BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
LAND QUALITY DIVISION

HEARING ON VARIABLE TOPSOIL, SELF-BONDING AND HOUSEKEEPING COAL 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 21st day of May, 2012 at 10:00 a.m. at the Oil and Gas Conservation Commission Hearing Room, 2211 King Boulevard, Casper, Wyoming, Mr. Jim Gampetro presiding, with Board Members Mr. Robert Green, Mr. Jim Skeen and Mr. Gene Smith in attendance.

Also in attendance were Ms. Nancy Nuttbrock, Administrator of the LQD, Mr. Craig Hults of the LQD, Ms. Carol Bilbrough of the LQD, Mr. Mark Moxley of the LQD, Mr. Mark Rogaczewski of the LQD and Mr. Lowell Spackman of the LQD,

In attendance from the public were Ms. Laura Ackerman with Buckskin Mine and Mr. Darryl Maunder with Cloud Peak Energy.

P R O C E E D I N G S

(Hearing proceedings commenced 10:00 a.m., May 21, 2012.)

CHAIRMAN GAMPETRO: Introductions. Mr. Hults, you want to start?

MR. HULTS: Craig Hults with the Land Quality Division.

MR. SPACKMAN: Lowell Spackman, Land Quality Division, District 1 supervisor.

MS. NUTTBROCK: I'm Nancy Nuttbrock, Land Quality Division administrator.

MS. BILBROUGH: Carol Bilbrough, Land Quality, program manager.

MR. ROGACZEWSKI: Mark Rogaczewski, District 3 supervisor.

MR. MOXLEY: Mark Moxley. I'm the district supervisor in the Lander office.

CHAIRMAN GAMPETRO: We have two --

MS. ACKERMAN: Laura Ackerman, Buckskin Mine.

MR. MAUNDER: Darryl Maunder, Cloud Peak Energy.

MR. SMITH: Gene Smith, Land Quality Advisory Board.

MR. GREEN: Bob Green. I'm the industry

rep. I'm with Cloud Peak Energy, Gillette.

CHAIRMAN GAMPETRO: Jim Gampetro. And I'm a public representative, Land Quality Advisory Board.

MR. SKEEN: Jim Skeen. And I'm a public representative for the Land Quality Advisory Board.

CHAIRMAN GAMPETRO: Who's going to start us off? Mr. Hults? Nancy?

MS. NUTTBROCK: Could I start by just saying a few introductory things? Just to give you a little bit of update on what we've been doing since we've last spoken, we've been continuing our work with the uranium work group, and it's going quite well. We're working through some issues that will result in some changes in our guidance documents, will result in some changes to our rules, which we'll get to hear later this fall when we present those to you.

This week also we're going to start working with our coal work group. That's representatives -- seven representatives from industry paired with seven representatives from the Land Quality Division, as well as the Casper field office. Jeff Fleischman and Frank Bartlett will be at the table, as well. The primary purpose of that work group is to evaluate the bond release process from many different viewpoints.

There's a secondary purpose to that work group,

as well, and that may be anything that we need to work through with the industry and the regulatory body. We're really excited to have that kick off this Thursday, if you're in Casper. So, periodically when we meet, I may give you an update on how that's going. But I think everybody that's involved is really excited to have this opportunity to work through such an important issue.

CHAIRMAN GAMPETRO: Thank you, Nancy. How would you like to proceed, then?

MS. NUTTBROCK: Mr. Hults?

MR. HULTS: I believe first on the agenda was the approval of minutes from the previous meeting. And just kind of a funny thing about that. Let me pull it up here quick. I was actually reviewing it to make sure that we had addressed all the changes that were discussed during the meeting. And unless I stepped back into the '50s at one point and was a bit of a hipster from that time, I notice on page 109 it says that I said, apparently, the bee's knee. We're still waiting on the Federal Register. I believe that was supposed to be Rule Package 1-BZ. Just got a kick out of that. It made me pause because I was pretty sure that's not my vocabulary.

CHAIRMAN GAMPETRO: Anything else? Any amendments or changes or anything else?

MR. HULTS: No.

CHAIRMAN GAMPETRO: We'd introduce a motion, then.

MR. GREEN: With Mr. Hults' amendment, I would move that we adopt them.

MR. SKEEN: I will second.

CHAIRMAN GAMPETRO: All those in favor signify by saying aye.

(All members vote aye.)

CHAIRMAN GAMPETRO: Any opposed?

(No response.)

CHAIRMAN GAMPETRO: It's passed.

Mr. Hults?

MR. HULTS: First off, I thought I'd like to just go through the package that we had talked about in our previous meeting. And I know you guys were interested in seeing some of the changes I've made to that rule package. It's currently on its way down to the EQC. We're waiting for the governor's permission to proceed right now, and hopefully we'll get that early this week yet and move it along. But just wanted to kind of jump through there kind of quickly.

MS. NUTTBROCK: Craig, could I also interject that the EQC hearing that would be maybe appropriate for you to attend if you'd like would be July 12th and 13th.

MR. HULTS: Yeah.

MS. NUTTBROCK: That's when Chapters 8, 9 and 10 that we discussed last time will be presented to the EQC. And I believe that's in Cheyenne.

MR. HULTS: Yeah.

So the way I have this kind of set up right now, it's tracking changes that were done previously. I can turn it off if it looks too confusing, but kind of indicates some of the things. I'll just kind of whip through these. In Section 1B and 1C, we combine those two sections. We were kind of looking for a way to clarify that a little bit. And so we just -- in Section B that's up there currently, we had split Section B and C. The second sentence in what is now Section B was added just to help the flow. No changes were made to any of the language or anything. It was just combined into one section to improve the readability a little bit.

Also, we did the discussion regarding the term sealant material, versus grout. We made corrections to that and used the sealant materials as the more general term and grout where necessary. And if you'd like to see those, I don't know how much detail you want to look at these.

So we're starting in subsection (d) there. And so now it's the sealant materials. So previously we had

the grout means, and so we've made those changes. And that carries on throughout here. In most instances, grout was replaced with sealant materials.

Some other changes, subsections (3)(d) and (3)(e) were revised to include the reference to Chapter 3 based on conversations that we were having. And that was -- we just added the subsection (i). So here I can highlight that. So previously it read Chapter 3, Section 2(c). We added the "and 2(i)." And that is also the case with (e), where we added the section (i) in there, as well. My intent is to send you the -- or, this will be posted shortly, as well. But in this rule package, like I discussed last time we were here, I've added these sections here that discuss any changes that were made to the advisory board statement of reasons. So that was it for Chapter 9 -- or, Chapter 8. I'm sorry.

In Chapter 9 we changed and replaced applicant or operator as necessary to better fit the context. We did have some discussion about the wildlife consultations. And it was my impression that during the discussion and after reviewing the meeting minute notes, that we had finalized some language. And I believe that's what I captured, but I just wanted to be sure about that.

This paragraph here is what was the final

result. And I believe the big discussion was the submission of the things to the Forest Service -- or, the wildlife service and the Game and Fish. The key term I think we were focussing on was that it should address their recommendations and not necessarily that they had to follow them, per se.

And the final section here, we had that it had to be within the scope of the Act and whether it was in compliance with state and federal law. So I think we've included all the things that were discussed. And I believe that's what we finalized.

There was one more change in 9. Oh, in Section 5 in Chapter 9, we made clear that the future landowner -- or, future land uses were determined by the landowner or had input by that landowner. And several grammatical changes were made. And we also clarified that the buildings or structures could be left in place at the request of the surface owner.

So here is the landowner statement included by the landowner, a statement about the proposed changes. Here again, "operator," versus "applicant." We struck out the term "to" and replaced -- or, installed "may." That was just a grammatical correction. Again, applicant to operator. I believe that should be it for that section. Oh, and then the disposal of the buildings. We

added the line at the end, description of any buildings or structures that will be left in place at the request of the surface owner.

I believe those are all the changes that were made. I did add a few spots in the statement of reasons just to indicate where changes were made based on advisory board comments. That was it for Chapter 9.

And Chapter 10, we didn't make any changes to that. We did review it for the applicant/operator issue again. And I didn't see any instances where that was a problem in Chapter 10 at all. So that was our version that is down with the governor's office currently.

And I believe that captured everything. But if you are attending the EQC hearing --

MR. SMITH: If you would go back to the very first one that you showed.

MR. HULTS: Sure.

MR. SMITH: It was a reference to a section blank. I'm just wondering if that blank gets filled in.

MR. HULTS: Oh, okay.

MR. SMITH: In paragraph B, about the fourth -- one, two, three, four -- fifth line down, accordance with section blank and in compliance with. Does that blank get filled in?

MR. HULTS: Section 7 is the language I have up here.

CHAIRMAN GAMPETRO: It shows Section 7.

MR. SMITH: Oh, that is a 7.

MR. HULTS: Yeah.

MR. SMITH: Never mind. It's just very faint on this screen. I couldn't see the down part. All right. Thank you.

MR. HULTS: Certainly.

CHAIRMAN GAMPETRO: Anybody else? Anyone else have any issues regarding any of it? We're good.

MR. GREEN: Thanks for all your work on that, by the way.

MR. HULTS: Not a problem.

So then what I had today was a coal rule package. I don't have much in the way of a PowerPoint for this. There isn't a whole lot to show, really. What we have today is what I'm calling a housekeeping package, basically. There's four main things that we're trying to address today. The first one is actually a State initiative and is not related to any concerns that the OSM had.

I believe it was in 2006, the federal rules were changed to allow for variable topsoil depth while they were replacing it during reclamation, with the

caveat that it needed to be related to your revegetation efforts. If your shrubs needed a deeper fill and you wanted to create some more diversity, that's what the hope is by allowing that variable topsoil depth.

The second thing is that we are removing anything that was disapproved by the OSM as it relates to self-bonding. Again, that was in 2006. We had a State initiative where we tried to raise some of the levels on the amounts that a company could self-bond from 25 to 35 percent if they're able to meet more stringent financial tests. The OSM pretty much flat-out denied the whole package. The only thing that we did get out of that was that we were allowed to use different statistical rating organizations other than Moody's or -- I forgot what the other one is offhand. That part was okay. They approved that. But pretty much everything else was disapproved. So our attempt here is just to revert back to what we had in our rules previous to that disapproval.

The third thing is we -- the LQD received a concern letter after reviewing our valid existing rights, noncoal mine waste and individual civil penalties package. And that was identified as 1-BZ. So there were some issues there that they wanted to -- or, needed correction or additional language. The same thing with our ownership and control package. So those are the four

main things. I've got a little more detail in the next couple of slides.

So the variable topsoil depth, that's in 30 CFR 816.22. And we're basically mirroring the federal regulations. Again, that was updated -- the federal rules were updated August 30th of 2006. Again, self-bonding, just provided some references if anybody is interested in those. Pretty clear-cut, the Federal Register. The big problem is that those rules are still on the State books as current rules. Even though the OSM disapproved the rules, they're still out there with the Secretary of State's files. To avoid that confusion, we're just reverting back to what was previously approved.

Then the 1-BZ, we received that letter in August. They detail eighteen issues that they had. In some ways, when I reviewed these, it's like that may be more than what we started with, even, as far as what we were attempting to address. However, in most instances, it was cross references and citations to other sections in the chapters. There were fairly discrete issues that we needed to correct. And most of the issues related to valid existing rights, which was, in my opinion, a fairly convoluted section of the rules.

And then finally, our ownership and control

concern letter. That one we received in February of this year. This one had sixteen concerns. And they were a little more detailed or involved than the valid existing rights issues. I believe that's probably related to the fact that there were three rule-makings at the federal level that were combined into a full ownership and control suite, I guess I would call it, of rules. And as they did it, it was three different periods in time. So a lot of these sections refer back to other sections that are kind of intertwined. But there wasn't an effort made to -- it wasn't one rule-making. So I think there was a little more confusion as to what pieces tied to each other. At least I found that in trying to correct our rules. Ultimately we ended up withdrawing that package from the OSM's consideration at this time.

Part of their concern was that there was too much going on in the Federal Register, and it was looking like, hey, we're submitting packages while we've got eighteen issues now. It's not really fixing anything. Again, I would say that some of the issues are pretty small. In fact, the first page on the concern letter is like thirteen or so just grammatical corrections.

So they're reviewing them with a fine-toothed comb, which I definitely appreciate, because ultimately I'd like to resolve all those issues. So we'll go

through those. And the intent is to submit whatever comes out of this effort along with what was approved at the State level as one bundle, and hopefully we'll only have one Federal Register that says all the rules are great.

Our next steps for this package will be to submit the proposed rules to the OSM informally. I wanted to take it through this level, see if there were any issues that were needed to be dealt with. I'm going to submit it to them informally, and hopefully they'll have some review comments or give me a thumbs-up that says I think this is going to address the problem.

In the past we had just been submitting them formally, and that was their first very thorough review. I think was a little bit confused, maybe, that at the advisory board level, they were looking at, would point those things out. Just wasn't working that way. So we'll be submitting it informally and hopefully get their feedback and their blessing prior to the EQC, and we won't have to go through this process again. We'd certainly save a few steps in the chain here.

Again, like I said, we'll combine the previous rule changes. The valid existing rights, those will stay, other than what's addressed in this package. But again, the ownership and control package will have to be

completely submitted with what's in this package.

And then the final step is hopefully we'll revel in the fact that we're all fully in compliance with the OSM. Some of these issues that I started working on were pointed out in the mid '80s. It's been a long, ongoing process. But, to me, I think this is it and should resolve all of our disapprovals. And that would make a lot of people happy. So that's what today's package is.

And I struggled a little bit with how to present this. I thought the best way would probably be to just go through the side-by-side. The side-by-side contains the federal regulations. And in most instances, I tried to mirror those so that we're not having any differences in interpretation. It also includes a column that relates back either to why that change is being made, and in most instances, it relates back to these concern letters. If we have any questions about why we're making that specific change, we can look at the concern letters. So I thought we'd just kind of go through it and see if we have any issues along the way if that works for everybody.

CHAIRMAN GAMPETRO: Go for it.

MR. HULTS: So, on page 1, this is where we have our variable topsoil depth. Again, it's just a

one-sentence change. And what it says is that soil thickness may be varied -- may also be varied to the extent that such variations help meet the specific revegetation goals identified in the permit. And you can see over on the federal regulations, that's pretty much verbatim. And this is something that certainly the operators will appreciate, I think. It was something that we're doing on our own. It wasn't a disapproval that we're trying to meet. But there was certainly interest in that ability.

The next section, again, this is just removing what was disapproved by the OSM as it relates to self-bonding. It starts on page 1. And so in that first section there, it was -- the 35 percent was the part that OSM had an issue with. You can see that they limit it to 25 percent. And that was the same on the beginning of page 2 there. The second box down, kind of subsection (c), there weren't any changes made there, but I just wanted to indicate that the -- we were mirroring what their program is.

We also had some sections that had no federal equivalent regulation, so those are indicated where necessary. But again, we're just removing them. Subsection (d), we were allowing the use of assets outside of the United States in calculating tangible net

worth. Have to pull that out. And then what it was going to take for us to accept some of those things was detailed in subsection (e). Again, we're just striking all of that out. And that was it for the self-bonding rules.

One interesting thing I learned was that I don't have to submit these to the OSM, necessarily. Because they disapproved it, they feel like it's not part of our program. However, I still have to go through the hoops at the State level. So this would be submitted to them, as well.

CHAIRMAN GAMPETRO: One quick question.

MR. HULTS: Sure.

CHAIRMAN GAMPETRO: My understanding is that we have to be at least as stringent. However, would you need to remove things that are not included in the OSM rules if they did not cause the package to be less stringent?

MR. HULTS: No. There are sections, I would say, throughout our rules where, if there isn't any equivalent federal regulation, there may be something at the state level. We do want to address -- typically we would have to be more stringent then if we're going to do that or addressing the unique situation that isn't addressed in the federal rules. The areas where there

wasn't an equivalent federal regulation is where we kind of stepped out of line, I would say, in some instances here. And that's why there isn't an equivalent federal regulation there.

CHAIRMAN GAMPETRO: Thank you.

MR. HULTS: And then this gets into the next kind of section of this, I guess, is some of the changes that were related to the 1-BZ package, which was mostly, again, the valid existing rights. And I'm not sure the best way to kind of go through this. I don't know if we just kind of want to step through these. But I struggle with that a little bit, not getting into too much detail.

CHAIRMAN GAMPETRO: What's the feeling of the board?

MR. GREEN: I think probably the most expedient way would be the best.

CHAIRMAN GAMPETRO: The most expedient way.

MR. HULTS: All right. So, again, these were related to -- and you have the concern letters. This would be the one that, on top, states April 28th, 2011. And so, in this first instance, they were saying that we didn't include the language that provides an exception. You're still required to deal with all the

rest of the rules and regulations. This is an exception to those rules. So that language is added in the first box there.

Section 2 of the concern letter, this change was that they wanted a reference to the life of a mine map on the bottom there in Section 4. So that's been made and references Chapter 2. Section 3 of the concern letter, we missed the word "coal," and that was an issue. We had removed originally a definition of the surface coal mining operation. And as part of that effort, we reinstalled the definition so we didn't have terms that were undefined. But part of that effort was also calling it a surface coal mining operation, not just a surface mining operation. So that change has been made.

Section 4, this one seemed to me kind of grammatical. But they wanted me to clarify above providing a public comment period and how that request is made. Also, I copied their rules a little bit too verbatim in instances. And where it would say the regulatory authority or something like that, they requested that I put in a more definitive term. In this case it would have to be administrator.

In Section 5 of the concern letter, again, another correction. Part of a sentence that I left off -- and this just explains the -- the applicant is

intending to conduct surface coal mining under a valid existing rights claim. It's just clarifying what these sections are. Also in Section 5, a couple of cross references back to the valid existing rights definition. And that was a kind of common theme throughout some of these concerns. They wanted more specificity as far as cross-referencing or citations.

In Section 6, again, this was -- the part in paragraph A relates, actually, to Section 5, but it's just included. Again, that was a chapter reference that I need to install a citation there in subsection 4.

In subsection 7, I made a decision to leave out part of a sentence. The way I had worded it originally was that the review examines completeness only. The OSM wanted to add the remainder of that sentence, which states, "not the legal or technical adequacy," which further clarifies that. So that language has been added, as well.

In subsection 8 of the concern letter, again, Chapter -- cross reference is added to Chapter 12. Section 9 of the concern letter is mostly chapter references and clarifications. There was one grammatical correction seen there, which was putting in "creating" instead of "creation." Like I said, they obviously reviewed this quite thoroughly.

In subsection 10, the big issue here was that they wanted me to provide some examples that are in the federal rules. You can see on the left-hand side, they have that sentence, "For example." I didn't include those originally, and we're installing that language now.

In subsection 11, this was a discretionary thing. And apparently, even though it's discretionary to us, we need to point out to operators and interested parties that we can grant more time for good cause if necessary. And we also may consider comments that are received after the closing date. Again, it's discretionary with the Land Quality Division. So that language is new there, as I hoped.

Subsection 12, again, chapter references. 13 is the same issue with -- again, they pointed out a general thing where I had responsible agency. It's the Land Quality Division in this instance. And then again making some corrections to the chapter citations.

In subsection 14 of the concern letter, they wanted a reference to the Administrative Procedures Act, which is similar to the cross references in the federal regulation. So that's been put in. In subsection 15, this is regarding the availability of records. They wanted a header in that section. And also, to detail that any correspondence or records associated with

requests would be made available or part of the public record, as well. And again, we included references to the LQD where appropriate.

Subsection 16 was a chapter cross reference. I avoided that originally just because some of our Chapter 1 definitions, it gets kind of ugly if we make any changes to specific definitions because of the way we have it structured in alphabetical order. Each one gets its own subsection heading. So, if we install the definition somewhere in the middle of all those definitions, all of those subsections following have to change. So it's trying to avoid that if we do make those kind of changes. It gets kind of messy going back through all of our other chapters to figure out where those cross references are. In this instance, it's a very specific section, so I don't think that will be as problematic.

In Section 17 they wanted a correction to the definition of "willfully." And it just more fully follows what the federal regulations have in their language. Pretty much verbatim again.

And then finally, in Chapter 18 -- or, subsection 18. I'm sorry. This section actually wasn't in the statement of reasons that I provided. I had some questions regarding whether there was going to be any

issue about expanding the scope of 902 of our statute. I've spoken to Luke about it, and he believes that's just the -- the part that the OSM had the issue with was the failure or refusal. We didn't have that language in there. After speaking to Luke, he feels that that's a subset of those violations and isn't expanding anything.

The reason I had some concerns was I had previous correspondence from quite a while back from our previous attorney general. He was of the opinion that most of these rules, the individual civil penalty rules, were addressed in statute and shouldn't be placed. I had a hard time convincing the OSM that that was the case. They still wanted this language in there. And when we went through that section, this was one we missed. So this has actually been added to the statement of reasons.

And there are a couple spots that I'll go through once we get through the side-by-side that I will show you. But I've added that language there, and that's included in the side-by-side. But it was one on the concern letter that I just missed, honestly, when it came time to put together the full rule package. And I think I had some question marks next to it and missed it. So that language has been added. Again, it's detailed in Number 18 of the concern letter on page 6 of that one.

And that will take us to some of the sections

in the second concern letter. This one was even more detailed, I think. Their first concern was a full section of typographical and grammatical errors. So, throughout, you will see Section 1A or Section 1G. Those are those instances where I've tried to correct the grammatical errors. So, for example, 1A was the regulatory authority, versus DEQ or LQD, whichever is appropriate for the context. So those changes have been made throughout where I could find them.

We'll jump into Number 2 right away. I think the grammatical things kind of speak for themselves. In Section 2, the definition of permit transfer was revised. They have a very simple definition now. It's a change of permittee, basically. And that is all it says. So our current definition was revised to reflect that our proposed language is the mirror of the OSM's language.

In Section 3 of the concern letter, our definition of violation, we didn't include that originally in the first go-round. It's here now, I guess. And this will be in the context of when submitting things to -- as part of your application in Chapter 2 or when we're talking about permit eligibility requirements in Chapter 12. And that's the specific definition that we're talking about here.

And they provide examples of what those are. I

did make a note in the side-by-side, we don't have an equivalent in the federal regulations to the alternative bonding system that they discuss. So I don't have a tandem to the federal regulations. It's just not applicable to our current program.

In subsection 4, I don't believe this is an issue that comes up very often. I don't think we have many sites that are currently being remined. But we needed to provide an exception for the eligibility requirements. And this particular exception, if it relates to an unanticipated condition at a remining site, if they still had these unabated conditions out there, we could still issue the permit for that under that remining instance if it's something that was uncovered and they didn't know about it. Then there's also -- coming up in here, there's a definition that we added to our unanticipated conditions definition. So they do tie together, I hope.

In Section 5, this really wasn't added the first time through. And that's probably my fault. We didn't really have anything that was considered, I guess, a provisionally issued permit. It needs to be in there, after reading it. This would be an instance where there is an unabated violation or condition out there. But the applicant would be in the process of dealing with that.

I guess I would describe it, if it was clearly that there was no attempt to fix the issues that were out there and we were made aware of that and moving forward, we wouldn't, certainly, issue that permit if we weren't getting compliance on other issues. But this allows us to kind of keep the process moving. It would certainly be subject to reviews along the way, but it would allow that person to get the process going, get the permit. And knowing that it's provisionally issued, it would still be subject to any of the conditions that we had placed on that and certainly correction of any unresolved issues out there. So that's detailed in Chapter 12.

We also had to add a section that relates to the -- that provisionally issued permit, another category that they have is called the improvidently issued permit. And that would be an instance where we shouldn't have issued it based on what's found in the applicant violator system or new information has come to light. That provisional permit would be taken away at that point or removed. So that's subsection 3 there.

And like I stated, we did add -- we detail what unanticipated condition is in Chapter 4. Just to tie everything together, I added a subsection (f), which details what an unanticipated condition is at a remining location. And basically it's just related to the prior

mining, and it wasn't addressed in the permit application. That would be something that became uncovered or wasn't discoverable at that time. And it's related to that previous mining that was there.

In subsection 6 of the concern letter, we're dealing with permit transfers. There wasn't a lot of change to this after reviewing. I looked through and I had talked to the person that was reviewing this chapter, and I don't believe he was aware that we had a further section. And I didn't point it out to him. It was kind of a brief conversation. But after reviewing our rules on the transfers, we had a lot that there just wasn't part of our previous package. So he wasn't aware of it. I did make one change. The permit transfers are subject to Section 406 of the statute. Also, I added that we need the address and permit numbers to more clearly mirror the federal regulations.

And that takes us into Section 7 of the concern letter. And this again -- this was a kind of general thing that I felt was included in most of our forms. It was a requirement that we have the applicant swear or affirm under oath and in writing that the information they provide is accurate. Most of our forms contain that statement when they're signing off on our forms. However, it's been added. And also, that we may house an

applicant's information in a central location. For example, kind of related somewhat to our IT effort, if someone applies, they won't necessarily need to detail their business structures. This is information that we have already. Would just be able to update things.

CHAIRMAN GAMPETRO: Just one suggestion.

MR. HULTS: Sure.

CHAIRMAN GAMPETRO: "All applicants must swear or affirm, under oath and in writing, that all information you provide." I would think "that they have provided." Just a language thing.

MR. HULTS: I could change that to the applicant -- "All applicants must swear or affirm, under oath and in writing, that all information the applicant provided." Good catch.

Again, here, these that I've highlighted in red, part of my process is I just keep looking this over and over and over and over again. I did catch a couple more spots that I missed regulatory authority. So that's why it's highlighted in red, is because it's not actually in my statement of reasons. I'll show you where I've added it in the statement of reasons currently, but just wanted to make you aware.

Also, the "pervious" was changed to "previous." For some reason, that actually is a word somewhere and

doesn't come up as a misspelled word. And that's related to the concern letter again. But again, that wasn't in the statement of reasons. It's highlighted in red.

Subsection 8, this is dealing with Chapter 10. I had originally, in subsection (a), thought it made more sense than referring back to Chapter 2 to just spell out what the applicant was providing. However, I had a change of heart. So we've referred back to that section what the applicant is providing. It was expanded a little bit to -- I think had I used the chapter references, I believe it would have went to (b) through (e), I think. And so we added, I believe, as I remember -- yeah, we've added a subsection (b). So those changes were made.

MR. SMITH: I have a question on Section 8.

MR. HULTS: Sure.

MR. SMITH: At the end of paragraph (e), the very last sentence, if a hearing is not requested regarding preliminary findings on permit eligibility and the time for seeking a hearing has passed, or expired, the DEQ will enter our findings into AVS only if that finding is upheld on administrative appeal. That's the first reference I've noticed to an administrative appeal. Can you tell me something about that process?

MR. HULTS: An administrative appeal would typically be an EQC hearing. If the applicant disputed those findings or finding of ownership and control, they would have that ability to first go through the EQC and make those concerns known. Ultimately an administrative appeal could be a court case, too. Generally speaking, when you say administrative, it's more prior to that court case, but it could be a court case. So it would be any of the options that they would have. It may be an informal meeting, as well, if they were able to convince us, I guess, that, wow, this -- or provided us with new information.

MR. SMITH: If there is no request for a hearing, does an administrative appeal always occur?

MR. HULTS: No. No.

MR. SMITH: Then do we really mean it's going to be entered into AVS only if it's upheld on an administrative appeal?

MR. HULTS: That's a good question. Let me look at the federal rule.

CHAIRMAN GAMPETRO: It would seem to be the opposite. If there was an administrative appeal --

MR. SMITH: If it failed or is not upheld on an administrative appeal or unless it was not. I'm not sure how to word it. It feels opposite.

CHAIRMAN GAMPETRO: If a hearing is requested, then it would have to be only if it's upheld on administrative -- but if it's not requested, then --

MR. SMITH: Then it ought to be just entered.

CHAIRMAN GAMPETRO: Yeah.

MR. HULTS: Just bear with me. I'm looking to see if this one relates to some of the other changes.

MS. NUTTBROCK: Mr. Chairman, I think -- I think this is -- you have to read this whole paragraph a couple of times to get the sequence. But I think earlier in the paragraph, it talks about, about midway through the paragraph, if DEQ is persuaded that you are not an owner or a controller, we will serve you with a written notice to that effect. If you don't appeal that within a certain amount of time or request an administrative hearing, then we, DEQ, would stick with that original assumption and enter that information into the AVS.

MR. SMITH: And that makes sense.

MS. NUTTBROCK: I think that's the way I'm reading this. So that last sentence says, if a hearing is not requested, then we're assuming that that party agrees with our determination that they're not an owner or a controller and that we should enter that information

into the AVS and that our written finding is correct.

CHAIRMAN GAMPETRO: The hearing and the administrative appeal are separate things, correct, separate happenings?

MS. NUTTBROCK: Are you referring to the last sentence there?

MR. HULTS: In the federal rules -- that may be my mistake. The way it reads in the federal rules is, if you do not request a hearing and the time for seeking a hearing has expired, we will enter a finding into AVS. And then there should be right here, if you request a hearing -- the second sentence that they have in the federal rules is, if you request a hearing, we'll enter a finding into AVS only if that finding is upheld on administrative appeal. So there is a section missing there, I think.

MR. SMITH: So we need to add the rest of that sentence into it?

MR. HULTS: Yeah. Let me --

MR. SMITH: It makes more sense that way.

MS. NUTTBROCK: So, if they don't request an administrative hearing, am I understanding this correctly, that then that would essentially be their acknowledgement that our written -- our written demonstration is correct?

MR. HULTS: Yeah. Let me just read through that. So entry into AVS is the section we're dealing with with the federal regulation. There's two subsections to that. If you do not request the hearing and the time expires, they'll enter the finding in the AVS. The second one is, if you request a hearing and -- if a hearing is requested, we'll enter a finding only if that's upheld on appeal. So that was the part. Let me just type that in.

So I think that corrects it. If a hearing is not requested regarding the preliminary findings on permit eligibility and the time has expired, the DEQ will enter our findings into AVS. If the hearing is requested, the DEQ will enter that finding into AVS only if that finding is upheld on administrative appeal.

MR. SMITH: Thank you.

MR. HULTS: Thank you. That was a good catch.

MS. ACKERMAN: Before you go on, I have a alteration. It appears in a lot of your changes, you're trying to get rid of the personal pronouns.

MR. HULTS: Uh-huh.

MS. ACKERMAN: And that particular paragraph is full of "we's" and "you's."

MR. HULTS: Yeah. Actually, Luke, I spoke

to him today, and he pointed that out to me. In some instances, I think it makes sense. Like, for example, you have the DEQ -- and I would say certainly like you, that it should be probably "the applicant." So I guess my answer would be I need to check that one a little more closely, since we pointed it out, as well. So I guess the big one there is the "you's" would be "the applicant." And we'll be happy to make that change to that.

MR. ROGACZEWSKI: And then would you be changing the "we's" to "the DEQ"?

MR. HULTS: Yes. That would make sense, as well.

MS. ACKERMAN: And the second-to-the-last line, "will enter our finding into AVS," you might want to change "our," as well.

MR. HULTS: I'm not sure that it's always "applicant," either. The one I have highlighted right there, "After the DEQ issues a written preliminary finding under this section, the DEQ will allow you, the person subject" -- I guess you could just remove "you" and just say "the person subject to." So it would read, "The DEQ will allow the person subject to the preliminary finding" and take out the "you."

CHAIRMAN GAMPETRO: I saw that, but I

didn't want to be that picky.

MR. HULTS: Well, to be honest, probably picky is good at this level. That's some of the things that they've been catching me on and calling concerns.

CHAIRMAN GAMPETRO: You could just say that applicant, the applicant.

MR. HULTS: And it wouldn't always necessarily be an applicant. That's the trouble. It could be somebody related to the parent corporation that is a partial owner. So it wouldn't always necessarily be the applicant. So I think I just have to look at that a little more closely and add -- or, remove the "you's" if appropriate or specify that it is the applicant if that's actually the case and then the DEQs where necessary.

And if I'd be allowed to make those changes following the meeting, I'd be happy to do so, so I'm not holding everybody up trying to pick those up right now.

CHAIRMAN GAMPETRO: I don't see any objection here to that.

MR. SPACKMAN: Mr. Chairman, I have some observation. A lot of it, throughout this thing, it seems like Land Quality Division, LQD, DEQ are interchangeable. Is that something that needs to be consistent?

MR. HULTS: I've thought about that, and I

think that's -- over the years, that's been that way. I, too, do it. I don't have a concrete rule on how to do that. In some instances it is kind of more of a DEQ that's going up through kind of Corra and not always our decision-making process. I don't know without -- I mean, it would be most of our chapters that we would have to do that. And certainly in this instance, if somebody has one identifier, DEQ or LQD, I could probably make that work throughout. I guess it would probably be DEQ. But I'm open to suggestions on that.

MS. NUTTBROCK: So, Craig, in the past, it has been somewhat interchangeable? There hasn't been a strict, hard-and-fast rule?

MR. HULTS: Yeah. I guess my kind of rule of thumb is, if it's something very internal to us in our procedures, I try to use the LQD. But I won't say I follow that hard and fast at all. I use them interchangeably, I guess, to answer your question.

MS. NUTTBROCK: Interchangeably with judgment?

MR. HULTS: Yeah. I guess the way to address that would be to just review these chapters completely in their entirety and just do word searches and pick one that fits most appropriately, I guess, with kind of that rule of thumb that if it's specific to us

internally, or do we just want to say the DEQ as part of the umbrella?

MS. NUTTBROCK: They're our rules, Land Quality's rules. And I think going through and doing word searches on all of Land Quality's rules and trying to make some determination as to what should be maybe isn't the proper course of action at this point in time. I think maybe as we move through each of these chapters, we should pay attention to terminology like "applicant," versus "operator"; "LQD," versus "DEQ." So maybe we can develop a checklist of things that, as we move through chapters, we want to pay attention to and clean up maybe over a longer period of time.

But I think your rule of thumb seems to make sense. If it pertains directly to our set of rules, versus DEQ and its other divisions having their own separate set of rules, that makes sense to me. But if it's something broader that DEQ would otherwise be concerned about, that would be appropriate, as well. So I'm not sure if there's a fix for the whole thing right at this point in time.

MR. HULTS: And I guess some of the reasons that I've kind of made that distinction a little bit, I know some of our documents require Corra's signature, versus your signature. So I know there is a

distinction as far as kind of a more umbrella, versus internally what we're able to do. I do struggle with it. I will admit that. I guess with these chapters, we could certainly do that search. There's five here. At least we'd have those contextually appropriate.

MS. NUTTBROCK: I think, realistically speaking, I'm not sure if it's the -- because going through all of our rules and combing out LQD, versus DEQ, would require a rule change, technically. I'm not sure that that's the intent, nor do I know if its necessary. I think we've been working with the rules as they are with LQD interchangeably used with DEQ, and we all seem to be able to read and interpret that appropriately. But I do agree with, while these chapters are open and under consideration, we may take this opportunity to make any further distinction.

Mr. Chairman, would you agree with that?

CHAIRMAN GAMPETRO: Anybody have a comment? I don't see any disagreement.

MR. HULTS: So, for those chapters, what I will do is kind of look for the DEQs. There's also -- probably in some instances, it will say the Department. So I'll just kind of look through and find a consistent one that we can all agree on. I guess would be the DEQ, the LQD, and I guess that would be it.

MR. SPACKMAN: I would say another thing that we probably should check, and that would be the administrator, versus the Land Quality Division, making sure that's appropriate.

MR. HULTS: To follow up on that, would -- again, that's kind of that distinction between administrator, versus director. Because there's some throughout here also that the director makes that call, versus the administrator. So we would just have to be sure that that's what we wanted or we had the right person there. Well, I will make that review and go through and check what we have.

Moving on, in this section, the part that they wanted us to fix was Section 9 of the concern letter. The only thing they really pointed out was I needed to add the "in connection with surface coal mining and reclamation operations." I took the liberty and added a little bit more of a grammatical change, "the submission of the application," in both of those sections.

In subsection 3, we had the word "indentifying," as opposed to "identifying." That one I missed in the statement of reasons. That's why it's in the red font. Subsection 10, again, this was earlier entering in the -- what will be entered into AVS. The thing we were missing, however, was in subsection (e).

We needed to add within the departure of anybody in a position that was identified earlier in their application. Within 60 days of the departure, addition or change in position, that information needs to be updated.

A small correction in subsection (f) was within the five-year period, as opposed to with the five-year period.

In subsection 11, this is dealing with the challenges to ownership and control. We had to add subsection (b). And that necessitated changing the section numbering. In Section 12 of the concern letter, they wanted us to clarify that the sections below, (d) through (f), only apply to a challenge to ownership and control and are not to be used for a challenge in liability or responsibility under any other sections of the Act or rules and regulations. Also small grammatical correction for the surface coal mining again.

Section 13 of the concern letter, they wanted us to clarify that materials presented in connection with a challenge to a listing would become part of the permit file or investigation file or other public file. Again, I'm just using the federal language. Basically that's of public record unless it was indicating a trade secret or had something to do with archaeology or something like

that, where you're giving locational data. Those will always still be confidential and can be requested to be so.

A small grammatical change again at the bottom in subsection 3 there. As opposed to "our," it's "or." Another grammatical change at the top of that page, at the top of 30. And then this language is the same that was up above.

In subsection 14, I split that out. There's some different paragraphs that they're talking about. In the first case, just wanted us to correct the chapter citation. The second one was the addition of the discussion about provisionally issued permits. The third one relates to the use of all administrative remedies prior to an appeal. And also, for service, I wanted a section header and a bit more of the discussion. And I pulled this from another section, language that -- just wanted clarification on what those procedures were related to service.

Subsection 1(j), a grammatical correction related to owns or controls. And finally, again, related to the exhaustion of administrative remedies. Section 15 as it's here, again, I'll have to go through and correct what was corrected above. That's what makes this a little difficult sometimes to file. But the same issues

again that we were just previously discussing. And subsection 15, we had originally left out portions of one of their rules, and that was where we were discussing -- the parts we left out were that the permit eligibility will be entered into AVS after a hearing, the use of prima facie evidence in those cases, and the final decision. So it's basically that same section, but it addresses an additional concern.

Page 35 is Section 16 of the concern letter. The only addition they wanted there was just a court of competent jurisdiction. I guess, looking over at subsection (b) in the federal rules, that mirrors their language. And then paragraph 2 in that section was the addition, departure of anybody that we added to Chapter 2.

I believe that should be it. But I did want to go through -- that was it as far as the table and the side-by-side. But I did want to go through the statement of reasons just to point out those areas where I had made changes to the statement of reasons as it was presented originally. And I'll just scroll through it quick. It should be highlighted text.

Here was that section where I had missed the "indentifying." It's changed to "identifying." I think the main issue is just that section in Chapter 16. Oh,

and again, in a couple of instances -- here again, this will be something we'll be looking at after we leave here, where we use the Department of Environmental Quality, versus regulatory authority. Also fixed the "previous," versus "pervious." That wasn't in there originally. I did add a couple of places where typographical errors were fixed. Again, that was just me continuing to review this package and adding a little clarity to why the small change above was made. But that's just the statement of reasons that change there.

Same for this. And the reason I added these little bits of statement of reasons was, in anticipation of submitting this to the OSM, I just want to be as clear as possible, where any issues they had, where they're addressed in the rules. So, again, same kind of thing here.

And then that last section here that I was talking about earlier, that was added, as well, and would be there when we forward.

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

Craig, in the package that you distributed, the one that's on the website, at page 27 and 28 -- I couldn't quite tell as you were scrolling down -- have you added a statement of reasons to those changes under subsection (b) there?

MR. HULTS: The subsection (b) that is up there now?

MR. GREEN: That (b)(2), where you have -- you've you clarified that, indeed, permit transfers are subject to the two-week public notice.

MR. HULTS: Oh, yeah. You're right.

MR. GREEN: There's no --

MR. HULTS: That is not in there, as well.

MR. GREEN: There are two changes without a statement of reasons, so if you could just add that.

MR. HULTS: Let me pull it up here. It's Chapter 12. This is not the appropriate locale for that, but I just want to make sure this is the language that you're talking about, Bob.

MR. GREEN: It is.

MR. HULTS: What I will need to do is install it back in our Chapter 12, I guess. Let me see. I might be able to do -- I had most of it there. So it was here in the Chapter 12 discussion. There wasn't a statement of reasons following it.

MR. GREEN: Correct. That's the main thing. If you want to add that, that would be great.

MR. HULTS: So you were looking for just a statement of why this was changed?

MR. GREEN: Yeah, just to complete your

package.

MR. HULTS: Sure. So I will add the appropriate section in the concern letter where that was discussed.

And that was all I had for today as far as rule changes.

CHAIRMAN GAMPETRO: Motion to -- would entertain a motion to approve with the changes that we've indicated.

MR. GREEN: Yes. With all of the changes that we've discussed today, with that caveat, I would move that we accept.

MR. SKEEN: I will second that.

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

(All members vote aye.)

CHAIRMAN GAMPETRO: No opposed?

(No response.)

CHAIRMAN GAMPETRO: Seeing no opposed, it's passed.

Is there anything else to come before this body today?

Nancy?

MS. NUTTBROCK: Mr. Chairman, I would like to express thanks to Mr. Hults for enduring the better

part of a decade or more on some of these issues. In reading through this material, it dates back to 2000, 2001 in some instances.

MR. HULTS: Yeah.

MS. NUTTBROCK: To pay attention to this level of detail and carry that through with comments going back and forth from OSM over the period of a decade is nothing shy of enduring. So I thank you for that attention to detail.

MR. HULTS: Well, thank you.

MS. NUTTBROCK: And congratulations on taking this big step in this rule package.

If I could, just a couple of comments leading up to our next advisory better meeting.

CHAIRMAN GAMPETRO: I would like to second the sentiments about Craig. Great job.

MR. HULTS: Thank you.

MS. NUTTBROCK: Our next advisory board meeting is August 20th. We don't have a particular rule package queued up for that meeting. However, I do anticipate that as we start working toward the November meeting, we're looking toward the November meeting for a presentation to you on our noncoal Chapter 11, which is our in situ uranium chapter. I anticipate that that's going to be fairly involved. We'll have a lot of

industry participation. And well prior to that, we're going to be working through our work group to come to a consensus on any changes that we'll bring forward to you.

But I've got some thoughts on how we might utilize that time in August. And just speaking out loud, I'm not certain how the summer is going to pan out. We could utilize that meeting with you to have a workshop on in situ mining, where we invite some of our industry participants in that work group to give a primer, In Situ 101, in advance of what we'll be looking at for Chapter 11 revisions. That's an idea. Or we could look at adjusting the August date such that if we push it later in the third quarter, we might also utilize that workshop for Chapter 11, depending on the speed at which we work with our work group and actually tackle what is a pretty long chapter.

So I guess just to let you know, we don't have anything specific for our third quarter advisory board meeting yet, but I suspect that it will -- we will have several things that we'd like to visit with you about that. So, if you could be flexible, and I'll be in contact with you all as we move through the summer, and we'll be certain that it's a good use of your time and ours.

CHAIRMAN GAMPETRO: Good. That will be

fine. As the time approaches, maybe we'll better know what we need to do for that meeting.

MS. NUTTBROCK: Statutorily, we're required to have one meeting per quarter. Doesn't say when in that quarter. And I think we can shift if it works -- if we're flexible enough, we can shift to kind of meet the broader scope of what we're trying to do on some other initiatives, as well.

CHAIRMAN GAMPETRO: Is there anything else?

MS. NUTTBROCK: Also, thank you for attending. But I want to continue to have our upon-adjournment time with the management of LQD available for any conversations. We do have one scheduled. We'll be visiting with Bob, Lowell and myself and whoever else wants to join the conversation after lunch. But I want to continue to make folks aware of the availability to visit with district managers and myself and Carol on whatever issue might merit some conversation. We have the room up until 4:00, and then I think we'll be asked to leave probably thereafter.

CHAIRMAN GAMPETRO: Anything anyone on the board needs to bring up?

(No response.)

CHAIRMAN GAMPETRO: Well, I guess we would

entertain a motion to adjourn.

MR. SMITH: Motion to adjourn.

MR. SKEEN: I'll second that.

CHAIRMAN GAMPETRO: Moved and seconded.

All those in favor.

(All members vote aye.)

CHAIRMAN GAMPETRO: Opposed, same sign.

(No response.)

CHAIRMAN GAMPETRO: We are adjourned.

(Hearing proceedings concluded 11:37 a.m., May 21, 2012.)

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 5th day of June, 2012.

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RANDY A. HATLESTAD

Registered Merit Reporter