

HEARING OF THE WATER AND WASTE ADVISORY BOARD

DEQ/Water Quality Division

Held Thursday, December 5, 2013

By Videoconference

Meeting time: 9:29 a.m. - 3:58 p.m.

BOARD MEMBERS PRESENT:

Marjorie Bedessem, Chairman, Laramie

David Applegate, Vice-Chairman Casper

Lorie Cahn, Jackson

Klaus Hanson, PhD, Laramie

## Hearing

1 MS. BEDESSEM: Let's move forward. I'm happy to  
2 call (inaudible) Water and Waste Advisory Board meeting to  
3 order. Although I realize that these technical difficulties  
4 delayed our start time, that's minor in comparison to all  
5 the hours that we've all spent on inclement weather. So  
6 thank you, everyone, for working together to get all this  
7 set up today.

8 Do you think --

9 MR. EDWARDS: We are on this end.

10 MS. BEDESSEM: All right. Well, first off, I'd  
11 just like to start and introduce our board members. If  
12 everyone is hearing me. Marge Bedessem, representing the  
13 public-at-large. Can we hear from Jackson?

14 MS. CAHN: Lorie Cahn, representing the  
15 public-at-large in Jackson.

16 MS. BEDESSEM: Casper?

17 MR. APPLGATE: Dave Applegate, representing  
18 (inaudible).

19 MS. BEDESSEM: Thank you. Now, Calvin Jones,  
20 who's our representative from agriculture will not be at the  
21 meeting today. Klaus Hanson may be able to call in by phone  
22 with respect to reimbursements. Mr. Jennings will contact  
23 him at that appropriate time. But otherwise, he's not --  
24 due to an emergency, he's not able to attend this morning.

25 So the first thing on our agenda is, I believe we

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1 have some administrative items to take care of. The first  
2 item was election of officers for this coming year. So I'd  
3 like to start off by asking if we have -- right now, I am  
4 the chair and Dave Applegate is the vice chair of the Water  
5 and Waste Advisory Board.

6 Do we have nominations for the upcoming year for  
7 the chair position?

8 Can everybody hear me?

9 MR. EDWARDS: We hear you in Cheyenne.

10 MS. BEDESSEM: Okay. So I'm looking at my two  
11 board members to see if there's any nominations for chair  
12 for this coming year. Or whether we're leaving the slate of  
13 officers the same or not.

14 MR. ADAMS: This is David Adams. I move we leave  
15 the slate of officers the same.

16 MS. BEDESSEM: Are you making a motion to do so,  
17 Dave?

18 MR. ADAMS: If the current chair is open to the  
19 motion at that time, then I will make a motion.

20 MS. CAHN: Since you're both officers, I'll  
21 make the -- first of all, I wonder if we shouldn't wait for  
22 a full board. But I'm okay with making a motion that we  
23 keep the same slate of officers. But do we want to just  
24 continue as is until we have a full board?

25 MR. ADAMS: I think that's a good idea.

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1 MS. BEDESSEM: I am fine with doing that. We'll  
2 table that to the next meeting, because we only have three  
3 out of five of our board members. I think that's  
4 appropriate. Thank you, Lorie.

5 MS. CAHN: I just have another administrative  
6 detail. I know, Marge, you were up for reappointment, and I  
7 was up for reappointment. I have not received anything from  
8 the Governor to say that I've been reappointed. I was  
9 wondering if you have.

10 MS. BEDESSEM: Yeah, I thought they went out.

11 MR. EDWARDS: Yeah, this is Cheyenne. It's our  
12 recollection that they were, but we can -- we'll check on  
13 that after the meeting and reverify that with the board.

14 MS. CAHN: I went on the website and saw that I  
15 had been reappointed so I'm assuming that that's official,  
16 but I don't have anything from the Governor saying that I  
17 was reappointed.

18 MR. EDWARDS: Yeah. I think we've seen that,  
19 Lorie. We'll follow up and make sure you get a copy of it.

20 MS. CAHN: Thank you.

21 MS. BEDESSEM: Are there any other administrative  
22 items?

23 Okay. Now, moving forward, I believe there was a  
24 request for a change in the agenda to have the nonpoint  
25 source information presented first. Is that correct?

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1 MR. STRONG: Yes, Madam Chair, that is correct.  
2 Jennifer Zygmunt is with Water Quality Division in Casper  
3 and would like to give you an update to the Wyoming nonpoint  
4 source program best management practice manual that's  
5 recently been developed and presented to the nonpoint source  
6 advisory task force. So I'll turn it over to Jennifer, and  
7 Jennifer can brief the board.

8 MS. BEDESSEM: Thank you very much.

9 I'm curious here then, is our screen going to go  
10 to the screen where Jennifer's presentation is going to be?

11 SPEAKER: 3 is everybody. That's what I  
12 was. . . that should help. Okay. That's good. But I don't  
13 know if they can see it.

14 MS. BEDESSEM: Yes, we can.

15 MR. STRONG: That's good.

16 MR. EDWARDS: We can.

17 MS. BEDESSEM: Thank you.

18 SPEAKER: But further on in the presentation, I'll  
19 need to see them.

20 MS. ZYGMUNT: Madam Chairman, members of the  
21 Board, thank you for having me here today. My name is  
22 Jennifer Zygmunt. I work with the nonpoint source program,  
23 and I am here to present one program document that we are  
24 ready to update. If you recall, I was here about a year  
25 ago, giving updates for the pertinent documents that we

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1 have. We did not have this document ready at that time, but  
2 we would further ask you to prepare it, put it through  
3 public notice, and get task force approval ready to present  
4 it (inaudible) for board approval today. So that's said,  
5 I'll start with the presentation.

6 SPEAKER: Next slide should. . . put up one at  
7 this point.

8 MS. CAHN: Could you zoom into the slides and also  
9 could Jennifer put the microphone directly in front of her.

10 MS. ZYGMUNT: Is that better?

11 MS. CAHN: Yes, thank you.

12 MS. BEDESSEM: Now, let's go. . .

13 MS. ZYGMUNT: Okay. So this is a brief  
14 introduction to the nonpoint source program. Our mission is  
15 to reduce and prevent nonpoint source solution such that  
16 water quality standards are achieved and maintained. We are  
17 a voluntary program and operate on incentive-based programs  
18 with many partnerships at the local, State, and Federal  
19 levels.

20 The national assistance that we provide to local  
21 groups, it's primarily (inaudible) two federal grants  
22 (inaudible) with water apps, Section 319 and 205(j) grants,  
23 (inaudible) and nonpoint source task force which is a group  
24 of citizens appointed by the Governor.

25 Just (inaudible) engineered required to have a

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1 nonpoint source management plan, and this is a document  
2 which is establishing how the program will be managed in  
3 short and long term. As I said, this was last updated last  
4 year in 2013, presented to the Advisory Board in December,  
5 it was approved by EDA, the Governor, in the spring of 2013.

6 Part of the nonpoint source management plan  
7 involves identifying which best management practices the  
8 program supports within the state of Wyoming. And our  
9 program does that through a series of (inaudible) E manuals,  
10 and again, these manuals just identify which communities are  
11 supported for Section 319 funding. But they're also  
12 intended to be an educational resource to the public.

13 We have five manuals in Wyoming, other urban, crop  
14 (inaudible), livestock and wildlife manuals were presented  
15 to you last year, and those lake source rest (inaudible)  
16 officially approved, and the one that we are able to present  
17 to you today is the stream and lakeshore restoration manual.  
18 This was last updated in 1999, and we previously called it  
19 the hydrologic modification manual.

20 So reasons for updating this document, as you can  
21 see, it's been many, many years since we've updated it, 14  
22 years. Since the update, it was a very -- updated  
23 references, better -- to provide a better educational  
24 resource to the public, and because stream restoration  
25 techniques have changed significantly over the last two

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1 decades, we really felt that it needed to reflect those new  
2 techniques and the new philosophies that have developed  
3 about stream restoration within the past years.

4           So one point is that the revised document that has  
5 been presented to you, represents nearly a complete  
6 rewriting of the 1996 to 1999 version, which is why every  
7 line strike-out version was not prepared. But in a packet  
8 that was sent out, it included both the updated 2013 manual  
9 and the previous 1999 manual.

10           Some general updates, we've improved the formats  
11 of all of the BMP manuals should be consistent between the  
12 different manuals to better summarize key points about BMPs,  
13 (inaudible) practices, and to -- in general, to make it more  
14 user and reader friendly.

15           All of the references have been updated, and as  
16 much as possible, made those available online to (inaudible)  
17 that are present in the documents. We provided updated  
18 photos and diagrams where available, and particularly with  
19 this manual, we've used Wyoming-specific pictures for most  
20 of the BMP fact sheets. The manuals include general and  
21 specific references. But these aren't intended to be  
22 exhaustive references about the practices, but they are  
23 intended to direct users to more detailed information  
24 (inaudible) more until the (inaudible) creation of  
25 specifications for each practice.



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1           The manuals are also updated to include  
2 information about regulatory considerations people need to  
3 think about when they do BMPs and whatever contact  
4 information and technical assistance.

5           So this is just a slide that shows what the old  
6 manual looked like and the fact sheet from the 1999 version.  
7 And then this next slide shows how the fact sheets have been  
8 updated to include the Wyoming-specific photos, we have  
9 those, a better summary of the BMPs, limitations it manages,  
10 and then, most importantly, highlighted (inaudible) there,  
11 online hyperlinks so people can access information, more  
12 detailed information about each BMP.

13           Some highlights about changes that were made to  
14 this updated manual. First, I mention that this manual was  
15 previously called the Hydrologic Modification BMP Manual.  
16 We changed that to the Stream Restoration Manual just  
17 because most people couldn't really relate to hydrologic  
18 modification. It's kind of a confusing term, and we felt  
19 stream restoration just was more user-friendly in terms of  
20 what we were trying to convey to the public.

21           We've updated information about the importance of  
22 (inaudible) in doing the stream restoration projects,  
23 meaning that it's important to not just look at certain  
24 segments of the streams, but you really need to evaluate  
25 conditions more to shed light, to not do -- abandon your

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1 approach piece by piece, but keep realistically what needs  
2 to be accomplished in the watershed.

3           We have (inaudible) information about the  
4 importance of understanding regulations. We need to get  
5 into modifying stream channels, working (inaudible) wildlife  
6 water, there are much -- many more regulations that apply  
7 (inaudible) as people might need to obtain before  
8 undertaking those projects. We continue to improvise the  
9 importance of consulting with (inaudible) fish on these  
10 types of projects, due to the potential to alter spawning,  
11 migration, and fish habitat. (inaudible) involve in draft  
12 of this document and provide it early on into the process.

13           And finally, we've highlighted the importance of  
14 seeking technical assistance from professional engineers and  
15 hydrologists as needed (inaudible) to get into stream  
16 restoration projects that can be very complex. It's  
17 important to make sure that you have the correct amount of  
18 oversight to make sure that they're done appropriately.

19           A few additional highlights. A significant one is  
20 that we (inaudible) clearly the manual that we have a  
21 preference for conservation references that are based on  
22 vegetative, natural channel design, or land engineering  
23 practices, when possible. A lot of these techniques have  
24 developed over the last decade -- last two decades. And  
25 because of the benefits to aquatic and (inaudible)

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1 ecosystems, (inaudible) habitat, better long-term stability,  
2 and due to potentially less extensive and are more  
3 traditional structural practices such as riprap. For those  
4 reasons, we've emphasized those practices within this  
5 manual.

6           One of our manuals still identifies traditional  
7 structural practices such as riprap, making appropriate, in  
8 some cases, and included those for consideration. But we do  
9 suggest that when people use those more traditional  
10 practices, that they consider using them in conjunction with  
11 vegetative practices as well.

12           This slide just shows the BMPs that are featured  
13 in the manual, this means that we just prepared a fact sheet  
14 for each of these BMPs. I'm not going to go into detail  
15 into each of these, but as you can see from the list, as I  
16 mentioned previously, they do emphasize more of a natural  
17 challenge design vegetative bioengineering principles.

18           We've also included a statement in the manual that  
19 would allow us to consider conservation practices included  
20 in any USDA table guides, manuals, and handbooks, which  
21 would include enter (inaudible), their field officer and  
22 manual guide, Forest Service documents. We just felt it was  
23 appropriate to work with other agencies as they develop  
24 their practices that may become credible to our program.  
25 This gives us flexibility to consider practices that come up

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1 in their work.

2           There are several amenities in this document, more  
3 so than in other BMP manuals, adjusted to (inaudible) name,  
4 the regulatory oversight that is often associated with  
5 stream restoration projects. The first index discusses  
6 planning considerations for stream channel alteration  
7 projects, construction measures. Just a basic guide to  
8 considerations we need to be thinking about in planned  
9 projects. Appendix C talks specifically about Section 4 for  
10 permits, Section 4 (inaudible) certifications and other  
11 regulatory considerations that people need to thoroughly  
12 consider before they begin forming their projects.

13           Appendix C includes additional considerations for  
14 select activities. You can see the list there, such as,  
15 (inaudible) standard ground deposits, recreational role  
16 running, and this was information included in the 1999  
17 manual that we felt was important to keep in the manual. We  
18 just felt it was better presented in the index so we could  
19 keep that information there, (inaudible) chief evaluation of  
20 fact sheet as the main part of the manual.

21           Appendix D talks about State and Federal agency  
22 resources for regulatory departments. Those two people you  
23 can contact for more information about permits. And then  
24 Appendix E is a reference for a technical and financial  
25 assistant sources, and then finally, appendix, just included

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1 this full-length website addresses for documents cited  
2 earlier in the -- in the manual, without a direct hyperlink.

3           The timeline for this manual, completed last  
4 April, presented it to the nonpoint source task force in May  
5 and they approved it at that meeting. It was sent to --  
6 both noticed June 14th through July 31st. We did not  
7 receive any public comments on it. We did receive a letter  
8 from Game and Fish Department that they did not have any  
9 aquatic concerns with the manual.

10           So again, today we are here to present it to you  
11 for approval. If we get that today, then the next step will  
12 be to take it later this winter, early spring to the  
13 Governor's office for certification and DEQ for final  
14 approval. So that concludes our presentation, and I would  
15 be happy to take any questions.

16           MS. BEDESSEM: Do we have any questions from  
17 members of the Board?

18           MR. APPELATE: Madam Chair, I don't have any  
19 questions. I will comment, I think this document is  
20 well-done and very thorough. So I think you guys did a  
21 really nice job with it.

22           MS. ZYGMUNT: Thank you.

23           MR. APPELATE: I would be in favor of -- well, I  
24 make a motion we approve the document.

25           MS. BEDESSEM: Dave, when you speak, could you

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1 speak up. I'm having a hard time hearing you.

2 MR. APPELATE: I would make a motion that we  
3 approve the document, and before that, I did say that I  
4 thought the document was well-done and thorough.

5 MS. BEDESSEM: Thank you.

6 MS. CAHN: I would second the motion, and I agree  
7 with David. It was extremely well-done.

8 MS. BEDESSEM: And I personally have had to do a  
9 stream restoration project and have been very pleased at the  
10 evolution of this document and also the way you've made it  
11 comprehensive so it really helps members of the public kind  
12 of navigate the regulatory maze of what needs to, you know,  
13 be done permit-wise as well.

14 I also appreciate -- I was looking particularly,  
15 even have this in your slide presentation, on -- let's see,  
16 page 44, where you redid -- no, 44 and 45, where you redid  
17 the BMP: Log, Rock, and J-Hook Vanes. That would have been  
18 very helpful to show the contractor who, for my particular  
19 issue in restoration project, had a hard time comprehending  
20 that vanes didn't go 90 degrees into the stream. These are  
21 very good diagrams. I think it's a great resource for the  
22 public and -- and for doing these kinds of projects. So  
23 with that said, we have a motion and a second.

24 MS. CAHN: I actually had some -- just some quick  
25 comments. I forgot I had them until you pointed out that

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1 page.

2 MS. BEDESSEM: Okay. Go for it, Lorie.

3 MS. CAHN: Just to -- just a minor thing that, for  
4 instance, on page 45, in the figure, in the text in the  
5 figure, it refers to figure 3.2, which is -- I assume is  
6 part of where the source document was. And there's also  
7 acronyms like QCF in the second -- on the right-hand side,  
8 sort of in the top third of the page, says, Typically  
9 one-quarter to one-third QCF Width Max, and so I'm wondering  
10 if it would be helpful to just add in -- where you've got  
11 figure 13, if you could just add in what the acronyms are  
12 under the figure in that figure title. And then also just  
13 that figure 3.2 refers to the Virginia stream restoration or  
14 something, and I noticed that in some places. I'd forgotten  
15 to mention that. It would just be -- just a minor thing,  
16 but I think it could be a really simple change.

17 MS. ZYGMUNT: I would have to make those  
18 changes (inaudible) document figures to see where else that  
19 probably would apply to.

20 MS. CAHN: Okay. Thank you.

21 MS. BEDESSEM: Yeah, and I guess particularly also  
22 that if there's any excerpts taken from anywhere else, if  
23 the references that are within the excerpts, are referenced  
24 in your document. So. . .

25 MS. ZYGMUNT: Sure.

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1 MS. BEDESSEM: Okay. With that said, we have a  
2 motion and a second to approve.

3 MS. CAHN: Marge -- Marge. Excuse me. Can you  
4 just give me a second to look through --

5 MS. BEDESSEM: Oh, I didn't realize that --

6 MS. CAHN: I read this about a month ago when we  
7 first got it, so I just want a few seconds to look through  
8 it to see if I had any other comments. Sorry.

9 MS. BEDESSEM: Oh, that sounds good. We'd be  
10 happy to wait for those.

11 MS. CAHN: I'm starting --

12 MS. BEDESSEM: While we were -- take your time,  
13 Lorie.

14 MS. CAHN: Okay.

15 Okay. On page 48, investment management practice  
16 14, the bottom figure, there is a -- there is -- at the top  
17 left, there's an arrow, open class aggregate or salvage  
18 substrate, and it's pointing to something, but it's not  
19 clear what it's pointing to.

20 MS. ZYGMUNT: Okay.

21 MS. CAHN: I'm going backwards here. On best  
22 management practice 3, page 16, on the left-hand figure,  
23 there's OHW. Or bank full. And again, that would just be  
24 an example where an explanation in the figure title of the  
25 acronym.



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1 MS. ZYGMUNT: Okay.

2 MS. CAHN: And the same thing as on page 13, best  
3 management practices 2, again, it has OHW. Or bank full.

4 MS. ZYGMUNT: Okay.

5 MS. CAHN: And then the only other -- and then on  
6 best management practice 1, page 10, I just sort of had a  
7 general comment that these graphics have the -- the --  
8 whatever format you have used to import them seems to be  
9 making it difficult to read the text. So I'm wondering if  
10 there's anything you can do to bring it in as a PNG file or  
11 something other than whatever method you brought. Just  
12 check them to look for a few that are, you know, not clear.

13 MS. ZYGMUNT: Sure.

14 MS. CAHN: And then on page 7, under general  
15 resources, you refer to FISRWG in the document. But when I  
16 went to look it up in the general resources, it was called  
17 the Federal Stream Corridor Restoration Handbook. So if you  
18 could make sure that references in the text correspond to  
19 the same -- how you start the references in the back so that  
20 it's easier to find them.

21 MS. ZYGMUNT: All right.

22 MS. CAHN: So, for instance, on page 4, the second  
23 full paragraph about the middle, the reference is to FISRWG  
24 1998. And then the general resources, it's under Federal  
25 Stream Corridor Restoration Handbook.

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1 MS. ZYGMUNT: Okay.

2 MS. CAHN: And then on page 2 -- let's see. Let's  
3 see. I could -- actually, Jennifer, I think for the rest of  
4 my comments, they're just -- if you want to just call me,  
5 I've got a couple, probably a dozen, editorial comments, and  
6 if you want to just call me. We don't have to take the  
7 Board's time on English, but I found very few, so that's a  
8 good job on your part. But if you want to just call me, I  
9 can go over the simple English changes.

10 MS. ZYGMUNT: Sure.

11 MS. CAHN: We won't change them -- okay. After  
12 the call, if you want to call me, my number is  
13 (307) 733-9396. And then I'm done with Board comments on my  
14 part. Thank you.

15 MS. BEDESSEM: Thank you very much, Lorie. And  
16 all those comments were relatively minor, so that doesn't  
17 impact the vote today, of course. As you said, we have a  
18 motion to approve and a second. All those in favor, say  
19 aye.

20 (Motion carries unanimously.)

21 MS. BEDESSEM: None opposed. Pleased to move  
22 forward with this update of Wyoming Nonpoint Source Program,  
23 the Stream and Lakeshore Restoration Best Management  
24 Practice Manual.

25 I'm sure this is a combination of a lot of hard

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1 work, so Jennifer, thank you very much, and it's much  
2 appreciated that you've brought this to the Board.

3 MS. ZYGMUNT: Thank you very much.

4 MR. EDWARDS: Madam Chairman, this is  
5 Alan Edwards. Could I make a general comment here at this  
6 point?

7 MS. BEDESSEM: Yes.

8 MR. EDWARDS: Okay. It is related not directly to  
9 Jennifer's report, but while she's there, I want to just  
10 touch base on another aspect that I think might be good  
11 background for the Board or just some general information.

12 As you're aware from my presentation in Jackson,  
13 I'm still wearing two hats, basically. My other hat is the  
14 administrator of the abandoned mine land reclamation  
15 program. For those Board members who aren't familiar with  
16 that, we're charged with reclaiming abandoned mines that  
17 were abandoned prior to 1977 and for which there's no  
18 responsible party to clean them up.

19 As part of our activities, we do an awful lot of  
20 sediment -- sediment control, topographical replacements, in  
21 other words, we restore the topography, we revegetate. We  
22 also address a lot of stream channel repair, and so  
23 there's -- there's a lot of Nonpoint Source related aspects  
24 of the work we do.

25 I worked with Jennifer and with David, primarily,

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1 and also with Kevin, and decided there was a lot of  
2 advantage in the AML reclamation work being coordinated more  
3 closely with the water quality Nonpoint program activities.  
4 There was really no correlation that that had been being  
5 done, that identified the gains that were being done on one  
6 hand through reclamation, and then what Jennifer and the  
7 Nonpoint Source folks are trying to document.

8           So especially over the last year to two years, the  
9 two programs have started working a lot closer together to  
10 not only coordinate the activities, but to find areas where  
11 that reclamation could perhaps further enhance some of the  
12 Nonpoint Source issues that we were all trying to address.

13           I don't think Wyoming in some respects outside of  
14 Wyoming gets sufficient credit for the water quality and  
15 the -- and the watershed improvements that are being made in  
16 other activities, so -- but I want to acknowledge that  
17 between Kevin and David, Jennifer and the abandoned mine  
18 lands program, we've really worked to improve that  
19 interdivisional coordination and sort of leveraged the  
20 efforts of both programs.

21           So I wanted to just take the opportunity to  
22 acknowledge that and bring that to the Board's attention,  
23 because the work that Jennifer is doing and David, they're  
24 not alone in those efforts. The more we can coordinate, I  
25 think the further we can enhance the value of what we're all

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1 working to accomplish. Thank you.

2 MS. BEDESSEM: Well, that sounds wonderful with  
3 respect to efficiencies on the Department's part as well as  
4 learning from all the AML projects that you're currently  
5 would, and have been --

6 MS. CAHN: Excuse me, Cheyenne is going to have to  
7 mute their microphones so we can hear you, Marge.

8 MS. BEDESSEM: How about now?

9 MR. EDWARDS: We're mute.

10 MS. CAHN: A little better, but not much. Do you  
11 have a microphone in front of you?

12 MS. BEDESSEM: We have no microphones. They're in  
13 the ceiling. So we'll just have to bear with this.

14 The only thing I wanted to say was I was glad to  
15 hear that the programs were coordinating and that has to  
16 bring a lot of efficiency to the work that's being done, but  
17 also so that AML has so much hands-on experience with a lot  
18 of these restoration projects that both the Nonpoint Source  
19 Program and the AML Program can learn from all those  
20 activities as they're ongoing. So that sounds excellent.  
21 So thank you, Alan, for filling us in on that.

22 Now, from here, are we going to move forward to  
23 the solid waste work and then come back to water quality?  
24 What's the agenda?

25 MR. EDWARDS: Madam Chairman, this is

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1 Alan Edwards. Our plans were to move through the solid and  
2 hazardous waste presentations and then finish up with the  
3 last water quality presentation.

4 MS. BEDESSEM: That sounds good. Before we  
5 started on this, we went around to the different sites and  
6 introduced the Board members. I just want to check and see  
7 if we have any members of the public at any of our locations  
8 today?

9 In Laramie, we have Brooks Webb with the City of  
10 Laramie present. Do we have members of the public present  
11 in Jackson?

12 MS. CAHN: Not yet, but I think there may be some  
13 people coming later. If we could take a break before we go  
14 into Frank's presentation, there may be some people who  
15 might show up.

16 MS. BEDESSEM: Okay. Thank you, Lorie. How about  
17 Casper?

18 SPEAKER: Madam Chair, we have about 10 additional  
19 people in the audience here.

20 MS. BEDESSEM: Okay. And they have signed in, and  
21 so at the time for public comment, they can be presenting.

22 And how about in Cheyenne?

23 MR. EDWARDS: Madam Chairman, we have several DEQ  
24 employees here. We also have Mr. George Parks, the  
25 executive director of the Wyoming Association of

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1 Municipalities here as a member of the public. And so far,  
2 that's the only public representation we have. I would like  
3 to --

4 MS. BEDESSEM: So the majority --

5 MR. EDWARDS: Excuse me, Madam Chair. I just  
6 wanted to remind the group that we are relying upon a court  
7 reporter to take transcripts of the hearings today. He's  
8 with us here in Cheyenne. So it might be helpful on  
9 occasion that we at least state our names before we speak so  
10 he can capture that in the record. Thank you.

11 MS. BEDESSEM: Thank you very much for that  
12 reminder. Okay. With that, I believe we can move forward  
13 with DEQ Solid and Hazardous Waste Division presentation.

14 MR. EDWARDS: Thank you, Madam Chairman. This is  
15 Alan Edwards. One question for you first, Marge, is you  
16 mentioned that Klaus was unable to attend, so he would like  
17 to join during the reimbursement part. Did he give a time  
18 that is more convenient for him than others? Because we  
19 could adjust our presentations to accommodate what might be  
20 best for his schedule and get that reimbursement in there.

21 MS. BEDESSEM: In my conversation with Mr. Hanson  
22 this morning, we were simply going to call Klaus on his cell  
23 phone at the point of voting, because he has already  
24 reviewed the packet, and if he is available, we'll vote. If  
25 he is not available at the time that we get to it, we'll

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1 table it and come back to it at a later time, based on  
2 what -- what he can hear during that phone call or we'll  
3 just try again, essentially. Okay?

4 So I think we should move -- move forward the way  
5 we had planned, and then Mr. Jennings has Klaus's cell phone  
6 number, and we'll try to tackle it that way and proceed.

7 MR. EDWARDS: Okay. Thank you, Madam Chairman.  
8 If I may, I would appreciate the liberties to make just a  
9 few -- I'd like to start the presentation with a few  
10 administrative updates. But my thought for the order of  
11 events here is I'd like to do some administrative updates.  
12 Then get into the Chapter 1 and Chapter 17 rules. And then  
13 wrap up with Mike and the reimbursement portion. So if  
14 everybody's okay with that, I'll start from there.

15 First, on a general note, the apologies for the  
16 weather and the technical difficulties. These arrangements  
17 are clearly sort of a poor second to having these meetings  
18 in person. But I'd like to acknowledge, I guess, both the  
19 water quality and the solid and hazardous waste staff for  
20 their last-minute efforts to get this together.

21 First, an update on the administrator's position.

22 MS. CAHN: Excuse me. Alan. Can I ask a  
23 question? I understand -- I was told by Mr. Jennings,  
24 or Doctor, I can't remember which, that our ability to have  
25 these remote sites through videoconferencing goes away



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1 December 31st? Can somebody explain what's going on and why  
2 that is?

3 MR. EDWARDS: I think Bill Tillman could -- he  
4 indicates an interest in going there, but just so you know,  
5 we're looking at Going To -- you know, Go To Meeting, with  
6 Google and others, so this system was eventually going to be  
7 taken offline. So with that, I'd like to leave that to Bill  
8 to make a couple of other additional comments.

9 MR. TILLMAN: This is Bill Tillman, and that was  
10 basically what I was going to say. What we're understanding  
11 is that we're supposed go to Google Hangout, or Google-type  
12 format for these videoconferencing type meetings, and that's  
13 supposed to take place sometime next year, so I think that's  
14 the official justification for why this type of technology  
15 is going away.

16 SPEAKER: Hey, Bill. Mention that --

17 MS. BEDESSEM: And --

18 MS. CAHN: Does Google Hangout have the ability --  
19 I've used it with two people and I noticed quite a distinct  
20 drop in quality when a second -- when a third -- with three  
21 people. So two people, it worked great. With three people  
22 on the line, the quality suffered greatly. Have we tried it  
23 with ten, five people calling in? We would have at least --  
24 if everybody was doing it from their own computer, I guess  
25 we would have the five board members plus a couple locations

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1 in Wyoming where DEQ is at, and then maybe members of the  
2 public. So have we tried it with a dozen, let's say?

3 MR. TILLMAN: Not to my knowledge. We haven't had  
4 any formal training with Google Hangout just yet. They had  
5 a seminar to kind of introduce it to everyone a few months  
6 ago, but to my knowledge, there hasn't been any attempts to  
7 try and use it just yet.

8 MR. EDWARDS: And if I could add to that, the --  
9 the move towards that is not a DEQ initiative. It's a  
10 statewide initiative that's being overseen by technology  
11 services. So basically, we're -- we're -- we will be  
12 brought up to speed as they further develop the systems.  
13 But on the technical applications or the limitations of  
14 that, there's still a lot of information that needs to be  
15 gained. So I regret to say we can't specifically answer  
16 your question. But we do know and we can tell you it's in a  
17 status of transition to the other system.

18 MS. CAHN: Thank you.

19 MR. EDWARDS: Madam Chairman, then, if I could  
20 continue. The administrator position, I'm still just the  
21 acting administrator for Solid and Hazardous Waste Division.  
22 The position itself has been advertised and is out for  
23 active recruitment at this point in time. Director Parfit  
24 intends to close the recruitment period sometime on or prior  
25 to December 20th of this year. From there, he will select

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1 some candidates and do some interviews in January. So that  
2 position should be filled sometime by the end of January,  
3 depending on who's selected, if they're in-state or out of  
4 state, of course. There's still an open question as to when  
5 a body might physically be in the position, but director  
6 intends to have somebody selected for that position by the  
7 end of January. So that's under active recruitment. And  
8 we'll see where that goes.

9           We did provide a brief update in Jackson about the  
10 hazardous waste rules that are under development. Ruled by  
11 reference, just as a little update and the status on that.  
12 The hazardous waste staff has done a lot of work on that.  
13 If work keeps progressing, it's possible that we might have  
14 something to bring to the board in the first quarter of 2014  
15 meeting. If not, then perhaps the second quarter.

16           So that would be the rewrite of the hazardous  
17 waste rules and the conversion to the rule by reference that  
18 we discussed in Jackson. So that's still a work under  
19 development, but it's been pretty nearly complete.

20           There's been quite a bit of outreach to industry  
21 that's affected by this, large and small, some outreach to  
22 the environmental stakeholders to get their input as well.  
23 But for the most part, this is strictly just a conversion to  
24 a rule by reference. It's not a major new package of  
25 totally new items that are being brought forward. It'll

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1 reflect what's in the rules now, but hopefully, in a more  
2 streamlined and more effective to use package.

3 I also want to acknowledge that the staff has  
4 prepared four guidance documents for my review. I will  
5 acknowledge that I've had these for a little while, but due  
6 to being overtaken by some other events, I haven't been able  
7 to totally complete my review on that. So I'll acknowledge  
8 some responsibility for the delays and some of the action on  
9 that yet. But there are four guidance documents that will  
10 be brought to the advisory board. Those include the site  
11 characterization for landfill siting. Performance-based  
12 design demonstrations. Hydrologic evaluation of landfill  
13 performance. And the fourth one would be freight and  
14 transport modeling.

15 I have those. I intend to be going through them  
16 here in the very near future. So hopefully, we'll have  
17 those to bring to the board, either first quarter,  
18 hopefully, or no later than second quarter of next year.

19 The rules you have in front of you now for  
20 consideration are Chapters 1 for the general permit and  
21 Chapter 17 for the landfill remediation. The next step in  
22 all that process, when we're done with the rulemaking for  
23 Chapter 1 and Chapter 17, those were relatively high  
24 priority because of the implementation of the new program.  
25 The legislature will be meeting to award funding. So we're

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1 trying to position the rules so that they would be effective  
2 by the time the funding is available and communities could  
3 apply.

4 We elected to proceed on that with the stand-alone  
5 rulemaking. When we're done with that, we've done a review  
6 of all the solid and hazardous waste rules. And clearly, it  
7 appears that there are some areas where there's duplication  
8 between chapters. There's some chapters that are out of  
9 date and perhaps are no longer necessary.

10 When we're done with the Chapters 1 and Chapter 17  
11 rulemaking, I've asked the staff to take a look at all the  
12 rules and see if there are opportunities to do some rule  
13 consolidation. Eliminate duplication where possible,  
14 eliminate the dated rules if they're no longer necessary,  
15 and basically clean up the solid and hazardous waste rules.  
16 Do a general cleanup on that.

17 The intent of that, again, is to basically  
18 streamline the rules, consolidate so they're easier to  
19 follow. They'll be easier to apply, both for people who are  
20 either applying for permits or those who -- who have an  
21 interest in the permitting activities so the rules would be  
22 a little clearer and more streamlined. So just as a  
23 heads-up, as a place-holder for the future, we were looking  
24 at the division also taking a look at those rules for those  
25 same purposes. It just seems time to do a little cleanup

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1 with that.

2           What I would like to do next, then, is -- if  
3 there's no questions on those, is get into the Chapter 1 and  
4 Chapter 17 rulemaking. When we are done with that, then we  
5 would go into Mike's presentation on the cost reimbursement.  
6 Relative to the rules, when we get to this, I'm going to  
7 turn it over to Luke Esch. Luke has actually taken the lead  
8 on our team effort to develop the rules. Bob and his staff  
9 has done a lot of work to assist in the development of the  
10 regulations. But I would like to give a special  
11 acknowledgment to Luke, who took the lead on this and  
12 shepherded it through, kept it extremely well-focused, I  
13 believe, and developed what we think is a good package that  
14 we're bringing to you today. So I'd like to acknowledge  
15 Luke and the staff for their contributions.

16           What got us here today was perhaps a little  
17 different approach to the rulemaking. I don't know if all  
18 the board members are familiar with the steps we took, but  
19 the very first initial step was to develop a preliminary  
20 draft of the rules to basically develop our best approach on  
21 what we thought would need to be done under the rules.

22           We then held five public outreach meetings at  
23 various corners of the state and took those preliminary  
24 draft rules out to get input from the regulated community  
25 and those who would actually have to implement and abide by

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1 the rules, et cetera.

2           Rather than look at this as strictly from an  
3 in-house regulatory standpoint -- excuse me, I've been  
4 fighting a cold -- we also wanted to gather the input from  
5 the affected regulated community to make sure there wasn't  
6 something we overlooked, something we missed, something that  
7 actually might not have made sense for landfill operations.

8           We had a very good response at those outreach  
9 meetings. We took those comments that we received, adjusted  
10 the rules again, and those adjusted rules are what you saw  
11 in the rule package. So that rule package reflects the  
12 preliminary draft and then one iteration based on some very  
13 extensive input from the stakeholder community.

14           So there was, basically, a three-step process to  
15 get us here. And with that background, then, what I would  
16 like to do is essentially turn this over to Luke to walk you  
17 through the rules. He has Bob in Casper and Becky Dietrich  
18 here to also bring into the discussion if you have questions  
19 where he needs a little bit of support.

20           But as Luke was the most familiar, I'll defer the  
21 remainder of this part of the discussion to Luke unless you  
22 have specific questions for me when we get through those.  
23 Luke?

24           MR. ESCH: With that, thank you, Madam Chairman  
25 and members of the board. I'm going to attempt to put my

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1 presentation up on the screen here so bear with me. Does  
2 everybody see the first slide?

3 MS. BEDESSEM: Looks good.

4 MR. ESCH: Excellent. That's a great start for  
5 us.

6 Thank you, Alan, for the introduction. Once  
7 again, my name is Luke Esch, and just a brief summary again.  
8 We really tried to roll these rules out in late September,  
9 early October. And have an aggressive outreach to the  
10 stakeholders and members of the public and throughout the  
11 state. As Alan mentioned, we had five sessions held  
12 throughout the state, and where we walked through the rules  
13 at each location, and solicited a lot of good feedback from  
14 the members of the public, and no matter how many times you  
15 look at a rule, there's always something that might miss  
16 your eye, and through the various outreach meetings, we got  
17 a lot of good feedback and made some changes to the rules, I  
18 think, for the better.

19 So for the members of the public that are out  
20 there and who provided comments, thank you all very much.  
21 Your input led to a better set of rules to present to this  
22 board.

23 So with that, we'll just dive into the rules here.  
24 I have several slides, but I probably won't go through them  
25 all in detail because our court reporter has to leave at



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1 12:00 o'clock, so hopefully, we can wrap up before that.

2           Here we go. Beginning with the overview. House  
3 Bill 65 and 66 passed by the legislature last year. That  
4 was the impetus for the rulemakings. House Bill 65 directed  
5 DEQ to make changes to the rules to implement the Cease and  
6 Transfer Program. House Bill 66 directed DEQ to promulgate  
7 rules for the implementation of the leaking landfill  
8 remediation program. So that's what the Department did.  
9 And we'll go through these rules.

10           The first chapter, Chapter 1, was once again for  
11 the implementation of the Cease and Transfer rules. We went  
12 through Chapter 1, Section 8. There were several  
13 definitions that we decided needed modification in order to  
14 clarify the legislation, promulgated by the legislature.  
15 First of all, it was the -- we introduced the definition of  
16 cease disposal for the purposes of the cease and transfer  
17 program to really clarify what the legislature was  
18 intending, which was that it was directed at the disposal of  
19 municipal solid waste.

20           Second, another item that we wanted to clarify --  
21 or this was a side item we received through comments in our  
22 listening sessions. We received several comments that  
23 construction and demolition waste and construction and  
24 demolition landfill definitions needed to be modified to  
25 really include what could be considered to be construction

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1 demolition waste. The potential universe for inert waste,  
2 which would be allowed to be disposed of in a construction  
3 and demolition landfill, is fairly large. Through our  
4 outreach, there was several suggestions that we needed to  
5 add to these definitions to provide more clarity on the  
6 types of waste that could be used.

7           The division felt that providing more discretion  
8 for the administrator to approve items whenever they're  
9 presented or proposed by the operators, made a lot more  
10 sense in order to allow it to be a -- a dynamic definition  
11 that can change rather than one that has to be continually  
12 updated whenever new material is proposed by an operator.  
13 So those are the changes that were proposed for those  
14 definitions.

15           Moving on, another change that we heard, with the  
16 cease and transfer program implementation, there's a lot of  
17 discussion about the regionalization of landfills. And we  
18 received comments that, you know, the regionalization effort  
19 is hampered somewhat by the definition of a major change, so  
20 if a facility wanted to increase their service area by more  
21 than 5 percent, they'd have to go through the major change  
22 procedures, which could be -- well, time-consuming.

23           So the Department thought about it and thought  
24 that this provision probably wasn't necessary because we're  
25 going to receive this information in other ways, through

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1 other regulations that are already on the books. So we  
2 proposed to eliminate that to streamline the effort  
3 somewhat.

4           The other big change in the definitions was  
5 modification of the definition of municipal solid waste. We  
6 also heard throughout our listening sessions that  
7 construction and demolition waste is not the same as  
8 municipal solid waste, and really, we need to clarify that  
9 in our regulations, and so we decided to go through and make  
10 sure that clarification was added in the regulation. And  
11 furthermore, this is for the -- for the -- both programs.  
12 There's language in the statute that references disposal of  
13 waste, of municipal solid waste, and by changing this  
14 regulation, we clarify that the purpose of these programs  
15 really is directed at municipal solid waste.

16           Section 2 A. This is the permit application  
17 procedures. Really, this was just a quick modification to  
18 the language to clarify that the directive by the  
19 legislature --

20           Do you have a question? Okay.

21           Well, this is a clarification that the general  
22 permit application procedure is different from the permit  
23 application procedures for other solid waste permits. The  
24 general permit application procedures is set forth in  
25 Section 2 K. And going back to House Bill 66 for -- yeah,

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1 no, 65, for the Cease and Transfer Program, there was a  
2 directive by the legislature for the Department to create a  
3 general permit for municipal solid waste landfills less than  
4 30 acres, and that general permit procedure was supposed to  
5 streamline and make it a simpler process for those smaller  
6 landfills to receive a closure permit and eliminate some of  
7 the costs associated with that. So that's the change in  
8 Section 2 A.

9 Section 2 K. This is really the promulgation of  
10 the regulations for the implementation of the general  
11 permit. Diving right in, K 1. This is clarifying that this  
12 is for landfill -- municipal solid waste landfills with less  
13 than 30 acres of municipal solid waste disposal areas.

14 Now, when we were doing our outreach sessions,  
15 there was several requests for clarification on what does  
16 the 30 acres mean. Is that 30 acres of -- in your entire  
17 landfill or just 30 acres of disposal area of municipal  
18 solid waste. So the Department modified this and said that  
19 it was less than 30 acres of municipal solid waste disposal  
20 area. So that was -- that was clarified through the  
21 comments received in our outreach.

22 Section 2. This is the regulations that set forth  
23 the procedures for application for the general permit.  
24 Application needs to be submitted and two copies. It needs  
25 to be made on the forms provided by the Department. All

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1 activities need to meet the standards that are already in  
2 place in Chapter 2 of our regulations. And specifies that  
3 the general closure permit application needs to be prepared  
4 under the supervision of a professional engineer.

5           And one thing I want to clarify with all this, is  
6 this is all new language. Just because it's in red or it's  
7 in black, it doesn't mean it's already established. This is  
8 all new language. We changed it to put it in black because  
9 reading all the new language in red is kind of rough on the  
10 eyes. So. . .

11           Subsection 3. This is the application process.  
12 We are -- the administrators must review each application or  
13 resubmittal within 60 days. The administrator may request  
14 additional information. And the Department shall issue the  
15 application -- or the permit within 30 days of finding that  
16 the application is complete. And no closure can begin until  
17 written notification of coverage is received.

18           Subsection 4. This just covers the petitions to  
19 terminate the post-closure period. And provides the  
20 interested persons an opportunity to appeal the decision  
21 regarding coverage under Subsection 5.

22           And with that, if there's no questions regarding  
23 Chapter 1, we can jump into Chapter 17.

24           With that, we can -- all right. Chapter 17. Now,  
25 Chapter 17. This was the promulgation of regulations for

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1 the implementation of the leaking landfill remediation  
2 program. Section 1, the authority and purpose. This was  
3 taken primarily directly out of the statute. Just citing  
4 the statute which provides authority and provides the  
5 purpose which is to provide funding to take remediation  
6 actions at eligible facilities.

7 Section 2 goes into the leak -- some definitions.  
8 In order to streamline and keep the regulations short, we  
9 referenced -- cross-referenced the existing definitions set  
10 forth in Chapter 1. And only added a couple definitions,  
11 two definitions. One referenced to the remediation program  
12 account, and the second one, the leaking municipal solid  
13 waste landfill, which this was added after the outreach  
14 sessions were held. We received comments asking, well, what  
15 does a leaking municipal solid waste landfill mean? And so  
16 based on those comments, we provided a definition that the  
17 leaking municipal solid waste landfill is a unit or an  
18 existing facility that exceeds groundwater protection  
19 standards.

20 Section 3 is eligibility. This was a big part of  
21 the legislature -- the legislation, I should say.  
22 Subsection A. This implements a requirement of the statute  
23 that the facility enter into a written agreement with the  
24 Department to -- well, basically meet the requirements of  
25 the -- of this program.

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1            Subsection A is also a requirement of the statute  
2 that the operator shall implement and revise the communities  
3 integrated solid waste management plan. So that was  
4 incorporated.

5            Subsection 2. This provision, the Department  
6 had -- did some thinking on. A requirement of the statute  
7 stated that disposal of all waste streams at leaking  
8 facilities must cease. However, there was a clear  
9 indication that the legislature might not have meant all  
10 disposal. More specifically, it was more directed at  
11 municipal solid waste. So we incorporated the provision in  
12 Subsection B that the operator may continue to dispose of  
13 construction and demolition waste in portions of an  
14 operating facility if the operator shows to the satisfaction  
15 of the administrator that the disposal of construction and  
16 demolition waste is necessary for the purpose of achieving a  
17 permitted or approved final grade and is protective of the  
18 environment.

19            Subsection 3. This incorporates another provision  
20 of the statute that the operator must agree to provide  
21 funding from any available funding source for at least 25  
22 percent of the total cost of monitoring or remediation of  
23 the program. Now, whenever the Department was promulgating  
24 these regulations, we had to think about it for a while,  
25 because whenever an applicant is wanting to become eligible

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1 for the program, they might not know exactly what their  
2 final remedy is going to be, and so how are you going to  
3 provide this information if you don't know what the final  
4 remedy is going to be.

5           So after some discussion, we determined that it  
6 would be appropriate for the operator to propose a  
7 presumptive remedy, which would entail what they believed  
8 the final remedy would be. And we received comments in our  
9 outreach sessions where they -- that there were several  
10 commenters that thought that we shouldn't require the  
11 submission of a presumptive remedy, that we should basically  
12 make it a two-step approach and have the showing be made at  
13 a separate time.

14           The Department considered that, but in the end,  
15 decided to keep a presumptive remedy a part of the program.  
16 Because this provides additional information for the  
17 Department to look forward and manage the funds of the  
18 remediation account in the best manner possible.

19           MR. EDWARDS: There's -- there's a couple of items  
20 relative to that I could add. This is Alan Edwards.  
21 Is there -- there's a couple of items that come into play  
22 under both cease and transfer, but until Chapter 17,  
23 landfill remediation. The operators have to be able to make  
24 the demonstration that they're capable of paying the  
25 25 percent, or 25 percent or greater local share of the



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1 cost. Absent a presumptive remedy, there's no way to  
2 evaluate the cost either from the Department standpoint, so  
3 we can plan for the use of remediation funds, or to evaluate  
4 the operator's ability to pay statements.

5           We do fully recognize that as we get into the  
6 design, the final remedy might be different, but at that  
7 point in time, we're at least closer to what we feel the  
8 financial target is, and at that point in time, we can  
9 adjust the cost estimates and reflect that in our landfill  
10 remediation account, plus look for the operators to either  
11 make a new financial responsibility statement, either to  
12 reflect the increased or the reduced cost that come out of  
13 that final remedy.

14           MR. ESCH: And thank you, Alan. And with that,  
15 that Subsection B that I've got on the screen in front of  
16 you, that incorporates what Alan was mentioning regarding  
17 the additional showing after your entry into the program,  
18 that we understand that your final remedy might not be what  
19 your presumptive remedy is, and so this allows that -- the  
20 remedy to change based on the investigations that are  
21 conducted.

22           Subsection C. This incorporates a requirement  
23 from the statute that some operators performed remediation  
24 and monitoring activities between July 2006 and  
25 December 31st, 2012. The legislature allowed that this work

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1 could be used to -- the cost of this work could be credited  
2 towards that required 25 percent funding requirement.  
3 However, that cost, that credit, can only be used for a  
4 cumulative amount of \$4 million. So all the facilities  
5 around the state that are trying to use this money for that  
6 25 percent demonstration, it's limited to \$4 million.

7 Go ahead, Alan.

8 MR. EDWARDS: This is Alan. I do also want to  
9 note in here and make sure it's clear. There was some  
10 confusion on my part and the Department's part about this  
11 particular provision, the \$4 million reimbursement for prior  
12 remediation. There was confusion relative to that.

13 What that provision covers is that it is not,  
14 per se, a direct reimbursement for expenses that were  
15 remediation -- eligible remediation costs that were incurred  
16 during that period. What it is, is we'll work to establish  
17 what those eligible costs would be, determine how to fairly  
18 and equitably apportion the \$4 million across the eligible  
19 facilities. That amount that's dedicated then to a facility  
20 is actually a credit.

21 As they come in and they pay their at least  
22 25 percent or greater, the amount that they're eligible for  
23 under the reimbursement is actually applied as a credit to  
24 their -- their 25 percent share.

25 Now, in essence, in one respect, it's a

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1 reimbursement, because it does reduce their out of pocket in  
2 their -- in their actual 25 percent commitment. But it's  
3 actually a credit towards their future work, not a direct  
4 payment for past work. So there's a distinction there, I  
5 think is important to get on the table. Thanks, Luke.

6 MR. ESCH: Thank you.

7 Moving on. Subsection 4. This was another  
8 requirement of the statute that the operator must control  
9 the source of release.

10 Subsection 5. The statute provided instances --  
11 well, provided the option for the operator or the Department  
12 to oversee the remediation and the monitoring activities of  
13 the facility. This provision just incorporates the option  
14 for the operator to -- whenever they request the  
15 authorization to oversee the monitoring or remediation, that  
16 written agreement that is required to be entered into  
17 contains a commitment that the operator agrees to comply  
18 with all the applicable regulatory requirements.

19 And you know, of course, it incorporates the  
20 oversee -- or the oversight requirement of the Department  
21 that the Department shall approve the monitoring plan and  
22 the remediation plan.

23 And Subsection B just talks about, that's taken  
24 from the statute as well, which requires the Department to  
25 take all actions necessary to ensure that the local

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1 operator, yeah, complies with all the regulatory  
2 requirements.

3           So that sums up Subsection A. And Subsection A of  
4 Section 3 is all the requirements that need to be entered  
5 into, that written agreement between the Department and the  
6 operator. And the Department really believes that that --  
7 that written agreement should be a flexible document that  
8 will be able to take into account site-specific conditions  
9 and provide the flexibility that's going to be required due  
10 to all the different circumstances of facilities around the  
11 state.

12           Subsection B. This incorporates the requirement  
13 of the statute that requires documentation that the operator  
14 can continue to oversee the -- the facility after the  
15 remediation is conducted. And so this requires that  
16 documentation be provided, that the full cost of the  
17 remediation and post-closure activities can be taken over by  
18 the operator.

19           C. This is the requirement that the operators  
20 must demonstrate through generally-accepted accounting  
21 principles that the liabilities associated with the loss --  
22 closure and post-closure can be taken over by the operator.

23           Section 4. This is the program process.  
24 Subsection A, this is what we're anticipating our notice  
25 for -- notice of intent to participate in the program or --

Hearing

1 will contain. The information about the basic information  
2 about the facility, name, location, background information,  
3 estimated depth to groundwater. This is a lot of the  
4 information that the facilities will all -- will already  
5 have, so it's not anticipated that this is going to be a  
6 big -- a big requirement that they'll have to dig it up.

7 4, 5, 6, and 7. This is also requirements of the  
8 notice of intent. Discussion of exceedances. What the  
9 presumptive remedy may be. A request by the operator. This  
10 is that provision about the operator having an option of  
11 overseeing the remediation or -- and monitoring.

12 And Subsection 7 incorporates that requirement  
13 that they acknowledge that they are supposed to -- they have  
14 to comply with the requirements of Subsection 3, which is  
15 eligibility.

16 Subsection B. This provides the Department 90  
17 days, upon receipt of the operator's notice, to notify the  
18 facility of the receipt and then provide a date upon which  
19 the Department will commence discussions with the operator  
20 on the drafting of the written agreement.

21 Now, that second part, it provides a lot of  
22 flexibility for the Department. For -- one reason is, the  
23 timing that -- we're not sure how the timing is going to  
24 match up with distribution of the funds from the  
25 legislature, so we didn't want to put a hard date upon which

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1 the Department has to enter into the written agreement,  
2 because there might be some timing issues.

3 MR. EDWARDS: Relative to that, Madam Chairman,  
4 this is Alan Edwards. For those who have been following  
5 this, you know that the legislature has appropriated  
6 \$45 million for landfill remediation. That does include the  
7 \$4 million for the past remediation reimbursement credit.  
8 However, the legislature must, from that 45 million, make a  
9 second appropriation, so to speak, or release of the funds  
10 for the Department to actually implement the program.

11 So while there is \$41 million generally available,  
12 there is not currently \$41 million presently available in  
13 the pot to do -- to do remediation. So what -- as Luke  
14 identified, this provides some flexibility to work on the  
15 agreements, coordinate with the operators, and time that  
16 with the funds as they're actually available for  
17 remediation.

18 MR. ESCH: Thank you, Alan.

19 Subsection C. This is -- just provides the --  
20 that upon execution of the written agreement that is  
21 required by Subsection -- or Section 3, an approval of  
22 the -- the financial demonstration required by Subsection 3  
23 B and C, that the facility will be entered into the program  
24 and eligible to receive funds.

25 This would allow the facility to have that

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1 information submitted and then be able to receive funds for  
2 the further investigations of the facilities in order to  
3 develop the final remedies. So this was just provision  
4 that, I guess, demonstrates the finality of whenever they're  
5 eligible.

6           Subsection D. This provides the dispute  
7 resolution where if the operator and the Department are  
8 unable to reach an agreement, that either party may petition  
9 the EQC for a hearing to resolve the matter.

10           Subsection E. This was a requirement of the  
11 statute as well. In addition, the Department is developing  
12 a priority list which lists the facilities around the state  
13 and their relative priority for remediation. There might be  
14 certain circumstances where a facility that is lower on the  
15 priority list is next to or down the road from a facility  
16 that's higher on the list, but circumstances are present  
17 that it would be the best use of program funds to get that  
18 other facility while we were -- the Department is out there.

19           So it's -- it's really a regulation that allows  
20 the Department to take into consideration other factors when  
21 conducting those remediations that -- to really -- that  
22 utilize the funds that are available in the best manner  
23 possible.

24           Subsection F. This is -- comes right out of the  
25 statute, that all facilities will have to be returned to

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1 local control and will no longer be eligible to receive  
2 funding from the account 10 years after the implementation  
3 of the final selected remedy. Facilities which have  
4 long-term monitoring, the time will begin whenever the  
5 initiation of that monitoring program begins.

6           The statute also contemplates that there might be  
7 unforeseen circumstances out there, and so that the  
8 Department may authorize funding to continue, only in the  
9 event that the operator shows that unforeseen circumstances  
10 have prevented it from being able to continue the operation  
11 of the remedy, and the failure of the remedy would result in  
12 a significant threat to the public safety, health, and  
13 environment.

14           MR. EDWARDS: This is Alan. One other just quick  
15 update in here. You'll note the distinction that it says,  
16 10 years -- under F, 10 years after the implementation of  
17 the final selective remedy. The first draft rule had put in  
18 there that 10 years after the approval of the final remedy,  
19 based on some of the public comment we got, as they noted,  
20 it could be 6 months, 9 months to a year, from the time that  
21 the actual final remedy is selected to when the remedy is  
22 actually implemented. So when does the 10-year period  
23 start?

24           To clarify that, we wanted to make the distinction  
25 that that provision in the statute was clearly directed



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1 towards the remediation, the remedy portion of the  
2 agreement, and it made the most sense to initiate that  
3 period at the time when the remedy is actually, physically  
4 implemented. So we made that distinction in the rules, and  
5 I think it was an important addition for clarification.

6 MR. ESCH: Thanks, Alan.

7 Section 5. This just incorporates the program  
8 requirements. This -- in this section, we try to  
9 cross-reference our existing regulations as much as possible  
10 to eliminate the duplication of regulations in other  
11 sections, so this Subsection A, this covers the  
12 investigations, must be conducted in accordance with our  
13 requirements in Chapter 2, Section 8. Section B, all  
14 corrective actions must restore the environment to a quality  
15 consistent with the requirements of Chapter 2.

16 In carrying out the activities, the Department has  
17 a right to construct and maintain any structures whenever  
18 taking these remediations and monitoring actions.

19 Subsection C. Groundwater monitoring must be  
20 reported in accordance with Chapter 2, Section 6(B). The  
21 Department shall notify -- this was a requirement of the  
22 statute that it puts a -- the requirement on the Department  
23 to notify the public of confirmed releases that require a  
24 plan of remediation, and so we brought that in.

25 And Subsection D, this incorporates all the

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1 records requirements. All records created must be  
2 maintained by the operator and submitted to the Department  
3 as required by Section 2, Section 8 -- Chapter 2, Section 8.

4 MR. EDWARDS: This is Alan again. Some additional  
5 background in this section. You'll notice that the statute  
6 allowed two different provisions here. One where the  
7 operator feels confident, taking the lead on their own  
8 project. They essentially own the project, do construction,  
9 do design, do -- do all of those aspects.

10 The second provision actually gives the Department  
11 the authority to go in and contract for services, do  
12 construction, et cetera, et cetera, associated with  
13 facilities. So there's actually two different provisions  
14 included in the statute.

15 Under the one where the operator takes the lead,  
16 we would have an agreement, the implementation agreement,  
17 that basically would acknowledge that they're in the lead.  
18 We are then in an oversight, in another role, so it would  
19 define the roles and responsibilities with the operator  
20 being the point for that.

21 The second one, and the reason I bring this up, is  
22 because it raises some questions on the part of the couple  
23 of the operators, is for those instances where a facility  
24 just flat refuses to do the work, the Department has the  
25 ability to go in and do the work and implement a remedy.

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1 But more importantly, what it is, is for some of the smaller  
2 communities who do not feel that they have the staff and the  
3 resources to physically manage a project, they can request  
4 that the Department provide that assistance on their behalf.  
5 So in those cases, our agreement with the local operator  
6 would be different. It would acknowledge we're in the lead.  
7 Establish the roles between the two parties. So there'd be  
8 two different agreements there.

9           The concern that came from the operators was,  
10 well, you know, does this mean that if an operator is making  
11 progress and just isn't there yet, the Department would come  
12 in and preempt their effort and take it over? That is not  
13 the case here. Obviously, the Department is more interested  
14 in achieving the final remediation as defined in the  
15 legislature -- legislation. So if an operator is making  
16 progress and is making reasonable progress, I would see very  
17 little value in preempting that.

18           So while that was a concern that was raised, it  
19 wasn't a concern on our part, because we just do not  
20 envision ourselves being in that role. Thank you.

21           MR. ESCH: Thanks, Alan.

22           Section E. This requires that the construction  
23 contractors employed to conduct activities of the facilities  
24 need to be registered and bonded with the State.

25           Section F. Right of inspection. This provides

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1 the Department with the right of entry for the purposes of  
2 inspection, assessment, or implementation of corrective  
3 actions of eligible facilities, and this would also be  
4 contained in the written agreement between the operator and  
5 the Department.

6 Section 6. Project costs. Because -- the cease  
7 and transfer program rules were promulgated by the State  
8 Land Investment Board, I think it was back in October.

9 MR. EDWARDS: Yes, October 3rd.

10 MR. ESCH: October 3rd. And because the programs  
11 are very similar, the Department felt that the project costs  
12 for both programs should be very similar or should be  
13 identical.

14 So the Department basically incorporated the  
15 project costs -- the eligible project costs and ineligible  
16 project costs from the -- for the SLIB board into our  
17 regulations, so there's consistency across the programs.

18 The one minor change that we made was that in  
19 Subsection A, we clarified that capping groundwater  
20 remediation monitoring, methane mitigation and monitoring,  
21 and other closer-related expenses are the eligible costs.  
22 The SLIB rules didn't have that exact language in there, so  
23 we decided to modify that and just make sure that the  
24 activities that the legislature intended to be covered are  
25 covered in our eligible costs.

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1           Ineligible costs. These are the costs that are  
2 identified by the SLIB board as the costs that should not be  
3 covered. In our trip around the state, we heard several  
4 comments with regard to B 5 on engineering. There's several  
5 comments that were made, saying that 10 percent of project  
6 costs was way too low. The Department considered those  
7 comments and decided to keep it as it is, because of the  
8 consistency with SLIB rules as well as the provision that  
9 allows the Department to approve it otherwise. So if the  
10 Department sees that a cost is above 10 percent and wishes  
11 to approve that, that that's still an option.

12           Noncash costs exempted. There's certain --  
13 certain facilities are wanting -- would like to put their  
14 own efforts towards the demonstration of that 25 percent  
15 requirement. So the labor that is used by these facilities  
16 can be accounted towards their own demonstration of that  
17 25 percent funding requirement. We heard comments regarding  
18 that around the state as well.

19           These are just further ineligible costs.

20           Go ahead, Alan.

21           MR. EDWARDS: This is Alan. As a general comment  
22 and a little bit of background on here. It's recognized  
23 that a lot of the smaller communities may struggle a little  
24 bit, and actually, some of the mid-sized ones as well, as  
25 coming up with -- with their -- their 25 or more match if it

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1 had to be just strictly a cash contribution to the effort.

2           So it is recognized that in-kind services, if an  
3 operator were able to use their equipment and everything to  
4 conduct a lot of the work that's being done or significant  
5 portion of it, that in-kind work would count towards  
6 satisfying their 25 percent share. So they have the ability  
7 with existing staff and equipment to moderate the  
8 out-of-cash expenses that are associated with this. And  
9 that is very important.

10           On a procedural note, looking ahead at the  
11 implementation of this, since this is the topic right now in  
12 front of us, we've been already working and coordinating  
13 with the State Land and Investment Board on how all these  
14 projects would go ahead, whether it be landfill remediation  
15 or cease and transfer. It's clearly recognized that the  
16 communities, their first option or first direction they will  
17 go to address their 25 percent costs will be in-kind plus  
18 also the State Land and Investment Board loan program or  
19 grant program if they can. So, I mean, it can be fully  
20 expected that they will go there for their share of the  
21 costs in one way or another.

22           What we're doing is, we're -- we're working to  
23 develop a coordinating mechanism with SLIB where we closely  
24 coordinate with the application process so that an operator  
25 doesn't have to do duplicate submittals of things unless

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1 it's really necessary because of the circumstances between  
2 the two programs.

3           So the hope would be they could make one  
4 application that would include both the State share of the  
5 contribution towards the remediation, plus the amount that  
6 they're seeking from the State Land and Investment Board.  
7 The State Land and Investment Board also already has a  
8 provision that allows certain in-kind costs to be counted  
9 towards the 25 percent. So our rules, just as a general  
10 background, we've tried to adjust the rules, as Luke says,  
11 to be consistent with not only the SLIB rules but also the  
12 SLIB process and how they review and evaluate everything.

13           So procedurally, we're looking ahead at trying to  
14 streamline that process when we actually get to the  
15 application and the specific funding stage.

16           MR. ESCH: Thanks, Alan.

17           Yeah, and Subsection 6 here in front of you on the  
18 screen, that's what Alan was referencing regarding the  
19 in-kind services being allowed to be counted towards the  
20 25 percent requirement, so that authorizes those activities  
21 to be counted.

22           The rest of these are just ineligible costs that  
23 have been adopted by SLIB and brought up, I guess,  
24 incorporated by the Department as well.

25           With that, I would like to address a couple of our

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1 outreach efforts.

2           As mentioned, we rolled these regulations -- or  
3 Alan, go ahead.

4           MR. EDWARDS: Yes. Before we get into the  
5 outreach, it's important, George here indicated that he was  
6 going to have to leave, so I want to make just one other  
7 general comment and it deals again with the implementation  
8 so it's background for the board members. One of the  
9 provisions about the cease and transfer and the landfill  
10 remediation is that the operator must make an accounting and  
11 be able to demonstrate that they can pay their -- their  
12 share of the costs.

13           Now, under the Cease and Transfer Program, there's  
14 a hard reporting date. While we're not dealing with that  
15 here, there's an important parallel.

16           They have to report by January 1 that they have  
17 the ability to make those -- to pay their share. We  
18 recognize that there's a lot of communities come January 1  
19 may not be able to make that certification, but -- so we've  
20 developed a process to, basically, take their January 1  
21 submittal and then move ahead, because ultimately, their  
22 certification of ability to pay really has very little value  
23 up until -- it only has real meaning, we'll put it that way,  
24 at the point in time they make application for funding,  
25 because they'd have to be able to demonstrate they can do



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1 that. So relative to that, we also recognize that some of  
2 the communities, their record keeping is such they might not  
3 be able to document it. They might not know what needs to  
4 go into that.

5           We are -- we took some of the funds that the  
6 legislature made available to provide assistance to the  
7 operators. We're in the process now of going out and doing  
8 some solicitation to pick up four accounting consultants,  
9 we'll call them, one for each corner of the State. Those  
10 consultants would be charged with working with those  
11 communities who request the support to go to -- go to their  
12 community, take a look at their records, determine what  
13 they've got, and then not separate -- we're never going to  
14 get into a rate-setting basis. Trust me. I have no  
15 interest in going there.

16           But the real key would be for the consultants to  
17 help the communities develop a road map and a work plan and  
18 identify the type of costs they need to include and identify  
19 the type of information they would need to make in their  
20 submittal so that we can make a reasonable analysis.

21           So what we're looking to do is provide that  
22 assistance for those smaller communities to put them into a  
23 position where they can potentially make a certification.  
24 They still have to come up with their costs, they have to  
25 identify the rates. But for those who are small and don't

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1 have a large in-house accounting staff or folks on the  
2 city -- city group that are familiar with that, it's just  
3 another mechanism to help position them to at least be able  
4 to make a certification and to apply when they're ready.  
5 Thank you.

6 I realize that digresses a little bit, but keep in  
7 mind, under the landfill remediation, they also have to make  
8 a certification that they can meet the 25 percent, so there  
9 is a parallel to this, although the cease and transfer is  
10 more specific.

11 Do you want to make a comment or anything?

12 MR. PARKS: No. Appreciate the information. Pass  
13 it on.

14 MR. ESCH: Thanks, Alan. Thanks, George. With  
15 that, members of the board, I'd like to briefly address the  
16 outreach that we've done. As you know, in the month of  
17 October, we did our outreach sessions throughout the state.  
18 We took oral comments at those meetings and developed those  
19 into a responsive comments document that has been posted on  
20 the board's website. Whenever we sent you the draft rules.

21 Since then, we've received additional comments  
22 throughout this 30-month -- or 30-day comment period. And  
23 the Department has put together a response to comments  
24 document for those as well, which I believe has been emailed  
25 to the board and, really, just briefly, we can go through

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1 some of the bigger comments that were made and the  
2 Department's response to those.

3 MS. BEDESSEM: Luke, one thing I'm concerned about  
4 is I recall being informed that our court reporter was going  
5 to be leaving at noon. And if we have members of the public  
6 that would like to give testimony today, I'm concerned that  
7 they will be able to get on the record. And so I guess I  
8 want to have an idea of how long it might take, because  
9 perhaps we should consider having those public comments  
10 first and then you have wrap-up with the additional  
11 responses to some of the comments you've previously  
12 received.

13 MR. ESCH: Madam Chairman, that sounds like a  
14 great idea.

15 MR. TILLMAN: Madam Chair, I'd like to interrupt  
16 just for a second. We recognized that our court -- may I  
17 interrupt? Recognized that our court reporter will have to  
18 leave roughly at noon, but we've got a recorder here so we  
19 can still record the rest of the meeting and then we can add  
20 to that record at that time, so the entire meeting should be  
21 on record.

22 MS. BEDESSEM: Okay. That sounds good. My  
23 preference is to have members of the public, you know, speak  
24 so that the court reporter can record that, because  
25 sometimes the taping doesn't work quite as well.

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1           And also, so that if -- if they want to leave at  
2 noon, or whenever we might be able to get that accomplished.  
3 And also, in the past 15 minutes or so, I did receive a  
4 phone call from Klaus Hanson, and he should be here within  
5 15 or 20 minutes. So he will be able to vote on the  
6 reimbursement packets when they come up as well.

7           So if we have any -- yes?

8           MS. CAHN: I would just like to request a  
9 five-minute break.

10          MS. BEDESSEM: Okay. We'll have a five-minute  
11 break and then we'll go to some public comment and then go  
12 back to Luke Esch to go through some of the other comments  
13 that were received and the Department's responses. Okay.  
14 We'll take five. Thank you.

15          (Recess from 11:03 a.m. to 11:19 a.m.)

16          MS. BEDESSEM: Are we all back in attendance? Can  
17 we hear from each location.

18          MR. EDWARDS: Cheyenne's here.

19          MS. BEDESSEM: Cheyenne's here. Casper?

20          MS. CAHN: Jackson's here.

21          SPEAKER: Casper's here.

22          MS. BEDESSEM: Sounds good. I'd like to welcome  
23 our board member, Klaus Hanson has joined us in Laramie.  
24 We're pleased to have him here. Klaus represents local  
25 governments.

Hearing

1           So at this point, right before break, we just  
2 finished the presentation on chapters -- the changes to DEQ  
3 south passageway to rules, Chapters 1 and 17. I'd like to  
4 take a break before the DEQ presentation regarding the  
5 response to comments and go forward with accepting public  
6 comments at this point for those individuals who are  
7 interested in presenting their views today.

8           Can we have -- I think most of the members of the  
9 public are in the facility in Casper. Casper, do you have  
10 members of the public that would want like to make comments  
11 on Chapters 1 or 17?

12           MR. APPLGATE: Yes, Madam Chairman. Yes, we do.

13           MS. BEDESSEM: Please go ahead and state your  
14 name. And who you represent.

15           MS. LANGSTON: Hi. This is Cindy Langston. I  
16 worked on two parties that I have. First, the one  
17 (inaudible) waste and recycling association. I'm the  
18 current treasurer and secretary for that board, and  
19 (inaudible). I'm sure we all jealous of him in this cold  
20 weather.

21           But anyway, first I would like to thank  
22 (inaudible) and in particular for going through all the  
23 outreach areas and gathering comments on them, we would  
24 commend DEQ's effort to really listen to them and  
25 (inaudible) like on both the land owned cease and transfer

Hearing

1 rules. So we thank you. We appreciate your dedication on  
2 these matters and cease and transfer for trying to resolve  
3 the construction and demolition confusion.

4 And with that, that's what I had to say about the  
5 efforts here. And second, the City of Casper had one  
6 comment, actually, to obligate or we really appreciate  
7 listening to our comments, and thankful for that.

8 And second, I just want to note any comment about  
9 construction and demolition, what is it to find the  
10 definition, it's great, but it has also a definition of  
11 construction and demolition landfill, which is a conflict  
12 between the two.

13 The CD landfill includes brush, and I don't know  
14 if people are familiar with the recent storm, but we dealt  
15 with a lot of brush that was broken, and this is true not in  
16 there; particularly, it's in smaller pieces. It will cook,  
17 it's an organic material, so I really think brush  
18 (inaudible) should be one of those in the inert material put  
19 by the administrators, so I'd like to see consistency  
20 between those two definitions. Actually, the CD waste and  
21 the CD landfill. And that's all I have for now.

22 MS. BEDESSEM: May I ask that Mr. Applegate, can  
23 you coordinate various members of the public that come to  
24 the podium for Casper, please?

25 MR. APPLEGATE: That would be fine.

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1 MS. BEDESSEM: Thank you.

2 SPEAKER: Yes. I'm Philip (inaudible) with  
3 Campbell County Public Works, Gillette, Wyoming. And I  
4 think there's an issue that the legislature is kind of put  
5 a --

6 MS. CAHN: Excuse me. We're not hearing you in  
7 Jackson. Could you move the microphone close to your mouth,  
8 please.

9 SPEAKER: Is that better?

10 MS. CAHN: That's better. Could you start over  
11 again with who you are and who you represent, please?

12 SPEAKER: Okay. I'm Philip (inaudible) with  
13 Campbell County Public Works out of Gillette, Wyoming. Did  
14 you hear that well?

15 MS. CAHN: Yes, thank you.

16 SPEAKER: Okay. I guess the issue I wanted to  
17 bring forward is kind of a challenge in the legislation  
18 that's been brought out, and that's on the -- it's a topic  
19 of closure, closure plans and closing the facilities. And  
20 how that relates with all of this remediation. Particularly  
21 the possibility that the economies of scale may be involved  
22 if remediation work and closure are done in one and the same  
23 effort.

24 And I wonder how that's going to be dealt with by  
25 DEQ. I presume it may involve some agreement challenges and

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1 may also involve some administrative orders. And how -- how  
2 that's all going to happen to make things harmonious with  
3 this, look forward to reaching a closed (inaudible)

4 SPEAKER: Mike, I guess I don't understand your  
5 comment. This is Mike (inaudible). I guess your concern is  
6 that you (inaudible) it's too much too soon or too fast? I  
7 don't know what you're saying.

8 SPEAKER: Well, basically, the proposed facility  
9 for Chapter 1, if you go to page 1-3, says the means of  
10 regulated facilities at which operations have been  
11 improperly terminated and coordinated with an approved  
12 facility closure plan on file with solid waste hazard  
13 division of the waterfall division.

14 So basically, there has to be an approved facility  
15 closure plan. And I think in a lot of these cases out  
16 there, you do not have such an animal in place as we move  
17 forward with remediation. So it's going to be a bit of a  
18 challenge how -- how administratively the remediation moves  
19 forward.

20 SPEAKER: Are you -- based on out there, saying  
21 this, does a landfill have to be closed before remediation  
22 can start? Is that further remediation to be done prior to  
23 closure of the landfill. That's a question for DEQ or -- I  
24 guess I don't understand.

25 MR. DOCKTORE: This is -- I guess this is -- this



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1 is Bob up in Casper, (inaudible) Docktore with DEQ. In  
2 answer to your question, Madam Chairman, yes, we can start  
3 doing remediation at the landfill before the entire facility  
4 is closed and that leads into our intermediate reclamation  
5 plans.

6           And what the remediation statute requires is that  
7 we close down the leaking portion of the landfill to allow  
8 the operator to continue operating in the portion of the  
9 landfill that is not leaking and has -- is lined or has the  
10 problem based on identification. So you wouldn't have to  
11 necessarily close the entire facility in order to be  
12 eligible for remediation. Does that answer?

13           SPEAKER: Well sort of. Very unlikely, not  
14 sure -- I know a couple of -- why Casper. So they'd  
15 probably be on board with it, but most landfills that are  
16 leaking probably fill half parts of their (inaudible) or is  
17 that in incorrect assumption?

18           SPEAKER: I'm sure. We do you have some landfills  
19 that have unlined portions that are leaking, and in light of  
20 the landfill that they're operating. Cheyenne comes to mind  
21 as one of those landfills that old portions of that landfill  
22 were not lined but their current units are, in fact, lined.  
23 So that is common.

24           SPEAKER: So they would have to have a closure  
25 plan for the unlined portions of the landfill in order to

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1 access the remediation but the --

2 SPEAKER: Yeah, you have to --

3 SPEAKER: Leaky landfill.

4 SPEAKER: Is that generally how that -- the time  
5 associated with getting these closure plans, do access for  
6 remediation funds?

7 SPEAKER: It's not necessarily not that much of a  
8 concern at Campbell County's landfill. I'm just saying  
9 around the state, you may have challenges in that manner to  
10 actually have those closures in place. So you can look  
11 forward to remediation of those.

12 SPEAKER: Do you have to have a closure plan where  
13 you have people that close, you just have to have a closure  
14 plan?

15 SPEAKER: A closure plan, and this (inaudible)  
16 inside a flexibility that won't happen in the agreements  
17 that the legislature is going to have us to allow us to work  
18 directly with operators to implement that.

19 SPEAKER: Yeah, that helps.

20 SPEAKER: Did you have any other comments?

21 SPEAKER: No, that was it on our comments.

22 SPEAKER: Thank you. Are there other folks in the  
23 audience that have any comments? If so, just raise your  
24 hand.

25 Yes, come on up. Yes.

Hearing

1           SPEAKER: Madam Chairman, my name is Kathy L. I'm  
2 from the (inaudible) city of Sundance. We do have our  
3 transfer station. It will be complete this spring, so we  
4 are ready to -- to transfer when we do complete our closure,  
5 which is before the hospital (inaudible) 2006 came about.  
6 It was September 2014.

7           And of course, we'll have to reevaluate that now  
8 with this ruling, but on that proposed priority list, we are  
9 number 18 for closure. And I'd estimate a cost of  
10 \$2,240,000. At this time, because we are due to close, or  
11 were, anyway, so early, we have \$18,000 in our closure  
12 account.

13           There's a couple items that are concerning to us  
14 about being able to fund when we do our estimate of what  
15 kind of payment we'll have to make to meet those deadlines  
16 as a small community, but also another comment I'd like to  
17 make is the comment of -- of a design and landfill lined  
18 that is transferred to. That would put a huge expense on us  
19 in the northeast corner to have the (inaudible) hall to  
20 align that on to Casper and the limit is kind of over our  
21 heads. So those were other comments just I'd like to have  
22 on the record.

23           SPEAKER: Thank you. A question I have related to  
24 that problem is, how many mine landfills -- how many mine  
25 regional landfills are available in Wyoming at this

Hearing

1 particular time?

2           SPEAKER: Madam Chairman, this is Craig  
3 (inaudible) in Casper. Currently, there are about six  
4 operating mine landfills in the state and there are four or  
5 five others that are scheduled to come online in the next  
6 probably 12 to 16 months. (inaudible) I'm not positive  
7 (inaudible) all back with a construction date.

8           SPEAKER: Just as a -- as a follow-up item, would  
9 you mind getting the board a map that shows exactly -- for  
10 our next meeting, that shows the location of those mine  
11 landfills across the state and the ones that are being  
12 developed? Just to see how those lay out geographically and  
13 basically -- sort of better understand the concerns raised  
14 by these comments?

15           SPEAKER: Madam Chairman, yes, that's -- that's  
16 possible. The timing of your question is actually very  
17 good. We're developing a GIS map this afternoon, which  
18 we're putting the finishing touch on it, that may be  
19 available by the middle of next week at the joint  
20 (inaudible) petroleum committee.

21           So having that time, having a chance to look at  
22 that map, our administrator and whoever is making a  
23 recommendation, is -- might go public at that time, but  
24 certainly, I can get you a map. It's not that difficult for  
25 this upgrade and engineering education and lap board. And

Hearing

1 besides that, it is, for this particular purpose, is  
2 there -- landfills in that part of the state that are mined  
3 and they're shared in Buffalo and mines in Campbell County.

4 It's -- so we're in the process of (inaudible)  
5 informing (inaudible) for any of those entities. Trying to  
6 work with other people to open their services areas. What  
7 Kathy was speaking to was currently the facilities at their  
8 disposal that are mined, in the City of Casper, had a  
9 service area that is able to take their waste.

10 MR. APPLGATE: Thank you for your comments. Is  
11 there anyone else here in Casper that would like to comment?

12 Marge, that's all the comments from Casper.

13 MS. BEDESSEM: Do we have any participants in  
14 Casper or Laramie or Jackson -- excuse me, not Casper,  
15 Cheyenne, Laramie, or Jackson?

16 Do we have any participants in Cheyenne, Laramie,  
17 or Jackson that would like to make comment?

18 MR. ESCH: Madam Chair, this is Luke Esch. Just  
19 for the record, George Parks mentioned he had no comments.

20 MS. BEDESSEM: Thank you.

21 Brooks Webb in Laramie has no comment at this  
22 time.

23 Anyone in Jackson? Lorie?

24 MS. CAHN: No, there's nobody here but me, and us  
25 chickens.

Hearing

1 MS. BEDESSEM: All right. No comments from  
2 chickens.

3 MS. CAHN: No.

4 MS. BEDESSEM: We can go back to -- hand it back  
5 over to Luke Esch at DEQ to discuss some of the comments  
6 that were received prior to this meeting during the public  
7 comment period as well as at the various outreach meetings.

8 MR. ESCH: Madam Chairman, thank you very much.  
9 One quick response to Cindy's comment. The development of  
10 these regulations was an effort by much more than myself and  
11 Becky. It was the entire Solid and Hazardous Waste  
12 Department. Bob, Dale, Craig -- the input we received by  
13 the Craig group, it was just outstanding, and I really can't  
14 thank the group enough for all their efforts. Bill Tillman  
15 also helped out a little bit with our regulations. So thank  
16 you, Bill.

17 With regard to our comments that we received  
18 during our outreach sessions, we really combined those into  
19 the document that we sent out, whenever we sent the board  
20 its response -- or the draft rules. So we incorporated  
21 those in our proposed rules and provided responses to those.

22 Since we sent those out, we've received additional  
23 comments from -- from, I think, three or four -- four  
24 individuals -- four individuals. Kathy, with the City of  
25 Sundance, submitted a comment, and we thank you, Kathy, for

## Hearing

1 this comment. It was regarding -- the question regarding  
2 dead animals. There was two comments submitted regarding  
3 this issue. There was questions about whether dead animals  
4 could still be disposed of at the facilities if they were to  
5 seek eligibility under the remediation program. And that  
6 was -- that question was in regards to whether that could be  
7 qualified as a construction and demolition waste.

8           The Department considered this, and under our  
9 existing definitions, dead animals are included specifically  
10 within the definition of municipal solid waste, so dead  
11 animals would not be able to be disposed of at the facility,  
12 the C and D facility. There are other options available to  
13 operators for disposal of dead animals. I know Bob Docktore  
14 in Casper has much more knowledge on the subject of this,  
15 but there's composting available. You can transfer those  
16 animals. But given our current regulatory setup, dead  
17 animals would not be able to be continued to be disposed at  
18 that facility under the construction and demolition waste  
19 exception.

20           That comment was also submitted by Philip Griffin  
21 with Campbell County. He inquired as to the -- the  
22 disposable nature of dead animals. And once again, it's the  
23 Department's conclusion that dead animals really shouldn't  
24 be disposed of at facilities that are seeking funding for  
25 the cease and transfer and municipal -- or remediation

Hearing

1 programs.

2 Park County, in addition to their -- their great  
3 presentation and participation at the outreach sessions,  
4 they went ahead and submitted their comments that they made  
5 in person at the outreach session in writing to the  
6 Department, so we went ahead and provided responses to those  
7 in this response to comments document, and so therefore,  
8 some of their comments really did change the way that the  
9 regulations were prepared and presented to the board today.  
10 So we wanted to make sure that they were incorporated in  
11 here.

12 With regard to -- well, Section 2(K)(4) of the  
13 Chapter 1, they wanted to -- they recommended inserting a  
14 word "approved" in front of the post-closure plan, which we  
15 agreed with and incorporated into our regulations which were  
16 presented to the board.

17 With regard to Chapter 17, we received comments  
18 regarding what is the definition of a leaking municipal  
19 solid waste landfill that would qualify for eligibility  
20 under the program. Mr. Griffin with Campbell County  
21 submitted this comment. He requested that whether the  
22 Department should apply a class of use definition for  
23 groundwater, and groundwater protection standards for  
24 remediation to be linked to the facility's groundwater use  
25 classification.



Hearing

1           The Department has regulations in place in  
2 Chapter 2, Section 6, which cross-references Chapter 8 of  
3 the water quality regulations, that step defines the  
4 groundwater protection standard as for a constituent wherein  
5 maximum contaminant level is exceeded, and given the  
6 existing regulations being in place, we felt that our  
7 existing definition that was adequate.

8           Furthermore, on this provision, we want to  
9 emphasize that the -- in order to be eligible under the  
10 remediation program, there has to be an exceedance of the  
11 groundwater protection standard. So perhaps having a more  
12 broad definition of what a groundwater protection standard  
13 is would allow more facilities to potentially become  
14 eligible to receive funding for closure under the program.

15           Moving on with eligibility.

16           SPEAKER: May I ask you a question on this, Luke,  
17 since we have just got an explanation of it.

18           MR. ESCH: Could you state your name for the court  
19 reporter, please?

20           MR. APPLEGATE: Yes. This is David Applegate.

21           Madam Chair, are you okay if I ask a question or  
22 do you want to wait until he finishes?

23           MS. BEDESSEM: I would appreciate if you ask the  
24 question now.

25           MR. APPLEGATE: So I think you just answered it,

Hearing

1 it was the question I had coming in today that I can't seem  
2 find it in the response comments. So the term "groundwater  
3 protection standard" which is used in Chapter 17,  
4 paragraph C, under Section 2, Definitions, is that a defined  
5 term? I think you said it was, but how does one know if  
6 they're in this part of the regulations what that term  
7 means?

8 MR. DOCKTORE: Madam Chairman, this is Bob up in  
9 Casper again. All those things you have already defined in  
10 the existing rules and regulations in Chapter 2, and there  
11 is a specific procedure that the Department has to follow in  
12 order to establish those groundwater protection standards,  
13 and so all of these requirements all reference into that,  
14 and as Luke mentioned, a facility wouldn't even be  
15 participating in this program --

16 MR. APPLGATE: Yeah, my -- my question is really  
17 separate than that. The term "groundwater protection  
18 standards," those three references are defined terms earlier  
19 in the regulations?

20 MR. ESCH: Madam Chairman, this is Luke Esch. I  
21 don't believe -- in Chapter 17, the term "groundwater  
22 protection standards" is not defined. So, yes, that's  
23 correct.

24 MR. APPLGATE: Well, I was asking a question for  
25 clarification. If someone is using this regulation, do they

Hearing

1 know where to go, or in the solid waste and hazardous rules,  
2 is that term defined somewhere? I don't see a definition  
3 for it. And for a standpoint of using the regs, how does  
4 one know when they read this, "groundwater protection  
5 standards," what that means.

6 MR. ESCH: Madam Chairman, this is Luke Esch  
7 again. That's a very valid comment. I guess the  
8 cross-reference that we're relying on is in Chapter 2,  
9 Section 6. Perhaps that is something we could be more clear  
10 on by making that cross-reference available in the  
11 regulation. Bob, what are your thoughts?

12 MR. DOCKTORE: Yeah. This is Bob again. Really,  
13 the groundwater protection standard, defining what that is,  
14 is the process. It's not -- it's not a given. The rules  
15 says it's an MCL, its constituent doesn't have MCL, but it's  
16 either back (inaudible) or (inaudible) value established by  
17 the Department in accordance with the water quality rules  
18 and regulations, so there's not a particular definition that  
19 section of solid waste rule is referenced in many other  
20 places, but it's not a specific term. It's a process of  
21 establishing --

22 MR. ESCH: Madam Chairman, I think that the --  
23 Bob, I think the cross-reference would reference that  
24 process. So I think if we -- if we make the clarification  
25 in that Chapter 2 -- or Chapter 17, Section 2 B -- I think

Hearing

1 it's C, which references Chapter 2, Section 6, I think that  
2 would get at the question.

3 MR. APPELATE: Yeah, I just had the same concern  
4 when you brought it up. When I was reading this, I did not  
5 know what that term meant. (inaudible), but I think it  
6 would be unclear. I have more comments regarding that, but  
7 I'll let you continue before I get into those.

8 MR. ESCH: Thank you. Madam Chairman, thank  
9 you -- thank you from the comment from the board. We  
10 appreciate those things that we can overlook that we think  
11 are so clear, but obviously, that's not the case all the  
12 time.

13 MS. BEDESSEM: Luke, before you continue, I want  
14 to make one comment. I think it's important to have this  
15 cross-reference. I think the establishment of groundwater  
16 protection standards is the -- a very complicated process in  
17 some cases.

18 And the response to comment number 6 in the  
19 response to comments, for example, well, talking about what  
20 leaking is, and I guess it's also in number -- I think 19.  
21 The comment number 19 where they say -- asking the question  
22 about requiring cleanup to groundwater protection standards  
23 and is there opportunity to clean up groundwater to its use,  
24 that the responses are very simplistic compared to what  
25 really happens.

## Hearing

1           When we have a process for groundwater protection  
2 standards, you know, if we don't have MCL, then we're  
3 looking at Chapter 8 for naturally occurring nonhazardous  
4 substances. Then we can be looking at drinking water  
5 equivalents. Then we can be looking at DEQ-approved natural  
6 background concentrations. Then we can be looking at  
7 ambient water quality standards, and water quality rules and  
8 regs, Chapter 1. Then we go to EPA national as a secondary  
9 water -- drinking water contaminants.

10           So there's kind of a priority list going through  
11 as we develop these groundwater protection standards. So  
12 the response to the comments is so very simple, but it's  
13 really a very complicated -- complicated issue, and so when  
14 I first read these response to comments, I -- I thought it  
15 was somewhat misleading in that it's implying, it's very  
16 clear, oh, it's an MCL, you know, when really it's, as Bob  
17 was saying, a process, and it has a kind of a -- a -- almost  
18 a priority list -- I hate to over use that term of how you  
19 go forward in determining what that is, and that part of  
20 that does involve, could involve, the Chapter 8 groundwater  
21 rules, which does involve standards for a class of use.

22           And so I would ask you to kind of relook at your  
23 response to comments on comment number 19, because class of  
24 use can be involved in establishing a groundwater protection  
25 standard, if background is -- excuse me, if your contaminant

## Hearing

1 is you have a high background level as above the contaminant  
2 level and you don't have an MCL and so forth.

3           So could we please try to reexamine the -- not  
4 only cross-reference but re-examine the responses to  
5 comments on number 19? Because this is really a good topic  
6 of conversation, because it is a complex issue and you don't  
7 want to mislead the operators into thinking this is as cut  
8 and dried as it might look from this initial response.

9           MR. ESCH: Madam Chairman, that's a very good  
10 point and we will take a look at that.

11           Now, for some clarification, are you referring to  
12 comment 4 in our most recent response to comments or comment  
13 19 in our prior response to comments document?

14           MS. BEDESSEM: Comment 19 in the prior response,  
15 because that is what I went over in more detail than your  
16 most recent, I got it at a quarter to 4:00 yesterday. So  
17 this one, number 19, is the one I was concerned about.  
18 Okay?

19           MR. ESCH: Thank you, Madam Chairman. We will  
20 take another look at that and see if we can provide  
21 additional clarification.

22           MS. BEDESSEM: But your suggestion about  
23 cross-referencing is very excellent. Thank you.

24           MR. ESCH: Thank you. Moving on, the next comment  
25 that we have in our most recent response to comments

Hearing

1 document comes from Park County. And this was an issue that  
2 they were -- that Park County was very concerned about, was  
3 the requirement that operators revise, as were necessary,  
4 their integrated solid waste management plans. There was  
5 concern that some of these operators have conducted those  
6 solid waste management plans in conjunction with other  
7 entities and that for one entity that wants to participate,  
8 would they be required to take on the modification of the  
9 solid waste management plan on their own.

10           And this is something that the Department just  
11 wouldn't require an operator to do something like that.  
12 Obviously, that's something that we could take a look at on  
13 a case-by-case basis and that that type of arrangement could  
14 be addressed in the written agreement between the operator  
15 and the Department itself.

16           Comment 6 also goes to what the leaking -- what is  
17 the leaking groundwater -- or leaking landfill, and you  
18 know, that -- in this document, we reference Section 2 C.  
19 Obviously, we will include additional clarification on that  
20 to cross-reference the process that is required.

21           MR. EDWARDS: Madam Chairman, this is Alan. I'd  
22 like to just take us back to the immediately previous  
23 comment about the regional landfill planning. That is a  
24 very good question by Park County.

25           The original regional plans were done in 200- --

Hearing

1 well, they were done a few years ago. We'll put it that  
2 way. And since then, a lot of the discussions about the  
3 regional landfill planning has started to evolve. The  
4 discussions that we had at the operator outreach meetings,  
5 the operators are really starting to take a different look  
6 at the regional landfill planning, and what I -- my  
7 perception is, what we're seeing, is more -- more of a -- a  
8 desire by the landfill operators to revisit some of those  
9 plans.

10           So as this goes forward, we will continue to work  
11 with the landfill operators to see if those plans could be  
12 revised, amended, expanded, but that's also an evolutionary  
13 process based on information we are currently learning. And  
14 I suspect that over the next year to two years, as we work  
15 to implement this, as Craig said, we got our GIS mapping,  
16 we're doing, there will be more information available to  
17 make some more informed judgments, and the communities will  
18 be able to get together, review their assessments for  
19 regional landfill planning.

20           I see that as an iterative process, but the  
21 question was very good. It's an iterative process and  
22 there's no single silver bullet answer that an operator  
23 could provide for their application

24           MR. ESCH: Thank you, Alan.

25           (Court reporter leaves at 11:53 a.m.)



Hearing

1 (Following proceedings transcribed from audio  
2 record.)

3 MR. ESCH: Moving forward, we're -- we're losing  
4 our court reporter, but we'll just kind of continue moving  
5 forward and try to wrap up.

6 The next comment came from Park County regarding  
7 the construction and demolition waste. They wanted, I  
8 guess, clarification on the construction demolition waste  
9 definition -- or municipal solid waste definition, excluding  
10 construction and demolition waste.

11 And so we agreed -- we agreed with that and  
12 incorporated that into the regulations that are before the  
13 board today.

14 MR. EDWARDS: Which comment was that? We'll  
15 just --

16 MR. ESCH: That was comment 7.

17 MR. EDWARDS: -- make a note for the tape. Okay.  
18 Thanks.

19 MR. ESCH: Comment 8 was from Park County as well.  
20 This regarded the ability for -- for facilities to continue  
21 using C and D waste as void fill. We -- we agreed with  
22 that, and that was incorporated into the regulations as  
23 well.

24 Comment 9. This comment refers to the type of  
25 proposed remedy that is planned for remediations under

Hearing

1 Chapter 17. The comment really proposed the use of GCL,  
2 geosynthetic clay liner for the closures at municipal solid  
3 waste landfills. And this was -- the Division incorporated  
4 the flexibility to use something like this in our  
5 regulations currently. There's Section 3 A, 3 A 4, states  
6 that the presumptive remedy that is proposed by the operator  
7 may be -- and other remedy as proposed by the operator in  
8 addition to the -- the three that are proposed above it.

9 MR. APPELEGATE: Madam Chair, may I make a comment  
10 on the (inaudible) timing seems right. Madam Chair, this is  
11 Dave Applegate, do you mind if I insert comment here?

12 MS. BEDESSEM: Go ahead.

13 MR. APPELEGATE: Just so -- just to make sure we're  
14 all in the same sections, Section 3, Eligibility, paragraph  
15 3 I, paragraph A, the presumptive remedy section, where you  
16 have construction and (inaudible) other remedies proposed by  
17 operator? Are we talking about the same section?

18 MR. ESCH: Madam Chairman, that is correct. That  
19 is the section.

20 MR. APPELEGATE: So the comment I have related to  
21 that is paragraph 4, bullet I, says, Construction at an  
22 impermeable cap as a presumptive remedy.

23 I would assert that there is no such thing as an  
24 impermeable cap in standard capping of patterns, waste  
25 landfills, or any sort of caps. You don't happen

Hearing

1 (inaudible) statistical number of penetrations in those  
2 caps. (Inaudible), which I (inaudible) past, you would know  
3 that there's an assuming number of perforations in that cap.

4 So I think in terms of being consistent with the  
5 state of the practice, that (inaudible) saying construction  
6 of a permeable (inaudible) cap. So I also would add that on  
7 the site that we sit on here, again, which I had extensive  
8 involvement with (inaudible) refinery, we created a landfill  
9 for impacted waste that had an evaporated cap which, again,  
10 puts (inaudible) cap and sort of (inaudible) environment.

11 So this is one of my stronger comments I have  
12 today. I have for (inaudible) when you (inaudible)  
13 permeable (inaudible).

14 MR. ESCH: Madam Chairman, thank you for the  
15 comment. I -- I currently don't have a position to take on  
16 that right now.

17 MR. EDWARDS: We'll look at that --

18 MR. ESCH: Yeah, we'll take a look at that, and  
19 obviously come back and make a determination on that.

20 Moving forward -- do we want -- do we have  
21 additional comment on that provision, or do we want to move  
22 forward with other comments?

23 MS. BEDESSEM: There was a public comment, I'm  
24 wondering whether ET caps --

25 MR. ESCH: Oh, okay.

Hearing

1 MS. BEDESSEM: -- would qualify as a low  
2 permeability cap, and do we need to say something  
3 specifically about the evapotranspiration caps.

4 MR. ESCH: Madam Chairman, the provision as  
5 it's -- as it's proposed, tries to incorporate the  
6 flexibility by Subsection 5, which says other provision --  
7 other remedy proposed by the operator, so if the other -- if  
8 the remedy proposes an ET cap, obviously, that would be  
9 something that the Department would consider in evaluating  
10 in the remedy consideration.

11 MR. APPELEGATE: Madam Chair, I actually have a lot  
12 of comments on this particular presumptive remedy section.  
13 I don't know if now is the best time to do it, but I would  
14 state the majority of my time is actually (inaudible) of  
15 the -- of the rules.

16 MR. ESCH: Madam Chairman, I have -- I think we  
17 should hear the comments.

18 MS. BEDESSEM: I apologize. I could not hear what  
19 Mr. Applegate just said. Mr. Applegate, could you repeat  
20 that?

21 MR. APPELEGATE: Yes, Marge. I'm wondering about  
22 our time (inaudible), I have a number of comments that  
23 relate to this presumptive remedy section, and I don't want  
24 to interrupt your way of lining up to these comments, but  
25 obviously here (inaudible) but I'm here (inaudible)

Hearing

1 forestry.

2 MS. BEDESSEM: We'll see how many more. . . I have  
3 a couple of comments more on the groundwater protection  
4 standards, and so I'm wondering if you only have three or  
5 four more, we will -- whenever we get them, we need to just  
6 go through those, and then we'll go back to other comments  
7 and -- and Lorie's and -- and Dave's.

8 MR. ESCH: Madam Chairman, that's fine. We can  
9 proceed and then come back to the comments.

10 Comment 11 goes back to the leaking, municipal  
11 solid waste landfill, which we've already covered earlier  
12 today.

13 Comment 12, and this was a comment by Park County,  
14 requesting clarification on the exception to the 10-year  
15 limitation of funding. They've recommended that some  
16 language be included to refer to the exceptions, to the  
17 10-year limitation.

18 The Department felt that the existing proposed  
19 regulation was sufficiently clear, by referring to that  
20 Subsection 2 below, which outlined the unforeseen  
21 circumstances, and left that as it was.

22 Comment 13. This pertained to -- oh, this was, as  
23 Alan mentioned earlier, a situation where an operator  
24 basically left the -- a facility in a remediation undone.  
25 The circumstances in which the Department would -- would

## Hearing

1 come in and take over the remediation. This language was in  
2 Section 35-11-532D, and would only be -- take place in a  
3 situation where the operator is in default or unwilling to  
4 implement the remediation program.

5 MR. EDWARDS: Or as requested by the operator.

6 MR. ESCH: Or as requested by the operator.

7 Comment 14. This relates back to the -- the  
8 leaking aspect of it, and confirmed releases. The comment  
9 really pertains to the provision that requires the  
10 Department to notify whenever a release that requires  
11 remediation is detected. And it -- it references back to  
12 the confirmed release and the -- the process of when -- what  
13 is going to be a leaking municipal solid waste landfill,  
14 that determination, as Bob mentioned, the process was.

15 15. This clarified -- this was a great comment by  
16 Park County, making us aware that there's no licensing  
17 programs for contractors as we had in the previous draft  
18 iteration of the regulations, that they just -- there's a  
19 registration process, so we did incorporate that change.

20 Comment 16. This refers to -- oh, this is the --  
21 the comment that -- on the inclusion of -- of landfill  
22 mitigation monitoring in the eligible costs section that I  
23 referenced earlier in the presentation. We included that  
24 from the statute and plugged that into our eligible costs.

25 So with that, that wraps up the response to

Hearing

1 comments that we received since our last outreach session,  
2 so maybe perhaps we can return to the comments from the  
3 board.

4 MS. BEDESSEM: I'd like to return to a couple  
5 things with regard to groundwater protection standards, and  
6 that will probably wrap up -- well, and I have one other set  
7 of comments, and then we'll move to Dave Applegate and  
8 Lorie Cahn, and then Klaus, if he has anything that he needs  
9 to add.

10 With the groundwater protection standards, I  
11 (inaudible) probably went on ad nauseam about how it's  
12 relatively complicated in a case where you don't have  
13 (inaudible) simple MCL for developing that groundwater  
14 protection standard. And in your response to number 14, you  
15 state the facility as -- which has statistically exceeded  
16 the groundwater protection standards. So here it says  
17 "statistically exceeded," then in the definition of leading  
18 landfill, we don't have the word "statistics." We just have  
19 "exceeded." So maybe we need to make sure that we're --  
20 we're consistent in that regard.

21 The other concern I have is that a lot of  
22 facilities are evaluated because there's a -- this is a  
23 statistical comparison between the down-gradient wells and  
24 the up-gradient wells, and they could -- the -- there looks  
25 like there's a significant difference; i.e., there may be

Hearing

1 impacting groundwater. But they may not be above a  
2 particular groundwater protection standard.

3           Now, when the original -- so I have a question  
4 that kind of goes back to the priority lists. When we were  
5 originally developing the priority lists for facilities that  
6 may need to undergo mediation, I wasn't -- it seemed to me  
7 that almost all the landfills were being sort of ranked  
8 on -- with respect to their need for remediation. And I  
9 wasn't necessarily aware that previously that half of them  
10 were removed from the list because they hadn't actually  
11 violated or exceeded the groundwater protection standard.  
12 Or in some cases, a groundwater protection standard might  
13 not have been developed for that particular constituent  
14 where it looks like it's been changing and impacting for  
15 that facility, based on, you know, the fact that there might  
16 not be an MCL for that, and it's a naturally occurring  
17 constituent and has a high background and so forth.

18           So those original priority lists; did they have  
19 all the facilities on them for mediation? I remember, they  
20 were pretty lengthy, and are we now dropping out some -- I  
21 don't know, are there some that we don't know if we're  
22 dropping out because we haven't evaluated specifically  
23 whether that up-groundwater protection standard has been  
24 exceeded, statistically exceeded?

25           Could you address that -- that question with



Hearing

1 respect to the priority list?

2 SPEAKER: Madam Chairman, this is Paul (inaudible)  
3 in Casper. About that, I'd have to say the data reported on  
4 that list was prepared so we could prepare for the  
5 legislature. And an estimate of the potential costs for  
6 remediation by state law. That list was based on the  
7 information that we had available at the time. We have  
8 landfills that are going to be dropping off that list, added  
9 to that list, and changing over time as we require more  
10 groundwater data.

11 So that list was contingent for the purpose of  
12 estimation, but it's not the final word, and it will be  
13 changing, and we will be reporting to the legislature  
14 annually on those changes and on revising our estimated  
15 costs of (inaudible). So we shouldn't hang our hat on that  
16 list as the final word on what's going to be happening and  
17 when.

18 MS. BEDESSEM: Well, I understand that. My  
19 question was: Has that list been gone through to say -- to  
20 eliminate those facilities that haven't exceeded the  
21 groundwater protection standards, statistically exceeded  
22 that. So, in other words, are there a lot of facilities on  
23 that -- you know, in other words, has that step been taken?

24 SPEAKER: Yes, it has and will be as we're moving  
25 forward. There are maybe some facilities that are not on

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1 the list yet or others that when we look at them -- and this  
2 gets to the question that showed data on the (inaudible)  
3 classification. And potentially, there are some landfills  
4 on that list that -- weren't able to get groundwater  
5 classified. Things may change a little bit for some of  
6 those facilities. So that list is a moving target, I guess,  
7 and will change based on the actual data that we get from  
8 the facilities. We've got (inaudible) to revise that list  
9 constantly.

10 MR. EDWARDS: Madam Chairman, this is Alan. I'd  
11 like to build on what Bob indicated. That -- there has been  
12 an initial look at that, and very definitely, yes, that will  
13 be looked at further as we go forward.

14 There were two priorities as it -- as it related  
15 to that remediation priority list. One of the -- the most  
16 important ones was based on the information we had  
17 available, which were the highest ranked landfills, so we  
18 could identify those, because those are the ones that would  
19 go first into the system and with the available funding we  
20 had, we would start beginning the physical work.

21 So there was a focus on identifying those that  
22 would be early starters.

23 In the report that was submitted in June, there  
24 were three more that were added to that top priority  
25 ranking, and that, again, was based upon the additional

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1 information that was gained and what is known.

2           It is very clear that some of the projects -- or  
3 some of the operate -- landfills will eventually drop off  
4 the list as we go out and we gather more groundwater data.  
5 Some might be naturally attenuating, so that will also be  
6 dropped off.

7           Our first priority, though, was to focus on those  
8 who would be going into the system early. So we would have  
9 a good basis for that. This will be, as Bob says, a work in  
10 progress. The cease and transfer, we're finalizing that,  
11 and we'll have that submittal to the -- to the minerals  
12 committee next week. But that also, to some degree, will be  
13 a work in progress as we learn more going forward and we get  
14 some input.

15           So the answer, I guess, Madam Chairman, would be,  
16 yes, we have looked at it. But, no, it's not done. We need  
17 to continue to work on that. And that'll be a process over,  
18 I believe, the next two to three years before that list  
19 really is finally shaken out.

20           Does that help, Madam Chairman?

21           MS. BEDESSEM: It does, and it sounds to me like  
22 it behooves the individual landfill operators to -- to  
23 understand their groundwater data and for them to know what  
24 their -- whether they're exceeding a -- statistically  
25 exceeding the groundwater protection standard or if this is

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1 a standard that's going to be developed for their particular  
2 site.

3 MR. EDWARDS: Madam Chairman?

4 MS. BEDESSEM: Yes?

5 MR. EDWARDS: To build on that, that's a very good  
6 point, and if you don't mind, I'd like to build on that.

7 You're very familiar that there is a statutory  
8 funding that was made available to reimburse for groundwater  
9 monitoring, et cetera, to further refine that.

10 Based on that statute, there was also a provision  
11 that 1.75 million of the money that's remaining under that  
12 fund would be available to the Department to conduct ongoing  
13 investigations.

14 So we have the ability, number one, for those  
15 communities who want to do some more analysis and gather  
16 some more information, they can come in under the  
17 reimbursement program.

18 For those that we feel are high priority that we  
19 need to refine further, it's my understanding, so we'll put  
20 it that way, it's my understanding that the Department funds  
21 can be used for the purposes of -- of narrowing in that --  
22 that universe where we definitely feel there's an immediate  
23 need for more groundwater data.

24 Staff has been -- staff and I have been working on  
25 some options in how to move into that, and how to get going,

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1 but it goes hand in hand, what do we need to look at on the  
2 landfill prioritization list and then what data are we  
3 lacking, what are our options to move into it.

4 So there's -- there are some pieces to that, but  
5 there is still some funding available in that -- in that  
6 statute that assists either way.

7 MS. BEDESSEM: Thank you for bringing that up,  
8 that issue back.

9 The other comment I had, which is different than  
10 the groundwater protection standard, is with respect to  
11 the -- the dead animal issue. I know that, you know, dead  
12 animals are not specifically called out as -- as part of  
13 that municipal solid waste definition in subtitle D. And I  
14 know previously that dead animals have been in our  
15 definition of municipal solid waste.

16 But prior to now -- not to now, but prior to the  
17 passage of the most recent legislation and the approach that  
18 municipal solid waste landfills, you don't need to either be  
19 lined or -- or be able to -- to make a -- basically, a  
20 demonstration that they're performance-based facilities.

21 Now -- now having dead animals in that municipal  
22 solid waste definition, now because of -- of those lining  
23 requirements, then it makes it if anybody wants to bury a  
24 dead animal at a landfill, they're going to have to do that  
25 at a lined or approved performance-based designed facility.

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1           So even though dead animals have been in that  
2 definition for a while, the impact of having that in the  
3 definition has changed with this new legislation. And so  
4 I -- I guess I would ask the Department to -- to continue to  
5 look at that, because I fear that keeping that in the  
6 municipal solid waste definition reduces the Department's  
7 flexibility and ability to handle dead animals as a separate  
8 item, not necessarily as part of the municipal solid waste  
9 definition or as part of the construction demolition waste  
10 definition, but as a separate entity, to be managed in a  
11 practical manner.

12           Because dead animals, to me, is saying, yeah, you  
13 can't put it someplace unlined because there's, you know,  
14 potential for groundwater impacts. To me, when I think of  
15 dead animal disposal, I'm more concerned about the public  
16 health impacts and saying, well, yeah, you can still  
17 transfer it. I mean, I wouldn't want to be transferring  
18 dead animals. I think that's more of a public health  
19 exposure, you know, to us, even though in the past it's been  
20 more something that you want to have immediately buried, so  
21 that you don't have vermin, you don't have transfer of  
22 biological vectors.

23           And so, you know, transferring it doesn't seem  
24 to -- to address that particular issue. So that seems like  
25 maybe we want to consider dead animals in its own special

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1 entity and not -- and abstracting yourselves with the  
2 requirements of municipal solid waste by including that in  
3 the definition.

4           So I just wanted to bring that up again and ask  
5 you to -- to think about that, and also think -- so maybe  
6 inquire as to how these are handled in our neighboring  
7 states because, you know, this is -- this is a concern for  
8 rural agricultural areas. It's not necessarily municipal  
9 waste. It's, you know -- and at this meeting today, we do  
10 not have our agricultural representative, Alvin Jones, and  
11 he may want to have some input on that.

12           So I just wanted to bring that -- that topic up.  
13 Again, I know that a number of -- of constituents commented  
14 about this, and you've talked about addressing it in the  
15 various ways. But I still leave that open to further  
16 discussion.

17           So that's -- that's all the comments that I have.  
18 We'll turn it over to -- to Dave Applegate to go through  
19 his, unless DEQ would like to make any remarks about that.

20           MR. ESCH: Madam Chairman, this is Luke Esch.  
21 Just briefly about the dead animal issue. It's -- it  
22 was whenever these comments were raised, I certainly have  
23 the same question. We live in Wyoming. Especially with the  
24 recent history -- the past with the winter storm atlas,  
25 having the impact on all the ranchers in the northeastern

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1 part of the state, that's certainly a consideration.

2           And one of the questions that I asked the staff as  
3 well was, well, what about these circumstances? And some of  
4 the responses that I received were, well, if it's an  
5 agricultural producer and they have a lot of cattle loss,  
6 they're not prohibited from going out on their own land  
7 and -- and doing a pit for their own dead animals. And  
8 there's also a few -- well, Bob Docktore has a lot of  
9 information on this, because I kind of picked his brain for  
10 quite a while on it, and there's other ways to deal with  
11 them.

12           But I understand what your point is, and I think  
13 we'll take that into consideration going forward and seeing  
14 whether a separate section on animal disposal is something  
15 that should be done.

16           MS. BEDESSEM: Well, I appreciate your  
17 consideration. Thank you.

18           DR. HANSON: I just have -- I'm sorry I was late.  
19 I kind of rose from the hospital bed to get here. Sorry.

20           In the -- and it just occurred to me, in the first  
21 response there, after the comments section, you excluded  
22 tires but you left abandoned automobiles in there. Usually,  
23 abandoned automobiles come with tires. So what do you do  
24 there? Does the operator then have to take the tires off  
25 and do them separately? I -- I didn't quite follow this,



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1 and I put a question mark to it. This is the first comment,  
2 you know, under Chapter 1, Regulation. And, you know, you  
3 took out tires but you kept abandoned automobiles.

4 And. . . you see where I am on the first page?

5 MS. BEDESSEM: Yeah, he's in the first batch under  
6 response to --

7 MR. ESCH: Oh, okay.

8 DR. HANSON: And I understand, you know, we, of  
9 course, do the -- require separately, but should there be a  
10 comment, then, that the automobiles have to have the tires  
11 taken off? Otherwise, you have the automobile in there,  
12 with the tires.

13 MR. ESCH: Madam Chairman, that's a very good  
14 point. I know tires -- oh. (Inaudible) I did.

15 Madam Chairman, I appreciate the comment, and it's  
16 a very good point. It's something we'll -- we'll need to  
17 consider.

18 MR. EDWARDS: Yeah, we have not thought of it to  
19 that level.

20 DR. HANSON: That was all that I noted.

21 MS. BEDESSEM: So could we transfer over to -- to  
22 Dave in Casper?

23 MR. APPELATE: Okay. Thank you. The -- I guess,  
24 first of all, (inaudible) on Chapter 1. First of all  
25 (inaudible), and I think in general, Chapter 17 is also

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1 about that, so certain (inaudible) matter, set of rules. I  
2 do have (inaudible) is working. (Inaudible) comments go to  
3 these two ideas, that municipalities that engage in  
4 remediation activities in what would be (inaudible)  
5 agreement or (inaudible) what those activities look like  
6 should have lots of flexibility in doing that. And should  
7 generally have the same flexibility that the (inaudible)  
8 have when they have to negotiate or (inaudible) cleanup.

9           The other sort (inaudible) principle that I had  
10 with the carbon zone (inaudible), have to do with trying to  
11 avoid language that might inadvertently lead us to remedial  
12 solutions that are either too costly or that kind of raise  
13 false expectations in terms of what we're going to be able  
14 to achieve.

15           So I have to also give you this kind of  
16 (inaudible) as to start with (inaudible). I think  
17 groundwater remediation is very difficult, and 30 years of  
18 mediation history (inaudible) country has demonstrated that  
19 it's very, very difficult to reach groundwater cleanup  
20 standards with (inaudible). It's like a vast majority of --  
21 well, maybe I shouldn't say "vast," but probably the  
22 majority of cleanup study (inaudible) across the country are  
23 sort of maintenance-type solutions. Once you contaminate  
24 groundwater, it's very hard to clean that up.

25           Municipal landfills have contaminants in them that

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1 are, I believe, not different than hazardous waste sites or  
2 landfills. They have (inaudible) contaminants in  
3 groundwater that (inaudible) clean up. They might have  
4 recalcitrant organic contamination (inaudible) aromatics.  
5 Those will take decades if not centuries to biodegrade.  
6 They may include other organics, (inaudible), which will  
7 remediate more quickly. But the point is, it will take a  
8 long time, and again, this is just (inaudible) me and my  
9 comments. You know, you look at the cleanup that was  
10 negotiated (inaudible) when the (inaudible) site, and  
11 groundwater cleanup standards are effectively reached in  
12 hundreds of years.

13           Another cleanup project that I've been  
14 specifically (inaudible) involved with is the Laramie  
15 (inaudible) site, which has recalcitrant poly (inaudible)  
16 aromatics. Those (inaudible) were groundwater constituents  
17 with (inaudible) cleanup standards. So that's the context  
18 in which I have this discussion, is the context of, yes, we  
19 should cap landfills and we should use lime landfills, so we  
20 should have realistic expectations regarding what's going to  
21 happen to groundwater over several decades. So with that,  
22 I'm going to (inaudible).

23           In Section 2, under definition of leading  
24 (inaudible) solid waste landfill, I think we should add to  
25 that definition, or at least, what DEQ should consider at

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1 the end of that. (Inaudible) solid waste landfill means a  
2 unit at an existing facility that a (inaudible) groundwater  
3 protection standards, and I would add, (inaudible) had  
4 (inaudible) program (inaudible) definition is (inaudible)  
5 building to folks participating (inaudible) in determining  
6 compliance.

7 Now, it's a sign that (inaudible) starting point  
8 on that, is a point of compliance that's (inaudible) as  
9 close as possible to waste treatment (inaudible). That's  
10 the reason why this should be our goal, but the (inaudible)  
11 remediation any (inaudible) person who's trying to clean up  
12 a site, to make an argument to how (inaudible) control their  
13 (inaudible). That flexibility is getting to (inaudible) be  
14 industrial participants involved here in mediation program.  
15 I see -- there's no reason why (inaudible) same possibility.  
16 Circumstances were (inaudible) for -- for (inaudible)  
17 compliance to that. (Inaudible) in our definition to  
18 (inaudible) control area for (inaudible).

19 Another (inaudible) I think presumptive remedy. I  
20 think presumptive remedies is really important because it  
21 gives insight into where the DEQ sort of -- it's sort of  
22 their reflection of the kind of remedy that they can  
23 (inaudible) all future discussions in negotiations  
24 (inaudible). And therefore I think the language in that is  
25 very critical. I firmly believe (inaudible) suggest that

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1 when (inaudible), because I think it would lead all  
2 discussions in the future to (inaudible), and therefore clay  
3 caps or ET caps (inaudible) starting at -- you know, any  
4 difficulty they have (inaudible) choose in saying  
5 (inaudible). By operator (inaudible) (overlapping  
6 voices) control the (inaudible).

7 I'm not quite sure what that means. You put a cap  
8 on to try to prevent (inaudible) leaching, but these  
9 landfills are biological (inaudible) that will continue to  
10 (inaudible), regardless of whether or not they have cattle  
11 with them. (Inaudible) biological degradation (inaudible)  
12 status of the landfill (inaudible). So I'm not quite sure  
13 what you mean when you say "control of landfill leachate."  
14 I'm not sure what -- (inaudible)

15 MS. BEDESSEM: Dave -- Dave, I'm just going to  
16 suppose something here, and -- and -- and staff at DE  
17 (inaudible) a time in here, but I'm thinking that in some  
18 cases, you know, we've had facilities where you had landfill  
19 leachate daylighting, you know, at certain locations. So  
20 managing that -- that leachate material so that it's  
21 collected and -- and treated or disposed, whatever, could be  
22 something that would be -- fall in the category of control  
23 of landfill leachate, you know, for those, you know, older  
24 facilities where things like that have certainly happened in  
25 the past.

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1           MR. APPELATE: And I think that's an excellent  
2 point and could be clarified by saying, control landfill  
3 leachate that might be surfacing, or that might be exposed,  
4 any sort of -- and I think just the (inaudible) was that  
5 clear.

6           The next one, control migration to groundwater.  
7 Well, again, I'm not sure how you're going to control  
8 (inaudible) cattle on -- it doesn't help (inaudible).  
9 You're really trying to control any offsite migration of  
10 groundwater. I'm just saying at least (inaudible) propose 2  
11 and 3 here (inaudible). I think ultimately with these  
12 landfills we're going to be putting caps on them which now  
13 means we're going back (inaudible) landfill gas.

14           (Inaudible) compliance where (inaudible)  
15 mediation. I think to be added to the presumptive remedies,  
16 should be a proposed (inaudible) compliance (inaudible)  
17 groundwater remediation. (Inaudible) institutional controls  
18 as another presumptive remedy. I think these landfills, if  
19 they're like most industrial sites, they will still have  
20 (inaudible) groundwater far beyond the time that they're  
21 still (inaudible) as hazardous (inaudible).

22           I will go on -- as my final suggestion, I  
23 (inaudible) obstruction is that (inaudible) monitored  
24 (inaudible) and (inaudible) presumptive remedy, (inaudible)  
25 if not most cases, that would be an appropriate (inaudible)

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1 for groundwater.

2           So that's my comments on presumptive remedy. I  
3 just think we (inaudible) shake the entire agreement process  
4 at least have two (inaudible) in that section.

5           MR. ESCH: Madam Chairman, this is -- this is  
6 Luke. With regard -- and I thank the board for its  
7 comments. Those were very good comments. We will take them  
8 into consideration.

9           The -- and I guess provide a reason of why we  
10 included these -- these items in the discussion was we are  
11 trying to just get an idea of all the possible potential  
12 remedies that may be involved out there, whether it be  
13 landfill leaching, leachate, or migration to groundwater.  
14 We just wanted to make a broad statement of having the  
15 operators propose what they anticipated would all be  
16 included in -- in the -- in the agreement with the -- with  
17 the Department.

18           So it's not necessarily any specific  
19 recommendation for a remedy. In provision 5, we do -- we  
20 try to include that -- that provision that puts out the --  
21 something proposed by the operator, like natural  
22 attenuation. That could be something that could be included  
23 in Subsection 5 of that presumptive remedy.

24           But we appreciate your comments, and we will  
25 certainly take them into consideration.

Hearing

1           MR. APPLGATE: So (inaudible) expectation, where  
2 it could be (inaudible) 15 years from now (inaudible) this  
3 program is on page -- well, it's the page that talks about  
4 (inaudible), they would proceed times. (inaudible) I'm  
5 sorry if I sound (inaudible) in terms of the ability to  
6 clean up groundwater, it's just based on personal  
7 experience.

8           And so (inaudible) section, providing (inaudible)  
9 facilities for return flow control of water also (inaudible)  
10 mediation program (inaudible) recommendation of (inaudible).  
11 And again, I would just say that somehow that seems to  
12 suggest that we're going to be in a different place in 10  
13 years than we are today. We will have capped these  
14 landfills. We will (inaudible) systems which will be the  
15 official (inaudible). We will hopefully (inaudible) protect  
16 surface water waste and groundwater (inaudible), those are  
17 appropriate places for (inaudible) facilities. But the  
18 contaminants we're going to find will still be there 10  
19 years from now, and I guess, I'm just saying (inaudible)  
20 without these, you'd better plan for that, because whatever  
21 system you put in place, (inaudible) 10 years, then you're  
22 going to still carry the burden of that cost, and it's going  
23 to be decades to (inaudible) bearing the cost.

24           So those are my philosophical comments. Again,  
25 generally speaking, I (inaudible) I honestly believe that



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1 (inaudible) location (inaudible) expectations and trying to  
2 create a plan (inaudible) of what we're going to achieve in  
3 (inaudible).

4 MR. EDWARDS: Madam Chairman, this is -- this is  
5 Alan. These comments actually are very good, and I -- I  
6 appreciate them a lot.

7 One of the things I will do, in light of what you  
8 mention in your comments, is I think it would be  
9 appropriate, and I'll get some -- some input and thoughts  
10 from the hazardous waste division, especially as how they  
11 deal with the VRP program, et cetera, so we can simply do  
12 then a comparison and see where the similarities are, the  
13 distinctions. I think that's an exercise, based on your  
14 comments, is well worth doing.

15 On the presumptive remedy, one of the other items  
16 to keep in mind is -- is the intent of the presumptive  
17 remedy is not to say, this is our expectation for every  
18 landfill. But based on the earlier comment, too, it's  
19 important to have something upon which to base our initial  
20 cost estimates on so we can make sure that there's  
21 adequate -- adequate funds reserved for a particular  
22 project.

23 Because on the balance of expectations, in -- it's  
24 going to take us awhile, as we implement the program, I  
25 think, to fully understand and appreciate the nuances of

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1 this. But I would have a concern as well as identifying  
2 presumptive remedies that appear to be very light, where on  
3 the basis of the groundwater data and other stuff for a  
4 particular landfill, might not be reflective of -- of what  
5 an actual remedy might end up needing to be. And it could  
6 raise an expectation of costs that are lower than otherwise  
7 might be expected.

8           So it will be a struggle to try to balance that a  
9 little bit, and will admit to that.

10           The control of the landfill leachate, that one, I  
11 find extremely well -- extremely good. From a standpoint  
12 that -- and I'd like to throw this out, because this is my  
13 understanding of this, so I'm going to step out here a  
14 little bit. I'd like to see if my staff disagrees or  
15 others.

16           But there's two aspects of controlling leachate.  
17 Putting a liner on, and I would acknowledge and recognize as  
18 well, that you put a liner on, you're not going to eliminate  
19 leachate. Because there's a lot of factors that come into  
20 play.

21           But -- so if you control it at -- up front, at the  
22 source, and then you control your leachate that's leaving  
23 the facility, there's really, I believe, two aspects that we  
24 need to keep in mind.

25           One is to identify a cap -- a capping mechanism

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1 that reduces it, to the extent possible, does control  
2 infiltration and et cetera into the landfill that would  
3 reduce the risk of -- of leachate continuing to be developed  
4 and being an ongoing problem. So you do what you can to  
5 eliminate at the source.

6 But I am aware of some landfills in the state that  
7 actually do have physical leachate leaving the site in ways  
8 that are creating challenges. So that's also a leachate  
9 control mechanism.

10 I'm not so sure that our rules maybe make that  
11 distinction, and it's very -- it'll be very worthwhile for  
12 us to take a look at what we've proposed in light of that  
13 discussion to see if that needs to be refined and adjusted.  
14 So I think that's -- that's very good.

15 So what I find here in my challenge of dealing  
16 with this is, none of this will be cast in stone for the  
17 life of the program. The 10-year provision, for an example,  
18 isn't necessarily a reflection that at the end of 10 years,  
19 we figure we're going to be close to being done. The  
20 10-year provision was actually a specific provision in the  
21 statute where the -- the legislature looked to limit the  
22 State's liability in that, so the 10-year was not one that  
23 the Department picked on the basis that we'll be able to see  
24 and measure marked progress then. It's a statutory funding  
25 provision for the legislature.

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1           That doesn't totally answer your question, because  
2 the communities will need to look at, what are those  
3 long-term costs. What are they, based on the options that  
4 are selected. You know, with the understanding that the  
5 State funding would end in 10 years as the language  
6 currently exists, unless those conditions we've tried to  
7 identify in the statute are in play. You know, the remedy  
8 doesn't work or we've uncovered situations in the field that  
9 were unknown.

10           We've tried to build in what flexibility we have  
11 under the statute. Beyond that, the 10 years is a direct  
12 statutory restriction. So I hope I haven't confused. These  
13 comments, I think, are very good, and we need to take a look  
14 at them.

15           MR. APPLGATE: (inaudible) and I wasn't aware of  
16 the statutory limitations are. I appreciate that too. I  
17 just wanted to (inaudible) know if they're (inaudible) in  
18 cost (inaudible) injury (inaudible) (overlapping  
19 voices) remediation (inaudible) advised us they have these  
20 early (inaudible) costs and (inaudible) and they might have  
21 done cost projections in their closure plans (inaudible)  
22 documents for 30-year time frames. (inaudible) that wasn't  
23 very high or something (inaudible) supposed to be  
24 (inaudible) a lot of money in (inaudible) they have the  
25 agreements that we (inaudible) drinking water standards and

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1 all of a sudden, (inaudible) for a hundred years. So  
2 (inaudible) these are tough nuts to crack and, you know  
3 (inaudible)

4 MS. BEDESSEM: So Dave, does that wrap up your  
5 comments, and we can move on to Lorie?

6 MR. APPLGATE: Yes, Madame Chair. Thank you.

7 MS. BEDESSEM: Okay. Thank you, Dave.

8 Lorie, we're turning over the floor to you.

9 MS. CAHN: Okay. I have some -- as usual, I have  
10 some wording comments. But before I get to those, I -- I  
11 wanted -- I echo the comments that Marge and Klaus and Dave  
12 have made because I have similar comments.

13 But if we get back to the presumptive remedy. I'm  
14 having a really hard understanding the wording for  
15 presumptive remedy, chopping one or more of the following,  
16 because it seems to me that if you've got -- these are all  
17 leaking landfills. So if you have a leaking landfill, it  
18 seems to me that you need to put a cap on it. That's -- I'm  
19 wondering whether that's really an option.

20 Then if you've got -- if you're generating  
21 landfill leachate, it's most likely got contaminants in it,  
22 and it seems to me you need to control that.

23 If you have migration to groundwater, you  
24 definitely have to control that, unless -- I mean, maybe you  
25 can educate me if you wouldn't need to.

Hearing

1           And then if you're generating landfill gas, you  
2 may need to collect and treat that.

3           So I'm just wondering about this language that  
4 says, "One or more of the following," and wondering if it  
5 said -- it should say something like, you know, if there's  
6 any of these things that have to be done like, for instance,  
7 if construction of a cap is -- is -- low permeability cap is  
8 necessary, it would be that, and -- and/or -- and include  
9 the following as necessary.

10           And so then it would have the list of the other  
11 things that, "as necessary," you would have any of those.  
12 So it's just hard for me to -- to envision a situation that  
13 have only one of those.

14           So anyways, I'll get -- I'll put it on mute, and  
15 let you respond to that thought.

16           MR. ESCH: Madam Chairman, this is Luke Esch.  
17 Well, "as necessary." I -- we appreciate your comment.  
18 With regard to this presumptive remedy, this presumptive  
19 remedy is -- is incorporated -- is supposed to be a part of  
20 the written agreement that's entered into between the  
21 Department and the operator, and this is really just the  
22 first step into becoming eligible for the program.

23           So this written agreement will contain this  
24 presumptive remedy, which, at that time, has the operator's  
25 presumption of what the remedy will be. Some of these

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1 facilities, all the investigations won't have -- won't have  
2 been done already. So we tried to incorporate enough  
3 flexibility where this written agreement will contain the  
4 presumptive remedy, which will be based on the information  
5 available to the operator, so if they do have leachate  
6 that's surfacing or something that they're aware of,  
7 obviously, we look for that presumptive remedy to include  
8 something that will address that problem.

9           Does that -- does that answer your question? And  
10 we don't want to limit to just what -- what is known -- or  
11 what's -- these four requirements. We really -- we're  
12 anticipating that this written agreement will be a close  
13 relationship between the Department and the operator in  
14 sitting down and working this written agreement to include  
15 the best -- what will work best for the operator.

16           MR. EDWARDS: And this is Alan. I'd like to echo  
17 what Luke had indicated. The presumptive remedy is -- is  
18 not the final. And your comments are actually very good.  
19 Very likely, you'll need at least one, but you might need  
20 more.

21           So what we're trying to do is strike the balance  
22 of leaving the options on the table for the operator to  
23 review. The options for the Department to require or  
24 request that they look at other variants of that. But more  
25 importantly, the presumptive remedy will be based upon what

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1 everybody knows at the point in time the application is  
2 made.

3           The early stages of the project is clearly the  
4 design, the further groundwater monitoring, such as it may  
5 need. And that information will make a much more informed  
6 decision on what that final remedy should be, which very --  
7 very easily could involve, one, if it's low concentration  
8 and natural attenuation is feasible, versus leachate  
9 collection, the methane. But that -- what we're looking at,  
10 if we could do that as an outgrowth of the design and  
11 investigation stage of the project, when we get to there,  
12 these options are on the table, and we can then make our  
13 decision going forward either to agree or disagree with the  
14 operator on their recommended final remedy.

15           So it is somewhat of an iterative process. And as  
16 Mr. Applegate had mentioned, you know, clearly, there's some  
17 challenges for those that have, you know, extremely high  
18 concentrations of materials, but once again, that could be  
19 defined as part of the final remedy, based upon our  
20 investigations.

21 MS. CAHN: And perhaps, instead of presumptive  
22 remedy, because I come from the side of the world where  
23 presumptive remedy has a very distinct meaning, and it tends  
24 to be your final remedy, and it's -- you've met a whole  
25 bunch of conditions first before you can have a presumptive



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1 remedy.

2           So perhaps what you're really -- I didn't  
3 necessarily get the point, other than when I read further on  
4 in the regulation, where it started using the term final  
5 reform difficult. Perhaps we should say the preliminary or  
6 the presumptive preliminary remedy? Or something so that, I  
7 don't know, maybe to make it more clear, that this is just  
8 your preliminary steps. So, I don't know, I throw that out  
9 there.

10           MR. ESCH: That's very good.

11           MR. EDWARDS: That's a very good comment. Thank  
12 you very much.

13           MR. ESCH: I, myself, also missed the -- the  
14 parallel with circling the understanding it might leave in  
15 people's minds, but again, what we're looking at, we're  
16 trying to look at a preliminary, based on what we know and  
17 then define it to get our -- you know, our final remedy.

18           So that's a -- we can make that change. I think  
19 that's very appropriate.

20           SPEAKER: How did this happen? (inaudible) seen  
21 my (inaudible) the use of the word presumptive remedy  
22 carries all those connotations as to use (inaudible)

23           MR. ESCH: And thank you, because obviously, we  
24 look at it, you know, from our perspective, trying to drill  
25 down into the rules, so once in a while, we need to pull

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1 ourselves out of those weeds and take a look at it from that  
2 perspective on the perception with the folks we'll be  
3 working with. So thank you. We would have not picked up on  
4 that on our own, so it's much appreciated.

5           SPEAKER: This is (inaudible) this is Bob out of  
6 Casper. We're spending a lot of time on this, but I think  
7 you really need to keep in mind that this is a placeholder.  
8 This (inaudible) anticipate the program. You have to find  
9 25 percent of the cost, where the running cost is  
10 (inaudible), so you may be changing the words (inaudible)  
11 or, you know, (inaudible) something else (inaudible) in this  
12 industry.

13           Now, there are some things that people in our  
14 industry are not (inaudible) she comes home and talks about  
15 the (inaudible) but this is not something we should be  
16 (inaudible) I think (inaudible) this is (inaudible) in the  
17 program so they can be a participant, if not necessarily  
18 directed to follow the timetable which required that a  
19 (inaudible) regulations. This is to allow us to put people  
20 on (inaudible) to get us through this whole process.  
21 Nothing that, we can't (inaudible) all at once.

22           So we understand that, or we (inaudible) to think  
23 that we look at that and be prepared (inaudible) come down  
24 the pike. But we (inaudible) something that (inaudible)  
25 that is environmental and most likely looking (inaudible)

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1 potential remedies. We just want to give people in the  
2 program (inaudible)

3 MR. ESCH: Thank you, Bob. That's a little bit  
4 longer way to say that what we're looking at is a  
5 preliminary remedy or some other term that identifies that  
6 so that gets us back to the same point, is it's a starting  
7 point. It gets us back into the system. So we will work to  
8 identify the most appropriate term to use for that that  
9 would reflect that perception.

10 MS. CAHN: Okay. This is Lorie. I'll go on.

11 On page 17-2, the -- under A, so if I can get  
12 this -- I always get confused trying to do this. It would  
13 be 3, little A, small I, capital A. (inaudible) I believe  
14 that you've used the term "which" when you actually mean  
15 "that," and after units of facilities, so I think it needs  
16 to read -- and also, I guess I question about units of  
17 facilities. I don't know that that caught that -- I realize  
18 you're going to have several units within facilities, but  
19 I'm not sure you talked about that prior. So we could  
20 either simplify it to say that the operator -- oh, and then  
21 I'll finish --

22 MR. ESCH: Where are we at?

23 MS. CAHN: I think we can get rid of those units  
24 that -- so it might say, the operator can continue to  
25 dispose units of solid waste into units that have an

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1 approved engineered containment system and perform to  
2 performance-based design standards, and it -- if "of  
3 facilities" is necessary, we could add that back in, but I  
4 think it would be simpler English, and I don't think that  
5 you meant "which," because I think the first "which" should  
6 be "that," because "that" is a defining thing -- that --  
7 that unit has to have an approved contained engineered  
8 system that does not, oh, by the way, it just happens to  
9 have that.

10 MR. ESCH: Thank you very much. We'll change  
11 that.

12 MS. CAHN: Then back to the presumptive remedy. I  
13 really -- so now, under (inaudible) presumptive remedy. I  
14 really had a hard time reading the second sentence. In  
15 terms of the Governor's request to simplify English, I would  
16 propose that we change it to the presumptive remedy is  
17 the -- and we could change if it becomes preliminary remedy  
18 or initial remedy or preliminary or presumptive or whatever,  
19 but it may say something like, the presumptive remedy is the  
20 remedy presumed by the operator prior to assessing  
21 corrective action.

22 Because when I read the sentence, the presumptive  
23 remedy will be that which the operator believes the remedy  
24 will be prior to the assessment of correction action being  
25 conducted, I just got lost in that. So I can read that

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1 again as a -- as a proposal. I would get read of "will be  
2 that which," and replace it with, "is the remedy presumed  
3 by." I would get rid of, "believes the remedy will be," and  
4 replace the assessment of -- am I going too fast?

5 MR. ESCH: No. No, we're following along.

6 MS. CAHN: Okay. I would replace the "assessment  
7 of" with "assessing," and I would get -- delete "being  
8 conducted." So I'll read it again.

9 The presumptive remedy is the remedy presumed by  
10 the operator prior to assessing corrective action.

11 MR. ESCH: Madam Chairman, thank you very much.  
12 We'll make that modification. Do you have any additional  
13 comments or suggestions?

14 MS. CAHN: Yeah, Yeah, on 17-3, I would just, in  
15 small V, so a small 5, in the sentence starting out, "in  
16 instances." I would take "from the Department" and put that  
17 after "as requested authorization," so it says, "requested  
18 authorization from the Department," as opposed to oversee or  
19 conduct monitoring or mediation from the Department,"  
20 because it makes a little less clear who's doing the  
21 monitoring. It's not -- it's not the Department doing the  
22 monitoring. It's the authorization from the Department. So  
23 I would just move those three words.

24 I've got some more kind of just editorial ones. I  
25 can go through them quickly.

## Hearing

1           On page 17-4, Section 4(A)(I), the location  
2 mailing address of facility does not need to be capped. So  
3 it should just be lower cases.

4           Further down, under 5, where it says, talks about  
5 a presumptive remedy for the landfill. Rather than saying,  
6 estimated costs of such remedy, that's kind of -- sounds  
7 legalese. I would just say, a presumptive remedy for the  
8 landfill and its estimated cost.

9           On page 17-5, the bottom of the page, little 2. I  
10 would just get rid of to a facility in the first line, so it  
11 would read, The Department may authorize funding to continue  
12 for operation and maintenance.

13           On page 17-6, under Section 5, under the  
14 requirement for contacts to be registered and bonded through  
15 the State, I noticed that you responded to the public  
16 comment saying that monitoring would not need bonding, so  
17 you removed the sentence about monitoring. Or removed  
18 monitoring, which is good.

19           But when it's -- now when it says, contact is  
20 employed to conduct activities, and eligible facility must  
21 be registered and bonded with the State, it -- it's not  
22 clear that -- if you're going to be doing monitoring on are  
23 repairing a well or repairing a remediation system that you  
24 use need to be bond -- not bonded, I'm sorry, but you would  
25 need to be registered and bonded with it -- well, not

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1 registered, sorry, bonded with the State.

2           So I'm wondering if we need to say something, this  
3 does not include activities does not include -- does not  
4 include monitoring while repair, and remediation, repair,  
5 something. I -- so I appreciate that you're responsive to  
6 comments, but I wonder if we need to go further, so that --  
7 because conducting activities, monitoring could be  
8 considered an activity.

9           MR. ESCH: Madam Chairman, I think we received  
10 comments that -- that -- well, we received comments about  
11 the monitoring issue, and we -- we felt that that was  
12 addressed by including construction contractors, which would  
13 be doing the activities that would require -- well, I think  
14 we addressed that by including the construction activities,  
15 which during your discussions with the stakeholders, they --  
16 they felt comfortable that by referring to construction  
17 contractors, that that would address the monitoring issue.

18           Perhaps, Bob, you could further clarify that?

19           SPEAKER: Madam Chairman, (inaudible) certain was  
20 that we're talking about construction, because nobody was  
21 (inaudible) bonding (inaudible) and that stuff, and that  
22 (inaudible) use the word insurance, and then that  
23 automatically eliminates all these other things.

24           MS. BEDESSEM: Lorie, does that satisfy your  
25 concern?

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1 MS. CAHN: You know, I think with the comments  
2 being in the public record, that would satisfy that. I  
3 wonder if -- I hate to be redundant, but maybe we should say  
4 construction contractors employed to start construction  
5 activities, just to -- I mean, I think it's okay with the  
6 explanation. So we can leave it. Thank you. I missed  
7 that.

8 MS. BEDESSEM: Do you have additional remarks to  
9 wrap up your comments?

10 MS. CAHN: That's all the comments I have on 7 --  
11 I mean, 17.

12 Before I forget, I do want to make a comment. In  
13 our public notice of the meeting, for this--and I know we've  
14 had two public notices, but it's the one that includes this  
15 statement: Email comments -- this is on this, Chapters 1  
16 and 17 (inaudible) to attend by oral or written comments on  
17 the proposed revisions. Email comments will not be included  
18 in the public record, and I just was wondering why we're not  
19 including email comments in the public record.

20 I know we've gone through this before. Somebody  
21 bothers to send in a comment that we would (inaudible)  
22 that's sort of the way that people submit comments these  
23 days, so I just need some explanation as to why we're back  
24 on that again.

25 MR. ESCH: Madam Chairman, this is Luke Esch.



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1 That's typical procedure, as I understand, for -- for  
2 comments received by the board for their consideration, that  
3 they be in written format. However, for this -- this rule  
4 revision review, we did receive electronic comments, and  
5 they were included in our review and analysis. Those in our  
6 response to comments documents that we got out to you. I  
7 think all of them were received by electronic communication,  
8 and none of them were -- well, one of them was in writing.  
9 So we did consider them in this circumstance.

10 MR. EDWARDS: And so their -- their comments --

11 MS. CAHN: Thank you for that, and -- go ahead.

12 MR. EDWARDS: No, I was just going to mention --  
13 mention that nobody's comments were dropped off the plate.  
14 We feel we've covered all the comments that were provided,  
15 even the email. They were very -- very good comments and  
16 questions to form our decision, so as Luke said, we put them  
17 in our response to comments so that everybody would be aware  
18 of that. So while the specific email isn't in there, we  
19 have the -- we've captured the question and in our response  
20 to the question.

21 MS. CAHN: Okay. I guess if you could just pass  
22 along to whoever suggested that wording, that, you know,  
23 we've mentioned this before. I don't -- I don't know if it  
24 is procedural or if it's habit or -- or what, but, you know,  
25 we've talked about it before, that we really don't like to

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1 see that in our notice of meetings, that we won't be taking  
2 email comments, so if you'd just pass that along. We've had  
3 this discussion before over the years.

4 MR. ESCH: Madam Chairman, we'll pass that along  
5 to the administer and the director.

6 MS. BEDESSEM: Thank you. So now based on these  
7 comments today, can you tell me what is -- what are the  
8 plans, then, for this group (inaudible) for the next  
9 meeting?

10 MR. EDWARDS: Well, Madam Chairman, thank you.  
11 You know, I kind of made a list of the primary items that  
12 we -- we would like to address, and clearly, there were  
13 several others that were smaller, but, for example, the  
14 groundwater protection standards. That's something we need  
15 to do to our cross-reference and clarify. We'll -- we'll  
16 take another look at the dead animal to see if we can  
17 clarify that and identify what options might be.

18 The comment about the tires on the automobiles to  
19 be disposed of, that's -- that's a very good one. I think  
20 we can adjust that language.

21 I will have our hazardous waste on our preprogram  
22 work with -- with Luke and the team, including Bob, to just  
23 see what the parallels are between the programs. We're  
24 aware of those.

25 The control of lead shape. I fully understand the

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1 comment there, but I think we could look at the -- the  
2 language that's in the proposed rule for that and maybe  
3 tweak it to explain that it's not only control at the source  
4 but control at the -- of the actual lead shape.

5           The presumptive remedy, that one is clearly one  
6 that just cries for a change, but again, it's a pretty  
7 straightforward. I think we can put, you know, either  
8 preliminary presumptive or preliminary remedy, and -- and  
9 clarify the follow -- language and address that pretty  
10 adequately, I believe.

11           My -- my request would be, due to the sensitivity  
12 of the time of this, is if the board would consider  
13 recommending that this proceed with the comments that were  
14 incorporated or addressed today, we would like to make these  
15 changes and move ahead towards the environmental quality  
16 council so we can -- can move that ahead. But if -- if the  
17 board were to consider going in that direction, any of the  
18 comments that we receive today and the changes we've  
19 incorporated as a result, I will guarantee the board will  
20 have a copy of that to show how we addressed the comments.

21           So my request would be, if the board is  
22 comfortable, to move ahead with the understanding we will  
23 provide that response to the comments and the specific  
24 language changes that we made as a result.

25           MS. BEDESSEM: Is this also -- we haven't also

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1 discussed Chapter 1, so we're just right now, referring to  
2 Chapter 17?

3 MR. EDWARDS: Actually, you know, we would -- we  
4 would like to make sure we're addressing the comments on  
5 both. I -- my apologies. I thought that we were done with  
6 the comments on both chapters, so I was making the jump from  
7 there. We were looking to move these ahead as sort of a  
8 single -- middle and a single rule package. So we consider  
9 them to be combined, even though they're separate rules.

10 MS. BEDESSEM: I think Lorie would probably just  
11 have comments on Chapter 1 yet?

12 MR. EDWARDS: No, on that -- and Madam Chairman,  
13 my apologies if I jumped ahead, because I thought that that  
14 had been covered, but that was a presumptive opinion on my  
15 part, if you'll pardon the expression.

16 MS. BEDESSEM: Well, that -- based on -- on my  
17 question as to what your intentions were today. But let's  
18 hear what -- what Lorie has to say with regard to Chapter 1  
19 and then move back to -- to what you had proposed for -- for  
20 plans for the rule package. So is that okay with you,  
21 Lorie?

22 MS. CAHN: Yes.

23 MS. BEDESSEM: On page 1-5, and I'm looking at the  
24 clean copy of Chapter 1, under the -- the definition of  
25 construction demolition approval. We're excluding hazardous

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1 or toxic waste, but we also have solvents in that  
2 specifically being excluded, and since solvents are  
3 hazardous or toxic waste, I'm wondering if we would just  
4 remove solids or have hazardous toxic waste such as solids.

5 MR. ESCH: Madam Chairman, that's a very good  
6 comment. There may be some redundancies there between  
7 paints and solvents. Obviously, they would likely be  
8 included in hazardous or toxic waste. So that's something  
9 that we can certainly take into consideration.

10 DR. HANSON: Would you repeat once more the change  
11 once more on the change? Because we were sidetracked here  
12 for a minute.

13 MS. BEDESSEM: Mark, can you repeat the change?

14 DR. HANSON: Construction. It's something to --  
15 go beyond.

16 MR. ESCH: Yeah, Madam Chairman, the -- Lorie  
17 referenced the -- the construction and demolition landfill  
18 definition. It's the last sentence. This does not include  
19 garbage, liquids, sludges, paints, solvents, putrescibles,  
20 dead animals, friable asbestos, and hazardous or toxic  
21 waste. There's a reference that sludge -- or solvents would  
22 likely be included in hazardous or toxic wastes, and so it  
23 may be redundant.

24 MS. BEDESSEM: Okay. I think you were going to  
25 reexamine that definition as well to make sure it was

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1 consistent with the definition of construction demolition  
2 waste in response to Cindy Langston's comment, asking to  
3 look at that waste versus the landfill definition.

4 MR. ESCH: Madam Chairman, that's correct.  
5 Cindy's comment was referring to the breadth possibly being  
6 not included in the -- in the definition of construction and  
7 demolition waste, but it would be included in the  
8 construction and demolition landfill definition.

9 MS. BEDESSEM: Would you continue.

10 MS. CAHN: On page 1-8, under the definition for  
11 groundwater. I was confused as to why there was a  
12 distinction between the groundwater definition for all solid  
13 waste facilities and a distinction between the ground water  
14 for municipal solid waste landfills. So maybe somebody  
15 could explain to me. I read that, read that, and read that,  
16 and I didn't understand why we have two definitions of  
17 groundwater, depending on what kind of facility we have.

18 MS. BEDESSEM: Because it's statute, but I'm sure  
19 Mr. Edwards can probably clarify that.

20 MR. EDWARDS: Yes, that was -- was direct  
21 statutory reference, so that's the origination of that.

22 MS. CAHN: Thank you.

23 On that page 1-23. And the second thing where  
24 you're talking about type 1 and type 2 landfills. You need  
25 to change your "which" in both of those sentences to "that."

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1           And since you're wanting to send these along, I'll  
2 give you my editorials. 1-27. Little 2. In the very last  
3 line, where it says, "required of it's own employees." That  
4 should not have an apostrophe. It should be i-t-s.

5           MR. EDWARDS: Madam -- Madam Chairman? Could --  
6 could I make a comment here? And it's just -- just sort of  
7 a reference. The editorial comments that are being made are  
8 very good, but there's one -- one challenge that we have  
9 with that.

10           We had looked at making changes to Chapter 1 to  
11 insert and reflect that -- the new statutory requirements.  
12 The areas that are being referenced here, Lorie, are  
13 actually from the existing statute. So I guess the question  
14 would be, are those open for change here or would that  
15 require further public review? Because we're changing  
16 language other than what we've proposed for change.

17           If you understand the distinction. We're not  
18 being quarrelsome, but it opens that as sort of a question  
19 there.

20           MS. BEDESSEM: Go ahead, Lorie.

21           MS. CAHN: Is this the question? Because you've  
22 gone after public comment, and if we're not changing the  
23 meaning, I don't see where we have to go back out for public  
24 comment, but maybe there -- what you're trying to say is  
25 that this was -- this is language taken directly from

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1 statute?

2 MR. ESCH: Madam Chairman, Lorie, the -- I think  
3 what we're getting to is the -- we really do appreciate your  
4 comments, and I think that it's clear that a fresh look  
5 needs to be taken at Chapter 1 to address some of the -- the  
6 grammatic and, I guess, editorial oversights that have been  
7 made.

8 However, I guess our concern is that if we start  
9 changing sections that weren't originally proposed to be  
10 changed, that might expand the scope of review of these  
11 rules and get us into a situation where our timetable may  
12 be, I guess, be jeopardized. I think it would be a very  
13 valuable endeavor is, is to take another look at Chapter 1  
14 in -- in, I guess, after -- in consideration of the  
15 Governor's request for reviewing all our rules. I think  
16 that would be a valuable endeavor to undertake.

17 I think -- I guess my concern is that -- whether  
18 that time is right now or after these programs are  
19 implemented and these regulations are in place.

20 MR. EDWARDS: And this is Alan. As I indicated at  
21 the beginning, we -- number one, we were looking at the  
22 changes to Chapter 1 and Chapter 17 as being -- we looked at  
23 those totally upon the implementation of the statutory  
24 changes that were made. But, you know, we also will have,  
25 when we're done with this process, be going back through a



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1 total rule review. And we'll be looking at consolidating,  
2 cleaning up all the rules.

3           So we're looking to have a more comprehensive  
4 process that addresses all of those issues, and I'm -- I'm  
5 willing to -- I bet you I could bet Luke's salary and be  
6 pretty safe that there's a lot of other editorial and  
7 conflicting words that are in other chapters as well. We  
8 had looked at that as being an opportunity to do a more  
9 detailed scrub of all the rules while we kept our internal  
10 focus on the two statutory changes, House Bill 66 and 65.

11           MS. CAHN: And is my understanding when I was  
12 given my board packet that we were given Chapter 1 to -- to  
13 look at as well, or were we only supposed to be commenting  
14 on Chapter 17?

15           MS. BEDESSEM: We were supposed to be commenting  
16 on Chapter 1, but what we were supposed to be commenting on  
17 were -- were essentially changes to that chapter. So, in  
18 other words, you've got proposed revisions to Chapter 1, and  
19 kind of red line. So the areas that are being changed are  
20 areas that would be, you know, subject to our own review and  
21 comments, while the majority of the body of Chapter 1 is not  
22 being changed.

23           (Conflicting voices.)

24           MS. BEDESSEM: So Chapter 17 was essentially, you  
25 know, whole, so that you could just review, again, the whole

Hearing

1 Chapter 1, the majority of it is -- is unchanged, and -- and  
2 the (inaudible) is going to look at it in the future to tie  
3 things together, I'll be making changes that were necessary  
4 to accommodate the new studies.

5 MS. CAHN: Then I misunderstood, because I have a  
6 clean copy of Chapter 1. It was mailed to me. I don't have  
7 a red-line strike-out. But that's okay. I will save -- I  
8 will look through my comments, then, and omit any editorial.

9 MS. BEDESSEM: I have a question of DEQ. The  
10 proposed revisions to that, 1 and 17, that are attached to  
11 the response (inaudible) so, in other words, they're  
12 attached to the back of the response to comments. Are  
13 changes from the original -- original proposal?

14 MR. ESCH: Madam Chairman, that's correct.

15 MS. BEDESSEM: So in the board packet, we do not  
16 actually have a Chapter 1 red-line strike-out. A complete  
17 Chapter 1 red-line strike-out.

18 DR. HANSON: But we have -- for Chapter 1, we have  
19 a (inaudible) two editorial, two different editorial  
20 changes, purple net web. So several (inaudible)

21 MR. ESCH: Madam Chairman, the purple changes were  
22 changes made from our original draft -- draft rules. And  
23 the red ones were made after we conducted our outreach.

24 DR. HANSON: Oh.

25 MR. ESCH: And Madam Chairman, with -- with regard

Hearing

1 to the strike-through for Chapter 1, Chapter 1, obviously,  
2 is a very long chapter, and we didn't want to attach the  
3 red-line strike-out to the response to comments document for  
4 the entirety of Chapter 1 to make it a little more readable  
5 for the board.

6 MS. CAHN: Okay. I clearly misunderstood, because  
7 I didn't get a red-line strike-out, so -- and I assumed we  
8 were looking at the entire chapter. So I will hold off on  
9 my comments, I guess, and get them to you at the end of --  
10 you know, individually, for when you go through and do that  
11 again.

12 But in the future, I think please -- you know,  
13 we've always had red-line strike-outs of comments so that we  
14 know what the changes are. And in this case, I did not have  
15 the -- the red-line strike-out, and I read the entire thing  
16 over again.

17 MR. ESCH: Madam Chairman, Lorie, we apologize for  
18 that. We will certainly make sure that that's always  
19 provided in the future.

20 However, with regard to your current editorial  
21 comments, do you have any comments on page 1-49 and 1-50  
22 which contains the majority of what we're proposing for  
23 language? I don't know for it's going to be in strike-out  
24 there, but this is the -- Section K is the addition.

25 MS. CAHN: I do not.

Hearing

1 SPEAKER: Madam Chair, this is --

2 MS. BEDESSEM: Let's go back --

3 SPEAKER: -- this is Dave. . . Madam Chairman, I  
4 make a recommendation that we remove (inaudible) in order  
5 (inaudible) convene Saturday. I know for myself, I have  
6 (inaudible) different opinion (inaudible) 17. It has to do  
7 with (inaudible) being paid, so I'd just ask (inaudible)

8 MS. BEDESSEM: You know, we discussed before,  
9 normally, when we have public comments at the -- at these  
10 board meetings, it is not for the people for the board to  
11 move the package on. We understand that there's time  
12 constraints. You know, so this would be a very unusual  
13 situation for us to be moving this packet forward.

14 And -- and if you -- if you want Chapter 1 and  
15 Chapter 17 to -- to move together to EQC, I -- I guess I'd  
16 like to hear some -- some feedback from -- from Alan. Did  
17 you want to discuss these separately or -- or together?  
18 (inaudible) like to see the comments, you know, addressed,  
19 have the red-line strike-out, know we're approving this set  
20 of packets, and moving it forward, and having responded to  
21 all the comments that were made up to today.

22 And so if we're going to do something different,  
23 and there's a possibility of doing it piecemeal, I guess I'd  
24 like to get some feedback from Alan with respect to -- to --  
25 I understand (inaudible) together, but that may not happen,

Hearing

1 so -- so tell me if you consider them separately or not.

2 MR. EDWARDS: Our hope here was that they would be  
3 considered as a package. Both Chapter 17 and Chapter 1 are  
4 part of the statutory responsibility we have to implement.

5 The Chapter 1 provisions are -- are extremely  
6 important from the standpoint that -- for an example, the --  
7 and I need to provide Madam Chairman a little background, if  
8 you'll bear with me.

9 Under the cease and transfer, which falls under  
10 the -- the State Land and Investment Board, they  
11 incorporated the body of the funding and the requirements  
12 for cease and transfer. So in there, what they did is they  
13 made a reference to our Chapter 1 for the definition of  
14 municipal solid waste.

15 Under that provision -- and they also made --  
16 included the language lifted directly from statute about  
17 cease disposal of landfills. Over the course of our review,  
18 both of those became extremely important, because the C and  
19 D was not distinguished in our statutes as being separate  
20 from municipal solid waste.

21 But for the purposes of awarding funding -- so if  
22 statute -- if Chapter 1 is -- is not amended, then the SLIB  
23 reference to our municipal solid waste rules would exclude  
24 the changes we've made to incorporate public comment on  
25 cease and -- or, excuse me, construction and demolition.

Hearing

1           The rules also incorporate based upon public  
2 comment and input from the legislature about ceasing  
3 disposal as still allowing under the appropriate  
4 circumstances, using C and D for void fill. Those are two  
5 very important options as articulated by all the operators.

6           So absent approval of Chapter 1, and in my  
7 apologies here, because it's like I'm trying to put  
8 pressure, which I'm not, but I'm trying to explain the  
9 situation, would mean that the SLIB likely could be delayed  
10 in awarding the funding because of that -- that -- that  
11 definitional definition, which automatically eliminates and  
12 restricts a lot of the -- the operators from eligibility.

13           The chapter -- so that's important from that  
14 standpoint. Chapter 17 is extremely important from a timing  
15 standpoint. There's clearly an overlap between some of the  
16 Chapter 17 provisions and cease and transfer. For example,  
17 the financial responsibility. The construction and  
18 demolition and everything else. So if Chapter 1 isn't done,  
19 we don't have the direct linkage under our Chapter 17 for  
20 the issues that we talked about which are C and D and  
21 others, which are less important under landfill remediation,  
22 but are still there.

23           But more importantly, the legislature has already  
24 initiated actions to pull some money from the 41 million  
25 that's available and make it available to start awarding of

## Hearing

1 projects this summer. So the sooner the rules are done, the  
2 sooner the Department can move into active remediation. So  
3 there's a timing standpoint there.

4 Because of the interrelationships between the two,  
5 it's really hard to -- to make a distinction between the two  
6 of them and say one versus the other. Because Chapter 1  
7 affects the ability of SLIB to make awards. Chapter 17  
8 delays the ability of -- of the Department to make awards  
9 under landfill remediation. So there's a timing factor, and  
10 unfortunately, they're both sort of tied together.

11 So, again, keep in mind, I'm not making these  
12 comments to say, you know, there's a lot of pressure or  
13 anything else, although I realize that's -- the situation it  
14 does put the board in, but it's just to explain how we find  
15 ourself where we are at this point in time. So I --

16 SPEAKER: (inaudible) question --

17 MS. BEDESSEM: I can't -- Dan, can you --

18 SPEAKER: (inaudible) so my (inaudible) is  
19 (inaudible) area (inaudible) on Chapter 17, and (inaudible)  
20 a certain way, and I'll just use an example. My -- my  
21 (inaudible) permeable barrier (inaudible) rules and use  
22 (inaudible) terminology that I think is technically  
23 incorrect (inaudible) so I'm (inaudible) is somehow is less  
24 than I need when I haven't seen (inaudible) language  
25 (inaudible)

Hearing

1 MS. BEDESSEM: (inaudible) hard data nor are we  
2 suggesting any additional public comment, because we -- I,  
3 for one, think you've done an excellent job reaching out to  
4 the public, talking to your constituency, and getting the  
5 comments or that (inaudible) for this rule package. So I  
6 don't believe there's any -- any question requiring any --  
7 any additional kind of public remarks for this one package.

8 However, there is a concern about -- about not  
9 seeing the final language, you know, for -- for some of  
10 these issues and some of the topics that were in  
11 conversation today. If we -- as Dave suggested, if we were  
12 to schedule another meeting, is the minimum that you would  
13 need, then, 30 days, just because you have to be announced  
14 that that meeting is occurring, or is it more like 45 days  
15 because of a notice requirements? Can you still fill me in  
16 as to whether that's a 30- or 45-day?

17 MR. ESCH: Madam -- Madam Chairman, this is Luke.

18 With regard to the comments that we received and  
19 the board's uncomfortable -- being uncomfortable about not  
20 knowing the final language, we could certainly go through  
21 the comments that we've received and most likely provide a  
22 response on how the final language ended up right now.

23 With regard to the impermeable cap, I think that  
24 is something we can address quite -- quite easily. Instead  
25 of impermeable, we can say final cap, which would allow the



Hearing

1 discretion and the flexibility that board member Applegate  
2 is looking for.

3 MS. BEDESSEM: I don't think -- I think he's  
4 looking for a final, you know, red-line strike-out document  
5 with most language stressing, you know, the comments that --  
6 that were discussed today so that we have a package that  
7 we're (inaudible) moving forward, not necessarily just  
8 (inaudible) what I was asking is his suggestion about us  
9 moving to forward in -- in 30 days, whether that can be done  
10 in 30 days, or whether it has to be 45, if that was an  
11 option. I didn't -- I don't know what the -- the notice is.

12 MR. EDWARDS: If -- if I understand the question,  
13 Madam Chairman, that -- the board, if it's -- if the board  
14 decides to delay and go through another public comment  
15 period -- no, but if you do, that's where the 30 days comes  
16 in.

17 The 45 days is the public notice requirement, of  
18 course, for the EQC, which would be the next step. It's my  
19 understanding that if the board is not looking to go for  
20 another full public review, then it's just a matter of the  
21 timing of the board getting our responses and having the  
22 opportunity to review those, and I -- I do not believe, and  
23 I'll have to turn to my attorney, but I don't think if  
24 you're -- if you're not looking to get public input into  
25 each specific change, and you're just looking to get the

Hearing

1 answers to your questions, I do not believe that would  
2 require the 30-day comment period.

3 MS. CAHN: For us to have a meeting, which is a  
4 public meeting, don't we have to give a 30-day notice that  
5 we're having a public meeting? That's the question. Let  
6 me -- let me make a proposal. Let me make a proposal.

7 Why don't we take -- I'll see if the other board  
8 members agree, but perhaps we could take a lunch break. I  
9 am more than happy to entertain, since Luke thinks these  
10 changes can be easily made, I'm more than happy when we come  
11 back from the lunch break to have Luke say, I'm going to  
12 change this word to this and this word to that and this word  
13 to that, and then take a vote on it, with those amendments,  
14 with those changes, take a vote on it from the board.

15 And I'll throw out that there as a suggestion.  
16 That gives you an hour to find out about the 30-day, whether  
17 we have to have a 30-day public notice of the meeting, which  
18 I believe we do, and also whether Luke could potentially  
19 just get these red-line strike-out changes made, and he  
20 could read them to us in an hour.

21 So that's my proposal.

22 SPEAKER: Lorie, (inaudible) VRP and (inaudible)  
23 based on the VRP (inaudible) potential changes based on an  
24 VRP (inaudible) in an hour. I just don't see anybody  
25 (inaudible) making changes. (inaudible) there's nobody

Hearing

1 (inaudible)

2 MR. EDWARDS: We can double-check, at least on the  
3 other question that's out there, which is -- and Lorie, you  
4 raise a good point. If the board is going to meet as a  
5 public body, do you still need to give the 30-day public  
6 notice. We can find the answer for that pretty quick, and  
7 you -- you may very well have a valid -- a valid point  
8 there. But definitively, I can't answer that in light of  
9 that new answer, but we can get that answer pretty quick.

10 MS. CAHN: And, you know, we -- our four members  
11 of the board, so if it could be that three of the four  
12 members might not agree with Dave, so, you know, I think  
13 it's worth taking a vote (inaudible) whether we should do it  
14 in an hour or not. So (inaudible)

15 MS. BEDESSEM: (inaudible) that we take a lunch  
16 break and we do that in an hour.

17 SPEAKER: I would second that.

18 MS. BEDESSEM: Let's (inaudible)

19 SPEAKER: This is Frank James in Casper, and  
20 (inaudible) I just want to let you know from a technical  
21 standpoint, the video (inaudible) at 4:00 p.m., and I'm not  
22 sure how long you want (inaudible) recitation will take.

23 SPEAKER: (inaudible) my only (inaudible) so I'll  
24 probably leave the (inaudible)

25 MS. BEDESSEM: Okay. So should we just have -- I

## Hearing

1 have about 1:35. Should we just take 25 minutes?

2 MR. EDWARDS: And -- and Madam --

3 MS. BEDESSEM: How long -- how long does Luke feel  
4 that he needs?

5 MR. EDWARDS: Madam Chairman, could you review  
6 what you're looking to receive from us in the period that  
7 we're gone, so we're all on the same wavelength?

8 MS. BEDESSEM: If you could see what comments you  
9 think you believe you can address.

10 MR. ESCH: Madam Chairman, this is Luke. With  
11 regard to the comments, I think we can -- we can find some  
12 potential language with regard to many of the comments in a  
13 half hour.

14 Madam Chairman, did -- okay. Did you hear me  
15 about the half hour thing? Okay.

16 MS. BEDESSEM: Yes. I would say, let's do a half  
17 hour in consideration to try to get as much of this done and  
18 make sure we have a video link, but I think all of us at  
19 this point have been working at this for a while, and I  
20 think 30 minutes would do us some good as far as being  
21 refreshed and also as far as giving Luke time to address  
22 some of these remarks.

23 I've got 25 of. We will reconvene at five after  
24 2:00. Okay.

25 SPEAKER: Five after 2:00.

Hearing

1 MS. BEDESSEM: Yes. That's five after 2:00.

2 Okay?

3 DR. HANSON: So a little later, can you plan to  
4 make it ten after 2:00?

5 MS. BEDESSEM: Ten after 2:00, just in case we  
6 (inaudible) on the way.

7 DR. HANSON: Yeah.

8 MS. BEDESSEM: Will that work for. . .

9 MR. FREDERICK: Madam Chair, Kevin Frederick. I'm  
10 just wondering if -- if the board contemplates trying to get  
11 to the water quality division presentation yet today or not.  
12 Your thoughts on that? That might be pushing it a little  
13 bit, from the look on your face.

14 MS. BEDESSEM: How long is the -- is the water  
15 quality presentation?

16 SPEAKER: About a half hour.

17 MR. FREDERICK: Madam Chair, it would be 40 to 45  
18 minutes. And it's certainly not a problem to, you know,  
19 remain on standby.

20 MS. BEDESSEM: Okay. (inaudible) sideways, we  
21 have, you know, going over a few (inaudible) comments and  
22 also the reimbursement to do. So I'm thinking if we could  
23 have that up by -- get that done by 3:00, would we be able  
24 to handle water quality by 3:00?

25 MR. FREDERICK: Absolutely.

## Hearing

1 MS. BEDESSEM: Okay. Why don't we plan on that.

2 MR. FREDERICK: Okay. Sounds good.

3 MS. BEDESSEM: Try to wrap up by 4:00. Okay.

4 MR. FREDERICK: Thank you, Madam Chair.

5 MS. BEDESSEM: Thank you very much.

6 MR. EDWARDS: Thank you.

7 (Recess.)

8 MS. BEDESSEM: Okay. We're all back from break,  
9 so I'm going to hand it back to Alan Edwards.

10 MR. EDWARDS: Thank you, Madam Chairman. We'll  
11 take a two-fold approach to this. One, we do have some  
12 specific language to change some of the provisions as they  
13 were specifically identified. So I'll turn to Luke to get  
14 into those right away.

15 There's a couple of points that we'll reserve to  
16 the end that we'd like to discuss, because I think a  
17 discussion on that might either indicate that a change isn't  
18 necessarily warranted, or define how we would go ahead with  
19 that. But we'll separate those topics out and go right into  
20 the language changes first that Luke has worked on.

21 MR. ESCH: This was the definition of leaking  
22 municipal solid waste landfill. We're proposing that the  
23 modified language to be, leaking municipal solid waste  
24 landfill means a unit at an existing facility in a point of  
25 compliance monitoring well which is exceeding groundwater

Hearing

1 protection standards pursuant to Chapter 2,  
2 Section 6(B)(I)(E), 8 and 9.

3 This tries to incorporate board member Applegate's  
4 concern or comment about having a definite point in place  
5 for the exceedance to occur, as well as the cross-reference  
6 to the Chapter 2, Section 6 procedure, for determining  
7 the -- the ground water protection standards.

8 The next change --

9 MS. CAHN: And I believe you need to -- that  
10 "which" should be "that."

11 MR. ESCH: Oh, later in Section 3?

12 MS. CAHN: No, in the sentence you just read,  
13 leaking municipal solid waste landfill means a unit at an  
14 existing facility in a -- in a point of compliance  
15 monitoring well.

16 MR. ESCH: Which is exceeding --

17 MS. CAHN: You read -- yeah, but you read "which,"  
18 and it should be "that" --

19 MR. ESCH: Okay.

20 MS. CAHN: -- as exceeding.

21 MR. ESCH: That -- that is -- okay. Thank you  
22 very much.

23 MS. BEDESSEM: And something -- can you tell me,  
24 Luke. When you say that is exceeding, is it understood that  
25 it's based on statistical analysis done pursuant to Chapter

Hearing

1 2, Section 6?

2 MR. ESCH: Madam Chairman, I think I might have to  
3 refer to -- to the -- some of the other staff here. They're  
4 much more familiar with Chapter 2, Section 6, than I am.  
5 Bob, maybe you can help me out with that one?

6 SPEAKER: (inaudible) that's the section that  
7 is -- defines how we determine there's been the (inaudible)  
8 exceedance (inaudible) standard (inaudible) the very first  
9 (inaudible)

10 MR. ESCH: Yes, Bob.

11 MS. BEDESSEM: So the question is, then, does it,  
12 by reference to that section, are we then incorporating the  
13 fact of statistical evaluation? So, in other words, that  
14 exceedance determines the statistical method?

15 SPEAKER: What was the reference again, Luke? I'm  
16 sorry (inaudible) what was that reference (inaudible)

17 MR. ESCH: That's pursuant to Chapter 2, Section  
18 6(B)(I)(E) 8 and 9. And Madam Chairman, with regard to your  
19 question about the statistically significant exceedance, I  
20 believe if it's not identified there, that's the way it  
21 would be interpreted by the Department.

22 MS. BEDESSEM: Okay. (inaudible) did you  
23 believe-check.

24 MR. ESCH: Bob, is that correct?

25 SPEAKER: Yes. I (inaudible) sometimes --



Hearing

1 MS. CAHN: Could we say that (inaudible)  
2 reference? Could we say that is statistically exceeding the  
3 protection standard?

4 MS. BEDESSEM: Sure. Yeah. (inaudible)

5 SPEAKER: Sure. Why not?

6 MR. ESCH: We will -- we will make that -- that  
7 incorporation. Thank you.

8 So that the new language would be, a leaking  
9 municipal solid waste landfill means a unit at an existing  
10 facility in a point of compliance well that is statistically  
11 exceeding groundwater protection standards pursuant to  
12 Chapter 2, Section 6(B)(I)(E) and 9.

13 MS. CAHN: Wouldn't you mean, though, in a point  
14 of compliance well at the end of the sentence? Otherwise,  
15 you have a unit at an (inaudible) in a private compliance?  
16 The language is -- what do you mean, in a point of  
17 compliance --

18 MS. BEDESSEM: (inaudible)

19 MS. CAHN: -- for it to be clear?

20 SPEAKER: So we've got statistically exceeding  
21 groundwater protection standards (inaudible)

22 SPEAKER: Chairman (inaudible), Chapter 2,  
23 Section B, blah, blah, 8 and 9. (inaudible) is the operator  
24 in question (inaudible) administrator establish groundwater  
25 protection standards, and that's where that discussion is

Hearing

1 about (inaudible) is the (inaudible) administrator establish  
2 all (inaudible) groundwater protection standards. So that  
3 section has to do with -- with the groundwater protection  
4 standard. I'm just doing some forward thinking here, so --  
5 so (inaudible) this section is pursuant to (inaudible)  
6 determination in (inaudible) prior that (inaudible) set for  
7 monitoring (inaudible) section.

8 MS. CAHN: If we put the word "statistically" in  
9 the sentence, then we likely don't have to have that  
10 citation in there; is that correct?

11 SPEAKER: Correct. I think we can get that  
12 citation out.

13 MS. CAHN: And more just-right would be to keep  
14 the -- put the "in a point of compliance monitoring well"  
15 has to be at the end of the sentence, not after the word  
16 "facility," because the facility is not in a well.

17 MR. ESCH: Madam Chairman, if -- that's fine, we  
18 can refine to, means a unit in an existing facility that is  
19 statistically exceeding groundwater protection standards in  
20 a point of compliance monitoring well.

21 MS. CAHN: Well, I -- I think -- yeah, I think  
22 that's fine.

23 SPEAKER: (inaudible) I really (inaudible)

24 MS. BEDESSEM: Lorie, Dave, are you all right with  
25 that?

Hearing

1 MS. CAHN: I'm good with it.

2 SPEAKER: (inaudible) all right with it.

3 MS. BEDESSEM: Okay.

4 MR. ESCH: Moving forward. Section 3 A,  
5 Subsection 2. This is a board member -- the comment about  
6 switching the which to a that. So exceptions provided in  
7 Subsection A and B below. The operator must cease disposal  
8 of all waste streams in a leaking, closed facility -- as a  
9 leaking portion of an operating facility that is adjoining  
10 remediation.

11 On page 3 -- or page 2, excuse me,  
12 Subsection 3(A), this -- the second sentence, the  
13 presumptive remedy, changed is to, is the remedy presumed by  
14 the operator prior to assessing corrective action.

15 Subsection I of this provision, construction -- is  
16 the presumptive remedy shall be one or more the following.

17 Section I, construction of a final cap. This  
18 provides the discretion so that it doesn't have to be an  
19 impermeable cap.

20 Does that address the board's concerns?

21 SPEAKER: That addressed mine, certainly. Thank  
22 you.

23 MR. ESCH: Moving forward with Subsection 2,  
24 control of landfill leachate. We're proposing to add  
25 "present" at the end of that section.

Hearing

1           Moving -- on page 3, SubSection 5, this  
2 incorporates the removal of -- from the Department to prior  
3 in the sentence. In the instance where the operator has  
4 requested from the Department an authorization from the  
5 Department to oversee or conduct monitoring and remediation.

6           Page 4. We're proposing to put location, mailing  
7 address and facility, in lower case, on Section -- on  
8 Section A(I).

9           Section 4, same page. A(5). A presumptive remedy  
10 for the landfill and either estimated costs and removal of  
11 such remedy.

12           Page 5. Section F(2). We're proposing to delete  
13 to a facility, so the revised sentence will read, the  
14 Department may authorize funding to continue for operation  
15 and maintenance of a remedial system at the end of 10 years.

16           I believe that's -- that completes the proposed  
17 modifications for Chapter 17.

18           Moving on to Chapter 1.

19           SPEAKER: Luke, this is -- Luke (inaudible) for a  
20 second?

21           MR. ESCH: Sure.

22           SPEAKER: (inaudible) see in comments when you go  
23 to page 17-6, Section 5(E)(E) (inaudible) employees who  
24 conduct (inaudible) activities at an eligible facility, and  
25 then add all such construction (inaudible) records must be

Hearing

1 registered and bonded. We had that discussion. I would  
2 suggest we insert the word construction (inaudible)  
3 additional to location. One of the consultants here that  
4 was here in (inaudible) earlier (inaudible) our map.

5 MR. ESCH: So the proposal is include construction  
6 contractors, and -- on the second sentence?

7 SPEAKER: Correct. Confirm the word activities,  
8 you (inaudible) have construction contractors employed to  
9 conduct construction activities at an eligible facility, and  
10 end the second sentence in that paragraph, all such  
11 construction contractors must be registered and bonded in  
12 the state. See here (inaudible)

13 MR. ESCH: Madam Chairman I'd defer to the board  
14 on what your thoughts on that language would be.

15 MS. CAHN: I'm in agreement with the proposed  
16 language.

17 DR. HANSON: (inaudible) contractors (inaudible)

18 MS. BEDESSEM: So we're just adding the word  
19 "construction"; is that correct?

20 SPEAKER: Yes, Madam Chairman.

21 MS. BEDESSEM: Yeah, I think that's fine.

22 SPEAKER: That's fine.

23 MR. ESCH: All right. Madam Chairman, moving on  
24 to Chapter 1. I don't want to rush. Is that all the  
25 concerns we have with Chapter 17?

Hearing

1 Moving on to Chapter -- Chapter 1 --

2 SPEAKER: (inaudible) thank you.

3 MR. ESCH: Of course.

4 Chapter 1, page 1- -- 1-5.

5 MS. BEDESSEM: Now, what copy are we looking at  
6 here?

7 MR. ESCH: Oh. Well -- yeah, I've got the entire  
8 Chapter 1.

9 MS. BEDESSEM: So the clean copy we're looking at?

10 MR. ESCH: Yeah, and -- yeah, and I'm really just  
11 going to refer to the definitions of construction and  
12 demolition landfill. This is one of the changes that were  
13 proposed, so that should be on our revised or reduced  
14 version as well.

15 But on the definition of construction and  
16 demolition landfill, we -- we discussed the dead animal  
17 issue over the break. And we're proposing to remove dead  
18 animals from this section. And also remove paints and  
19 solvents from that second sentence. So this does not  
20 include garbage, liquids, sludges, putrescibles, friable  
21 asbestos, and hazardous toxic waste.

22 Now, with regard to the dead animal issue -- and  
23 I'll -- I'll let Alan elaborate a little bit more on this,  
24 but if -- if we want to -- we're not saying dead animals  
25 can't be included in it, construction demolition landfill,

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1 but we're not -- we're not eliminating the opportunity for  
2 somebody to make a demonstration that it might be  
3 appropriate, and I'll turn it over to Alan for further --

4 MR. EDWARDS: And that's an important distinction.  
5 In looking at the comments from the board but also some of  
6 the comments from the -- that we heard from the public today  
7 about preserving some options, we've tried to balance those.

8 First and foremost, it's important to make the  
9 comment that dead animals clearly can pose a -- a  
10 groundwater and a public health exposure risk. So very  
11 clearly, dead animals do need to be properly attended to.

12 So -- but the fact that it wasn't included in  
13 the -- that it was included in the C and D definition, I'm  
14 going to back away from that, did not mean that the  
15 applicants didn't already have some options available.  
16 The -- the provision that we put in there is they would have  
17 to stop disposing of dead animals in a landfill that's  
18 closing.

19 Based on the other discussions we had, they got a  
20 landfill that's closing, and they couldn't put it into  
21 there. But a lot of the landfills have other permitted  
22 societies, other permitted facilities. And so if they had  
23 other permitted facilities on the site, they clearly would  
24 have the option to continuing to dispose there.

25 For those who did not have other permitted

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1 facilities, there is nothing that would prevent an operator  
2 from requesting a separate appropriately designed dead  
3 animal waste storage pit. So there was also that option,  
4 and you treat that as a separate permitting action.

5           The discussion was, and the decision to remove it  
6 as a specific reference under C and D, to be very clear, is  
7 not to say that this gives blanket approval to dispose dead  
8 animals in C and D landfills. What it does is it preserves  
9 an option.

10           Operators under this would have the ability to  
11 make a performance-based demonstration that the disposal of  
12 the dead animals within a C and D pit would not pose a -- a  
13 groundwater or a public health threat. So they would have  
14 the ability to demonstrate that.

15           And clearly, what goes into that consideration are  
16 depth to groundwater, groundwater quality, and a whole  
17 variety of other issues. But if -- if groundwater is not an  
18 issue and there's no -- no risk based associated with that,  
19 they would reserve the option under this to make that  
20 demonstration and be allowed to do that. So it would  
21 provide another option for the operator, provide some  
22 discretion for the administrator, yet still keep in mind  
23 that dead animals are a public health issue that need to be  
24 addressed and properly handled.

25           So in light of that change, I think that gives



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1 some flexibility but still allows some control and does not  
2 just automatically exclude dead animals from the pet but  
3 gives the opportunity under site-specific conditions for  
4 that to be approved by the Department.

5 MS. CAHN: So do you mean -- just a minor -- do  
6 you need a comma after street sweepings? Because, you know,  
7 it's not street sweeping brush? And then you also need a  
8 comma -- you might want to put a comma after brush, before  
9 "or."

10 MS. BEDESSEM: So can you tell me again what the  
11 last sentence finally leaves in that construction demolition  
12 landfill definition?

13 MR. ESCH: Madam Chairman, this -- this last  
14 sentence means that those items would not -- oh, okay. I'm  
15 sorry.

16 All right. This does not include garbage,  
17 liquids, sludges, putrescibles, friable asbestos, and  
18 hazardous or toxic wastes.

19 DR. HANSON: Can I make --

20 MS. BEDESSEM: Well --

21 DR. HANSON: -- a suggestion, and that was -- does  
22 not include just simply exchange to excludes. It would be  
23 so much clearer.

24 MS. BEDESSEM: Well, I have two -- two concerns.  
25 I agree with the comment that a clause made -- that says

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1 that this excludes, you know, might be simpler. But do we  
2 have a conflict here where you're saying we're going to  
3 allow a test at some site-specific flexibility here, but  
4 when we have putrescibles -- I guess -- my concern is, I'm  
5 not real, really clear on the definitive definition of the  
6 term "putrescibles."

7           Because as Cindy Langston mentioned in her  
8 comments, she had a pile of brush that she had to get rid  
9 of, and she'll let you know that it is, you know,  
10 biodegradable. And so when I -- and this has always been a  
11 problem with the construction demolition -- you know,  
12 landfill definition that you know, we might (inaudible) to  
13 be nonbiodegradable waste, but when we're including things  
14 like brush, things do break down in the long run.

15           And so I'm -- you know, I'm not sure in your first  
16 sentence where it says, or other (inaudible) by  
17 administrator, I think you should just say, or other  
18 material specifically approved by the administrator, so that  
19 if that facility -- they would have the particular  
20 requirements for a dead animal, you know, arrangement, that  
21 this definition wouldn't exclude it, because you're only  
22 allowed to, you know, approve inert material, which we agree  
23 dead animals are not.

24           And then -- and also inclined that the rest of the  
25 things on the list are (inaudible), which I'm not sure they

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1 really are. You know, brushes, biodegradable.

2           So -- so my question, can you change it to say,  
3 street sweeping brush or other materials specifically  
4 approved by the administrator? And then you don't have to  
5 include putrescibles, because mostly, what you're excluding  
6 there is garbage, your concern, but then you still have some  
7 flexibility to apply a site-specific conditions when you're  
8 requested and you approve it specifically to deal --  
9 potentially deal with dead animals.

10           MR. ESCH: Madam Chairman, we can remove  
11 "putrescibles" from that second sentence. Would that  
12 address your concerns?

13           MS. BEDESSEM: That's one. The other is to say,  
14 or other, and, slash, inert, but to say materials  
15 specifically approved by the administrator.

16           MS. CAHN: (inaudible) not sure what inert means,  
17 because there's not a whole lot on the planet that  
18 (inaudible)

19           MS. BEDESSEM: You know, that's (inaudible) as far  
20 as construction demolition materials, but. . .

21           MR. EDWARDS: If I may, Madam Chairman, just to  
22 make sure I'm clear, is you're drawing the distinction  
23 between inert, but we also have the provision in there,  
24 unless otherwise approved by the administrator. We might  
25 have what otherwise are considered inert material, but would

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1 still be a suitable under site-specific demonstrations to be  
2 allowed here with the approval of the administrator. Is  
3 that essentially what I'm reading?

4 MS. BEDESSEM: I guess what I'm saying is I'm not  
5 sure that -- that -- my feeling is that you should preserve  
6 your ability to specifically approve items and not have  
7 it -- have to meet an inert criteria. You know, it's likely  
8 that the only thing you'll ever approve is inert, but you  
9 don't have to do that in your definition.

10 MR. ESCH: Madam Chairman, based on the discussion  
11 here, we're proposing to -- in this definition, supposed --  
12 or proposing to include a comma after "street sweeping" and  
13 after "brush." Or other materials specifically approved by  
14 the administrator. This does not include garbage, liquids,  
15 sludges, friable asbestos, and hazardous -- and hazardous  
16 and toxic waste. And we -- or we can do, this excludes --  
17 this excludes those items that I mentioned.

18 DR. HANSON: (inaudible) strike the word "inert"?

19 MS. BEDESSEM: Uh-huh. And as you said, you're  
20 likely only going to approve materials that are inert, but  
21 rather than having to figure out whether it meets that  
22 definition, because brush really doesn't. Not for dead  
23 animals, ever, so --

24 MR. EDWARDS: Absolutely.

25 MS. BEDESSEM: (inaudible) it would be the same

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1 thing in the construction demolition waste definition as  
2 well.

3 MR. ESCH: Madam Chairman, that's correct. We're  
4 proposing to remove the "inert" -- the word "inert material"  
5 and then include specifically "approved by the  
6 administrator."

7 MS. CAHN: I have a dumb question, since we're  
8 trying to -- since everyone wants to eliminate words. Why  
9 do we have to have the word "specifically"? If we just say  
10 "material approved by the administrator. Why do we need  
11 "specifically"?

12 MS. BEDESSEM: I suggest that -- just so that it  
13 didn't get misconstrued as an open thing put in (inaudible)  
14 but you don't have to have the word. It's up to DEQ.

15 MR. ESCH: Madam Chairman, I think it -- remaining  
16 in there is -- is fine. We understand -- we'll take into --  
17 take that into account when -- whenever we come back through  
18 in our next approach to Chapter 1 and really look to  
19 streamline and reduce the content. But leave the  
20 substantive portions.

21 MR. EDWARDS: The other -- the other thing, too,  
22 Madam Chairman, that I -- that I look at is, you know, we  
23 make these changes that are in here. Once the board -- you  
24 know, if these then go ahead to the EQC, there'll be another  
25 round of public comments and public input, and so there'll

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1 be another opportunity for the comment -- or for the public  
2 to comment as to whether or not that addresses what the  
3 concerns were, still provide some flexibility, but they  
4 would have this language, then, with which to start their  
5 consideration on that. So it would be a great starting  
6 point, but we'll have that other opportunity for another run  
7 at it through the next public review.

8 MR. ESCH: Moving on. Oh, go ahead.

9 DR. HANSON: (inaudible) just ask the question.  
10 Since the dead animals are gone here, where are they going  
11 to show up again?

12 MR. ESCH: Madam Chairman, thank you very much for  
13 that comment. That leads us to our next definition of  
14 municipal solid waste. They're still going to be included  
15 in the definition of municipal solid waste. And --

16 MS. BEDESSEM: So. . .

17 DR. HANSON: So this would be after that --

18 MS. CAHN: So this is my (inaudible) question --

19 MR. ESCH: Go ahead. Sorry.

20 MS. CAHN: So my question is, if it's -- if it is  
21 included in the definition of municipal solid waste, then  
22 doesn't that present a problem with respect to the fact that  
23 municipal solid waste has to be buried in a facility that  
24 deals with lime or has made the -- the demonstration as far  
25 as performance-based design?

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1           SPEAKER: (inaudible) Madam Chairman (inaudible)  
2 if I'd known municipal solid waste in landfills (inaudible)  
3 locator, either on --

4           MR. EDWARDS: Madam Chairman, housekeeping item.  
5 Bill Tillman just reminded us, since the court recorder  
6 isn't here, it's be important for whoever is making comments  
7 to mention their name, because he'll need to pull that off  
8 the recorder.

9           But -- but the answer to your question, from my  
10 perspective, is, yes. If it's -- if they're going to  
11 dispose of it as MSW, it would be going to a landfill, you  
12 know, in the future as we do all this transition that is  
13 either lined or has a performance-based design.

14           So if they have that, the access to that, it would  
15 clearly be allowable. What the definition of construction  
16 and demolition then allows is one other option. In addition  
17 to the municipal solid waste that could be exercised if the  
18 appropriate performance-based analysis was completed.

19           So, yes, under municipal solid waste it would need  
20 to go to that kind of a facility, as an MSW would, so that  
21 would clearly be a -- you know, an automatic approval. For  
22 anything other than that, such as C and D, it would require  
23 an analysis to determine if it was appropriate under those  
24 site-specific conditions, case by case.

25           MS. CAHN: So you're telling me that if we have a

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1 construction demolition fill that might want to -- to -- you  
2 know, bury half a dead animal in it, that it would either  
3 have to be lined or they would have a performance-based  
4 standard pit? I'm -- I'm still confused about that. I'm  
5 sorry.

6 MS. BEDESSEM: I agree about asking this question.  
7 I'm still confused.

8 MR. EDWARDS: Basically, we would look at the  
9 construction and demolition pit that they're looking to  
10 dispose of it in. But we would approve that, they would  
11 need to make a case that the depth, the groundwater, and the  
12 other site-specific conditions were such that the disposal  
13 of those animals there would not present a -- a hazard.

14 So, yes, they would have to make that as a  
15 determination. It doesn't necessarily mean that the C and D  
16 landfill itself has to be lined or has a performance-based  
17 design. It's just that based on that landfill, is that --  
18 would that -- would that dead animal be appropriate for  
19 disposal there.

20 So it isn't a requirement, a back-door requirement  
21 to require them to be lined.

22 MS. BEDESSEM: Okay.

23 MS. CAHN: I think -- I think I understand your  
24 approach now. I appreciate your patience with me in a  
25 replying that.



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1           MR. EDWARDS: Oh, no. This is -- this is helping  
2 us a lot, so, you know, your patience with us is greatly  
3 appreciated. I would like to make another comment.

4           As we -- you know, the dead animals will likely be  
5 an ongoing issue. As we get into our rule consolidation and  
6 that other package that we're going to be doing this -- this  
7 next year when we're through this, we could look to take a  
8 look at our Chapter 8 to determine if the dead animal issue  
9 could be further defined when we address those rules.

10           So there's another opportunity to look through  
11 that as we look through the remainder of the process. But I  
12 think for the purposes of going through cease and transfer,  
13 landfill remediation, this definition, I think, gets us  
14 through the points that we heard and gets us there. But  
15 that could then be further addressed and refined under a  
16 future rule making.

17           MS. CAHN: So your -- your inclusion of this in  
18 municipal solid waste definition isn't going to prevent your  
19 ability, perhaps at a later date, to have dead animals as a  
20 potential special waste, because that's a Chapter 8 item.  
21 If -- you would have to go back and change municipal solid  
22 waste definition again, if you decided to treat it in  
23 special requirements in Chapter 8.

24           MR. EDWARDS: It wouldn't necessarily need to be,  
25 but you're very correct. If we get into Chapter 8 and it's

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1 determined, based upon the review of all of those, that  
2 some -- some adjustments would be necessary, we would come  
3 back and propose those as part of that overall rule-making  
4 package, which would also include -- what -- what I'm  
5 proposing is that we would look at all the rules.

6           So whatever is in place on Chapter 1 and  
7 Chapter 17, they would be part of that consideration. So if  
8 under Chapter 8, it was deemed appropriate to make a change  
9 at that point, we would need to correlate that with all the  
10 other provisions, including Chapter 1 and Chapter 17.

11           But our larger --

12           MS. CAHN: (inaudible) you'll have to do that  
13 anyway, so --

14           MR. EDWARDS: Correct.

15           MS. CAHN: -- it won't matter --

16           MR. EDWARDS: Correct. Yeah.

17           MS. CAHN: Thank you.

18           MR. EDWARDS: But --

19           MS. BEDESSEM: Thank you.

20           MR. EDWARDS: But my making that as a total, all  
21 the rules and assessment of that, it allows us to address  
22 all these nuances that come up through the rules.

23           MS. CAHN: Okay. Thank you.

24           MR. ESCH: And I believe the final -- I believe  
25 the final comment that we have is just regarding the

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1 question about abandoned automobiles and tires. The reason  
2 we removed tires from this definition was during our  
3 outreach sessions, we -- we encountered comments that --  
4 well, the folks were saying that we have -- the Department  
5 has a memo that allows for the disposal of tires under  
6 certain circumstances in unlined facilities.

7           But there's certain specifications that are  
8 applicable on that situation. There has to be at least 20  
9 feet to groundwater. And in -- in those limited  
10 circumstances, the Department would allow tires to be  
11 disposed -- disposed of in that manner.

12           We were approached by some commenters, saying, why  
13 is tires in there when, under these certain circumstances,  
14 you do allow it? So we took a look at it and said, yeah,  
15 you're right, so we removed tires from that definition.  
16 That's kind of how that happened.

17           But with regard to automobiles, whatever they are  
18 disposed off, tires are included in the definition -- or  
19 the -- with the automobile. So they're considered part of  
20 the package.

21           MR. EDWARDS: And that, Madam Chairman, is  
22 consistent with disposal in other areas, such as salvage  
23 yards that take cars. Typically, they're not allowed to  
24 stockpile tires and do that there, under their -- their  
25 requirements, but if a tire comes in on a car, it's

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1 considered part of the car.

2           So by -- by just including car, it's consistent  
3 with how we treat the -- you know, abandoned car, whether  
4 it's for salvage or disposal, and that does include tires by  
5 our -- our standard use of the term.

6           So the comment was a good one, but I think our  
7 approach to that and how we've handled that, it's to the  
8 point that it's consistent with all our other applications.

9           MR. ESCH: Madam Chairman, one final comment. I  
10 forgot this, whenever I was in Chapter 17. Another proposed  
11 change that we're making globally is from the presumptive  
12 remedy, we're proposing to change it to the preliminary  
13 presumptive remedy. I don't know if that addresses the  
14 concerns.

15           MR. EDWARDS: Okay. Then -- is that all you had?

16           MR. ESCH: That's all I had.

17           MR. EDWARDS: Okay. There's one other provision  
18 that the board had raised prior to lunch, and that deals  
19 with the point of compliance and, you know, the similarity  
20 with the VRP program.

21           Over the lunch hour, I was able to get some more  
22 input on that, and I -- and I -- I think we can address  
23 that, and it's not to minimize the concerns or the comments  
24 that were made, but it was pointed out to me that there is a  
25 clear distinction in what is determined as a point of

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1 compliance when you look at Fed reg Subtitle C, this says,  
2 Fed reg Subtitle D. Under Subtitle D for landfills, the  
3 point of compliance is as close as possible to your unit,  
4 but no further than 150 meters.

5 MS. BEDESSEM: (inaudible)

6 MR. EDWARDS: On land that is owned by the  
7 landfill. So there is some flexibility on where that point  
8 of compliance is set. But there are bounds established on  
9 that point of compliance, established by Fed reg Subtitle --  
10 or Subpart D. So the -- there is no direct parallel between  
11 the hazardous waste and the solid waste within that regard.

12 The -- the other comment which was extremely  
13 important, not necessarily for the regulation, but, you  
14 know, it's recognized that there's a lot of things that get  
15 disposed of in a landfill and is done historically.  
16 Herbicides, pesticides, you name it. There's a lot of  
17 materials that can find them -- can be found in the  
18 leachate.

19 So in that regard, there is a similarity between  
20 the hazardous waste approach to the program and ours, in  
21 that, you know, we have to look at those compounds,  
22 determine their longevity, how you treat them, how you --  
23 how you deal with that. But otherwise, there's no direct  
24 parallel.

25 My -- my thought of going and working with the

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1 hazardous waste and VRP was more procedurally as we go  
2 forward, which is to learn from them their experiences with  
3 different compounds and constituents, how that's handled,  
4 what the -- the life is of that, is there a national  
5 attenuation, and we look at that. But I -- but I think it's  
6 also important to take a look at how the statute reads and  
7 how we progress through the project.

8           As was -- was changed, we're looking at a  
9 preliminary presumptive remedy. So no matter what, whatever  
10 comes up first is one that we're assuming might be  
11 acceptable in the end but likely may change.

12           The -- the first step in a project, once it's  
13 approved, is to do your groundwater monitoring, your  
14 baseline assessments action and to do your design. So based  
15 on that, if -- if these constituents, in fact, do exist and  
16 are found in the leachate, again, if it is in fact leak  
17 being and it's found in the leachate, would then be  
18 incorporated in the design of the final remedy.

19           And yes, there -- and the one point was extremely  
20 germane. It's important for the operators to understand  
21 that this is not a ten-year process. It could be longer.  
22 There are some things we'll need to consider when we get  
23 into final design, such as if these constituents are found  
24 in the groundwater, is it going to be a short-term fix or a  
25 long term fix?

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1           But we -- we can deal with that through our review  
2 and processing of the final remedy. But once again, we can  
3 look at that. We can make sure the -- the operators are  
4 aware of a longer-term risk, but we are still, no matter  
5 what, reduced to a ten-year participation standpoint.

6           So while those materials are important, it will be  
7 important to identify those constituents when we do our  
8 monitoring and our design, to recognize them in our remedy,  
9 but the VRP remedy, the point of compliance, et cetera, will  
10 be different than what we're authorized by statute to do  
11 here.

12           So, again, it's not to deminimize that point, but  
13 point of compliance is established by subpart D. We could  
14 work within that boundary, but that point of compliance  
15 would also be an item that would be determined through  
16 our -- our preliminary design and our work with the  
17 operators to find the most appropriate point of compliance.

18           But, again, to emphasize, it has to be on their  
19 property, as close to the landfill as possible, no more than  
20 150 meters. So we have three distinct boundaries within  
21 which we can review that and determine that point of  
22 compliance.

23           When we were discussing this morning, I wasn't --  
24 I'd probably been briefed on that, but I've been briefed on  
25 a lot of things, so if I was briefed, I overlooked that.

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1 But there is a clear distinction between the two that we  
2 failed to acknowledge and -- and include as part of our  
3 solid waste discussion this morning.

4 MS. BEDESSEM: Thank you for that.

5 MR. APPLGATE: Madam Chair (inaudible)  
6 verification (inaudible) entirely (inaudible) at one point  
7 in time (inaudible) I appreciate that (inaudible) suggest  
8 language change that (inaudible) remediation, at least for  
9 (inaudible) consider. Under Section 3 (inaudible)  
10 Chapter 17, Paragraph 5 (inaudible) in pertinent  
11 municipalities --

12 MS. BEDESSEM: Dave -- Dave, can you tell us what  
13 page -- tell us what page you're on in Chapter 17?

14 MR. APPLGATE: Yeah, page 3. So (inaudible) was  
15 a subset (inaudible) my concerns (inaudible) municipalities  
16 (inaudible) DEQ have the ability to negotiate a cleanup  
17 that, you know, I guess needs to be (inaudible) when the  
18 operator has requested authorization to oversee (inaudible)  
19 of the Department. (inaudible) that the operator shall  
20 adhere to (inaudible) all (inaudible) well, requirements of  
21 the program are hard to find. And (inaudible) in terms of  
22 what you're really trying to achieve.

23 So I would suggest that (inaudible) the operator  
24 has available to them (inaudible) evaluation criteria  
25 provisions of raw material remediation program in reaching



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1 (inaudible) those provisions in the VRP allow (inaudible)  
2 requirements potentially to change (inaudible) you know,  
3 it's very hard to remember (inaudible) and there's very  
4 specific (inaudible) evaluation criteria in the VRP, which  
5 is, you know (inaudible) threshold criteria (inaudible)  
6 policy criteria, so if you're (inaudible) all pretty much  
7 (inaudible) the operator -- there's no indication in this  
8 document what that is. There's no balance or site  
9 (inaudible) on what they're trying to negotiate towards this  
10 cleanup.

11 So while I (inaudible) has to do with (inaudible)  
12 VRP (inaudible) and possibly other provisions that apply  
13 (inaudible) guidance (inaudible) Paragraph I, the operator  
14 has available to them cleanup standard remedy, evaluation  
15 criteria (inaudible) remediation program (inaudible).

16 SPEAKER: Madam Chairman, I'm sorry to do this,  
17 but I just (inaudible) subject (inaudible) part D  
18 (inaudible) remediation program --

19 MR. APPELATE: I'm saying this (inaudible) saying  
20 the same period --

21 SPEAKER: We have provision in Chapter 6  
22 (inaudible) rules that are based on (inaudible) that we have  
23 to follow. We can't -- can't substitute volunteer  
24 remediation standard programs for those.

25 MR. APPELATE: So the question for (inaudible)

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1 criteria. We have to evaluate whether (inaudible)  
2 continuation (inaudible) how many -- what process are you  
3 going to use to select that (inaudible) use special criteria  
4 or (inaudible) criteria. Evaluation. They come to you and  
5 say (inaudible) those provisions (inaudible) reference.  
6 They don't have anything to do with any volunteer.  
7 (inaudible) cleanup standards for (inaudible) how I will use  
8 (inaudible) a scientific process to evaluate an approach to  
9 cleanup. (inaudible) I don't see how you reach an agreement  
10 (inaudible) evaluate a proposed regulatory.

11 MR. EDWARDS: Madam Chairman, this is Alan. Could  
12 I -- could I interject in here a little bit.

13 First, you know, I -- I understand, I believe,  
14 Mr. Applegate, where you're going with that. Because what  
15 you want to make sure is, you know, the experience and the  
16 knowledge through the VRP is not lost in this -- in this  
17 informing process.

18 So -- but the two challenges that I see is, number  
19 one, regardless of what information the VRP could bring into  
20 it, we're still -- we're still controlled by subpart D, and  
21 then also by any of the statutory provisions that came in  
22 under the act. So, I mean, we do have bounds in which we  
23 can do that.

24 I do -- you know, no matter what, we have access  
25 to how -- how VRP looks at the -- at the hazardous waste

## Hearing

1 constituents and the other items, so we already have the  
2 ability to take a look at what those are, consider them as  
3 they go forward, and actually so did the operator. You  
4 know, here's what they're doing.

5           But -- but all that would do is inform their  
6 decision, which is important, but it won't control the  
7 decision and the final determination, because that would be  
8 reviewed by others.

9           My thought is, you know, first of all, I will be  
10 working with, you know, haz waste and VRP to, you know -- to  
11 take a look at where the overlap is and what we can learn  
12 from their process. I think that's important to do.

13           I'm frankly uncomfortable with including --  
14 including a reference in the solid waste rules that  
15 specifically references solid -- or hazardous waste in VRP,  
16 because that may give, you know, what we talked about  
17 earlier today, the unintended perception or understanding be  
18 that those are the rules that would apply when, in fact,  
19 it's not. So we'd be starting to cross over right within  
20 our remediation between a totally different and recognized  
21 process and our solid waste process. What's more important,  
22 I believe, is to recognize the experience that exists  
23 elsewhere so that we can evaluate that as we go through and  
24 work with the operators to determine their final remedy.

25           And it's also important to note that when -- when

## Hearing

1 we're going through this final remedy, that will be a  
2 partnership, if you'll call that, between the operators and  
3 the -- and the Department. Because we'll all be looking at  
4 that data. Their consultants will be making  
5 recommendations. We would be reviewing those. So there's  
6 plenty of opportunity for input and consideration of that, I  
7 believe, without including language that starts to -- starts  
8 to cross-reference and confuse the authority and the -- the  
9 regulatory authority between the two programs.

10 I'm not intending to be argumentative here. It's  
11 just -- but --

12 MR. APPLGATE: I don't -- (inaudible) I'm not the  
13 one trying to (inaudible) I'm simply trying to say I think  
14 there are mistakes within VRP, which should be included here  
15 (inaudible) requirements. Do you guys -- what we're trying  
16 to achieve through VH. (inaudible) all through this  
17 suggested language (inaudible) anyone get through in a day,  
18 so while I find (inaudible) I find to be a question for  
19 (inaudible) so where you (inaudible) in terms of finding  
20 what (inaudible) what the criteria is in terms of defining  
21 (inaudible) standards and in terms of defining the criteria  
22 by which (inaudible) in terms of negotiating the  
23 municipalities (inaudible) DEQ (inaudible) have resulted in  
24 (inaudible) industrial contaminated sites. And so as  
25 (inaudible) the past was, let's try to define (inaudible)

Hearing

1 the VRP (inaudible) negotiated with (inaudible) find  
2 legislative action.

3           So I (inaudible) pushing this for (inaudible)  
4 because (inaudible) the requirements of (inaudible) are not  
5 (inaudible). And (inaudible) were -- were rushed. That's  
6 why I believe it. So (inaudible) we've always -- we felt  
7 that the regulatory requirements are very specifically found  
8 in section (inaudible) chapter (inaudible) may or may not  
9 agree with (inaudible) VRP, but our section D, detailed  
10 requirements, are for (inaudible) D, you can't mess with  
11 them (inaudible)

12           SPEAKER: Is there (inaudible) Section 8  
13 (inaudible) evaluate programs. So (inaudible) but --  
14 context with this. And (inaudible) chapter simply means  
15 (inaudible) Section 8 (inaudible) title in Section 8  
16 (inaudible)

17           SPEAKER: Madam Chair -- Madam Chair (inaudible)

18           MR. EDWARDS: Could -- could -- this is -- Bob?  
19 Bob? If I could interject here, Madam Chairman. You know,  
20 Bob is -- Bob is right on in defining the regulatory  
21 requirements of the program, but from what I understand of  
22 the discussion, people really do fully understand that --  
23 that particular distinction.

24           So the question still is, in my mind, does -- do  
25 we use the hazardous waste stuff to simply just use it to

Hearing

1 inform a process, or do we use it to drive the process when,  
2 in fact, subpart B and the statute and the regulations  
3 actually provide us the bounds of what our options are, but  
4 within those bounds, the knowledge of what there is and  
5 their hazardous waste in VRP would help inform that decision  
6 within there.

7           But I would still go back to, you know, the  
8 comment if we included specific language, it has the  
9 appearance of blurring the lines between the two, and it  
10 would leave a regulatory implication that may or may not be  
11 consistent with our -- our regulatory drivers.

12           So, Bob, I think that issue has been covered. I  
13 appreciate you bringing it up, but I'd like to hear more  
14 discussion on it from the others, if I could.

15           MS. BEDESSEM: I think, you know, there's always  
16 some heartache whenever we see rules that say -- kind of  
17 grandiosely, you know, adhere to all regulatory  
18 requirements. But first off, if it's a regulation, they're  
19 required to adhere to it anyway, so I'm really not sure why  
20 we even have this section. Because you know, like part B,  
21 that 5 B says, You will take actions to ensure that they're  
22 complying. Well, you do that anyway, you know. Regulation,  
23 and, you know, you ensure compliance if that happens anyway.

24           But perhaps if you're specifically saying that  
25 while the regulatory requirements as a program, are you

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1 saying that that's the requirements that are listed in  
2 Section 8 or whatever section that applies to this, maybe  
3 that would seem more acceptable rather than all regulatory  
4 requirements of the program will be dealt -- I'm not sure we  
5 understand what that means.

6 MR. ESCH: Madam Chairman, we can certainly  
7 include all applicable regulatory requirements. And the  
8 reason this was included in there is it was part -- part of  
9 the statute that directed that the Department or other  
10 persons take corrective action, shall restore the  
11 environment to a condition and quality consistent with the  
12 standards established in rules and regulations.

13 So because we wanted to keep it broad and allow  
14 that flexibility in there for the written agreement to take  
15 into site-specific conditions, we kind of left it a little  
16 more broad. If we want to say all applicable regulatory  
17 requirements, that's something that --

18 MS. BEDESSEM: I don't even -- yeah, I don't even  
19 think you need the word "all." You just say, adhere to  
20 applicable regulatory requirements of the program. I would  
21 be happy with that. I -- I don't personally feel the need  
22 to have to connect to the VRP program, because I do think  
23 there's a problem with blurring the lines between the two.

24 You know, if -- if it at some point there's a guy  
25 who's down the road to help people get through this process,

Hearing

1 you know, then maybe those -- that work can be cited there,  
2 but I'm not sure that -- that it's appropriate in this  
3 regulation.

4 So I'm fine with just changing it to "applicable  
5 regulatory requirements" and calling it good and not having  
6 the VRP. But that's my position, but we'll hear from other  
7 members of the board.

8 Lorie, do you have anything to weigh in on that?

9 MS. CAHN: Well, I think just back on the  
10 voluntary remediation program stuff, I think we have to be  
11 careful that we're -- EPA has to approve this -- this  
12 regulation, and we have to be compliant with subtitle D  
13 requirements for landfills for EPA. So that makes me a  
14 little nervous, about bringing involuntary remediation  
15 programs and stuff. So I'll just leave it at that.

16 MS. BEDESSEM: Any comments across -- okay.

17 All right. Are we done with our -- with the  
18 changes that you're proposing at this point? Because I  
19 realize we had asked for our questions starting out several  
20 minutes ago, and so I want to wrap this up.

21 MR. ESCH: Madam Chairman, we're -- we're done,  
22 yes.

23 MS. BEDESSEM: Okay. So you expressed a desire to  
24 move this packet forward and have put the effort to address  
25 these comments that are -- on our 25-minute break, you've



## Hearing

1 done a marvelous job getting the public outreach, getting  
2 public comments to address it, and trying to address those  
3 in a short period of time.

4           And based on what you've -- you've done, I'm  
5 looking to see whether we have any kind of motion to -- to  
6 move this forward or whether we're going to ask for an  
7 additional -- a meeting or to move this forward.

8           Do I have a motion on the floor?

9           DR. HANSON: I move to move it forward. Hanson.

10          MS. BEDESSEM: Klaus has made a motion to move  
11 Chapter 1 and Chapter 17 with the changes as expressed up  
12 until this very moment. The changes are right up until the  
13 last five minutes. Do I have a second?

14          MS. CAHN: I second. Let me ask before we -- let  
15 me just ask before we take a vote if board members feel we  
16 need to get a read on the 30-day requirement, or shall we  
17 just move forward with the vote? 30-day requirement for  
18 public notice.

19          MS. BEDESSEM: Do you have an answer to that  
20 question? Alan?

21          MR. EDWARDS: No, we don't. We were busy working  
22 on these responses, so I didn't get a chance to check that.  
23 But I think Lorie is correct, that if the board is meeting  
24 in an official capacity, there is a public notice  
25 requirement, and that probably is the 30 days. So if the

Hearing

1 board were to defer, I do think you're correct. It would  
2 require a 30-day notice to meet those requirements.

3 MS. CAHN: Okay. Thank you.

4 MS. BEDESSEM: Any further discussion before --  
5 before we vote on this?

6 Okay. I just want to say, I still always have --  
7 you know, as having managed a lot of engineering projects, I  
8 still do have some heartache on the 10 percent item, because  
9 I do know that there are split programs that are  
10 substantially higher than that.

11 So I -- I do have some concern over that,  
12 especially when you don't know the whole project total until  
13 you go out to bid, and you've all -- you know, already had a  
14 commitment, you know, for a certain piping from your  
15 community, and then you might find out later, since it's --  
16 10 percent is oftentimes very close, find out later that  
17 also now the City has a certain percentage that's not  
18 approvable to this program. But I'm hoping that, in  
19 changing this, that the Department will -- will certainly  
20 open to discussion about those and is flexible.

21 So that's my only comment at this point. And if  
22 no one else has anything else to say, we'll move forward for  
23 a vote. Any other comment?

24 Okay. All those in favor of this motion, say aye.

25 DR. HANSON: Aye.

## Hearing

1 MS. BEDESSEM: Aye.

2 MS. CAHN: Aye.

3 MS. BEDESSEM: All those opposed, not in favor,  
4 same sign?

5 MR. APPELGATE: Aye.

6 MS. BEDESSEM: And there are no abstentions.

7 So based on that vote, the solid and hazardous  
8 waste member program should move this forward to the EQC. I  
9 don't know what that puts you in, as far as your schedule.

10 MR. EDWARDS: Madam Chairman, that puts us into  
11 early -- probably early -- well, the March to April time  
12 frame. But that gets us into that -- if I may make one  
13 other offer, Madam Chairman, to the board.

14 We went through a lot of these changes. We've  
15 captured them all. As we're getting into this process to go  
16 down the road with -- would the board members appreciate a  
17 copy of these with all the changes incorporated so you have  
18 them as your reference documents going forward? And by  
19 that, I mean, as soon as we get those done, we can share  
20 with you, here's what it was, incorporating the changes as  
21 discussed today. So, again, that's your reference document.  
22 If you --

23 MS. CAHN: I would appreciate that.

24 MR. EDWARDS: Okay. I'll make the commitment.  
25 We'll get that out as soon as we've got a clean copy with

## Hearing

1 the changes.

2 MR. ESCH: Madam Chairman, I'd just like to thank  
3 the board for their time today as well. I know it's been  
4 difficult, but thank you very much for your time and  
5 patience.

6 MR. EDWARDS: And Madam --

7 MS. BEDESSEM: We appreciate that (inaudible), and  
8 I want to thank water quality too. I feel really bad that  
9 it's this late in the day, and they haven't presented yet.  
10 However, we -- we -- go ahead.

11 MR. EDWARDS: I was just going to mention, and  
12 it's the board's discretion, but we still have Mike with the  
13 reimbursement request on our table. So depending on which  
14 way you want to go, that's your call, but that was the only  
15 remaining solid waste item left.

16 MS. BEDESSEM: Well, let's do the reimbursement  
17 while we have the other people here. It should only take a  
18 couple minutes. So. . .

19 MR. EDWARDS: And Mike, we consumed most of your  
20 time, so as much as you can settle through it, it would be  
21 appreciated.

22 MS. CAHN: (inaudible) I want to steal your  
23 thunder. What I'd like to do, rather than have you make  
24 this presentation, would be just ask if the board has any  
25 questions --

## Hearing

1 SPEAKER: Yes.

2 MS. CAHN: I'm sorry, Marge. I'm doing your job  
3 for you.

4 MS. BEDESSEM: If you can expedite, that's just  
5 fine, Lorie. Go for it.

6 SPEAKER: Madam Chair (inaudible) here.  
7 (inaudible)

8 MS. CAHN: I -- I would propose, Mike, that you  
9 might buzz through it, that we ask for the board has any  
10 questions, and if we don't, we can proceed to a motion.

11 MS. BEDESSEM: Yes, I think we can go directly  
12 there. Do we have any questions?

13 I hear no questions on the reimbursement package,  
14 Mike.

15 SPEAKER: Okay. Just real quick. There's one  
16 reimbursement in the packet for you (inaudible) landfill --

17 MS. CAHN: Mike -- Mike, I'm going to interrupt  
18 you. I'm going to just ask that -- I'm going to make a  
19 motion that we approve this packet from Rock Springs  
20 (inaudible) site as recommended by you in our packet. And  
21 that's my motion.

22 MR. APPLGATE: Second.

23 MS. BEDESSEM: And that -- so the motion we have  
24 on the floor is to approve the -- the Rock Springs  
25 reimbursement request, DEQ recommendation, which is

Hearing

1 \$11,625.17.

2 All those in favor?

3 MR. APPELGATE: Aye.

4 DR. HANSON: Aye.

5 MS. CAHN: Aye. Those opposed. All abstentions,  
6 abstained?

7 Motion passes.

8 Mike, shall I sign and have this scanned and sent  
9 to you?

10 SPEAKER: (inaudible)

11 MS. BEDESSEM: I will (inaudible) thank you.

12 SPEAKER: (inaudible)

13 SPEAKER: Here in Jackson (inaudible) since July  
14 (inaudible) for the presentation of water quality  
15 (inaudible)

16 MS. BEDESSEM: So now are we turning it over to  
17 (inaudible) with water quality (inaudible) there?

18 SPEAKER: Yes, Madam Chair, members of the board.  
19 Thank you very much for your patience.

20 MS. BEDESSEM: And now you're going to talk as  
21 fast as the Jimmy John's delivery guy?

22 SPEAKER: Well, unfortunately, Frank Strong, who's  
23 one of our fastest talkers, was going to give the  
24 presentation. His wife is ill, so he has to tend to her.  
25 But Rich Cripe is our water and waste water section manager

## Hearing

1 and is Frank's supervisor, so Rich will be -- will be  
2 handling the review on some of the questions with respect to  
3 the Chapter 25 draft regulation that the board has raised  
4 dealing with gray water, pathogen protection, and tank  
5 access, septic tank access. So --

6 MS. BEDESSEM: Thank you.

7 SPEAKER: With the board's pleasure, we'll just  
8 proceed with the presentation.

9 MS. BEDESSEM: Sounds good.

10 SPEAKER: Madam Chair, is that displaying on your  
11 end? The presentation?

12 MS. BEDESSEM: Yes, it is. Looks good.

13 SPEAKER: Okay. I'll try to expedite this a  
14 little bit, because I know everybody has got things they  
15 need to complete here today.

16 Basically, our intent here was to try to clarify  
17 and educate a little bit on gray water, talk about pathogen  
18 protection, and the taint access.

19 The first slide is just basically a definition in  
20 our regulations as to what it pertains to with the gray  
21 water.

22 What we're really talking about is gray water  
23 as -- as this was set up in our small waste water, is --  
24 mirrors the reuse of Chapter 21. What we're proposing is to  
25 closely mirror Class B.

Hearing

1           The next three slides that we'll go through just  
2 show you the levels that they are. We're not proposing  
3 Class A, which is the most stringent.

4           Class B is what we are proposing to do with this  
5 for the gray water, which typically is in a -- in the gray  
6 water regulation for fence-off or signed areas.

7           Class C is more agriculture and stuff of that  
8 nature.

9           So our small waste water regulation was mirrored  
10 after B, but with the caveat that signing that would not  
11 need to be for the homeowner as they use the gray water.

12           The reason we feel that the regulation as we've  
13 got it drafted, as we progress here, needs to proceed in the  
14 manner that we are, is the lion's share that what comes out  
15 of or what makes up the gray water is the laundry, the bath,  
16 the shower, that are shown on slide 7. That's the bulk of  
17 it.

18           If you're not going to use that, then it doesn't  
19 make any sense in going forward. While each of these all  
20 have fecal coliform in there.

21           So slide 8 is a list of the pathogens that have  
22 been found in gray water. Giardia, cryptosporidium, and so  
23 forth, that go down through here. All of these are in -- in  
24 the research and the documentation that we did provide to  
25 you as well as the international plumbing code. All of them



Hearing

1 suggest that it does need disinfection, because we're trying  
2 to remove these pathogens.

3 On slide 9, the requirements to disinfect for  
4 surface irrigation, and we're not talking subsurface, is  
5 based because we have the high fecal counts, the presence of  
6 pathogens, the high exposure of risk in the urban area.  
7 Again, I'll reiterate that it -- this follows what's in the  
8 2012 international plumbing code.

9 And Chapter 13 -- 13.02 -- excuse me?

10 MR. APPLEGATE: (inaudible) running out of time  
11 (inaudible) ask you a quick question just to clarify  
12 (inaudible) I know (inaudible) is (inaudible) irrigation  
13 (inaudible) considered subsurface or surface irrigation?

14 SPEAKER: Subsurface. Madam Chair, that would be  
15 considered subsurface.

16 MR. APPLEGATE: (inaudible) that's why I was  
17 (inaudible) and I see now you have (inaudible) require  
18 disinfection. I will point out, this is (inaudible) caused  
19 me some confusion (inaudible) review that you sent out  
20 (inaudible) gray water use. (inaudible) and shows a  
21 (inaudible) drip irrigation surface, drip irrigation.

22 MR. EDWARDS: Excuse me. Madam Chair, what page,  
23 David?

24 MR. APPLEGATE: (inaudible) experience is  
25 (inaudible) you know, I -- I mean, I'm not sure (inaudible)

## Hearing

1 so I'm trying to get to a place where I can be more sure. I  
2 (inaudible) because I thought in this (inaudible) closely  
3 (inaudible) irrigation was required disinfection. Partly  
4 (inaudible) this table talks about (inaudible) irrigation  
5 being surface (inaudible). See that out there in the table?

6 SPEAKER: I'm not --

7 MR. APPELATE: It's a bar chart. It (inaudible)  
8 now, I refer to (inaudible) can't see (inaudible) paper is.

9 MS. BEDESSEM: Dave, there's a lot of echo or  
10 something when you're talking. You're actually (inaudible)  
11 for us to hear.

12 DR. HANSON: Klaus.

13 MS. BEDESSEM: Yeah. Both Klaus and I are  
14 struggling to hear what you're saying.

15 MR. APPELATE: Yeah, I'm talking (inaudible)

16 MS. BEDESSEM: Yeah. Maybe it's the echo in the  
17 room.

18 SPEAKER: Madam Chair, he is correct. What it  
19 says there, as far as it being surface drip irrigation, as  
20 far as that research saying that. My -- I guess I'd have to  
21 clarify or understand that, because my understanding or  
22 experience with that, usually with the drip, is below the  
23 surface, so I'm not sure why that is displayed that way.

24 MR. APPELATE: I have (inaudible) just an  
25 (inaudible) that I have drip irrigation (inaudible) and the

Hearing

1 drip irrigation runs (inaudible) surface. (inaudible) part  
2 of your -- part of your presentation is (inaudible)  
3 disinfection. And it might be part of the (inaudible)  
4 through it says (inaudible) does not require disinfection.  
5 I don't think it (inaudible) in the system, even if it  
6 (inaudible) on the surface possess much exposure rates.

7 My understanding (inaudible) associated with spray  
8 irrigation. (inaudible) irrigation, so (inaudible)  
9 irrigation that would require disinfection by (inaudible) is  
10 flood irrigation, which (inaudible) I don't think would  
11 happen very often in an urban setting.

12 SPEAKER: Well, Madam Chair, actually, when they  
13 are using laundry method and things of that nature, that's  
14 where you typically will see that flood irrigation occur, or  
15 if they are doing something with applying it to -- water the  
16 garden, things of that nature.

17 MR. APPLEGATE: Right. At the same time  
18 (inaudible) irrigation. Well, I just wanted to (inaudible)  
19 the technical paper indicated drip irrigation as being a  
20 surface application. And your (inaudible) actually talking  
21 about it being subsurface, and I just wanted to express  
22 early in the discussion, if I had concerns, I assume they  
23 would apply disinfection to drip irrigation. I don't  
24 (inaudible) that answer, just my (inaudible)

25 MR. EDWARDS: Yes. Madam Chair, we'll -- we'll

Hearing

1 make some clarification with respect to the relationship of  
2 drip irrigation and surface irrigation. We'll make some  
3 clarification in the -- in the next draft of the regulation  
4 you'll see. Thank you.

5 MS. BEDESSEM: Thank you.

6 DR. HANSON: I -- I'm still struggling, pardon me,  
7 with the gray -- gray water definition as is listed on  
8 page 4, where the (inaudible) technically, under gray water  
9 quality, quantity could be defined as base water (inaudible)  
10 from toilet and urinals. That's clear to me. But then it  
11 says, such as.

12 Now, the such as doesn't make sense to me. Is  
13 gray water including bathtubs, showers, bathrooms, wash  
14 basins --

15 MS. BEDESSEM: Yes.

16 DR. HANSON: -- et cetera? So would it be clearer  
17 to say bath than to say not?

18 MS. BEDESSEM: That's just a document they give us  
19 for reference.

20 DR. HANSON: Yeah, but I still think it's unclear.  
21 If you say not originating on toilet or urinals, but rather  
22 from -- well, whatever, you know.

23 MS. BEDESSEM: This is an already-published --

24 DR. HANSON: Document.

25 MS. BEDESSEM: -- document.

Hearing

1 DR. HANSON: But I was unclear on the definition.

2 MS. BEDESSEM: Gotcha.

3 DR. HANSON: So we are including bathtubs,  
4 showers, et cetera, because there are chemicals in there  
5 that could certainly be, you know, put them on the ground,  
6 and I think the document lists that, too, that the washing  
7 machines, I think, are the ones that are -- contribute  
8 considerably to pollution here.

9 SPEAKER: Thank you, Doctor.

10 Madam Chair, we'll back up to slide Number 2,  
11 which contains a little bit of a more clear definition of  
12 how we're applying it to gray water in our draft rule.

13 MS. BEDESSEM: Thank you.

14 SPEAKER: Madam Chair, does that answer the  
15 question, or -- or --

16 MS. BEDESSEM: It's a -- it's a good definition of  
17 gray water.

18 DR. HANSON: Thank you.

19 SPEAKER: Okay. Can I -- can I proceed forward,  
20 then? We're -- okay.

21 MS. BEDESSEM: Yeah.

22 SPEAKER: Okay. As we -- as we consider this, we  
23 also looked at surrounding states to get a -- a view of what  
24 were in regulations, and the following are some slides that  
25 indicate that Nebraska, all gray water must go to on-site

## Hearing

1 waste water. Montana, permit required. However, they  
2 exclude the kitchen sink and soil diversion. They have  
3 subsurface irrigation only and can be used to irrigate crops  
4 for human consumption.

5 Other states on slide 11, Idaho, require -- permit  
6 required. Excludes kitchen sink, water softener,  
7 dishwasher, surface irrigation only -- subsurface, excuse  
8 me, and not to be used for food production.

9 On slide 12, Utah, a permit is required,  
10 subsurface irrigation only, and can be used for vegetable  
11 garden but not in contact with edible portion.

12 And Colorado currently is in the process of  
13 developing their regulation.

14 Arizona is the last one we had on here, which is  
15 slide 13. And it's interesting. . . excuse me? Madam  
16 Chair, we have like an echo. Is there a question?

17 MS. BEDESSEM: No. I'm not sure where --

18 SPEAKER: Can I ask (inaudible)

19 MS. BEDESSEM: Yes.

20 SPEAKER: Sorry (inaudible)

21 MS. BEDESSEM: Rich needs to turn off his mic --  
22 Rich needs to turn off his microphone when you're talking to  
23 Dave.

24 SPEAKER: (Inaudible) in the spirit of (inaudible)  
25 because I think these slides are awesome (inaudible) the one

Hearing

1 (inaudible) as (inaudible) other states. One question that  
2 I (inaudible) I guess I was (inaudible) is (inaudible)  
3 suggested (inaudible) apply a rule in (inaudible) understand  
4 it better, the issue (inaudible) all the other states that  
5 you've listed, do all (inaudible).

6 MS. BEDESSEM: So were you able to hear that  
7 question, Rich?

8 SPEAKER: Not really.

9 MS. BEDESSEM: I think Dave is generally asking,  
10 you know, you've gone and looked at these other states and  
11 what their requirements are, but whether -- when you say  
12 permit required, is that general permit by rule or, you  
13 know, these other ones, where you don't say permit required,  
14 does that mean there's, -- you know, it's by rule, or how  
15 are these others handled in other states?

16 SPEAKER: Madam Chair, the majority of the states  
17 of the United States require a general permit. The permit  
18 by rule is not the -- the norm, even in this document that  
19 we gave you. There are very few states that are contrary to  
20 requiring a permit. I believe there are six states that  
21 have -- don't have a requirement. The majority of all the  
22 rest do. And they are a general permit.

23 MS. BEDESSEM: But they're general permit formats.  
24 Thank you.

25 Did that answer your question?

Hearing

1           SPEAKER: It did. I think, you know (inaudible)  
2 here shortly. I had two general -- I had two general things  
3 I wanted to better understand (inaudible) the report.  
4 Otherwise, disinfection, which I -- I do (inaudible) better  
5 understanding (inaudible) apply (inaudible) to (inaudible)  
6 irrigation, if I understand right. The other issue was sort  
7 of this issue raised regarding the (inaudible) versus the  
8 (inaudible). And I guess I just wanted to ask a couple  
9 follow-up questions on that, with those (inaudible).

10           So (inaudible) I can at least envision a permit by  
11 rule where (inaudible) in the sense that (inaudible)  
12 requiring a general (inaudible) you could have requirements  
13 for plumbing and all that stuff, requirements of the  
14 building code, and you can have requirements (inaudible)  
15 necessarily don't need that application or (inaudible)  
16 trying to understand how many people were doing it, is it  
17 driven by a (inaudible) part of it. You know, I have to  
18 come back to Mr. Harmon's comment endorsed (inaudible)  
19 understand why you (inaudible) permitted process (inaudible)  
20 it has the potential to a (inaudible) purpose (inaudible)  
21 more people (inaudible) to do (inaudible) and I guess it  
22 (inaudible) thought here (inaudible) slide direction  
23 (inaudible).

24           SPEAKER: Madam Chair, the -- the past of what DEQ  
25 did in -- in this, in 11, part D, was, it was a permitted



## Hearing

1 system, but they were completely separated systems. At one  
2 point, when Mr. Harmon was in this position, and then has  
3 since retired, he proposed the idea of a permit by rule.

4           However, the -- there's a -- a disconnect between  
5 us and delegated counties, is one aspect of it. It's a  
6 health and safety aspect, as we've kind of illustrated here,  
7 with the pathogens. And because the old regulation that we  
8 had only had a line in there, it didn't give much guidance  
9 or direction.

10           The intent of this regulation is to ensure that  
11 health and safety aspect is there and to be consistent with  
12 the -- the regulation -- or consistent with what we see as  
13 the norm across the United States.

14           As far as it being a disincentive, actually, when  
15 you review this critical review, we're probably more open  
16 than most states of encouraging that with regulations. It  
17 even concludes that in there, and we, for the most part,  
18 allow things other than the spray irrigation.

19           As far as other things that happen inside the  
20 home, that doesn't fall within our regulatory authority. So  
21 they could plumb it to do the toilet and all of those kinds  
22 of things. If you review the literature there and compare  
23 what our regulation is, as opposed to the other states',  
24 we're very open. The only thing I would suggest that we  
25 could do better to address your point of -- of this is

Hearing

1 educating the public for the need of -- of doing it properly  
2 and not just installing systems everywhere.

3           Two counties that were involved early on in this  
4 process, Laramie County and Natrona County, were very  
5 disturbed by it. As a matter of fact, at one point, there  
6 was a policy in place that had this permit by rule, and it  
7 really let -- let the barn door open, and what we had was  
8 a -- a delegated county setting stronger restrictions than  
9 what we had presently at the time, because they were having  
10 all kinds of problems.

11           The problem is, if you ever have that kind of  
12 situation go on, then we're not consistent with them,  
13 especially if we delegate that authority. So you could have  
14 the situation where maybe someone in that county would feel,  
15 I don't want to follow this, and because of the way the  
16 statute is written, they could, after they went through  
17 their whole process, come to us and request us to step in,  
18 and if we approached it by a permit by rule, then basically,  
19 we would have two opposing positions on that instead of  
20 being more consistent with one another.

21           SPEAKER: I appreciate the comment, and if you  
22 (inaudible) hopefully (inaudible) I just wanted to hear your  
23 thought process. I have to leave, but I just want to say, I  
24 appreciate your presentation and information you guys pulled  
25 together to address certain things that were really

Hearing

1 (inaudible) in the last. I appreciate (inaudible) I will  
2 just comment, I (inaudible) perspective (inaudible)  
3 irrigation that (inaudible) David.

4 (Inaudible) on Chapter 16, and you get to a  
5 section called -- give me just a second here -- it's  
6 Section G, called gray water components and configurations.  
7 (Inaudible) the question I gave you (inaudible) David  
8 (inaudible) the other thing (inaudible) is (inaudible) gray  
9 water is not permitted (inaudible) the document (inaudible)  
10 ability for gray water application (inaudible) irrigation  
11 (inaudible) in treating (inaudible) into the chapter where  
12 it starts Section 16.

13 So I (inaudible) David that that (inaudible) put  
14 into responding to some of the issues I had raised at the  
15 last (inaudible) thank you for (inaudible). Before I leave  
16 (inaudible) any questions on the (inaudible) that is, David?

17 SPEAKER: Madam Chair, not at this moment. I will  
18 go over those details and suggestions that have been brought  
19 up. Thank you.

20 MS. BEDESSEM: Okay. Please continue.

21 MR. ESCH: So basically, we're on slide 14. Gray  
22 water is a component of waste water. The -- a question was  
23 asked when we were there, and you guys had a concern about  
24 the length and complexity of Section 16, can some of the  
25 requirements be moved to a design package. As Madam Chair

Hearing

1 suggested, filters and pumps.

2 DEQ is currently evaluating the components and  
3 will -- and the configuration section to determine what we  
4 could move to the design package. That was a good  
5 suggestion.

6 Slide 15. Concern that the requirement of  
7 disinfection would discourage the use of gray water. I  
8 think we kind of addressed that with Mr. Applegate's  
9 questions. However, there is one point through this that we  
10 are currently evaluating, and that is the large setback  
11 distance in rural lots.

12 The reason we're considering that is that could be  
13 a potential, eliminating the requirement at the end of these  
14 rural areas where the disinfection tends to be more of an  
15 issue in the urban areas, and if we did, then we'd want to  
16 avoid human contact with the gray water and soil irrigated  
17 with gray water to protect the public health, and we'd need  
18 to add this section due to the larger setbacks.

19 Slide 16. Examine the possibility of restricting  
20 gray water from problem sources. Like I discussed earlier,  
21 I -- I understand the question that was proposed, but when  
22 you look at what the makeup of that gray water is, laundry's  
23 about 70 percent of it. Bath is about 13. And kitchen's  
24 17. And this is shown on that slide 7 that we were  
25 covering.

Hearing

1            Basically, if you -- if you take those things  
2 away, then there's no need to do gray water, because the  
3 cost doesn't -- it's cost-prohibitive to try to go and plumb  
4 all that and -- and not take these things into  
5 consideration.

6            So -- and with the idea of disinfection, that's  
7 why that would address the pathogens and the -- the fecal  
8 coliform.

9            Slide 17. Basically, what we're trying to get  
10 here on this slide is that we're going to -- we took the  
11 comment that you guys indicated on -- needed to clarify the  
12 difference between subsurface and surface irrigation, and  
13 we're going to clarify in there that it's not a requirement  
14 to disinfect the gray water used for subsurface irrigation.  
15 However, there is language in there that does cover the  
16 surface irrigation.

17            Slide 18. Occupant calculation was another  
18 comment, and we agree and we will simplify that so that it's  
19 just two occupants per bedroom and not make it so hard to  
20 understand.

21            Next slide is slide 19. The setback distance for  
22 gray water systems are inconsistent with the setback  
23 distances everywhere else in the chapter. Basically, what  
24 this boils down to is the setbacks for the surface are more  
25 restrictive because of the gray water at the surface.

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1 That's why those are set as they are.

2 Slide -- slide 20. Pathogen definition. We had a  
3 comment from Madam Chair on that with coliform, and we are  
4 going to eliminate the coliform bacteria from that  
5 definition.

6 Slide 21. Is the pathogen necessary in subscript  
7 2 in table 4? The purpose of the subscript 2 is to protect  
8 the public water wells from contamination, so the answer  
9 would be yes. There's a requirement for pathogen removal,  
10 based upon the Wyoming wellhead protection plan. This plan  
11 has three zones of protection. The zone that we're really  
12 trying to protect would be zone 2, which is a two-year  
13 travel time, and that's consistent with Chapter 23,  
14 subdivision.

15 So slide 23, we've given you a map, and if I can  
16 get this pointer working here, basically, on that map that  
17 you see on slide 23, the blue circle here that I'm moving  
18 the pointer around is the zone 2 for these wells. And it  
19 goes quite a distance. It's a -- it's a section.

20 So development in this area around public water  
21 wells is -- is a concern, and that's what that -- the  
22 reasoning for that subscript under that table is for.

23 Slide 24. Basically, where we're getting into  
24 here is the access ports for septic tanks. We've reviewed a  
25 lot of it. What we found out was what are out there, 50

Hearing

1 percent -- or 52 percent of the tanks have a 20-inch  
2 diameter or less. 4 percent are 21 to 23. And then the  
3 remainder are 24 or more long. Requiring a 20-inch access  
4 port would require the majority of the manufacturers to  
5 modify their fabrication process.

6 Slide 25 is a -- a review of the states around.  
7 We looked at EPA on-site waste water system manual. They go  
8 from 18 to 24. Louisiana was 20-inch square or 24-inch  
9 round. Nebraska was 12-inch. Tennessee, 20. Utah, 18.  
10 And it goes on down the list.

11 But basically, to sum up the point there, is -- so  
12 everybody predominantly is using 20-inch. Some might  
13 migrate to 24, but our position would be that that is a  
14 minimum standard for the inlet, and we feel that that's the  
15 proper size for it. If the public would choose to go  
16 something larger than that, they can do that. But our  
17 stance would be to suggest keeping the 20-inch diameter.

18 At that, I go to questions, if you have any.

19 MR. EDWARDS: Madam Chair, we can only see the --  
20 the Casper site on our television here, so we can't see you.

21 MS. BEDESSEM: But you can hear me?

22 MR. EDWARDS: Yes.

23 MS. BEDESSEM: Okay. That's good. I have no idea  
24 why you can't see us anymore.

25 MR. EDWARDS: I think Casper has to share the --

## Hearing

1 share the camera back, if I'm not mistaken.

2 SPEAKER: (Inaudible).

3 MS. BEDESSEM: Well, I think we can probably wrap  
4 up shortly. I don't have any additional questions. From my  
5 perspective, I'm thrilled to death that you have gone over  
6 these various points that were points of discussion last  
7 time prior to coming forward with a revised rule. And it  
8 looks like you've done a lot of research to base your  
9 recommendations on.

10 So I want to thank you very much for that, and I'd  
11 like to put it forward to other members of the board to see  
12 if there are additional questions, because I know Lorie, in  
13 particular, had a lot of public input, and I'm curious to  
14 see if she has additional questions with regard to this.

15 SPEAKER: I think Mr. Applegate has probably left  
16 already, so he's probably not going to ask any questions.

17 MS. BEDESSEM: So, Lorie, do you have anything in  
18 Jackson?

19 MS. CAHN: I guess at this point, there's really  
20 not enough time left for discussion. What is the  
21 schedule -- what are you guys thinking about when you'll  
22 come back to us again with another packet for public comment  
23 and a packet for us to look at at a board meeting? Are we  
24 looking at maybe three months? Six months? What are you  
25 thinking?



Hearing

1           MR. EDWARDS: Madam Chair, we would -- we would  
2 like to come back before the board during the -- the first  
3 quarter board meeting of next year.

4           MS. BEDESSEM: With a revised rule based on how  
5 you'd address these comments?

6           MR. EDWARDS: Yes, ma'am.

7           DR. HANSON: Madam Chair, I think there was some  
8 interesting discussion on this -- this article that we got.  
9 And one of them, also the -- the nonuse of gray water, and  
10 on page 24, there's something about, what is it called,  
11 credit for using gray water, because -- and I think it's  
12 probably one of the things that probably also ought to be  
13 addressed in order to make it more feasible to people to --  
14 to use it, because with our water situation, we certainly  
15 have to discuss the use of gray water, but also the cautions  
16 that have to be applied to water use, because there are  
17 certain risks and problems with this.

18           But I think -- this was very interesting, the  
19 statement, which was why isn't more of it used, and one of  
20 the reasons was, no financial or no credit given. And some  
21 of the restrictions are cumbersome. Some of them are  
22 necessary. But to sort that out seemed to be important to  
23 (inaudible).

24           MS. BEDESSEM: I think that's also something you  
25 can bring up at -- (inaudible) know, so municipal or

Hearing

1 (inaudible) thing to address.

2 DR. HANSON: I will do that.

3 MS. BEDESSEM: Okay. Any further questions  
4 from -- from the board?

5 None from --

6 MS. CAHN: I just -- I just wants to make sure,  
7 Frank, under -- Frank, sorry, Rich -- that silence from the  
8 board at this point does not mean consent. There's just not  
9 enough time for discussion. So I just want to make sure  
10 that that's clear to you.

11 SPEAKER: Madam Chair, we're of understanding on  
12 that. We are just suggesting or requesting, could -- can we  
13 go ahead and present our regulation at the -- at the next  
14 thing, knowing that after what we've presented here that  
15 we've tried to address a lot of those questions and concerns  
16 to move forward with the reg and showing it to you.

17 MS. BEDESSEM: I would be pleased to see it first  
18 quarter. Lorie, are there some other concerns that you want  
19 to communicate via email in the meantime? Or are you  
20 amenable as well for a first quarter review of revised  
21 rules?

22 MS. CAHN: Yeah, I think first quarter would be  
23 great. And I think we had talked about a potential meeting  
24 in Cheyenne. And then I was telling him, since that's still  
25 winter, the first quarter, maybe we can have -- go to

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1 meeting setup in case we have another situation like we had  
2 this week.

3 MS. BEDESSEM: I think that -- a backup plan is  
4 advisable. Prepare for a Cheyenne meeting February, March,  
5 whatever -- whatever works. Depending on when you have your  
6 revised rule ready and would like to propose.

7 We'll look forward to seeing emails where we can  
8 work out a schedule and kind of vote on what the timing  
9 would be. And then look forward to seeing that -- the final  
10 revised rules, then, to review.

11 SPEAKER: Very good, Madam Chairman. Very good.  
12 Thank you.

13 MS. BEDESSEM: Thank you, everyone, for your  
14 patience and hanging here till almost 4:00 o'clock. I'm  
15 going to conclude the meeting. We've got two minutes left,  
16 rather than getting cut off, I'm going to conclude the  
17 meeting at this moment. Thank you all very much. Stay  
18 warm, and we'll talk to you soon. Thank you.

19 (Meeting adjourned.)

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Hearing

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REPORTER CERTIFICATE

I, JASON T. MEADORS, Registered Professional Reporter, Certified Realtime Reporter, and Notary Public, appointed to take above mentioned hearing, certify that the designated reported proceedings were taken by me on December 5, 2013; that the remaining portion was transcribed from an audio recording provided to me after the hearing.

I certify that the proceedings were reduced to typewritten form by computer-aided transcription consisting of 204 pages herein; that the foregoing is an accurate transcript of the proceedings, to the best of my ability to transcribe through record vulnerabilities due to videoconferencing distortions and occluded speech.

I certify that I am not related to, employed by, of counsel to any party or attorney herein, nor interested in the outcome of these proceedings.

Attested to by me this 10th day of February, 2014.

---

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My commission expires January 26, 2017.

Re: Wyoming Waste and Water Advisory Board  
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