

WWAB Meeting - SHW

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1 WYOMING WATER AND WASTE ADVISORY BOARD

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4 RE: WYOMING SOLID AND HAZARDOUS WASTE DIVISION:
5 SOLID WASTE RULES AND REGULATIONS CHAPTERS 3 AND 18

6 AND

7 WATER QUALITY DIVISION: RULEMAKING WQRR CHAPTER 3

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9 TRANSCRIPT OF MEETING PROCEEDINGS

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11 Pursuant to notice duly given to all parties
12 in interest, this matter came on for meeting
13 on the 25th day of June, 2019, at the hour of
14 9:10 a.m., at the Oil and Gas Commission, 2211 King
15 Boulevard, Casper, Wyoming before the Wyoming Water
16 and Waste Advisory Board. Ms. Marjorie Bedessem,
17 Chairwoman, presiding, with Mr. Brian Deurloo and
18 Mr. Alan Kirkbride also in attendance.

19 Mr. Luke Esch, Solid and Hazardous Waste
20 Administrator; Mr. Kevin Frederick, Water Quality
21 Administrator; Ms. Jody Weikart, Acting Solid Waste
22 Program Manager; Ms. Lily Barkau, Groundwater Section
23 Manager; and Ms. Gina Thompson, Water Quality Division,
24 were also in attendance.

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1	I N D E X	
2		PAGE
3	SOLID WASTE RULES AND REGULATIONS CHAPTER 18	9
4	SOLID WASTE RULES AND REGULATIONS CHAPTER 3	48
5	PUBLIC COMMENTS:	
6	JAMES OWEN	54
7	JEFF TUCKER	62
8	WATER QUALITY CHAPTER 3	71
9	MOTIONS:	
10	Motion 1	92
11	Ruling	92
12	Motion 2	93
13	Ruling	93
14	Motion 3	99
15	Ruling	100
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

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

2 (Meeting proceedings commenced

3 9:10 a.m., June 25, 2019.)

4 CHAIRMAN BEDESSEM: I hereby call the
5 second quarter of the Water and Waste Advisory Board
6 meeting to order. We have three board members present
7 today. We'll start to introduce.

8 BOARD MEMBER DEURLOO: Briar Deurloo,
9 representing industry.

10 CHAIRMAN BEDESSEM: Marge Bedessem,
11 representing the public at large.

12 BOARD MEMBER KIRKBRIDE: Alan Kirkbride,
13 representing agriculture.

14 CHAIRMAN BEDESSEM: Member Lorie Cahn, who
15 represents the public at large, is absent today. And we
16 have a fifth vacant seat.

17 The first item on the agenda was election of
18 officers, per Wyoming Statute 35-11-113(c). We're going to
19 table that election, given that we only have three out of
20 five board members here today. And hopefully we can get
21 that completed in the third -- at the third quarter Water
22 and Waste Advisory Board meeting.

23 The third item on the agenda is Solid Waste Rules
24 and Regulations Chapters 3 and 8. So I'm going to turn
25 this over to Luke Esch, Administrator of the Solid and

1 Hazardous Waste Division.

2 MR. ESCH: Great. Thank you.

3 Once again, my name is Luke Esch. I'm the
4 administrator of the Wyoming Solid and Hazardous Waste
5 Division of the Wyoming Department of Environmental
6 Quality. Thanks for having us today.

7 With me today is Jody Weikart. She is the acting
8 Solid Waste Program Manager for the Solid and Hazardous
9 Waste Division. And today we're here to present to you
10 Chapter 18 of the Solid Waste Rules and Regulations, as
11 well as modifications to Chapter 3 of the rules.

12 So as a bit of background, coal combustion
13 residuals, or commonly known as coal ash, is created when
14 coal is burned by power plants to produce electricity. And
15 as a result it's one of the largest quantities of
16 industrial waste that varies in the United States.

17 So in Dec -- back in 2008, December of 2008, a
18 large coal ash spill occurred at the Tennessee Valley
19 Authority Power Plant in Kingston, Tennessee, which
20 resulted in a release of coal ash to some neighboring
21 rivers, and it prompted EPA to assess coal ash disposal and
22 management nationwide.

23 So back in 2014, EPA signed the Disposal of Coal
24 Combustion Residuals from Electric Utilities, which
25 established national regulations for the management and

1 disposal of ash and coal combustion residuals from power
2 plants and landfills and service impoundments in the United
3 States.

4 As a little bit of background here, the State of
5 Wyoming has been regulating coal CCR, or coal combustion --
6 or coal ash for several years. We've been doing it in the
7 Solid Waste Program under our Chapter 3, Industrial
8 Landfills. And the water quality program has been
9 regulating surface impoundments through their Chapter, I
10 think, 3 regulations as well. So many of the regulations
11 that are part of this national rule that the feds kicked
12 out in 2014 were already established in Wyoming. So the
13 rules required new CCR units or expansions to existing
14 facility structures to be constructed with protective
15 liners.

16 And for existing service impoundments, the owner
17 needed to make a demonstration that the line -- acceptable
18 liner exists or one -- or needed to commence closure. So
19 all landfills and surface impoundments must implement
20 groundwater monitoring, corrective action requirements, and
21 closure and post-closure care if the impacts exceed local
22 groundwater protection standards.

23 The rule also imposed several timelines and
24 deadlines for several of these closure requirements if
25 certain things were present at the facilities. And the

1 rules, as they were initially promulgated by EPA, were
2 self-implementing. Basically meaning that there was no
3 oversight authority, there was no permitting entity to make
4 sure that all these rules were being followed. They were
5 intended to be self-implementing, and so that if they
6 were -- if there was a violation, that needed to be
7 enforced through basically a citizen suit against the
8 utility directly.

9 There was a lot of comments whenever these rules
10 came into being. State of Wyoming also commented on these.
11 And one of the comments we had was, well, a lot of these
12 requirements are already in place at the state level, so
13 you should basically allow the states to manage them. They
14 disregarded that, but one of the comments that we did
15 submit is why don't you allow a delegated program to be
16 done so that the states can oversee this -- these
17 regulations on behalf of the EPA, similar to we do for the
18 Clean Water Act, for the RCRA, in a similar manner.

19 And I know several other states also commented
20 and made that same comment. So in 2016 the Water
21 Infrastructure Improvement for the Nation Act was signed by
22 the president. And this law amended the RCRA, Subtitle D,
23 which is the solid waste portion of that, to give states
24 the authority to establish CCR programs in response -- for
25 the 2014 CCR rule. So, you know, this basically is the

1 culmination of the process of Wyoming seeking delegated
2 status for the CCR program.

3 As I mentioned before, this -- the two different
4 types of holding facilities -- the landfills and the
5 surface impoundments -- we're going to -- we're proposing
6 to consolidate them under the Solid Waste Program so the
7 facilities won't have to receive permits from different
8 groups. It can be all consolidated within one house of
9 DEQ.

10 And, you know, the Department -- we decided to
11 move forward with developing our own program for a few
12 reasons. One, we wanted to eliminate any potential for
13 duplication at the facility -- at the regulated facilities.
14 If there's federal rules on the books, as well as state
15 rules that govern the same facility, we felt it would be
16 more appropriate that it could be consolidated under one
17 permitting entity, as well as it provides single regulatory
18 authority for oversight.

19 So that's kind of the reasons behind our path
20 forward. What we're proposing to you today is we're
21 proposing to create Chapter 18 of the Solid Waste Rules and
22 Regulations, which incorporates by reference all of the
23 requirements of that Federal Rule by referring to the
24 federal CFR.

25 We're also going to be proposing to modify

1 Chapter 3. As I mentioned before, Chapter 3 is where -- is
2 our industrial landfill regulations, which is where these
3 CCR landfills are -- the requirements for them are at now.
4 We want to make small modification to exclude CCR landfills
5 from that chapter. So it's a very minor modification to
6 allow them to be regulated by Chapter 18.

7 So with that, I'd like it turn it over to Jody
8 for a little bit more detailed explanation of the rules.
9 But after our presentation today, we look forward to
10 hearing your input on this proposed path forward for the
11 State of Wyoming. And at the end, we would look for your
12 recommendation for moving these rules forward to the
13 Environmental Quality Council.

14 BOARD MEMBER KIRKBRIDE: Chairman. Is it
15 going to be -- need federal approval once you get all this
16 done, right?

17 MR. ESCH: Madam Chair. Mr. Kirkbride,
18 yes, it will.

19 So this is the first step toward receiving that
20 federal approval. We'll get -- we need to move this
21 forward. So before they approve the federal program, it
22 needs to be established in the rules. So it will have to
23 go through the EQC. Then we'll submit our package to EPA.
24 They'll have to review it to make sure that it meets all
25 the minimum criteria for their program.

1 I can tell you, we've been in pretty close
2 communication with EPA on this process. We've let them
3 know that we're moving forward with the delegated program.
4 They've been pretty cooperative in providing feedback on
5 what aspects of our rule, if we need to modify something,
6 that would meet the minimum criteria.

7 So, yes, but we're having those communications.
8 And I think those early communications are going to pay off
9 in a more expediently approved package down the road.

10 BOARD MEMBER KIRKBRIDE: Thank you.

11 MS. WEIKART: Madam Chair, Members of the
12 Board, good morning. I'm going to be presenting a detailed
13 overview of our Chapter 18 first. I'll go section by
14 section, kind of give you an overview of the EPA CCR rule.
15 And then I will also chat about and give an overview of the
16 requirements that are currently in our Chapter 3 that we've
17 added to Chapter 18, and also portions of the Water Quality
18 Rules and Regulations that have been added as well.

19 We did receive public comment. So we will, as we
20 go through sections, address those comments as we get to
21 those. I would ask that the Board please look at the top
22 copy of that packet. It has green cross-outs on the front.
23 All of my --

24 BOARD MEMBER DEURLOO: Which packet? The
25 one we were just handed a minute ago?

1 MS. WEIKART: Yes. That's -- we did make
2 some revisions after receiving public comment. And so all
3 of my line references are all related to that version --
4 to that version with the green on the front cover.

5 So to begin, Section 1 is the Authority section.
6 This section gives the statutory authority to promulgate
7 the rules and regulations for this chapter. We did not
8 receive any comments on this section.

9 Section 2 is our Incorporation By Reference
10 section. So this section specifies what portion of the
11 Code of Federal Regulations will be incorporated by
12 reference. That will be 40 Code of Federal Regulations, or
13 CFR, Part 257, Subpart D. Hazardous and Solid Waste
14 Management System: Disposal of Coal Combustion Residuals
15 from Electric Utilities. It will be the version as it
16 originally appeared on April 17, 2015, and as revised on
17 July 30th of 2018. This section also outlines where copies
18 of the EPA CCR rule can be obtained. We received no
19 comments on this section.

20 Section 3 would be our General Provisions. Here
21 on page 18-2, lines 45 through 57, we incorporated by
22 reference the criteria found in 40 CFR Subsection 257.50
23 through 257.53. This essentially tells folks what
24 facilities the EPA CCR rule applies to.

25 And then, additionally, on page 18-2, lines 54

1 through 85, the definitions found in Wyoming Statute
2 35-11-103(a) and (d) from the Wyoming Environmental Quality
3 Act were added, along with the Solid Waste Rules and
4 Regulations Chapter 1, Section 1. And so essentially the
5 way we worded this rule is if terms are not defined in the
6 EPA Federal Rule, that they are as defined in the statute
7 and in Chapter 1, Section 1.

8 We did receive one public comment. All of our
9 public comments came from PacifiCorp. This is Public
10 Comment PacifiCorp Number 2. PacifiCorp recommended that
11 DEQ modify its proposed language to clearly state that
12 operator's compliance with regulations is deemed complete
13 when a professional engineer certification is submitted to
14 the administrator for approval. What this relates to in
15 Chapter 3 is we did do a substitution. The CCR -- sorry.
16 The EPA CCR rule requests that either a PE certification or
17 State approval where the plan has been approved, or the
18 EPA, where the EPA is the regulatory authority, approve
19 different plans, different criteria. We did a substitution
20 so that that would be a PE certification and State approval
21 at this time.

22 At this time DEQ appreciates PacifiCorp's
23 comment, but does not recommend making any changes at this
24 time. The majority of instances where the EPA CCR rule
25 requires this type of certification, those would be

1 included in the initial lifetime permit application.

2 On the remaining instances, which include
3 construction certification, alternative source delineation,
4 those sorts of things, DEQ does believe its within reason
5 to ask for not only a PE certificate conviction but also
6 the opportunity to review and provide comment and then
7 approve for compliance at that time.

8 BOARD MEMBER DEURLOO: Madam Chairman, may
9 I ask a question?

10 CHAIRMAN BEDESSEM: Uh-huh.

11 BOARD MEMBER DEURLOO: So in line 73 of
12 18-2, it says certification from a professional engineer or
13 approval from the state director or EPA approval. So
14 they -- an entity can receive approval for this delegate --
15 sorry, I'm trying to get all the nomenclature correct in my
16 head here -- but receive approval to discharge CCR into a
17 landfill just with certification from a professional
18 engineer?

19 MS. WEIKART: That's how the EPA CCR rule
20 is written. The State is going to -- proposes to
21 substitute that with PE certification and state approval.

22 BOARD MEMBER DEURLOO: And state approval.

23 MS. WEIKART: Yes, sir.

24 BOARD MEMBER DEURLOO: Because here it says
25 "or."

1 MS. WEIKART: That's -- it says,
2 "Certification from a professional engineer or approval
3 from the Participating State Director or approval from EPA
4 where EPA is the permitting authority. When used in the
5 context of 40 CFR, the substitution shall be the
6 certification from a professional --

7 BOARD MEMBER DEURLOO: And approval. I
8 apologize. Yeah. Keep reading, Brian.

9 Thank you.

10 MS. WEIKART: Of course.

11 That is all the comments for Section 3.

12 Section 4 begins on page 18-3, line 90 through
13 227. This outlines the permitting requirements for CCR
14 Landfills and Surface Impoundments.

15 And I would like to mention that this is
16 consistent with the other recently revised Solid Waste
17 Rules and Regulations Chapters 2, 4 and 6.

18 Here it outlines the transition from the current
19 Water Quality permits and the Solid Waste Rules and
20 Regulations Chapter 3 permits. It also indicates that the
21 term will be a lifetime permit through post-closure.
22 Post-closure will be a minimum of 30 years. And it also
23 indicates permit amendments will be required and how permit
24 amendments will be done. It also has a subsection for
25 closure permits. So there is criteria in the EPA CCR rule

1 that would require closure, and prior to a lifetime permit
2 being issued. And so that would be done under a closure
3 permit, which would be for the closure activities and the
4 post-closure time period.

5 We did receive three comments from PacifiCorp on
6 this. And forgive me. I should have mentioned the
7 comments from PacifiCorp are also included in that packet
8 that we handed out to you.

9 And so PacifiCorp Comment Number 3, this is in
10 relation to Subsection 4(b)(i), line 96-101. PacifiCorp
11 recommends that DEQ clarify that existing Chapter 3 CCR
12 landfill permits can be renewed under proposed Chapter 18.

13 DEQ does agree with PacifiCorp and proposes to
14 revise the language of Section 4(b)(i), line number 96
15 through 101. And you'll see in your green copy the
16 cross-out and the additions there. And it will read
17 "Existing CCR landfills that are permitted under Chapter 3
18 that do not have a lifetime permit and intend to continue
19 disposal of CCR after the effective date of this chapter
20 shall submit a permit renewal application under this
21 chapter no later than 12 months prior to the expiration
22 date of the facility's existing permit or 12 months after
23 the effective date of this chapter, whichever comes later,
24 unless an alternate schedule is approved by the
25 Administrator for good cause."

1 PacifiCorp had another comment. It is their
2 Comment Number 4. This is subsection 4(b)(ii), lines 101
3 to 106. PacifiCorp has a total of nine CCR surface
4 impoundments and are concerned the requirement to obtain a
5 permit for all nine surface impoundments within 18 months
6 will not be adequate. PacifiCorp recommends that DEQ
7 require permit submittals within 18 months.

8 The DEQ agrees with PacifiCorp that the
9 requirement to obtain a permit within 18 months may not be
10 enough time. And we believe that 12 months would provide
11 adequate time to submit a permit. So we have chosen to
12 revise the language. This is line 103 to 106. The
13 language now would read "Existing CCR Surface Impoundments
14 that currently have a permit with Water Quality Division
15 shall submit a new permit application under this chapter
16 within 12 months of the enactment date of this rule, unless
17 an alternate schedule is approved by the Administrator for
18 good cause." So that gives us a little bit of flexibility,
19 as well, with those statements.

20 Finally, PacifiCorp had one last comment on this
21 section. It's PacifiCorp Comment 5. Would be subsection
22 C, lines 122 to 124 and 126 to 127. PacifiCorp recommends
23 DEQ should clarify that all CCR unit permits should be
24 issued for the operating life of the facility through a
25 post-closure.

1 DEQ agrees with PacifiCorp and will revise the
2 language of Section 4(c)(i), line number 122 to 124, to
3 read "Permits for new CCR units, or existing CCR surface
4 impoundments seeking a permit under this chapter, will be
5 issued for the life of the facility, through post-closure.

6 Additionally, DEQ will revise the language of
7 Section 4(c)(ii), line number 126 to 127, to read "Renewal
8 permits for CCR landfills will be issued for the operating
9 life of the facility, through post-closure."

10 These were the only comments that DEQ received on
11 Section 4.

12 BOARD MEMBER KIRKBRIDE: Madam Chair. So a
13 basic question. The difference between a surface
14 impoundment and a landfill.

15 MS. WEIKART: Madam Chair. Mr. Kirkbride,
16 the difference is one is stored in water, while the other
17 is stored on dry.

18 BOARD MEMBER KIRKBRIDE: The surface
19 impoundments are stored in water?

20 MS. WEIKART: Yes. Sorry.

21 BOARD MEMBER KIRKBRIDE: It's temporary,
22 essentially, or not so?

23 MS. WEIKART: No. It is not temporary.

24 BOARD MEMBER KIRKBRIDE: Oh. Okay.

25 MR. ESCH: Madam Chair. You can think of

1 the -- Councilman Kirkbride, you can think of the surface
2 impoundment as -- basically it's a slurry of coal ash, and
3 they try to remove as much water as they can to get it down
4 to -- you obviously don't want a lot of water in there, you
5 can't move it around. But, yeah, so they try to get --
6 take as much water as they can, but still keep it somewhat
7 liquid so it's manageable. But, yeah, it's kind of more of
8 a slurry.

9 BOARD MEMBER KIRKBRIDE: But it's an open
10 pit?

11 MR. ESCH: That's correct.

12 BOARD MEMBER KIRKBRIDE: Thank you. Good.

13 BOARD MEMBER DEURLOO: Chair, may I ask a
14 question as well?

15 CHAIRMAN BEDESSEM: Uh-huh.

16 BOARD MEMBER DEURLOO: Okay. So I pushed a
17 lot of coal towards power plants, but I haven't been to the
18 back end of power plants very often. So with the coal ash
19 coming out in a slurry, and then -- can you help me just
20 understand the process a little bit better? It comes out
21 as a slurry, water and coal ash, then is it evaporated
22 through drying? Do they do different drying processes?
23 And then once it's dehydrated -- or it's just coal ash at
24 that point, is it going to like a landfill on-site?
25 There's nine of them in the state, apparently, owned by

1 PacifiCorp. There may be more. But are those on-site?
2 do they go to the Casper landfill? Where do those go
3 afterwards, basically?

4 MS. WEIKART: Madam Chair. Mr. Deurloo,
5 the facilities have surface impoundments and some have
6 landfills on-site.

7 BOARD MEMBER DEURLOO: Okay.

8 MS. WEIKART: So these are -- all these
9 impoundments and landfills are located within the facility
10 boundary. The landfills, the material is stored dry. Some
11 are excavated into the ground and placed there and then
12 taken vertically. Others are placed at ground level and
13 taken vertically. The surface impoundments are the same
14 sort of process. You know, dikes can be built, dams put in
15 place, that sort of thing.

16 Does that answer your question? Luke might be
17 able to --

18 MR. ESCH: There is no hauling off. The
19 surface impoundment is intended to be the final disposal
20 site for that waste. Whenever the active lifespan of that
21 cell is complete, the idea is to evaporate it, to get as
22 much water out of that as we can, and then close the cell.

23 BOARD MEMBER DEURLOO: I see. Okay. Thank
24 you.

25 MS. WEIKART: Section 5 is General Facility

1 Information. This begins on page 18-6, lines 231 to 282.
2 This is the general facility information required for
3 permit applications. And, once again, this is -- this is
4 consistent with other Solid Waste Rules and Regulations
5 chapters. It requires information on the operator, the
6 manager, legal description, facility narrative, surface and
7 mineral ownership, potential to impact surface and
8 groundwater, and geologic, hydrologic, and hydrogeology
9 information.

10 On page 18-7, line 271 to 282, the access
11 agreement was added to the chapter to address 2015 Senate
12 Enrollment Act 61. This is consistent with other
13 previously revised chapter of the Solid Waste Rules and
14 Regulations.

15 On this section we receive three comments from
16 PacifiCorp. This includes Comment Number 6, which is the
17 Section 5 title. PacifiCorp recommends to avoid confusion
18 DEQ change the title of Section 5 from General Facility
19 Information to General Facility Information to be Included
20 in a Permit Application.

21 DEQ appreciates this comment, but does not
22 recommend making any changes at this time.

23 Chapter 18, Section 4(d)(i), line 139 to 142,
24 states that "Permit application shall contain a completed
25 application form, and a written report containing the

1 applicable information from Sections 5 through 14 of this
2 chapter." So DEQ believes making this revision would be
3 repetitive.

4 Additionally, the Section 5 title is consistent
5 with other revised chapters of the Solid Waste Rules and
6 Regulations.

7 PacifiCorp Comment Number 6, Subsection 5(a),
8 lines 231 to 237, PacifiCorp considers the information
9 requirements of Section 5(a) as overly broad for the
10 purpose of CCR compliance, particularly as it relates to
11 reporting resolved issues.

12 DEQ appreciates this comment, but does not
13 recommend making any change at this time. This language is
14 consistent with the recently revised Solid Waste Rules and
15 Regulations Chapters 2 and 4.

16 And the final comment from PacifiCorp on Section
17 5 is Comment Number 7. Subsection 5(h), lines 271 to 282.
18 PacifiCorp requests to include a condition to the access
19 agreement that DEQ representatives will comply with
20 Occupational Safety and Health Administration safety and
21 North American Electric Reliability Corporation Critical
22 Infrastructure Protection Standards.

23 DEQ appreciates this comment, but does not
24 recommend making any changes at this time. The proposed
25 language in Chapter 18 was provided to DEQ by the Attorney

1 General's Office and was recommended to be included in DEQ
2 permits to clarify DEQ's authority to access permitted
3 facilities.

4 As written in the access agreement, DEQ personnel
5 will present credentials and at this time facility
6 personnel are welcome to escort DEQ personnel to the
7 facility to ensure safety and security requirements are
8 adhered to.

9 Section 6, Location Standards. This begins on
10 page 18-7, and includes lines 286 to 298, which is the
11 criteria found in 40 CFR Subsection 257.60 through 257.64.

12 These location standards include placement of
13 coal combustion residuals above the uppermost aquifer,
14 location restrictions for wetlands, fault areas, seismic
15 impact zones, and unstable areas.

16 On page 18-8, line 300-353, additional locations
17 standards for new facilities were added to meet the
18 requirements found in the Wyoming Statute 35-11-502(c), and
19 other Solid Waste Rules and Regulations chapters. These
20 location standards include distance to other surface
21 waters, local zoning ordinance, public park and recreation
22 areas, Wild and Scenic River Act, National Preservation
23 Act, Endangered Species, big game winter range, avalanche
24 area and so on.

25 PacifiCorp received -- did give us a comment on

1 this section. It's their Comment Number 8, Subsection
2 (c)(f)(ii), lines 311 to 313. PacifiCorp recommends DEQ
3 clearly state that notwithstanding the limitations in
4 Sections (c)(f)(ii), the authority of a county commission,
5 municipality, or other political subdivision to regulate
6 CCR disposal is expressly preempted except that a
7 municipality may enact, amend, or enforce an ordinance or
8 other measure that does not effectively prohibit CCR
9 disposal and is not otherwise preempted by state or federal
10 law.

11 DEQ appreciates this comment, but does not
12 recommend making any changes at this time. The language is
13 consistent with the recently revised chapters and the
14 language is current -- it is the current language in
15 Chapter 3.

16 Additionally, DEQ views this as local matter and
17 not a state matter.

18 Section 7 is the Design Criteria. This begins on
19 page 18-9, line 357 to 372, as the criteria found in
20 40 CFR 257.70 through 257.74. These criteria spans the
21 requirements for new CCR landfills and lateral expansions,
22 existing CCR surface impoundments, new CCR surface
23 impoundments and lateral expansion, the structural
24 integrity for existing CCR surface impoundments, the
25 structural integrity for new surface impoundments and

1 lateral expansions.

2 On page 18-9, line 374 to 394, the DEQ added
3 additional design criteria and construction standards to be
4 consistent with other Solid Waste Rules and Regulations.
5 And these standards are also found in the current Chapter 3
6 that includes surveyed corners, buffer zones, availability
7 of cover material, those sorts of items.

8 DEQ received no comments on this section.

9 Section 8 is the operating criteria. This begins
10 on page 18-9, lines 398 through 411, is the criteria found
11 in 40 CFR Subsections 257.80 to 257.84. Here is the
12 requirements for a fugitive dust control plant; the design,
13 construction, operation, maintenance of run-on and run-off
14 systems for landfills; the design, construction, operation,
15 and maintenance for inflow design flood control systems for
16 surface impoundments; and it also has requirements for
17 inspections by qualified person and by PEs.

18 On page 18-10, line 413 through 492, we added
19 additional criteria for operation. And it's to be
20 consistent with other solid waste rules and reg -- rules
21 and regulations chapters. It's also the current
22 regulations in Chapter 3. It has to deal with qualified
23 solid waste managers, access restrictions, waste
24 screenings, site capacity, those sorts of items.

25 PacifiCorp did have a comment on this section.

1 PacifiCorp Comment Number 9, it's for subsection (f)(vii)
2 through (x), lines 456 to 570. DEQ's proposed Chapter 18
3 provides descriptions of operating standards. However,
4 these operating standards are also incorporated by
5 reference. PacifiCorp recommends DEQ revise these criteria
6 to meet that of the EPA CCR rule.

7 DEQ agrees with PacifiCorp's comments and has
8 removed the criteria from Section (a)(f)(vii) through (x),
9 which is all, again, lines 457 to 470, as those criteria
10 are included in the EPA CCR rule.

11 Section 9, Groundwater Monitoring and Corrective
12 Action. Page 18-12 is where the section begins. Lines 496
13 to 497, we added the criteria found in 40 CFR Subsection
14 257.90. This deals with the development of sampling and
15 analysis plans for groundwater, the establishment of
16 background, the requirement for annual groundwater
17 monitoring and corrective action report.

18 And on page 18-12, lines 499 through 515,
19 additional criteria was added for the annual groundwater
20 monitoring report. This is in response to a comment that
21 we will discuss in the recordkeeping section. We added the
22 requirements for facility operations remaining useful
23 capacity and then additional information as required by the
24 administrator. These are the current requirements of
25 annual reports in our Chapter 4.

1 On page 18-13, line 517 through 518, we added the
2 criteria found in 40 CFR 257.91. This sets up the minimum
3 criteria for groundwater monitoring systems.

4 Lines 18-13 -- excuse me, page 18-13, line 520 to
5 524, we added additional groundwater monitoring system
6 criteria to be consistent with other Solid Waste Rules and
7 Regulations chapters. This includes a description of well
8 location, design, construction, development, and also a
9 description of the sampling program to include frequency,
10 test parameters, and methods.

11 On page 18-13, 528 -- lines 528 to 529, we added
12 the criteria found in 40 CFR 257.93. This establishes the
13 evaluation requirements for groundwater monitoring. This
14 includes the measurement of groundwater elevations,
15 statistical methods, the requirement for no field filtering
16 of samples. And it also establishes that statistically
17 significant increases over background be determined within
18 90 days of completing sampling and analysis.

19 On page 18-13, lines 531 through 532. The Water
20 Quality Division, Chapter 8, Table 1, was added to Appendix
21 IV to be consistent with the Water Quality Division's
22 current requirements.

23 On page 18-13, lines 534 to 535, criteria found
24 in 40 CFR 257.94 were incorporated by reference, this
25 establishes the requirements for detection monitoring.

1 It's done on a semiannual basis through active and
2 post-closure.

3 And within 90 days of statistically significant
4 increase over background, the facility may either
5 demonstrate an alternative source of the impacts or begin
6 assessment monitoring.

7 On page 18-13, lines 537 to 538, the criteria
8 found in 40 CFR 257.95 was incorporated by reference. This
9 establishes the assessment monitoring requirements.

10 Not to go into too much detail on the assessment
11 monitoring. 90 days -- within 90 days of triggering the
12 assessment monitoring, and annually thereafter, the
13 facility will sample and analyze for Appendix IV of the
14 appendices incorporated by reference.

15 On a semiannual basis, they will sample for
16 Appendix III and the Appendix IV constituents that were
17 detected. The facility may go back to detection monitoring
18 if for two consecutive events all of Appendix III and
19 Appendix IV constituents are at or below background.

20 This section also establishes groundwater
21 protection standards for the constituents. And if
22 statistically significant levels of an Appendix IV
23 constituent is detected above groundwater protection
24 standards, the facility must characterize the nature and
25 extent of the release and within 90 days initiate

1 assessment of corrective measures along an alternate
2 source.

3 On page 18-13, line 4 -- 540 through 575, we add
4 the constituent of Appendix IV for which no MCL has been
5 established. The Water Quality Division Administrator
6 shall establish groundwater protection standards pursuant
7 to Water Quality Rules and Regulations Chapter 18.01.

8 Page 18-14, line 576 to 577, added criteria found
9 in 40 CFR 257.96. This is the assessment of corrective
10 measures.

11 On page 18-14, line 579 to 580, we added the
12 criteria found in 40 CFR 257.97. This is the section that
13 sets the criteria for the this selection of remedy. It
14 establishes the criteria of how to select a remedy.

15 Page 18-14, lines 576 to 599, we added additional
16 criteria to be considered for the selection of a remedy.
17 It includes current and future uses, withdrawals rates of
18 users, hydrologic characteristics of the facility,
19 groundwater removal and costs, and the cost and
20 availability of alternate water supplies.

21 On page 18-15, lines 601 to 602, we added the
22 criteria in 40 CFR 257.98. This is the implementation of a
23 corrective action program. DEQ received three comments
24 from PacifiCorp on this section.

25 At this time, we would like to invite Kevin

1 Frederick, our Water Quality Division Administrator, and
 2 Lily Barkau, our Water Quality Division's Groundwater
 3 Section Manager, to discuss PacifiCorp Comment 10, which
 4 would be Section 9(d)(i), beginning on line 531.

5 MR. FREDERICK: Good morning, Madam Chair.
 6 Kevin Frederick, Water Quality Division Administrator. And
 7 with me is Lily Barkau. Lily is our groundwater section
 8 manager in the Water Quality Division. She oversees the
 9 Underground Injection Control Program, as well as
 10 corrective action and cleanup, and formerly used defense
 11 sites, such as the missile sites in southeast Wyoming and
 12 some of the other formerly used defense sites, multiple
 13 legacy groundwater contamination sites that existed prior
 14 to Solid Waste obtaining primacy for the RCRA, Subtitle C,
 15 Hazardous Waste Rules and Regulations dealing with
 16 hazardous waste facilities like refineries and so forth.

17 So we have numerous other nonhazardous waste
 18 corrective action sites that have been under Water Quality
 19 Division oversight for many, many years until the inception
 20 of the voluntary remediation program. And at that time,
 21 these types of facilities that had spills and releases, et
 22 cetera, were then essentially migrated into the voluntary
 23 cleanup program. In the event that the -- that they did
 24 not wish to proceed voluntarily, then we would proceed with
 25 cleanup water, an administrative order on consent or

1 administrative order from the Department to compel cleanup.

2 In addition, Lily oversees the statewide ambient
3 groundwater monitoring program, which is essentially a --
4 an assessment of groundwater quality conditions in what we
5 consider to be high priority groundwater areas. These are
6 areas where groundwater is being used as a drinking water
7 source. And we're sensitive to contamination or releases
8 from the surface, and we're also threatened by potential
9 contaminant sources that may affect groundwater quality.

10 So with respect to the CCR surface impoundments,
11 those have been overseen by Water Quality Division and
12 Lily's shop for many, many years. We've worked with
13 PacifiCorp and others to develop and implement groundwater
14 monitoring programs around these surface impoundments, to
15 implement corrective measures when they're needed, and to
16 proceed with closure of some of the surface impoundments.

17 And most recently, one at the Naughton Power
18 Plant, I believe, that was essentially permitted for
19 closure in context of the federal guidelines that do meet
20 our requirements for closure, et cetera. So we've been
21 involved with the surface impoundment side of things for
22 many, many years. They're essentially along the same type
23 of corrective action path, if necessary, that's spelled out
24 in these rules and regulations. The rules and regulations
25 that the feds have developed, that Solid and

1 Hazardous Waste wants to adopt, they're essentially
2 consistent with the pathway that DEQ would take in
3 responding to a release or a detection, et cetera.

4 So there's a lot of similarities there. The
5 federal rules essentially just kind of incorporate those
6 into a more clear, concise timeline for taking responses
7 and meeting design criteria, things like that.

8 So with that, we did have some comments on -- I
9 should say some responses to comments that we received from
10 PacifiCorp on the groundwater monitoring requirements. And
11 Lily will review those with you, and what we think is an
12 acceptable middle ground to help address our concerns.

13 MS. BARKOU: Madam Chair, Board Members,
14 the comment that we received was in connection to Section
15 9(d)(i), where PacifiCorp recommended that Wyoming develop
16 new tables in Chapter 18, Section 9, which clearly
17 identified the appropriate Appendix III and Appendix IV
18 constituents as they currently exist in EPA CCR rule.

19 This is just a summary of what the overall
20 comment was. The concern was that the CCR rule had already
21 evaluated the appropriate constituents to be part of
22 Appendix III, Detection Monitoring, or Appendix IV,
23 Assessment Monitoring Programs.

24 The 2015 CCR rule preamble did evaluate chemical
25 constituents primarily associated with leaching potential

1 through the toxicity characteristic leaching procedure,
2 also known as TCLP. These constituents that carried over
3 into Appendix III and IV of the federal CCR tables, they
4 don't account for Wyoming Water Quality Rules and
5 Regulations Chapter 8, Suitability Standards. Therefore,
6 incorporation of the Water Quality Chapter 8, Table 1
7 constituents into the assessment monitoring are valid and
8 incorporation is applicable.

9 This will assist in the appropriate evaluations
10 of restoring the aquifer to its class of use as required in
11 our Water Quality Rules and Regulations Chapter 8.
12 However, in review and consideration of PacifiCorp's
13 comment, DEQ is proposing a modification in order to
14 provide clarification on the use of Water Quality Rules and
15 Regulations Chapter 8, Table 1, within the assessment
16 monitoring program. The following modification of Section
17 9(f)(i) -- (ii), Part 3 is proposed.

18 So for Chapter 8, Table 1 of Water Quality Rules
19 and Regulations, constituents, as established by the
20 Administrator, and for which there is a class of use
21 standard based upon the groundwater classification.

22 CHAIRMAN BEDESSEM: What line is this?

23 Excuse me.

24 MR. FREDERICK: Madam Chair, it's our line
25 565.

1 BOARD MEMBER DEURLOO: It's 406 on the --
2 that one.

3 CHAIRMAN BEDESSEM: Okay. Thank you.

4 MS. BARKOU: I apologize. "Until such time
5 as a groundwater classification has been established by the
6 administrator, all constituents for Chapter 8, Table 1 of
7 Water Quality Rules and Regulations shall be analyzed. A
8 reduced list may be requested provided that water quality
9 samples are conducted from wells in the unaffected portion
10 of the aquifer. A plan for monitoring well placement and
11 sample frequency to provide a groundwater classification
12 shall be submitted to the Administrator for approval."

13 In addition, to -- for the Appendix IV, we wanted
14 to add a footnote to that particular table, where we added
15 the line Water Quality -- this is page 18-IV-1. To the
16 footnote to Water Quality Rules and Regulations, Chapter 8,
17 Table 1. Footnote 2, "The full list identified in Table 1
18 of Chapter 8 shall be analyzed until groundwater
19 classification has been made identifying specific
20 constituents associated with the particular class of use of
21 the aquifer as prescribed in Section 9(f)(ii)(3).

22 And that's --

23 BOARD MEMBER DEURLOO: Chair, may I ask a
24 question before we move on?

25 CHAIRMAN BEDESSEM: Uh-huh.

1 BOARD MEMBER DEURLOO: So these mine
2 impoundments currently being monitored, do we have
3 groundwater wells around them currently?

4 MS. BARKOU: Yeah, we do.

5 BOARD MEMBER DEURLOO: Yeah, figured for
6 years. So what they do is go out there and drill these
7 monitoring wells to first groundwater or the second water
8 table, whatever, pull up a water sample, figure out the
9 class of use, and right there is your baseline, correct,
10 once you determine the class of use of that groundwater?

11 MS. BARKOU: I guess I'm -- so the previous
12 monitoring wells that are established around these
13 impoundments are associated with Water Quality Chapter 3
14 permits that are provided through our wastewater program,
15 the monitoring requirements incorporate constituents that
16 do include our Chapter 8, along with other constituents.

17 They are -- they can be used for water -- the
18 suitability classification, but they are more there for
19 detection monitoring and assessment monitoring. If we were
20 to go to groundwater suitability evaluation, new wells
21 would have to be constructed within the unaffected portions
22 of the aquifer to establish that more accurate baseline or
23 background sampling approach sample for the Table 1,
24 Chapter 8 constituents, and then make a groundwater
25 classification from that.

1 BOARD MEMBER DEURLOO: A follow-up
2 question, Madam Chair.

3 So the classification of use of the water quality
4 around -- say we've got 10 wells around an impoundment
5 right there, and we want to determine which class of use,
6 is it drinking water, agricultural, whatever they are. You
7 don't actually just pull the water sample from the well
8 that PacifiCorp or their contractor drilled. Can't you
9 just determine the class of use from the well that they
10 just drilled?

11 MS. BARKOU: If it's unimpacted.

12 BOARD MEMBER DEURLOO: Oh.

13 MS. BARKOU: We wouldn't know if there's
14 the impact from the impoundment or not.

15 BOARD MEMBER DEURLOO: Gotcha.

16 MS. BARKAU: It would just depend on the
17 constituents that we're looking at and what the sample
18 results show. So it's recommended to actually take samples
19 from wells that are not immediately adjacent. There's
20 other ways of establishing groundwater classification, such
21 as the use of -- we do it by -- classification by use or
22 classification by quality, are there any domestic wells,
23 irrigation wells, or agricultural wells within a one-mile
24 radius.

25 BOARD MEMBER DEURLOO: I see.

1 MS. BARKAU: And that would establish the
2 class of use. If they -- if there were no wells in the
3 area, then we would need to look at the quality, and,
4 therefore, using more of a -- unaffected portions, not
5 nearly -- not as adjacent. Possibly some upgradient wells
6 could be evaluated around the impoundment, but it is
7 recommended to use more of a background system.

8 BOARD MEMBER DEURLOO: Okay. Thank you.
9 Thank you.

10 MS. WEIKART: Thank you.

11 I had two more comments on this section. Comment
12 Number 11, this is lines 573 to 575. PacifiCorp recommends
13 DEQ correct the errant references to the EPA CCR rule.

14 DEQ agrees with PacifiCorp's comment and will
15 revise lines 573 to 575 to remove those references to the
16 federal CCR rule.

17 PacifiCorp Comment Number 12, line 597 to 599.
18 PacifiCorp submitted a comment of support for the proposed
19 inclusion of cost consideration during the selection of
20 remedy, and we, of course, appreciate their comment and
21 support.

22 Section 10 is Closure and Post-Closure Care.
23 This begins on page 18-15, line 606 through 619, added the
24 criteria found in 40 CFR 257.100 to 257.104. These
25 criteria include the closure and post-closure care for

1 inactive CCR surface impoundments, the closure or retrofit
2 of CCR units, alternative schedule for closure, or retrofit
3 of unlined CCR surface impoundments, and post-closure care
4 set at a minimum of 30 years.

5 We receive no comments on this section.

6 Section 11 is the recordkeeping notification and
7 posting of information to the Internet. On page 18-15,
8 lines 624 through 631, we added a criteria found in 40 CFR
9 Subsection 257.105 through 257.107. This includes the
10 recordkeeping requirements, notification requirements, and
11 the publishing of a publicly accessible website.

12 DEQ received two comments from PacifiCorp on this
13 section. PacifiCorp Comment Number 13, Subsection C, line
14 630 to 631, PacifiCorp recommends the removal of the
15 requirement for a publicly accessible Internet site.

16 The EPA CCR rule was developed as a self-
17 implementing rule, thus operators of CCR units are not
18 required to submit permit applications to an approving
19 agency.

20 DEQ appreciates this comment, but does not
21 recommend making any changes at this time. After
22 conversations with EPA Region 8, they indicated to DEQ that
23 the elimination of the publicly accessible website would
24 jeopardize DEQ's application for primacy.

25 PacifiCorp -- the final comment, PacifiCorp

1 Comment Number 14, relates to Subsection 11(d), line 633 to
2 651. PacifiCorp recommends the information required by
3 annual reports be included in the EPA CCR required annual
4 groundwater monitoring and corrective action report.

5 And as I spoke earlier, we have moved those
6 requirements to the annual groundwater and corrective
7 action report.

8 Section 12 is the Transfer, Treatment, and
9 Storage Facility Standards. It's page 18-16, line 655 to
10 656. We added a reference to the requirements of Chapter 6
11 of the Solid Waste Rules and Regulations. This is
12 consistent with other Solid Waste Rules and Regulations
13 chapters.

14 We received no comments on this section.

15 Section 13, Special Waste Standards. This is
16 also page 18-16, lines 660 to 661. We added a reference to
17 complying with standards of Chapter 8. This is consistent
18 with other Solid Waste Rules and Regulations chapters.

19 We did receive one comment from PacifiCorp. It
20 is PacifiCorp Comment 15. PacifiCorp recommends clarifying
21 the language of Section 13 of the special lease standards.

22 We appreciate this comment, but do not recommend
23 making any changes at this time. The proposed language of
24 Section 13 is consistent with the previously revised
25 chapters of 2, 4 and 6.

1 Section 14, the final section, is the Supporting
2 Documentation and Appendices. This begins on page 18-16,
3 lines 665 through 733. We added additional requirements
4 for supporting documentations to be consistent with other
5 Solid Waste Rules and Regulations. Some examples, this
6 includes topographic maps, general facility plots, which
7 has excavation plans, surface water structure access
8 points. This is current with the current Chapter 3.

9 And we receive no comments on this section.

10 And that finishes the review of Chapter 18.

11 Madam Chair, Members of the Board, would you like
12 to move to Chapter 3?

13 BOARD MEMBER KIRKBRIDE: Madam Chairman.

14 CHAIRMAN BEDESSEM: Uh-huh.

15 BOARD MEMBER KIRKBRIDE: I might have
16 missed it, but I was wondering about when a company has a
17 request for a variance or a -- what -- where's that come
18 in? And then what do you do? What's the price? What all
19 happens?

20 MS. WEIKART: Madam Chair. Mr. Kirkbride,
21 the procedure for a variance, I believe, is included in the
22 statute under the Location Standards. It would be 502(c);
23 is that correct?

24 MR. ESCH: It is the Location Standards,
25 yes.

1 BOARD MEMBER KIRKBRIDE: And how often
2 do -- does that happen?

3 MR. ESCH: Madam Chair. Councilman
4 Kirkbride, not very often. We've had, with regard to
5 solid waste facilities in the past, probably I think 5 to
6 10 years we've had two that have went through the process
7 and received a variance for -- set for landfills. It's a
8 very thorough process. They have to make demonstrations on
9 alternate site evaluations, detailed financial evaluations
10 of why an alternate site is not suitable. So it's a pretty
11 thorough process. And a lot of times there's -- and
12 there's no guarantee that they would get it at the end. So
13 it's a fairly rare process to go through.

14 BOARD MEMBER KIRKBRIDE: They'd have to get
15 it from the DEQ, but then also from the EPA, right?

16 MR. ESCH: Madam Chair. No, the variance
17 process would solely be with DEQ.

18 BOARD MEMBER KIRKBRIDE: Okay.

19 CHAIRMAN BEDESSEM: I'd like to ask some
20 questions about, I guess, applicability. And I guess some
21 information about the existing facilities. You know,
22 when -- the landfills used to be -- and currently are, the
23 CCR landfills -- were regulated under the industrial
24 landfill permitting system. Are all the landfills that are
25 currently permitted with CCR waste a hundred percent CCR

1 waste, or do they have -- are they taking industrial waste
2 from -- other types of waste from that facility, which
3 could certainly be allowable under, you know, an industrial
4 waste landfill permit?

5 MR. ESCH: Madam Chair, I don't have the
6 exact numbers for you, but we do have some industrial
7 landfills that are accepting additional waste besides CCR.
8 It's waste from the facilities themselves, but I think it's
9 not hazardous, but do you have any more information?

10 MS. WEIKART: I know we have one facility
11 that does accept, I believe, petroleum-contaminated soil,
12 but it's from their facility. It's not from an outside
13 source.

14 CHAIRMAN BEDESSEM: Because my recollection
15 was in years past that it made sense, if they were going to
16 have a landfill to put CCR, they might as well put the rest
17 of their junk in there. It was cost effective, and a lot
18 of the ash materials, you know, kind of seized up as kind
19 of some pozzolanic characteristics. But what I don't
20 understand, looking at this ruling -- maybe I'm missing
21 this -- is we have a chapter that says, you know, for
22 disposal of CCR waste. What happens with a facility where
23 you have Industrial waste from that facility and CCR waste?
24 How -- what do they apply under?

25 MR. ESCH: Madam Chair -- and Jody can help

1 me out with this -- I believe it was -- it's Section 12 or
2 13 in our proposed rule talks about special waste.

3 MS. WEIKART: That's correct.

4 MR. ESCH: If a facility wishes to continue
5 doing -- disposing of waste generated at the facility -- in
6 their CCR facility, I believe that provision allows them to
7 continue to do so.

8 CHAIRMAN BEDESSEM: I thought special waste
9 had a very specific definition. There's categories of
10 special wastes, and that it wouldn't include everything
11 that we might be talking about. Like special waste, "we're
12 special." So I guess I'm concerned, and I don't know if
13 that's something we need to look at.

14 So you're saying a facility that was -- you know,
15 majority of CCR wastes, could accept other materials, but
16 it would be under that special waste category. I'm just
17 concerned that special waste category might be pretty
18 specific.

19 MR. ESCH: Madam Chair, I might have to
20 defer.

21 Jody, do you know or should we look into it?

22 MS. WEIKART: Madam Chair, the special
23 waste is very specific as to what wastes are classified
24 under there. At this time I do not think that we would
25 prevent a facility from disposing of industrial waste in a

1 CCR-permitted facility. While we were drafting the rule,
2 that was a discussion that we had. And I don't think that
3 we see anything that would stop folks from disposing of
4 industrial waste in one of the CCR units. And I believe we
5 would do it under Chapter 18. And during the review, we
6 would look to make sure that the requirements that are
7 found in Chapter 3 are adhered to in 18.

8 CHAIRMAN BEDESSEM: Okay. So I guess I'm
9 concerned, from the aspect of an applicant, whether we can
10 have some clarification of language so that, you know --
11 because now a lot of our rules, for the emphasis of trying
12 to be concise, we don't have those big paragraphs in the
13 front that says why do you have to follow this rule. You
14 know, most of that language, as far as applicability, has
15 kind of been deleted from all the rules, just in general,
16 just kind of to make them shorter.

17 And so if an applicant was looking through the
18 rule package and trying to figure out what kind of permit
19 they needed, it would be beneficial if it was clarified in
20 the rule that if you had a facility that took both
21 industrial wastes and CCR wastes, that they would be
22 permitted under the CCR chapter. And then to make sure
23 that CCR chapter wasn't missing anything. It doesn't look
24 like it is, but I would feel more comfortable with some
25 clarification that way, because we've got two different

1 permitting chapters and potential facilities that would
2 have both, so...

3 MS. WEIKART: Madam Chair, I will say that
4 on the landfill side, we did take the federal -- or the EPA
5 CCR rule and compare it to our current Chapter 3 and added
6 any of the additional requirements found in Chapter 3 that
7 are not in the current EPA CCR rule and added those to
8 Chapter 18. So the rules are quite similar.

9 CHAIRMAN BEDESSEM: Comparable. Okay.

10 MS. WEIKART: And especially when you look
11 at the groundwater monitoring and the corrective action
12 side, the process is very similar. The timelines are
13 slightly different.

14 CHAIRMAN BEDESSEM: So the timelines are
15 different, but also there's -- can you go over again and
16 summarize for all of us what the main difference is between
17 existing industrial rules and the CCR rules.

18 MS. WEIKART: Sure.

19 CHAIRMAN BEDESSEM: Can you do that?

20 MS. WEIKART: With regards to groundwater
21 specifically or overall?

22 CHAIRMAN BEDESSEM: Just overall.

23 MS. WEIKART: Sure. So specifically with
24 the landfills, the main difference would be the requirement
25 of the liner. We take collection system as a removal

1 system. That's the big ticket item that is different.
2 There were situations where liners would be required by
3 Chapter 3, but it's at the discretion of the administrator.
4 So the majority of Chapter 3s are not lined. So that's the
5 largest difference on that side.

6 The groundwater monitoring is very similar. You
7 move from detection to assessment if you have statistically
8 significant increase over background. And then you proceed
9 to your alternative source delineation, your assessment of
10 corrective measures, your selection of a remedy, kind of
11 the implementation of that remedy, which is very similar to
12 how we have Chapter 3 organized.

13 CHAIRMAN BEDESSEM: So one more question.
14 Is that if -- there's a different set of constituents under
15 assessment monitoring for facilities that are taking
16 industrial wastes versus CCR waste.

17 MS. WEIKART: That is correct.

18 CHAIRMAN BEDESSEM: And so if you were to
19 permit a facility that takes both industrial waste and CCR
20 wastes, do you have the ability to bring in those
21 additional components that might be related to the
22 industrial, which would be likely different than your
23 Chapter 8 list plus the --

24 MR. FREDERICK: Madam Chair, good point.
25 And I appreciate you bringing up the situation where you

1 may actually have commingling of waste in a CCR permitted
2 facility. And I -- just in quickly scanning the rule here,
3 I don't know that the administrator has the ability to
4 essentially incorporate any additional analytes than those
5 identified in Appendix IV and Appendix III. So perhaps
6 that flexibility is needed as the example that was given,
7 if you're commingling petroleum contaminated soils as an
8 industrial waste in a CCR facility. In my opinion, it
9 would only make sense where you would want to look for some
10 additional petroleum-related constituents in the monitoring
11 program.

12 CHAIRMAN BEDESSEM: So I guess I'm -- I
13 wasn't sure that we had the ability, the way it's written
14 currently.

15 MS. WEIKART: Madam Chair, we do not have
16 that ability the way it's written currently.

17 CHAIRMAN BEDESSEM: So, anyway, my
18 questions are just based on -- with the thought in mind
19 that you're going to get an application that's out of the
20 box. We have these categories, CCR and Industrial, and
21 there's going to be something out of the box, and -- can
22 you address it with this combination, and can we clarify
23 and make sure we have enough flexibility in the rules so
24 that, you know, you can pick, you know, the CCR rule and
25 make sure that you're covered for everything? Because it

1 doesn't necessarily make sense for a facility that might
2 want to do both to have to do separate facilities because
3 the rules aren't, you know, cross-referenced enough or --
4 so to speak.

5 So, anyway, thank you for answering those
6 questions.

7 BOARD MEMBER DEURLOO: I have a couple more
8 questions, if you don't mind, Madam Chair --

9 CHAIRMAN BEDESSEM: Uh-huh.

10 BOARD MEMBER DEURLOO: -- around the
11 commingling of waste streams, which I think is -- would be
12 good to make allowances for that, if you guys deemed
13 necessary. But when thinking about that as -- if you do
14 mix some sort of -- whatever that waste stream looks like,
15 how does it interact with the CCR waste? Is it an acid?
16 Is it a base? Is it going to affect the liner system
17 ultimately, because when you mix different things together,
18 is it going to go through the stream and punch a hole in
19 the liner is something that I think would be -- but also I
20 think it would be a cost-effective measure for the operator
21 if they could commingle that.

22 I do -- one question, if someone could answer me
23 this. Are there commercially viable recyclable products of
24 CCR? I mean, is there something to divert from the
25 landfill? Do we use it for concrete or linoleum or

1 whatever? Does a lot of it get diverted into different
2 products?

3 MR. ESCH: Madam Chair. Councilman
4 Deurloo, the quantity of waste generated versus what can be
5 recycled into reusable products is pretty small. We have
6 done beneficial uses coal ash in the past for, as you
7 mentioned, cement. There's been a request for road base.
8 I think some people use it in grouting materials as well.
9 The requests are fairly rare, though. So I do not think
10 there's a huge demand out there for the material as it is
11 right now.

12 BOARD MEMBER DEURLOO: Hmm. But it's there
13 if we want it later, right? Okay.

14 MR. ESCH: Correct.

15 BOARD MEMBER DEURLOO: Okay. Thank you.

16 That's all I had, Madam Chair.

17 CHAIRMAN BEDESSEM: I have, you know, just
18 some minor comments, but a lot of them are small where I
19 can potentially give those to you later that have to --
20 have to deal with, you know, grammar items, not big-picture
21 items. So I was going to do big-picture right now, and we
22 can do Chapter 3 and then have public comment and then kind
23 of come back. Because my impression -- and please correct
24 me if I'm wrong -- that both the solid waste rules and the
25 water quality rules, except for the one on carbon

1 sequestration, are pretty much a package, because all three
2 of those need to kind of go forward together to address
3 making sure all the loose ends are tied up to address
4 incorporating the CCR, correct?

5 MR. FREDERICK: Madam Chair, that's
6 correct.

7 CHAIRMAN BEDESSEM: Okay. Thank you.

8 So let's kind of move -- if we're okay with that,
9 move to 3 and then we'll take some public comment.

10 Thank you very much.

11 MS. WEIKART: Chapter 3, we have a total of
12 five revisions to 3. This will be in your binder. We did
13 not make any revisions after receiving public comment. The
14 first revision would be on page 3-20.

15 BOARD MEMBER DEURLOO: You must have --

16 CHAIRMAN BEDESSEM: It's the third tab.

17 BOARD MEMBER DEURLOO: This slash --

18 MS. WEIKART: I would recommend looking at
19 the strike and underline.

20 CHAIRMAN BEDESSEM: Yes. It's the third
21 tab.

22 MS. WEIKART: Third tab.

23 BOARD MEMBER DEURLOO: Thank you.

24 Which page?

25 MS. WEIKART: 3-20, line 1055. And this is

1 under Section 4, Design and Construction Standards. We
2 deleted the reference to coal combustion and by products in
3 Section 4 -- or in -- yeah, Section 4(j)(iv).

4 On page 3-21, line 1098, we deleted the
5 requirements related to coal ash generated at a coal-fired
6 power plant.

7 In Section 5, page 3-37 [sic], line number 1351,
8 we deleted the requirement -- the -- sorry, deleted the
9 routine cover requirement for fly ash and bottom ash
10 disposal facilities.

11 BOARD MEMBER DEURLOO: What page?

12 MS. WEIKART: I'm sorry. 3-37.

13 BOARD MEMBER DEURLOO: Okay. I don't see
14 an update on that. 3-37?

15 CHAIRMAN BEDESSEM: No.

16 BOARD MEMBER DEURLOO: No.

17 MS. WEIKART: I'm sorry.

18 CHAIRMAN BEDESSEM: 3-30.

19 BOARD MEMBER DEURLOO: 3-30 is the next
20 one.

21 MS. WEIKART: Yes. Sorry. 3-30.

22 BOARD MEMBER DEURLOO: Okay.

23 MS. WEIKART: Line 512. We deleted the
24 reference to ash disposal facilities there.

25 On page 3-39, we deleted the requirement related

1 to the Wyoming State Engineer's Office permitting of
2 monitoring wells. During the State Engineer's Office
3 review of these rules, they informed us that they no longer
4 permit monitoring wells, and so we thought it was suitable
5 to remove that requirement from Chapter 3 at this time.

6 BOARD MEMBER DEURLOO: Uh-huh.

7 MS. WEIKART: The Department did receive
8 one public comment from PacifiCorp. PacifiCorp Comment 1.
9 PacifiCorp submitted a comment in support of the proposed
10 Chapter 3 rule package. We, of course, appreciate
11 PacifiCorp's support.

12 That is all of the changes in the Chapter 3
13 industrial landfill regulations.

14 CHAIRMAN BEDESSEM: I wanted to thank you
15 for also including the Statements of Principal Reasons for
16 adoption in your packet. It hasn't always been in the
17 past, so appreciate you doing that, because it helps when
18 doing review to kind of go back through your Statement of
19 Principal Reasons to make sure you catch everything that
20 you said was changed in here and seeing where all those
21 were. So appreciate that.

22 In your -- and I know we're not normally
23 commenting on the SOPR. But in the second paragraph of the
24 SOPR, you should probably take out the "shall prescribed"
25 in the second paragraph. "Shall prescribe." Because you

1 have "shalls" in the next two.

2 MS. WEIKART: Oh, thank you.

3 CHAIRMAN BEDESSEM: Yeah, so just take out
4 "shall prescribe." Otherwise, it looks awesome.

5 MS. WEIKART: Thank you, Madam Chair.

6 CHAIRMAN BEDESSEM: Does anybody have any
7 specific questions on Chapter 3 on the board?

8 BOARD MEMBER DEURLOO: I don't, Madam
9 Chair.

10 BOARD MEMBER KIRKBRIDE: No.

11 CHAIRMAN BEDESSEM: I had one other little
12 question on Chapter 18.

13 MS. WEIKART: Of course.

14 CHAIRMAN BEDESSEM: So Chapter 18 is a
15 little difficult to follow. There's nothing that can be
16 helped about that, because it's a combination of
17 incorporation by reference, so you can't easily check,
18 well, what does that mean when we add certain parts,
19 because you have to go back to the Federal Register to
20 figure out what it says. And I know that's happening
21 across all the rules, so there's nothing that can be done
22 about that. But during review, that becomes a little
23 difficult tin the incorporation by reference when we don't
24 have a reference. So it might be helpful if we have that
25 to -- in the future when we're doing that, to have the

1 actual CFR so we can see.

2 And not so much that we didn't -- to make changes
3 to that at all, because we can do that, but to see how it
4 impacts the other parts that you add. So, for example,
5 the things that get added to like Appendix IV, like the
6 Chapter 8, Table 1 list, does that -- those constituents
7 then -- if it's a statistically significant increase in
8 those constituents, does that automatically trigger having
9 to go into corrective measures?

10 MS. WEIKART: Madam Chair, yes. If there
11 is a statistically significant increase that exceeds
12 groundwater protection standards, the rule is written at
13 the federal -- the EPA CCR rule is written with a "must."

14 CHAIRMAN BEDESSEM: But their "must" is
15 only related to a list of stuff that they picked out, not
16 all of Chapter 8, Table 1.

17 MS. WEIKART: We've added Chapter 8, Table
18 1 to Appendix IV.

19 CHAIRMAN BEDESSEM: Right. So now those
20 are -- are pretty much a must for triggering corrective
21 measures when it may be something related to -- well, when
22 we've established the standard as background or whatever.
23 And maybe Mr. Frederick can address that later when you do
24 your water quality section, or you can do that now, but it
25 seems like we're adding a bunch of things to the must. Are

1 we taking some flexibility away there?

2 MR. FREDERICK: Sorry, Madam Chair. Could
3 you restate the question?

4 CHAIRMAN BEDESSEM: Okay. So --

5 MR. FREDERICK: I have a little trouble
6 hearing.

7 CHAIRMAN BEDESSEM: Sure. I'm under the --
8 based on what Jody's saying and because the parts are
9 incorporated by reference, I can't go back and read the
10 language very easily. My impression was that from the CCR
11 rule, that if there was a statistically significant
12 increase in any of the constituents on the assessment
13 monitoring list -- in other words, Appendix IV -- then you
14 would -- you must do corrective measures, so there's no
15 flexibility in there. Where if we have -- so if we add
16 Appendix 8, Table 1, if we add the statistically
17 significant increase in chloride, for example, we -- are we
18 automatically kicked into corrective measures?

19 MR. FREDERICK: Madam Chair, I believe it
20 requires an evaluation of remedies.

21 CHAIRMAN BEDESSEM: Okay.

22 MR. FREDERICK: And so corrective action, I
23 think, may take a variety of forms, for lack of a better
24 word. I suspect that you could go so far as monitoring
25 natural attenuation, as an example, as opposed to an

1 engineered contaminant control-type system, pump and treat,
2 what have you.

3 CHAIRMAN BEDESSEM: Okay. So you're saying
4 it's only triggering an evaluation, and so that doesn't
5 cause you concern, because it -- at that point, based on
6 the severity and the Department has flexibility to use
7 their judgment based on that particular constituent and the
8 level of increase?

9 MR. FREDERICK: That's my understanding.

10 CHAIRMAN BEDESSEM: Okay. Thank you for
11 answering that.

12 I'd like to call -- if there's no more questions
13 from the Board right now, I'd like to call for public
14 comment on Chapters 3 and 18 for Solid and Hazardous Waste
15 Rules.

16 So please come up. I don't -- right over here
17 and just project. Yeah, identify your name and who you are
18 representing. Thank you.

19 MR. OWEN: Good morning, Madam Chair,
20 esteemed members of the Board. My name is James Owen, and
21 I'm the environmental director for PacifiCorp. And I'm
22 joined here by a member of my staff, Mr. Jeff Tucker. And
23 he is our principal engineer and our resident CCR guru. He
24 knows answers to all the tough questions. And we are here
25 today to speak in support of Wyoming's proposed revisions

1 to Chapter 3 and Chapter 18 of the waste rules.

2 As you know, we've already submitted very
3 detailed comments. And the comments that we're making
4 today are simply to supplement and reinforce those. As you
5 can tell, some of the comments made it through, some of
6 them didn't. Obviously, we still stand by the comments we
7 submitted in writing, as we believe they make the rule more
8 complete.

9 Just for a bit of background to understand.
10 PacifiCorp, we're an energy service provider. We serve
11 approximately 1.9 million customers across a
12 141,000-square-mile service area, from California, Oregon
13 Washington, Idaho, Utah and, of course, here in Wyoming.

14 Our operating company in the Pacific states is
15 Pacific Power, Pac Power. And here in the Rocky Mountain
16 states, the operating company everybody's familiar with is
17 Rocky Mountain Power. We have long believed that a
18 diversified energy portfolio is important to ensuring
19 reliable and reasonably priced electricity for our
20 customers, and our energy portfolio reflects that. It
21 includes renewables, hydroelectric, geothermal natural gas,
22 and, of course, coal-fired generation.

23 41 percent of our nearly 11,000 megawatts of
24 net-owned and contracted generating capacity are from coal
25 plants. And to facilitate that coal generation, we use CCR

1 units, CCR impoundments and facilities.

2 We have 13 total CCR units, 11 of which are here
3 in Wyoming, and nine of which are impoundments that would
4 require permitting under Chapter 18. All of those
5 currently we maintain strict compliance with the federal
6 CCR rule. And so anything that this state decides or
7 determines relating to the state getting primacy over the
8 CCR rule obviously would have significant impacts for
9 PacifiCorp and our customers, hence our engagement with DEQ
10 and our fairly complete set of comments that we've
11 submitted.

12 As you know, in our written comments we suggested
13 edits, corrections, clarifications which we believe make
14 the rule more complete. And because we went through all
15 the details, there's no need to belabor the specifics any
16 longer in this portion.

17 But we will say that we believe the rule, as it
18 is -- and we haven't had a whole lot of time to digest
19 these new changes this morning, but what we've seen, we
20 still believe that this rule is sound. We believe it
21 accomplishes the goal of incorporating national standards
22 for CCR regulation. And it's a good first step moving
23 towards primacy and obtaining federal criteria
24 requirements. We support the proposed rule because we
25 believe it will greatly simplify the regulatory process and

1 eliminate uncertainties for CCR compliance, while
2 maintaining adequate standards of environmental protection
3 and regulatory transparency.

4 Specifically, yeah, you brought up a couple of
5 questions as it relates to industrial waste. Obviously,
6 the company always vies for more clarification. Any time a
7 rule can be more specific and eliminate uncertainty for us,
8 that's our preference. Same thing with special waste or
9 commingling of waste streams within the groundwater.

10 We look forward to continuing our support as the
11 State moves through the process of getting federal
12 approval. We know that's a tough road. There are going to
13 be, we anticipate, some challenges, but we think the State
14 has done a good job in setting itself up for success in
15 that regard.

16 So that's the long and short of our comments.
17 And the long's before you for you to read, but I also
18 wanted to make myself and Jeff available for any questions
19 should you have any.

20 CHAIRMAN BEDESSEM: So you're probably the
21 best person to ask about the difference between the amount
22 of these materials that you generate and the recycling
23 demand.

24 MR. OWEN: Yes. And I think that we got it
25 right. So it's a very small percentage that we are

1 actually able to use for beneficial use. And a lot of that
2 is regional as well. So it kind of depends on what
3 resources are needed in what areas. In Utah, for example,
4 we have a few more companies that have contracted with us
5 for beneficial use, and they're putting it to use for
6 concrete and road base purposes. In the state of Wyoming
7 our operations are a little more remote, and so it makes it
8 a little more challenging in terms of, you know,
9 transportation costs, handling costs and those sorts of
10 things.

11 But, yes, we have been approached even recently
12 about some potential beneficial use at our Naughton
13 facility. And for each of those requests, we do a very
14 deep dive. It's a business engagement, right? It's a
15 business relationship with whoever's going to be taking
16 those CCR unit ash and putting it to use.

17 One thing I will mention, there are a lot of
18 barriers that come into play for the company. One in
19 particular, CCR liability is a cradle to grave thing. So
20 once you generate the CCR waste, you're not free from the
21 legal liabilities of potential spills until it's been
22 encapsulated in its final form. So even after you have a
23 beneficial use contractor that purchases the waste from
24 you, if they were to stockpile that waste or if they were
25 to do something with it in the interim before it's turned

1 into road base or concrete, or what have you, we still have
2 ongoing liability for that. So as you can imagine, our
3 team of contract attorneys are very diligent with that. So
4 there are some risks associated with it, but any time those
5 opportunities arise, we take advantage of them.

6 CHAIRMAN BEDESSEM: Has the material been
7 approved or is it very plant-specific with respect to
8 departments of transportation around the country? Have
9 certain DOTs said this is beneficial use and they support
10 in using the materials?

11 MR. OWEN: It is plant-specific and state-
12 specific. So some of the materials simply aren't suitable
13 for certain uses. In fact, even with the state of Utah, we
14 have two facilities that are all of 12, 14 miles apart.
15 And the chemistry of the ash and the makeup is so different
16 that there's some that can be used, and some of it would
17 have to be mixed to be used. So it's very much based off
18 the coal you burn and any additives or any processes that
19 you do. So it's case by case. We're often contacted by
20 research laboratories that will ask us to send them our
21 waste and they'll tell us what they think we can do with
22 it. So it's very, very case by case.

23 CHAIRMAN BEDESSEM: Uh-huh.

24 I have one last question. One of the changes,
25 you proposed was handled a little differently in that I

1 think DEQ made the time frame for submitting consistent by
2 making everything 12 months, and then -- it went down from
3 18 months, but they put in flexibility you requested to
4 change that. So is Pacific Power comfortable with that?

5 MR. OWEN: Yes, to the degree we have that
6 flexibility. And that was the main thing we were after.
7 Oftentimes, when you're submitting comments, right, you're
8 asking yourself the question, in an ideal world for
9 PacifiCorp what would this look like? So, of course, we
10 want as much time as we can get. We do believe that for
11 the facilities that we're going to have to submit
12 applications for, and that's a great deal of work. But for
13 nine facilities, 12 months is a lot.

14 That said, we will be, we anticipate, applying
15 for that latitude and requesting using justification to
16 show, you know, the complexities at our facilities, that it
17 just might take longer than that. So as long as that part
18 remains that we have that latitude to request from the
19 administrator additional time, I think the company is
20 comfortable with that.

21 CHAIRMAN BEDESSEM: Thank you.

22 BOARD MEMBER DEURLOO: Madam Chair, I have
23 a couple of questions.

24 CHAIRMAN BEDESSEM: Uh-huh.

25 BOARD MEMBER DEURLOO: First of all, I'd

1 like to thank you for coming up all the way from Salt Lake
2 City to address the Board --

3 MR. OWEN: Pleasure.

4 BOARD MEMBER DEURLOO: -- for the DEQ. So
5 thank you.

6 Just -- I'd like to understand a little bit
7 better. The -- so the CCR, does that come out of -- I'm a
8 mining engineer, so, like I said, I pushed a bunch of coal
9 your way in the past. But so where does the coal ash
10 actually come from? Does it come from the bottom as it
11 falls out, or is it from the stack, from the scrubbers,
12 that you go up there and whatever you do, shake out or
13 whatever? So where does it come from actually in the
14 plant? And I don't need a diatribe of it, just a basic
15 understanding of it.

16 But also, secondly, given a ton of coal -- and I
17 know all coal is a little bit different -- what is the
18 average waste stream, the CCR, from a given ton of coal?
19 Is it a couple pounds? What are we -- I mean, like for the
20 Dave Johnston plant -- you own that, correct? The Dave
21 Johnson plant. So it's like how many tons do you have
22 rolling through there a year? And what is your cubic
23 yards? It looks like the DEQ requires cubic-yard
24 assessments on the total CCR going into a holding facility
25 after that. Just kind of some basic understanding about

1 that, James, please.

2 MR. OWEN: Madam Chair. Mr. Deurloo, I
3 happen to be a mining engineer as well, so I can understand
4 both sides of it. So ash is kind of in two forms. You're
5 either going to have fly ash or bottom ash. Bottom ash is
6 what is sluiced out, and the fly ash is what you, you know,
7 capture in bag houses. That's not sluiced out. In terms
8 of the percentages --

9 BOARD MEMBER DEURLOO: So you need to have
10 water push the -- that's why it comes out in slurry, is you
11 use water to move it out of the system?

12 MR. OWEN: That's correct.

13 BOARD MEMBER DEURLOO: Okay.

14 MR. OWEN: And Jeff can -- percentages of
15 tonnage to ash, do you have information.

16 MR. TUCKER: Excuse me. The ash content
17 varies depending on the coal you burn, obviously. But
18 anywhere from 8 to 14 percent is -- ends up being ash.

19 BOARD MEMBER DEURLOO: Oh, okay.

20 MR. OWEN: And for clarification, as you
21 alluded to, fly ash and bottom ash are handled differently,
22 right? So you can send fly ash straight directly to a
23 landfill. And for bottom ash, it's sluiced, and that's
24 deposed of in the -- in the impoundment.

25 So that's -- and for the question about the

1 difference between a landfill and impoundment --

2 BOARD MEMBER DEURLOO: The fly ash can go
3 straight to the solid landfill and the sluice is evaporated
4 over time?

5 MR. OWEN: That's correct.

6 BOARD MEMBER DEURLOO: Okay.

7 CHAIRMAN BEDESSEM: So --

8 MR. OWEN: To the degree it can be.

9 MR. TUCKER: The -- how the ash is actually
10 moved from the unit to whatever you dispose of is unit-
11 specific. And the newer units all handle fly ash dry. And
12 we can talk some specifics. DJ only sluices the bottom ash
13 but Naughton sluices all ash. Just because it's an older
14 unit, and that's how it was designed is to move all of it
15 by water. So those -- we have ash ponds at Naughton.
16 Where DJ we have one bottom ash pond, but all the fly ash
17 and the scrubber material is also collected from the stacks
18 is dry. We dry that and put that in the landfill directly
19 too.

20 MR. OWEN: A pond is interchangeable with
21 an impound, in terms of terminology.

22 CHAIRMAN BEDESSEM: But what you're saying
23 is you can't make the statement that all bottom ash goes to
24 ponds and all fly ash goes to landfills because in the
25 older facilities, they may be commingled, for example, in

1 the sluice.

2 BOARD MEMBER DEURLOO: To your point, Madam
3 Chair, is the commingling of the waste stream, you have the
4 fly ash and the bottom ash?

5 MR. TUCKER: That's correct. Because at
6 Bridger, which is our third plant here, it's all
7 handled dry. All the ash is handled dry. The only wet is
8 the scrubber solution, and that goes to impoundment.

9 CHAIRMAN BEDESSEM: So little different in
10 each facility. So you'll have an interesting time putting
11 together nine applications, because, you know, they're all
12 different. It won't be cookie cutter.

13 MR. OWEN: Hence our request for
14 flexibility in timing.

15 BOARD MEMBER KIRKBRIDE: Madam Chair, so I
16 get to ask a basic question, since we got to that.

17 CHAIRMAN BEDESSEM: Uh-huh.

18 BOARD MEMBER KIRKBRIDE: So what is the
19 ash? What is it comprised of chemically, most of the time?

20 MR. TUCKER: Madam Chairman.
21 Mr. Kirkbride, basically it's things that won't burn at
22 3,000 degrees. So it's basically just minerals. It's
23 mostly the heavy -- the metals and everything else. And it
24 comes out looking like glass, really. It's very hard.
25 Bottom ash was used a lot in Wyoming for a long time for

1 road base because it is -- it's light material, and it's
2 very hard. It's indestructible. So it's mostly anything
3 that you can't burn under 3,000 -- or 3500 degrees.

4 BOARD MEMBER KIRKBRIDE: And a lot of
5 variety, depending on the coal.

6 MR. TUCKER: It is based on the coal.

7 BOARD MEMBER KIRKBRIDE: Yeah. Thank you.

8 CHAIRMAN BEDESSEM: So I'm going to go
9 forward and ask some minor things, but thank you very much.

10 Are there -- are there additional comments?

11 So I'm going to go back to Chapter 18 real quick
12 just for a couple of questions, in honor of Lorie, since
13 she's not here.

14 MS. WEIKART: Right.

15 BOARD MEMBER DEURLOO: Which isn't bad.

16 CHAIRMAN BEDESSEM: So on 18-2 -- Chapter
17 18 --

18 BOARD MEMBER DEURLOO: Chapter 18.

19 CHAIRMAN BEDESSEM: -- in the
20 strike/underline, page 2. The groundwater definition
21 that's there, it says when used in the context of 40 CFR,
22 the definition shall be -- where is that definition from?

23 MS. WEIKART: Madam Chair, that definition
24 is from the Water Quality Rules and Regulations. So
25 we've -- when aquifer is used in the EPA CCR rule, that

1 definition, as defined in that rule, will be replaced with
2 the definition presented here.

3 CHAIRMAN BEDESSEM: That's not in statute,
4 but in Water Quality Rules and Regulation.

5 MS. WEIKART: It is in Water Quality.

6 CHAIRMAN BEDESSEM: So I was just having
7 trouble understanding the definition, because I didn't know
8 what "they" referred to when it says subsurface water that
9 fills available openings in rock or soil materials such
10 that they may be considered water saturated. So is it the
11 openings in the rock or soil materials that's "they"?

12 BOARD MEMBER DEURLOO: Yes.

13 CHAIRMAN BEDESSEM: Or is it the rock and
14 soil materials?

15 MS. WEIKART: Madam Chair, that would be my
16 understanding, yes.

17 CHAIRMAN BEDESSEM: Okay. In -- on line
18 201, it says --

19 MS. WEIKART: I'm sorry. Madam Chair, are
20 you looking at Chapter 18 green, or are you looking at --

21 BOARD MEMBER DEURLOO: Strike and
22 underline.

23 MS. WEIKART: Strike and underline?

24 CHAIRMAN BEDESSEM: The first strike and
25 underline.

1 MS. WEIKART: The one that was included in
2 your packet --

3 CHAIRMAN BEDESSEM: Right.

4 MS. WEIKART: -- that you received in May?

5 CHAIRMAN BEDESSEM: The numbers are a lot
6 different. It's line 201.

7 BOARD MEMBER DEURLOO: 18-2.

8 CHAIRMAN BEDESSEM: Yeah, page 18-2, line
9 201.

10 MS. WEIKART: Of the original strike and
11 underline?

12 CHAIRMAN BEDESSEM: Yes. Thank you.

13 MS. WEIKART: Thank you, Madam Chair.

14 CHAIRMAN BEDESSEM: When it says "...the
15 direction of the Wyoming DEQ or their designee," so is
16 it -- tell me, is that his or her designee? Is their --
17 isn't their plural? Yeah, there must be some convention
18 that you can fill me in.

19 MS. THOMPSON: Sorry, Madam Chair, if I
20 might fill you in.

21 CHAIRMAN BEDESSEM: Thank you.

22 MS. THOMPSON: I think that's the -- that's
23 the agency's sort of chosen way of handling --

24 CHAIRMAN BEDESSEM: Because they didn't
25 want to say "his/her."

1 MS. THOMPSON: It's longer and --

2 CHAIRMAN BEDESSEM: Okay.

3 MS. THOMPSON: Historically we had just
4 used "his."

5 CHAIRMAN BEDESSEM: So they changed it to
6 "their."

7 MS. THOMPSON: Correct.

8 CHAIRMAN BEDESSEM: Okay. I knew there was
9 a reason behind this.

10 MS. THOMPSON: Yeah.

11 CHAIRMAN BEDESSEM: So thank you.

12 MS. THOMPSON: You bet.

13 CHAIRMAN BEDESSEM: Appreciate it.

14 So then do we not capitalize EQC anymore?

15 MS. THOMPSON: So, Madam Chairman, the
16 Solid Waste Division -- Solid and Hazardous Waste Division
17 does not necessarily operate under the same style guide
18 that Water Quality Division has been putting together for
19 you. And so, in general, depending on how it's used
20 contextually, they may have some mixture of upper and lower
21 case. But if you could give us the line number, we can --
22 we can check.

23 CHAIRMAN BEDESSEM: Okay. So in 18-6 on
24 page -- I mean, line 353 in the old strike/underline.

25 MR. ESCH: Environment Quality -- Madam

1 Chair, Environmental Quality Council?

2 CHAIRMAN BEDESSEM: Uh-huh.

3 MR. ESCH: Madam Chair, I will say that the
4 Solid and Hazardous Waste Division is more than happy to
5 get on the train of the style guide that Water Quality has.
6 So, yeah --

7 CHAIRMAN BEDESSEM: I was just curious.

8 MR. ESCH: Yeah, whatever changes we can
9 make from the style guide, we're happy to incorporate.

10 CHAIRMAN BEDESSEM: Yeah, so everybody's
11 the same. It just was odd, because I feel like that's a
12 title of something.

13 Page 18-13, line 653 in the old strike/underline.

14 BOARD MEMBER DEURLOO: 653 you say?

15 CHAIRMAN BEDESSEM: Yeah. "For which MCL's
16 have not been established." That's just plural, no
17 apostrophe.

18 MS. WEIKART: Thank you. Madam Chair.

19 CHAIRMAN BEDESSEM: Sorry. They were
20 just -- on that -- sorry. I think this is on page -- nope.
21 I think that's just fine. I think I'm good.

22 There was some other one where the act was used
23 and one time it's capitalized and one wasn't, but I don't
24 know where it is, so don't worry about it. I'm sure you'll
25 see it as we go through these.

1 Okay. Those are all my little notes. Anybody
2 else?

3 BOARD MEMBER DEURLOO: I don't have any.
4 Thank you.

5 CHAIRMAN BEDESSEM: So since any decisions
6 on these need to be done as a package with the first part,
7 the first rule in water quality, if everyone is in
8 agreement, can we postpone just -- unless you guys are
9 departing. Are you departing?

10 MR. ESCH: Madam Chair, we're here until
11 the end of this.

12 CHAIRMAN BEDESSEM: Oh, okay. To defer the
13 discussion of what to do with the package until we go
14 through the first part of the first chapter with water
15 quality.

16 So how are we looking on -- on timing?

17 MS. THOMPSON: So, Madam Chair, it's 11:00.
18 If you want to continue, we can continue. If you -- if it
19 pleases the Board, it might be helpful to take a short
20 break. It might be helpful for our court reporter to get
21 to stretch her legs a little. But it's up to you. We
22 defer to you.

23 MR. FREDERICK: Madam Chair, this will only
24 take a few minutes, if you want to go through Chapter 3
25 real quick.

1 CHAIRMAN BEDESSEM: We'll do that, and then
2 we'll take a break.

3 So now we're moving to Chapter 3, Water Quality
4 Rules.

5 MR. FREDERICK: So Chapter 3 is a
6 regulation and requires a permit from Water Quality
7 Division to essentially construct, install, operate any
8 treatment facility or other facility capable of causing or
9 contributing to pollution. And over the years, other
10 Divisions have developed permitting systems that have
11 precluded the environment for Water Quality Division permit
12 because now the other division is requiring essentially a
13 permit. And it also has precluded requiring permits on
14 facilities that actually fall under the jurisdiction of
15 other agencies, such as the Oil and Gas Conservation
16 Commission. And the exceptions to the permit requirements
17 are identified on page 3-2, beginning line 58. And I'll
18 draw your attention to line 59.

19 BOARD MEMBER DEURLOO: On the strike and
20 underline, Kevin?

21 MR. FREDERICK: The --

22 BOARD MEMBER DEURLOO: Chapter 3, strike --

23 CHAIRMAN BEDESSEM: Yeah. I see red over
24 there.

25 BOARD MEMBER DEURLOO: I see red over there

1 too. Yeah.

2 CHAIRMAN BEDESSEM: Yeah.

3 MR. FREDERICK: And on line 59 it makes it
4 very clear that the regulations, i.e. this regulation for
5 requiring permit for Water Quality Division doesn't apply
6 to facilities that are authorized by permit-issued
7 provisions of the Environmental Quality Act, which is the
8 case, as Luke described, with the new regulation on coal
9 combustion residual impoundments in the landfills.

10 So what we've done, on line 63 and 64, which did
11 identify certain types of facilities that Water Quality
12 Division doesn't require permit for that are permitted by
13 Solid and Hazardous Waste, we simply inserted the words
14 "and coal combustion residual surface impoundments" to
15 clarify that those now were excluded -- or would be
16 excluded from Water Quality Division permitting on surface
17 impoundments, because the permitting requirements would be
18 covered under the new Solid and Hazardous Waste Division
19 permit, and there's no need for dual permitting on any type
20 of facility.

21 So it's essentially cleaning up a permit
22 requirement that would no longer be needed.

23 And, finally, turning your attention on line 305.
24 It's on page 3-8. And this particular paragraph that
25 begins on line 304 talks about applications for permits

1 from Water Quality Division, and it goes on to talk about
2 how the application must be accompanied by three copies of
3 plans, specifications, et cetera, et cetera, et cetera.

4 So this is a historic artifact that's been in
5 Water Quality Rules and Regulations for a long time. And
6 the language is kind of outliving its purpose when we talk
7 about requiring three, essentially, hard copies, or three
8 paper copies of all of this material be submitted with an
9 application. And we're working very hard to move into a
10 more paperless type of an agency. We commonly accept
11 electronic documents for permit applications now. We don't
12 require three hard copies of that information to be
13 provided to us. So this is just a way to start to begin to
14 clean up our rules and regulations.

15 I've been encouraged to undertake this particular
16 cleanup on Chapter 3 while we have it before you, because
17 as we come forward with new revisions to existing rules and
18 regulations that contain similar type of language, we're
19 going to be cleaning that up as well. So that's
20 essentially the intent here.

21 There's a similar change on line 378 on page 3-9.
22 And I believe that's all we have on this chapter.

23 CHAIRMAN BEDESSEM: Okay. Any questions on
24 Water Quality Chapter 3?

25 BOARD MEMBER DEURLOO: I don't have

1 anything.

2 BOARD MEMBER KIRKBRIDE: No.

3 MR. FREDERICK: Thank you.

4 CHAIRMAN BEDESSEM: Now, reading through
5 the agenda and so forth, both Water Quality Division and
6 the Solid and Hazardous Waste Division have put this forth
7 to the Board with their request to move on to the
8 Environmental Quality Council. And is that what you're
9 requesting at this point?

10 MR. ESCH: Madam Chair, that's correct.
11 We're seeking the recommendation for approval of these
12 regulations so we can move forward to the Environmental
13 Quality Council.

14 CHAIRMAN BEDESSEM: Uh-huh. Discussion
15 from the Board?

16 BOARD MEMBER DEURLOO: I recommend we
17 approve and move to the Environmental Quality Council.

18 CHAIRMAN BEDESSEM: That was a motion.

19 BOARD MEMBER DEURLOO: No, I didn't say
20 "move to." That's just my discussion. I don't have any
21 problems with that.

22 CHAIRMAN BEDESSEM: Okay. I guess I have a
23 concern that -- particularly in response to PacifiCorp
24 comment -- that there's quite a few changes since the first
25 draft. And, admittedly, PacifiCorp's the only one that

1 commented, but they did do a good -- a very excellent job
2 commenting. And they did say in their testimony that they
3 hadn't had the opportunity to digest what the changes were,
4 since they were just kind of looking at this today, to see
5 if -- you know, certainly they're supportive and -- and
6 support -- I'm sure we'll be really supportive. It's
7 important to not have a regulated community have to answer
8 to both the federal government and the state government.
9 It's very nice to have it just under the State of Wyoming
10 Rules and Regulations.

11 But I'm concerned that -- that when we have
12 this -- you know, this level of changes, and also this
13 complicated, actually, of a rule, we don't usually move
14 that forward the first -- out of the box with those changes
15 on the first time, and also without a -- well, we have a
16 quorum, but not a full board. I guess I'd personally like
17 to see that kind of flexibility in addressing how you will
18 handle facilities that come in with multiple waste types so
19 that there's some more clarify as far as what applies to
20 what, and to make sure that if things were regulated under
21 CCR, that you have the flexibility to cover these other
22 small amounts of waste and be able to ask for the right
23 groundwater constituents and so forth, as opposed to still
24 having to do different permits or what you have to do with
25 respect to that.

1 So I'm concerned that we need to do -- have you
2 look at some of those changes and then come back, and the
3 hopefully we'd be able to move forward at the next meeting,
4 and then not have -- what -- I guess I would like to ask,
5 what do you -- in order for -- you know, Pacific Power may
6 not comment again, but give them an opportunity to digest
7 what changes you have accepted and what changes you have
8 not accepted from their suggestions. But it's nice to,
9 perhaps, not have comment period go all the way to the next
10 meeting or -- or do -- are we always required to do that?
11 Maybe you can answer that in order so that people can say
12 something at the meeting.

13 MS. THOMPSON: Madam Chair, I believe that
14 in general we handle the written comments similar to how we
15 did it this time. We show a preference for comments
16 submitted in advance of the board meeting so that we can
17 answer them.

18 CHAIRMAN BEDESSEM: Uh-huh.

19 MS. THOMPSON: And then in general, you
20 know, if the Board wishes to take oral comments again, then
21 you would need to leave the hard end date for the comment
22 period until the close of the meeting. So that -- so -- so
23 I guess it depends on your preference as a Board. If you
24 want that opportunity for people to come to you, then the
25 comment period needs to close at the end of the meeting.

1 CHAIRMAN BEDESSEM: But we're not required
2 to. So you can have a public comment period. If you
3 publish your new revision with what you proposed today,
4 that we have seen here, and put that out for public comment
5 and gave it 30 days, by the time the next meeting you would
6 have wrapped everything up and be able to present at that
7 meeting and there wouldn't be any new comments coming in on
8 that date. So that is an option to have the public comment
9 period end before the date of that meeting.

10 MR. FREDERICK: Madam Chair, that's
11 correct. I think the requirement is that we simply make
12 the revisions available for public comment for 30 days --

13 CHAIRMAN BEDESSEM: I think it's 30 days.

14 MR. FREDERICK: -- if I'm not mistaken.

15 And there's no requirement that we hold that
16 comment period open to the next board meeting. You have
17 that ability to decide.

18 CHAIRMAN BEDESSEM: So we could do 30 days
19 based on our revised version that includes all these new
20 things, so that also if Pacific Power had any comments
21 related to what was accepted and what wasn't, they'd be
22 able to let you know in that 30-day period and you wouldn't
23 get anything at the end.

24 MR. FREDERICK: That's my understanding.

25 CHAIRMAN BEDESSEM: Okay. Well, thank you

1 for answering that question.

2 So I kind of stated my opinion. But thoughts
3 from the other members.

4 BOARD MEMBER KIRKBRIDE: Do we have other
5 potential public commenters? Are there power companies
6 that might be --

7 CHAIRMAN BEDESSEM: There are other than
8 Pacific Power.

9 BOARD MEMBER KIRKBRIDE: Yeah.

10 MR. ESCH: Madam Chair, yes. We're in
11 contact with the other potential impacted parties, and I
12 think we've sent some the -- outreach. We conducted some
13 outreach with them, and let them know the rules were out
14 there and moving forward in this direction. So we've been
15 in contact.

16 BOARD MEMBER KIRKBRIDE: How many of them
17 are there?

18 MR. ESCH: I think -- Madam Chair.
19 Councilman Kirkbride, I think there's potentially three
20 affected entities. PacifiCorp's, obviously, I believe the
21 most impacted. Black Hills, I believe, has a facility.
22 And I want to say -- oh, Basin Electric.

23 CHAIRMAN BEDESSEM: Okay. So if you had a
24 30-day comment, you can conceivably get other comments.
25 But you've done public outreach, so this is not going to be

1 a huge level of -- likely a huge level of comment. But I
2 think it's important, when we have this many changes at the
3 end, to be able to put that back out there in case there
4 are any concerns. So...

5 MR. FREDERICK: So just for clarification,
6 Madam Chair. The rule then would go -- the revised rule
7 would go out for public comment --

8 CHAIRMAN BEDESSEM: Uh-huh.

9 MR. FREDERICK: -- for the required
10 30 days. And then the Department would compile its
11 responses to those comments.

12 CHAIRMAN BEDESSEM: Which should be minor
13 at that point.

14 MR. FREDERICK: And would bring those back
15 to the advisory board, and the Board then would, again, be
16 asked to take an action to either move the rule forward or
17 not.

18 CHAIRMAN BEDESSEM: That's what I'm
19 suggesting. I'd like to hear from the rest of the Board.

20 BOARD MEMBER KIRKBRIDE: You're suggesting
21 some more consideration, though. It isn't just the rules
22 that are in the green here, right?

23 CHAIRMAN BEDESSEM: Well, you're going to
24 look at the flexibility for -- with the commingling --

25 BOARD MEMBER KIRKBRIDE: The commingling

1 thing.

2 MR. ESCH: Madam Chair, it was kind of
3 our understanding that flexibility was already built in.
4 Any -- moving forward, we can certainly look at including
5 additional language to draw that out further, but that
6 provision, as I mentioned, it's already -- we're already
7 allowing that as it is with our landfills. So if we need
8 to draw that clarification out, we can certainly can.

9 CHAIRMAN BEDESSEM: Yeah, I'm concerned
10 about the very specific set of analytes. And I guess if
11 you could look in the rule and say where it allows that
12 flexibility to change that list of analytes if you add
13 other components in a CCR landfill, that would be great.
14 But --

15 MR. ESCH: And, Madam Chair, we can refer
16 to Chapter 3, which allows us for the flexibility to look
17 at a different list of constituents based on a waste that's
18 being deposited of.

19 CHAIRMAN BEDESSEM: Well, I don't feel like
20 it's clear right now, so -- I think if I was an applicant,
21 I'd be very confused as far as -- because, you know, you've
22 got industrial landfills, CCR landfills, municipal
23 landfills. If you've got a cross between them, what does
24 that mean? You've got C&D landfills. So I think you sort
25 of address it with municipal solid waste when you have C&D

1 and special wastes that are not -- you know, that are
2 incorporated in that, but I'm not sure that it's clear
3 here. At least I'm not -- I'm not seeing that from a
4 perspective of the applicant.

5 And when you -- Pacific Power's comments were
6 fantastic, but they didn't require you to do a number of
7 changes. And when those changes are in the last four days
8 of, you know, a public comment period, those changes
9 haven't been out to the other affected parties, the two --
10 Black Hills, whatever. And you said you've been in
11 contact -- I mean, did this list of changes go to the other
12 affected parties?

13 MR. ESCH: No, Madam Chair, they didn't.
14 We --

15 CHAIRMAN BEDESSEM: Right. Unless they
16 were here --

17 MR. ESCH: -- I mean, clearly put the
18 changes together based on their comments.

19 CHAIRMAN BEDESSEM: Right. Which is --
20 which is a perfectly viable way to do it. And if they only
21 had two little comments, then it probably wouldn't be a big
22 deal. But considering that there's that many changes and
23 they had such a lengthy list of comments, that it seems
24 like the other affected parties should get to see that
25 before a final ruling to the EQC. That's just my opinion.

1 And also having been on this Board for probably too long --
2 10 years -- very rarely -- unless it's, you know, like the
3 Chapter 3 -- the first time out of the box, it doesn't get
4 moved forward to the EQC unless we have a phenomenal
5 deadline, for some reason, statutory deadline or something
6 like that.

7 And, typically, if it rule has this many changes
8 in it, it's a whole new chapter, then certainly would like
9 the opportunity to have those affected parties see what
10 those changes are before it gets moved on to the EQC, and
11 to make sure we have a board that has an opportunity to
12 look at that, so...

13 But I'm only one vote too, so...

14 BOARD MEMBER DEURLOO: Madam Chair, I see
15 your point on that, because at first I was thinking that,
16 you know, the rules and regulations are you do a public
17 comment. You incorporate. The DEQ reviews those and takes
18 some on, board rejects -- just exactly what happened here.
19 And if the other two or three parties didn't want to make a
20 comment, then that's their fault, or they didn't have any
21 comments.

22 CHAIRMAN BEDESSEM: Uh-huh.

23 BOARD MEMBER DEURLOO: But if we're
24 creating a whole new rule and we just go through one time
25 and then, you know, a couple hours before a major industry

1 has only few minutes to review it, I -- I do get your
2 point. And I think it may be worth just taking this back
3 and rewriting those and going out for 30 days public
4 comment.

5 CHAIRMAN BEDESSEM: Yeah.

6 BOARD MEMBER DEURLOO: I think it's
7 probably a good idea.

8 CHAIRMAN BEDESSEM: It may not result in
9 significant changes to the rule, but I think it's due
10 diligence to do that. And then you will not have, you
11 know, any complaints or issues that this got moved forward
12 without them having an opportunity to comment on changes.

13 BOARD MEMBER DEURLOO: Yes. Yes.

14 And, secondly, is they will see -- industry will
15 see that they know they've got -- from the time this --
16 this regulation's enacted, they have 12 months to comply
17 with that. They know it's coming down the pipe right now,
18 so it really gives them another three months to start the
19 work they've got to do to be in compliance with the
20 regulation.

21 CHAIRMAN BEDESSEM: There may be more
22 additional time in there anyway, based on -- because you
23 still have to get approved by EPA, correct?

24 MR. ESCH: Madam Chair, that's correct.
25 There's an additional public comment period before the EQC.

1 After the EQC approves it, then it goes to the EPA. We
2 hope to have all the issues with -- basically the
3 conversations with EPA well before that time, so they're
4 aware of what's being approved. So, therefore, they don't
5 come back last minute and say, oh, yeah, by the way, you
6 just got rules approved, but I need to make these changes
7 for us to get final approval. So we're going to try to do
8 that ahead of the game.

9 BOARD MEMBER DEURLOO: And that was --
10 sorry. Go head.

11 That was my -- that was one question that was
12 rattling around in my head too, whether we keep the public
13 comment on a Water and Waste Advisory Board, or there's got
14 to be another public comment before these go to the EQC,
15 right?

16 MR. ESCH: That's correct.

17 BOARD MEMBER DEURLOO: So are we just doing
18 double --

19 CHAIRMAN BEDESSEM: The EQC --

20 BOARD MEMBER DEURLOO: -- duty here by
21 creating another public comment here at our level?

22 CHAIRMAN BEDESSEM: I don't believe so,
23 because when we go to the EQC and the EQC has public
24 comment on the final rule --

25 BOARD MEMBER DEURLOO: Yeah.

1 CHAIRMAN BEDESSEM: -- they typically don't
2 want to get into the minutia of the rule. They want that
3 all taken care of this at this board level.

4 And it's -- like I said, we may have -- you know,
5 another board member is a hydrogeologist that may want to
6 comment in the second [sic] quarter meeting as well. And
7 that -- that level of comment does not typically happen at
8 the -- at the EQC.

9 BOARD MEMBER DEURLOO: Okay.

10 CHAIRMAN BEDESSEM: If all is good, you
11 don't get any comments at the EQC.

12 My feeling for due diligence is to just have a
13 30-day comment on your final revision. And then by the
14 time you schedule the second quarter meeting, that will
15 have passed, you know, the month before that, and there
16 won't be any major changes and the Board can feel
17 comfortable moving it forward. And that the other affected
18 parties will have had the opportunity to look at it. But I
19 don't -- I don't know if that requires a motion.

20 MR. FREDERICK: Madam Chair, I would.

21 BOARD MEMBER DEURLOO: Yeah.

22 CHAIRMAN BEDESSEM: A motion to extend the
23 public comment period on the revised version based --

24 BOARD MEMBER DEURLOO: Not extend. So it
25 wouldn't be an extension of the public comment.

1 CHAIRMAN BEDESSEM: A new public comment.

2 BOARD MEMBER DEURLOO: It would be a new
3 public comment.

4 CHAIRMAN BEDESSEM: Correct.

5 BOARD MEMBER DEURLOO: So we're -- what
6 we're looking for is not a motion. We're looking for --
7 we're looking for a motion to incorporate the changes as
8 discussed in today's meeting and to Section 3 and Section
9 18 and perform another public comment period -- 30-day
10 public comment period?

11 CHAIRMAN BEDESSEM: For 30 days. Uh-huh.
12 The minimum required public comment period.

13 BOARD MEMBER DEURLOO: And review
14 Section 3 and Section 18 at the next board meeting.

15 CHAIRMAN BEDESSEM: Uh-huh. Yeah, table --
16 table that decision as far as approve or disapprove to
17 forward to EQC to the second quarter meeting.

18 BOARD MEMBER DEURLOO: Third quarter.

19 CHAIRMAN BEDESSEM: Excuse me. Third
20 quarter meeting. This is the second quarter.

21 BOARD MEMBER DEURLOO: Right.

22 CHAIRMAN BEDESSEM: We didn't have a first
23 quarter meeting.

24 BOARD MEMBER DEURLOO: No. Yeah, I think
25 that's fair.

1 MR. FREDERICK: Madam Chair, if I may,
2 you're talking specifically now on Solid and Hazardous
3 Waste Chapter 18?

4 CHAIRMAN BEDESSEM: Right. I don't believe
5 there were -- so in -- so I guess the question I have, in
6 Chapter 3, if -- the reason I'm asking this question.
7 Chapter 3 in Water Quality, the changes are consistent.
8 There's nothing likely to be changed in there. In Chapter
9 3 of the industrial waste rules, it kind of depends on if
10 you were going to clarify when you do need a permit under
11 CCR, whether that would incorporate a change in Chapter 3
12 or only Chapter 18. I guess I'd leave that to you to look
13 at the possibilities.

14 MR. ESCH: Madam Chair, could you clarify
15 that? Within Chapter 3 of our Solid and Hazardous Waste
16 rules?

17 CHAIRMAN BEDESSEM: Right. So my concern
18 was figuring out the applicability when you have both types
19 of waste, and whether you were going to do a clarification,
20 whether you would incorporate the language only in 18 or
21 whether you would incorporate it into 3.

22 MR. ESCH: Madam Chair, I believe we've
23 been doing it in 18.

24 CHAIRMAN BEDESSEM: Okay.

25 MS. WEIKART: Yes, Madam Chair. That's

1 what I would envision.

2 CHAIRMAN BEDESSEM: So then you would just
3 be required to put Chapter 18 out for additional public
4 comment.

5 BOARD MEMBER DEURLOO: Yeah, we don't need
6 to do 3.

7 CHAIRMAN BEDESSEM: So both 3s, you can
8 just leave alone and just put Chapter 18 forward, the one
9 that really has the substantive changes in it. The other
10 two chapters are just support for Chapter 18.

11 MR. ESCH: Madam Chair, before we leave
12 that subject, I'd like to get some clarification on the --
13 the issues that you'd like the Department to look at. It's
14 my understanding you want us to look at incorporating
15 additional flexibilities for nonCCR waste to be disposed of
16 in CCR units, as well as the consideration of additional
17 constituents that may be analyzed for those cells that
18 receive nonCCR-type wastes. Am I missing anything else?

19 CHAIRMAN BEDESSEM: No. Just trying to
20 look for consistency to make sure that it's clear when a
21 CCR permit applies.

22 MR. ESCH: All right. Thank you.

23 CHAIRMAN BEDESSEM: So hopefully that will
24 be a minor task. But then you'll incorporate all of the
25 changes that you made in response to Pacific Power and put

1 that out for public comment in Chapter 18 for 30 days. And
2 then we'll get to hopefully move it forward in third
3 quarter.

4 So my question is, did you make a motion?

5 BOARD MEMBER DEURLOO: No, I didn't.

6 CHAIRMAN BEDESSEM: Okay.

7 BOARD MEMBER DEURLOO: I did not make a
8 motion. I'm still trying to discuss how to do this,
9 because it might be two motions, Madam Chair. Because
10 Section -- or Chapter 3, we seem to be okay with. There's
11 just three or four minor modifications there, correct?

12 CHAIRMAN BEDESSEM: But we can't move
13 anything -- they need to be moved forward as a package.

14 BOARD MEMBER DEURLOO: As a package.

15 CHAIRMAN BEDESSEM: Right, because we can't
16 approve and send to EQC these two rules because they don't
17 make any sense without the third rule, because they all --
18 they have to be together to basically set it up so that
19 Chapter 18 is covered and all the -- the --

20 BOARD MEMBER DEURLOO: I understand.

21 CHAIRMAN BEDESSEM: -- citations in the
22 other two are supported.

23 BOARD MEMBER DEURLOO: I understand.

24 MR. ESCH: Madam Chair, I believe the Board
25 could move on the Chapter 3s, and the package wouldn't be

1 moved to the EQC until everything was brought as a package,
2 as you indicated. But if the Board's prepared to make a
3 decision on those other chapters, then it could.

4 CHAIRMAN BEDESSEM: I think it makes sense
5 to do it as a package, but I think you only have to do
6 public comment on 18.

7 BOARD MEMBER DEURLOO: Well, what if we --
8 this is a recommendation. This is not a motion.

9 CHAIRMAN BEDESSEM: Uh-huh.

10 BOARD MEMBER DEURLOO: If we move to
11 approve Chapter 3 as discussed, and second -- and it to be
12 held off to presentation to the EQC until Chapter 18 is
13 approved through this Board.

14 CHAIRMAN BEDESSEM: So can we make it --
15 we can do that contingent upon approval of Chapter 18,
16 because --

17 BOARD MEMBER DEURLOO: Yes.

18 CHAIRMAN BEDESSEM: -- if we approve it,
19 that means it gets moved to the EQC. So we'd have to say
20 contingent upon --

21 BOARD MEMBER DEURLOO: Yes.

22 CHAIRMAN BEDESSEM: -- approval of Chapter
23 18. We can do that?

24 MR. ESCH: Madam Chair, the Board can
25 certainly do that.

1 BOARD MEMBER DEURLOO: Sure.

2 CHAIRMAN BEDESSEM: We can do that, if
3 that's one less item on your plate so you don't have to
4 discuss that.

5 MR. ESCH: Chapter 3 is pretty easy, so
6 whatever the Board wants to do.

7 CHAIRMAN BEDESSEM: But it would be both
8 Chapter 3s.

9 MR. ESCH: Yes.

10 CHAIRMAN BEDESSEM: I don't know that we've
11 ever done that before, where we've approved but held it
12 back saying it's -- it's not to be moved forward to the EQC
13 because it's contingent upon approval of 18 of the -- of
14 the chapter. But we can. I don't think that there's any
15 legal reason we can't do that.

16 MR. FREDERICK: Madam Chair, it's fair to
17 ask the administrators to hold those two rules until such
18 time as --

19 CHAIRMAN BEDESSEM: Chapter 18 is approved.

20 MR. FREDERICK: -- it is ready to go to the
21 Council. We're certainly fine with that.

22 CHAIRMAN BEDESSEM: Okay. All right. That
23 means you can do several motions.

24 BOARD MEMBER DEURLOO: Two, right?

25 CHAIRMAN BEDESSEM: Yeah.

1 BOARD MEMBER DEURLOO: I'll go ahead and
2 start my motion. I move to approve Chapter 3 as discussed
3 in today's board meeting.

4 CHAIRMAN BEDESSEM: The Solid and Hazardous
5 Waste Chapter 3.

6 BOARD MEMBER DEURLOO: Solid and Hazardous
7 Waste Chapter 3. Move to approve. And it will not be
8 forwarded to the Environmental Quality Council until
9 Section -- or Chapter 18 of the industrial solid waste
10 chapter is approved by this Board as well. Is that fair?

11 CHAIRMAN BEDESSEM: Yeah, Solid and
12 Hazardous Waste chapter.

13 BOARD MEMBER KIRKBRIDE: I would second
14 that.

15 CHAIRMAN BEDESSEM: All those in favor.

16 BOARD MEMBER DEURLOO: Aye.

17 BOARD MEMBER KIRKBRIDE: Aye.

18 CHAIRMAN BEDESSEM: Opposed? Abstentions?

19 Motion passes.

20 MR. FREDERICK: Madam Chair, did I hear
21 approval for the Water Quality Chapter --

22 CHAIRMAN BEDESSEM: No. That's a second
23 motion.

24 BOARD MEMBER DEURLOO: Say -- try to say
25 the same thing with Water Quality?

1 CHAIRMAN BEDESSEM: But with Water Quality
2 Division.

3 BOARD MEMBER DEURLOO: Okay. I move to
4 approve Chapter 3 of the Water Quality Rules and
5 Regulations as discussed in today's board meeting. And
6 that it not be presented to the Environmental Quality
7 Council until Chapter 18 of the Water Quality Rules and
8 Regulations as --

9 CHAIRMAN BEDESSEM: Solid and Hazardous
10 Waste, right.

11 BOARD MEMBER DEURLOO: Chapter 18 of the
12 Solid and Hazardous Waste Rules and Regulations be approved
13 by this Board.

14 CHAIRMAN BEDESSEM: Second?

15 BOARD MEMBER KIRKBRIDE: Second.

16 CHAIRMAN BEDESSEM: All those in favor?

17 BOARD MEMBER KIRKBRIDE: Aye.

18 BOARD MEMBER DEURLOO: Aye.

19 CHAIRMAN BEDESSEM: Aye.

20 Okay. So we have -- motion passes. There were
21 no -- everyone voted, so there were no abstentions and no
22 opposition.

23 We need a third motion on Chapter 18 as far as
24 extending the comment period. Not extending, but having an
25 additional comment period on a revised updated version.

1 BOARD MEMBER DEURLOO: Okay. So how -- can
2 we discuss that for a minute? How do we want that? Again,
3 just to touch base so we can get a nice, concise motion on
4 this, Madam Chair?

5 CHAIRMAN BEDESSEM: It's hard. It's a
6 mouthful. Divisions have long names.

7 BOARD MEMBER DEURLOO: This is not a
8 motion. It's a discussion. But basically what we're
9 looking into is move that the Chapter 18 Solid Waste Rules
10 and Regulations -- let's see. That the administrator -- go
11 ahead, if you have some comments.

12 CHAIRMAN BEDESSEM: As far as how to
13 formulate the motion?

14 BOARD MEMBER DEURLOO: Yeah.

15 MR. ESCH: Madam Chair, may I make a
16 recommendation?

17 CHAIRMAN BEDESSEM: Sure. Please.

18 MR. ESCH: The recommendation to the Board
19 could be to remand Chapter 18 to the Department for public
20 comment, incorporating the changes as discussed.

21 CHAIRMAN BEDESSEM: And as presented in --

22 MR. ESCH: As presented and discussed by
23 the Board.

24 CHAIRMAN BEDESSEM: Uh-huh. For a minimum
25 30-daycomment period.

1 BOARD MEMBER DEURLOO: Remand Chapter 18 of
2 Solid Waste Rules and Regulations to the Department.

3 MR. ESCH: For, I guess, additional --
4 additional public comment, not to -- no less than 30 days.

5 BOARD MEMBER DEURLOO: Additional 30-day
6 public comment?

7 CHAIRMAN BEDESSEM: Uh-huh.

8 MR. ESCH: To receive input on the rules as
9 presented and with changes as discussed.

10 BOARD MEMBER KIRKBRIDE: Standard 30 days
11 from when?

12 CHAIRMAN BEDESSEM: From when you published
13 the last -- when you do a public notice.

14 MS. WEIKART: I'm sorry, Madam Chair?

15 CHAIRMAN BEDESSEM: I think I was just
16 answering your question.

17 BOARD MEMBER KIRKBRIDE: Yes. Yes.

18 CHAIRMAN BEDESSEM: Yeah.

19 BOARD MEMBER DEURLOO: So second part of
20 that would be the Board would review these?

21 CHAIRMAN BEDESSEM: The Board will take up
22 the rule in the third quarter advisory board meeting.

23 BOARD MEMBER DEURLOO: Take up the ruling.

24 CHAIRMAN BEDESSEM: Well, no, it's not take
25 up.

1 MR. ESCH: Maybe another easier way to do
2 it is --

3 CHAIRMAN BEDESSEM: Bing it back.

4 MR. ESCH: -- move to remand the rule to
5 the Department to incorporate changes as discussed and be
6 republished for 30 days for input.

7 CHAIRMAN BEDESSEM: And then the Department
8 will bring the rule back to the third quarter advisory
9 board meeting for discussion.

10 You gave him a novel.

11 MR. ESCH: That's why I tried to cut it
12 down.

13 BOARD MEMBER DEURLOO: It's all over the
14 place.

15 CHAIRMAN BEDESSEM: Needed a lawyer for the
16 word "remand," otherwise we'd be here all day.

17 BOARD MEMBER DEURLOO: So just -- this is
18 still just discussion. But remand Chapter 18 Solid Waste
19 Rules and Regulations to the Department for an additional
20 30-day public comment. We just want to keep with that, or
21 do it in the third quarter Water and Waste Advisory Board
22 meeting?

23 CHAIRMAN BEDESSEM: Does he have to
24 incorporate the part about --

25 MR. ESCH: Madam Chair, I don't believe the

1 second -- that last portion is necessary, because we have
2 to --

3 CHAIRMAN BEDESSEM: We're going to do that.

4 MR. ESCH: Yeah, we're going to be coming
5 back to you regardless.

6 CHAIRMAN BEDESSEM: Yeah, it's understood.

7 BOARD MEMBER DEURLOO: Okay.

8 CHAIRMAN BEDESSEM: So just include the
9 part about the corrections that were discussed today. Then
10 we're having lunch. Or have a break.

11 BOARD MEMBER DEURLOO: Almost there.

12 CHAIRMAN BEDESSEM: Okay.

13 BOARD MEMBER DEURLOO: Okay. Got to have
14 it right, right?

15 CHAIRMAN BEDESSEM: Uh-huh.

16 BOARD MEMBER DEURLOO: Madam Chair, I move
17 that we remand the Chapter 18 of the Solid Waste Rules and
18 Regulations to the Department for an additional 30-day
19 public comment to incorporate the discussion from today's
20 board meeting.

21 BOARD MEMBER KIRKBRIDE: Only thing I'd do
22 with that is switch the phrase for additional public
23 comment to include -- to include these -- these changes for
24 the -- and then for -- well, I can't remember. But I'd
25 switch that last phrase.

1 CHAIRMAN BEDESSEM: I second the motion as
2 amended. All those in favor?

3 BOARD MEMBER KIRKBRIDE: Did you get what I
4 was after, Brian?

5 BOARD MEMBER DEURLOO: Well, does the court
6 reporter have it? We want to make sure we have the motion
7 correct.

8 CHAIRMAN BEDESSEM: We can ask the court
9 reporter to read it back.

10 THE REPORTER: Which part? The amendment
11 or motion.

12 BOARD MEMBER DEURLOO: The amended motion
13 as what --

14 CHAIRMAN BEDESSEM: You can read it back,
15 Brian.

16 BOARD MEMBER DEURLOO: I don't quite -- I
17 don't quite know exactly what we're --

18 CHAIRMAN BEDESSEM: I think we're tired and
19 need to break, so --

20 BOARD MEMBER DEURLOO: Let's make sure we
21 have it before we spend 5 to 10 minutes on this. Let's
22 make sure -- we want to have the right public comments when
23 people are reading this -- or have the right motion.

24 CHAIRMAN BEDESSEM: Totally agree.

25 BOARD MEMBER DEURLOO: So we have a motion

1 on the table.

2 CHAIRMAN BEDESSEM: Uh-huh.

3 BOARD MEMBER DEURLOO: So we're going to
4 want to -- so amend what I wrote -- what I -- the
5 discussion -- what I said is remand the Chapter 18 -- Solid
6 Waste Rules and Regulations Chapter 18 to the Department
7 for additional 30-day public comment and incorporate the
8 discussion topics from today's board meeting.

9 BOARD MEMBER KIRKBRIDE: Okay.

10 BOARD MEMBER DEURLOO: That's the motion.

11 BOARD MEMBER KIRKBRIDE: Okay.

12 BOARD MEMBER DEURLOO: Are you okay with
13 that?

14 CHAIRMAN BEDESSEM: Amendment is withdrawn?

15 BOARD MEMBER KIRKBRIDE: Yeah, I withdraw
16 it.

17 CHAIRMAN BEDESSEM: So we'll to vote on
18 your motion. You want to repeat it?

19 BOARD MEMBER DEURLOO: I'm going to repeat
20 my motion just for fun.

21 Madam Chair, I move that we remand the Chapter 18
22 Solid Waste Rules and Regulations to the Department for
23 additional 30-day public comment so they may incorporate
24 discussion topics from today's board meeting.

25 BOARD MEMBER KIRKBRIDE: I'll second that.

1 CHAIRMAN BEDESSEM: All those in favor.

2 BOARD MEMBER KIRKBRIDE: Aye.

3 BOARD MEMBER DEURLOO: Aye.

4 CHAIRMAN BEDESSEM: Opposed? Abstentions?

5 Motion passes.

6 Okay. So we got --

7 MR. ESCH: Thank you.

8 CHAIRMAN BEDESSEM: -- two moved forward

9 and on hold, and a third with changes that the other CCR
10 producers will be able to look at, and then we'll meet
11 again. Thank you.

12 Thank you very much. It was an excellent
13 presentation by both Solid Waste and Water Quality
14 Division.

15 And great comments from Pacific Power. It's
16 wonderful to have that level of comment too.

17 So thank you, everybody. We'll talk again.

18 Are you guys getting in the car now?

19 BOARD MEMBER DEURLOO: I move to adjourn
20 the meeting.

21 CHAIRMAN BEDESSEM: We're going to break.

22 BOARD MEMBER DEURLOO: Oh, we're not
23 adjourning. Okay. Sorry.

24 CHAIRMAN BEDESSEM: We have Chapter 24
25 to --

1 BOARD MEMBER DEURLOO: Oh, we have
2 Chapter -- oh, yes.

3 CHAIRMAN BEDESSEM: On carbon
4 sequestration.

5 We're going to stop and have lunch. We're going
6 to have a break. And then we're going to come back at --
7 at 12:45. Does that sound good, 12:45? We will adjourn
8 for lunch and come back at 12:45. Thank you.

9 (Meeting proceedings reconvened
10 11:35 a.m., June 25, 2019.)

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C E R T I F I C A T E

I, KATHY J. KENDRICK, a Registered Professional
Reporter, do hereby certify that I reported by machine
shorthand the foregoing proceedings contained herein,
constituting a full, true and correct transcript.

Dated this 15th day of July, 2019.


KATHY J. KENDRICK
Registered Professional Reporter

