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BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
LAND QUALITY DIVISION

HEARING OF RULE PACKAGE 1-B, SOLID WASTE AND NONCOAL MINE
WASTE

TRANSCRIPT OF HEARING PROCEEDINGS

Transcript of Hearing Proceedings in the above-
entitled matter before the Department of Environmental
Quality, Land Quality Division, commencing on the 21st
day of July, 2008 at 9:00 a.m. at the Oil and Gas
Conservation Commission Hearing Room, 221 King Boulevard,
Casper, Wyoming, Mr. Jim Gampetro presiding, with Board
Members Alan Linford, Don McKenzie, Robert Green and Carl
Demshar in attendance.

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

2 (Hearing proceedings commenced 9:00

3 a.m., July 21st, 2008.)

4 CHAIRMAN GAMPETRO: Before we even do the
5 introductions, I want to do a public mea culpa for
6 missing the last meeting. I've been doing this for years
7 and never missed a meeting. But my oldest son, who is
8 married, brought his wife up and is working for me now.
9 And I have an actual life on weekends. We have a seven-
10 day-a-week business, so I usually go into the office
11 every day. And I haven't been doing that lately. And we
12 had a meeting on Monday. And I didn't look until Monday.
13 And I missed the meeting. I have corrected that
14 situation by now putting all Monday meetings, a reminder
15 on my calendar on Friday. And so that won't happen
16 again. But I'm sorry. And we can go on with the
17 introductions.

18 I'm Jim Gampetro from Buffalo, Wyoming, and I'm
19 a public member.

20 MR. DEMSHAR: Carl Demshar from Rock
21 Springs.

22 MR. GREEN: Bob Green, Gillette industry
23 rep.

24 MR. SLATTERY: Joe Slattery, Pine Haven,
25 agricultural rep.

1 MR. McKENZIE: Don McKenzie, administrator
2 of Land Quality.

3 MR. HULTS: Craig Hults. I work with the
4 Land Quality Division out of Cheyenne.

5 MR. LIEDTKE: Roy Liedtke, Cordero Rojo
6 Mine.

7 MS. GOODNOUGH: Beth Goodnough, Western
8 Fuels.

9 MR. SWEET: Jon Sweet with Land Quality in
10 Sheridan.

11 MR. LARSEN: Lane Larsen with Buckskin
12 Mine.

13 MS. ACKERMAN: Laura Ackerman, Buckskin.

14 MR. LOOMIS: Marion Loomis, Wyoming Mining
15 Association.

16 MR. GLOE: Harv Gloe, Office of Surface
17 Mining.

18 MR. GIRARDIN: Joe Girardin with the
19 Environmental Quality Council.

20 CHAIRMAN GAMPETRO: I guess we could go
21 forward now. Welcome all of you, and thank you for
22 coming. We can talk about the minutes from the last
23 meeting. And we would entertain a motion for approval.
24 Or any indications of changes, anyone?

25 MR. GREEN: I would move for adoption.

1 CHAIRMAN GAMPETRO: Do we have a second?

2 MR. DEMSHAR: Second.

3 CHAIRMAN GAMPETRO: All those in favor,
4 aye.

5 (All members vote aye.)

6 CHAIRMAN GAMPETRO: Any opposed?

7 (No response.)

8 CHAIRMAN GAMPETRO: Minutes are adopted
9 unanimately.

10 Discussion for selection of reappointment of
11 members. And I'll turn it over to Don.

12 MR. MCKENZIE: We have two board members
13 whose terms expire in September. That would be Jim, our
14 chairman, and Alan. Alan couldn't be with us today.
15 Alan is the subdivision representative. So I'm going to
16 have to contact Alan and see if he still has an interest
17 to serve in that capacity. And if not, I'll make some
18 inquiries. I would be curious if Jim might be interested
19 in another term with us. And I'm not looking for an
20 answer today. But that would be great if that's
21 possible.

22 CHAIRMAN GAMPETRO: I'll give you an
23 answer. I'm still interested.

24 MR. MCKENZIE: Very good. Thank you. I
25 think that's really all I had. I just wanted to see

1 where you might be, Jim. And if Alan were here, I'd ask
2 him the same question. But I'll have to give him a call
3 and report back to the board.

4 CHAIRMAN GAMPETRO: Before we get into the
5 rules package, is there any response -- and we can deal
6 with it on a point-by-point basis in the rules package --
7 to the letter from the Powder River Resource Council from
8 the mining association?

9 MR. LOOMIS: Mr. Chairman, no. We just
10 received it. And I shared it with a few of the members,
11 but we have not prepared any response at this time. May
12 come later if more people review it.

13 CHAIRMAN GAMPETRO: Thank you, Marion.
14 The only comment I had on it was that when we get any
15 kind of proposal suggestions in, I would very much like
16 to see data or information or a study cited. There was a
17 study mentioned on the lining situation, but there was no
18 study cited. And so I had asked Don if we could possibly
19 go back and request that from the Powder River Resource
20 Council specifically regarding that issue, as it is one
21 that they're indicating there are studies that indicate
22 the lining situation should be done a certain way, and if
23 it's not, that there are issues with it. And, of course,
24 in any kind of response that the mining association might
25 make, we would also like to see data, information, a

1 study cited, as opposed to just an opinion.

2 So are we going to do that, then, Don?

3 MR. MCKENZIE: Mr. Chairman, I can
4 certainly approach the Powder River Basin Resource
5 Council. I guess one comment I would have, just for the
6 folks here and the board today, there is a national
7 portion that comes into play on coal combustion
8 byproducts. And that has not been finalized yet. And I
9 feel we might be premature time-wise to consider that for
10 this rule package.

11 What we're trying to do here today is address
12 OSM deficiencies with our coal program. And once the
13 national scene plays out, I think we may have a better
14 understanding of what kinds of expectations there are at
15 a national level, and then we can look at pursuing that
16 and incorporating that into our state rules once that's
17 available.

18 CHAIRMAN GAMPETRO: Any comments, input,
19 ideas?

20 MR. GREEN: I just would add that I do
21 agree with Don's view, and that is that this package is
22 relatively prepared to go forward now with regulations as
23 they stand, with federal regulations as they stand now.
24 So I would think that delaying action on pending
25 regulations would be a worthy idea.

1 CHAIRMAN GAMPETRO: Everybody's happy with
2 that? Okay, let's go forward.

3 I'm going to turn it over to whoever is going
4 to present the package.

5 MR. HULTS: Thank you, Mr. Chairman. I
6 just put together a brief PowerPoint here. And this will
7 give you a little historical information where this
8 package came from initially, what we're trying to do with
9 it. With that, I'll go forward.

10 This rule package was originally initiated back
11 in the late '80s. It was to address a statutory change
12 that was made to the Environmental Quality Act. In
13 response to that change of the Environmental Quality Act,
14 we promulgated some rules in '91 and submitted them for
15 federal approval. During that review, the OSM identified
16 some deficiencies. These are currently codified at 30
17 CFR 950.16 (r), (s) and (t) of the language.

18 The first one, (r), required Wyoming to submit
19 revisions to the LQD rules at Chapter 2, Section 3(a),
20 Romanette 5, capital A, Section 2. The reason these are
21 in brackets is, when this was promulgated or published in
22 the CFR, there's been quite a lapse in time since this
23 has gone on. Our chapter designations have changed. The
24 language hasn't, but the chapter designations have. So
25 it required us to submit revisions or to reinstate the

1 removed reference that was cited.

2 And what was cited was, the disposal of noncoal
3 wastes shall be in accordance with the standards set out
4 in Section 11, paragraph (c) of the solid waste
5 management rules and regulations of '80.

6 Now, what happened was the Solid and Hazardous
7 Waste Division, when that change happened to the
8 Environmental Quality Act, the intent was that they were
9 trying to remove kind of the dual jurisdiction of
10 permitting these landfills and waste sites within
11 permitted areas. So what the waste management division
12 did was just drop that reference. They had a reference
13 in there that talked about our coal mines and what the
14 standards were there. So our rules reference their
15 rules, but they've dropped the part that we've
16 referenced. So we had to make a change.

17 And that was what this first one was talking
18 about, that they wanted us to either have some kind of
19 standards in there or to reinstate that. Well, we can't,
20 because they don't have the rules there to reference. So
21 that was the first one.

22 The second one was -- again, this is Chapter 2
23 and Chapter 4 again. And they wanted us to include
24 specific performance standards for noncoal waste
25 disposal. And we have to be at least as stringent as the

1 federal regulations.

2 The third one is very similar, to provide
3 standards again for the noncoal mine waste. They do
4 have -- in this section of the CFR, they have a reference
5 to Chapter 4, Section 2 (c)(v). In my research back to
6 the '86 rules, even, we've never had that section, so I'm
7 not sure where that came from. And that was this
8 highlighted section in there. But I think we addressed
9 the OSM issues without this reference in there. So I
10 just wanted to point that out, that we won't be making a
11 change to that section, because it doesn't exist.

12 The federal rules on this area that we need to
13 be as stringent as are these here. And this is noncoal
14 mine waste, including, but not limited to, grease,
15 lubricants, paints, flammable liquids, garbage, abandoned
16 mining machinery, lumber and other combustible materials
17 generated during mining activities, shall be placed and
18 stored in a controlled portion of the permit area. And
19 this placement and storage shall ensure that there's no
20 leachate or surface runoff that degrade surface or
21 groundwater, that fires are prevented, and that the area
22 remains stable and suitable for reclamation and
23 revegetation.

24 Final disposal of noncoal mine waste shall be
25 in a designated disposal site -- and that's what we're

1 talking about here, these disposal sites -- in the permit
2 area or a state-approved solid waste disposal area. And
3 that would be your typical landfill if they were shipping
4 things off site to up the permit area.

5 Disposal sites in the permit area shall be
6 designed and constructed, again, to ensure that leachate
7 and drainage from the noncoal mine waste area does not
8 degrade the surface or underground water. Wastes shall
9 be routinely compacted and covered to prevent combustion
10 and wind-borne waste. And when the disposal is
11 completed, a minimum of two feet shall be placed over the
12 site. The slopes will be stabilized and revegetation.

13 They also have a reference in here to, the
14 operation of the disposal site shall be conducted in
15 accordance with all local, state and federal
16 requirements. This becomes important because the OSM has
17 taken a position that the EPA is in charge of RCRA, or
18 waste disposal. And so they have a fairly limited set of
19 standards here, knowing that the EPA is the one that
20 actually regulates a lot of this waste disposal.

21 There's a third section. At no time shall any
22 noncoal mine waste be deposited in a refuse pile or
23 impounding structure, nor shall an excavation for a
24 noncoal mine waste disposal site be located within eight
25 feet of any coal outcrop or coal storage area. And this

1 deals more with fire issues more than anything.

2 A little history on this. I briefly stated
3 that the -- our rules in 1986 contained a reference to
4 the solid waste division rules. And, again, in 1989, the
5 Environmental Quality Act was revised to exclude the
6 solid waste management program jurisdiction for all
7 on-site solid waste management facilities subject to
8 permitting requirements for air, water and land. What
9 this did is it kicked it into our jurisdiction.

10 The waste division, they revised their rules by
11 dropping the standards applicable to waste disposal sites
12 for coal mines. And what that did is left us without any
13 standards to apply to those areas.

14 The LCD revised their rules again in 1981. And
15 those amended rules became a source of the deficiencies
16 that we're trying to address today. And, again, I want
17 to stress that's really what we're trying to fix, is
18 these OSM deficiencies. That's been kind of the mission
19 as of late.

20 There were four advisory board meetings held on
21 this rule package during the '90s. It went to the EQC in
22 1999. And the EQC -- the hearing was in 2000. I'm
23 sorry. The hearing was held in 2000. And they
24 recommended sending it back to the advisory board to work
25 out some issues. Some of the things they wanted us to

1 address were small quantity hazardous waste generators.
2 We didn't have rules that addressed those. What do you
3 do if you run across an old waste pit from, say, oil
4 operations or even just an old homesteading dump and
5 things like that?

6 Another thing that was discussed briefly was
7 some of the combustion byproducts. And, again, this rule
8 package isn't intended to address those issues. I think
9 the scope of that would be quite large. And this is to
10 address something that's been going on for close to 20
11 years now. And to get these deficiencies off the books I
12 think would be the best move at this point and move
13 forward from there whatever this discussion evolves into.
14 But I think ultimately what we're trying just to do today
15 is fix those OSM deficiencies.

16 And that was all I really had on the intro. We
17 could go specifically into the rule package.

18 The rule package itself is intended to make
19 some changes to Chapters 2, 4 and 7. This package was
20 developed in 2000 after following the EQC hearing that
21 was held and the request to send it back to the advisory
22 board. When it was originally in front of the EQC, there
23 was a Chapter 21 that tried to address and very
24 specifically address all waste management within the
25 permit areas on coal mines. That became a source of a

1 lot of the problem. And I think what happened is, in
2 reviewing the record for this rule package, it appeared
3 that we were trying to re-create the wheel. And what I
4 mean by that is that we were trying to come up with
5 regulations that -- for example, the industrial municipal
6 landfill regulations of the hazardous waste department.
7 That's like 75 pages. There's a lot of issues there.

8 The waste division is also granted primacy on
9 any kind of RCRA waste. And they have the expertise in
10 that area. So for us to kind of re-create this bundle of
11 rules that address any kind of waste issue, it just
12 became problematic. What this does -- and, again, this
13 just is trying to address those three deficiencies that
14 are posted or published in the CFR.

15 Have a brief intro here. Again, as we came
16 back, '98 was that EQC. Or 2000 was the EQC hearing.
17 And that leaves us today with this language. And there's
18 fairly minimal changes here. The first proposed rule
19 amendment you have is to Chapter 2, Section 2. And this
20 is the application content requirements for surface coal
21 mining.

22 The first change we made was in subsection (a).
23 We just updated the name of the solid and hazardous waste
24 division. The second change that we made was in
25 subsection 2. This deals with solid waste information

1 that you're putting together as part of your permit
2 before your permit application. What we've added to this
3 is that we have added the language, in addition to the
4 performance standards that we'll be talking about in the
5 future here, standards in Chapter 4, Section 2. So this
6 is just referencing the standards that we'll be citing
7 to. Not a big change.

8 If there's any questions on that first section
9 or comments. Not seeing any, I will continue on.

10 The second proposed change that we have here,
11 again, this is Chapter 2. As part of the application
12 requirements again, we will be requesting -- this is
13 proposed -- a plan for management and disposal of noncoal
14 mine waste, including any noncoal waste generated by mine
15 mouth power plant, coal dryer or coal processing facility
16 within the proposed permit area. We've dropped some of
17 this industrial solid waste language. It will come back
18 in Chapter 4 again.

19 The second part was, we just removed this
20 section -- subsection 24 and tied that into the previous
21 section.

22 And if there are any comments on that section.

23 MR. GREEN: Just one brief question, if I
24 might, Mr. Chairman.

25 On coal processing facility, just a minor note.

1 But going back to Section 1, that's not really defined.

2 MR. HULTS: Okay.

3 MR. GREEN: I think you've got some other
4 terms, though, that are utilized elsewhere in the rules.
5 So maybe you want to take a look at using those defined
6 terms. I don't think you need another definition, but
7 just so it's clear what you mean.

8 MR. HULTS: Just so we are consistent?

9 MR. GREEN: Yeah, if you would, please.

10 MR. HULTS: Okay. Let me highlight that.

11 MR. LIEDTKE: Mr. Chairman?

12 CHAIRMAN GAMPETRO: Yes.

13 MR. LIEDTKE: Roy Liedtke with Cordero
14 Rojo Mine. Just to, I guess, elaborate on that a little
15 bit, our only concern is that we want to make sure that
16 coal fines and stuff like that do not fall underneath
17 this category, which I don't think that's the intent.

18 If you look at the original rules, they talked
19 about -- the rules as they are today talked about coal
20 mine mouth power plants and a mine mouth coal dryer. I
21 can see from some of the work that's being done with coal
22 today is more than drying it. They're doing other
23 things. Then those facilities should be covered by those
24 rules.

25 And, again, this is not a defined term, but I

1 think what you're after is coal beneficiation or coal
2 enhancement projects or something like that. And we just
3 want to make sure in the future it's not confused
4 sometimes. The permit says compression coal is the
5 process used, and therefore, all your coal fines are
6 subject to all these requirements.

7 MR. MCKENZIE: Mr. Chairman, I would agree
8 with Mr. Green. We probably do need to stick within the
9 defined terms. And we do have a definition of coal
10 preparation plant, Roy, if that would get to at least one
11 of your concerns.

12 MR. LIEDTKE: The definition of coal
13 preparation plant includes chemical enhancement.

14 MR. MCKENZIE: Chemical and physical.

15 MR. LIEDTKE: And that's my only concern
16 there, that we do not have any chemical.

17 MS. GOODNOUGH: Would crushing be
18 considered enhancing?

19 MR. MCKENZIE: Under the definition, it
20 talks about other processing or preparation, which could
21 be chemical or physical.

22 MR. HULTS: If I may, the definition, I
23 have it here. Coal preparation plant means a facility
24 where coal is subjected to chemical or physical
25 processing or cleaning, concentrating or other processing

1 or preparation. It includes facilities associated with
2 coal preparation activities, including, but not limited
3 to, the following: Loading facilities, storage and
4 stockpile facilities, sheds, shops and other buildings,
5 water treatment and water storage facilities, settling
6 basins and impoundments and coal processing and other
7 waste disposal areas.

8 MR. GREEN: Mr. Chairman, if I might, I'd
9 like to echo Roy's points about the coal fines and add
10 coal dust. And if that's the term that's utilized, coal
11 preparation plant, then I would ask that the SOR or other
12 means somehow clarify that coal fines and coal dust are
13 not included in the wastes that are covered by this rule
14 revision.

15 CHAIRMAN GAMPETRO: Don, do you have a
16 problem with that?

17 MR. MCKENZIE: No, unless staff would have
18 a statement or a comment to make.

19 MR. SWEET: Well, I can foresee the
20 problem here if we don't somehow just remove from those
21 products just coal fines or some other type of physical
22 definition or something. We are concerned very much so
23 with chemical processing and any other kind of treatment
24 of coal. But strictly physical reduction of fines is
25 certainly something we don't want to get into. So a

1 point of clarification would be a good one if we can
2 figure out how to do that.

3 MR. MCKENZIE: Craig?

4 MR. HULTS: If we use -- the language I
5 have highlighted here was the processing facility. Are
6 we suggesting that we put in coal preparation plant in
7 exchange for that?

8 CHAIRMAN GAMPETRO: Might it be simpler to
9 just exclude those items that are of concern to Bob but
10 not a concern in terms of what we're trying to accomplish
11 here specifically?

12 MR. GREEN: Mr. Chairman. Craig, if
13 you're suggesting to still utilize the coal processing
14 facility term and put in the rule except for coal dust,
15 coal fines, that's fine. But I would think that the
16 clarification on the SOR would probably work just as
17 well.

18 MR. HULTS: Okay. Don, do you have a
19 preference on that?

20 MR. MCKENZIE: No. But as long as we have
21 OSM here, I was curious if Harv might have a position on
22 this.

23 MR. GLOE: I think Jim has a point.
24 They're just excluding what you don't want to be
25 involved, would probably be a possible way to look at

1 that.

2 MR. MCKENZIE: Are we in favor of
3 something that simple?

4 CHAIRMAN GAMPETRO: Everybody on the board
5 comfortable with that? Why don't we exclude coal fines
6 and coal dust.

7 MR. HULTS: Okay. Let me try a little
8 language here quick. Would that satisfy? A plan for the
9 management and disposal of noncoal mine waste, including
10 any non-coal waste generated by a mine mouth electric
11 power plant, coal dryer or coal processing facility,
12 excluding coal fines and coal dust within the proposed
13 permit area.

14 MR. MCKENZIE: Mr. Chairman, can I ask a
15 question of our audience, particularly Roy?

16 What is your management plan, or what do you
17 envision as a plan to address coal fines, coal dust? Or
18 is that already addressed under, say, another permitting
19 action by the department?

20 MR. LIEDTKE: Yes, it's addressed -- most
21 permits would cover that, I think. But coal fines, I
22 mean, hopefully you can put them back in the car somehow
23 and ship them out and burn it. It's a product. It's not
24 a waste. If we have sludge or whatever from a sump or
25 something, then our permit addresses how to -- you can

1 put that in the backfill but above the water table and
2 below the root zone. But it's actually a product. It's
3 not waste.

4 MR. HULTS: And maybe that's what we're
5 getting hung up on here. We're talking about noncoal
6 mine waste. And these would be some of the greases and
7 old machinery and things like that.

8 CHAIRMAN GAMPETRO: I guess it depends on
9 how you read "noncoal mine waste." If it's noncoal-mine
10 waste, then it's already covered, actually. If it's
11 noncoal mine waste, then that's a different --

12 MR. HULTS: If I may, Mr. Chair, the OSM
13 term -- this noncoal waste is interpreted by the OSM as
14 being any waste not classified as coal mine waste, coal
15 processing waste and underground development waste under
16 30 CFR 701.5. What we're adding here is, we would adopt
17 that interpretation.

18 CHAIRMAN GAMPETRO: Jon, do you have a
19 comment?

20 MR. SWEET: Well, I think, Jim, exactly
21 yours. But this whole issue is noncoal-related waste
22 handling. It's not coal waste. And so the distinction
23 for fines and things is probably not all that applicable
24 here. I mean, it's not a bad thing. But when I look at
25 noncoal, I mean, everyone in this room is a coal miner.

1 There are noncoal miners in this room at this point. And
2 we're talking about noncoal waste generated by a coal
3 mine but not the coal waste.

4 CHAIRMAN GAMPETRO: Maybe if we said it
5 that way, noncoal waste generated by a coal mine.

6 MR. SWEET: Well, then I think some of
7 these are not -- well, are these all coal rules that
8 we're dealing with right now?

9 MR. HULTS: Yes.

10 CHAIRMAN GAMPETRO: Is that what OSM
11 means, I mean, in terms of noncoal wastes generated by
12 coal mine?

13 MR. GLOE: Yes, designed to address the
14 stuff that comes from shops, offices, anything outside of
15 the mine -- or the pit itself.

16 MR. SWEET: I think, Mr. Chairman, that
17 addition that we just put in there does not seem to fit,
18 to me.

19 Sorry, Craig.

20 MR. HULTS: No. I would agree.

21 MR. GREEN: Mr. Chairman, could I go back
22 to the earlier suggestion of just having a clarification
23 and statement of reasons? That way if there is ever a
24 question in the future, it's at least on record that coal
25 fines and coal dust were never meant to be included in

1 this. That might be the simplest way.

2 MR. HULTS: We can certainly do that.

3 MR. LIEDTKE: Mr. Chairman, one other
4 comment. Apologize for maybe bringing this up too soon.
5 But we're still in Section 2, which is the application
6 content requirements for operations. So this is the
7 section to say what you put in your permit. If you go to
8 the next section, which is Section -- Chapter 4 that
9 talks about the requirements of how you do this, it's
10 some similar words, but these words "excluding coal fines
11 and coal dust" might fit a lot better in Chapter 4.

12 MR. HULTS: I will remove it for now and
13 keep that highlighted. And I've made a note to update
14 that section on statement of reasons to clarify.

15 If there's no further questions or comments on
16 that area, I'll move to Chapter 4. And this is where the
17 actual standards come in. In Section 2 of Chapter 4,
18 this is a general environmental protection performance
19 standard. The change we have made here was that we had
20 language in there in subsection (c) that would talk about
21 the final burial of noncoal mine waste and discusses some
22 of what those are. We've made this a header now and
23 split it into temporary storage and final disposal of the
24 noncoal mine waste. And I should point out these three
25 sections are virtually identical to the OSM's three

1 sections. And these are the only rules that they have on
2 these type of wastes. And so we've pretty much adopted
3 them verbatim.

4 First section, subsection (i), was temporary
5 storage of noncoal mine waste. Noncoal mine waste,
6 including, but not limited to, grease, lubricants,
7 paints, flammable liquids, garbage, abandoned machinery,
8 lumber and other combustible materials generated during
9 the mining activities, shall be placed and stored in a
10 controlled manner in a designated portion of the permit.
11 Placement and storage shall ensure that leachate and
12 surface runoff do not degrade the surface or groundwater
13 and that fires are prevented and that the area remains
14 stable and suitable for reclamation.

15 Then the second subsection here is the final
16 disposal. And, again, this one is, the disposal sites in
17 the permit area shall be designed and constructed to
18 ensure, again, that there's no leachate or drainage from
19 the noncoal mine waste which would degrade the surface or
20 underground water. Waste shall be routinely compacted
21 and covered to prevent combustion and wind-borne waste.
22 And when disposal is completed, a minimum of eight feet
23 of suitable cover shall be placed over the site, the
24 slope stabilized and revegetation accomplished in
25 accordance with Section 2. That's reveg.

1 We also included that statement, operation of
2 disposal site shall be conducted in accordance with all
3 state, local and federal requirements. And the reason
4 for doing that is that that brings in some of these RCRA
5 requirements and things like that. And I think what
6 experience has shown is that these mines are pretty good
7 at following and finding out what they need to do with
8 these wastes through either the EPA or Solid and
9 Hazardous Waste Division if questions come up. But it
10 adds that fact that, okay, you do have to account for
11 some of those things.

12 The other difference here is we added a minimum
13 of eight feet. The federal rules require two feet of
14 suitable cover. The suggestion was -- and, again, this
15 rule package was developed in 2000. And I kind of
16 updated some things and made a new format. But I
17 basically took the language that was suggested. And the
18 statement of reasons, that eight foot was in there just
19 due to the nature of, out west out here is a little more
20 erosion, as compared to east, where a lot of these -- the
21 two feet may make sense there. And eight feet might be
22 overkill here. I'm not sure of that specifically. And
23 I'm not completely vested in that number. But let it be
24 known that the feds have a two-foot cover requirement
25 there.

1 And the third section that we have here was, at
2 no time shall any noncoal mine waste be deposited in the
3 refuse pile or impounding structure, nor shall an
4 excavation for a noncoal mine waste disposal site be
5 located within eight feet of any coal outcrop or storage
6 area. And, again, that one mirrors the federal
7 requirements. And we removed the subsection (d), as that
8 was referencing the provisions of the Solid and Hazardous
9 Waste Division.

10 Do you have any questions or comments on that
11 area? Not seeing any --

12 MS. ACKERMAN: I have a question on that
13 eight feet. Should that be clarified as eight vertical
14 feet, or are you talking eight horizontal feet?

15 MR. HULTS: I would say linearly and
16 vertically, I would think. That would be my best
17 interpretation of that.

18 MR. MCKENZIE: Mr. Chairman, as long as we
19 have some folks in the audience, I'd like to maybe have a
20 little more conversation on the eight foot. We have Jon
21 Sweet here, Roy, Beth, Jamie.

22 CHAIRMAN GAMPETRO: Which eight feet? The
23 eight feet of burial or the eight feet of distance from
24 the outcrop?

25 MR. MCKENZIE: All of the above.

1 MR. SWEET: Mr. Chairman, the eight feet
2 from outcrop then would satisfy the federal rule in that
3 respect. I have no problems with that at all. I think
4 that's good, and we'll keep OSM on our side. The eight
5 feet of cover, I'm thinking of a landfill right now
6 that's active that may or may not fall into these rules
7 where that would be difficult to achieve, and others,
8 perhaps. So I don't have any real interest in eight
9 feet. I'd almost -- you know, properly designed, two
10 feet is adequate if you're trying to do an evaporative
11 cover on these things. Eight feet, from a regulator's
12 standpoint, I'll accept that. I don't think eight feet
13 is necessary. Unless the regulated community really has
14 concerns with eight feet, I'm not going to argue less.
15 But I don't believe eight feet is essential.

16 CHAIRMAN GAMPETRO: I'd like to make a
17 comment on that. I've seen pictures of a ranch in the
18 Powder River Basin there from a hundred years ago, and
19 the erosion is unbelievable compared to in the east, as
20 was indicated, very, very -- a cow path turned into a
21 major draw. I would say I don't know if eight feet is a
22 right number. But the reasoning behind it that was used
23 was good reasoning, I think.

24 MS. GOODNOUGH: Beth Goodnough with
25 Western Fuels. That's hard to argue, I guess. But I'll

1 just point out that if you go with eight feet and you
2 also have coverage, like a daily coverage or weekly
3 coverage requirement, eight feet quickly turns into 12 or
4 20 feet. And so that means your hole has to be bigger.
5 You have to have more materials set aside to cap with,
6 which means you get a hard time with contemporaneous
7 reclamation. So it has all these unintended
8 consequences. So I can live with eight feet. I prefer
9 four feet. Plus, you have two feet of topsoil cover on
10 that. But just so you know, you're going to end up with
11 where your landfill area might be this big. Once you go
12 to that deeper, all of a sudden it becomes a huger area
13 to manage long term.

14 MS. TORSKE: Jamie Torske with Thunder
15 Basin Coal. I would agree with what Beth said. I don't
16 think it should be any more than what is currently
17 provided, four feet plus the two feet topsoil. So I
18 guess I would agree with Beth.

19 MR. MCKENZIE: Mr. Chairman, do we need a
20 little more conversation or discussion on just the
21 management of these landfills at a coal mine site? Would
22 that be helpful? Beth alluded to daily cover or monthly
23 cover.

24 Could you elaborate on that a little bit, Beth?

25 MS. GOODNOUGH: Your rules say routinely

1 compacted and covered to prevent combustion and wind-
2 borne waste. And I'm the worst one to talk, because we
3 don't even do this. We send all of ours to town. We
4 have a contract. So it's really up to these guys how
5 they want to manage their sites.

6 MR. MCKENZIE: Jamie, could you speak to
7 that just a little bit, just the daily management, what's
8 involved and the impact it's going to have?

9 MS. TORSKE: Right now -- yeah. In our
10 current permit right now, we're required to cover monthly
11 six-inch cover. And that would -- I think the same
12 issues that Beth brought up earlier with having to bring
13 more dirt back. And as it is right now in our existing
14 permit, there's six feet of cover we're required to have
15 on final landfill cover. And I guess I don't see --
16 these lands are -- you know, you talk about erosion.
17 Well, yeah, but there's also other places that you're
18 supposed to be managing. And so I guess I would say it
19 would be more of a management issue long term. Does that
20 answer your question?

21 MR. MCKENZIE: Come on, Jon. You're
22 smiling.

23 MR. SWEET: Jim, if you'll allow me to
24 tell a story that recently came up, I'd be happy to. And
25 this is with Beth's operation. She runs the

1 environmental program at Dry Fork Mine. And recently, as
2 you may or may not know, they're building a power plant
3 adjacent to the mine. And the question was ash disposal,
4 whether it would be under a mine permit or something
5 completely separate from the mine and under the ownership
6 of the power plant.

7 And it went back and forth initially on that
8 issue. And that was the decision between the mine and
9 the power company. But I got involved on a very early
10 technical basis on cover of this ash fill. And the power
11 plant personnel convinced me that they can engineer and
12 design two feet of cover that will be more than adequate
13 and adequately protected, because you're trying to keep
14 water -- you know, you can get dome of a cell and keep
15 water from entering the cell, is the primary reason for
16 the cover, erosion being a different issue. And I
17 basically told them we couldn't go to two, but we could
18 go four without an argument. But if it went to two, we'd
19 have a huge battle.

20 So I'm saying between four and eight, where
21 everyone else is saying it's perfectly fine, from my
22 perspective as a compliance officer for the State. And
23 the issues with erosion, we have deeper burial or more a
24 depth commitment of better material on stream channels,
25 things like that that one would normally anticipate

1 eroding. But as Jamie indicated, many of these sites, if
2 they're near surface, they're probably going to have more
3 burial than eight feet. But often these are 50 feet
4 beneath the surface and not really an issue.

5 So, again, I think eight feet is in excess of
6 the environmental concerns.

7 CHAIRMAN GAMPETRO: Everybody be happy
8 with a minimum of four feet?

9 MR. SWEET: That's a requirement for the
10 permit cover, period, on everything, to be four topsoil
11 at a minimum, at least in our neck of the woods.

12 MR. MCKENZIE: I would be supportive of
13 four foot. It's more consistent across the board.

14 CHAIRMAN GAMPETRO: Nods of approval from
15 everyone on the board.

16 MR. HULTS: I will make that change.

17 CHAIRMAN GAMPETRO: What about the linear
18 issue? It would seem to me if it was my coal mine, I'd
19 want to keep it as far away as possible, because the last
20 thing I'd want would be a coal fire.

21 MS. GOODNOUGH: We agree.

22 MR. HULTS: And if I may, Mr. Chairman,
23 that eight feet in Section 3 there, that is the federal
24 requirement. If we went any lower than that, we would
25 likely run into a deficiency problem again. The one in

1 Section 2, though, that was over and above.

2 MR. MCKENZIE: Mr. Chairman, while we're
3 waiting to ask a question, did that satisfy the Buckskin
4 concerns?

5 MS. ACKERMAN: I just wanted that
6 clarification.

7 MR. MCKENZIE: Thank you.

8 MR. GREEN: Mr. Chairman, if I could ask a
9 related question. There was an example given that
10 there's an existing solid waste site that they struggle
11 with eight feet of cover. My question is whether or not
12 it is the intent of these rules to apply retroactively to
13 existing sites or just if it's going forward. If it's
14 the latter, if there could just be a small comment in the
15 SOR to explain that, that would be very helpful.

16 CHAIRMAN GAMPETRO: What is the intent,
17 from now on, or does this go backwards?

18 MR. HULTS: Typically, that's what -- you
19 move from that point forward. Anything that comes in
20 that would be requiring new permits would be on this
21 here. If you have an existing permit -- and I might be
22 speaking out of place. But if you have an existing
23 permit, those conditions wouldn't change, I don't
24 believe.

25 MR. MCKENZIE: Mr. Chairman, the only

1 portion of our rules that's not old that seems to
2 specifically address going back in time were the in situ
3 rules that were passed not too long ago, where basically
4 after a year, if you have an existing facility, you have
5 to go back and bring things forward based on the elements
6 that were changed in that rule package. Otherwise, we
7 typically don't make those statements. And as Craig
8 suggests, just go forward. I would be curious, with the
9 experience of Mr. Sweet, if he's aware of any sites where
10 this might be an issue.

11 MR. SWEET: No. I think, again, Don, what
12 we would typically do is evaluate any change in the rule
13 if you need to update a permit to reflect those changes.
14 But we've not had an issue going back retroactively. And
15 if there is, in these situations or like situations, we
16 draw a line in the sand, and this is the way it was run
17 up to this date, that it was run from this line forward
18 by the new rule, and make that distinction. But other
19 than some parallels to vegetation issues that you all
20 have been involved in, I don't believe that's really been
21 an issue for most things that we do.

22 And I think with these rules, the extent of
23 them, I truly feel that will probably be pretty seamless
24 into the future until we get more changes and whatnot.
25 Because I think most of the sites will satisfy these

1 rules as they're written today. There may be one or two
2 that may not or something. But that really doesn't come
3 to mind. I think it will be fine.

4 CHAIRMAN GAMPETRO: Does OSM have anything
5 to say about that?

6 MR. GLOE: I don't see a change coming.

7 MR. GREEN: Mr. Chairman, I earlier
8 mentioned having an SOR. I think simply this discussion
9 and the record should be sufficient.

10 MR. HULTS: The final section, this one
11 was for Chapter 7, Section 2(b). The deficiencies that
12 were identified related to surface and underground
13 mining. So what this does, Chapter 7, we're talking
14 about environmental protection performance standards
15 applicable to underground mining operations. And what we
16 did was added a new section that just references that
17 Chapter 4. The underground mines are covered, as well.

18 And that is the end of the rule package as I
19 have it.

20 CHAIRMAN GAMPETRO: Any other issues
21 regarding this rule package?

22 (No response.)

23 CHAIRMAN GAMPETRO: Okay. Any other
24 issues or items for discussion?

25 Marion?

1 MR. LOOMIS: Mr. Chairman, just a comment.
2 I just want to commend the department for addressing
3 these deficiencies. We've been looking at these for a
4 lot of years. And I think it's the right thing to get on
5 with addressing the deficiencies and getting them off the
6 list.

7 CHAIRMAN GAMPETRO: Thank you.

8 Any thoughts about the next meeting?

9 MR. MCKENZIE: I was looking at November,
10 Mr. Chairman. I have a specific date, actually, that
11 this room is available again. And some of that, I was
12 trying to keep in mind Carl's schedule. I believe that
13 was November 17th. Carl's checking his calendar.

14 MR. DEMSHAR: Open on a Monday if that
15 would be okay.

16 MR. MCKENZIE: Would that day work, then,
17 the 17th? Or is that the third --

18 MR. DEMSHAR: That would probably work.

19 CHAIRMAN GAMPETRO: What day of the week
20 is that?

21 MR. DEMSHAR: Monday.

22 CHAIRMAN GAMPETRO: It's awful close to
23 opening day of -- no, I'm just kidding.

24 MR. MCKENZIE: Mr. Chairman, I think we're
25 flexible. I was just trying to reach out and see when

1 this facility is available and pick a Monday that -- I
2 knew Carl has conflicts on some Mondays. But we could
3 certainly go back and address that.

4 CHAIRMAN GAMPETRO: It's fine with me if
5 it's okay with everybody else.

6 MR. MCKENZIE: Mr. Chairman, regarding the
7 rule package, do we want to go ahead with that, then? I
8 wasn't sure I heard a motion to do so.

9 CHAIRMAN GAMPETRO: We need a motion.

10 MR. GREEN: I would move to recommend this
11 package with the minor changes we discussed today and
12 recommend that.

13 MR. SLATTERY: I'll second.

14 CHAIRMAN GAMPETRO: We have a motion and a
15 second. All those in favor please indicate by saying
16 aye. (All member vote aye.)

17 CHAIRMAN GAMPETRO: It's unanimous.

18 MR. MCKENZIE: Mr. Chairman, Joe's here
19 with the Environmental Quality Council. And he's been
20 very good at attending our meetings. He gave us some
21 news in April as far as continuing to push these
22 deficiency packages to council and a desire by council to
23 move these packages through the system, rule-making
24 system. And I wasn't sure if Joe had any other comments
25 today. We certainly could respond to Joe on some of the

1 things in April. But I just thought as long as he's
2 here, if he had an opportunity to speak.

3 MR. GIRARDIN: The veg rule package that
4 you guys approved in April, we haven't received it yet,
5 so we haven't scheduled it yet. Once we actually have
6 the paper in our hands, we'll set it for hearing. I'm
7 thinking October. At this point, I still tentatively am
8 planning for it. But until I actually have the
9 paperwork, that's all I can do.

10 MR. MCKENZIE: Mr. Chairman. Craig, could
11 you speak to just where the veg package is and what
12 things we considered in April when Joe was present at the
13 board meeting?

14 MR. HULTS: Sure. Currently we installed
15 some of the -- the last rule package we were here for was
16 the 1-Y. There was some language there that we put into
17 the veg package. Right now where it stands is we're
18 doing some final edits on the statement of reasons itself
19 and the rule language to make sure we included all the
20 comments that were made during the board, that any
21 changes that were discussed are up to par.

22 The thing that we're working on currently is
23 just developing some of the striking and underlining the
24 complete chapters. And we should have that down to you
25 shortly. We're waiting for Carol to return from a

1 vacation. And once I speak with her and finalize
2 everything and make sure I've addressed anything she
3 wanted to finish up, we will be good to go. So I would
4 say a week after she gets back, or so, we'll be sending
5 it down. We were looking at the first part of August to
6 get it done there.

7 MR. LIEDTKE: Mr. McKenzie, I'd just like
8 to mention where we meet in your office on this in
9 February to discuss a couple of the issues that we were
10 still concerned about. And I felt like it was a very
11 productive meeting and made some progress, but we've just
12 not been able to -- the WMA is very willing to get back
13 to your folks whenever they are available, but they have
14 not been available. And we just think it would be much
15 more productive to handle that in a one-on-one meeting,
16 rather than in front of the Environmental Quality
17 Council.

18 MR. MCKENZIE: Mr. Chairman, if I may
19 respond.

20 Roy, we have this guidance document that is out
21 there, as well. I expect to have that completed in
22 August. And I think that's something you guys -- WMA
23 will want to see before we are in front of council.
24 Because whether council asks for that or not, it's
25 certainly an element of what was discussed in the board

1 meeting in January. So I'm looking at something that
2 August, first part of September time frame. Because I
3 think we do need to -- I think it would be helpful,
4 anyway, for us to meet prior to the council scheduling
5 the veg rules. So that's the way it's looking to me
6 time-wise.

7 MR. LIEDTKE: We agree it would be good to
8 meet.

9 MR. MCKENZIE: Mr. Chairman, I guess I
10 have one last thing. This veg package, I think we're all
11 aware this is something that's been out there for some
12 time, and we all would like to review that process. I
13 would like to extend an invitation to any board members
14 that are interested, once we do set -- get a day from
15 council for that package, if we have, say, a board member
16 or two or all of us present. Because I think this is one
17 of those situations where council oftentimes, there's a
18 question, why did we end up here, versus another place?
19 And having someone from the board might be helpful in
20 that process just to answer some of those kinds of
21 questions. I think they do appreciate the minutes. But
22 it's always great to have representation there. And I
23 don't know how often we've done that, but I would think
24 this would be one of those packages that it would be
25 worthwhile for the board to be represented if at all

1 possible.

2 MR. GIRARDIN: Can I add to that a little
3 bit? The council would be very appreciative to have any
4 members of the board show up at the hearing. In addition
5 to that, they've now hired an executive secretary to
6 replace Terri Lorenzon. And so he'll be glad to meet
7 you. He tried to make it today. But he'll be at the
8 next meeting, the board meeting. But he's trying to get
9 out and meet everybody and get familiar with everything.
10 His name is Jim Ruby. He's an attorney from Nebraska.

11 MR. MCKENZIE: We'll need to make a
12 submittal to council, and then council will send it in.

13 MR. GIRARDIN: Yeah. It will be 60
14 days -- at least 60 days after I receive the paperwork
15 for the hearing.

16 CHAIRMAN GAMPETRO: Thank you.

17 Is there any other business to come before this
18 body?

19 (No response.)

20 CHAIRMAN GAMPETRO: We'll entertain a
21 motion to adjourn.

22 MR. DEMSHAR: So moved.

23 MR. GREEN: Second.

24 CHAIRMAN GAMPETRO: All those in favor,
25 aye.

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(All members vote aye.)

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CHAIRMAN GAMPETRO: The meeting is

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adjourned.

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(Hearing proceedings concluded

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10:15 a.m., July 21, 2008.)

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C E R T I F I C A T E

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

Dated this ____ day of _____, 2008.

RANDY A. HATLESTAD
Registered Merit Reporter