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BEFORE THE  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
LAND QUALITY DIVISION

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DEQ LAND QUALITY DIVISION ADVISORY BOARD MEETING  
SPECIFICALLY REGARDING NON COAL RULE PACKAGE 1V  
REVEGETATION SUCCESS PERFORMANCE STANDARDS

CHAPTER 3

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TRANSCRIPT OF PROCEEDINGS

10:00 A.M.

DECEMBER 16, 2004

PURSUANT TO PUBLIC NOTICE given to all parties in  
interest, this matter came on for hearing in the  
Pronghorn Room of the DEQ Casper Field Office, 3030  
Energy Lane, Casper, Wyoming.

LQD STAFF IN ATTENDANCE:

RICHARD A. CHANCELLOR, ADMINISTRATOR  
BOB GIURGEVICH, DISTRICT III ASSISTANT SUPERVISOR  
CAROL BILBROUGH, CHEYENNE OFFICE  
MARK MOXLEY, LANDER FIELD OFFICE  
SANDRA GARCIA, SECRETARY

BOARD MEMBERS IN ATTENDANCE:

MARSHALL GINGERY, CHAIRMAN  
JAMES PONTAROLO  
CHET SKILBRED

\* \* \*

Rebecca S. Doby  
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2334 Main Street  
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## 1 P R O C E E D I N G S

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3 CHAIRMAN GINGERY: I'll call to order our  
4 December 16th meeting 2004 for the Land Quality  
5 Advisory Board.

6 We have three board members here today.  
7 We're expecting the Governor to make some announcements  
8 I believe on the other two, so that probably we will  
9 know certainly by the next meeting.

10 I believe I know most of you out there, but I  
11 am Marshall Gingery. I live in Jackson and I'm  
12 Chairman. And I'll let the other two board members  
13 introduce themselves and the staff, and then we'll go  
14 around the audience here. Since our group is small, we  
15 might as well know each other. So if you would like to  
16 start.

17 MR. SKILBRED: I'm Chet Skilbred, with  
18 Glenrock Coal. And I'm industry representative on  
19 the board.

20 MR. PONTAROLO: I'm James Pontarolo and I'm  
21 from the agricultural part of it. I live at Fort  
22 Laramie.

23 MR. CHANCELLOR: Rick Chancellor, Land  
24 Quality.

25 MS. GARCIA: Sandra Garcia, Land Quality.

1           CHAIRMAN GINGERY: Other Land Quality  
2 people, you might as well introduce yourself now.

3           MR. GIURGEVICH: I'm Bob Giurgevich, from  
4 the Sheridan office.

5           MS. BILBROUGH: Carol Bilbrough, from the  
6 Cheyenne office.

7           MR. MOXLEY: Mark Moxley, from the Lander  
8 office.

9           CHAIRMAN GINGERY: We might as well just  
10 start on down the back.

11          MR. HINCKLEY: Mart Hinckley, with MI-SWACO.

12          MS. CHASE: Barbara Chase, with Black Hills  
13 Bentonite.

14          MR. BRUMMOND: Gene Brummond, McMurry Ready  
15 Mix.

16          MR. BENSON: Scott Benson, Wyoming Mining  
17 Association.

18          MR. BUCHER: Lyndon Bucher, American Colloid.

19          MR. LAWSON: Bruce Lawson, with Bentonite  
20 Producers Association. And I also work for Black Hills  
21 Bentonite.

22          MR. SMITH: Jody Smith, with 71  
23 Construction.

24          CHAIRMAN GINGERY: We'll start down the  
25 agenda in a moment. As usual, I think with a group

1 this small, we'll try to keep it fairly informal. So  
2 as we go through this process, just indicate and we  
3 can usually stop and listen to individuals in the  
4 audience.

5 I believe we do have a presentation on the  
6 Non Coal Rule Package 1V and some aspects of that.

7 Before we really get started, does anyone  
8 have any statements or announcements or anything?

9 THE REPORTER: I do.

10 CHAIRMAN GINGERY: Yes.

11 THE REPORTER: I would just ask that every  
12 time you speak you please identify yourself, so that I  
13 can identify you correctly on the record.

14 CHAIRMAN GINGERY: Okay. We'll help you  
15 with that.

16 THE REPORTER: Thank you.

17 CHAIRMAN GINGERY: Okay. Unless we really  
18 get to talking.

19 If additional discussion is not more than I  
20 anticipate, we'll probably get out of here between  
21 12:00 and 1:00. Hopefully we'll get through all this.

22 Is there any announcements you have before we  
23 start?

24 MR. CHANCELLOR: No.

25 CHAIRMAN GINGERY: So we'll go on to Item 2

1 here, the Non Coal Rule Package. Item 1V, the  
2 Revegetation, Chapter 3. And I think Rick and Bob  
3 were going to make opening statements on this.

4 MR. CHANCELLOR: Right. I'll give a brief  
5 opening statement and then Bob will go through the  
6 actual changes. And what we propose to do on the  
7 changes is -- there's probably like six major  
8 changes. We'll address one at a time and take any  
9 questions or comments you may have. That's probably  
10 the best way to do it.

11 CHAIRMAN GINGERY: Okay.

12 MR. CHANCELLOR: We do have a handout for  
13 you, written comments from the Bentonite Producers  
14 Association that -- well, as we go through, they can  
15 elaborate on those.

16 CHAIRMAN GINGERY: I just realized one  
17 thing. I should let you finish. But I forgot to  
18 approve the minutes from May 10th and August 18th.

19 MR. GIURGEVICH: Oh, they're not ready yet.

20 CHAIRMAN GINGERY: That's what I was  
21 assuming. So approval of those minutes will be at  
22 the next meeting.

23 Excuse me for interrupting you. Go ahead.

24 MR. CHANCELLOR: Several years ago, a  
25 number of years ago, we had internal discussions with

1 the staff on how we were processing bond leases on  
2 non coal, and in response to several comments from  
3 industry folks, that our districts across the state  
4 were not being consistent in how they applied the  
5 regulations. And so we looked at the regulations,  
6 realized that we need to be consistent and follow the  
7 regulations. But we also realized that perhaps the  
8 non coal industry, given the size of the  
9 disturbances, that we probably could do some rule  
10 changes to recognize that.

11           Currently our non coal rules on bond issue  
12 vegetation mirrors the coal rules bond issue vegetation  
13 evaluation. So we felt that, again, given the size  
14 differential between the coal mines and the non coal  
15 mines, that we could have more flexibility with the non  
16 coal operators. And so we met internally, decided we  
17 need to get these rules done. Bob Giurgevich took the  
18 notes from our meeting internally and drafted up the  
19 proposed rules you see before you today.

20           And with that, I'll ask Bob to go through the  
21 changes.

22           MR. GIURGEVICH: For the record, I'm Bob  
23 Giurgevich. I'm out of the Land Quality Sheridan  
24 office.

25           As Rick pointed out, I was given the

1 assignment to create the original package that you have  
2 before you. And I was also asked to basically lead you  
3 through it briefly today. And I'll do my best to do  
4 that.

5           Before we hit the high points, I'd like to  
6 emphasize that overall I see three major things that  
7 we're doing today. The first is that we're proposing  
8 to completely eliminate three of the existing  
9 performance standards, take them completely off the  
10 books.

11           The second is that on a fourth performance  
12 standard, we seek to introduce much more flexibility  
13 than has been there in the past. That flexibility has  
14 to do with the sequence of field sampling of the  
15 vegetation.

16           And then what I think is the third major  
17 component today is there are a number of what I would  
18 call structural or word changes that have to go  
19 throughout this chapter to make those other deletions  
20 fit.

21           So those are the three main categories.

22           With that said, what I would wish to work  
23 from is a document that at least I have that's entitled  
24 Draft Proposed Rule Amendment with Statement of  
25 Reasons.

1 Does everyone have that?

2 CHAIRMAN GINGERY: Is there copies? We  
3 need one more copy up here.

4 MS. GARCIA: Sure.

5 CHAIRMAN GINGERY: There's copies over on  
6 the table there. Feel free to get your own copy.

7 We interrupted you. Go right ahead.

8 MR. GIURGEVICH: Well, I mostly wanted to  
9 get everybody on the same page, so that when we take  
10 those different elements everybody can see the exact  
11 location that we're discussing in the proposed  
12 revision.

13 So I'll start out with the top of that page  
14 1, that first paragraph that starts off with: The  
15 Administrator shall not release. This is the first  
16 spot where there is what I consider a minor change. It  
17 mostly is just a word clarification, to make sure that  
18 it's understood what type of evaluation, what  
19 characteristic of vegetation we wish to evaluate there.  
20 So that's the first major point.

21 And I guess Mr. Gingery, if you wish to open  
22 up any discussion, this is in what's identified as  
23 (vi), that first introductory statement.

24 CHAIRMAN GINGERY: Everyone has that, I  
25 assume now.

1           The vegetation cover -- well, the cover has  
2 been marked out.

3           First of all, from the audience, was there  
4 anyone that wanted to respond on that item (vi)?

5           MR. BENSON: Mr. Chairman, Scott Benson,  
6 Wyoming Mining Association.

7           Mr. Chairman, we generally support the rule  
8 package. We agree with the deletion, the total  
9 herbaceous production is a standard. We agree with the  
10 deletion of the grazing demonstration.

11           But we do have some concerns with the rule  
12 package. And a lot of those concerns resolve around  
13 the reference to Guideline 2 is in the process of being  
14 revised. So it's real hard to know -- I mean, right  
15 now, both before and even now with this rule package,  
16 the rules don't give a lot of details on how these  
17 things are going to be measured. They are reiterating  
18 and redefining these are the three performance  
19 standards. But there is nothing in the rules now to  
20 tell us how they are going to be measured.

21           We know, from working on a coal revision  
22 package that we've been working on the past year or  
23 more, that LQD is actively looking at those methods.  
24 And again, we encourage and support that, because  
25 industry needs to know -- you know, it's one thing to

1 set a standard. But if you don't say how you are going  
2 to measure that standard, it's hard to provide a lot of  
3 meaningful comment. And that will be a lot of our  
4 comments as we go through it.

5           But specifically, this first performance  
6 standard we're talking about, how are we going to  
7 measure self-renewing?

8           We're going out and planting revegetation  
9 species at real high seed mixes. And those high seed  
10 mixes have been encouraged by LQD over the years. We  
11 are providing the best seed bed we possibly can. And  
12 typically, as I think this rule package points out,  
13 we're getting very good revegetation. We're getting a  
14 lot of cover, a lot of production.

15           How are we going to demonstrate, in four  
16 years or five years or ten years, that it's  
17 self-renewing? You know, I think it's fairly easy  
18 maybe to demonstrate they're producing seed. But this  
19 is performance standards. They've defined it down to  
20 three. So I think the devil is going to be in the  
21 detail. When the guideline gets revised and it comes  
22 out, how now are we going to be held to this standard?

23           I mean, obviously you're changing the rules,  
24 which we support. But it would be nice if we had some  
25 more detail on how they are going to require us to

1 measure and demonstrate those performance standards.

2 CHAIRMAN GINGERY: So it's the evaluation  
3 you have this concern about.

4 MR. BENSON: And in particular with this  
5 one, one of our comments we're going to present later  
6 on is we think these standards only need to be  
7 measured for one year.

8 CHAIRMAN GINGERY: Yes.

9 MR. BENSON: And not two out of three  
10 years.

11 CHAIRMAN GINGERY: I thought we would get  
12 to that a little bit later.

13 MR. BENSON: You know, we want to address  
14 it specifically as we go through this one. Why on  
15 this one does it need to be measured for two years?  
16 If it's self-renewing in year four, why wouldn't we  
17 assume it's self-renewing in year five? Or year six,  
18 for that matter?

19 CHAIRMAN GINGERY: Okay. That's pretty  
20 much what we received back from the bentonite  
21 producers.

22 Rick, do you want to respond?

23 MR. CHANCELLOR: I guess maybe the first  
24 question: Is the Bentonite Producers and Mining  
25 Association requesting the rule be placed on hold

1 until the guideline is revised? Is that your -- I  
2 guess your question is that you really can't comment  
3 on this until the guideline is finished being  
4 revised -- you know how to -- is that your request to  
5 the board?

6 MR. BENSON: Part of the problem we have as  
7 an association in even giving comments, we haven't  
8 had an opportunity to really get together yet. The  
9 rule package just came out November 16th, so we've  
10 had less than a month to review it. Several of the  
11 bentonite operators have gotten together and  
12 discussed some comments. I got some comments faxed  
13 to me last night here in Casper from Kennecott Energy  
14 with concerns. We have not had a lot of time to  
15 review it. But I guess I'll leave that to the  
16 bentonite and everybody else if they have a  
17 recommendation.

18 MR. BUCHER: Lyndon Bucher, American Colloid.  
19 I guess that -- you know, some of these other  
20 concerns just came to light to us, as well, as far as  
21 the status of Guideline 2 and what implications it  
22 might have on the evaluation of these performance  
23 standards. It does put us in a little bit of a gray  
24 area, as far as -- you know, how to comment on some of  
25 these things.

1           In general, we're in support of the rule  
2 package. But it's difficult to know exactly how that  
3 will all be worked out until we see a final guideline.  
4 I'll agree with that.

5           I don't know what the time frame is that you  
6 are looking for -- you know, finalization of that  
7 Guideline 2. But it might be something that we would  
8 want to consider.

9           MR. LAWSON: Bruce Lawson, with the  
10 Bentonite Producers Association.

11           At this point in time, as I have read and  
12 studied these proposed rule changes, I have assumed  
13 that it's in relation to the current guidelines; you  
14 really haven't given any thought to how these proposed  
15 rules will mesh with the proposed changes. So that --  
16 you know, kind of throws a little different train of  
17 thought in the process for me at this point in time.  
18 But like I say, at this point in time I'm assuming that  
19 we're considering the current guideline, not the  
20 proposed guideline.

21           MR. CHANCELLOR: Mr. Chairman?

22           CHAIRMAN GINGERY: Yes.

23           MR. CHANCELLOR: Maybe we could ask the  
24 staff, when they say "revised guideline" what are  
25 they considering readvising?

1 MS. BILBROUGH: Carol Bilbrough, with Land  
2 Quality.

3 In terms of this rule package, the parameter  
4 that you will measure is coverage. And there is no  
5 substantial change to how you would go about measuring  
6 coverage, compared to how you would measure it now.

7 And the self-renewal part of the rule  
8 package, we consider if you have cover for two years  
9 that you have demonstrated self-renewal. So when you  
10 bring in the one-year proposal -- you know, we'll  
11 discuss that at that time.

12 But the changes to the guideline are more --  
13 I'm just trying to remember, because it's been a while  
14 since I've looked at it -- but things like what kind of  
15 information we want, since we're taking out production  
16 and we're taking out -- you know, the grazing. So  
17 we're just bringing the guidelines in line with the  
18 proposed rule changes. And we've reformatted it so  
19 that baseline and the interim measures of management  
20 and planning and things like that and then bond release  
21 are separated out. So we kind of changed the structure  
22 somewhat.

23 But for how you would actually go out in the  
24 field and measure cover, that's not going to be  
25 changed.

1                   MR. SKILBRED: May I ask -- I'm not  
2 familiar with the bentonite industry as far as their  
3 vegetation sampling schemes and yearly -- do you  
4 folks produce a yearly annual report that has  
5 vegetation data that you submit? Or do you not do  
6 that?

7                   MR. LAWSON: We typically don't. In the  
8 annual report there's no requirement for annual  
9 vegetation monitoring. So at this point in time the  
10 only time we submit vegetation monitoring data to LQD  
11 would be, for example, at the time of a bond release  
12 request. Or some of the permitting requirements do  
13 have what we call updates before we -- you know,  
14 before we -- you know, we have conversion permits  
15 where we were grandfathered. But the rules or  
16 regulations basically state even though we've got an  
17 existing quote, "permit", before we can do additional  
18 mining in that area we've got to bring that up to  
19 date as far as baseline. So there's an example of  
20 what we consider premining vegetation. But as far as  
21 veg studies on reclaimed lands, we don't typically do  
22 that on an annual basis or annual report.

23                   MR. SKILBRED: I believe that answers my  
24 question. I'm just trying to get at, if you had some  
25 record of vegetation data, then you could fall back

1 on that as well as your data for bond release that  
2 you are putting together.

3 But from what you are telling me then the  
4 first view of this piece of ground or the first actual  
5 hard data comes during the bond release application.

6 MR. LAWSON: Exactly.

7 MR. SKILBRED: So there's no background up  
8 to that point in time.

9 MR. LAWSON: There isn't. You know, we're  
10 all so busy, as everybody else is -- I'm sure you  
11 are -- you know, just trying to -- you know, cover  
12 the bases for normal compliance and permitting, that  
13 unfortunately, a lot of the bond release sampling and  
14 bond release requests are put off for years. I mean,  
15 a number of mine are 10, 12, 15 years out, you know.

16 So -- and we'll get back to this, as far as  
17 demonstrating renewing vegetation -- you know, we may  
18 be looking at 10, 15 years of growth before we even do  
19 bond release sampling and provide -- you know, detailed  
20 vegetation data to LQD.

21 So I think it's different with coal. Don't  
22 you have to do some annual monitoring of the vegetation  
23 on reclaimed lands?

24 MR. SKILBRED: Yes, that's correct. Thank  
25 you.

1                   MR. BUCHER: Just to maybe reiterate what  
2 Bruce was saying, we don't supply any hard data on  
3 that.

4                   However -- and correct me if I'm wrong, Bob  
5 -- but generally it's a subjective review. And at that  
6 point that we believe that the property is ready for  
7 bond release, we'll do a tour with LQD. They'll come  
8 out and take a look. Again, it's subjective. And  
9 they'll give us a yes or no, yeah, we think it's ready  
10 to pursue data collection and bond release.

11                  MR. SKILBRED: Thank you.

12                  MR. BENSON: Mr. Chairman, in response to  
13 Rick's question, and particularly Ms. Bilbrough's  
14 answer, the big concern several of our operators had  
15 was an apparent fear that species diversity and  
16 composition was going to start playing a lot bigger  
17 role. But given Ms. Bilbrough's response that they  
18 are not changing Guideline 2 and requiring sampling  
19 methods standard for diversity and composition -- I  
20 mean, we would like to go forward with this rule  
21 package at this time.

22                  CHAIRMAN GINGERY: I think we'll go back to  
23 you on this.

24                  From this aspect I see here possibly that  
25 there's slow down in momentum on Chapter 3. But what I

1 am hearing is that we need to keep in line the details  
2 that will come later. But as I read this -- and  
3 waiting for you to complete the areas that -- that  
4 these were changes that were really helping the  
5 situation. And not so much on the detail of vegetation  
6 or species and this kind of thing. So as we go  
7 through this we should be cognizant of that. But I  
8 didn't see the point that -- the changes I saw were  
9 more clarifications. But if it comes to that point, we  
10 need to kind of circle that particular area, if you  
11 feel that strongly. You feel -- you don't see any  
12 reason why we would stop not move on?

13 MR. CHANCELLOR: Mr. Chairman, the  
14 clarification from the staff and the nature of the  
15 changes we're looking at for Guideline 2 will not  
16 adversely affect the industry, as they were concerned  
17 about. And I think if we can, we need to go forward  
18 with this rule package and this discussion.

19 CHAIRMAN GINGERY: Well, let's go back to  
20 Bob here. And continue here at this time. Thank you  
21 for your input on this.

22 MR. GIURGEVICH: Mr. Chairman, if I may  
23 make one comment on what I think's been swirling  
24 around here.

25 My opinion is that if we try and do both the

1 rule revision package and a guideline revision at the  
2 same time, the best those can do is mirror each other.  
3 My opinion is we need to put a picket pin down on the  
4 rule and reg side and then finish the guideline.  
5 Because otherwise, we're trying to guess on what the  
6 rule and reg change will be.

7           So I strongly urge that we do our best to try  
8 and move forward with the revision package, knowing  
9 that the guideline will reflect and mirror that in some  
10 manner. But until we know what the revision change is,  
11 it's really tough to say exactly what will be in a  
12 revised guideline.

13           CHAIRMAN GINGERY: I think the board is  
14 fairly well in agreement. So let's proceed.

15           MR. GIURGEVICH: Thank you. The next  
16 revision element I would focus your attention is on  
17 about midway down that first page. It's in bolden.  
18 And again it says that section, (vi) continued.

19           This is the one that I bought out earlier,  
20 where we are eliminating completely one of the  
21 performance standards. In fact, in the original  
22 language here, there are two separate evaluations that  
23 were to be made; vegetation cover and total ground  
24 cover. Those were always seen as two different  
25 measures of vegetation, two different performance

1 standards.

2           This revision suggests making one single  
3 cover measure the performance standard. And that  
4 single cover measure is total vegetation cover. And  
5 as you read in the Statement of Reasons, we need to pin  
6 down what that definition is, because it differs from  
7 what was there historically.

8           But summary, we're talking two elements of  
9 historic performance standards and streamlining it to a  
10 single performance standard, total vegetation cover.

11           CHAIRMAN GINGERY: Okay. As we go down --  
12 I don't think I made myself clear when we first  
13 started -- when I ask for questions we'll be asking  
14 for questions on each of these segments and we'll be  
15 watching closely the wording there.

16           So at this time in the changes that has been  
17 mentioned, does anyone in the audience have any  
18 comments on it?

19           If not, how about the board? And what I'll  
20 try to do is gather a consensus as we go down and then  
21 when we vote -- you know, pretty well both of you are  
22 -- okay.

23           Well, let's move on to the next one, then.

24           MR. GIURGEVICH: Good job. The third item  
25 I'll focus your attention on the first line on the

1 top of page 2. Again, we're still in that same (vi)  
2 continued.

3           The focus here will be what was  
4 parenthetically Item No. 2. This is a second  
5 performance standard that we -- that the revision  
6 completely eliminates. And that one is the infamous  
7 productivity. Or annual herbaceous production is the  
8 more complete way to look at it.

9           So the third major item is to strike  
10 completely the performance standard for productivity  
11 when evaluating revegetation success.

12           CHAIRMAN GINGERY: Comments?

13           Hearing none, let's move on.

14           MR. GIURGEVICH: Mr. Chairman, Bob  
15 Giurgevich again.

16           Just to assuage some concern, if all folks  
17 would look at that Item No. 3 that's right below,  
18 that's the -- again, perhaps even more infamous --  
19 species diversity and composition. We're not  
20 suggesting any change whatsoever to that terminology in  
21 the rule package.

22           Fourth element, I would shift your attention  
23 to the bottom of page 2. This is the third performance  
24 standard that we suggest completely eliminating. And  
25 that has to do with any demonstration of grazing

1 capacity, post-mining ability of the revegetation to  
2 support grazing. So again, eliminate this performance  
3 standard completely is what this rule package proposes.

4 CHAIRMAN GINGERY: Comments?

5 MR. LAWSON: Mr. Chairman?

6 CHAIRMAN GINGERY: Yes.

7 MR. LAWSON: I'm not sure if this is the  
8 correct time to weigh in on this, but both of this --  
9 the current change and the previous one -- we  
10 strongly support those changes.

11 CHAIRMAN GINGERY: Thank you.

12 MR. BENSON: Mr. Chairman, just one comment  
13 in response to what Mr. Giurgevich just said.

14 The change that concerns some of our  
15 operators to species diversity and composition is the  
16 change that we'll hit in a couple pages back, where  
17 they are proposing to delete the words including "where  
18 applicable". And there are a lot of components that  
19 specify what the species diversity and composition are  
20 going to be or not going to be. And again, the concern  
21 is that the potential that this new guideline will come  
22 out and specify some new standard or some new measure  
23 to measure diversity and composition.

24 CHAIRMAN GINGERY: I don't know. My first  
25 reaction to that statement is that these

1 guidelines -- well, would it apply to -- these new  
2 guidelines for the future development of it, not so  
3 much the present, if there is -- it's in the --  
4 situation where he has a present requirement? Do we  
5 drop that, then?

6 MR. CHANCELLOR: I think we -- in the past,  
7 when we change a guideline, we don't make it  
8 retroactive to areas already disturbed. Generally we  
9 say that those previously disturbed lands that are  
10 ongoing mining and have already been claimed, the  
11 operator -- sometimes we find the guideline is  
12 better, the new version, to apply to those.

13 But we try very hard not to make our  
14 requirements retroactive, unless it's just really  
15 spelled out very clearly that will be retroactive, to  
16 avoid a moving target for the operators. And I guess  
17 we've had no discussions internally as far as changing  
18 -- any discussion on species diversity or composition  
19 for non coal. That has not been a topic of discussion  
20 at all.

21 And just for a sidelight, in our ongoing  
22 discussions with coal mines on species diversity, we  
23 are proposing changes in rules, as opposed to just  
24 guidelines. So if we go that route -- if we feel --  
25 again, we have not -- it' not on our radar to change

1 how we do the species diversity for non coal.

2 I would -- my assumption is that we wanted to  
3 make some major overhaul, we'd have to go back to rule  
4 making to clarify that.

5 CHAIRMAN GINGERY: Does that help you any  
6 on your question?

7 MR. BENSON: Yes, that does.

8 As I alluded to earlier, Kennecott Energy  
9 faxed me some comments and asked me to read them into  
10 the letter (sic). They are unavailable to be here.  
11 And they produce uranium and have some reclamation  
12 requirements there.

13 Their comment is: Neither the Proposed  
14 Changes nor the accompanying Statement of Reasons  
15 outline that the revised standards will not be applied  
16 retroactively. The applicability to existing  
17 facilities areas, the word disturbed under previous  
18 regulations and standards is also an issue that is not  
19 addressed in either the Proposed Rule or the Statement  
20 of Reasons. The Proposed Rule and the Statement of  
21 Reasons should be amended to clearly specify that the  
22 changes will apply only to lands disturbed after  
23 promulgation of the final rule and that the changes  
24 will not apply to facility areas that have been  
25 disturbed prior to that date.

1                   And again, that was from Kennecott Energy.

2                   But perhaps we can address some of these  
3 rules and they would like to withdraw that comment  
4 later. But they were unavailable to be here. And I  
5 know their concern revolves around diversity and  
6 composition and the fear that that guideline will make  
7 some new substantial requirements.

8                   MR. BUCHER: I can appreciate Kennecott  
9 Energy's concern there, and they may have some  
10 concerns that we're not aware of.

11                   However, I guess in light of what we view the  
12 rule package to be doing is clarifying and  
13 streamlining. American Colloid would be in favor of  
14 this rule package applying to -- being retroactive, I  
15 guess. All lands that are currently held under bond.

16                   MR. LAWSON: In speaking on behalf of Black  
17 Hills Bentonite, I agree with Lyndon's comments,  
18 also; it would be very beneficial for us if those  
19 rules were retroactive. The elimination of  
20 production sampling is going to be a major benefit  
21 for the industry.

22                   CHAIRMAN GINGERY: Okay.

23                   MR. LAWSON: It's extremely expensive to  
24 sample for production. And the elimination of that  
25 is going to have, I think, a major impact on how we

1 do business.

2 CHAIRMAN GINGERY: Any other comments  
3 before we move on?

4 Next, then.

5 MR. GIURGEVICH: Thank you, Mr. Chairman.

6 The next major revision element is at the  
7 bottom of page 3. And I'll give you -- we may get lost  
8 in the numbers here, but just to give you -- we may  
9 just read this in unison, without all the Statement of  
10 Reasons and everything. This refers back to kind of a  
11 collective statement of the three performance standards  
12 that we're suggesting remain. That is, an evaluation  
13 of self-renewing community, Item No. (1); total  
14 vegetation cover (2). And the third parentheses is  
15 diversity. And that supports the land use. Those are  
16 the three residual performance standards that would  
17 remain on the book.

18 This statement then says that all three of  
19 those performance standards would be evaluated twice --  
20 would be evaluated via physical field sampling -- an  
21 important point -- twice at the end of the period,  
22 whenever the company wants to come forward. And that  
23 those two evaluations would be done in two out of three  
24 consecutive years.

25 Now, the major change that -- there are

1 several major changes embedded in this. First of all  
2 is that we're still measuring something and we're still  
3 doing it for two years. But we're spreading it out  
4 over time, to give the operator some additional  
5 flexibility to make a guess. And I admit it's a guess.  
6 What will conditions be next year? Are we still going  
7 to be in a drought? Were we in a drought last year?  
8 We have tried to incorporate that option in there to  
9 help, instead of saying absolutely that it has to be  
10 two consecutive years.

11           So the change is to spread it out, give some  
12 option for flexibility and some option to make an  
13 educated guess. If the first year was good but the  
14 next year is obviously not, that option now will allow  
15 them not to sample that second year, but wait until the  
16 third year. But we still feel it needs to be close in  
17 time. So we spread it over three years, conceivably  
18 three consecutive years.

19           The other major change that's embedded in  
20 here is to establish the earliest point at which that  
21 field sampling can begin. It's a fairly strong  
22 consensus within the LQD that we set the fourth growing  
23 season as the earliest time that any field sampling  
24 would begin. And that comes from some analysis of the  
25 data sets that have actually been released from bond.

1 And it -- it's a warm, fuzzy gut feeling, based upon  
2 what we see on the ground. We feel that some starting  
3 point is crucial so that we get away from sometimes the  
4 arguments that occur, well, I think this is ready to  
5 go, and LQD does not think it's ready to go, or vice  
6 versa. So the major element also embedded here is to  
7 set the earliest growing season at which the field  
8 sampling can begin.

9 CHAIRMAN GINGERY: Comment?

10 MR. LAWSON: Mr. Chairman, you probably all  
11 have seen a copy of my letter. And the letter's a  
12 little long. But the whole intent of this letter has  
13 been to argue the point that two consecutive years,  
14 or the proposed rule of two out of three years, is  
15 unnecessary to demonstrate successful reclamation.  
16 And if I may, if I can take a little time here and --

17 CHAIRMAN GINGERY: Go right ahead.

18 MR. LAWSON: -- perhaps just read some  
19 points from my letter that I think support our  
20 argument.

21 In essence, what we're proposing is one year  
22 of vegetation sampling to demonstrate revegetation  
23 success.

24 So if I may: The Wyoming bentonite mining  
25 industry appreciates and supports the LQD's current

1 efforts to simplify and clarify the rules and  
2 regulations that are addressed in Rule Package 1V.  
3 The elimination of the performance standards pertaining  
4 to grazing and productivity will help to simplify and  
5 clarify the complex and burdensome process of  
6 demonstrating reclamation success. The BPA believes  
7 that further refinement of these rules is possible and  
8 offers the following request for additional changes to  
9 the rules and regulations.

10           The BPA is requesting that the current  
11 requirement of Chapter 3, Section 2, requiring the  
12 demonstration and evaluation of revegetation success  
13 for two consecutive years, be eliminated from the  
14 rules. Additionally, our organization requests that  
15 the proposed LQD revision to this current rule, which  
16 would require demonstration and evaluation of  
17 revegetation success during the -- during two out of  
18 three consecutive growing seasons, be withdrawn and  
19 eliminated from the proposed rule package. The net  
20 effect of withdrawing the fourth criteria from Section  
21 2 would reduce the quantitative sampling required for  
22 full bond release to one year.

23           Among other things, the BPA believes that the  
24 requirement to demonstrate revegetation success for  
25 more than one year has no scientific basis or value. I

1 personally, on a number of occasions, have spoken to a  
2 number of people within LQD and asked them, what's --  
3 you know, what's the scientific basis for this two-year  
4 rule, sampling for two consecutive years? And  
5 honestly, nobody's been able to tell me what -- you  
6 know, scientifically what the basis is for that. And  
7 in general, the response coming back to me is, well,  
8 it's in the rules and regulations. And personally, I  
9 don't think that's a good explanation.

10           The current LQD document, titled, quote,  
11 "Draft Proposed Rules and Statements of Reasons",  
12 included in Rule Package 1V, provides further evidence  
13 that the rule requiring two years of sampling lacks  
14 scientific basis. The LQD states, on page ii of the  
15 Draft Proposed Rules and Statement of Reasons document,  
16 that, quote, "The LQD revised the rules and regulations  
17 in 1978 to meet the requirements of SMCRA." And that  
18 is Federal Regulation Rule Making Surface Mining  
19 Control and Reclamation Act. The LQD rules applied to  
20 both coal and non coal mines. And as we all know, we  
21 have separate rules and regulations for coal mining and  
22 non coal mining. But at that time, the LQD applied the  
23 rules to both coal and non coal. Included in the 1978  
24 rules and regulations were altered components above the  
25 performance standard which added a new performance

1 standard stating that revegetation shall be deemed to  
2 be complete when the requirements of equal cover and  
3 equal productivity are met for two consecutive years.

4 In summary, the two-year rule, in my opinion,  
5 is simply an example of the LQD requiring non coal  
6 operators to abide by coal mining regulations which  
7 were promulgated by the federal government under SMCRA.

8 The BPA contends that one year of vegetation  
9 sampling following four full growing seasons is  
10 sufficient to demonstrate successful revegetation. The  
11 idea or concept that sampling for one year is  
12 sufficient to demonstrate revegetation is nothing new  
13 to the LQD or the non coal mining industry,  
14 particularly the bentonite industry.

15 And I want to stress this point. To date,  
16 successful revegetation has been demonstrated and full  
17 bond release granted by the LQD on over 3,326 acres  
18 where only one year of vegetation sampling was  
19 required.

20 And on top of that -- I don't have this in my  
21 letter, I just thought of it -- in addition to that,  
22 the LQD did not require production sampling on those  
23 acreages -- to the best of my knowledge, at least --  
24 the bond release Black Hills Bentonite has obtained.  
25 We're not required to do production sampling. And we

1 only sample for one year.

2           This deviation from the rules that LQD  
3 graciously granted to us -- and I -- I mean that. I'm  
4 very thankful for LQD for allowing us some leeway --  
5 that began in 1995. And it's continued for seven  
6 years. Over a seven-year period of time, from 1995 to  
7 2001, the LQD waived the requirement of sampling for  
8 two consecutive years. They also waived the  
9 requirement of sampling for production. We sampled  
10 only for cover. And like I say, I -- I am very -- I am  
11 very thankful that LQD granted that deviation. And  
12 again, it was during the seven-year period where they  
13 deviated from the rule, the written rule, that over  
14 3,326 acres of reclaimed lands were granted full bond  
15 release.

16           The LQD contends that changing the rule  
17 requiring demonstration of revegetation from two  
18 consecutive years, to two out of three years, will,  
19 quote, "give the permittee more flexibility and enhances  
20 the potential that clear demonstrations of total  
21 vegetation cover performance standards can be made."

22           Additionally, the LQD suggests that there is  
23 some evidence that the native and revegetated plant  
24 communities may respond differently to the prevailing  
25 environmental conditions from one year to the next.

1           The BPA disagrees with the LQD position that  
2     changing the rule from two construction years to two  
3     out of three construction growing seasons gives the  
4     permittee more flexibility. BPA believes just the  
5     opposite; the current rule and the proposed rules are  
6     restrictive and, we believe, unnecessary. The fact  
7     that full bond release has been granted on over 3,326  
8     acres with one year of sampling demonstrates that any  
9     type of two-year sampling regime is unnecessary.

10           One of the LQD's arguments was they suggest  
11    that due to the prevailing drought conditions in  
12    Wyoming, a two out of three year sampling regime may  
13    enhance the demonstration of total vegetation cover  
14    performance standard. BPA again disagrees that a  
15    multi-year sampling program is necessary to enhance the  
16    potential for demonstrating revegetation success. Of  
17    the 3,326 acres of land that have been granted full  
18    bond -- excuse me, granted full and final bond release  
19    during the seven-year period between 1995 and 2001,  
20    three of those years are part of the ongoing drought.  
21    And, for example -- this is some data that I gleaned  
22    from some bond release that we did associated with the  
23    leonardite mining operating across the road from where  
24    Chet works north of Glenrock. And basically, it's an  
25    example of the drought on vegetation sampling.

1           Consider the following information:  
2   According to the National Weather Service, since 1948,  
3   the average annual precipitation for Glenrock is 12.37  
4   inches. Based on data obtained from the National  
5   Weather Service, the annual precipitation for Glenrock  
6   during 2001 and 2002, when we conducted final bond  
7   release sampling -- and this was a two-year sampling  
8   regime -- at this point in time, this mine's  
9   administered by District One and they would not allow  
10   us the one year. So we sampled for two construction  
11   years.

12           Anyhow, during 2001, the average  
13   precipitation that year was 8.22 inches, or 66 percent  
14   of normal. In 2002, the average annual precipitation  
15   was 6.89 inches, or 55 percent of normal. During 2001  
16   and 2002, the total vegetation cover that we sampled on  
17   our North Reclaimed Area was 47.5 percent, while the  
18   total vegetation cover on the corresponding comparison  
19   area was 42.9 percent. So we proved that the  
20   vegetation on the reclaimed area was equal to or better  
21   than to the comparison area.

22           In 2002, the total vegetation cover on the  
23   reclaimed area was determined to be 48.9 percent, while  
24   the total vegetation cover on the corresponding  
25   comparison area was 43.9 percent. Again, as good or

1 better vegetation than the native ground.

2           During this two-year period, total vegetation  
3 cover on the reclaimed lands changed by 1.4 percent,  
4 while the total vegetation cover on the corresponding  
5 comparison area changed by 1.4 percent -- or 1 percent,  
6 excuse me.

7           In summary, during the required two-year  
8 sampling period, the average change in total vegetation  
9 cover on the reclaimed and comparison area amounted to  
10 about an average of 1.2 percent, while at the same time  
11 the average annual precipitation was almost half, 60.5  
12 percent of average.

13           Basically, what I'm getting at here is we  
14 achieved final bond release over a two-year sampling  
15 regime and some really brutal drought conditions and  
16 only saw about a 1 percent change in vegetation.

17           Regardless of the presence of drought or  
18 other extenuating circumstances, it seems reasonable to  
19 assume that if a reclaimed area meets the first three  
20 criteria of revegetation success after at least four  
21 full growing seasons, a prudent person would consider  
22 the revegetation to be a success.

23           The two -- I'll just go ahead and go on with  
24 this and we'll be done with it. The two-year, or  
25 proposed two out of three year requirement, makes final

1 bond release extremely burdensome, time consuming --  
2 and I stress this -- expensive. For example, the cost  
3 to Black Hills Bentonite in 2003 for final bond release  
4 sampling on 112 acres on our mining operation near Ten  
5 Sleep, Wyoming by a private consultant cost us \$5100,  
6 or approximately \$46 per acre. Factoring in the second  
7 year of sampling, the cost increased to \$92 per acre  
8 for bond release sampling.

9           And as just a footnote to this, I was on a  
10 follow-up DEQ inspection yesterday with one of the  
11 senior analysts out of one of the DEQ offices. And I  
12 happened to have this letter along with me. And I just  
13 gave it to her, let her read it to kind of get her  
14 opinion on it. She got done reading it and she says,  
15 well, you know we don't consider costs.

16           Well, my point is you should. DEQ should  
17 consider cost; not only to the industry, but the cost  
18 to the DEQ and the State. You know, a second year  
19 round of data, LQD is going to spend time on it.  
20 They're going to spend time reviewing it, looking at  
21 it. So not only is there cost to the industry, there  
22 is also a cost to the LQD and the State.

23           So anyhow, I guess that pretty much sums up  
24 my comment on requiring two years of bond release  
25 sampling. And we've even gone so far as we've created

1 a major database here. We've gone in and requested all  
2 of the bond release data from all of the bentonite  
3 operators and uranium operators that have ever achieved  
4 -- been granted full bond release. And we've got a  
5 wealth of information here.

6           But again, I can't reiterate strongly enough,  
7 based on our experiences as operators in the mining  
8 industry, that over 3,000 acres have been granted full  
9 bond release with only one year of veg sampling and no  
10 production sampling. And now DEQ says, well, one year  
11 doesn't work; we're going to go back to two years --  
12 which they have since about 2001. There's been some  
13 disagreement within -- internally within LQD. And I  
14 know there's two different camps. There are a number  
15 of people within LQD who support one year of sampling  
16 and another group that supports two-year sampling. But  
17 as Rick said, at some point in time after 2001 they  
18 decided that they were going to -- LQD was going to try  
19 to make things consistent between districts. And  
20 they've disallowed the one-year sampling regime that  
21 they had allowed for seven years and allowed us bond  
22 release on over 3,000 acres. And personally, I just  
23 think that's a great example of the success and use of  
24 the one-year sampling.

25           So with that ...

1                   CHAIRMAN GINGERY: Well, we certainly  
2 appreciate, Mr. Lawson, the association's time and  
3 energy in putting this together, because it does make  
4 us think about these important issues.

5                   I do have a question. But my other two  
6 colleagues, would you want to ask any questions at this  
7 time?

8                   MR. PONTAROLO: I don't have any questions.  
9 But as a farmer, I realize with grass -- and I've  
10 planted several thousands acres of it in the last  
11 twenty years here with CRP and stuff -- it takes  
12 about three years in order to get a stand of grass in  
13 our area, around Fort Laramie, anyway, because of the  
14 moisture situation. And I fully agree that you can  
15 have a lot of problems -- you know, planting the  
16 grass and getting a stand. And I feel like the third  
17 year -- the grass that I have planted, the third year  
18 is way better than any in the first two years I  
19 planted. And I do realize and think that one year  
20 would really be sufficient to sample your grass. But  
21 I do know that, from my experience, it takes at least  
22 two years for the grass to get established. And the  
23 third year is usually the best part of it. From  
24 there on, you've got a whale of a stand of vegetation  
25 on it.

1           MR. LAWSON: I would agree with that.

2           One thing -- and I have not necessarily  
3 discussed this idea with the rest of the companies that  
4 belong to the Bentonite Producers Association -- but  
5 personally, I'd offer a compromise. I mean, if DEQ is  
6 insisting on two construction years of sampling,  
7 personally, I'd be willing to wait five years before I  
8 started vegetation sampling. As I said, on a lot of  
9 the bond release we've done already, we've waited ten  
10 or twelve years, just because we have other priorities,  
11 you know. And this bond release request process is  
12 very, very time-consuming. And typically we've got  
13 bigger fish to fry. And so it kind of gets left behind  
14 and we tend to forget about it.

15           But -- you know, I'd hate to think how many  
16 thousands of acres are reclaimed and probably ready for  
17 bond release that haven't been bond released just  
18 because of the time and expense of doing it.

19           And again, I think the proposals LQD has made  
20 are great proposals, they're going to help us as an  
21 industry to start getting some of these lands off the  
22 books. But again, I think that there is room for  
23 refinement. And that refinement would be to allow us  
24 one year of vegetation sampling.

25           But again, getting back to my comment on

1 personally -- I'm speaking for Black Hills Bentonite,  
2 not necessarily the Bentonite Producers Association,  
3 when I say that, as a compromise I'd be willing to wait  
4 five years, if you will allow us one year of vegetation  
5 sampling. There may be room to wait a little longer  
6 than that, if it made DEQ feel more comfortable.

7           But just the time and expense of actually  
8 conducting going out in the field and hiring a  
9 consultant to sample this vegetation for two  
10 consecutive years -- you know, it's a major expense and  
11 it's an extremely burdensome process for us.

12           So again, maybe there is some room for us to  
13 possibly discuss extending the period of growing  
14 seasons before we're required to start sampling.

15           Thanks.

16           MR. BUCHER: I would tend to agree with  
17 some of those comments of Bruce, as far as a  
18 compromise.

19           Like Jim mentions, he's not out there  
20 actually sampling the grass. But he's got a pretty  
21 good idea when he's getting success. And I think  
22 there's some value with experienced operators and the  
23 LQD when they come out and look at a property and make  
24 a subjective evaluation, yeah, we think this is worth  
25 giving it a shot, why don't you go ahead and -- and

1 sample it. I think there is value in that expertise,  
2 in making a subjective case.

3           And so I think -- you know, maybe if we did  
4 like a four- or five-year period and LQD came out and  
5 looked at it and said, this looks like maybe it will  
6 go; why don't you sample it? And then we sampled it  
7 and in one year it proved out, the data proved it, then  
8 propose that the LQD then grant bond release.

9           But again, my point is that just subjective  
10 evaluation by trained people has value.

11           MR. LAWSON: Mr. Chairman?

12           CHAIRMAN GINGERY: Yes.

13           MR. LAWSON: Could I make another comment?

14           CHAIRMAN GINGERY: Yes, you may.

15           MR. LAWSON: One thing I found that was  
16 interesting is the vegetation consultant that I use  
17 that does my bond release sampling -- he's a great  
18 friend. We went to college at the University of  
19 Wyoming together and both have degrees in range  
20 management. For the past 25 years he's been employed  
21 as a private consultant, and a good part of his work  
22 is vegetation sampling, for nearly every mining  
23 company in the state of Wyoming for final bond  
24 release. And he doesn't support -- I mean, here's an  
25 individual -- he's making his living doing bond -- a

1 good part of his living doing bond release sampling.  
2 It means a lot of money to him. And I asked him to  
3 be here today but he was busy, he couldn't make it.  
4 But I know I can speak on his behalf. He does not  
5 support two consecutive years of sampling. He thinks  
6 it's unnecessary. And to me, that's amazing. Here's  
7 an individual -- that's how he's making his living,  
8 and he doesn't support it. At least for non coal.

9           One other point I wanted to make that we  
10 haven't touched on at all here -- and I'm not sure that  
11 you are all familiar with some of the other  
12 requirements for DEQ allowing full bond release. But  
13 in addition to all this vegetation sampling that we  
14 have to do and the detailed reports and the statistical  
15 analysis -- you know, one of the key factors in  
16 obtaining full bond release is we have to obtain a  
17 signed statement from the landowner that he is  
18 satisfied with the revegetation on those reclaimed  
19 lands.

20           And my experiences have been, when I have  
21 gone to the landowner -- and very little land that we  
22 affect we own. Granted, there's a few instances where  
23 we've got some mining claims. But in general, it's  
24 private ranchers and it's BLM and it's the State.  
25 Typically, the State or the BLM will send a range out,

1 they'll look at the site. And to this point in time I  
2 have not had anyone with the State or the BLM say, no,  
3 we're not happy with it. The landowners, the private  
4 ranchers we deal with, they want it released from bond.  
5 Because we have to restrict their use of the land to  
6 some extent over that growing period within that  
7 five-year period. And -- you know, we do what we can  
8 to work with them. But -- you know, we've got a  
9 considerable amount of money tied up in reclamation  
10 bond until that land is given final bond release. So  
11 -- you know, we can get in some real difficulties with  
12 the landowners on just how we think that land should be  
13 managed and how they want to manage it.

14           But what's interesting, in all the bond  
15 release that I have done in dealing -- particularly  
16 with the private landowners, excluding the State and  
17 the BLM -- none of them have ever wanted to see the  
18 statistical sampling data. They are not interested in  
19 it at all. You know, they're just -- they look at it,  
20 they tell me it looks good, they want their cattle back  
21 on it, and they sign off.

22           And I think that's important to note, that  
23 we're going to wait four or five years until we apply  
24 for bond release or do the sampling. I think it's  
25 important to remember that if the landowner is willing

1 to sign off on it that he's happy with it, that -- I  
2 think that's a big point to consider here.

3 So anyhow, any other comments?

4 MR. BUCHER: That was one question I was  
5 going to ask. And as Bob knows, occasionally we do  
6 have landowners that would like to have bond releases  
7 sooner than four or five years. And I think in some  
8 extenuating circumstances, if the reclamation is  
9 outstanding, that has happened.

10 But my question is: Would there be any  
11 provision for something like that to still occur?

12 CHAIRMAN GINGERY: Were you going to  
13 comment, Chet?

14 MR. SKILBRED: Yes. I guess I have been  
15 fortunate or unfortunate to be involved with twenty  
16 years of collecting vegetation data personally on  
17 coal mine very similar to what you guys are dealing  
18 with. And so I have some experience of what we are  
19 talking about.

20 For point of clarification, though, from the  
21 Department, you are using total cover for your analysis  
22 comparison for bond release; is that correct? That's  
23 the way I understand it. You are using that value in  
24 the analysis?

25 MR. GIURGEVICH: If I understand your

1 question, that's what we're proposing in this revised  
2 package, to use a single measure.

3 MR. SKILBRED: Of total cover.

4 MR. GIURGEVICH: Total vegetation cover.

5 MR. SKILBRED: Okay. And if I understand  
6 right, you must be collecting some additional cover  
7 data that you are using to get a composition and  
8 diversity from?

9 In other words, does the industry provide you  
10 with folio cover, the other one? So that's really the  
11 meat for composition or species composition on  
12 diversity.

13 MR. GIURGEVICH: Chet, to be blunt, that  
14 topic has seldom been -- it's turned around. It's  
15 usually individually resolved by permit.

16 MR. SKILBRED: Okay.

17 MR. GIURGEVICH: Sometimes that process is  
18 written into a permit. More often than not it is  
19 specified some kind of sampling methodology agreement  
20 that the agency seeks to get before the sampling  
21 occurs.

22 MR. SKILBRED: Okay.

23 MR. GIURGEVICH: The reason I say it's  
24 mixed is because many of the -- and I want to speak  
25 to the bentonite permits for a moment, I'm picking on

1 them -- many of those are older conversion permits  
2 that have very little content on these topics in  
3 them. And so usually what we try and do is, when an  
4 operator comes to us with a proposal to go for bond  
5 release, want to get a clear-cut set of methods and  
6 evaluation procedures at that time. So we usually do  
7 it after the fact.

8 MR. SKILBRED: Okay. Then speaking towards  
9 total cover, my experience of collecting total cover,  
10 over multiple years, is that it often varies very  
11 little over a long period of time.

12 Now, species foliar cover individually is  
13 affected a lot by drought conditions and whatnot. But  
14 I personally have seen some data where folio cover  
15 changes very little over a long period of time. I'm --  
16 I guess I'm asking -- or not folio cover, but total  
17 cover. I'm asking, I guess, the department whether you  
18 even see any difference in total cover that would even  
19 be measurable in sampling in two different years. I'm  
20 not sure what that data would tell you. Total coverage  
21 itself. I think folio cover might give you some  
22 insight at least to what's going on out there, at least  
23 as far as species composition. But I find it hard to  
24 believe that total cover is going to change in one or  
25 two years.

1           MR. GIURGEVICH: Chet, I have not looked at  
2 all of the data sets that are available. I'll give  
3 you a personal opinion, though, from a couple of  
4 recent ones that I have seen across non coal  
5 situations, mostly in the Powder River Basin.

6           There is some -- we're always going to see  
7 situations that are -- and everybody will have their  
8 own case to make. I'm just going to make a point that  
9 I have seen some differences in total cover from year  
10 to year. Now, whether or not those are significant or  
11 not, I leave that to someone else to judge.

12           My personal opinion, though, the reason for  
13 those differences from one year's sampling effort to  
14 the next, is some change in the management in those two  
15 years. And I say that because sometimes these  
16 properties are changing hands one ownership to another  
17 or lessee to another.

18           And I'll go to a point that Bruce Lawson  
19 made. I recognize the difficulty that the companies  
20 have in dealing with the surface owners and the fact  
21 that it often costs them money to deal with that. But  
22 I think embedded in your question is the issue of how  
23 those lands were managed, how they were grazed the  
24 previous year or earlier that year before sampling.

25           And fundamentally, to answer your question, I

1 see minor variations, but probably nothing that would  
2 be significant.

3 MR. SKILBRED: Thank you. That's what I  
4 basically found, too.

5 MR. MOXLEY: Mr. Chairman, I'd like to  
6 weigh in on this. I'm Mark Moxley, with the DEQ in  
7 Lander.

8 I have been with Land Quality for 28 years.  
9 I have seen a lot of reclamation, released a lot of  
10 bonds.

11 I think what I would like to add to this  
12 discussion is that much of western Wyoming is very arid  
13 land. We see wide fluctuations in precipitation. Much  
14 of the country, the bentonite country -- you're only  
15 looking at an average of 6 inches of precip. And we've  
16 been in a five-year drought, where we're seeing 2  
17 inches. Much of southwest Wyoming is very dry, too.  
18 The Bridger Coal Mine, Black Butte Coal Mine, they're  
19 down around 6 inches a year.

20 The point that I would like to make is that  
21 in those kinds of conditions, those arid conditions, it  
22 takes a long time to establish vegetation. And I don't  
23 think -- in five years you haven't established a stand,  
24 unless you really get some good moisture years. I  
25 think it takes ten years to establish that vegetation.

1           Part of that is because you are trying to  
2   establish shrubs instead of grass. Now, most of our  
3   seed mixes are composed of grasses and shrubs; we try  
4   to plant a pretty broad mixture of species. And  
5   initially, if you get some good moisture years, you may  
6   see a good flush of grasses. But in western Wyoming,  
7   much of the country is shrub land, and those grasses  
8   will not persist, particularly under drought  
9   conditions. They'll be gone. Your shrubs will come  
10  on, but they come on slowly. And so it may take you  
11  ten years to really see a good expression of shrubs.

12           So I -- I have a real concern about sampling  
13  too early. What you are going to see if you sample  
14  early in year four in western Wyoming -- you know,  
15  you're gonna see weeds and you are gonna see that  
16  initial flush of grass, if you are lucky. But you're  
17  not gonna see the shrubs.

18           So I -- I think our reclamation is very much  
19  in transition in year five. It's not really  
20  established in any permanent way. So I'm very  
21  concerned about sampling early for one year. We have  
22  always required two years of sampling data, and, in my  
23  mind, those two years of data demonstrate that the  
24  reclamation is well established. If it doesn't change  
25  from year to year, you are showing that it's pretty

1 stable.

2           We do have situations -- and I can point to  
3 examples -- where the company has sampled for three  
4 years because the first year failed. The first year of  
5 sampling in year five or six -- or whenever they did it  
6 -- they did not have cover on the reclamation that was  
7 comparable to the native ground around it. It was  
8 less. And so we've ended up collecting three years of  
9 data.

10           And I would have to say that the farther you  
11 move into that -- you know, closer to that ten-year  
12 time frame, the better vegetation you are going to see.  
13 Because shrubs are going to come on.

14           So I -- I have a real concern with one year  
15 of sampling, particularly if it's going to happen in  
16 year four.

17           Now, Bruce said he would be willing to wait  
18 until year five. I guess my question to him is, on his  
19 leonardite mine: What year did he sample that  
20 reclamation? And I'll let him respond here. But I  
21 think a lot of the reclamation that we see passing bond  
22 release is ten years old. I'll quit there.

23           MR. LAWSON: In response to Mr. Moxley's  
24 comments, the -- the leonardite mine sampling, as I  
25 pointed out in the letter, was sampling conducted

1 that was conducted in 2001-2002. And again, those  
2 years were extremely dry. Nearly 50 percent of the  
3 annual precipitation in both those years.

4 MR. MOXLEY: How old was the reclamation?

5 MR. LAWSON: You know, I don't --

6 UNIDENTIFIED AUDIENCE MEMBER: I think it was  
7 about six.

8 MR. LAWSON: It was well over -- it was  
9 probably approaching -- some of it was probably ten  
10 years. Some of it was five years. I mean, it was a  
11 combination of -- you know, multiple cut lines  
12 sequence that occurred over quite a long period of  
13 time. I don't have the numbers with me on how old it  
14 was. But -- you know, it's probably anywhere from  
15 five to ten years old.

16 If I might add, also, again like I say, we --  
17 we put together a huge database of vegetation sampling  
18 data, again, for all of the -- all the non coal lands  
19 that we could find data on that have been released from  
20 bond, including uranium and bentonite.

21 And this may not help you at all, Mark. But  
22 you talked a little bit about what a different animal  
23 the Big Horn Basin in western Wyoming is. And I  
24 agree. The soils are much different than eastern  
25 Wyoming and the precip is much different.

1 I'm just looking at some numbers here. We  
2 did bond release sampling. We sampled in the summer of  
3 2002 and 2003 on our Ten Sleep mining operation. And  
4 I'm just looking at some total vegetation cover  
5 numbers. For 2001 and 2002 on the reclaimed area,  
6 we're looking at, in 2002, 34 percent. And in 2003, 31  
7 percent. Really not much change there.

8 Again, I can't tell you. I don't have that  
9 data here as far as how long that land had been seeded.

10 MR. MOXLEY: Okay.

11 MR. LAWSON: But my guess is greater than  
12 five years.

13 And again -- you know, 2002 and 2003 have  
14 been dry years. And why I bring that up is, part of  
15 LQD's argument for two years, two consecutive years or  
16 two out of three is -- you know, we need that because  
17 of -- I think they alluded to the current drought  
18 situation. I disagree. 2002 and 2003 were extremely  
19 dry years. Again, on another bond release study area  
20 at Ten Sleep in 2002, the total veg cover was 39  
21 percent. In 2003, the total vegetation cover was 39.3  
22 percent. And I might add that the corresponding  
23 comparison areas for those areas in 2002 and 2003 were  
24 28 percent, 36 percent respectively.

25 So -- you know, from those numbers we're not

1 seeing a lot of variation. But again -- and I can't  
2 tell you, but I know for a fact those lands had been  
3 seeded probably closer to eight years possibly. You  
4 know, that sampling, at somewhere beyond five years --  
5 whether it's eight years, ten years, twelve years --  
6 that's not intentional. You know, we're not  
7 intentionally waiting for that period of time to  
8 sample. It's just a matter of we've got more important  
9 things to do than do bond release. We've got to mine.  
10 In order to mine, we've got to generate permits and  
11 updates and amendments. And we don't have time to go  
12 out and do bond release. So it sits out there for a  
13 long time.

14 MR. BUCHER: I think Mark has some valid  
15 points. American Colloid operates both in the Big  
16 Horn Basin and in eastern Wyoming. And they are  
17 different worlds, no doubt about it. And I can see  
18 where maybe Mark's -- some of Mark's concerns are  
19 coming from.

20 But to maybe reiterate a little bit of what  
21 Bruce is saying, American Colloid has reclaimed lands  
22 held under bond in the Big Horn Basin probably  
23 approaching 25, 30 years old. We haven't even gotten  
24 bond release on pre '81 lands, which doesn't even  
25 require sampling. And we've got lands that you can go

1 out and look at it, and to the untrained eye, someone  
2 would not know that that land has not been mind.

3           So I am wondering, I guess, if maybe there is  
4 a -- you know, recognizing the difference -- and I know  
5 SMCRA has provisions in there for different  
6 precipitation regimes. And maybe that's something that  
7 -- that needs to be looked at.

8           But we wouldn't be opposed to waiting five,  
9 ten years, obviously, if we could still just -- you  
10 know, once we do it and it proves that it is equal to  
11 or better, then that would be -- could be done.

12           CHAIRMAN GINGERY: Reminds me that it's  
13 easy to give when you are not losing anything.

14           MR. BUCHER: That's right.

15           CHAIRMAN GINGERY: I'm going to call for  
16 maybe a five- or ten-minute break. I have had a  
17 request. But we'll take one more comment and then  
18 we'll have a break.

19           MR. HINCKLEY: Mart hinckley, MI-SWACO.

20           I'd say that we would be more than willing to  
21 compromise on the time frame if we could change the  
22 sampling to one year.

23           CHAIRMAN GINGERY: Well, let's take a  
24 break. When we come back I believe Mark wanted to  
25 speak to this issue. But we'll take a break until

1 11:30. And get your ideas together.

2 (Whereupon, a short recess was  
3 taken.)

4 CHAIRMAN GINGERY: On these comments I do  
5 think we need to kind of move forward.

6 I have not had the opportunity to read the  
7 latest one here, and maybe I can -- we'll get back to  
8 that. But I have not read it.

9 I believe where I left off was with Mark.  
10 But I'd like to kind of sum up -- I'm still up of  
11 opinion, even though we received this excellent letter  
12 from the Bentonite Association -- and I appreciate your  
13 going over that -- that we can still move forward. And  
14 on this I'm sure there will be a few more comments  
15 about the years there.

16 The only thing I had -- I was trying to think  
17 this through, and some of my experience is different  
18 than what we're trying to do here -- is that I am  
19 concerned about the drought. And I'm glad your -- you  
20 put that information in there. But I just wonder if  
21 you -- if some of the locations, either because of the  
22 soil types or the different rainfalls in the west, I'm  
23 not too sure that maybe the compromise -- and I'll  
24 listen to more, the compromises more -- that maybe  
25 these different regions that we oversee may have

1 different times and different periods, if that is a key  
2 element. I don't know if it is. I thought that was  
3 quite interesting, coming from -- there must be -- I'm  
4 thinking about four to five counties in the western  
5 part of the state of Wyoming that -- you're only  
6 getting 6, and you're getting 12 in Big Horn. That's a  
7 radical difference. But I certainly would stay open to  
8 comments on that.

9           Mark, I think I cut you off before we had a  
10 break, so go ahead.

11           MR. MOXLEY: Thank you, Mr. Chairman.

12           I'd like to address, briefly, Mr. Skilbred's  
13 issue or question about species diversity. And species  
14 diversity and composition and how that plays into the  
15 two-year requirement, as I see it.

16           The way I look at species composition -- and  
17 this is not written in regulation or guideline -- the  
18 way I look at species composition is first off, I look  
19 at the baseline. What species were there on that  
20 ground before it was mined? Then I look at the  
21 approved seed mix that we approved for what the  
22 operator was going to plant out there. And then I look  
23 at the reclamation, the composition of the reclamation.

24           And the way the -- the way we get that data  
25 is, when you do your covered transects, you record the

1 species that you get and you actually calculate the  
2 relative composition -- you know, how much percent is  
3 this species and how much percent is that species.

4           So anyway, side-by-side I look at baseline, I  
5 look at seed mix, I look at the reclamation. And what  
6 I am looking for is not exactly what was there before,  
7 not exactly what was in the seed mix, but something  
8 that reflects that diversity that was out there before.  
9 And I think the reason that diversity is important is  
10 because we want that reclamation to be stable and  
11 relatively permanent and resilient, so that when a  
12 drought comes along or when a flock of sheep comes  
13 along, or when it burns, we want it to be able to grow  
14 back and -- and stabilize that ground.

15           So I think some diversity is necessary. If  
16 you just have a monoculture of one species, you are  
17 going to be susceptible to a complete failure, whether  
18 it's due to fire or bugs or drought or grazing or  
19 whatever. We want a community that has some different  
20 plants in it. They all respond differently to these  
21 perturbations in the environment. So that's how I look at  
22 species composition.

23           And that changes. In the two years of  
24 sampling the species composition does change. The  
25 point that Chet made about the total vegetative cover

1 may not change very much -- and Bruce has given us some  
2 data that in fact shows very little change from one  
3 year to the next, in terms of total vegetative cover.  
4 But if you look at the cover by species, that does  
5 change somewhat. And what I guess I see is that, as  
6 this community moves from a younger stage to an older  
7 stage -- you know, your weeds are generally crowded  
8 out. And so it might be weedier in the first year of  
9 sampling than it is in the second. That's what you  
10 would expect and hope to see. I don't know if that  
11 answers your question about species composition.

12           The other issue I would reiterate, I guess,  
13 is that a lot of the reclamation that we're seeing bond  
14 release on is significantly older than five years. As  
15 Bruce said, it's ten years, fifteen years, maybe even  
16 twenty years old. So one would hope -- and I think the  
17 data shows -- that that reclamation, when it's that  
18 old, is pretty good. It isn't changing. It's a stable  
19 ecosystem. And that's what the data reflects. And if  
20 those two years are not different, then that's probably  
21 why. That's what I would speculate, is because you  
22 have got a well established community there. If you  
23 sampled it early on in year four and five, I think the  
24 results would be quite a bit different. And we don't  
25 have a lot of that data. I think, particularly in

1 western Wyoming, people are waiting ten, fifteen years  
2 before they do their range studies. So it's kind of a  
3 chicken and the egg -- you know, we don't have a lot of  
4 data to show that there are differences from year to  
5 year, because we don't have that data in the early  
6 successional stages.

7 I'll quit there.

8 MR. LAWSON: Mr. Chairman?

9 CHAIRMAN GINGERY: Yes, go ahead.

10 MR. LAWSON: You know, I agree a lot with  
11 with Mark says. We mine on both the west side of the  
12 Big Horn Mountains. At Ten Sleep we've got about a  
13 10,000 acre permit area there. We've been mining  
14 there since the 1970s. And we also mine in the  
15 Kaycee area. We've been over there since the '60s.  
16 And then some scattered things in the southern Powder  
17 River Basin. And they're two different animals, I  
18 will agree with that. Vegetation and soils. The  
19 basin's predominantly shrub lands, the -- the east  
20 side of the Big Horns is predominantly grasslands.  
21 And there is major differences.

22 I guess I disagree with what Mark says a  
23 little bit on -- that you are going to see major  
24 changes within two years, in vegetation sampling. I  
25 heard someone from Mark's office make the comment that

1 we needed two years of sampling to demonstrate trends.  
2 You are not going to demonstrate a trend in vegetation  
3 in two years, from one year to the next. A lot of  
4 places I think you would be lucky to demonstrate a  
5 trend in five consecutive years.

6           But I apologize. I do have to apologize to  
7 the advisory board and the LQD on the presentation of  
8 the letter. I had truly hoped to get that out to you  
9 prior to this meeting, but I -- I just couldn't get it  
10 done. And it would probably be helpful for you to  
11 examine that information a little bit more.

12           And I would -- just wanted to touch on Mark's  
13 comment on species diversity, and this major spread  
14 sheet that we've put together here of some of the  
15 vegetation data that's been collected on bond release  
16 sampling. And this is anything that's ever been  
17 granted full bond release with DEQ. I mean, our  
18 company -- Barbara Chase has made several trips to  
19 Cheyenne, to go through the data there and help compile  
20 this. And all the other companies have submitted their  
21 vegetation sampling data. But I'm sure if I gave this  
22 to Mark he could pull out some negative aspects of  
23 species diversity.

24           But one thing that we sample for, when we go  
25 out and do bond release sampling, is not just total

1 vegetation cover and total cover and total bare ground.  
2 But we also -- at least the consultant I use, I require  
3 him to sample for -- you know, we provide numbers on  
4 vegetation cover by individual life form; by -- you  
5 know, by grasses, grass-like, perennial forbs, annual  
6 grasses, annual forbs, sub shrubs, succulents, and  
7 shrubs. We provide an analysis of the percent of those  
8 species that are sampled. And we also do detailed  
9 walk-thrus of the reclaimed and the comparison areas,  
10 just to -- and we provide a tabulation -- we count the  
11 number of species of grasses, grass-like, annual  
12 grasses, perennial forbs, annual forbs, full shrubs,  
13 sub shrubs, succulents, and trees.

14           So -- you know, there's a lot of data here.  
15 But just for example, in -- in Mark's comments on  
16 species diversity -- I'm looking at -- again at the Ten  
17 Sleep area, which is -- our office regulates our mining  
18 operations. So let me give you an example of maybe how  
19 some things have changed here a little bit on -- in  
20 relation to species diversity.

21           For example, in 2002, the percent of  
22 vegetation cover on sub shrubs on one of our reclaimed  
23 areas was 2 percent one year and 1.3 percent the next  
24 year. Vegetation cover on shrubs, 2002 11 percent;  
25 2003, 9.3 percent. So -- you know, there's -- just

1 using those for examples, there's not a lot of  
2 difference there, from one year to the next.

3           So just a little different perspective on  
4 species diversity. Thank you.

5           CHAIRMAN GINGERY: Thank you. I'm going to  
6 ask our Administrator, on the -- on dealing with  
7 these one or two years and review, looking through  
8 what we're trying to change today, that language  
9 stays the same even though the changes have been  
10 made; is that correct?

11           What I am trying to get to is, this  
12 discussion -- if we make the changes that have been  
13 proposed by the DEQ's -- I mean by the Land Quality  
14 office, looking through there, we would stay with the  
15 present system in the timing; is that correct?

16           MR. CHANCELLOR: As far as the five-year  
17 bond clock, yes. I think that's actually the statute  
18 for non coal.

19           CHAIRMAN GINGERY: I thought it was, too.  
20 That's why I was getting to that point.

21           MR. CHANCELLOR: It says at least five  
22 years.

23           So, if your question is, do we have latitude  
24 -- right now our proposal is to maintain the at least  
25 five years bond clock for the non coal.

1                   CHAIRMAN GINGERY: Okay.

2                   MR. CHANCELLOR: The statute says at least.  
3 So if you want to go longer, I suppose you would  
4 still be in compliance with the statute, because it  
5 says at least five years.

6                   CHAIRMAN GINGERY: Thank you for  
7 clarifying. I thought it was that way but I didn't  
8 know.

9                   Bring it back up here, we'll have a little  
10 discussion here. Since this seems to be a major issue  
11 with the industry and the regulators, how do -- do you  
12 want to go ahead and finish this up? Or is this such a  
13 large hurdle that maybe we need to stop and read  
14 everybody's data and move on? From the board's  
15 standpoint, how do you two feel about this?

16                   MR. PONTAROLO: Go ahead, Chet.

17                   MR. SKILBRED: I think we ought to proceed  
18 with it.

19                   Industry has indicated that the fourth year  
20 is not such a critical year for them. And perhaps  
21 there is something we could do there.

22                   I don't know -- Rick, is the Department set  
23 on this fourth full year growing season as an  
24 initiation time for bond release?

25                   MR. CHANCELLOR: No. We're more -- the

1 reason we said that was to say no earlier.

2 CHAIRMAN GINGERY: Oh.

3 MR. CHANCELLOR: So as far as being later,  
4 I don't think that would hurt. I'm saying if the  
5 board said it should be later -- our main concern is  
6 not to be earlier than.

7 MR. PONTAROLO: I agree with Chet.

8 CHAIRMAN GINGERY: Do you concur with that?

9 MR. PONTAROLO: Yes.

10 CHAIRMAN GINGERY: Okay. That made me  
11 think -- were you finished with your suggestions  
12 there, Chet?

13 MR. SKILBRED: Yeah. I -- I can understand  
14 both sides of this. Two years of sampling does  
15 provide useful information, there's no doubt about  
16 it. On species composition and species diversity.  
17 Because two -- the community is going to most likely  
18 change somewhat in that period of time. And it does  
19 provide useful data to the Department as far as  
20 numbers.

21 However, for the process of bond release,  
22 where you are using just total cover, and that's the  
23 criteria you're measuring, then two years worth of data  
24 is probably not going to change that value very much,  
25 is not going to gain you anything there.

1           So I guess I'm at a loss. I mean, I can see  
2 where it's useful for two years worth of data from a  
3 species composition point of view, which is just --  
4 well, you can collect it for two years and then you can  
5 go back and collect it another -- two years down the  
6 road, collect it again, it's going to be different. So  
7 I know it's going to change during that period of time.  
8 However, I do understand that total cover -- and I do  
9 believe that is not going to change significantly. So  
10 I'm -- from that point of view, I am not sure what two  
11 years worth of data would do. For that value alone to  
12 use in the analysis. So I'm at a loss to say two years  
13 is useful, from that point of view.

14           CHAIRMAN GINGERY: Let me ask you a  
15 question, since you've had to deal with this as a  
16 professional. Since we just received this  
17 information a couple hours ago, I gather we have  
18 not -- particularly the three of us here -- may not  
19 have had time to really absorb that. My feeling is  
20 that we go ahead with this. I think that this could  
21 be an all-day topic. And maybe this is something --  
22 the industry and Rick's office could really look at  
23 this a little bit closer. I -- my feeling is I need  
24 to think about it a little bit more. I think there's  
25 been some good presentations and some good thought.

1 I have a feeling whatever direction -- we might just  
2 leave it alone right now. Whatever direction I'd go,  
3 I'd probably be making a hasty decision just to move  
4 this along.

5           So, were you trying to get this to the DEQ  
6 board at any given -- what was our approach,  
7 administrative approach on this?

8           MR. CHANCELLOR: From the Division's  
9 standpoint, we felt that there are components of  
10 this -- such as the production and grazing issue --  
11 that really streamlines the bond release effort. And  
12 that was the main push from us, saying that we need  
13 to do these changes, to get those in place so it --  
14 it makes bond release easier. Or more efficient, put  
15 it that way. So our goal was to try to make the  
16 process more efficient. And of course the sooner the  
17 better to get that accomplished. I realize there is  
18 a lot of discussion on the two years or two out of  
19 three years versus one year. We have had discussions  
20 on the difference between the eastern part of the  
21 state and the western part of the state and all kinds  
22 of possible solutions as far as that.

23           So on the one hand, we feel it's very  
24 important to get some of these changes on -- to move  
25 forward. On the other hand, I do realize that there is

1 a lot of discussion that could be taking place yet on  
2 the time frame.

3 CHAIRMAN GINGERY: Okay. I kind of feel  
4 that it's quite a job. I've already stated that we  
5 really kind of need to move on this. But I think  
6 we've brought up a chapter -- and I have to say,  
7 maybe I was aware of this issue of one or two years,  
8 but I don't think I was. And I would say that we  
9 certainly have the formal letter from the Bentonite  
10 Association. And I'm of the mind -- would it help  
11 the association and interested parties if you meet in  
12 more of a technical session at some time and really  
13 talk this over?

14 MR. CHANCELLOR: It probably needs to be in  
15 a public meeting type format. We've come under some  
16 scrutiny lately --

17 CHAIRMAN GINGERY: Okay.

18 MR. CHANCELLOR: -- on negotiating with  
19 industry without the public having an opportunity to  
20 be there. So we need to be sensitive to that.

21 CHAIRMAN GINGERY: If we -- is somebody  
22 disagrees with me -- I'm trying to move this along --  
23 on that particular issue, which came forward to us  
24 today, I need to think about it a little bit more and  
25 get some more input.

1           What if we had a public meeting in 30, 60  
2 days, where we could make that a one- or two-hour topic  
3 and really have people bring forth information? Would  
4 that help, or am I just lingering misery?

5           MS. BILBROUGH: I think it's a good idea.  
6 We'd like to get the information that the bentonite  
7 producers put together and take a look at that.  
8 Because I think we're willing to look at the one-year  
9 option. And for me -- you know, we should sit down  
10 and make a list of the options. It sounds like one  
11 option would be splitting the state into two time  
12 periods. And it sounds like people are at least  
13 interested in exploring that. We're willing to look  
14 at the one-year question. There are some valid  
15 points there. But we need to balance it against our  
16 concerns, and maybe look at some data. And to me,  
17 the question is -- you know, how often does it happen  
18 that the second year is different than the first  
19 year? How often is that important, in terms of  
20 making a bond release decision? And if it's never  
21 important, then it's kind of hard to substantiate  
22 using it. If, on the other hand, we see that 10  
23 percent of the time, it raises an issue of the  
24 reclamation being adequate and we need to address  
25 that question.

1                   So I think we have some bite-sized issues  
2 that we can work through item-by-item and come up with  
3 some possibilities and some resolutions.

4                   CHAIRMAN GINGERY: Before you comment  
5 there, what I -- see if this -- we can have some more  
6 input on this. But what I've been really thinking  
7 about -- you know, we're always looking at meeting  
8 scheduling. And in talking with Rick, we were  
9 thinking of April. But if this is such an important  
10 issue, maybe if that would give everybody enough time  
11 to meet -- I like the approach you were making  
12 there -- maybe by the end of January, first of  
13 February? Would that give industry enough time to  
14 meet with the other people here and share some  
15 information? I'm looking at there seems to be some  
16 sharing that needs to be done. Then we need to have  
17 kind of a meeting just on tearing that apart and  
18 putting it back together and then we can move more on  
19 these regs.

20                   It's a three-pronged question. One is that  
21 I'd have to ask: Is the board wanting to do that?  
22 Instead of just my opinion. The other is if the  
23 Administrator feels that that's good. And if the  
24 industry, the audience -- so I'm suggesting that maybe  
25 around the first of February that we do have a meeting

1 here in Casper -- I think it's about halfway for  
2 everyone except for me. And we would meet here and  
3 maybe the first part of the meeting, a couple hours,  
4 spend on this. Or whatever report that comes back from  
5 the different entities. Or maybe you have agreed on it  
6 and Rick will be happy and we get this on off to the  
7 DEQ board.

8           Comments, first from James? Do you have any  
9 problem ...

10           MR. PONTAROLO: Well, my feelings is  
11 probably the sooner that we could get back together  
12 and get it done would be good for me. And I think  
13 probably for you folks, too.

14           CHAIRMAN GINGERY: Scott, I think you're  
15 the next one.

16           MR. BENSON: We would urge the board to  
17 make a decision today and move on, if at all  
18 possible. We're extremely busy, especially in the  
19 coal section, and most of these LQD people working on  
20 a much more detailed coal revegetation package.

21           We do believe that there is substantial data.  
22 I think several board members have expressed they feel  
23 that the vegetative cover just does not change that  
24 much from year to year. And in particular, that the  
25 current methods specified in the rules -- we're

1 comparing it to a reference area or a comparison area  
2 or adjacent area.

3           So -- I mean, if it's in a doubt or if it's  
4 an exceptionally wet year and you get 20 inches of  
5 precipitation, you are comparing it to lands right  
6 next door that experienced the same management, that  
7 experienced the same precipitation patterns.

8           And as far as the species diversity and  
9 composition, which may vary from year to year -- again,  
10 we aren't specifically sampling for species diversity  
11 and composition. That's a qualitative assessment  
12 that's being made on the ground, and that's what the  
13 rule states, is species diversity and composition  
14 suitable for the post mining land use. LQD comes out  
15 on site once a year and conducts an inspection of these  
16 reclaimed lands and looks at them.

17           If LQD feels it's necessary to look at it two  
18 years in a row and make that qualitative assessment,  
19 they can very easily make those internal procedures  
20 today and say -- you know, we're going to look at it  
21 every single year and do a qualitative assessment of  
22 what's going on with diversity and composition. And if  
23 that's qualitative assessment -- you know, they can do  
24 that every year. But total coverage is not going to  
25 change that much from year to year.

1           CHAIRMAN GINGERY: Yes, you have a comment?

2           MS. BILBROUGH: LQD inspects the full mine  
3 operation. It isn't necessarily possible to inspect  
4 all of the reclamation, just for clarification.

5           I have a question for the bentonite  
6 producers. Do you guys -- would you be comfortable  
7 having this rule package moved forward with the  
8 exception of the cover, and have us do a cover  
9 discussion? Or would you rather have the whole package  
10 put on hold until like a February discussion?

11          MR. LAWSON: Excuse me, but to quantify,  
12 what do you mean by a coverage discussion?

13          MS. BILBROUGH: Versus one year.

14          MR. LAWSON: The sample?

15          MS. BILBROUGH: Or is that something --

16          CHAIRMAN GINGERY: I think that's what I  
17 was trying to get from the group.

18                 It seems like a real benefit to our mining  
19 industry if we do make -- eliminate some of these  
20 changes. But it does come to the point, do we want to  
21 stop this in progress right now, do we want to come  
22 back say the first of February, or maybe -- December  
23 24th wouldn't be a good date, would it? And -- because  
24 I do think we need to move this along. And because  
25 there is some good avenues here that's being changed.

1           So it's really the board's call, working with  
2 the Administrator.

3           But how does the industry feel about this?  
4 You want to hold it now, come back in say February,  
5 when we have had -- you have had some probably informal  
6 discussions with the staff, and then still try to get  
7 this off to the board let's say this spring, early  
8 spring. What is the comment here?

9           MR. LAWSON: Actually, I think in all  
10 fairness to LQD and also the Land Quality Advisory  
11 Board, just the fact that -- you know, I didn't get  
12 you this information until this morning. And Lyndon,  
13 done, did you submit --

14          MR. BUCHER: No.

15          MR. LAWSON: Okay. Just the fact that you  
16 really haven't had a chance to look at this. And I  
17 apologize for that. And -- you know, I would say if  
18 you feel it's beneficial to have a little more  
19 discussion on that, that's probably -- or between the  
20 agency and the bentonite producers -- or the none  
21 coal operators, I should say -- I would be willing to  
22 go that route.

23          MR. BUCHER: One question I have. In this  
24 upcoming -- in this upcoming potential bond release  
25 season this summer, in the event that a rule package

1 doesn't get finalized until -- you know, in time for  
2 this field season -- is the LQD still allowed the  
3 discretion to waive productivity requirements and  
4 things like that?

5 MR. CHANCELLOR: Mr. Chairman?

6 CHAIRMAN GINGERY: Go ahead.

7 MR. CHANCELLOR: The rules do not allow me  
8 to have that discretion. That's why back in 2001,  
9 when we met internally and discovered that the rules  
10 weren't being followed -- you know, I really don't  
11 have that discretion to say I can waive this part of  
12 the regulation. So that's why we went back and said  
13 you've got to do two years -- you know, you've got to  
14 do everything the rules require. So we don't have  
15 that discretion.

16 Also realize that even if we passed a rule  
17 package today, the Wyoming Quality Council has been  
18 taking months, if not close to a year, to schedule a  
19 hearing on rules. So anything we do between now and  
20 say the field season, the council wouldn't even hear  
21 anyway until late 2005 or early 2006. Unless they've  
22 changed how they schedule hearings, we'd be hard  
23 pressed to have it heard by council in a timely manner.

24 So first, there is no discretion. And two,  
25 whether we do something today or do something in

1 February, it won't be done in time unless the council  
2 really changes how they do things, unfortunately.

3 CHAIRMAN GINGERY: You were going to  
4 comment?

5 MR. SKILBRED: Yes, Mr. Chairman. Is it  
6 possible for us -- if I understand this right, we can  
7 go ahead and approve the changes except for this item  
8 right here, at this point in time? If we should  
9 choose to do so, which may or may not -- will help  
10 these guys in some sense if they -- if the council  
11 got a chance to look at it. But it really won't  
12 change the burden, because they're still sampling for  
13 two years. So in other words, you gain something but  
14 you don't -- you haven't addressed this issue. Can  
15 we -- can this issue, what Carol's saying, be  
16 discussed further between the Department and industry  
17 for us to look at?

18 MR. CHANCELLOR: I think you have several  
19 options. I think one is you just table the rule  
20 package totally. You could pass the rule package as  
21 proposed, including the two out of three years, with  
22 the caveat that at the next board meeting, say in  
23 February, we open that up again and do another rule  
24 meeting on that. You could vote to pass the whole  
25 rule package except that rule. And basically there

1 you holding everything in abeyance, still.

2           So I guess the question is how to proceed. I  
3 think a lot of what we do will depend on how fast we  
4 get the council to move on the rule package. We've  
5 been unsuccessful to get them to do a rule package  
6 within a matter of months. Usually it's closer to nine  
7 or twelve months, just to get a rule package in front  
8 of them.

9           MR. SKILBRED: Okay. Then if we pass the  
10 rule package as it stands right now, as written, and  
11 we come back in February, and after further  
12 discussion between the Department and industry we  
13 make a change to this item here, will those two  
14 packages then go together as one before the council?  
15 In other words, not to -- to lengthen it out?

16           MR. CHANCELLOR: It would probably be  
17 better if you -- it all depends what the -- how fast  
18 the council moves. If we pass these today and we  
19 push these to council and they actually held a  
20 hearing say in January -- well, it won't be January.  
21 Probably February would be the earliest they could  
22 hold a hearing -- then it would be beneficial to do  
23 it separately.

24           But my take on it, if we plan to meet again  
25 in February to resolve the two-year question, we might

1 as well table the whole rule package. Because I don't  
2 think the council will act on the first rule package  
3 between there.

4 MR. SKILBRED: Okay.

5 CHAIRMAN GINGERY: Yes, Scott?

6 MR. BENSON: One other option to  
7 consider -- again, not to tell you -- your job.  
8 But -- you know, basically it's to make  
9 recommendations to the Land Quality Division to move  
10 this package forward to the Environmental Quality  
11 Council to promulgate a rule. And perhaps you have  
12 enough information today to make that recommendation  
13 to LQD, whether that recommendation may be -- you  
14 know, look really hard at changing this to one year  
15 or come up with some real good justification as to  
16 why you need two years or maybe put the burden back  
17 on industry and say -- you know, you guys need to  
18 come up with some really good data to convince the  
19 EQC that one year total vegetation covers enough.

20 MR. CHANCELLOR: I think that's a good  
21 point. You could go ahead and pass the rules, and  
22 between now and the time the hearing is held we would  
23 be sharing information and whatever. And there is  
24 opportunity for public comment at the DQC hearing.  
25 And by that time, maybe we have better knowledge and

1 information about -- you know, what is the real  
2 possible answer.

3 MR. BUCHER: I think at this point that  
4 might be the best option, is to go ahead and  
5 recommend passing of this rule package. And in the  
6 meantime, we'll get together with Land Quality and  
7 try to work out the differences on the two-year  
8 sampling regime, then fit that into the DQC hearing  
9 on their schedule.

10 CHAIRMAN GINGERY: I think originally I  
11 kind of suggested that, but Rick brought up the  
12 public process. And since we started in public, I  
13 think maybe he brings up a good point that, to  
14 safeguard our -- as a public entity, that we need to  
15 voice this in -- at a more public -- I have found --  
16 I can think of some things that took place in coal --  
17 by asking the parties to work it out before they come  
18 back to this board or go on to the council, I have  
19 found that to be a very effective approach. So I  
20 agree with you, but I do think that the public  
21 process has to be safeguarded.

22 So if we go ahead, I believe I have had a  
23 strong suggestion from my members that we go ahead and  
24 approve this -- letting Bob finish up, I mean. But  
25 let's say we do approve it. And then I do, think since

1 it started out as a public process, we should come back  
2 in February. And then hopefully we can send that on to  
3 the council.

4 MR. CHANCELLOR: And --

5 CHAIRMAN GINGERY: What, they may take up  
6 to a year to get to our agenda, is that right?

7 MR. CHANCELLOR: It has been taking about a  
8 year to get a hearing in front of council. We're  
9 trying get that shortened, but it's up to their  
10 scheduling.

11 One recommendation, too, you could -- in your  
12 recommendation to the council or to us to move forward  
13 with rules, is to state that there is room for more  
14 discussion on the two-year issue, to alert the council  
15 that all sides here realize that there is -- that there  
16 are concerns with this issue, and encourage more  
17 discussion from the council on this issue.

18 CHAIRMAN GINGERY: Would that be  
19 satisfactory to the industry, if we approach it that  
20 way? That keeps the door open on this and all of us  
21 can get some input. And then we wouldn't have to  
22 come back in February if we use that language.

23 MR. CHANCELLOR: Right.

24 CHAIRMAN GINGERY: Can I ask you, if we  
25 continue here -- but to relay that information, that

1 you will provide that information to the  
2 appropriate -- back to the council?

3 MR. CHANCELLOR: Right. Your  
4 recommendation was made part of the record and is  
5 being transcribed. So if you vote to recommend we  
6 move forward with this rule package, and have that  
7 part of the motion --

8 CHAIRMAN GINGERY: All right.

9 MR. CHANCELLOR: -- it will be conveyed to  
10 the council.

11 I want to note to the industry -- you know,  
12 there is a public comment period before it goes to the  
13 council. And if you can have those comments to us real  
14 early in the process, we'll have a chance to be better  
15 prepared at the council meeting.

16 CHAIRMAN GINGERY: I think if industry and  
17 the Department here are talking to each other -- it  
18 doesn't sound like it's controversial, but you are  
19 going more as partners. You may have a different  
20 view, but there's been exchange of information and  
21 you're going -- what I have noticed, at the few  
22 council meetings that I have attended, is the parties  
23 seem to be fairly -- are working on this issue. We  
24 don't have all of it solved, but they seem to go  
25 along with it a little bit better. And I think you

1 are very close.

2           Okay. Let's continue the process. And that  
3 was almost an hour ago. And I believe we're down to  
4 the end of page 3. And I believe we had already  
5 discussed continuation of (vi).

6           Is that right? Where did we leave off, Bob?  
7 I'll leave it to you.

8           MR. GIURGEVICH: Mr. Chairman, you are  
9 correct. We had our vigorous discussion on the  
10 bottom of page 3.

11           I submit that the rest of the proposed  
12 revisions are mostly word changes, to strike things  
13 throughout the remainder of this chapter. And I don't  
14 have any strong comment to make beyond that. So I feel  
15 that the others are primarily structural changes to  
16 accomodate the other revisions.

17           CHAIRMAN GINGERY: Any comment? We could  
18 take -- most of it is the productivity on page 4 --  
19 oh, there it is. Well, all of it's dealing with  
20 that.

21           Does anyone have any problem with page 4? If  
22 not, we'll move on.

23           MR. BENSON: Mr. Chairman, again, I believe  
24 that was Kennecott's -- one of their primarily  
25 concerns with the rule package. Again, relating to

1 their worry that LQD may change Guideline 2 to  
2 require some new procedures or new methods or new  
3 standards to sample for species diversity and  
4 composition. And given everything we've heard today,  
5 everybody has indicated that is not the intent. So  
6 would it be possible, on page 4, that middle one,  
7 then just to strike "and procedures for evaluating  
8 post mining species diversity and composition," which  
9 will very clearly then say the total cover is what is  
10 being measured.

11 CHAIRMAN GINGERY: I'm getting -- you are  
12 nodding that that's not a good idea.

13 MR. GIURGEVICH: Mr. Chairman, I think that  
14 goes well beyond the original intent. Because that  
15 takes out the segment that I, personally, feel needs  
16 to remain there.

17 There are several other equivalent statements  
18 in the existing Chapter 3 that clearly state the  
19 Administrator shall establish methods. And by striking  
20 the entire statement of procedures for evaluating  
21 diversity and composition, I think it violates what I  
22 conclude as the intent that in the end the  
23 Administrator defines the methods.

24 CHAIRMAN GINGERY: Just looking at that  
25 paragraph that's in the center there and after

1 speaking to that, is there any desire to remove that,  
2 from the board? Or just leave it?

3 MR. SKILBRED: I think we need to leave  
4 that in there.

5 CHAIRMAN GINGERY: All right. You might  
6 take that back to them and discuss that a little bit.  
7 I almost think they are reaching on that and -- since  
8 the Administrator does have that particular  
9 permission to do that. But I see where they are  
10 coming also on that, Scott. But you may -- there may  
11 be need for more discussion. I don't quite agree  
12 with what they're saying there. I think it's pretty  
13 neutral.

14 Okay. Anything else on page 4?

15 Okay, we'll move on to page 5. And that was  
16 almost the same thing as on page 4; just taking out the  
17 wording there. And that would bring us to an end.

18 Any other comments before -- don't I need any  
19 other comments now, to have the board make a motion on  
20 this?

21 MR. CHANCELLOR: Yes.

22 CHAIRMAN GINGERY: Any other comments? I  
23 really appreciate you guys coming. You really make a  
24 difference in getting our work done. And I'm sorry  
25 that we didn't have -- in a positive sense, the two

1 letters we did receive -- I will certainly read those  
2 more in detail and comment. And I appreciate your  
3 input, because it does make a difference in the whole  
4 picture.

5           So at this time I would entertain a motion to  
6 -- on this particular Chapter 3.

7           MR. SKILBRED: How do we have to word that,  
8 Rick, for the council?

9           MR. CHANCELLOR: I think basically you move  
10 that the LQD proceed with rule making on these rules  
11 as written, with notification that the discussion of  
12 one-year sampling versus two-year versus two out of  
13 three-year sampling warrants further discussion and  
14 consideration.

15           MR. SKILBRED: Okay. So Mr. Chairman, I  
16 move that we move on the changes to Chapter 3 as  
17 written, with the notation, I guess, that there be  
18 further discussion or potential for discussion on the  
19 one versus two years coverage sampling criteria.

20           CHAIRMAN GINGERY: Do I have a second?

21           MR. PONTAROLO: I would second it.

22           CHAIRMAN GINGERY: Okay. Motion has been  
23 moved and seconded.

24           Any additional discussion? I will give the  
25 opportunity to the audience before we vote, if you have

1 any comment.

2 If not, all in favor of the motion signify by  
3 saying aye.

4 MR. PONTAROLO: Aye.

5 MR. SKILBRED: Aye.

6 CHAIRMAN GINGERY: Aye. Same sign  
7 negative. The motion passes three to zero. So that  
8 stands.

9 And is there any other items that -- Rick,  
10 that you wanted to bring forward to us at this time?

11 MR. CHANCELLOR: Just an update on several  
12 of the past rule packages that the board voted on.

13 The high wall rule package passed the council  
14 and went to OSM. I received word that they intend to  
15 approve the package, with one disapproval, and that was  
16 concerning the language about retention of high walls.  
17 As the board knows, we put forward additional rules to  
18 take care of that. We anticipated that action, and the  
19 board went through and passed some additional rules to  
20 address that concern. And those are before the  
21 council, I believe. Haven't gone to the Governor's  
22 office yet.

23 MS. BILBROUGH: I think that's the second  
24 time it's been to council. Is that right?

25 MR. CHANCELLOR: Not on the second rule

1 package, just the criteria for high walls. And that  
2 rule package and the rule package on Chapter 15, bond  
3 release, there was some short changes. Those I  
4 believe are before the council. They have not gone  
5 back to the AG's office and the Governor's office.

6           The other rule package we're working on is,  
7 as we talked here earlier, is a very large rule package  
8 on coal regulations concerning bond release, doing  
9 vegetation sampling, methodology, and species  
10 diversity. We have had extensive discussions with  
11 (inaudible), the Forest Service being involved. Sparse  
12 attendance by outside parties. We hit a roadblock on  
13 species diversity. We think perhaps we are -- have  
14 overcome that roadblock. We have a meeting scheduled  
15 in early January. We hope that that would be the last  
16 meeting. And we'll write the rules and I'll bring  
17 those forward to you. So we're hopeful that species  
18 diversity will not delay us further. When we first  
19 started out we made very slow, poor progress. Then we  
20 made good progress for awhile. Then species diversity  
21 held us up now for probably six months. But we think  
22 we're to the point we can get past that and finish up  
23 our discussion and write the rules.

24           CHAIRMAN GINGERY: Any questions or  
25 comments? Appreciate your hard work on that.

1 I believe the high wall and Chapter 1, 4, and  
2 10 that you presented back on May 7th, and you -- you  
3 think by next -- I missed the point about the second  
4 time. This should be passed --

5 MR. CHANCELLOR: No. The board -- we had a  
6 set of rules that took out high walls. The council  
7 put in language concerning retention of high walls.

8 CHAIRMAN GINGERY: Oh, okay.

9 MR. CHANCELLOR: That went to OSM. OSM is  
10 in the process of approving that rule package but  
11 denying that one rule concerning high walls.

12 CHAIRMAN GINGERY: Oh, okay. I was a  
13 little confused.

14 MR. CHANCELLOR: So the second round is --  
15 we anticipated that, so we did a set of rules just to  
16 address that issue. That went to the board and now  
17 to the council.

18 CHAIRMAN GINGERY: All right. Okay.  
19 That's just a clarification for me. I think  
20 everybody else was on board.

21 Any other notices? Okay. In a moment we'll  
22 set the next meeting.

23 I have one request. It's kind of our  
24 educational series. Some of us do not deal with mining  
25 every day. Would the Bentonite Producers Association

1 like to present, at our next meeting -- again it will  
2 probably be in April -- maybe a ten- or twenty-minute  
3 program on your industry?

4 MR. BUCHER: Absolutely.

5 MR. LAWSON: You bet.

6 CHAIRMAN GINGERY: Okay.

7 MR. LAWSON: Happy to.

8 CHAIRMAN GINGERY: Are my colleagues in  
9 agreement?

10 MR. PONTAROLO: Sounds fine.

11 MR. SKILBRED: Yes.

12 CHAIRMAN GINGERY: Okay. We'll look  
13 forward to twenty minutes or something there. But I  
14 really -- there are two things that have really  
15 helped me. One is visitations to your sites. And  
16 the other thing is the presentation. I think we --  
17 it's not just looking at pieces of paper with print  
18 on it; it becomes real. And the uranium group has  
19 really been -- I've had the opportunity to visit them  
20 a few times. The coal industry has been excellent.  
21 Petroleum has been excellent. I think I've only  
22 visited -- made one trip to bentonite. So I think  
23 it's your turn, and I'd appreciate your taking that  
24 opportunity.

25 The next item of business is locate the next

1 board meeting. And my suggestion to us -- I think it  
2 turns out to be -- unless somebody has a different  
3 suggestion -- to just meet here again in Casper. And I  
4 like the meetings in Jackson, but I haven't had much  
5 luck lately. Is Casper all right with your operation?

6 MR. CHANCELLOR: That would be fine.

7 MR. PONTAROLO: Fine.

8 CHAIRMAN GINGERY: I believe the consensus  
9 is the next meeting will be in Casper, Wyoming. And  
10 we'll leave the Administrator to determine that date  
11 and publish that date. I think that gives us enough  
12 time.

13 Other than that, is there any other business?

14 If not, I would entertain a motion to adjourn  
15 this meeting of December 16th.

16 MR. PONTAROLO: I so move.

17 MR. SKILBRED: Second.

18 CHAIRMAN GINGERY: Motion has been made and  
19 seconded.

20 All in favor, say aye.

21 MR. SKILBRED: Aye.

22 MR. PONTAROLO: Aye.

23 CHAIRMAN GINGERY: The meeting is  
24 adjourned.

25 Thank you all for coming.

1                                   (Whereupon, the meeting was  
2                   adjourned, at 12:28 p.m.)  
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REPORTER'S CERTIFICATE

December 23, 2004

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