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4 HEARING TO DISCUSS PROPOSED REVISIONS TO CHAPTERS 1, 2,
5 6, 12 AND 16

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9 TRANSCRIPT OF HEARING PROCEEDINGS

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11 Transcript of Hearing Proceedings in the above-
12 entitled matter before the Department of Environmental
13 Quality, Land Quality Division, commencing on the 24th
14 day of February, 2014 at 10:00 a.m. at the Oil and Gas
15 Conservation Commission Hearing Room, 2211 King
16 Boulevard, Casper, Wyoming, Mr. Jim Skeen presiding, with
17 Board Members Mr. Jay Collins, Mr. Kyle Wendtland and
18 Mr. Michael Shober in attendance. Appearing
19 telephonically was Chairman Jim Gampetro.

20 Also in attendance were Mr. Craig Hults of the
21 LQD, Ms. Carol Bilbrough of the LQD, and Ms. Tanya King
22 of the LQD.

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

2 (Hearing proceedings commenced

3 10:00 a.m., February 24, 2014.)

4 ACTING CHAIRMAN SKEEN: We'll start the
5 meeting for the Department of Environmental Quality, land
6 division, for the rules changes. I don't know where to
7 go now. Do we need to approve the minutes of last month?

8 MR. HULTS: That's correct, yep. You
9 should have received them back late January.

10 ACTING CHAIRMAN SKEEN: Everybody read
11 them?

12 MR. SHOBER: I don't remember.

13 MR. WENDTLAND: Yeah, I reviewed them,
14 Jim. I'd make a motion to approve the minutes from the
15 previous meeting.

16 MR. COLLINS: I'll second that motion.

17 ACTING CHAIRMAN SKEEN: It's been moved
18 and seconded to accept the minutes from last meeting.
19 All in favor say aye.

20 (All members vote aye.)

21 ACTING CHAIRMAN SKEEN: Motion carries.
22 Or, anybody against it?

23 (No response.)

24 ACTING CHAIRMAN SKEEN: Motion carries.

25 Do you want to have introductions?

1 MS. BILBROUGH: Yeah. Since Jim's on the
2 line, we should go ahead and do some introductions and
3 let him know who's here.

4 Jim, can you hear us?

5 CHAIRMAN GAMPETRO: Sounds a little
6 scratchy, but go ahead. If you call on me or ask me
7 something, you might have to do it more than once for me
8 to be aware that you're asking me.

9 MR. HULTS: Craig Hults with the Land
10 Quality Division in Cheyenne.

11 MS. BILBROUGH: Carol Bilbrough with the
12 Land Quality Division in Cheyenne.

13 MS. KING: Tanya King, Land Quality
14 Division in Lander.

15 MR. WENDTLAND: Kyle Wendtland, industry
16 rep, Gillette.

17 MR. SHOBER: Micky Shober, Campbell County
18 commissioner, Gillette.

19 MR. COLLINS: Jay Collins, Glendo. I'm
20 the ag representative.

21 ACTING CHAIRMAN SKEEN: And Jim Skeen,
22 public rep from Douglas.

23 Okay. I guess we got everything taken care of
24 there. So, Craig, did you want to start off, or anybody
25 else have anything?

1 MR. HULTS: So today I have a fairly brief
2 rule package. This is for Chapters 1, 2, 6, 12 and 16.
3 These changes were drafted in response to several rule
4 packages that we formally submitted to the OSM, the
5 Office Of Surface Mining. They identified numerous
6 concerns. This involved a rule package for valid
7 existing rights, a second one that was the ownership and
8 control rule package, and then a third one last year
9 which was a combination of both of those trying to
10 correct some errors. So we've gone through these rules
11 several times, and it seems to me we're down to the final
12 details of getting close to having this approved finally.
13 We've had several go-rounds.

14 The other issue that we're addressing today is
15 a blasting issue that was identified during the OSM's
16 oversight during the 2013 oversight year. And so those
17 are the topics we're going to address.

18 Just as a way of history, we have had numerous
19 submittals here. Going back to 2011, we had two formal
20 submittals to the OSM. Again, that was the valid
21 existing rights package and the ownership and control
22 packages. We ultimately decided to formally withdraw
23 that ownership and control package. They had identified
24 quite a few things that were wrong, I believe eighteen
25 issues that they had originally. From Washington's side,

1 I guess that was too many, and they didn't want to
2 publish the Federal Register with that many errors in it
3 and have to go through this again with that Federal
4 Register out there. So we withdrew it.

5 And then in 2012, we submitted another package
6 that was a combination of the valid existing rights and
7 the ownership and control issues that they had identified
8 that we needed to fix yet. That package was subsequently
9 split apart to address those two separate packages. We
10 did it at the state level in one rule package.

11 Since that time, they've had time to review
12 that 2012 package. That generated two concern letters
13 from the OSM, again identifying some issues. Each time
14 it's dropped off the number of issues, so that's
15 encouraging.

16 They've also -- just by way of note, they
17 haven't published these in the Federal Register yet. So
18 we're getting to a place where we're starting to get
19 almost ahead of them a little bit. Those concern letters
20 basically detail what would be in the Federal Register.
21 It goes through a process that someone in Denver reviews
22 it. They send it to their solicitors, who review it new.
23 So there's several layers that it goes through. And I
24 think those different sets of eyes entails different
25 views on what's at least as effective as the federal

1 rules or as stringent as SMCRA is. So we've been having
2 this go-round quite a few times.

3 But to help avoid that in the future, we've
4 been submitting these packages informally. This time
5 around we sent them the same time we published the draft
6 package. We submitted that to the OSM to give them a
7 chance to review it so that we would have that
8 opportunity to make some changes if they were going to
9 have some issues still. And it turned out they did. And
10 so I'll have some suggested changes today that are based
11 on those OSM comments.

12 The OSM oversight issue was an issue again
13 related to the blasting regulations. This issue dealt
14 with the periodic monitoring of blasting to ensure that
15 there's compliance with the air-blast standards. Our
16 rules, the way they read, it gave the administrator
17 discretion to require that periodic monitoring. The
18 federal regulations don't. It just requires that
19 periodic monitoring. So, basically, our change in
20 Chapter 6 is just to get rid of that discretionary
21 portion from the administrator, and then we would just
22 require that periodic monitoring.

23 In practice, that was actually what was
24 happening. It was just a disjointed portion of our rules
25 that didn't quite match up there. So that was something

1 they said we need to fix during this upcoming year. And
2 we decided to get it into this package.

3 Like I said, I have some proposed changes to
4 the draft, the statement of reasons that you have. The
5 revisions have been drafted in response to OSM's
6 comments. They had four comments, basically. There was
7 also some back and forth with phone calls with the OSM to
8 ensure that I have everything. The number of times we go
9 through this, it takes basically a year from Point A to
10 Point B to get this all the way through the process. So
11 we're hoping this one does it.

12 The things that we changed there are the four
13 things in this letter. And there were also -- again, we
14 had conversations with the AVS office, which is the
15 office that maintains the database on things like
16 violations, ownership and control, that type of thing.
17 The person in Denver who does our initial review
18 contacted them to make sure that our language might be
19 okay. And it turned out that it was actually a pretty
20 involved kind of thing. It wasn't so clear-cut as it
21 appeared on their rules. Part of that I believe is
22 they're dealing with new rules themselves on OSM's side
23 and really haven't had a chance to implement their rules.
24 So I think we're getting some questions on their end, as
25 well.

1 But we've made the changes in response to those
2 conversations, as well. And it appears that that would
3 be satisfactory to the AVS office, who would be the ones
4 who would be administering some of this. That's good,
5 I'm hoping.

6 And once we go through the rules, what I was
7 hoping is I can step through the draft language. I have
8 indicated changes that were made since we originally
9 forwarded the draft package to you. I've indicated those
10 in red. And we can talk about those as we go through. I
11 don't think the changes are real big changes.

12 Probably the vast majority of the rule language
13 that we'd be adding would be related to transfers. When
14 I originally put the transfer language together, we had a
15 section of rules that referred to transfers as -- or, the
16 rules in general would apply to transfers. We didn't get
17 into the specifics of it. It would be the same as if you
18 were applying for a permit right from the get-go or a new
19 permit. That wasn't adequate. So we've added quite a
20 few sections there. But it does mirror the federal
21 language. And that, I'm finding out, is pretty key. And
22 you'll probably see in some of these edits that they're
23 looking at it to that level, a couple words here or
24 there. If it's different, they want it the same on these
25 issues.

1 Once we get through the advisory board stage,
2 if there are any revisions based on this meeting, we
3 would make those corrections and update the statement of
4 reasons. I generally provide a summary of anything that
5 happens at the meeting, and that gets installed into the
6 rule package itself.

7 From there we go to a formal rule-making
8 process. It's fairly similar to what we're doing here.
9 The time frames are a little bit longer. Public notice
10 is longer. Review times are longer. But at that point
11 we're hoping to have a rule set well enough that the OSM
12 is going to agree with them and we wouldn't have any
13 changes from this point forward, hopefully. And as you
14 can see, there's the EQC hearing, a 75-day review after
15 from the governor's office, and ultimately they get filed
16 with the Secretary of State.

17 So that's all I have as way of introduction to
18 the rule package. My hope was then to just jump into the
19 rule language and kind of approach it chapter by chapter.
20 And if you have any questions along the way, please feel
21 free to ask.

22 MR. WENDTLAND: Craig, do you know if the
23 draft packages have been seeing the solicitor's review at
24 OSM or not?

25 MR. HULTS: They haven't. And I believe

1 that's some of where we get the disjointed kind of --
2 some of these issues that we're addressing today were new
3 issues from the concern letters. We made changes. Now
4 somebody is looking at it again, and oh, we see something
5 else now that's on there. So it's been just kind of a
6 continuous cycle to try and get this down to the point
7 where we've got everything.

8 I think a lot of that, if we go back to like
9 the 2011 versions that we did, there was a lot of rule
10 language. The OSM had three different rule-makings that
11 they combined under that ownership and control umbrella.
12 So a lot of it's new, I think. But they don't see it
13 now, not until the final submittal.

14 MS. BILBROUGH: So, Jim?

15 CHAIRMAN GAMPETRO: Yes.

16 MS. BILBROUGH: Kyle asked a question
17 about if the rule package had been reviewed by the OSM
18 attorneys.

19 Is that right?

20 MR. WENDTLAND: Solicitor.

21 MS. BILBROUGH: Solicitor. And that's the
22 question that Craig was just answering.

23 CHAIRMAN GAMPETRO: Yes. I can hear what
24 you have to say and what Craig has to say quite clearly.
25 Other pronouncements are not heard.

1 MS. BILBROUGH: Okay. We'll try to
2 repeat -- when someone asks a question, we'll repeat that
3 question so that you can hear it.

4 CHAIRMAN GAMPETRO: Thank you very much.

5 MR. HULTS: And just a little bit more on
6 that. The review happens at the Denver level. And he
7 submits that review. It seems like, for the most part,
8 there isn't a lot that's different from his review. But
9 there have been instances where there's new concerns
10 brought up. And that's some of what we have here today.

11 The process itself, like I said, the Federal
12 Register hasn't been published yet. And that's where
13 it's sitting right now, is with the solicitor. I guess
14 they've reviewed it. And even during that review, they
15 found one thing that wasn't a part of that concern
16 letter. It's been handled already, fortunately. So it
17 wasn't an actual issue. But it will be published as a
18 deficiency. But on our end at the state level, that
19 correction was made during the previous rule-making.

20 MR. WENDTLAND: Okay. Thank you.

21 MR. HULTS: Just in the introduction, just
22 a few changes on the page numbering. I had one typo I
23 saw, and that was it on the introductory material.

24 In Chapter 1 we have two definitions that we're
25 updating. During the OSM's review -- and this has been

1 something that has been noted several times before.
2 Originally we removed a definition. And when we did
3 that, we also removed the term "surface" from a lot of
4 our rule language when we're referring to surface coal
5 mining operation. We've corrected most of those. This
6 is one that slipped through the cracks. So, for control
7 or controller, we've added that word "surface" back in to
8 address the concerns in the concern letters.

9 The other one was "notice of violation."
10 Again, like I said, you can see the level of review here.
11 They wanted the word "the" placed in front of the
12 Department of Environmental Quality. And some of these,
13 if you see -- like, for instance, this one, Section 1,
14 the concern letters themselves, in Section 1 it was
15 usually typographical errors. We wouldn't have had to
16 have corrected those to be as effective as the federal
17 regulations, but they indicated that it wouldn't hurt, so
18 we've gone ahead and done that.

19 That brings us to Chapter 2. For Chapter 2,
20 again, we had removed the "for surface coal mining
21 operations" from the chapter header. OSM pointed it out
22 that we had to put that back in. I still don't totally
23 understand that one, because this applies to all of our
24 permit applications, whether it's a surface mining
25 operation or underground or a combination of those. Be

1 that as it may, we've made that correction. We're just
2 trying to get all of these things resolved.

3 The next section that we addressed was the
4 subsection (B), mostly grammatical errors again. And the
5 corrections that we have here are generally either a
6 direct mirror of the federal language, or if -- the way
7 our rule was structured, we try and keep it as -- if our
8 rule wasn't structured exactly like theirs, we try and
9 keep it as similar as possible. In this instance, it was
10 grammatical errors.

11 And the other part was that we've added the --
12 the black underlined language was the original issue that
13 we were trying to address. We needed to include that we
14 were concerned about identifying the operator and the
15 operator's partners or principal shareholders, not just
16 the operator. And again, there were some other
17 grammatical corrections there.

18 In subsection (ii)(A) Roman Numeral I, we had
19 some minor corrections to do there, again grammatical,
20 that help us mirror the federal language. I'm fairly
21 appreciative of the fact that we are doing this level of
22 review, but my hope is that once we do address this, then
23 we've met what we need to do to be as effective as the
24 federal regulations.

25 So, again, grammatical.

1 In subsection (II) we removed the word "or."
2 Again, that mirrors the federal language. I added
3 subsection (III) in there just to see the flow. In
4 subsection (I) we added the word "or" just to match what
5 the federal regulations have.

6 And finally in subsection (B) again, this one,
7 again, we're making a typographical error correction,
8 just adding the word "the." I believe that was it.

9 And that takes us to Chapter 6, which is our
10 blasting regulations.

11 MS. BILBROUGH: Any questions about
12 Chapter 2 before we move on?

13 MR. SHOBER: How many times can you
14 question "and" or "or"?

15 MR. HULTS: In Chapter 6, we haven't
16 updated this chapter in quite some time. As we get these
17 chapters that we haven't revised in a while, I've been
18 trying to make them consistent. And there are times when
19 people have these on their desk sitting as a stand-alone.
20 So I just wanted to put that it is the Department of
21 Environmental Quality in our land quality rules and try
22 and provide some consistency amongst the chapters.

23 The change that we were doing here, as I
24 mentioned earlier, was we had language in there that
25 suggested that the periodic monitoring was at the

1 administrator's discretion. We've removed that and just
2 start out the sentence now that the operator shall
3 conduct that periodic monitoring. Again, that matches
4 what we've been doing. And now our regulations will be
5 consistent with what we've been doing on the ground.

6 And that's the only change in Chapter 6.

7 MR. WENDTLAND: And that's, from a
8 practice standpoint, what's consistent with what's in the
9 permits for the mines?

10 MR. HULTS: Yeah. Doug Emme, our blasting
11 coordinator, initially he didn't even want to do the rule
12 change. He felt that that's what we were doing. But the
13 problem was it was published in their oversight report.
14 And if we have the disconnect between our regs and what
15 the OSM regs say and what we're actually doing, that
16 doesn't help anybody. So we made the correction.

17 MS. BILBROUGH: So, Jim, Kyle asked if the
18 revision to the rules was consistent with what's actually
19 in the coal permits, and the answer was yes.

20 CHAIRMAN GAMPETRO: Thank you.

21 MR. WENDTLAND: Thanks, Carol.

22 MR. HULTS: That brings us to Chapter 12.
23 Again, we're dealing with the valid existing rights. And
24 what that is is if a person has certain expectations,
25 they've invested money, they may have a lease out there,

1 they've done quite a bit of groundwork or anything that
2 they have had quite a bit of expense involved with, if at
3 that point the federal government might declare, for
4 example, a national monument, they may pull back lands
5 that now they're saying are unsuitable for coal mining.
6 That person, the prospective either permittee, or if they
7 have the permit already, would be in a position then to
8 claim that they have valid existing rights so that they
9 would be able to mine those areas based on their
10 expectations that this was open to leasing and mining in
11 the past.

12 The changes here in subsection (A), kind of
13 hard to tell, but in the second sentence -- or, second
14 line of subsection (A), we've removed an S at the end of
15 "applicants" and added an S after the word "intend."
16 Just a grammatical correction again. Same thing in
17 (B)(IV). We've removed the word "the," a grammatical
18 change again.

19 In subsection (E) we corrected a typographical
20 error. It's the Wyoming Administrative Procedure Act,
21 not "Procedures."

22 Subsection (F), we've done a little bit more
23 revision to this one. The concern here was that we
24 didn't have a process or a statement about how requests
25 or availability of the records, if somebody makes a

1 request related to a VER determination or a subsequent
2 decision on our part, how do people get those records?
3 The red language, after discussing this with the OSM, we
4 needed further clarification. So we've indicated that
5 this would be administered under the Wyoming Public
6 Records Act, in addition to the Environmental Quality
7 Act, which also contains a public records portion. And
8 we've also included what is the minimum requirements.
9 And that is a mirror of the federal regulations. So we
10 should have our bases covered here.

11 I did remove in that same section this language
12 that I'm highlighting right now. I initially had this in
13 there. But what that deals with is our records-retention
14 schedules. So it really doesn't impact how somebody goes
15 ahead and gets these records or what their rights are
16 related to those records. So I removed that as part of
17 this draft. And it's struck through and underlined, but
18 it should be just struck through.

19 Same thing in the statement of reasons there.
20 I've removed that reference to Wyoming Statutes 9-2-405
21 through 413 and added some explanatory language about the
22 citations that were added.

23 Section (vii) is still dealing with the valid
24 existing rights. This information, this is where we get
25 into the AVS system. This is dealing with permit

1 eligibility. And here the one correction or first
2 correction that we made is removing that regulatory
3 authority. The federal language has that regulatory
4 authority language in it. And in my attempt to mirror
5 their language, I had put that in there originally during
6 our previous rule-makings. It's not specific to our
7 division, though, which was pointed out by the OSM. So
8 it was too generic, so we added our division as the one
9 that would be doing this work.

10 MS. BILBROUGH: Does everybody know what
11 AVS is, or do you want an explanation?

12 MR. COLLINS: Give us a definition.

13 MS. BILBROUGH: It's the applicant
14 violator system. And it's a nationwide program that the
15 Office of Surface Mining manages. And the Land Quality
16 Division enters all the officers of a coal mine or a
17 company or a parent company for that coal mine, and then
18 when we get ready to do various types of approvals, major
19 revisions, amendments, new coal mines, transfers, we have
20 to actually check that AVS system to find out if there
21 are any outstanding violations in any other state before
22 we can move forward with the approval of that permit
23 action.

24 So we're kind of responsible for entering the
25 officer information, and then we check to make sure that

1 everything -- that there aren't any outstanding
2 violations somewhere else in the country.

3 Is that consistent with what you understand,
4 Kyle?

5 MR. WENDTLAND: Yeah. Pretty much if
6 you've had an unsettled violation or history, that would
7 come up in the AVS, and it could preclude them from
8 securing a coal permit.

9 MS. BILBROUGH: We can't approve it until
10 that violation is either taken care of, either remedied
11 or --

12 MR. WENDTLAND: Abated.

13 MS. BILBROUGH: If it's abated. I wasn't
14 sure I wanted to use that word, because it's a unique
15 word, but abated. Or if, in fact, the company is
16 contesting that violation, then we wouldn't use that to
17 hold that.

18 MR. HULTS: Toward the bottom there, we've
19 provided a cross reference in response to OSM's concern
20 that we needed to add clarifying language there. In
21 subsection (X), again, a grammatical change. We've
22 removed the word "that" from the sentence. In subsection
23 (D), we've added the language that's "unanticipated event
24 or condition." And that matches the federal regulations.

25 In subsection (xiv), we get into ownership and

1 control. And that's the ownership tree of a permittee or
2 an applicant. Subsection (C) was revised with the
3 intent -- and this is where we actually got into the
4 discussions with the AVS office. It was pointed out that
5 it wouldn't always be the Land Quality Division that's
6 potentially entering things in the AVS. If we have a
7 corporation that has multiple permits in various
8 jurisdictions, it's possible those other states would be
9 entering that information. And also on the federal side
10 of things, they may enter information, also.

11 That prompted a discussion that the federal
12 regulations allow for fourteen days of response time.
13 I've been instructed by our attorney general not to
14 include timelines for the federal agencies on when they
15 can respond. We don't really have the ability to
16 regulate the federal offices. So this is a compromise
17 that we worked out.

18 That person would either contact us or that AVS
19 office. It would generally be the AVS office which would
20 start that fourteen-day period. The feeling here was
21 that if they contact the AVS office directly, we don't
22 have multiple fourteen-day windows going or restarting of
23 that clock. It would just be from the AVS office. They
24 ultimately may have to contact us to find out the
25 information or an explanation about it. But this allows

1 us to keep that fourteen-day window only on the AVS
2 office side of things and not try and impose a
3 fourteen-day window on our side and then restart the
4 clock if we have to ask the AVS office anything.

5 We've included a reference to that 773.26(e),
6 and that's where that fourteen-day time period is listed.

7 In subsection (II), (D)(II), again, another
8 grammatical change. We've added the word "thereof." In
9 subsection (F), the original comments in the concern
10 letter dealt with our lack of specificity. So we added a
11 bunch of language that addressed that, as far as what
12 kind of our rules are as far as what we'd be working
13 under, the Environmental Quality Act, Rules of Practice
14 and Procedure, the Administrative Procedure Act,
15 basically our procedural rules that apply to us as a
16 division, and then Chapter 12.

17 So we spelled out this a little more clearly.
18 We added that -- or, I added that language in red that
19 the division will post all decisions made under the
20 section on AVS. We did have some similar language down
21 below, which was, "AVS shall be revised as necessary."
22 I've put that red language in there just to mirror the
23 federal regulations and how they're organized.

24 And then that final sentence there, again, is a
25 clarification of our more general language that we

1 originally put in, stating that the division's written
2 decision or reviewing decision, we have to check AVS to
3 determine whether that is consistent with the decision.
4 And if not, we revise AVS to reflect that decision.

5 Again, anywhere that the statement of reasons
6 is updated in red, that was the comments that I received
7 from our informal submittal to the OSM.

8 In subsection (D) -- or, (B), this is where I
9 was talking about where we originally had just kind of
10 general -- a general statement that our program would
11 apply to permit transfers. That has since been pointed
12 out that that wasn't clear enough. So we've gone
13 through, updated this initial header that states that the
14 statute which deals with transfers will apply, and then
15 also this section, and we go through and spell out some
16 of the more -- or, the requirements of transfers,
17 assignment or sale of permit rights.

18 We've also added a definition. The OSM said we
19 would be -- it would be a good idea to add that.
20 Normally we have all of our definitions in Chapter 1. I
21 started to look at where this would fall out. And
22 because of the large number of definitions that we have
23 there, it would have required section header revisions
24 for numerous definitions. And I was afraid if I did
25 that, that we would suddenly have citations to those

1 definitions that were off in other chapters and without
2 having to go through all of that. So we just added it
3 here at the top of the section that deals with transfers.

4 And so, for this section, potential transferee
5 means any person who succeeds to a right granted under a
6 permit, by transfer, assignment or sale of those rights.
7 That's the equivalent of the federal definition for
8 potential transferee. We don't use that language
9 anywhere either in statute or -- except for this place
10 where we're putting it here and further down. But we
11 just didn't have an equivalent, so we've taken that
12 definition and applied it to this section. Again, we're
13 adding requirements that are mirrored in the federal
14 regulations.

15 In subsection (C), this deals with the
16 publishing or advertising of a potential permit, transfer
17 or sale or assignment. Again, these mirror the federal
18 regulations. Subsection (D), again, we're mirroring the
19 federal language. This deals with public participation.
20 Subsection (E) is the criteria for approval. We did make
21 one correction that was pointed out with our informal
22 submittal. We drew in a couple more sections regarding
23 eligibility to receive a permit. So we've updated those
24 citations.

25 And subsection (F) deals with notification.

1 And that's notification from our end to the permittee,
2 the current permittee, the potential transferee and
3 commenters, and then also the requirement that that
4 potential transferee provide us with notice that the sale
5 or transfer has gone through.

6 And finally in subsection (G), for continued
7 operation under existing permit, again, we revised this
8 based on the concern letter and then more fully in
9 response to the OSM's comments on the draft language that
10 we had provided. They wanted a citation to our
11 regulations and the Environmental Quality Act and the
12 terms and conditions of the existing permit.

13 I believe that is it. No. Chapter 16. Got
14 ahead of myself.

15 MS. BILBROUGH: Questions on Chapter 12
16 before we move on?

17 MR. WENDTLAND: Yeah. I've got one,
18 Carol, back on page 7 under Item (F). And I think this
19 is more a question for you guys. We use the term
20 "conveniently available." And I'm not sure. Do we have
21 a definition for that in the rules, or is that setting
22 the department up for an endless discussion with some
23 challenge of what "conveniently" means?

24 MS. BILBROUGH: So, Jim?

25 CHAIRMAN GAMPETRO: Yes.

1 MS. BILBROUGH: Kyle's question was on
2 page 7 of Chapter 12 under Section (F), availability of
3 records. The last sentence adds in the phrase that
4 basically we will make available a copy of records so
5 they are conveniently available to residents of that
6 area. And the question is who's going to decide what
7 "conveniently available" is? And when I read that, I
8 wondered the same thing.

9 MR. WENDTLAND: I guess I would think that
10 that would put the department in a position of, you know,
11 if it's published in the newspaper, is that convenient or
12 not?

13 CHAIRMAN GAMPETRO: That sounds reasonable
14 to me.

15 MS. BILBROUGH: I think that we would just
16 work with the residents and figure out what's convenient.
17 Obviously if they're in Kemmerer, Wyoming, coming to
18 Cheyenne is not convenient. So we would work something
19 out.

20 CHAIRMAN GAMPETRO: Jim here. Yeah, you
21 might have a problem with the definition of the word
22 "conveniently."

23 MS. BILBROUGH: Yeah. Whose convenience?

24 MR. WENDTLAND: Does that term need to be
25 in there, I guess, or does it just need to be

1 "available"?

2 MR. HULTS: Yes. Craig Hults. This was
3 something we had quite a bit of discussion with the OSM
4 about. That final sentence, or a portion of that
5 sentence that we've added, is a mirror of the federal
6 regulations. The way they talk about "conveniently" is
7 either placing it in the clerk's office of that county or
8 making it available via a request to us specifically that
9 we would either mail it to them or provide it in some
10 way.

11 CHAIRMAN GAMPETRO: Possibly it would be
12 wise to use those same words.

13 MR. WENDTLAND: Or create a definition for
14 "conveniently."

15 MS. BILBROUGH: I think we'd be more
16 likely to set a policy and try to be flexible enough to
17 work with people who -- to the residents of the area and
18 strike a balance if we can. And we would probably
19 address that later if we found it to be a problem.

20 MR. HULTS: And also, these -- Craig Hults
21 again. The statutes that we've cited have procedures
22 related to responses to requests for public records. And
23 that's what these would be considered. So we would be
24 under that as a minimum and then going from there.

25 MS. BILBROUGH: Point is well taken, Kyle.

1 MR. HULTS: I guess my concern would be
2 that if I don't use that term, "conveniently," I run the
3 risk of not being consistent with the federal
4 regulations. I'm certainly open to something that would
5 be more -- defined better, I guess. But again, it was
6 just a mirror of that federal regulation.

7 MR. WENDTLAND: Well, I appreciate your
8 feedback, then.

9 CHAIRMAN GAMPETRO: If the term
10 "conveniently" has definitions ascribed to it, I don't
11 see the problem.

12 MS. BILBROUGH: I don't think it does.
13 Does it in the CFR?

14 MR. HULTS: The CFR goes on -- there's a
15 further section. This was also part of the discussion,
16 was that this section is only talking about ownership and
17 control. The section that we are talking about here that
18 we've put in on the federal level is general
19 applicability. We were somewhat concerned that if we
20 went through and stepped further down into that portion
21 of the rules, that suddenly these things weren't making
22 sense. They started talking about issues that weren't
23 related to ownership and control.

24 This was kind of worked out with the Denver
25 office, that this was a compromise between the two, just

1 the way -- our rules are structured differently in this
2 area, as opposed to the federal regulations, where their
3 whole availability-of-records section applies to the
4 program on the whole. And this was to get past the
5 ownership and control issues that they pointed out.

6 I would say that we would certainly have some
7 guidance from the federal regulations. And my initial
8 kind of feeling would be that we would follow some of
9 that as guidance.

10 CHAIRMAN GAMPETRO: That sounds reasonable
11 to me. Are there any further problems with it?

12 MS. BILBROUGH: I don't think we know yet.

13 MR. HULTS: I guess one way that we could
14 address this would just be to flesh out the statement of
15 reasons a bit more without actually providing a
16 definition, but here's what our prospective --

17 MR. WENDTLAND: And give an example of.

18 MR. HULTS: Yeah.

19 MR. WENDTLAND: Newspaper publication,
20 posting with the clerk.

21 CHAIRMAN GAMPETRO: I guess, Craig, I was
22 under the impression that the term "reasonable" was
23 pretty much defined elsewhere.

24 MR. HULTS: We were talking about
25 "conveniently."

1 CHAIRMAN GAMPETRO: I'm sorry.

2 "Conveniently."

3 MR. HULTS: Yeah.

4 CHAIRMAN GAMPETRO: So is that the case?

5 Is there a definition that you can fall back on?

6 MR. HULTS: I would look to the federal
7 regulations. We don't, per se, have a definition of that
8 in our regulations, no.

9 MS. BILBROUGH: Do the feds actually have
10 a definition?

11 MR. HULTS: Not "conveniently," no. They
12 have how you would comply with that --

13 MS. BILBROUGH: Okay.

14 MR. HULTS: -- which was either making it
15 available in the county clerk's office or responding to
16 individual requests. And I think a lot of that is dealt
17 with in our Wyoming Public Records Act, as well.

18 MR. WENDTLAND: It just makes me nervous.

19 CHAIRMAN GAMPETRO: That sounds like a
20 definition to me.

21 MR. WENDTLAND: Yeah. I just think
22 anytime you get into a term like this where you're
23 talking about public disclosure and you have ambiguity, I
24 think that is a liability for us. So I guess I would
25 just want to maybe have you research that out, Craig,

1 would be my request, to see if we do adequately have that
2 covered or not.

3 MR. HULTS: Okay.

4 MR. WENDTLAND: I realize you're probably
5 not in a position to answer that today. And also, I
6 understand and appreciate your time negotiating this with
7 OSM. But we are talking about a public disclosure.

8 MS. BILBROUGH: So your thought on
9 adequate coverage would be a definition or something
10 that's very clear-cut?

11 MR. WENDTLAND: Or some type of reference
12 so that if you get a legal challenge, you can go back and
13 say we've met the intent. Correct.

14 MR. HULTS: Would a citation to the
15 federal regulations that address how the federal
16 government would comply with that "conveniently" be --

17 MR. WENDTLAND: I think that would be
18 satisfactory, Craig. But having some experience with
19 this, this is exactly the kind of loophole that you will
20 be challenged on.

21 MR. HULTS: Oh, absolutely. I don't
22 disagree. Well, that would be my proposed solution to
23 that, would be to add towards the end of that sentence
24 there a citation to the federal regulations that discuss
25 how the OSM would comply with that and mirror that.

1 MR. WENDTLAND: I think that's a
2 reasonable -- I think that's a reasonable solution from
3 where I sit, Craig.

4 MS. BILBROUGH: Add to the statement of
5 reasons or adding to --

6 MS. KING: Into regulation.

7 MR. HULTS: Yeah. I would actually prefer
8 to put it into the regulation, as opposed to --

9 MR. WENDTLAND: Yeah, I would, too.

10 MR. HULTS: -- just a description.

11 MS. BILBROUGH: I agree. So, to
12 summarize, then, Craig is just going to insert the
13 reference to the federal regs for their guidance on how
14 or their procedure on how they deal with the convenience.
15 Is that correct?

16 MR. HULTS: Yeah. I guess my concern
17 there, too, was a little bit with our kind of compliance
18 with that, was knowing that we have our division offices,
19 our field offices. They're a little bit closer to the
20 operations, perhaps, or the residents in that area. But
21 we don't have one in each county. So, at some point in
22 time, there would be individual requests for these
23 records, I would imagine. And not knowing our procedures
24 specifically enough in-house, that I guess I was just
25 assuming, which is a bad thing, that that would meet that

1 "conveniently."

2 MR. WENDTLAND: No. I think you're trying
3 to balance OSM here, and that's a difficult task. But I
4 think if you can at least go back and say you're
5 complying with the federal requirement here and that we
6 mirror that, I think you're covered.

7 MR. HULTS: Okay.

8 MS. BILBROUGH: So, Jim, Kyle is just
9 agreeing with the concept of including this federal
10 reference in the regulations.

11 CHAIRMAN GAMPETRO: And what's the
12 problem?

13 MS. BILBROUGH: That was the resolution to
14 the problem. The problem was the idea of exactly whose
15 convenience we are dealing with when we talk about
16 currently available -- conveniently available to
17 residents of the area, how we agree on what convenient
18 means. And the feds have a description of a procedure
19 they use, publication in the newspaper, availability at
20 the county courthouse --

21 MR. HULTS: Yeah.

22 MS. BILBROUGH: -- as how they deal with
23 being convenient for the residents.

24 CHAIRMAN GAMPETRO: And the concern is
25 that it's too difficult to implement?

1 MS. BILBROUGH: I think the concern was
2 that how you decide whose concept of convenience. Is it
3 the residents? Is it ours? That LQD might be faced with
4 a legal challenge to say, you know, this information that
5 you're providing hasn't been convenient for the
6 residents.

7 CHAIRMAN GAMPETRO: That's in spite of the
8 fact that we're referencing exactly what the federal regs
9 require?

10 MR. WENDTLAND: Just clarifying of the
11 term "conveniently."

12 MS. BILBROUGH: It's just clarification of
13 the term "conveniently" is all. And then we are totally
14 in line with the federal regulations.

15 CHAIRMAN GAMPETRO: Are we not always
16 totally at their mercy in any event?

17 MS. BILBROUGH: I don't know. I don't
18 think so. I hope not.

19 CHAIRMAN GAMPETRO: I thought that the
20 guideline was that we always have to be as stringent, at
21 least.

22 MS. BILBROUGH: Yes. Yeah, we do have to
23 be at least as stringent as the federal regs. But this
24 is probably adding more detail, rather than more
25 stringency.

1 MR. HULTS: It would also give us -- this
2 is Craig Hults. It would also give us that minimum.
3 We'd at least be meeting that. It may be that our
4 procedures are more convenient than what the federal
5 regulations are prescribing. But at least if we did have
6 that challenge, we would have that citation back to the
7 federal regulations.

8 CHAIRMAN GAMPETRO: Where are we going
9 with this?

10 MR. WENDTLAND: Jim, it's Kyle. I think
11 what Craig has proposed here with that citation to the
12 federal reg gives us adequate definition. I think we're
13 good with that.

14 MS. BILBROUGH: Did you hear that?

15 CHAIRMAN GAMPETRO: No, I did not.

16 MS. BILBROUGH: Kyle was saying that
17 adding this reference gives adequate restriction on the
18 definition or adequate clarification of what
19 "conveniently" means. So the resolution is that Craig's
20 going to add a reference to the regulation, proposed
21 regulations to the federal CFR.

22 CHAIRMAN GAMPETRO: Sounds good to me.

23 MR. HULTS: Anything further in Chapter
24 12?

25 (No response.)

1 MR. HULTS: Hearing none, I'll move to
2 Chapter 16. Chapter 16, first revision that we're doing
3 here was in subsection (h). Generally ownership or
4 control -- or, ownership and control is usually referred
5 to throughout the rules as one or the other. We've just
6 swapped out "and" for "or."

7 In subsection (c), Section 4(c), romanette (i),
8 here we just corrected a typo again. We had a capital D,
9 director, instead of "the director." We've corrected
10 that. In subsection (A) I just noticed when I was
11 putting this together, we so often were inserting the
12 word "surface." In this instance we actually had to
13 insert the word "coal." And so I made that correction to
14 the statement of reasons. I think originally I had
15 "surface" in there.

16 And I believe that's it.

17 ACTING CHAIRMAN SKEEN: Does anybody else
18 have any questions or discussion?

19 MS. BILBROUGH: Jim, any comments,
20 questions?

21 CHAIRMAN GAMPETRO: No comments.

22 ACTING CHAIRMAN SKEEN: Do we vote on
23 accepting these changes? Is that what -- all right. Is
24 there a motion for accepting these changes?

25 MR. HULTS: I guess, if I may, Craig

1 Hults. Generally coming out of the advisory board, as
2 far as having changes based on these comments from the
3 OSM, that was my intent to include them as basically a
4 public comment. I tried in all instances to include
5 references back to that set of comments just to detail
6 why we were making these changes, in the hope that once
7 this hits OSM's desk, that, look, they've done this so
8 many times, and they've addressed all these issues.

9 But as far as a motion, yes, that would be the
10 thing to -- you'd be stating that you agree with the
11 changes as presented today and agree that they would move
12 forward to formal rule-making, I guess.

13 MS. BILBROUGH: Should Kyle make or
14 someone make a motion for the specific revision that Kyle
15 mentioned today, as well as the revisions in red that
16 are -- you made after?

17 MR. HULTS: That's certainly acceptable,
18 yeah, or just stating as discussed today or presented and
19 discussed today.

20 MR. WENDTLAND: I would make a motion that
21 we accept the rule package revisions as presented, with
22 the exception of the Chapter 12 rules, Item (F), that an
23 addition to the Federal Register definition of
24 "conveniently" be made.

25 MR. SHOBER: Second.

1 ACTING CHAIRMAN SKEEN: Did we have a
2 second?

3 MR. SHOBER: Right here.

4 ACTING CHAIRMAN SKEEN: It's been moved
5 and seconded to accept the rule package, except the
6 Section 12.

7 MR. SHOBER: Have the secretary state the
8 motion?

9 ACTING CHAIRMAN SKEEN: Pardon?

10 MR. SHOBER: Have the secretary state the
11 motion, huh?

12 MS. BILBROUGH: Do you want to restate the
13 motion as you understand it?

14 MR. HULTS: I guess the motion that's been
15 made is to accept the changes as presented today, with
16 the addition of a citation to what "conveniently" means
17 in the federal regulations.

18 MR. WENDTLAND: In Chapter 12, Section
19 (F).

20 MR. HULTS: In Chapter 12, Section (F).

21 ACTING CHAIRMAN SKEEN: Now do we vote on
22 it? All in favor, aye.

23 (All members vote aye.)

24 ACTING CHAIRMAN SKEEN: All against.

25 (No response.)

1 ACTING CHAIRMAN SKEEN: All right. Motion
2 carries. Is there anything else?

3 MS. BILBROUGH: Just for my own clarity,
4 this means that we don't bring it back to you. We will
5 advance it to the EQC.

6 MR. WENDTLAND: Correct.

7 MR. SHOBER: Good enough.

8 MS. BILBROUGH: What do you talk about
9 after you approve the rules? I don't know what we have
10 on the agenda.

11 MR. WENDTLAND: Is there any new business,
12 I guess? Is there any new business?

13 MS. BILBROUGH: I don't know what's on the
14 agenda for next quarter, the second-quarter meeting. I
15 don't think we've made a decision on that.

16 MR. WENDTLAND: Do we have anything new
17 that you know of coming out of the legislature?

18 MS. BILBROUGH: They will be voting on
19 whether or not to advance the primacy for uranium mining.
20 I know that's in there. I can't think of any others at
21 the moment that I'm aware of.

22 MR. SHOBER: If that happens, would it --
23 would that fall under DEQ, or would they create
24 another --

25 MS. BILBROUGH: It would be in the Land

1 Quality Division.

2 MR. SHOBER: But would they create a sub-
3 department of Land Quality?

4 MS. BILBROUGH: I'm not sure. Nancy has a
5 plan, but I'm not entirely sure what it is, so I would
6 hate to misrepresent it. But they -- we would add --
7 implement the program over a course -- I believe it's a
8 five-year plan, basically. And we would add some new
9 positions and possibly reassign some positions. I don't
10 know that all of them would necessarily only be uranium.
11 Right now a lot of our permit coordinators are
12 coordinators for coal and uranium and bentonite. We
13 might continue with some aspects of that and then have
14 some specialized people looking at issues that pertain
15 only to uranium. A lot of the positions would be in
16 Cheyenne but not all is my understanding.

17 ACTING CHAIRMAN SKEEN: Any other
18 discussion?

19 MS. BILBROUGH: Craig just reminded me of
20 one thing. When we do meet next time, since we don't
21 have a rule package, it probably will be by calling in.
22 And there's a program that we use a lot called
23 GoToMeeting. And you can basically set up a meeting that
24 will allow everybody to share their computer screens.
25 So, if I was doing a slide show, I could share my screen

1 with everybody who's participating. And you could watch
2 what is on my screen, or I can, alternatively, turn it
3 over to somebody else, and we can see what's on their
4 screen.

5 And that also provides a call-in number. So we
6 would -- I think we're going to try to explore that a
7 little bit and experiment with that to see if we can make
8 that work. So you might get a new format for a remote
9 meeting. And it's pretty easy. You just launch the
10 application and it goes.

11 ACTING CHAIRMAN SKEEN: How does that work
12 when we have very poor reception for our internet out
13 there at our place?

14 MS. BILBROUGH: It's slow?

15 ACTING CHAIRMAN SKEEN: Very slow.

16 MS. BILBROUGH: I don't know. You know
17 what we should do is --

18 ACTING CHAIRMAN SKEEN: I had a heck of a
19 time responding yesterday.

20 MS. BILBROUGH: It still has a call-in
21 number.

22 ACTING CHAIRMAN SKEEN: Okay.

23 MS. BILBROUGH: So you can definitely
24 still listen. And that's the kind of thing that we
25 should probably send out an experimental meeting in

1 advance and let everybody try it and see how well it
2 works, and then we'll figure out a plan.

3 ACTING CHAIRMAN SKEEN: Very good.

4 MS. BILBROUGH: But certainly you can
5 still call in and hear everything.

6 ACTING CHAIRMAN SKEEN: Okay. If there's
7 no further discussion from anybody, I'll entertain -- is
8 there a motion for adjournment?

9 MR. SHOBER: I move we adjourn the
10 meeting.

11 ACTING CHAIRMAN SKEEN: Is there a second?

12 MR. COLLINS: I'll second.

13 ACTING CHAIRMAN SKEEN: It's been moved
14 and seconded to adjourn the meeting. All in favor.

15 (All members vote aye.)

16 ACTING CHAIRMAN SKEEN: All opposed, same.

17 (No response.)

18 ACTING CHAIRMAN SKEEN: Meeting is
19 adjourned.

20 (Hearing proceedings concluded
21 11:08 a.m., February 24, 2014.)

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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 7th day of March, 2014.


Randy A. Hatlestad
RANDY A. HATLESTAD
Registered Merit Reporter