from  
15 one of the board members to take a break.

16 (Hearing proceedings recessed  
17 11:24 a.m. to 11:36 a.m.)

18 MR. WENDTLAND: Mr. Chairman, as we  
19 reconvene, it would be my recommendation we let Craig go  
20 through a couple of formatting items for Chapter 18 and  
21 then take public comment on Chapter 18.

22 CHAIRMAN GAMPETRO: Okay. Tell me when  
23 you're ready.

24 MR. HULTS: Nearly.

25 (Pause in proceedings.)

1                   MR. HULTS: I am ready, Mr. Chairman.

2                   Mr. Chairman, Board Members, there were some  
3 kind of issues that I had picked up. This time we had  
4 many different writers involved in this. And at that  
5 time, I get the full chapter and go through just the  
6 formatting steps that I usually do. As part of that, I  
7 noticed a couple of things that were kind of last minute.  
8 I didn't want to make changes because they would have  
9 been substantive changes to documents that I received,  
10 and they wouldn't have had notice of them.

11                   So the first one is in Section 2(f). And,  
12 hopefully, I can find this quick enough.

13                   Up on the screen, I have Section 2(f). My  
14 assumption was that this got pulled over from Chapter 11.  
15 Currently the way this is written, the revision date for  
16 this is -- it allows operators to come into compliance.  
17 And the date in there right now is May 25th, 1980. The  
18 suggested revision would be that it would state no later  
19 than one year following the promulgation of these rules  
20 that we're filing with the Secretary of State. That  
21 would allow a -- the current permits that we may have out  
22 there, that allows them time to come into compliance with  
23 these issues. That date is a little far back, I think.  
24 That was the first one.

25                   And then in Section 5, we have -- in

1 Section 5(c) we're asking for a description of operations  
2 specific to in situ mining to include but is not limited  
3 to the following. In Section Romanette (i)(G), we had  
4 pulled in language from former Section 3(c)(ii). We also  
5 pulled it in again in Section 5(c) Romanette (ix), which  
6 is down here a little bit. So we've pulled in that  
7 language again. The strike-and-underline contains the --  
8 we want Number (ix). I'm sorry.

9 In Section (ix) there's some additional  
10 language. So, in this instance, it reads "A description  
11 of the chemical or physical reactions that may occur  
12 during mining as a result of injection or recovery fluid  
13 injection." The recommendation would be that subsection  
14 (ix) is struck, and this language then would be moved to  
15 the previous subsection where we first had it, which was  
16 up in (G) here. We just have two instances. They say  
17 the same thing. One had a little bit of revision to it  
18 and was more inclusive. That was the one down below. So  
19 we would move that language here, which is consistent  
20 with the other revisions in the chapter. So this  
21 language here in (ix) would be moved to that subsection  
22 just so it wasn't redundant.

23 Another thing was there was an effort to remove  
24 the S from "groundwaters," the plural. There's one  
25 instance of it in the beginning of the chapter; however,

1 there's more instances in the chapter where it wasn't  
2 shown as stricken language. The recommendation would be  
3 to remove that S from all instances in the chapter just  
4 for consistency.

5 In Section 10(i) we have an incorrect reference  
6 within the chapter. In Section 10(i) it states that  
7 "Plugging and conversion activities shall be reported in  
8 accordance with the requirements in Section 10 of this  
9 chapter." We're currently in Section 10. My belief is  
10 it should be Section 15, which was the reporting section.  
11 So I would recommend that we correct that to proper  
12 reference of Section 15.

13 Those were the kind of small things that I  
14 found along the way that I just wanted to point out to  
15 the board that I'd recommend is changed.

16 CHAIRMAN GAMPETRO: Thank you, Craig.

17 MR. HULTS: You're welcome.

18 CHAIRMAN GAMPETRO: We can now take public  
19 comment on Chapter 18.

20 MS. ANDERSON: Thank you, Mr. Chairman.  
21 Shannon Anderson with Powder River Basin Resource  
22 Council. I appreciate your time and attention to these  
23 rules and for the long-waiting updates to these rules. I  
24 remember talking to somebody from GasTech probably back  
25 in 2010 about the need to create a regulatory framework

1 for underground coal gasification because it is very  
2 different than the uranium industry. These are mining  
3 operations for coal and coal seams largely done in  
4 freshwater aquifers, the Fort Union Formation in the  
5 Powder River Basin. So there's a real need to have our  
6 regulatory framework address this new emerging  
7 technology.

8           With that, though, I would say that the purpose  
9 of these rules should not be to facilitate underground  
10 coal gasification. The history of this technology has  
11 shown that it is a very problematic technology. I  
12 provided you with an article about Link Energy and their  
13 Australian operations. While they were going through  
14 permitting here in Wyoming, we were raising concerns  
15 about their Australian operations. The company told us  
16 that this was state of the art. It was the best there  
17 is. And the Wyoming project would be more of the same.  
18 In fact, they named the gasifiers sequentially after the  
19 number of gasifiers they had in Australia because it  
20 would be the same kind of technology.

21           I think you all know what happened to Link.  
22 Largest contamination case ever in history. \$20 million  
23 liability they're facing down there to clean up that  
24 operation. They're in bankruptcy. They're being  
25 liquidated. Luckily, here in Wyoming they never started



1 operating. So they did some exploration. They did some  
2 well drilling. But they never actually started  
3 operating. So we were actually quite lucky here in  
4 Wyoming. They also were a company that did oil and gas  
5 here in the state as well. So there's some liquidation  
6 issues related to oil and gas operations as well.

7           But my point is that when you think of these  
8 rules, we just ask you to think of them in a way that's  
9 going to protect the public interest and not facilitate  
10 development. Because it's not in the public interest,  
11 actually, to allow this kind of technology here in the  
12 state of Wyoming. We understand it's in the statutes,  
13 and there may be some interest. I'm not aware of any  
14 company in the state right now that wants to do this.  
15 It's not commercially viable. Big coal companies have  
16 never been interested in it. It doesn't seem to have a  
17 lot of interest. But here we find ourselves promulgating  
18 a whole new set of rules to facilitate an industry that  
19 may likely never exist. But it's important that we  
20 create the rules that protect the public and particularly  
21 our water supplies.

22           I would just like to address the issue of SMCRA  
23 as well. I think it was appropriately answered, but it's  
24 similar to underground mining. So it's not necessarily  
25 that SMCRA applies for the whole operation, but the

1 surface consequences of the underground mining. So it's  
2 similar to underground mining. And OSM historically has  
3 been interested in this technology. They were very  
4 interested and engaged in the Link Energy process. I had  
5 several conversations with OSM staff during that  
6 permitting process. So I assume their staff would be  
7 also very interested in this rule package when it moves  
8 to them, as would EPA. I included a letter from EPA in  
9 your materials that show that EPA was also very  
10 interested in what was happening with Link Energy and, in  
11 fact, had required a new public comment hearing  
12 specifically for the aquifer exemption.

13           Again, this is the Fort Union Formation. Its  
14 underground source drinking water is probably the most  
15 important in Campbell County and Powder River Basin. And  
16 for Link in particular, it was an aquifer that could have  
17 met Class I drinking water standards. There is a little  
18 bit of exceedances for manganese and iron. But, other  
19 than that, it was Class I drinking water. And they were  
20 proposing to exempt it. In fact, they were granted that  
21 exemption by the EPA. But the EPA required an additional  
22 public hearing in the town of Wright. So it was located  
23 in the area. Because partly what happens with this Water  
24 Quality, Land Quality nexus and intersection is you get  
25 thrown in the 20-day contested case hearing proceeding

1 under Section 406(k) of the statute for this in situ coal  
2 and this aquifer exemption.

3 And so what EPA was requiring was an additional  
4 public comment opportunity that actually complies with  
5 your aquifer exemption public hearing requirements, which  
6 is not a contested case hearing in Cheyenne, which is  
7 what we were given the opportunity for in Section 406(k).

8 So, as you get to that part of the  
9 regulations -- I think it's page 18-29, subsection (c) --  
10 dealing with, again, the relationship between Water  
11 Quality Division administrator and how the aquifer  
12 exemption is being presented to EPA, I would just  
13 encourage you to think of that public hearing requirement  
14 that is in the federal regulations for an aquifer  
15 exemption and to consider and question whether the  
16 requirements of 406(k) meet those requirements. And if  
17 they don't, you need a new public comment hearing process  
18 specific to the aquifer exemption for these projects.

19 I also had a comment on the trespass portion,  
20 so I'm glad you're going to remove that. It's just  
21 important to note if the staff has access to a site, it's  
22 technically not trespass. It technically wouldn't be  
23 trespassing because they would have legal access to that  
24 area. So I would just be cautioning you on the use of  
25 the word "trespass" and make sure you don't call DEQ

1 trespassing when they're really not in that case.

2           On the permit requirements section,  
3 particularly Section 4 and some of the others, it was a  
4 little bit unclear from my read whether those sections  
5 also apply to R and D licenses or just need permits. And  
6 the distinction is important, again, given the state of  
7 this technology. Link actually applied for an R and D  
8 license. They didn't apply for a new permit. So, if  
9 this is meant to address Link and a similar company to  
10 them maybe in the future, I would just want to make sure  
11 that any new requirements equally apply to R and D  
12 licenses and for you to make that specific in the  
13 regulations.

14           On page 18-16, dealing with the restoration  
15 requirements, as Mr. Kristiansen was mentioning, there is  
16 best practical technology. This is already kind of  
17 incorporated in the statute and somewhat of what we do  
18 for in situ uranium. But, again, I would say that  
19 in situ coal or underground coal gasification is  
20 different. The pollution we're producing is actually  
21 carcinogenic. It's V-tex. It's not in the aquifer prior  
22 to mining. So it's a little bit different than uranium,  
23 where there is uranium present in the aquifer prior to  
24 mining. Here, this is not contaminated water that we're  
25 purposely contaminating through the mining process.

1           So I'd encourage restoration practices to  
2 premining conditions, not just class of use. But  
3 baseline should always be the goal. Class of use can  
4 vary dramatically for certain constituents. And it  
5 matters a lot when you're dealing with things like V-tex,  
6 which a very small amount can be quite dangerous, and so  
7 to think about restoration to premining quality as the  
8 goal and the requirement.

9           I also would question whether you would want to  
10 include something like the socioeconomic value of the  
11 impacted aquifer and the socioeconomic value of the  
12 source of pollution and weigh those two together. Again,  
13 when you're dealing with the source of pollution, you're  
14 dealing with a project that likely isn't that  
15 commercially viable, and it's creating a carcinogenic  
16 contamination of that aquifer system. I would question  
17 whether V-tex has any economic and social value, but I'd  
18 leave that up to your discretion on how you want to  
19 balance these factors and consider what the goal of the  
20 restoration should be.

21           So that kind of goes into the next page a  
22 little bit too with, again, the aquifer must be protected  
23 to the class of use. So I would encourage you to think  
24 about a restoration standard that requires restoration to  
25 premining conditions.

1           Also on page 18-17, there's a minimum of one  
2 year of quarterly monitoring data. I would question  
3 whether one year is enough to show restoration. I'm not  
4 sure what the number is. But I think for the Coal Creek  
5 project, it took decades to determine whether that site  
6 was, quote, unquote, cleaned up. In fact, it never  
7 really was. So I would just encourage you to think of  
8 one year maybe not being enough for restoration and how  
9 long a company has to monitor to show a cleanup of an  
10 aquifer that, again, they're purposely contaminating with  
11 carcinogenic pollution.

12           That's pretty much my comments. I would answer  
13 any questions you have. But, again, I just wanted to  
14 provide some perspective. If the advisory board hasn't  
15 been maybe briefed about what underground coal  
16 gasification is, the state of the technology, the state  
17 of the industry, it might be an interesting project for  
18 you as you're considering these rules to get a better  
19 perspective of what companies are actually interested in  
20 doing this in Wyoming, what the opportunities are, and to  
21 make sure, again, these rules are really protective of  
22 our water systems, our land quality and our agricultural  
23 communities, particularly in Powder River Basin, because  
24 that's where most of these projects have been.

25           Thank you.

1                   CHAIRMAN GAMPETRO: Thank you very much  
2 for your comments.

3                   Anyone that would like to comment on the  
4 comments or respond in any way?

5                   MR. DINSMOOR: Can we ask a question?

6                   CHAIRMAN GAMPETRO: Sure.

7                   MR. DINSMOOR: Ms. Anderson, I would like  
8 to ask, one of your first comments was you were concerned  
9 about promulgating rules that would facilitate an  
10 industry versus rules to protect public interest. Under  
11 the Environmental Quality Act, how would you do that? Is  
12 that a rule-making issue, or is that something beyond our  
13 control?

14                  MS. ANDERSON: Mr. Chairman, Board Member  
15 Dinsmoor, I would say it's just a matter of perspective  
16 in how you view these regulations. There's some  
17 introductory remarks by the DEQ that there were delays in  
18 the permitting process caused by a sufficient lack of  
19 regulatory framework at the time of the Link Energy  
20 application. And I would encourage you to not consider  
21 the delays in permitting being a problem, but more, you  
22 know, are these regulations the right regulations we need  
23 in Wyoming to protect the public interest?

24                  And that really is the fundamental purpose of  
25 the DEQ as founded in the Environmental Quality Act. It

1 has nothing to do with facilitating development. It has  
2 everything to do with protecting our water resources and  
3 our land quality and to just make sure, as you consider  
4 these rules, to have that in the back of your mind, that  
5 the goal of these rules is really about protecting those  
6 resources.

7 MR. DINSMOOR: Thank you.

8 CHAIRMAN GAMPETRO: I think we try to  
9 strike a balance. We, obviously, want to protect the  
10 public. I'm a public representative. But we also need  
11 to protect the public from poverty in terms of being able  
12 to make a living. So, obviously, there's a balance  
13 there. We try. And thank you again for your comments.

14 Are we ready for Chapter 11?

15 MR. WENDTLAND: Did we have anything  
16 further? Craig? B. J.? Carol?

17 (No response.)

18 MR. WENDTLAND: Mr. Chairman, I would  
19 suggest maybe we move to a vote for Chapter 18 first and  
20 then we take on Chapter 11 and do it a piece at a time  
21 here.

22 CHAIRMAN GAMPETRO: Okey-doke.

23 MR. WENDTLAND: So that would be my  
24 recommendation.

25 And, Craig, I might need a little help here,



1 but I think if there's a motion made, we're going to need  
2 to have amendments for those corrections.

3 CHAIRMAN GAMPETRO: Maybe you could help  
4 us with that motion --

5 MR. WENDTLAND: That would be beneficial.

6 CHAIRMAN GAMPETRO: -- in case we need to  
7 redact anything.

8 MR. WENDTLAND: And then also for the  
9 redaction of the access consent language.

10 But, yeah, that would be my recommendation,  
11 Mr. Chairman.

12 MR. SHOBER: You need a motion for  
13 approval with --

14 MR. WENDTLAND: Those amendments.

15 MR. SHOBER: With these amendments. All  
16 right.

17 CHAIRMAN GAMPETRO: And any potential  
18 future redaction.

19 MR. WENDTLAND: No.

20 MR. HULTS: Mr. Chairman, I believe we  
21 would strike that language from the chapter right now as  
22 moving forward, not waiting until later in the process.

23 MR. SHOBER: I move for approval of  
24 Chapter 18 rules with Craig's changes on it.

25 MR. WENDTLAND: Corrections.

1                   MR. SHOBER: The corrections. And so do  
2 you want to -- I can give you a list of what you had.

3                   MR. HULTS: I can summarize them,  
4 Mr. Chairman. It included a revision to Section 2(f) to  
5 remove the date and allow for one year after promulgation  
6 to come into compliance with these regulations. In  
7 Chapter 18, Section 5(c)(i)(G), I would include the  
8 additional language that was listed in Section -- or,  
9 proposed Section 5(c)(ix) and strike Section 5(c)(ix).  
10 We would make corrections to remove the S from  
11 "groundwaters" wherever it occurs in the chapter. We  
12 would make a correction in Section 10(i) to make the  
13 reference to Section 15 instead of Section 10, and the  
14 redaction or removal of the trespass language.

15                   MR. WENDTLAND: The access consent  
16 language, yes.

17                   CHAIRMAN GAMPETRO: Got that? Do we have  
18 a second to that motion?

19                   MR. HINES: I'll second.

20                   CHAIRMAN GAMPETRO: It's been moved and  
21 seconded. Discussion?

22                   MS. MACKER: Mr. Chairman?

23                   MR. WENDTLAND: Yes, Natalia.

24                   MS. MACKER: Thank you. Since you have a  
25 quorum in the room and it was a little hard for me to

1 follow some of the changes that were presented, I would  
2 prefer to abstain from the vote if you have a quorum  
3 there.

4 CHAIRMAN GAMPETRO: That's fine. It will  
5 work. Thank you for letting us know.

6 Discussion?

7 MR. DINSMOOR: Yeah. My question goes to  
8 the comment -- there have been a couple of comments  
9 received. Is the comment period closed? And what  
10 happens if more comment comes in after we make a motion?  
11 Since there was -- there wasn't a hard-and-fast comment  
12 period on the public notice, I'm not sure if that's an  
13 issue or not. I just want to make sure we're doing  
14 things right here.

15 MR. WENDTLAND: Mr. Dinsmoor, I'm going to  
16 refer that question to Craig. But you have to remember  
17 there is a process here where, once it goes through this  
18 board, it goes to the EQC. So there is going to be  
19 another public venue for this.

20 MR. HULTS: Mr. Dinsmoor, Chairperson  
21 Gampetro, the way I've always viewed it is we can accept  
22 comments right up until the meeting in whatever form  
23 they're getting to us. In this instance, we received the  
24 WMA's comments yesterday via e-mail. I don't know --  
25 because I wasn't in my office yesterday, I don't know

1 whether they arrived in a physical form through the mail  
2 or through our electronic comment portal. I believe the  
3 issues addressed in those comments, we've come up with a  
4 solution to address that at a later date using the  
5 director's policy until we get some concrete guidance on  
6 what that court case means.

7           So I think we have everything. The only other  
8 comments we received were from the Powder River Basin  
9 Resource Council. So I think we've got everybody on  
10 record up to this point. Once we get to the vote, that's  
11 kind of the last opportunity at this meeting to voice any  
12 opinions. So you're basing your decisions on what we  
13 have to date. And moving forward, there may be  
14 additional comments, but those would be related to any  
15 announcements we do public-notice-wise for Environmental  
16 Quality Council with a formal rule-making process.

17           CHAIRMAN GAMPETRO: My understanding is  
18 that until it goes to the Quality conference -- and it  
19 can't go there until we pass this.

20           MR. HULTS: That's correct.

21           CHAIRMAN GAMPETRO: It's a step along the  
22 way. And not only there can be but will probably be  
23 other changes as we go along.

24           MR. WENDTLAND: It's an unknown to us,  
25 Mr. Chairman, as to what comment we may or may not

1 receive. All we can do is adhere to that process and  
2 make sure that the process has integrity. And we see  
3 what we get when we get to the council.

4 MR. DINSMOOR: And so you don't need to  
5 respond to comments prior to a decision by the advisory  
6 board?

7 MR. WENDTLAND: Mr. Chairman and Board  
8 Member Dinsmoor, I think for the issues at hand, we've  
9 addressed those through the comments we received from the  
10 public and from the governor and then the corrections we  
11 made today. And I would add, Mr. Chairman and Board  
12 Member Dinsmoor, you can take the vote. You can decide  
13 not to take the vote. That's within the board's  
14 authority to decide how we want to move forward.

15 MR. HULTS: Mr. Dinsmoor, one more thing.  
16 At the advisory board level, the prescriptions about the  
17 rule-making process are not laid out in any detail, so  
18 there isn't a formal requirement that I would be  
19 forwarding a response to comments, which, at the EQC  
20 level, that's actually part of the rule package that  
21 moves along through to the Secretary of State.

22 So, in this case, if there was a feeling that  
23 we didn't address those comments, then we'll have that  
24 opportunity before the council to make additional  
25 comments which would follow through all the way through

1 the end of the rule-making process.

2 CHAIRMAN GAMPETRO: So let me ask again,  
3 subsequent to the discussion. Do you want to propose the  
4 motion that you proposed?

5 MR. SHOBER: Yes.

6 CHAIRMAN GAMPETRO: John, do you want to  
7 second that motion?

8 MR. HINES: Yes.

9 CHAIRMAN GAMPETRO: So we still have a  
10 motion that's been moved and seconded. All those in  
11 favor please indicate by saying aye.

12 (All members vote aye.)

13 CHAIRMAN GAMPETRO: Seeing no opposed, the  
14 motion passes.

15 Can we go on to Chapter 11?

16 MR. WENDTLAND: Yes, Mr. Chairman, we can.  
17 Craig, I'm going to have you pull that up.

18 And, Brandi, would you please come up and help  
19 us with the walk-through?

20 MS. O'BRIEN: Mr. Chairman, Board Members,  
21 I've been working with the uranium work group for quite  
22 some time now on these revisions to Chapter 11. It's  
23 something that work group had been working on prior to me  
24 even working with Land Quality. So this is something  
25 that has been under the works for quite some time.

1           Just so you can follow what I'm doing, I am  
2 going to be going through that statement of proposed  
3 reasons for the changes. So this is the document that  
4 I'm scrolling through.

5           The last time Chapter 11 was changed was in  
6 November of 2013. And it was changed at that time to  
7 reflect practices at the time and to clarify or amend  
8 rules to remain as effective regulations. This time  
9 around we are changing the rules to make the rules more  
10 clear and to increase their effectiveness. And since  
11 Chapter 18 was being advised at the same time, we are  
12 working at making those rules similar in format so that  
13 we can just increase our effectiveness as a program and  
14 to be clear and consistent.

15           We've been working with the uranium work group  
16 meeting very regularly, usually on a monthly basis,  
17 discussing topics, including Chapter 11. We really  
18 wanted to just be more clear about the intent of the  
19 rules, like B. J. was talking about, being consistent  
20 between coal and noncoal with our formatting for  
21 Chapter 11. So, in this, the overall changes that you're  
22 going to see in the chapter, the big one is really the  
23 organization. That's the biggest. Things were  
24 restructured and changed.

25           And B. J. had spoken about this. The structure

1 of Chapter 18 was set up to follow the format set out in  
2 coal Chapter 2 permit application requirements. So, if  
3 you're wondering why that format, that's where that came  
4 from. And we're following that here as well. It made  
5 sense to follow that within Chapter 11 for noncoal  
6 in situ.

7           Something else that you'll see throughout the  
8 document, references to rules or statutes have been  
9 modified to remove the date. So we are not meaning to  
10 update that whenever statutes are changed. And whenever  
11 statutes are referenced where the definition was  
12 repeated, we have removed that, and it just now states  
13 that reference to the statute. So those are changes that  
14 you'll see throughout the document.

15           Now I'm going to walk through just an overview  
16 of the sections, the changes that were made, and then  
17 I'll go through the document and point those changes out  
18 so you can see those as well.

19           Section 1 was revised to remove definitions  
20 that were no longer used. Some of these had been used in  
21 the past throughout the history of Chapter 11. And it  
22 being changed, those definitions were no longer being  
23 used, so we took those out. Other definitions have been  
24 added for terms that were used throughout the chapter.  
25 And we felt it helped add clarity to the document to



1 define those terms. And then here there's a list of  
2 those terms that were added. You can read through those,  
3 and I'll also be going through those in the document.

4           And then B. J. had gone over "background"  
5 versus "baseline." Same reasoning. That was changed  
6 throughout this document. Used to be referred to as  
7 "background." We've gone to "baseline" because we feel  
8 that's a more appropriate term to use.

9           And then throughout the document, you'll also  
10 see that the term "research and development testing  
11 license" has been changed to "research and development  
12 license." That's just to reflect the language used in  
13 statute. So just minor formatting things to be more  
14 clear and consistent.

15           Section 2, "General Requirements," it has been  
16 slightly modified to include a statement about format of  
17 application submittals, just updating that information.  
18 There was the portion included about the operators  
19 obtaining and granting access to the Division, which we  
20 had a lengthy discussion about that in Chapter 18. So  
21 same thing applies here. There was also language added  
22 to emphasize that an area permit does not allow for  
23 construction of nonbonded infrastructure. That didn't  
24 change the rules. It was just to add clarification.

25           Section 3, the "Application Content

1 Requirements - Adjudication" actually used to be lumped  
2 together with baseline information. So those sections  
3 have been split up. And in a moment, I'll show you a  
4 table showing how that structure has changed. But  
5 adjudication has been separated into its own section.

6 Section 4, "Baseline Information," again, has  
7 been put into its own section. Mine operations plan  
8 really wasn't changed substantially. There were slight  
9 modifications to be more clear about the intent of the  
10 rules.

11 Section 6, the "Application Content  
12 Requirements," it's been slightly modified to clarify --  
13 again, clarifying the intent of the chapter. There was  
14 language added to require one year of quarterly  
15 monitoring data to demonstrate groundwater stability  
16 during the evaluation of restoration. And you also saw  
17 that in Chapter 18. This came from Guideline 4, which is  
18 the guideline for in situ applications. We just thought  
19 it was appropriate to put that into this chapter.

20 Section 7, no unique revisions. Just some of  
21 those overall changes that were made throughout the  
22 document.

23 Section 8, the "Well Construction  
24 Requirements," there's been a reference to Water Quality  
25 Chapter 8 that was removed. And when you see that

1 removal, there will be an explanation for that change.  
2 Language discussing the distance between wells and  
3 buildings or power lines has been removed because it's a  
4 State Engineer's Office requirement, and we would not be  
5 regulating that or administering those rules and  
6 requirements, so we felt it was appropriate to take that  
7 out of our Chapter 11.

8           With other things, metal screws have been  
9 excluded as acceptable means to join PVC casing. There  
10 have been just -- it has been shown to cause corrosion  
11 and issues using those. So that has been added to  
12 clarify that no metal screws are allowed for that.

13           And then there was one section in the  
14 previous -- or, in the current version that's been split  
15 up into two different places. I'll show you that when we  
16 go to the table of the structure.

17           Let's see. The mechanical integrity testing,  
18 the contents were modified to include production and  
19 monitoring wells for mechanical integrity testing. B. J.  
20 had mentioned that. That also carries over into this  
21 because the injection wells can be converted to  
22 extraction wells. And that discussion that B. J. had  
23 had, same applies here. The term "conditions," which is  
24 a remnant of EPA language, has been changed to  
25 "requirements" because, in Land Quality, we have

1 requirements of the permit, not necessarily conditions,  
2 and so just changing that language to be more appropriate  
3 and compatible with how Land Quality does things.

4 Section 10 for "Requirements for Plugging of  
5 Drill Holes and Repair" -- well, I need to fix that  
6 spelling -- "Conversion and Plugging of Wells," there was  
7 a portion in that about a well being considered abandoned  
8 after two years of nonuse. I proposed a change in that.  
9 And when I get to that section, I'll elaborate on that  
10 change. And then aquifer exemption -- or, classification  
11 exemption, there was some language removed in order to be  
12 more concise. It didn't really change the substance.  
13 Other language has been added that refers to the working  
14 agreement between Water Quality and Land Quality.

15 The permit, research and development testing  
16 license has been restructured. There's pieces of  
17 Section 11 in that. And, again, I'll go through that  
18 when we get to the table of the change of formatting.  
19 There were no unique revisions to Section 13.

20 Section 14, there's been a provision added  
21 that, in the case an existing permit is in violation of  
22 the law, that that permit could be reopened to be brought  
23 into compliance with that law. So we felt that was  
24 important to include that ability for us to do that.

25 "Reporting Requirements," "Monitoring

1 Requirements" and "Maintenance and Retention of Records,"  
2 there were no unique revisions. "Noncompliance and  
3 Excursions" used to be one section. We've split that up  
4 because we didn't want there to be the misconception that  
5 an excursion is necessarily noncompliance. There is a  
6 period of time in which they can correct that excursion  
7 and it's not noncompliance. So we felt that that was  
8 important to separate those so we aren't sending the  
9 wrong message. And there are a couple of changes and  
10 bells that I'll go through when I get to that section.

11 For "Corrective Actions and Compliance  
12 Schedules," the only unique revision is additional  
13 language to clarify the intent of the rules. It doesn't  
14 really change the rules. It's just being more clear.  
15 And then "Confidential Records" and "Revocation," no  
16 unique changes.

17 So here is a table showing the current sections  
18 of Chapter 11. Or, here's what's in the current version.  
19 Here's the proposed version on the left. Really, the big  
20 change is application content requirements for  
21 adjudication and baseline were split up. They used to  
22 both be in Section 3. And then other things were just  
23 shuffled clear around, just moved to different areas to  
24 match so we're matching Chapter 18, just to be kind of  
25 clear how we do things.

1           Section 11 that used to be the permit -- which  
2 one was Section 11? Section 11, the prohibitions was  
3 actually split into two different sections. That's been  
4 included in the proposed Section 8 and proposed  
5 Section 12. And so, as you can see, just things have  
6 been shuffled, mostly. So, if you're curious about,  
7 "This section used to be here. Where is it now?" you can  
8 refer to this table.

9           So, jumping into Chapter 11 itself, these  
10 underlined portions were added. And, again, that's, as I  
11 discussed before, added because they were terms that were  
12 used throughout the chapter, and we felt that defining  
13 those terms added clarity. And you'll see these  
14 throughout. I won't necessarily point out all of these.  
15 But, if you see a definition underlined, that's been  
16 added for that purpose.

17           The area permit, slight modification. Instead  
18 of calling them injection wells, it's really a UIC  
19 Class III well. That was changed.

20           And if you have any questions as I'm going  
21 along, please stop me.

22           This is where "baseline" -- or, "background"  
23 was changed to "baseline." And we already had that  
24 discussion. You'll see that changed throughout the  
25 document, not just in this definition. The definition

1 for catastrophic collapse, there was this extra language  
2 here added, and it was just to provide an example of how  
3 this type of extraction potentially produces catastrophic  
4 collapse. Just adding clarity, adding an example.

5           Just a very small change here. The term  
6 "stopes" was changed to "stope" because that is language  
7 that industry uses. And, again, here's an example of a  
8 definition that's been removed because it was not being  
9 used in the chapter. So "conventional mine," that was  
10 removed from this chapter because it's not used.

11           And here's an example of where we took the date  
12 out of when we were referencing the statute. So we took  
13 out that date. You'll see throughout the section where  
14 we had referenced sections. That's changed because of  
15 the way we have shuffled things. So you'll see this  
16 change frequently throughout the chapter. And then the  
17 word "uranium" was taken out of this. Because a lot of  
18 the work on Chapter 11 has been done through the uranium  
19 work group, oftentimes we forget this does apply to other  
20 industries. So this was just something we caught in this  
21 revision, to take out the word "uranium," because this  
22 does apply to other industries besides uranium.

23           More definitions that were added. And this is  
24 just the first example where we changed the "research and  
25 development testing license" to "research and development

1 license." You'll see that throughout the document.  
2 "Mechanical integrity," we had changed it to include a  
3 production well or monitor well. Just felt that was  
4 important. B. J. had discussed that before. So adding  
5 this language includes those.

6 "Mechanical integrity testing," for clarity  
7 purposes, a new definition for mechanical integrity  
8 testing was created by removing language from "mechanical  
9 integrity" and adding language here. So this used to  
10 actually be part of a different definition. We felt it  
11 merited its own definition, so we kind of shuffled some  
12 definitions around there to be more clear to include  
13 "mechanical integrity testing" rather than just "mechanic  
14 integrity."

15 This language, "mining permit" or "permit," the  
16 definition in statute is actually for mining permit, not  
17 permit. So that's why we added this language, consistent  
18 with the statute, since we were referencing the statute.

19 "Production well or recovery well," we added  
20 the "production well" to this definition so it could be  
21 more useful. The term "production well" is often used  
22 interchangeably with "recovery well," so we wanted to be  
23 clear that this covers both instances. And then the word  
24 "conduit" really didn't add anything to the definition,  
25 which is cut out here. It just wasn't necessarily



1 appropriate to keep that in there. And the term  
2 "soluble" was added because the mineral would have to be  
3 soluble to be extracted using this method. So just  
4 various changes to the language here to make it more  
5 clear.

6 Then the term "stratum" was deleted. Not  
7 necessarily -- the term is used, but it's actually  
8 referred to as "receiving strata." And so we added  
9 definition for "receiving strata" and got rid of this  
10 definition here. And then we discussed the change of  
11 "research and development testing license" versus  
12 "research and development license." And, again, just  
13 adding language here. Before it just said "UIC." We  
14 wanted to spell out "underground injection control."  
15 Just small changes like that to make this document more  
16 useful and more clear.

17 In the definition for "upper control limit," we  
18 had removed the language "For certain parameters, such as  
19 pH, a UCL may be defined as an acceptable range of  
20 values." We felt it was more appropriate to change this  
21 language to "Upper control limits are derived as outlined  
22 in Reference Document 4" rather than throwing out these  
23 random -- well, not necessarily random. But, rather than  
24 throwing these out, we thought it was more appropriate to  
25 point everyone towards Reference Document 4, where these

1 requirements are actually spelled out.

2           The word "suitable" was actually deleted  
3 because it's subject to interpretation. It's difficult  
4 to enforce, so we took that language out. So, when we  
5 get into the general requirements, this language here  
6 that you see was just added to make it more clear what's  
7 required or added -- excuse me. Just discussing the  
8 format that's necessary to submit an application. Just  
9 language to be more clear that that Chapter 7 is noncoal  
10 rules and regulations. We added a reference to Chapter  
11 27 because it's both Chapters 8 and 27 in the Water  
12 Quality rules and regulations that are appropriate for  
13 this section.

14           This, I had discussed before. There was  
15 language added that says "The area permit does not allow  
16 for construction of nonbonded infrastructure." This  
17 really doesn't add anything new. It's just trying to be  
18 more clear that, hey, you can't build anything that isn't  
19 bonded.

20           This is the access -- right-of-access language  
21 that had been stricken from Chapter 18. We had before  
22 this language. This language was already there in  
23 Chapter 11. All of this underlined is the new language.  
24 And I would imagine that we, similarly, would want to get  
25 rid of this language in light of everything going on with

1 the trespass law.

2           Section 3 used to be adjudication and baseline  
3 information. It's been split into two sections. So  
4 that's why you see these various things taken out of this  
5 section. There are portions in here that have been moved  
6 to the next section where you see in Section 4. There is  
7 language here where it refers to the U.S. Nuclear  
8 Regulatory Commission. We have added "or Wyoming Uranium  
9 Recovery Program" because of Wyoming needing to be an  
10 agreement state with the NRC. So, once we have received  
11 that authority from NRC to regulate the source material  
12 licenses, then the appropriate reference would be the  
13 uranium recovery program. So that language has been  
14 changed in anticipation of us reaching that agreement.

15           And then Section 4 used to be part of  
16 Section 3. These are the sections that it used to be.  
17 The above was just split off in the introduction and  
18 added to the section, so it's nothing new. It's just  
19 shuffled around.

20           And then "All baseline groundwater quantity and  
21 quality information must be provided in an electronic  
22 format prescribed by the administrator." This was to be  
23 consistent, again, with our Guideline 4. So that's why  
24 that's there. And, again, just more clarifying  
25 statements here just clarifying that this section also

1 applies to amendments as well as new permit applications.

2           And then a description and dimension for all  
3 proposed impoundments as defined by the State Engineer's  
4 Office. This is important to add because that's where  
5 those requirements are coming from. So it's not a change  
6 in our process. It's just clarifying that that's defined  
7 by the State Engineer's Office. And like we had  
8 discussed before, monitoring wells were included because  
9 it's important to get a detailed description of the  
10 typical proposed well completion, including the  
11 monitoring wells, injection wells and recovery wells.  
12 It's important to get that information for all three  
13 types of wells.

14           And then, likewise, adding those types of wells  
15 for a schedule and description of the procedures to  
16 demonstrate and maintain mechanical integrity, like we  
17 discussed before. It's important to ensure that they're  
18 maintaining mechanical integrity for all of those types  
19 of wells, not just Class III injection.

20           And then the spill response and reporting plan,  
21 this was added. So there's a requirement to track and  
22 report spills. And that's especially important when it  
23 comes to reclamation so we can know what lands to pay  
24 attention to where spills have been. It's really  
25 important to ensure that reclamation standards are being

1 met before we're releasing the financial assurance.

2           Let's see. This section, "The evaluation of  
3 restoration of the groundwater within the production zone  
4 shall be based on," we changed this to "shall be based on  
5 the target restoration values." In this it used to talk  
6 about the average quality over the production zone, all  
7 of this. Really, we wanted to get to the important  
8 aspect here without being wordy with our language.  
9 Really, we need to get to target restoration values. We  
10 feel this is more clear language and allows for the  
11 flexibility in case there are changes to EPA rules. So  
12 this gets to the heart of it. It's just less language.

13           And then "The evaluation of groundwater  
14 restoration success" just -- this language is added to be  
15 clear that that's what we're referring to in that  
16 section.

17           This is something new, "A minimum of one year  
18 of quarterly monitoring data for a full suite of  
19 parameters, except those shown to be unaffected by the  
20 mining and restoration process, must be provided to  
21 demonstrate groundwater stability." And this is a  
22 requirement in Guideline 4 that we have. We felt it was  
23 appropriate to place this in the rules to give it more  
24 clout. And we wanted to add "for a full suite of  
25 parameters, except for those shown to be unaffected" so

1 there isn't an unnecessary burden on industry to be  
2 testing for things that weren't affected, so they don't  
3 have to do unnecessary testing.

4           And then in Section 6 and the well construction  
5 requirements here, we added "including premining aquifer  
6 groundwater sampling and pumping tests." So construction  
7 requirements applied to this as well. And we felt it was  
8 important to include this in the requirement.

9           And then the reference to Chapter 8, Water  
10 Quality Chapter 8, has been removed because, as the  
11 requirements -- I'm sorry. It's a Water Quality  
12 requirement, not one of our requirements. And industry  
13 is already being held to this by Water Quality. And Land  
14 Quality, we already have a few things already addressing  
15 this within our chapter, so we thought it was redundant  
16 to reference Chapter 8.

17           And then this portion here was deleted. This  
18 is spelling out a very specific requirement that is the  
19 responsibility of the State Engineer's Office and would  
20 not be administered by Land Quality.

21           MR. SHOBER: Can you go back to that for  
22 just a second?

23           MS. O'BRIEN: Absolutely.

24           MR. SHOBER: So state water will permit  
25 this portion of it?

1 MS. O'BRIEN: B. J., do you know the  
2 answer?

3 MR. WENDTLAND: Would you restate that,  
4 Mickey? I'm sorry.

5 MR. SHOBER: Well, it says where a well is  
6 constructed near buildings or well shall be -- so you've  
7 taken out the distance away from a building, and then you  
8 made a reference to state water department.

9 MR. WENDTLAND: State Engineer's Office.

10 MR. SHOBER: State Engineer's Office. So  
11 will that clause or this portion simply go away, or will  
12 it be part of water --

13 MR. ROGACZEWSKI: It's my understanding,  
14 Mr. Shober, that, yes. When they put these wells in, the  
15 SEO actually understands -- and they have a database of  
16 where all wells exist. So that is taking care -- their  
17 location in proximity to buildings of our lands is taken  
18 care of by the SEO. So it was redundant for us to do it.  
19 So we leave it in their hands. So your answer is yes,  
20 SEO, takes care of the distance from buildings or power  
21 lines as part of their program.

22 MS. O'BRIEN: To continue on, I had  
23 discussed before that no metal screws in the PVC casing  
24 can be used. And industry has seen numerous examples of  
25 where the use of those screws has caused pronounced rise

1 in MIT failures just because of the corrosion of using  
2 those screws in PVC casing. So that's no longer an  
3 acceptable method. So we explicitly stated that here.

4           And then, again, another reference to Chapter 8  
5 Water Quality Division rules and regulations. It was not  
6 necessary or useful to include that here. So "The uses  
7 for which the groundwater in the receiving strata is  
8 suitable under premining conditions in any aquifer  
9 affected or potentially affected by the injection  
10 operation," we felt that was sufficient. It really  
11 wasn't useful or helpful to have that reference to  
12 Chapter 8 Water Quality.

13           And then just to be more clear here, we wanted  
14 to be clear that we're speaking about the chemical nature  
15 and volume of injection fluids there. We felt that the  
16 nature and volume was too vague, so just trying to be  
17 more clear in our language.

18           And then here, "Except for all new wells  
19 authorized by an area permit," this was removed because  
20 this language would apply to all new injection wells,  
21 even those authorized by an area permit. So this  
22 language was not necessary. It applies to everything,  
23 including those authorized by an area permit. And then  
24 this language at the end was added to cover the content  
25 below that we are keeping. So there are portions that



1 were deleted. And then the portions that we wanted to  
2 keep of this language was actually added here in that  
3 sentence. So, really, the important part that we wanted  
4 to keep of this is that the operator has demonstrated  
5 mechanical integrity and that they shall submit notice of  
6 completion of construction and demonstrate mechanical  
7 integrity in the quarterly monitoring reports.

8 All of this, what we're trying to get at here  
9 in this section, there was the requirement for an  
10 operator to wait thirteen days after they've sent notice  
11 of completion to the Division to commence injection. And  
12 that was to allow the Division opportunity to go out and  
13 inspect those sites. And, really, the way that turned  
14 out was just a paperwork exercise. Land Quality didn't  
15 really have the time to get out there and do those  
16 inspections within thirteen days.

17 And, really, the way we look at this is  
18 industry submits the -- let me make sure I'm stating this  
19 correctly. We receive the mechanical integrity test, the  
20 data from that, and we review those tests. Really, when  
21 we go out to a well, there's not a whole lot that we can  
22 see from that. And so, basically, we're relying on those  
23 tests rather than trying to take away that burden for  
24 industry to wait thirteen days because we didn't have the  
25 time and the resources to get out there.

1           So this really was unnecessary for them to  
2 wait. And so we felt we're still able to -- there's  
3 still the requirements that they have to meet prior to  
4 injection. We're still reviewing that data through the  
5 mechanical integrity test data that we receive. So all  
6 this is covered. We've just taken away that requirement  
7 for industry to wait prior to injection. They won't  
8 inject unless they've met all of those requirements for  
9 the well.

10           And this is just a lengthy discussion about why  
11 we changed the term "conditions" to "requirements." If  
12 you want to see more detailed explanation as to the  
13 history of where conditions came from, you can read  
14 through this.

15           And this, again, "The operator of a Class III  
16 or production well shall establish mechanical integrity,"  
17 again, just trying to include that production well  
18 language that we discussed earlier. And this, "The  
19 mechanical integrity of each Class III well," we wanted  
20 to make sure that that was being reported in the annual  
21 report. The results of MITs are required to be there in  
22 Guideline 4. We felt it was appropriate to bring it into  
23 the chapter.

24           And then just trying to bring things up to  
25 date. Quarterly -- the results of MIT tests need to be

1 reported quarterly in electronic format as prescribed by  
2 the administrator. Just trying to bring this up to date.  
3 It's a lot easier to review this information  
4 electronically. And this is also set to be consistent  
5 with Guideline 4. And, again, we felt it was appropriate  
6 to bring it into the chapter.

7           This is one of the larger changes that we made.  
8 This language used to be here that "A well is considered  
9 abandoned when it has not been used for a period of two  
10 years, unless the operator submits to the administrator  
11 and receives approval for a nonsignificant revision  
12 demonstrating their intent to use the well again and the  
13 actions and procedures they will take to ensure that  
14 mechanical integrity of the well are maintained and the  
15 well will not endanger any unauthorized zone or water  
16 bearing strata in accordance with the requirements of  
17 this chapter."

18           So this was added back in 2005. And the intent  
19 of this being added back then was to ensure that there  
20 were no wells just sitting around not being checked for  
21 mechanical integrity so there wasn't degradation of the  
22 groundwater. So that was the intent of the rule.  
23 However, this has proven to be difficult for Land Quality  
24 to enforce. And this really kind of just made more of a  
25 paperwork exercise.

1           I guess I'll take a step back. So the  
2   inspiration for the 2005 edition came from EPA Rule 40  
3   CFR 144.52(a)(6), which reads that, after cessation of  
4   operations of two years, the owner or operator shall plug  
5   and abandon the well. It goes on to read that that is to  
6   ensure that the well will not endanger underground  
7   sources of drinking water during the period of temporary  
8   abandonment. This was not specifically written for UIC  
9   Class III wells. And so that's the intent.

10           I feel that when we delete this, we are still  
11   meeting the intent of that rule. In Chapter 11 we are  
12   requiring -- or, through our rules, we're requiring that  
13   these are bonded. So there is bonding. So the wells  
14   simply won't be abandoned, and there won't be resources  
15   to plug it. And every five years all of these wells are  
16   required to be tested for mechanical integrity. So, if  
17   they're keeping a well, it has to be tested every five  
18   years so they are maintaining mechanical integrity.

19           There is not a mechanism in place currently for  
20   us to see when a well was last used. So this is where  
21   the difficult enforcement comes in. We don't have a  
22   mechanism to look at a list of wells and, "Oh, this was  
23   operated three years ago. We need to consider this  
24   abandoned." So we don't really have a mechanism in place  
25   to check that. However, we do know that their wells are

1 being MIT'd every five years. So we feel that the intent  
2 of this change is being met without keeping this despite  
3 our current requirements.

4           And, also, for industry to submit a  
5 nonsignificant revision for all of these wells, it's a  
6 huge burden. That's a lot of wells. The reason industry  
7 would want to keep these wells is because, down the road,  
8 they may need those for restoration in the future. So it  
9 wouldn't make sense for them to plug wells just for a  
10 couple of years when they found out they need to do more  
11 groundwater restoration for each of these wells. It  
12 truly makes sense for industry to keep these until  
13 restoration is complete because they could use all of  
14 these wells for groundwater restoration.

15           So they aren't sitting there to just sit there  
16 because they don't want to plug them. They're staying  
17 there for future use. And, really, that's very standard.  
18 It's not unusual for uranium in situ operators to keep  
19 those wells. It would be odd for them to plug them for  
20 no reason, because there is a need for future use of  
21 those. So that is my spiel for this section.

22           This change, just removing language to be more  
23 concise. There's no need to list the classifications  
24 here. We just felt it was more concise and more clear  
25 and less confusing to delete that language.

1           And then here we added the language "and the  
2 working agreement between Water Quality and Land Quality,  
3 Section III(C), UIC wells." And this is just pointing  
4 out that we have -- we have that agreement. And with the  
5 federal regulations, we are keeping the dates because  
6 that's important. That's how our rules people want that  
7 done, is to keep that.

8           And I think there are not very many more  
9 changes.

10           This portion, so it's talking about only  
11 conditions that can be revised -- "Only those conditions  
12 to be revised shall be reopened when a revision is  
13 necessary." So talking about that if you need to revise  
14 your permit, it doesn't open up the entire permit. It  
15 opens up the portion related to that change. However, we  
16 felt it was important to add this, "unless they are in  
17 violation of law that was enacted after the permit was  
18 approved." So, if they are revising their permit but  
19 there is a portion that is now in violation of a new law,  
20 we can change that at that point.

21           And I hope no one's getting motion sick  
22 following this.

23           Noncompliance and excursions, again, we felt it  
24 was important to separate those two. And this is just an  
25 explanation again of why. And then in our noncompliance

1 section, we felt it was important to add this language:  
2 "The procedures for mitigating or controlling the  
3 excursion." We felt this information was necessary to  
4 help define on a site-specific basis what mitigation  
5 measures work and also helps establish enforceable  
6 actions for future excursion attenuation. So this  
7 language we just felt was an important addition.

8 Here it's talking about if an excursion is not  
9 controlled within 30 days, information needs to be  
10 collected from each of the affected monitoring wells. It  
11 needs to be analyzed for various parameters. These  
12 parameters aren't necessarily appropriate for each well.  
13 The groundwater varies so much that we changed this  
14 language to be "The parameters to be analyzed shall be  
15 site-specific and based on baseline data." And we feel  
16 that's really important so operators aren't testing for  
17 unnecessary things and we're getting the information that  
18 we need without undue -- well, just without causing  
19 unnecessary spending on tests that don't need to be done.

20 And, again, just clarification of chemical  
21 nature.

22 And that covers the changes for Chapter 11. So  
23 are there any questions or sections you'd like me to go  
24 over?

25 CHAIRMAN GAMPETRO: Questions? Comments?

1 MR. DINSMOOR: Mr. Chairman, I have some  
2 questions.

3 CHAIRMAN GAMPETRO: I'm shocked.

4 MR. DINSMOOR: I was a little concerned  
5 with the definition of well -- the abandoned well and the  
6 two-years thing. And I think your explanation was really  
7 good and satisfied most of that. But I am concerned  
8 about the potential for mixing up two terms which are  
9 very close. And one is an abandoned well, and the other  
10 is abandonment as used somewhere else in Land Quality  
11 rules for an abandonment report, which implies the well  
12 has already been plugged. But an abandoned well has not  
13 yet been plugged. I'm not sure it requires a change.  
14 It's something you guys ought to think about, I think.  
15 It's awfully close. An abandonment report is a plugging  
16 report, but an abandoned well is not plugged.

17 MS. O'BRIEN: Mr. Chairman, Board Member,  
18 I appreciate the comment. And it could be very  
19 confusing.

20 MR. WENDTLAND: Well, Mr. Chairman and  
21 Board Member Dinsmoor, I think I would maybe -- I don't  
22 want to speak inappropriately here for you, but I think  
23 when we talk about an abandonment report, that's  
24 generally applied to a drilling notification or coal  
25 notification for drilling. So we're talking about two



1 different -- completely different components here. We're  
2 talking about a well that is in use versus an exploration  
3 hole.

4 MR. DINSMOOR: Well, it can go to a well  
5 also, the abandonment part.

6 MR. WENDTLAND: It can.

7 MR. DINSMOOR: Maybe it's not an issue but  
8 just something for you to think about.

9 MR. WENDTLAND: Sure.

10 MR. DINSMOOR: A second comment I had was  
11 with regard to the Water Quality Division and Land  
12 Quality Division memorandum of understanding. You're  
13 referencing it in a regulation. And we went quickly  
14 enough that I couldn't figure out whether what's being  
15 referenced is something that could change since you  
16 indicated earlier the MOU is not yet complete. And so,  
17 if it's just a general reference to the MOU, okay, that's  
18 not an issue. But, if it's referencing a specific  
19 provision that could change before the rule is passed,  
20 then we want to be a little bit careful.

21 MR. WENDTLAND: Just for clarification,  
22 Mr. Chairman, Board Member Dinsmoor, the MOU exists --  
23 it's just updating you. There's an MOU in place between  
24 Land Quality and Water Quality. But we are definitely at  
25 a point with these changes and some other things that it

1 has to be updated.

2 MR. DINSMOOR: Then related to that and  
3 going back to our discussions on Chapter 18, there are  
4 numerous references here to UIC. And there probably were  
5 in Chapter 18 also. And I just want to make sure that  
6 the -- by putting references to UIC to the Water Quality  
7 Division UIC process, standards, procedures, whatever,  
8 that we're not also committing Land Quality Division to  
9 accepting a Water Quality decision regarding aquifer --  
10 what was the term? Aquifer status, the conversation we  
11 had earlier -- that there's not a precedence set by  
12 referring back to that program and provisions or  
13 procedures under that program.

14 MR. WENDTLAND: I don't believe that  
15 that's -- Mr. Chairman, Board Member Dinsmoor, the  
16 reference is back to the UIC standards which Water  
17 Quality operates under. So I don't see that conflict.  
18 I'll defer that to Brandi and to B. J., but I guess I  
19 don't see that conflict where we're referencing the UIC  
20 language.

21 MR. KRISTIANSEN: I have to look at it  
22 very specifically.

23 MR. ROGACZEWSKI: Kyle, may I please add  
24 something?

25 MR. WENDTLAND: Yeah.

1                   MR. ROGACZEWSKI: Mr. Gampetro and  
2 Mr. Dinsmoor, when we worked through these processes, we  
3 worked very closely with Water Quality because of their  
4 EPA-assigned primacy for the UIC program. In this case  
5 we cannot provide and/or ask for the aquifer exemption  
6 from LQD. That is actually an assigned duty for Water  
7 Quality Division because of their primacy with EPA.

8                   So that's kind of what we're -- as an example  
9 of there are some decisions and processes that we have  
10 spelled out in our MOU that we've used since I started  
11 with LQD about 20 years ago that we must follow to make  
12 sure we receive the proper information, similar to the  
13 SEO does the well completion record or the construction  
14 of a pond. That is an assignment to Water Quality that  
15 we do accept, and we work through them to get these  
16 accomplished.

17                   Hopefully, that explains it. And they are in  
18 charge of the UIC program in Wyoming. That's Water  
19 Quality's responsibility.

20                   MR. DINSMOOR: I guess, to me, that  
21 confuses the conversation earlier we had about the  
22 aquifer exemption, where Land Quality was making -- Land  
23 Quality's rule allows Land Quality to make an aquifer  
24 exemption on issues beyond simply drinking water.

25                   MR. WENDTLAND: Clarification,

1 Mr. Chairman, Board Member Dinsmoor. Not aquifer  
2 exemption. We're talking about adding controls around  
3 non-SDWA water, not aquifer exemptions. Two different  
4 animals here.

5 MR. DINSMOOR: So, by referring to the UIC  
6 program or the MOU with Water Quality Division, we're not  
7 automatically accepting any aquifer exemption they may  
8 have made. It's not tying your hands and preventing you  
9 from making the exemptions for other reasons?

10 MR. WENDTLAND: We don't -- Mr. Chairman,  
11 Board Member Dinsmoor, when it comes to an aquifer  
12 exemption, because of the UIC primacy, Land Quality does  
13 not get to make that decision. We have to defer and wait  
14 for Water Quality to make that call.

15 MS. O'BRIEN: So, Mr. Chairman, Board  
16 Member, this might help clarify. When the company is  
17 seeking an aquifer exemption, that has to go through  
18 Water Quality, and Water Quality then presents that to  
19 EPA. And we are involved in the process of helping  
20 prepare the package, but we don't have the authority to  
21 carry that through. So that will go through Land  
22 Quality. And that's regardless of whether we define  
23 underground source of water or underground source of  
24 drinking water. That is outside of this.

25 So the company obtains their aquifer exemption

1 ultimately from the EPA through the Water Quality  
2 Division. And then in our rules where we define  
3 underground source of water versus underground source of  
4 drinking water, it doesn't change the aquifer exemption.  
5 All it is changing is what our rules apply to, really,  
6 specifically.

7           So Water Quality has their rules and their  
8 stringency for underground source of drinking water, and  
9 then what we define as underground source of water kind  
10 of expands what we are applying this to in our rules. It  
11 doesn't change the aquifer exemption. It doesn't change  
12 what Water Quality is doing. It's just saying when we  
13 are making these restrictions, it not only applies to  
14 drinking water, but it also applies to the other waters.

15           MR. DINSMOOR: Thank you. Good  
16 clarification. So the exemption's being made by the  
17 other agency, and then you are potentially taking further  
18 actions to enact further protections --

19           MR. WENDTLAND: Correct.

20           MR. DINSMOOR: -- for other sources of  
21 water? Thank you.

22           Early on in Section 2, you had a comment  
23 about -- or, language about unbonded infrastructure. And  
24 I guess I got kind of wrapped up in my understanding of  
25 how bond is calculated and bonded based on permitted

1 structures. So it really indicated to me that it should  
2 be saying an unpermitted infrastructure, I think. But I  
3 would leave that up to you.

4 MS. O'BRIEN: Mr. Chairman, Board Member,  
5 the history behind this actually came from confusion  
6 behind an area permit and what that allows an operator to  
7 do or not to do. So an area permit is a little bit  
8 different than -- it's a different beast than the rest of  
9 Land Quality works under. And B. J. has a better  
10 understanding of exactly what an area permit is. And  
11 then I can jump back to why this was added.

12 MR. KRISTIANSEN: Mr. Chairman, Board  
13 Members, the area permit concept came from the EPA  
14 initially, because when they work with licenses, they  
15 specifically address them to parts of the mine that then  
16 are all encompassed within that area permit. So they can  
17 do anything within that permit they do in a normal mining  
18 permit. We utilize it more in the sense of areas of  
19 disturbance that may or may not be associated with the  
20 well field that are associated with the mining itself.  
21 And so what we've done with that is the infrastructure  
22 aspect of that, trying to keep it confined to certain  
23 areas where they might be a lot more appropriate rather  
24 than start putting infrastructure way outside -- which is  
25 what we were getting. We were getting some of the

1 operators unknowingly putting out infrastructure quite a  
2 ways outside of the active mining area. And what we're  
3 trying to do is, with this particular definition, is keep  
4 everything within a specific scope.

5 MS. O'BRIEN: Yeah. Mr. Chairman, Board  
6 Member, just to add to that, EPA's definition is causing  
7 confusion in that some thought that this allowed them to  
8 construct wherever. We wanted to ensure that, yes, you  
9 have this area permit, but you can't construct anything  
10 that there isn't bonding for, something that you haven't  
11 already projected to build and haven't put bonds in place  
12 for that.

13 MR. DINSMOOR: That's the comment I'm  
14 trying to make. You can't bond anything that you haven't  
15 permitted. And so shouldn't it go to a permitting  
16 structure as opposed to a bonding structure?

17 MR. WENDTLAND: Mr. Chairman, Board Member  
18 Dinsmoor, you have to understand that that's under the  
19 area of permit. So it is -- there is a permit. It's a  
20 broader area permit. All we're stating is you can't  
21 drill holes or add infrastructure until you have bond  
22 within that area permit. Essentially, we don't want any  
23 unbonded infrastructure in place.

24 MR. DINSMOOR: Maybe permitted, but if  
25 it's not constructed, it's not bonded?

1 MR. WENDTLAND: Right.

2 MR. DINSMOOR: Next comment, there was a  
3 reference somewhere. And I'm sorry. I couldn't track  
4 the chapters quickly enough. But you were referring to a  
5 spill control plan.

6 MS. O'BRIEN: Yes.

7 MR. DINSMOOR: And you might consider  
8 using the official name of that so that there's no  
9 confusion to what that's referring to. And that's PCC --  
10 I don't remember the full acronym it stands for. But you  
11 might use that language as opposed to just the more  
12 common spill control plan if that's what you were, in  
13 fact, referencing.

14 MS. O'BRIEN: Is that what we were  
15 referencing, B. J., that specific one?

16 MR. KRISTIENSEN: I can't remember.

17 MR. DINSMOOR: Well, if you're referencing  
18 something else, then that's appropriate to have a  
19 different name.

20 MR. WENDTLAND: Mr. Chairman, Board Member  
21 Dinsmoor, I think that was more to reference if we have a  
22 surface spill of fluids, that we can denote it and track  
23 it so that when we go into restoration, we make sure that  
24 we have those areas covered.

25 MR. DINSMOOR: So that's a plan all unto



1 this permit?

2 MR. WENDTLAND: It's all unto this permit,  
3 yes.

4 MR. DINSMOOR: That's all I have.

5 MR. SHOBER: This access agreement, it's  
6 common in Campbell County for some type of annual access  
7 agreement that's renewable every year. When you talked  
8 about this, are you covered if -- if it's on an annual  
9 access agreement, is on an annual basis, do you believe  
10 you still will have access rights if that terminated  
11 because of nonpayment?

12 MR. WENDTLAND: Mr. Chairman, Board Member  
13 Shober, you raise a really good question. That's why we  
14 strive to get access that is assigned to the permit and  
15 the lands in the permit. That's not the issue, is access  
16 consent generally for the mining area. The issue is to  
17 get a -- or, permit consent, the issue is get access  
18 consent to the permit when we have no man's land between  
19 a county road and a permit.

20 So far, we've been able to work through the  
21 motions of that with the director's policy. That's where  
22 we're going to continue to land until this thing gets  
23 settled. And what that is, we have a variety of  
24 solutions for that. We have some folks that are  
25 providing annual basis, some folks that are signing off

1 and saying, "Yeah, we want you in there because we want  
2 you to be looking at the operation." We have some folks  
3 that say that you can come on this day for this many  
4 hours that we have to renew annually. With the number of  
5 permits we administer, the difficulties are down to a  
6 handful of probably 25.

7 So I don't see it going away. I don't see that  
8 there's a permanent solution here until we see what the  
9 court ultimately decides with this requirement.

10 MR. SHOBER: And I assume part of that is  
11 making the assumption that the well site is permitted,  
12 but there's an access agreement from a public road across  
13 private land to get to that site. And that's --  
14 sometimes I think those may have a tendency to be an  
15 annual.

16 MR. WENDTLAND: They can be. They can be  
17 an hourly one in some cases.

18 MR. SHOBER: Because you want yours to be  
19 long-lasting so that you can --

20 MR. WENDTLAND: The position the Agency  
21 has taken, not just the Division, is that moving forward,  
22 any permits we approve, we have to have access. We have  
23 to be able to inspect them. And, for example, in coal we  
24 have to make inspections to keep primacy. So there are  
25 situations where we have requirements, but we absolutely

1 have to have access. And if we can't have access, we  
2 simply can't approve the permit.

3 MR. SHOBER: So you believe you have that  
4 part of it covered?

5 MR. WENDTLAND: Mr. Chairman, Board Member  
6 Shober, I think we have it covered to the extent we  
7 possibly can have it covered, given the current  
8 situation.

9 MR. SHOBER: I understand. I understand  
10 your answer. I truly do.

11 When you spoke about taking away the two-year  
12 abandonment of a well -- and I understand that that well  
13 may not be used, but it's technically not abandoned. I  
14 guess I'm referring back to the coal bed methane stuff.  
15 Obviously, to everybody, it's abandoned, but technically  
16 it's not abandoned. In your rules of this process, do  
17 you have to force plugging if somebody just goes away?  
18 Yeah, you have bonding. But do you have a time frame in  
19 between there? I guess maybe to give an example is BLM  
20 says seven years of no production before they consider it  
21 an abandoned well.

22 MR. WENDTLAND: Mr. Chairman, Board Member  
23 Shober, I think you're asking two questions here. The  
24 first question is, if you have a site that goes -- an  
25 operation that goes into forfeiture, when do you start

1 that abandonment? And that would fall -- on the  
2 forfeiture proceeding, I think Link would be the best  
3 example of that right now, where, in this case, the  
4 credit trust has said, "We'd like the opportunity to plug  
5 those holes before we forfeit our bond, because we  
6 believe we can do it at a cost that is equal to or maybe  
7 a little less than the bond and therefore recover some  
8 capital resource."

9           So I think our position on that is we would  
10 work through that process. If we can't get them plugged,  
11 we will forfeit the bond and do the plugging. So that  
12 timeline is more dependent on the court proceeding in  
13 that case than it is how long it's particularly been  
14 abandoned, with the exception of, if you had a health and  
15 safety issue, we would have the right to forfeit the bond  
16 and plug the hole immediately.

17           So the second question of that is, as Brandi  
18 alluded to in her discussion, were the -- these in situ  
19 operations, the way they develop their fields and move,  
20 they may need to retain that well for a fairly extended  
21 period of time because, when they mine that field, they  
22 may mine an adjacent field, and they may go over and get  
23 another field to the opposite side. Well, then they want  
24 to start restoring here because of the way that  
25 groundwater flow and the wells are organized.

1           So, to say plug them in two years, rather than  
2 that, the conclusion we all came to is it makes more  
3 sense to say plug them at restoration, when you're done  
4 with restoration. Otherwise, you may have to come back  
5 in and redrill the holes to go back into restoration.  
6 And that would seem to be an onerous capital expense.

7           MR. SHOBER: You're looking at it as  
8 somewhat like a mining operation, where that operator has  
9 got some leeway in their reclamation of exactly how they  
10 schedule that?

11           MR. WENDTLAND: Correct.

12           MR. SHOBER: Technically, that well  
13 doesn't hurt anything. It isn't supposed to leak when  
14 it's being used, and it isn't supposed to leak when it's  
15 just sitting there. So, really, it has no effect other  
16 than there's a hole there, and at some point in time, it  
17 needs to be taken care of and the surface reclamation.

18           MR. WENDTLAND: Correct. And the MIT  
19 requirement is the five years. So, if it sits for that  
20 five years, they still have to come back in and do the  
21 mechanical integrity of the well, make sure we have a  
22 solid well bore. If it's a problem, we have to plug it.

23           MR. SHOBER: That may trigger some of  
24 that -- if, at five years, they want to retest the well  
25 or plug it --

1 MR. WENDTLAND: Or just plug it.

2 MR. SHOBER: Or plug it. Okay.

3 MR. DINSMOOR: And it's still bonded  
4 during that time?

5 MR. WENDTLAND: Absolutely. And it's  
6 bonded per hole.

7 MR. SHOBER: Thank you for your answer.

8 MR. HINES: One of my questions -- and I  
9 think it had been discussed -- is abandoned wells. And  
10 the first reading is kind of confusing. The other  
11 question, Mr. Chairman, throughout these rules, proposed  
12 rules, you have a date crossed out behind the statute.  
13 Virtually all that means, if the statute is changed, then  
14 it refers to the update, not the original?

15 MR. HULTS: Mr. Chairman and Board Member  
16 Hines, that was one thing I'm going to bring up. I think  
17 during the drafting of this chapter, there was some  
18 miscommunication related to the uranium program rules.  
19 In those chapters, they contain a reference that says --  
20 that references the date of promulgation or the effective  
21 date of those regulations. In those instances and in  
22 those chapters, the date wasn't provided for statutory  
23 language. They did include the date for federal  
24 regulations, which is similar to this case.

25 This chapter doesn't contain that general

1 description of when this chapter is applicable. And I  
2 believe I can't find anywhere -- the Secretary of State's  
3 rules still require that date on there. And I just  
4 haven't had a chance to confirm that. Because it sounded  
5 like the source of the removal of the date was coming  
6 from the LSO. My feeling is that the prohibition or the  
7 requirement for that date to be in there is still valid,  
8 because you don't want a statutory change that changes  
9 our requirements without a vetting before the board or  
10 the council.

11 My feeling was that I still need to straighten  
12 that out between LSO, Secretary of State and clarify  
13 that, because it's my understanding that date would  
14 actually be required still. I just haven't had a chance  
15 to iron it out with the parties that be and the ones that  
16 would require it, which would be the Secretary of State.

17 MR. HINES: Mr. Chairman, then one other  
18 thing I noticed in here is that it looked like a  
19 requirement to be a well or an opening, that they call it  
20 so far from a building or power pole. That's eliminated,  
21 or is it in another section that I missed?

22 CHAIRMAN GAMPETRO: I believe that was  
23 just referred to as not their authority. That's the  
24 engineer's authority to make that decision. So it's not  
25 our call.

1                   MR. WENDTLAND: That's correct,  
2 Mr. Chairman.

3                   MR. HINES: Mr. Chairman, power lines and  
4 power companies have requirements that's certainly more  
5 than what could be called so many feet. They have their  
6 own. Mr. Chairman, for clarification, I guess I'm trying  
7 to follow the procedures on these meetings and  
8 discussions we have. I'm used to going through a lot of  
9 this. In the last year, I went through it all before on  
10 a legislative committee. And whenever those -- whenever  
11 we give an agency the authority in those cases for rules,  
12 the final rule that they present to the governor always  
13 come back to that committee to see if -- because, along  
14 the line, as you said, there's changes in various places.  
15 And if there's an agreement or any objections or anything  
16 like that, these type rules, I can't see where they --  
17 like this and this doesn't go to a legislative committee,  
18 where that process would come in.

19                  CHAIRMAN GAMPETRO: I believe that we are  
20 an advisory board. And the difference would be if we  
21 were the final say. That's my understanding.

22                  MR. WENDTLAND: Mr. Chairman, Board Member  
23 Hines, I agree with you, Mr. Chairman. As the advisory  
24 board, it's can we move this to the EQC? That doesn't  
25 preclude that we provide a final copy when the governor's



1 signed off. If that is a wish of the board, I believe,  
2 Craig, that there's nothing that would preclude us from  
3 providing a copy. It's just that you're not going to be  
4 able to act on that copy.

5 CHAIRMAN GAMPETRO: The other thing that  
6 has been in the past a couple of times, where there would  
7 be a substantial change by the final board that actually  
8 approves this before it goes to the governor for  
9 signature, we are invited to go and discuss that with  
10 them, argue it, if you will, or whatever. I think that's  
11 happened twice in the last 20 years that I'm aware of.

12 MR. WENDTLAND: And then also the council  
13 can remand it back to us. So there is a way for it then  
14 to come back to the board.

15 MR. HINES: Mr. Chairman, then when the  
16 council -- they're the final say. A majority votes for  
17 it. Then it goes to the governor?

18 MR. WENDTLAND: Right. The governor is  
19 the final, final say.

20 MR. HINES: But like in the legislature,  
21 if a committee passes something, it goes to the governor.  
22 Any of the committee members can object and give their  
23 reasons to the governor. Is that the same way with the  
24 council?

25 MR. WENDTLAND: It's a majority vote with

1 the council.

2 MR. HINES: Are you saying minorities  
3 don't have a vote?

4 MR. WENDTLAND: Well, I'm saying that if  
5 the majority passes the rules with the recommendation to  
6 get them signed, they'll move through to the governor.  
7 Certainly the minority has an option, I'm sure, to make  
8 an amendment or a statement of why they object. But I  
9 just can't think, in my tenure -- Board Member Dinsmoor,  
10 I'm going back 25, 30 years here, and I can't think of a  
11 time when that has occurred.

12 MR. DINSMOOR: I think I can agree. I can  
13 go back 40, and I can't think of a time when the majority  
14 decision didn't go forward and there was no provision for  
15 a minority objection.

16 MR. WENDTLAND: Yeah. I can't think of  
17 when that's occurred, Board Member Hines.

18 MR. HINES: And this, Mr. Chairman, is a  
19 little different, I guess, because I'm referring to where  
20 the legislature passed it and gave approval for an agency  
21 to make the rules. Then the agency makes the rules, and  
22 those are usually referred back to the committee for no  
23 vote or anything. Just for their information. And if  
24 the committee or individuals on that committee don't like  
25 some of them, they have the right to notify the governor

1 and ask him not to sign it.

2 I know that's the process because I've done it  
3 a couple of times in the past over the years. The rules  
4 that came up by an agency that objected -- you know, we  
5 don't see the rules in the legislature. We authorize  
6 them, which that's the only way it can be. The  
7 legislature can't look at every rule and vote on it.  
8 But, if there's something they really objected to, they  
9 have their means to pass that word on to the governor,  
10 and he can either listen to them or ignore them.

11 MR. HULTS: Mr. Chairman, Mr. Hines, there  
12 is a legislative review of the final rules that come out  
13 of the EQC. It depends on whether they're new rules or  
14 amended rules. The amended rules, they're basically  
15 looking at procedure. However, if somebody on the  
16 committee related to that statute, they do get a version  
17 of the notice of intent, and they're made aware that  
18 there are changes to the regulations that relate back to  
19 that statute.

20 So, in the case of a new rule, we have to  
21 identify what statute, either House bill, Senate file,  
22 which one of those it was, and those members of the  
23 committee are actually notified for new rules. The  
24 amended rules, not as much. But I would imagine there is  
25 some continuity to that. If you were viewing an old

1 piece of legislation and wanted to keep tabs on it and  
2 were still in the legislature, you would be notified that  
3 that was either on the consent list or not on the consent  
4 list. And that's another portion where the legislature  
5 is able to act on that.

6 MR. HINES: Thank you. And, Mr. Chairman,  
7 I have one other note I wrote to myself, and I almost  
8 forgot what I was meaning by it. It was quite a while  
9 ago. And it had to do with the corporation or business.  
10 They had to name a CEO and officer or something to be  
11 responsible. If that business goes out of business, then  
12 what is the procedure, then, where there's no one  
13 responsible?

14 MR. WENDTLAND: Mr. Chairman, Board Member  
15 Hines, I think the most recent example is Link. We  
16 didn't have a CEO anymore because the company dissolved.  
17 But the credit trust and the trustee and who is counsel  
18 for the forfeiture is who we go to. So there is a path  
19 back to that source.

20 MR. HINES: Mr. Chairman, isn't there  
21 cases where there's no credit line? I'm thinking of  
22 little companies and corporations that --

23 MR. WENDTLAND: Mr. Chairman, Board Member  
24 Hines, if that were going to occur in Land Quality, I'm  
25 trying to think of -- it would be more likely with like a

1 small sand and gravel operator. But most of those are  
2 within the state and usually can find them. Again,  
3 that's because there's usually some landowner or surface  
4 ownership or mineral ownership that's associated with  
5 that. So, through the adjudication file, I'm just trying  
6 to think of --

7 Carol, have we had anything in your time frame?  
8 Because I'm not thinking, in my tenure, where we have not  
9 been able to identify a responsible party.

10 MS. BILBROUGH: We've had a few MIAs where  
11 we've had a struggle locating somebody. But I think we  
12 had ultimately managed to find someone. I can't think of  
13 any situation where we never got -- or, didn't succeed at  
14 all. There were definitely times when even a year went  
15 by before we could find someone.

16 MR. HINES: Thank you.

17 CHAIRMAN GAMPETRO: Thank you. Thank you  
18 all. Anything else on this? Public comment?

19 MR. WENDTLAND: Would you please state  
20 your name for the record?

21 MS. KOLKMAN: My name is Dawn Kolkman.  
22 I'm with Energy Fuels Corporation -- Energy Fuels  
23 Resources. Excuse me. I'd like to comment today, and  
24 I'd like to start by saying this has been a lengthy  
25 process. When Brandi says it's been going on for a

1 while, yeah. It's been going on for a long time before  
2 her. And, for the most part, I've been involved the  
3 whole way through. And I'd like to thank LQD, Kyle, your  
4 staff, Brandi, B. J., Ryan Schierman, who's not here  
5 today, and other staff members that I know have helped  
6 write this all along the way.

7           And I'd also like to thank LQD for allowing our  
8 input and our discussion within the work group. It means  
9 a lot to be able to work together with your regulator to  
10 figure out how to get business done at the end of the day  
11 so that we're all moving forward and keeping the  
12 environment safe, keeping our workers safe and still  
13 making money for our state.

14           There are just a few items that I'd like to go  
15 over today.

16           Kyle, first of all, I'd like to thank for  
17 redacting the Section 2(f). I think that that will be  
18 good to figure out how we go forward once the regulations  
19 are figured out.

20           MR. WENDTLAND: It's a moving target for  
21 all of us.

22           MS. KOLKMAN: Absolutely. So bear with  
23 me. I'm not up on all of the niceties and policies about  
24 calling out board members and chairman, et cetera. I  
25 mean no disrespect at all. So, if I appear to be, please

1 call attention to that.

2 MR. SHOBER: I've been called a lot of  
3 names as a commissioner.

4 MS. KOLKMAN: I will start in with the  
5 definitions. There's just a few things that I'd like to  
6 comment on or have questions for clarification on. The  
7 first one is Section 1(f), best practicable technology.  
8 That actually is a statute defined in statute. So we  
9 might want to go ahead and consider "means as defined in  
10 Statute 35-11-103(f)(i)."

11 The next one I have is Section 1, subsection  
12 (mm), regarding upper control limits.

13 And, Brandi, I am looking at the same document  
14 you are up there, so it should be page 7, I believe.

15 My question in this instance is, are we in  
16 danger or -- are we making Reference Document Number 4 a  
17 regulation by referencing it in this manner? Do we hold  
18 it to regulation that, if that is the case, maybe we  
19 should think about redacting that, if that's the right  
20 word to use? You don't want to tie a guidance document  
21 that has been and is changed quite frequently. You don't  
22 want to have that tied if you're going to make changes in  
23 some different manner.

24 There's also -- in the discussion about MITs --  
25 I'm sorry. Let's back up. In Section 4(a)(xiii), page

1 14, the last sentence that was added, my question is  
2 about the word "prescribed." It may be a matter of  
3 semantics, but another word that may be used would be  
4 "acceptable." "Prescribed" has shown in the past, at  
5 least in regulation, that if you're going to prescribe  
6 something, it's going to be what are you prescribing?  
7 Where is that going to be defined at? And if technology  
8 changes, is it going to be able to be in that manner? So  
9 it's just a matter of interpretation of that word,  
10 "prescribed" or "acceptable."

11 MR. WENDTLAND: Ms. Kolkman, I just have a  
12 question back on that one.

13 MS. KOLKMAN: Please.

14 MR. WENDTLAND: I think the reason we went  
15 to "prescribed" is because if we move into the -- and I'm  
16 not saying that we don't need to change it, by the way.  
17 As we move into the electronic permitting, there will be  
18 a set prescription format. So I think that's where that  
19 word derives from.

20 MS. KOLKMAN: And I can appreciate that.  
21 However, I would back up one step. We do know that  
22 technologies have a way of changing. And when those  
23 technologies change, we need to be able to use an  
24 acceptable format. Even though this is the format that,  
25 "Hey, this is what we're going to use this year," that



1 format could change. Again, it's just a matter of  
2 semantics. That word is used one other place within the  
3 document. I cannot remember that location. But it's the  
4 same comment to that effect.

5           With regards to MITs -- and this is in Section  
6 9 -- I'm sorry. Yeah, Section 9. And I believe it's  
7 subsection (a) for formatting purposes. I don't see an  
8 (a) or a (b) on that particular section. So I believe  
9 it's section (a). And it goes into subsection (iii),  
10 page 28.

11           MS. O'BRIEN: Which section is that?

12           MS. KOLKMAN: It is Section 9. Section 9  
13 starts on page 26. And that's where I don't see a little  
14 (a) at. And then it's subsection (iii), which actually  
15 appears on page 28.

16           MS. O'BRIEN: Mechanical integrity?

17           MS. KOLKMAN: Yes. And the addition of  
18 the annual report. I do not disagree that the  
19 Guideline 4 format for guidance on the annual report does  
20 request that we provide MIT information. However,  
21 through work group discussions, we had come to the  
22 conclusion that we would provide a summary of the  
23 quarterly reports of the MITs within the annual report  
24 versus resupplying duplicative information from the  
25 quarterly reports themselves.

1           What that would look like in the annual is you  
2 would say first quarter we did 60 MITs. So many passed.  
3 So many fails. You would do that for Quarters 2, 3 and  
4 4. In your annual report, then you would say -- you  
5 would say just that. You would limit it to, per  
6 quarterly report dated, et cetera, et cetera, we reported  
7 this many MITs. We reported this many passed, fails.  
8 And that's how that would look.

9           We also know that that Guideline 4 format has  
10 changed a few times over the years. And we want that  
11 ability to maintain that change just because we want  
12 valuable -- value added in our reporting procedures. And  
13 I think we would both agree on that. So that's just  
14 something to point out.

15           And I think my last comment to that effect is  
16 Section 14(e). And that's on page 38. It's the new  
17 section that says "unless they are in violation of law  
18 that was enacted after the permit was approved." Section  
19 14. I'm sorry if I said 16. Section 14(e).

20           MR. ROGACZEWSKI: What page is that on?

21           MS. KOLKMAN: It's page 38. I'm sorry. I  
22 thought I said that.

23           MS. O'BRIEN: You probably did.

24           MS. KOLKMAN: I'm not sure -- after  
25 reading this and rereading it, I think I need some

1 clarification on what this means or where LQD is going  
2 with this. I'm not recalling it from work group  
3 discussions. Doesn't mean we didn't discuss it. But,  
4 after reading it, I'm just not clear on what this is  
5 saying to us as industry when we're submitting a TFN.

6 MS. O'BRIEN: Okay. Mr. Chairman, Dawn,  
7 it's my understanding that this was added in the case  
8 that some new law is enacted. When you submit an  
9 application to amend your license, that we can bring that  
10 up to date if there's a portion that is outdated and  
11 doesn't comply with that new law. That was my  
12 understanding.

13 MR. ROGACZEWSKI: Yeah.

14 MS. KOLKMAN: Is there not a process in  
15 which, in the regulation, whereby once rules and  
16 regulations are promulgated, that LQD issues a letter to  
17 that industry that says you have one year, two years,  
18 et cetera, et cetera, to incorporate those regulations?

19 MR. WENDTLAND: There typically is a  
20 transition period.

21 Go ahead, Mark.

22 MR. ROGACZEWSKI: What I think -- and I'm  
23 not saying -- what I think this is stating is that if,  
24 through the process of this revision package that Land  
25 Quality Division would notice other aspects of the permit

1 being not in compliance with a new law, we have the right  
2 to ask you to revise additional portions of the permit.  
3 That's what I understood that was added for. And maybe  
4 it needs to be reworded. Because you would not be  
5 incompliant with the new law. LQD staff noticed that.  
6 Now you gave us a section to state. You're fixing how  
7 you're going to strip topsoil. But, through that  
8 process, we also notice that maybe in your seed mixture  
9 there now was a noxious weed -- going to extreme here --  
10 and we state now you have to change your seed mixture,  
11 also, because we looked at it on the following page and  
12 noticed something that's in error there.

13           That's what I understood that language to be.  
14 And maybe it needs to be rewritten.

15           MS. KOLKMAN: Does that mean, then -- does  
16 that mean, then, you would reopen the whole permit or  
17 just those specific discussions? For instance, topsoil,  
18 for instance, seed mixtures, would you just open that  
19 section of the permit? Because it kind of sounded like  
20 to me, anyway, in my thought, that that means there's the  
21 potential to reopen the whole permit for review if you  
22 find just a few items that need to be revised.

23           MR. WENDTLAND: I don't believe that was  
24 the intent, but I can certainly see how you see that in  
25 how this was written.

1 MS. KOLKMAN: And that's just the way --  
2 having worked with this for a while, that's just -- and  
3 rereading this, that's just kind of hit me different.

4 Mr. Chairman, Board Members, those are all of  
5 the questions, comments that I have. Is there anything  
6 that I can answer for you?

7 MR. SHOBER: Thanks.

8 CHAIRMAN GAMPETRO: Thank you very much.

9 MS. KOLKMAN: You're welcome.

10 MR. WENDTLAND: Natalia, are you still  
11 there with us?

12 MS. MACKER: I am, but I have no  
13 questions. Thank you.

14 MR. WENDTLAND: Mr. Chairman, is there any  
15 more public discussion?

16 MS. ANDERSON: Mr. Chairman, I'll be very  
17 brief. Shannon Anderson from Powder River Basin Resource  
18 Council. It may surprise you, but I actually agree with  
19 pretty much everything that was just said from the  
20 industry. I think, in particular, reference to a  
21 guideline in the regulations does cause concern because  
22 those regulations -- because those guidelines do not have  
23 the force of regulation. They haven't been through  
24 public notice and comment. So to reference them in a  
25 regulation almost gives them the force of regulatory

1 authority, which is concerning.

2 I would say the same thing about the MOU  
3 between the Water Quality Division and the Land Quality  
4 Division. I think, actually, the regulations, why you  
5 couldn't find it earlier when you were searching, you  
6 actually referred to it as a working agreement. It's  
7 actually an MOU. I think even the term is a little bit  
8 confusing in what you call it in the proposed rule. So  
9 maybe don't reference it at all. Again, those MOUs,  
10 those working agreements, whatever you may call them,  
11 don't have the force of regulation, and you shouldn't  
12 infer they do by referencing them in the regulations.

13 Thank you.

14 CHAIRMAN GAMPETRO: Thank you.

15 Any comments or response on that?

16 MR. WENDTLAND: Mr. Chairman, my response  
17 to that is that I think, based on what I've heard today,  
18 I would recommend that we take Chapter 11 back and go  
19 back to the work group in October for specifically the  
20 items that were outlined today. I don't want to reopen  
21 it to the entire chapter again, would be my preference,  
22 but to the items that were explicitly brought up today.  
23 And we will bring that back to you in the December  
24 meeting.

25 So I would recommend you table it and we make

1 those changes. Because I don't think we can come to an  
2 agreement on this change on page 38 today. So I would  
3 recommend that's the path, that we limit the scope of  
4 those discussions to those items outlined today,  
5 including the access itself.

6 CHAIRMAN GAMPETRO: Does anybody have a  
7 problem with tabling it until the next meeting?

8 MR. SHOBER: No. I would rather get it  
9 right than go back and have to change it.

10 CHAIRMAN GAMPETRO: Natalia?

11 MS. MACKER: Yes?

12 CHAIRMAN GAMPETRO: Do you have any  
13 problem with tabling this until the next meeting?

14 MS. MACKER: No. I think that's a good  
15 idea.

16 CHAIRMAN GAMPETRO: Thank you. It's  
17 tabled. Do we need a vote on that?

18 MR. SHOBER: Depends. Sometimes you do.  
19 Sometimes you don't. Depends on your rules. You been  
20 around longer than I have, so I don't know what the rules  
21 are.

22 CHAIRMAN GAMPETRO: I don't remember ever  
23 tabling anything before.

24 MR. DINSMOOR: I don't think it requires a  
25 vote.

1                   CHAIRMAN GAMPETRO:  Everybody agreed, so I  
2 think it's tabled.

3                   MR. ROGACZEWSKI:  Mr. Gampetro and  
4 Advisory Board Members, I do have one question because I  
5 do not remember the format of Chapter 18.  But do we have  
6 a reference to the Water Quality and Land Quality  
7 Division working agreement in Chapter 18 that if it is  
8 agreed upon in this uranium work group to remove those  
9 references, do we need to remove that reference also from  
10 Chapter 18?  I don't remember, though, if it actually is  
11 in there.  I know we did not --

12                   MR. WENDTLAND:  It was not.  To my  
13 knowledge, it is not.  So I do not believe we have that  
14 conflict.

15                   MS. BILBROUGH:  Mr. Chairman and Board  
16 Members, if we do table it, it will go back out to public  
17 notice.  And so we can't tell them you're only allowed to  
18 comment on these sections.  So, while it will go to the  
19 uranium work group and possibly only those sections will  
20 be discussed, it will go back to public notice prior to  
21 the December meeting.

22                   MR. SHOBER:  Would it be okay to have a  
23 motion to approve with those exceptions?

24                   MS. BILBROUGH:  We don't know what those  
25 exceptions are.



1                   MR. WENDTLAND: We don't know what those  
2 exceptions are going to be. Mr. Chairman, Board Member  
3 Shober, my recommendation would be, for disclosure  
4 purposes, that we table it, we make those corrections, we  
5 send it back out to public notice, and we come back in  
6 December. We've covered -- that way the public has an  
7 opportunity to see exactly what that change looks like.

8                   MR. SHOBER: Good enough for me.

9                   MR. WENDTLAND: I think that those parties  
10 that are here today are likely the parties we would see  
11 in December. So I guess I'm hopeful that we don't go  
12 outside of that scope in order to move this forward. But  
13 that is a risk. And I think it's the right risk.  
14 Because I think the public should be able to see what  
15 that change is.

16                   CHAIRMAN GAMPETRO: Other business?

17   (No response.)

18                   CHAIRMAN GAMPETRO: I guess we can  
19 entertain a motion to adjourn.

20                   MR. SHOBER: So moved.

21                   MR. DINSMOOR: Seconded.

22                   CHAIRMAN GAMPETRO: Been moved and  
23 seconded. All those in favor signify by saying aye.

24   (All members vote aye.)

25                   CHAIRMAN GAMPETRO: Opposed?

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(No response.)

CHAIRMAN GAMPETRO: Seeing no opposed, we  
are adjourned.

(Hearing proceedings concluded  
1:46 p.m., September 12, 2017.)

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C E R T I F I C A T E

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

Dated this 3rd day of October, 2017.

  
RANDY A. HATLESTAD  
Registered Merit Reporter

