BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY

LAND QUALITY DIVISION

HEARING ON EXPLORATION BY DRILLING, SMALL MINE AND LIMITED MINE RULE PACKAGE

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 14th day of November, 2011 at 9:00 a.m. at the Oil and Gas Conservation Commission Hearing Room, 2211 King Boulevard, Casper, Wyoming, Mr. Jim Gampetro presiding, with Board Members Robert Green and Jim Skeen in attendance. Also in attendance were Ms. Nancy Nuttbrock, Administrator of the LQD, Mr. Craig Hults of the LQD, Mr. Mark Moxley of the LQD, Mr. Mark Rogaczewski of the LQD, Mr. Bob Giurgevich, Mr. John Cash, Mr. Tom Powell, Mr. Terrence Osier, Mr. Frank Bartlett, Mr. Scott Benson, Mr. Bruce Larson, and Mr. Jeff Petty.

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

2 (Hearing proceedings commenced

3 9:00 a.m., November 14th, 2011.)

4 CHAIRMAN GAMPETRO: We have a quorum now.

5 If you can't hear me, please let me know. I'm Jim

6 Gampetro. I'm the chairman of the Land Quality Advisory

7 Board. And I welcome you all. We have trouble sometimes

8 hearing all of you. If you have a comment or a question

9 up here, particularly Randy, who has to record it, we put

10 a microphone out there, and we would ask you, with your

11 comments or questions or whatever, to please use that.

12 Other than that, we will open the meeting.

13 Please come forward to that and identify yourselves.

14 We'd like to first just go around the room and everybody

15 identify yourself and what organization you are with, and

16 we'll start that way. We'll go across here first. Jim

17 Gampetro. I'm from Buffalo, Wyoming, and I'm a public

18 representative.

19 MR. SKEEN: I'm Jim Skeen from Douglas,

20 Wyoming. I'm a public representative.

21 MR. GREEN: And I'm Bob Green with Cloud

22 Peak Energy, and I'm industry representative.

23 CHAIRMAN GAMPETRO: With that, Craig.

24 MR. HULTS: Craig Hults. I'm with the

25 Land Quality Division.

MR. MOXLEY: Mark Moxley. I'm with the Land Quality Division in the Lander field office.

MS. NUTTBROCK: I'm Nancy Nuttbrock. I'm the Land Quality Division administrator out of Cheyenne.

MR. ROGACZEWSKI: Mark Rogaczewski with the Land Quality Division out of our Sheridan office.

MR. GIURGEVICH: I'm Bob Giurgevich, Sheridan, Wyoming.

MR. BENSON: Scott Benson, Habitat Management, Gillette, Wyoming.

MR. OSIER: Terrence Osier, Riverton, Wyoming, geologist with Strathmore Resources.

MR. POWELL: Tom Powell, Strathmore Resources.

MR. BARTLETT: I'm Frank Bartlett. I'm with the Office of Surface Mining here in Casper.

MR. LARSON: Bruce Larson, Uranerz Energy Corporation.

MR. CASH: John Cash with Ur-Energy.

CHAIRMAN GAMPETRO: Because we only have three members at the present time, there are two openings. If you know of anyone that might be interested, we need an agricultural representative and a political subdivision representative. You could forward their names to Nancy, and we can see if we can get this

totally filled. But because we only have three, I'll have to vote today even if there's no tie. And the first thing we're going to do is I'm going to ask for somebody to move to approve the minutes of the August 25th meeting.

MR. GREEN: I so move.

CHAIRMAN GAMPETRO: I need a second.

MR. SKEEN: I'll second.

CHAIRMAN GAMPETRO: Thank you. It's been moved and seconded that we approve those minutes from the August 25th, 2010 meeting. All those in favor signify by saying aye.

(All members vote aye.)

CHAIRMAN GAMPETRO: Opposed, same sign.

(No response.)

CHAIRMAN GAMPETRO: It's carried.

Craig, are you going to present the proposed revisions?

MR. HULTS: I am, yes.

CHAIRMAN GAMPETRO: We can go forward with that.

MR. HULTS: Okay. Today we have a new member here. So, as part of that, I thought I would take the time to also kind of go through our rule-making process. The rules are somewhat limited in our scope of

what we're talking about, and I thought this would be a good chance to just kind of go through our rule-making process and your involvement and the steps following that.

So just to jump right in, our rule-making process, the source of our authority to promulgate new rules comes from the Environmental Quality Act, and that sets up the advisory board's Environmental Quality Council, details where and whose responsibility each part of the rule-making process is. I did bring each of you new copies of the Environmental Quality Act. We're updated on that.

The rule-making process is also shaped by the Administrative Procedures Act, the Wyoming Administrative Procedures Act. The Secretary has -- Secretary of State has rules on rules. I always get a kick out of that sometimes, the rules on rules. But what that details is actual specifics about the format of the rules, when they need to be filed, things like that. And then, also, the rule-making process is somewhat shaped by the Rules of Practice and Procedure. And that's through the Environmental Quality Council.

A little bit on some of the meeting requirements, notice requirements, things like that that are in there. This here is kind of a process overview,

1 and it's very stripped down. What we do is we'll draft
2 some proposed rules. There's numerous places it can come
3 from, the source of those rule changes, and I'll go
4 through that a little bit more. We get that draft
5 together. That's what you have in front of you. From
6 there, we have this meeting and open discussion about
7 them, basically. We're seeking comments, hoping to
8 revise them if necessary.
9 We take that end product from here, and
10 basically your role in this is a recommendation whether
11 we should move forward and what form those rules move
12 forward or perhaps coming back through again. If it was
13 something controversial and we needed time to draft new
14 rules or responses to comments, there's the potential to
15 have a secondary advisory meeting.
16 From there, we go into what's called the formal
17 rule-making. And that step is what I've labeled as the
18 EQC hearing. That has very specific rules regarding
19 public notice, who signs the rules. And it's like I
20 said, the formal rule-making. So there's a lot of detail
21 behind that.
22 Once we go through the EQC hearing, it would go
23 to the -- we would submit the rules to the Attorney
24 General's Office, who then submits them to the governor
25 for signature. The governor approves them, and he will

1 sign them, and they become filed with the Secretary of
2 State. And like I said, that's a very stripped-down
3 version of that, but I'll go through a little more in
4 detail here.
5 So, when we draft a rule package, it may be
6 because there's been a statutory change, federal rule
7 changes or federal reviews based on our rules. For
8 example, the Office of Surface Mining may review our
9 rules and find that they're deficient or need something
10 changed in there. Also, changes in technology can create
11 a rule change. If we're responding to something out in
12 the field, new methodologies, things like that, we may
13 want to actually put that in a rule.
14 Another reason we may change them or draft the
15 rules would be because of perceived problems in
16 administering the current rules if something's just not
17 working. Changes in policy, that's tied to that,
18 definitely. And then also administrative decisions,
19 court rulings, EQC hearings, things like that may require
20 us to do a rule change.
21 When we draft the rule package, we'll send it
22 internally. We take a look at who has the expertise in
23 certain areas, and we'll get the initial draft submitted
24 throughout our division, possibly seeking industry input,
25 but basically mostly an internal review and then bringing

it to this forum for vetting. We'll finalize that rule package. And then here at the meeting, this is where we discuss the rules, anybody's comments that we may have, responses to those comments. And the advisory board's role is to hopefully recommend them to go forward to the EQC. Like I said, there may be further meetings on the rules. There's a possibility that the board could recommend them not forward them to the EQC, possible revisions that you may want to see in the rules. But our ultimate goal is to get to the formal rule-making and seeking your input.

Once we go through the advisory board meeting, then we get into what I said is the formal rule-making process. It has some very specific guidelines or rules associated with that, one being, it has a minimum of a 45-day public comment period. And that's in statute. Right now it's closer to 60 days to allow us to respond to comments, get things together so that when we do hit the EQC level and have that meeting, we're ready to go with what we feel is the final package of rules and any responses we have.

Yes, Jim?

CHAIRMAN GAMPETRO: Jim Gampetro, Land Quality Advisory Committee.

We had a situation not too long ago where

1 cheatgrass was an issue relative to ground cover. And we
2 were informed and invited to attend the Environmental
3 Quality Council meeting.
4 MR. HULTS: Correct.
5 CHAIRMAN GAMPETRO: When and if and how,
6 what triggers that?
7 MR. HULTS: In that case, I think that
8 there isn't anything that requires you to be at the EQC
9 hearings. I think it was a motion of kind of support.
10 And should there have been any kind of discussion that we
11 felt we weren't capturing, perhaps, it was a courtesy
12 more than anything, I would say, and helped us in our
13 role to get the rules forward and to answer questions.
14 But again, there's nothing statutory or anything that
15 would require you to be at those meetings.
16 CHAIRMAN GAMPETRO: The real question was,
17 I appreciated that, so that we see what happens and can
18 have some input if necessary.
19 MR. HULTS: Absolutely. We'll keep that
20 in mind, definitely, and our next hearing, definitely.
21 The EQC holds a hearing on the rules very
22 similar to this. They're able to ask questions, too.
23 They may have changes that they propose along the way.
24 They may have comments based on comments we've received.
25 They may require clarification. And so, again, it's this

1 public vetting process is what it is, really.
2 We will prepare a set of revised rules that,
3 depending on public comments, things that are brought up
4 at the meeting. But generally, when we come into the EQC
5 hearing, what we're hoping is that is our final set of
6 rules that we brought with. Again, when I said we have
7 the 45-day public notice, right now we've tacked on about
8 two weeks to allow us to respond once the public comment
9 period closes. That allows us to draft an analysis of
10 comments and bring that to the hearing. So hopefully
11 we're not changing anything on the fly.
12 The final rules, once we get to an agreement,
13 at that point the hearing officer will sign our statement
14 of reasons. And that we take forward to submit to the
15 governor ultimately. There's some paperwork that follows
16 along with it, so there's a few signatures I'm gathering
17 along the way. But once we have our hearing, we're
18 moving forward to a point where we're hopefully
19 submitting to the governor shortly thereafter.
20 The governor has -- when we submit it through
21 the Attorney General's Office, he has 75 days to review
22 the rules. From everything I understand, the governor's
23 office has quite a few rule packages, not just from our
24 division, but all state agencies. And so it has been --
25 my experience lately has been it goes pretty close to

1 that 75 days. If the governor signs it -- oh, and the
2 governor has a line-item veto, which is kind of unique in
3 the rule-making or legislation environment. But if
4 there's something in there that he disagrees with, we
5 would have to -- the rules that he agrees with would get
6 submitted, and then that portion is actually stricken
7 out. So any kind of change he wants to make, he has that
8 authority. Once he signs off on them, it's sent over to
9 the Secretary of State's Office, and that becomes the
10 date of the effective rules. Once the Secretary of State
11 gets those signed rules, that's the effective date of the
12 rules.
13 Towards the end here, we would publish our
14 final rules on the website. What I brought to you today
15 are complete sets of coal and noncoal rules, and each of
16 those are updated. For example, the coal rules have
17 recently changed. So each of those chapters will be
18 revised, but the package of rules stays together that
19 way. We submit them to the federal agencies if
20 necessary. For us, that's the Office of Surface Mining
21 and possibly the EPA. We haven't had much in the way of
22 EPA rules recently, so most of it's been the Office of
23 Surface Mining.
24 When we do that, they're doing a formal review
25 to see that we're at least as stringent as or effective

1 as the federal rules. That's how they review our rules.
2 We have to be as stringent as them. We can be more
3 stringent. But we have to make that threshold that we're
4 at least as effective as the federal rules. Interested
5 parties are notified about the new rules at this point.
6 A mailing typically goes out, and it's posted on the
7 website.
8 And then finally, there's some administrative
9 tasks. We send things over to the state library, get
10 things published out to the district offices, things like
11 that. And that's kind of, in a nutshell, what the
12 process is. There's some kind of fine details along the
13 way that we have to follow. And I won't bore you with
14 those details. To be honest, I think this is a pretty
15 good framework of what we're doing.
16 And I also wanted to update you guys on some of
17 the status of our rule-making efforts. Rule Package
18 1-BZ, which is above and, Jim, we're here for, that one
19 has been filed, and that dealt with valid existing
20 rights, individual civil penalties and -- I'm missing the
21 third one -- and noncoal mine waste. That has been
22 submitted to the Office of Surface Mining. It was filed
23 with the Secretary of State on April 11th of this year.
24 When we submitted it to the OSM, they pointed out some
25 concerns they had with this package. The concerns I will

1 say are very minor, cross references to other sections of
2 our rules. They've really been going through these rules
3 with a fine-toothed comb. And so there's some minor
4 changes they want us to make regarding those rules, but I
5 don't feel, substantively, they're a big issue. But
6 because they are changes to the rules, we have to go
7 through the full process to address those issues.
8 I'm hoping that the final Federal Register from
9 the OSM will be posted here shortly. That will be their
10 final review. What they've told me is they'll either
11 defer making a ruling on those specific areas and approve
12 the rest and wait for our submission to fix the problems.
13 That seems to have worked pretty good. It doesn't create
14 new deficiencies, necessarily. They just give us some
15 time to go through the process.
16 Our most recent rule package was the ownership
17 and control rule package. That one was filed with the
18 Secretary of State in September, September 12th, and it
19 has been submitted to the OSM. Haven't seen the comment
20 period or Federal Register opened on it. I think they're
21 just in their preliminary reviews at this point. And
22 there will be a new Federal Register publication of that,
23 as well. They'll open up typically a 30-day comment
24 period and seek comments.
25 We have some future rule packages coming, this

1 one today, obviously. It's Chapters 9 and 10 of our
2 noncoal rules. Originally, as proposed, we had Chapter
3 8. We've pulled that from consideration to deal with
4 some technical issues and bundle it with a more
5 appropriate later rule package. We'll have -- the first
6 quarter of 2012, we're having one. This will be a coal
7 rules package. The things that we want to address there
8 are the ability to do variable topsoil depth when you're
9 doing reclamation. Our rules currently, the way they're
10 written require basically uniform depth of soil. And
11 we're just not current with the federal regulations.
12 They allow the variable topsoil depth. So we're going to
13 be trying to mirror that.
14 A second issue we want to address is the
15 inspection frequencies for inactive mines. Our
16 definition isn't entirely meshing with what the Office of
17 Surface Mining has for inactive mines. And our goal is
18 to get to where we can go to a lesser inspection
19 frequency. Basically, it's where the mine has ceased
20 operating, and they've done most of the reclamation, and
21 they're just kind of waiting on, perhaps, vegetation or
22 things to establish. We feel like -- and I believe OSM
23 allows this -- that that goes down on a quarterly type of
24 inspection instead of a monthly. So we're going to try
25 to address that.

1 Also, the two previous rule packages, I'm
2 pretty sure that ownership and control was pretty heavily
3 involved in a lot of sections of rules. So I will almost
4 assuredly guess that there's going to be some changes in
5 there for cross referencing, small, minor changes, but my
6 hope is that most things are addressed in there. But for
7 rule package 1-BZ and then ownership and control are
8 going to try to address any of the issues that they had
9 with these previous rule packages there and submit that
10 to the advisory board first quarter of 2012.
11 Our next one after that is Chapter 8, which --
12 of the noncoal rules, which we were going to have today,
13 but we pulled, and then Chapter 11, which is our in situ
14 mining. Those two kind of dovetail well together and are
15 probably best suited together. So we'll be having those
16 two coming in.
17 Today we have Chapter 9 and Chapter 10, just to
18 briefly go through what the proposed changes are. And my
19 hope is, once we go through this brief introduction, then
20 we can jump into the formal rule language that we're
21 proposing. But for Chapter 9, it was kind of one of our
22 messy ones that was littered with statutory references,
23 very hard to read. You had to get out your statutes.
24 And it was, okay, here's a reference to this. What does
25 that mean? So we're putting in that language that's in

1 statutes and hopefully making it much more readable, and
2 you only need one document in front of you.
3 We're also clarifying that topsoil and subsoil
4 are classified as overburden and are therefore included
5 in the overall 10,000 cubic yards for the annual
6 limitation. We've added a requirement that the applicant
7 provide documentation of compliance with city or county
8 zoning as applicable. In most instances, it seems like
9 gravel pits, things like that where this comes up. And
10 we've also taken from statute and put in the rule that
11 there's a 300-foot setback from homes or public
12 institutions.
13 And in Chapter 10, the things we're doing
14 there, we eliminated some ambiguous language that was
15 suggesting that multiple contractors can operate under a
16 single limited mining operation, or LMO. And we've also
17 codified a policy we've had in place since 1978 that has
18 the six-mile limitation for having limited mining
19 operations within that same radius. And this rule
20 prevents an operator from obtaining a second LMO,
21 basically having two small mines -- LMOs, not small
22 mines -- but within that radius and kind of circumventing
23 the rules, basically, without going through formal
24 process of getting a small mining permit.
25 And secondly, a provision has been added to

1 allow a second LMO if that first one has been reclaimed
2 through vegetation, and basically waiting on the
3 paperwork to say everything is done and over with. So
4 it's a pretty minor change here, but very important, I
5 think.
6 At this point I guess I'd open it up to
7 questions or comments and then hopefully jump into some
8 actual rule language if anybody --
9 CHAIRMAN GAMPETRO: Any questions,
10 comments?
11 MR. GREEN: I'll offer one comment, if I
12 might. Bob Green. I really appreciate what you've done
13 with the small mining permit rules to stop the flipping
14 back and forth. It reads much clearer. It's much
15 more -- it's much more -- it's much more comprehensive.
16 So it's appreciated.
17 MR. HULTS: That's great to hear,
18 honestly. Yeah, much appreciated.
19 Not hearing any other comments, I guess we can
20 just jump into the actual rule language. And I did
21 provide some drafts of this rule package that do not have
22 Chapter 8 in them now. It was towards the ninth hour
23 there that we made that decision. And so it probably is
24 somewhat new and was a last kind of effort here that I
25 put together just to pull that out. So there are copies

1 back there that just have the Chapters 9 and 10
2 discussions without the Chapter 8 in there.
3 And I would ask, Jim, I don't know how we want
4 to specifically go through this, line by line, open it up
5 to comments that we have on specific rule language. I'm
6 certainly flexible on that.
7 CHAIRMAN GAMPETRO: Why don't we open it
8 up if there's any issues, as opposed to going through
9 line by line.
10 MR. HULTS: Okay.
11 CHAIRMAN GAMPETRO: Maybe you could go
12 section and say, anything on this?
13 MR. HULTS: Absolutely, yeah.
14 So, in this Chapter 9, which relates to our
15 small mining operations, like I said in the opening
16 there, we've added in Section 1 that topsoil and subsoil
17 are a part of that 10,000 cubic yards. Again, much of
18 the statutory references that were in here, we've just
19 pulled the actual statutory language and put it into
20 rule. So that's what Sections 1 through 6 are here.
21 MR. GREEN: Mr. Chairman, if I might, I
22 just have a few minor questions, comments, if I might.
23 CHAIRMAN GAMPETRO: Go ahead, Bob.
24 MR. GREEN: Just that in Section 1 -- I
25 won't go through all the romanettes, but it's on page

9-2 about the middle of the page, D (viii) --

MR. HULTS: Okay.

MR. GREEN: -- the requirement for a United States Geological Survey map if available, you might just want to add in delineated with the permit area, just for clarification. I assume that's what you're after on that, after a map with the boundaries of the proposed mining area outlined in proposed permit area.

MR. HULTS: So, rather than a just random map. Gotcha.

MR. GREEN: Just for clarification. That way you get what you're after.

MR. HULTS: And I think down below in the section Roman Numeral 1, that was there, and so --

MR. GREEN: Yeah. It just sort of disappeared with the changes.

MR. HULTS: I guess -- and this, again, in this section here, most of this is statutory. And I guess there's not a lot of change to the rules other than we're just making it more convenient to read at this point.

MR. GREEN: And my comments are just for consideration for clarification.

MR. HULTS: Absolutely.

1 MR. GREEN: I've got a couple more, if I
2 might.
3 MR. HULTS: Sure.
4 CHAIRMAN GAMPETRO: Before you move on,
5 Craig, are you going to put back in Roman Numeral 1, a
6 map based upon public records showing the boundaries --
7 MR. HULTS: I think the way it's written
8 right now in (viii), it says United States Geological
9 Survey map, if available, of the permit area. I guess I
10 would revise that to make that a little bit clearer that
11 we want the permit boundaries delineated on that USGS
12 map. I think that's probably the best place to do that.
13 MR. GREEN: Appreciate that. On page 9-4,
14 again, about in the middle of the page, romanette (vi),
15 there's a provision that the administrator may waive this
16 requirement if requested by the operator and the degree
17 of surface disturbance is small. Hearkening back to my
18 old days as an inspector and a permit reviewer, if
19 there's a way that small can be defined at least with
20 side words, that probably would help everybody.
21 MR. HULTS: Okay. I guess I would look to
22 my technical team here. And I'm not sure how we would
23 want to delineate that. That's certainly a valid
24 comment, though.
25 CHAIRMAN GAMPETRO: Perhaps a range from

1 such and such to such and such is what is considered
2 small.
3 MR. GREEN: Or less than.
4 CHAIRMAN GAMPETRO: Or less than.
5 MR. HULTS: And just so I'm clear, Bob,
6 what romanette are you in?
7 MR. GREEN: That's (vi) in the middle of
8 the page, a contour map on the same scale as the
9 reclamation map. I just was reading the last line. So
10 if there's a way that small can be outlined as less than
11 whatever the -- whatever threshold might work for you, I
12 think that would be useful.
13 MS. NUTTBROCK: Mr. Chairman, would it be
14 appropriate to comment on that? This is not new language
15 to the -- to this area. So I suspect that there has been
16 a working policy to this point. Could I ask for
17 Mr. Moxley or Mr. Rogaczewski's understanding of what the
18 policy might have been in defining small?
19 MR. MOXLEY: Sure. Mark Moxley with the
20 DEQ.
21 I think, in terms of small, I don't think
22 that's necessarily the size, but perhaps the depth. If
23 you're mining a very shallow gravel deposit, you're not
24 going to change the surface contours of the land very
25 much. So that's typically what we've used in this

1 context to say it doesn't require a contour map if you're
2 just removing a shallow seam of gravel. So I don't know
3 how you would define that, necessarily, but maybe
4 something less than ten feet. Typically the USGS contour
5 map has a 20-foot contour interval. And if it's
6 significantly less than that, it isn't going to show. So
7 those are the kinds of things we would look at.
8 CHAIRMAN GAMPETRO: Jim Gampetro, Land
9 Quality Advisory Board.
10 Possibly you could use both, less than so many
11 cubic square feet or acres or whatever in terms of the
12 surface and less than so many cubic meters or feet of
13 gravel to take into account the depth. I understand
14 Bob's concern. How do you administer this and not show
15 favoritism to one person or another when you just have
16 the word "small"? Small for one person might not be
17 small for another. But you could use both volume and
18 area.
19 MR. GREEN: Or the depth aspect probably
20 would work out very well, too.
21 MR. MOXLEY: To me, the depth aspect is
22 the most critical. You know, you're dealing with a small
23 mine operation to begin with. It's going to be more than
24 ten acres, though. But, you know, as I said, if you're
25 only removing several feet of material, you're not going

1 to change the contours of the land surface. So I don't
2 know. Would we say maybe less than 20 feet? Does that
3 make sense as a criteria? As I said, the USGS contour
4 map is typically a 20-foot contour. And I guess we could
5 incorporate something like that.
6 MR. GREEN: That would make a lot of sense
7 to me. Thanks for the consideration on that one.
8 MR. GIURGEVICH: Bob Giurgevich. I want
9 to make it clear, I want to make some general comments.
10 But since you're going through individually, I just need
11 to bring up here that I think this is one situation where
12 this chapter really needs to be looked at again. Because
13 when I read this chapter, under the section on page 9-2
14 that calls for a reclamation plan, nowhere do I see any
15 mention of a reclamation map until you get to this point
16 where it -- and then you have your conversation about
17 contours. There is no fundamental requirement here to
18 have a reclamation plan map to begin with. And you need
19 to look carefully at this section and this entire
20 chapter, this being a good example, and make sure you
21 tell the operator -- the prospective permittee, actually,
22 before the operator -- what you expect to see in a
23 reclamation plan so that you get out of this thing of
24 saying, I'm going to talk about contours all day long,
25 but I don't really have the requirement for map here to

1 begin with.

2 CHAIRMAN GAMPETRO: Craig?

3 MR. HULTS: Boy, I just want to see the

4 beginning headers here. I guess the first section, I

5 guess, is only dealing with application materials. And

6 then the second section in (b), the application shall

7 include the mining plan and reclamation plan. So (b) is

8 kind of where we get into the details of what is

9 included. The mining plan and reclamation plan shall

10 include the following. I guess that first part is more

11 the application materials in subsection (a). I guess

12 that would be my response.

13 MR. GIURGEVICH: Bob Giurgevich again.

14 That's exactly it. Part (b) requires elements

15 of a mine plan and a rec plan. Nowhere in part (b) does

16 it require what this section that you've just been

17 talking about, nowhere does it say you have to have a

18 reclamation map. And then it goes on to talk about a

19 contour map. It's not requiring, though, the reclamation

20 map, per se. You need to start fundamentally, please,

21 and look at this chapter and make sure that everything

22 you want in a reclamation plan is defined here.

23 MR. HULTS: I guess my response to that

24 would be that our efforts here were to get rid of some of

25 the -- I don't think we're changing a whole lot. And if

1 that's kind of the direction we would like to go about
2 detailing the reclamation plan, that sort of thing, I
3 don't know that that was our effort at this point. It
4 was merely to get rid of some of the statutory language,
5 I guess.
6 MR. MOXLEY: Mark Moxley with DEQ.
7 Item (b) talks about a mining and reclamation
8 plan dealing with the extent to which the mining
9 operation will disturb or change the land. And then in
10 the Roman numerals following, Item (i) is a statement of
11 the present and proposed use of the land after
12 reclamation. Double (ii), plans for surface gradient to
13 a contour suitable for proposed use after reclamation and
14 proposed method for accomplishing that. To me, that --
15 it doesn't require a map, per se. But you're asking for
16 plans for how you're going to recontour that land. I
17 suppose we could add there a reclamation map, but
18 we're -- we are allowing the administrator to waive that
19 requirement, so we don't want to get too specific there,
20 I don't think.
21 CHAIRMAN GAMPETRO: What would be the
22 difficulty in adding the words, including a contour map,
23 even if it could be waived, so that at least people know
24 what you're specifically asking for?
25 MR. MOXLEY: What we typically see is -

and maybe we should specify that we'd like to see cross sections. A lot of times it's easier to draw some cross sections than it is to draw an actual contour map, particularly if you're just removing a thin layer of gravel, for instance. You know, the idea was to potentially waive the requirement for a contour map. So we don't want to say it's required in one place and then talk about waiving it at another place.

CHAIRMAN GAMPETRO: Well, you can only waive things that are required. I don't see a problem with that. And if you prefer, if everybody would be happy with a cross section instead of a contour map. There's no reason to waive something that's not being asked for.

MR. MOXLEY: Okay. We'll look at that. I guess, going back to the statute, the statute talks about both, I believe, and maybe that will make sense to put both of them here.

CHAIRMAN GAMPETRO: Any more comments on that?

(No response.)

CHAIRMAN GAMPETRO: Go ahead.

MR. HULTS: So, as a solution to this moving forward, is it proposed that we will change some of the language here? I guess to move forward with this

1 to incorporate whatever changes we're looking to do, I'm
2 kind of curious what that language is at this point.
3 Because in Section 6, I mean, we're talking about a
4 contour map on the same scale as the reclamation map.
5 And so I'm a little bit confused, I guess, of what we're
6 trying to fix at this point.
7 MR. GREEN: Mr. Chairman, if I might, just
8 following on Mr. Moxley's comment about typically seeing
9 or wanting to see cross sections, I don't see that
10 anywhere here in the rules. And so following on my
11 earlier comment to make these as comprehensive as
12 possible for the applicant, I think it would be useful,
13 as was suggested by Mr. Giurgevich, that maybe this
14 entire section -- that this entire chapter be reviewed to
15 make sure that it contains everything that you're wanting
16 to see from the applicant.
17 MR. HULTS: Okay. I guess we're in
18 section (b), subsection (vi) or (vii). One new
19 requirement that was added -- it's not a new requirement.
20 It's in the statute already -- was the 300-foot setback.
21 That's in subsection (xi). I believe those are the big
22 changes.
23 MR. GREEN: Mr. Chairman, if I might.
24 CHAIRMAN GAMPETRO: Go ahead, Bob.
25 MR. GREEN: Just one last little small

thing.

MR. HULTS: Absolutely.

MR. GREEN: In subsection (d), again, about the middle of the page of 9-5, it just talks about the publication requirements. I think, in that last line, where you're talking about general -- notice being placed in a newspaper of general circulation in the location of proposed operation shall be two consecutive weeks, I think you wanted to say once a week for two consecutive weeks.

MR. HULTS: Okay. As opposed to continually through the week?

MR. GREEN: Yeah, just for clarification. I think that's the general language that's used.

MR. BENSON: The bottom of page 5, subsection (x), second sentence, what's that?

THE REPORTER: Can I get your name?

MR. BENSON: Scott Benson, Habitat Management.

CHAIRMAN GAMPETRO: Please remember to identify yourself for Randy here.

MR. HULTS: And what was the subsection? I'm sorry.

MR. BENSON: X.

MR. HULTS: On page 5?

1 MR. BENSON: Bottom of page 5. I must be
2 using a different one. I was using the handout you had
3 at the front desk.
4 MR. HULTS: It's possible this -- oh,
5 well, you're on -- yes, okay, gotcha. And the question
6 is about that section?
7 MR. BENSON: It says -- my copy says, the
8 procedures proposed to avoid constituting a public
9 nuisance, endangering the public safety, human or animal
10 life, property, wildlife and plant life I or adjacent to
11 the permit area.
12 MR. HULTS: Typo, I'm guessing. So it
13 should read wildlife and plant life or -- well --
14 MR. MOXLEY: Mark Moxley, again.
15 I think, Craig, that should say in or adjacent
16 to the permit area.
17 MR. HULTS: That would make sense.
18 That was all the changes. I don't know if
19 anybody has any comments other than that on Chapter 9 at
20 this point.
21 MR. GIURGEVICH: Bob Giurgevich again.
22 I want to go back to a point that Craig made,
23 and it will be one that I'd want to make as a general
24 comment on this chapter. I feel that this chapter has
25 been on the books pretty much unaltered for more than 35

1 years. And it has had a great deal of questions and
2 issues raised about its contents over those 35 years. I
3 think it's time to deal with some of those questions now
4 and not just make a few minor fixes here and there. And
5 so I want to -- since Craig brought up we're just making
6 some small correction, I think it's time to deal with
7 most of the issues that have been raised by this chapter
8 over the years.
9 And since we're near the end of this, I'd use
10 the example Section 2, which is on the bottom of page
11 9-5. This section has been there forever. It clearly
12 allows an operator who has a small mining permit to
13 convert to what's often called a regular or a large
14 permit. Pretty clear you can do that. But how you do
15 that has never clearly been resolved.
16 I'd give you a couple of examples. The small
17 mining operation allows exemptions from certain
18 provisions of the permitting side of the issue. What's
19 in your application? There's no question about that.
20 The statute -- the Environmental Quality Act says you can
21 modify certain of the application requirements. However,
22 it says nothing or says very little about what elements
23 of other aspects of that permit, including reclamation
24 plan elements, performance standards, things like that
25 that can be, quote, unquote, modified.

1 What has historically occurred with small
2 mining permits is that you do get a simpler permit and
3 with little acknowledgement of all of the other
4 permitting requirement and all the other performance
5 standards that apply to a regular or a large mine permit.
6 The problem comes when somebody wants to convert from a
7 small to a regular. How do you bring those other
8 performance standards into that transferred or morphed or
9 whatever kind of permit you want to call it? This
10 section really says absolutely nothing about how you even
11 make that permittee aware that they now have another set
12 of performance standards, another set of reclamation
13 standards that they need to start thinking about and
14 integrating into their operation. Sometime that issue
15 ought to be dealt with in rule and reg so that the Land
16 Quality Division staff really knows how to approach that
17 issue, that conversion.
18 My point is, if you're not going to do it now,
19 when are you going to take some of these issues on that
20 have been there for 35-plus years?
21 MR. HULTS: I guess my response is, at
22 this point, outside of rule and regulation, we've been
23 going through some pretty big efforts to develop the
24 pre-application process and detailing the things that we
25 are going to require that they are going to need to get

1 this permit. Those would be the times that if the -- the
2 future plans are to go beyond that. And they may not
3 know that. I guess those things are in place. And our
4 effort here, again, was just to clean up the statutory
5 language, really. I would say we can certainly open it
6 up to that discussion, but I'm not sure that was our
7 effort at this point. And I would leave that to my
8 superiors.
9 MR. MOXLEY: Mark Moxley again.
10 I'll talk a little bit about Section 2 that
11 Mr. Giurgevich raises. And I think he raises a good
12 point. In Section 2, conversion of a small mine to a
13 large mine or a regular mine, we only talk about
14 submitting revised mining and reclamation plans. We
15 don't talk about baseline studies at all. Maybe that's
16 one of the things that Mr. Giurgevich is concerned about.
17 So, clearly, we talk about a revised mining and
18 reclamation plan, which is what you would expect. But I
19 guess maybe that's a big question for the board, is how
20 much do you go back and require new baseline studies,
21 particularly after your mine may have been there for some
22 time and you may have affected a good portion of that
23 permit area already? There's a lot of judgment required
24 on these conversions. You get all different kinds of
25 circumstances going on.

1 Typically, the reason for a conversion is the
2 10,000-cubic-yard restriction. And so, if an operator
3 gets a big job, he has to convert it to a large mine in
4 order to produce enough material to satisfy a big
5 contract. And so those are the typical scenarios.
6 We would require, as it says here, a new mining
7 and reclamation plan. And if the plan deviates
8 significantly from the approved plan, then you would
9 trigger a public notice process. That's, again, not
10 specifically spelled out here. But the permit revision
11 chapter contains that 20 percent. If your operation is
12 going to affect more than 20 percent more than originally
13 planned, you would trigger a public notice process.
14 So I guess perhaps it's a good question for the
15 board. How would you see us moving into providing the
16 kind of detail Mr. Giurgevich is asking for?
17 CHAIRMAN GAMPETRO: Wouldn't you, in the
18 conversion process, simply go to what would be required,
19 add those items that would be required for a nonsmall
20 situation in order to get approval for converting to the
21 larger situation?
22 MR. MOXLEY: To me, the real questions
23 come in the area of baseline studies. For a small mine
24 permit, for example, we don't require a full-blown
25 vegetation study with sampling on site. We allow the

operator to use NRCS published information.

With a good portion of the permit area perhaps being affected already, do you go back and do a new vegetation study on that portion that hasn't been disturbed? You know, these are questions -- and same thing applies to soils, wildlife. These baseline studies that are typically required, you don't have a baseline situation anymore. Sure, if the operation is in its infancy and still has acres and acres to affect in the future, then perhaps there is some validity to that. I don't know how you draw a general statement that would cover those different scenarios.

Certainly if a good portion of the permit area is already affected, I guess I would question the utility of going back and doing another baseline study when you don't have baseline conditions anymore.

MR. GREEN: Mr. Chairman, if I might.

CHAIRMAN GAMPETRO: Bob?

MR. GREEN: In a bit of a response, I know that the next chapter that we're going to be taking a look at with the limited mining operations, that the statement of reasons outlines concerns about bypassing the requirements for a larger operation by having multiple ten-acre permits. I think we're talking about the same thing here, but in a different way, that I think

1 it is incumbent on the Division to take a look at some
2 percentage of increase and outline a baseline as required
3 after that, that, indeed, if -- if, indeed, this large
4 job comes along, as you're talking about, surely the
5 timing is going to be critical at that point.
6 So it's going to be difficult to get baseline
7 done at all. It would be very useful to have those
8 baseline requirements up front so that any small mining
9 permit operator can take a look at what's going to be
10 involved for that next big job to make that determination
11 based on clear information about whether or not they're
12 going to make a jump or they're simply not going to go
13 for a regular permit.
14 So, with that, I guess I would suggest that the
15 Agency take the time to delineate what would be
16 practical. Again, based on past practice, I'm sure that
17 that should be fairly easy to do.
18 MR. MOXLEY: I agree with you. There is
19 potential here to circumvent the requirements of the Act.
20 We don't -- I don't think we really see that in practice.
21 But there certainly is potential. I mean, theoretically,
22 a person could get a small mine permit and then the next
23 year convert to a large mine permit without having to do
24 additional baseline studies, yes. So you're absolutely
25 right. I think that's good advice. We probably should

1 try to capture that requirement.

2 CHAIRMAN GAMPETRO: Could you possibly put

3 a restriction on the small mine permit that says if

4 you're going to -- this is only good for an increase up

5 to X percent, and that's it, because it's then too late

6 to do the baseline study for a larger operation, as

7 opposed to the sequential small mine, small mine, small

8 mine and circumventing the baseline study? So, once

9 you've committed to the small mine operation, it can only

10 get so much bigger, and that's it. If you have any

11 thoughts of going beyond that, then you have to do the

12 full-blown baseline study. Is that where you're going?

13 MR. GREEN: Pretty much. And I'm trying

14 to take a look at it from the applicant's point of view,

15 as well, that if, indeed, I'm looking to make that

16 decision about whether or not I'm going to go to a

17 regular permit or not, I'd certainly like to know what is

18 going to be entailed before I sign some contract that's

19 going to require me to do that. So I think it would be

20 useful for both of us.

21 MR. MOXLEY: The important thing to

22 remember is that the -- under a small mine permit, you

23 can permit a large area. You can permit 40 acres or 160

24 acres or even more under a small mine permit. But you

25 can only move through it in a very slow pace, given that

1 10,000-cubic-yard restriction on overburden and ten acres
2 per year. You can only move through it incrementally.
3 But you are authorized to mine that whole area
4 eventually. The thing that the large mine permit gets
5 you is the ability to mine the whole thing much more
6 quickly. So those are the issues that we struggle with.
7 CHAIRMAN GAMPETRO: Maybe we need to take
8 a look at that. Is timing the only critical issue, and
9 how quickly you move through it, as compared to if you
10 have one on the edge of town? We've got one in Buffalo.
11 And all of a sudden, it's a pretty big operation. And
12 what does that do to the community and so on?
13 MR. MOXLEY: Yeah. The statute does not
14 place a restriction on the ultimate size of a small mine
15 permit. It just talks about an operation that will
16 affect less than ten acres per year and move less than
17 10,000 cubic yards of overburden per year. It doesn't
18 say a small mine permit can't be any larger than 40
19 acres, for example. It doesn't say that. So I don't
20 know if we have the ability to restrict the size of a
21 small mine permit under the current statute.
22 MR. ROGACZEWSKI: Mark Rogaczewski with
23 the Land Quality Division.
24 And adding to that, how would we restrict
25 without the statutes being available to state, after only

25 percent of the provisional service or 50 or 75, you're required to go and get -- I'm curious how we would require someone to go back and do the extended baseline studies as to what percentage of disturbance. I mean, how would we pick that number? Is it 49, 51 percent of the original proposed disturbance or -- at this time we do not have any guidance. And it is a very good question. But I'm trying to run this math through my head and the multiple people that we deal with up in Sheridan.

And we have several small mines. And it is true, just like Mark said, that when they get a big job, let's say for WYDOT to fix part of the interstate, a lot of these contractors' hands, they're basically handcuffed. They say, I can only do ten acres, which they may not even be able to do ten acres, because they may have three feet of overburden to get to that gravel. And they're now restricted to maybe only four.

I'm just curious what -- are there any comments from the board on, is it 50 percent? If it's 50 percent of that original permit left, that's when you would go forward and -- you know, they always can amend lands and still -- you know, the boundary can be extended. If they get a big job, they can then go and amend lands to that operation, which requires more baseline studies for those

1 additional lands. And there is an operation just outside
2 of Buffalo that has existed for almost 30 years, and
3 that's how -- they've negotiated with the neighbors next
4 door. They've added 20 acres, knowing that you need more
5 rock or concrete for road construction. What they've
6 done is minimal studies to keep this small mine permit
7 alive for almost 30 years.
8 MR. GREEN: Mr. Chairman, may I ask a
9 question back?
10 MR. ROGACZEWSKI: Sure.
11 MR. GREEN: Obviously so far, the Division
12 has made some judgment calls along the line as to when
13 baseline is required. What's the decision-making process
14 there?
15 MR. ROGACZEWSKI: The ones that I've dealt
16 with in District 3 out of our Sheridan office is we have
17 not required them to do any extensive new baseline.
18 MR. GREEN: At all?
19 MR. ROGACZEWSKI: At all. The only time
20 they've been required to do additional baseline studies
21 is when they were going to then convert that original
22 small mine to a regular mine and then amend additional
23 lands, let's say another hundred acres, because they
24 found -- they negotiated with a neighboring ranch or
25 whatever. However, those new lands, through that

1 conversion process, were required to go under the
2 baseline studies of a regular mine operation, which is
3 much more expenses for vegetation and soils, et cetera,
4 but only when new lands have been required. That was our
5 interpretation of this current rule. If the lands stayed
6 the same, if that boundary did not change, no more
7 in-depth baseline was required, because we don't have the
8 guidance for that, so we didn't feel we could require it.
9 MR. GREEN: Has that been the case for
10 Districts 1 and 2, as well?
11 MR. MOXLEY: Yeah. The one exception I
12 guess I would make is -- well, two, really. Hydrology
13 concerns have dictated the installation of monitored
14 wells, for instance. Originally the plan did not vision
15 mining into the water table, for instance. And then as
16 you progress, you find that you are in the water table.
17 And so that may trigger some hydrology-type studies.
18 The other thing is wildlife. Wildlife are
19 dynamic. They change over time. And different species
20 are elevated, sage grouse. Those may dictate wildlife
21 studies. But other than that, I agree with Mark, that
22 the real trigger for additional baseline studies is the
23 addition of new lands.
24 CHAIRMAN GAMPETRO: My understanding now
25 is that we don't have, under the statute, statutory

1 authority to define a small mine as a certain area. It
2 can be anything. And so this whole small mine thing is
3 very, very misleading. And it basically has more to do
4 with how quickly you pull out whatever you're going to
5 pull out. And then, of course, there's no baseline that
6 can be set at some point, because whatever wildlife or
7 plant life was there is gone from that area. And even if
8 you haven't mined the next ten acres, it's definitely had
9 an effect on what's happening there.
10 MR. GREEN: Mr. Chairman, if I might, just
11 a follow-up comment. If that, indeed, has been the
12 Division's policy to date, to not require new baseline
13 without addition of new lands, then is that something
14 that the Division would be willing to put into rule and
15 regulation so it's clearly understood by all parties?
16 Again, my main -- my main purpose is just to try and get
17 some clarification for the applicant, as well as external
18 parties, as to exactly what is going to be required.
19 CHAIRMAN GAMPETRO: Well, that was my
20 question. But I guess the answer I thought I got back is
21 we didn't have, under the statute, the authority to do
22 that.
23 MR. MOXLEY: Mark Moxley again.
24 I think the door has already been opened here
25 in Section 2 with the conversion of a small mine permit

1 to a standard mine. We ask for revised mining and
2 reclamation plans. And I think it would be a logical
3 thing to develop some criteria here for requiring
4 additional baseline studies. I don't think that would be
5 a huge leap. And clearly, it is an unknown. It's not
6 something that we --
7 CHAIRMAN GAMPETRO: Unknown regulations
8 and rules are bad for everybody.
9 MR. MOXLEY: Right.
10 CHAIRMAN GAMPETRO: They're bad for the
11 people trying to do the contracts, and they're bad for
12 the people that live in the area.
13 Could we have a motion to take a look at this
14 and see how it could be changed in some way to make it
15 more definitive, large mine versus small mine, percentage
16 of increase, something?
17 MR. GREEN: Mr. Chairman, I would like to
18 move that the Division move forward with the changes that
19 have been proposed in this package as an initial step but
20 contingent on a thorough review of this chapter to assure
21 that it contains all of the elements that the Division
22 requires of a small mine permit and the conversion to a
23 standard permit and that it incorporate aspects of when
24 baseline information is required.
25 CHAIRMAN GAMPETRO: Okay. We have a

1 motion. Do we have a second?

2 MR. SKEEN: Mr. Chairman, I'll second

3 that.

4 CHAIRMAN GAMPETRO: Before we go forward

5 and vote, comments on the motion?

6 MS. NUTTBROCK: Mr. Chairman, just in

7 terms of the rule-making process, Craig, I wonder if it

8 would make sense to have those things incorporated and

9 not go forward with what we proposed here, but do it all

10 at once. The rule-making process is very lengthy in

11 itself. And I'm wondering if, by first quarter 2012, if

12 we couldn't have this evaluated and bring a fresh Chapter

13 2 for your consideration.

14 CHAIRMAN GAMPETRO: Craig, how do you feel

15 about that?

16 MR. HULTS: That would be probably the

17 most timely way to do it. Otherwise we end up revising

18 this chapter and then go back and revise it again. So

19 it's really two rule-makings. Granted, we have a pretty

20 aggressive schedule of proposed changes coming up. But I

21 think the best way would probably be to hit at that first

22 quarter. I would be a little bit concerned, though, our

23 first quarter being a coal rule package. And we could

24 shift, certainly, however you want to do that. But the

25 less we revise chapters, the better, I think, if we're

1 doing that same chapter over and over.

2 MR. GREEN: Mr. Chairman, my intent was to

3 just keep the process moving. So I'm more than happy to

4 amend my motion to --

5 CHAIRMAN GAMPETRO: Well, we've been moved

6 and seconded. Let's all vote it down, and then we'll

7 have another motion.

8 MR. GREEN: Very good.

9 MR. GIURGEVICH: Mr. Chairman, Bob

10 Giurgevich again.

11 In relation to Mr. Green's motion, I suggest

12 that it either be amended to include something else or

13 have the Agency hear it, also. There are provisions in

14 the Act. 406 specifically says a permit should not be

15 issued without indication or compliance with all state

16 and federal laws. For a long time -- now, this comment

17 applies to both the limited mining operation, as well as

18 the small mining operation. There have been questions

19 about whether or not culture resource issues has been met

20 in certain permits, threatened and endangered species,

21 federally listed. Another federal issue, migratory birds

22 of high federal interest, and jurisdictional wetlands.

23 None of those topics are clearly addressed in any of the

24 current provisions in Chapter 9 or 10.

25 I suggest that the motion also include

1 something to that effect because the Agency -- again,
2 this is a set of questions that have been on the books
3 floating around for 35-plus years. Again, my point is
4 sometime please deal with them in a direct manner.
5 Either say we're going to truly ignore them or come
6 forward and say here's how we're going to deal with them
7 in the permitting process.
8 CHAIRMAN GAMPETRO: I guess what I would
9 suggest is if you have -- it would be very helpful if you
10 could provide a list of those issues that you feel need
11 to be addressed, and in the subsequent amendment -- or,
12 subsequent motion that we're going to vote on, that we
13 indicate that we will be accepting input for other areas
14 of this chapter that need to be addressed.
15 MR. GIURGEVICH: Mr. Chairman, Bob
16 Giurgevich.
17 I do have written comments. I'll present them
18 to you on both chapters.
19 CHAIRMAN GAMPETRO: Very good.
20 We have a motion that was moved and seconded.
21 All those in favor indicate by saying aye.
22 (No response.)
23 CHAIRMAN GAMPETRO: Opposed, same sign.
24 (All members vote aye.)
25 CHAIRMAN GAMPETRO: Okay. That's down.

Would you like to make a new motion as to which way we're going here?

MR. GREEN: I'll give it a shot.

I move that processing of these changes as in this package that's been brought before us be delayed until the Agency conducts a review of the requirements for a small mining permit and conversion to a standard mining permit relative to all of the information the Agency requires and that that review include the adequacy of those information requirements to meet other statutory requirements that may be identified by external parties.

MR. SKEEN: I'll second that.

CHAIRMAN GAMPETRO: We have a new motion that's been moved and seconded. All those in favor signify by saying aye.

(All members vote aye.)

CHAIRMAN GAMPETRO: Opposed, same sign.

(No response.)

CHAIRMAN GAMPETRO: The motion carries. Is everybody happy?

Where do we go from here, Craig?

MR. HULTS: That's a good question. Chapter 10 language. And I guess we're going back to review some of this and see what changes we need to make. One thing I will say is these are noncoal rules. We're

1 not under any pressure, say, from the Office of Surface
2 Mining to get some changes. So have an open discussion
3 about this and --
4 CHAIRMAN GAMPETRO: I would like to call a
5 ten-minute break, and then we'll come back and go forward
6 from there. Would that work?
7 MR. HULTS: That would be great.
8 CHAIRMAN GAMPETRO: Do we need to vote on
9 that? I don't think we need to vote on that. So we'll
10 be back here at 10:30.
11 (Hearing proceedings recessed
12 10:19 a.m. to 10:31 a.m.)
13 CHAIRMAN GAMPETRO: Can we call the
14 meeting back to order, please?
15 Okay, Craig, what have you decided? Where are
16 we headed next?
17 MR. HULTS: It sounds like, I guess I
18 think we should take a look at what we had for Chapter
19 10. But in talking with Nancy and everybody, it sounds
20 like we would be revisiting these chapters again next
21 quarter.
22 CHAIRMAN GAMPETRO: Including 10?
23 MR. HULTS: Yes, if I have that correct.
24 CHAIRMAN GAMPETRO: It might be beneficial
25 to take a little walk through 10 and see what kind of

comments come up. In the event that you do need to revisit it, it will give you some idea of how it needs to be revisited.

MR. HULTS: Sure. And I guess I would ask, also, the discussion on 9 at this point, we're completed? Okay.

The changes we made in Chapter 10 were to Section 6. We pulled out -- just even in the title, now it's only called transfers. We have a limitation in 8. So that's our change in Section 6, is the limitation that we put in Section 8. It refers back to that. We've also deleted in Section (b) that the operator may allow contractors to operate within the limited mining area, provided that notice is given to the Division. (B) is basically codifying -- our removal of that is codifying that we would require all operators to file our Form 10, basically the paperwork that we have for a limited mining operation, and not allowing multiple operators in that same operation.

And in Section 8, we have codified what we've referred to as a six-mile rule. The change we made there is that an operator will not be allowed to conduct more than one operation of ten acres or less within any six-mile radius when the two operations are to mine the same mineral. And we added the caveat that the

1 administrator may allow two operations for the same
2 mineral within that six-mile radius if the reclamation
3 has been completed and they're awaiting bond release.
4 Those are the changes that we have for Chapter
5 10. We define what that complete reclamation is for the
6 purposes of this section. And so I would open that up to
7 comments, questions.
8 MR. GIURGEVICH: Mr. Chairman, Bob
9 Giurgevich.
10 Craig, in relation to what you said in Section
11 6(b), where you strike that, did I hear you say that you
12 now require a Form 10 from all operators, that is, all
13 parties that operate within a given pit?
14 MR. HULTS: Each operator, if I did say
15 that, that would not be what I was saying. I guess what
16 we're trying to clarify is the contractors, versus
17 operators. And contractors -- the way we had that
18 written before, the operator may allow the contractors to
19 operate within -- I guess we're just clarifying that --
20 it does kind of say that. I guess I would look to Mark
21 or Mark again.
22 MR. ROGACZEWSKI: Mark Rogaczewski with
23 the Sheridan DEQ, Land Quality Division.
24 What we were trying to do here is clarify
25 that -- I would say we had contractors gaming the system.

1 They were getting -- they were asking ranchers to apply
2 for a Form 10 and put up the bond, and then they would
3 come in as a contractor and mine ten acres or less over
4 here, sell all the product, fill their contracts. They
5 would go right across the fence line and get a second
6 rancher to go apply for another LMO. And they were only
7 like a mile and a half away or two miles, but let's just
8 say less than six. What we were trying to do is say, if
9 you are going to operate in the LMO, then you better be
10 on the Form 10, and you're the one basically submitting
11 an updated bond.
12 We also had some ranchers get stuck there with
13 a $10,000 bond. The operations didn't work out as
14 planned. They kicked the operators out, and then they
15 had a hole. They're a rancher. They have no equipment
16 to fill it in. So we are trying to protect not only some
17 of the landowners, but also make sure that some of these
18 bigger operators, if they truly want a gift and make
19 money, then let's have them move into this small mine or
20 regular mine operation if they want to mine plateau after
21 plateau after plateau of a gravel scene or scoria.
22 That's what we were trying to clarify.
23 MR. GIURGEVICH: Mr. Chairman, I
24 understand the points that Mark made. I might suggest
25 that another possible approach to that, there only - you

1 have a definition for operator in the Environmental
2 Quality Act. It's not best, but it's workable. You have
3 a definition of applicant in Chapter 1 of the LQD rules
4 and regs. And there's always been questions that those
5 apply to a limited mining operation, but I'll leave that
6 for now.
7 You have no definition of a contractor. You
8 don't have a definition of any other entity, individual
9 or otherwise, that may conduct a mining operation. One
10 way to address this may be to come up with what you
11 really mean by these different parties that have some
12 interest in removing that mineral and then reorganize,
13 redraft certain elements of this chapter to make clear
14 what you mean by those different parties, and then where
15 do you want them to show up on what form? Do you want
16 them on the Form 10? Do you want them in the annual
17 report? Do you want them whenever there's a change?
18 Somehow define the different parties and then work
19 forward from there as a possibility of resolving some of
20 these questions.
21 CHAIRMAN GAMPETRO: Anyone from DEQ want
22 to --
23 MR. MOXLEY: Mark Moxley.
24 The statute that authorizes the limited mine
25 operations, or otherwise known as the ten-acre exemption,

1 only talks about an operator. It does not talk about an
2 applicant. What we do on large mines, we issue licenses
3 to mine for contractors, et cetera. There's none of that
4 discussion under the limited mining operation. It only
5 talks about the operator.
6 And as Mark Rogaczewski said, one of the
7 problems we've had is that unscrupulous operators will
8 get a landowner to apply for the permit and post the
9 bond. We don't want to encourage that. That's not a
10 good practice. Because in that case, the landowner is
11 not protected. He has put up a bond, and he's letting
12 someone else mine his property. So we don't want to
13 encourage that type of practice. We want the operator to
14 get the permit and post the bond. So that was really our
15 intent here.
16 CHAIRMAN GAMPETRO: Doesn't the
17 elimination of the contractor language here solve that
18 problem?
19 MR. GIURGEVICH: Mr. Chairman, I think it
20 could. Again, I encourage you to look at -- as
21 Mr. Moxley says, in the Environmental Quality Act, it
22 says the operator will provide this so-called
23 notification. But the Form 10 that's currently used does
24 not -- it includes both operator and applicant. What I'm
25 saying here is you walk through these parties that you -

1 and I tend to agree with Mr. Moxley. You really want to
2 know who the operator is so that you make sure to the
3 best of your abilities, both during the permitting
4 process and during the subsequent inspections, that you
5 really know who's mining there, so that the issue of
6 evading other elements of the Act is clear, is clearly
7 not there.
8 And so what I'm suggesting again is look at
9 carefully what you call these parties that you want to
10 address in this chapter, but also on the form that the
11 Agency uses.
12 MR. ROGACZEWSKI: Mark Rogaczewski.
13 We are in the process of, after doing this
14 review of this chapter, we have been talking about that
15 we need to change the Form 10 because, as Mr. Giurgevich
16 said, it does have applicant, which was the rancher, and
17 an operator could be Acme Mining Company. We are in the
18 process of eliminating the operator/applicant to saying
19 operator only. There is going to be no dual section. So
20 I think we're eliminating the definition of a contractor
21 because we don't have anything in the Act to go to, and
22 we're getting rid of the applicant/operator situation by
23 changing our form to represent what is in this proposed
24 chapter.
25 CHAIRMAN GAMPETRO: So everybody will be

1 an operator?

2 MR. ROGACZEWSKI: Everybody will be an

3 operator. And if a rancher wants to truly operate a

4 scoria pit or something to make money, we're not against

5 that. It's just then they're truly the ones removing the

6 topsoil. They're truly selling the gravel. Again, they

7 may have Acme Mining Company come in and load their

8 trucks because they sold it to them. Great. Not a

9 problem. We just eliminate this what we believe is

10 circumventing.

11 CHAIRMAN GAMPETRO: Then they couldn't

12 hire somebody to dig for them or whatever?

13 MR. ROGACZEWSKI: Well, that's where we've

14 gotten into that problem with the contractors, where

15 these contractors have been in multiple pits, and they're

16 truly the ones, by our definition, operating the mine

17 site. They're doing the stripping, actual excavation,

18 the actual washing, crushing and then selling of the

19 rock. And we believe that was circumventing the rules

20 and regs.

21 CHAIRMAN GAMPETRO: That seems like a

22 slippery slope there. If I'm a rancher and I've got some

23 mineral and I want to have it dug out and I'm willing to

24 take the responsibility, I'm not allowed to hire somebody

25 that's got the equipment because I don't want to buy the

1 equipment.

2 MR. ROGACZEWSKI: That person that you're

3 going to hire, let's say Acme Mining Company, they sure

4 could come in and get the Form 10 on their property.

5 It's just Acme Company, as an example, would be filling

6 out the Form 10. And they could come in and mine on that

7 rancher's property. We're not stopping that.

8 CHAIRMAN GAMPETRO: They just would have

9 to be the one that -- okay.

10 MR. ROGACZEWSKI: Yeah. Yeah.

11 MR. MOXLEY: Mr. Chairman, you raise a

12 good question. And it is a slippery slope. At some

13 point you have to make a decision. Is this rancher

14 operating the pit, or is this Acme Mining Company

15 operating this pit? Certainly you, as a rancher, you can

16 go out and lease equipment. You could go out and hire

17 somebody to move some dirt for you. At some point,

18 though, there's a decision to be made. Is this guy the

19 operator, or is he just working for you, the landowner?

20 That decision is always going to be there, I think. But

21 we have to have the authority to say, okay, Acme Mining

22 Company, looks to us like you're operating this gravel

23 pit, and you can't do that without filing the Form 10 and

24 posting the bond.

25 CHAIRMAN GAMPETRO: Seems reasonable to

me. I can still hire whoever I want. But they got to be on the form, too, and the bond and so on. I don't know. Okay.

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

I agree with the resolution. I think that will work, can work. If I may have another comment --

CHAIRMAN GAMPETRO: Sure.

MR. GIURGEVICH: The proposed revision in Section 8, particularly the subsections two little I and little I, this again is an issue that has been out there for many, many years, this proximity of operations. But I would say that my reading of the proposed revision, I don't see how it answers the question. And if I may impose, I read Item A, when it says no operation for the same mineral within adjacent areas, adjacent areas is defined in Chapter 1 of the rules and regs as a half mile. You also have a definition for adjacent lands of a half mile in the Environmental Quality Act. One or both of those apply. I read Part 1 to say that you can't have operations for the same mineral within a half mile of each other. But then it goes on in the new or revised Section 2 to say that if you're mining the same mineral, you can't mine within six miles. I struggle to -- those are not mutually exclusive. I think you need one

1 statement of the restriction and then go on to say
2 whatever else you need to about giving a qualification if
3 one is fully reclaimed.
4 CHAIRMAN GAMPETRO: Responses, DEQ? I
5 note that it does say it's up to the administrator.
6 MR. GIURGEVICH: But that's only to grant
7 the second operation. And in the section it says six
8 miles, but the one before says you can't operate the same
9 one within a half mile. It really should not be both.
10 CHAIRMAN GAMPETRO: And only if the
11 operation has completed reclamation work on the previous
12 one and is awaiting bond release.
13 MR. MOXLEY: Mr. Chairman, I think the
14 intent here was, with the adjacent, we're trying to
15 specifically preclude an operator from simply moving, you
16 know, into a new pit right next door. The other is
17 talking about a nearby, some space between them, sort of
18 a scenario. Mr. Giurgevich is right. The statute does
19 define adjacent as within one half mile. But I guess we
20 see that as one scenario where an operator is simply
21 progressing from one pit into another, whereas the
22 six-mile rule is to get at a jump of some distance away
23 but still circumventing the requirements of the Act that
24 would require a permit with all the attendant baseline
25 studies and public notice.

1 CHAIRMAN GAMPETRO: So you don't want
2 either?
3 MR. MOXLEY: Right. We don't want either
4 thing going on.
5 MR. PETTY: Mark, can you tell me how this
6 is going to affect those bentonite mines?
7 CHAIRMAN GAMPETRO: Please identify
8 yourself for the recorder.
9 MR. PETTY: I'm Jeff Petty.
10 Where the bentonite mines have one permit and
11 they go from Ten Sleep all the way up to near Lovell, and
12 they've got different claims all over the place, is this
13 going to affect them at all?
14 MR. MOXLEY: No.
15 MR. PETTY: Because this is all under one
16 permit. Right? If it's under the umbrella of one
17 permit, they're okay?
18 MR. MOXLEY: This chapter addresses a
19 ten-acre limited mining operation. Does not have any
20 effect on large mines or bentonite mines. It's just
21 the --
22 MR. PETTY: Just the ten-acre exemption?
23 MR. MOXLEY: Ten-acre exemption, yes.
24 CHAIRMAN GAMPETRO: So where are we?
25 MR. HULTS: I have nothing further. These

1 were the only changes we had proposed for Chapter 10 at
2 this point.
3 CHAIRMAN GAMPETRO: So this Chapter 10
4 rewording, can we go forward with it? Seems like it to
5 me. Is there a motion?
6 MR. GREEN: I'll move that we accept the
7 revised Chapter 10 as provided by the Division.
8 MR. SKEEN: I will second that.
9 CHAIRMAN GAMPETRO: It's been moved and
10 seconded that we accept the revised wording here. All
11 those in favor signify by saying aye.
12 (All members vote aye.)
13 CHAIRMAN GAMPETRO: Those opposed, same
14 sign.
15 (No response.)
16 CHAIRMAN GAMPETRO: The motion carries.
17 So, other business to come before this body?
18 MR. GIURGEVICH: Mr. Chairman, I do -- as
19 I indicated earlier, I have written comments to enter
20 into the record. Before you move on, should I make sure
21 that those get into the record?
22 CHAIRMAN GAMPETRO: Yes. Let's do that.
23 I don't think you have to read them, but if you will
24 provide them to us. And I don't believe we have to vote
25 on that. I think we can just accept them. And thank

you. Your input has been appreciated.

Any other business to come before the Land Quality Advisory Board?

(No response.)

CHAIRMAN GAMPETRO: If not, we will entertain a motion to adjourn.

MR. GREEN: I'll so move.

MR. SKEEN: Second.

CHAIRMAN GAMPETRO: It's been moved and seconded. All those in favor say aye.

(All members vote aye.)

CHAIRMAN GAMPETRO: Opposed, same sign.

(No response.)

CHAIRMAN GAMPETRO: This meeting is adjourned.

(Hearing proceedings concluded 10:52 a.m., November 14, 2011.)

1 C E R T I F I C A T E

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3 I, RANDY A. HATLESTAD, a Registered Merit

4 Reporter, do hereby certify that I reported by machine

5 shorthand the proceedings contained herein constituting a

6 full, true and correct transcript.

7

8 Dated this 23rd day of November, 2011.

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RANDY A. HATLESTAD

15 Registered Merit Reporter

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