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**PUBLIC HEARING
ENVIRONMENTAL QUALITY COUNCIL
PROPOSED MODIFICATIONS TO
CHAPTER 1, CHAPTER 2, CHAPTER 5 AND CHAPTER 11
WESTERN WYOMING COMMUNITY COLLEGE
2500 COLLEGE DRIVE
ROCK SPRINGS, WYOMING
AUGUST 10, 2005**

Terri A. Lorenzon, Director
Environmental Quality Council

Council Members Present: Jon Brady, Wendy Hutchinson, Mark Gordon, Terri Lorenzon, Richard Moore, Dennis Boal, Sara Flitner (call in)

**Others Present: Dan Olson, Administrator, Air Quality Division
Tina Anderson, Air Quality Division
Nancy Vehr, Assistant Attorney General
(refer to sign-in sheet)**

Richard Moore: I will call this Hearing before the Environmental Quality Council to order. The Rulemaking Hearing is convened at 1:00 pm, Wednesday, August 10, 2005, at the Western Wyoming Community College, 2500 College Drive, Boardroom, Rock Springs, Wyoming. My name is Rick Moore. I am a member of the Council and your Hearing Examiner in these proceedings today. Other members of the Council who are present today are, at my immediate left, Dennis Boal, past Terri is Mark Gordon, Wendy Hutchinson and Jon Brady, and on my immediate right is Terri Lorenzon, our Council, who will advise and assist the Council in this Hearing today. The purpose of this Hearing is to hear the Air Quality Division's proposal to amend Chapters 1, 2, 5 and 11 of the Air Quality Standards and Regulations. Requirements for public notice for this Hearing have been met by paid advertisement of one Wyoming newspaper of general circulation, the Casper Star Tribune, the first appearance being June 25, 2005. A transcript of this proceeding will be prepared by DEQ, Air Quality Division, while the general distribution of this record will not be made. Anyone wishing to get a copy of the transcript should make the necessary arrangements with DEQ at (307) 777-7393. For purposes of clarification I would like to lay out some ground rules which we think would be useful in accomplishing the purposes of this Hearing. First, we would like each participant making comments today to identify himself or herself for the record and indicate on whose behalf he or she is appearing. Non-specific general type objections which may be satisfying to speakers are not generally helpful to us in making our decision. We request that your comments be as specific as possible. It will be considered inappropriate for speakers to attempt to debate the testimony of previous speakers. The Hearing will not be conducted as a general forum for debate of the issues. Speakers will not be allowed to interrogate each other, although members of the Council may ask questions for purposes of clarification. Speakers will be called in the order that requests were received in writing prior to the Hearing and then in the order that they signed in at the sign-in desk. When we reach the end of the list, if time allows we will then be presented an opportunity for statements from anybody present who has not previously signed in. No deviation from

this order of presentation shall be allowed. Joining us by speaker phone is Sara Flitner. The people that I have signed up at this time to address the Council include Gene Marshall, PacifiCorp, Matt Grant, Wyoming Mining Association, Mary Throne, Hickey and Evans, and Wanda Burget, Power River Coal Company. So if I didn't read your name and you want to testify go ahead and signup, please.

Mary Throne: Mr. Hearing Examiner. I think I said I wasn't, and I checked "no".

Richard Moore: I am sorry. I didn't look far enough across the sheet. Wanda Burget and Mary Throne both said "no", they just signed up as being in attendance. So the only speakers signed up at this time are Gene Marshall and Matt Grant. I am not going to impose a time limit on speakers at this point because we only have a limited number, but we would appreciate it if the speakers would limit their presentation so as to afford everyone a fair opportunity to submit their views. At the end of the Hearing we will determine whether the Council will be making a decision today. If the Council determines that an additional period of time for public comment should be allowed, that comment period will be scheduled and the Council will make a decision on these regulations at a meeting to be scheduled at a later date. Any additional comments that are allowed will be considered as made here today. On behalf of the Council, let me welcome all of you to the Hearing and tell you again how important we feel your comments are and that they are considered in detail by each member of the Council. Mr. Olson, I will give you opportunity to start.

Dan Olson: Thank you, Mr. Hearing Examiner. I just want to make a couple of remarks. One is, I provided some copies of a letter of comment I received in my office yesterday from PacifiCorp. They are on the table in front of Terri so that the Council can have the benefit of those written comments and also so that they would become part of public record. I think you also got comments from Black Hills Power. We are glad to be here. We have been in this particular process, particularly Section 5 of Chapter 1, for about a year and a half now. We will explain to you why it is taking so long. For the Council's consideration and certainly up to you, the number of changes that we are going to talk about today are in Chapters 1, 2, 5 and 11, which are relatively non controversial type changes to update our regulations and adoption by reference. I would suggest that the Council might hear those proposed changes first, then have a short break to allow Tina Anderson, of my staff, to set up the PowerPoint presentation for the Chapter 1, Section 5 discussion, if that would be the Council's pleasure.

Richard Moore: That is a good idea. Which chapters are we starting with?

Dan Olson: I think we will talk about everything in Chapter 1 except Section 5, and Chapters 2, 5 and 11. I will have Tina go through those for you.

Tina Anderson: I am Tina Anderson with the Air Quality Division. As Dan said, we are going to be talking about changes to Chapter 1, which is our Common Provisions chapter, Chapter 2, which is our Ambient Standards, Chapter 5, which is National Emission Standards and Chapter 11, which is the National Acid Rain Program. All of

this is fairly straightforward, except for Section 5 of Chapter 1, and we will come back to that as you agreed. So, what I thought I would do is take you through the word changes. So if you grab your draft copy of Chapter 1, we will start there. Beginning with page i, which is the opening page of Chapter 1, all we are doing there is changing the name of the section to "Equipment malfunction". Then moving on to page 1-1, under Section 3 – Definitions, we are simply correcting the citation to the "the Environmental Quality Act". We had done it in the paragraph before and neglected to do it here. The next correction is on page 1-4, the definition of "open burning", and those of you that enjoyed that whole open burning process will remember that we came up with a specific definition for Chapter 10. Because Chapter 10 is the only place in our regulations that we talk about open burning, we think that it is confusing to have two definitions with open burning, especially when they are not the same. So we are going to take this one out. This one is actually part of the new definition, except the new definition also includes burning for recreational purposes, cooking for food, providing warmth for human beings, branding of animals, hand-held fire extinguisher training and other similarly insignificant burning activities. Anyway, we are just trying to make this a little less confusing. That is the extent of the changes to Chapter 1 that don't include Section 5. Are there any questions about those?

Richard Moore: Are there any questions from the Council? Okay, thank you.

Tina Anderson: Okay, that takes us up to Chapter 2. I believe your draft says 2/3/05 up in the right-hand corner. This is our Ambient Standards section. The first change that we are doing on this is on page 2-2, and it falls under the ambient standard for PM_{2.5}. That is the standard for particulate matter 2.5 microns and smaller. It is the really fine stuff. This was a standard that was enacted in 1997. At that time, there was a lot of controversy about the implementation of that standard. EPA was sued right after that standard was promulgated by the American Trucking Association and there was a lot of discomfort on the part of the sources being regulated. So we put in some language there on page 2-2 that says, "the State of Wyoming will not enforce the above standard until EPA has completed its review of the PM_{2.5} standard and has determined to retain and enforce the standard as promulgated on July 18, 1997." Since that time, EPA was sued. The Court actually remanded that section. It went back to EPA, and since then it has been made an effective standard. It is an effective Federal Rule at this time. States have actually submitted designations for their areas within the state to determine whether or not they actually obtain that standard. The State of Wyoming went through that process and all of the areas in the State obtain the PM_{2.5} standard. EPA responded to our recommendation and did declare everything in attainment. It is actually called unclassifiable/attainment because there are some areas that are actually so unmonitored that you can't really say that they are in attainment, so they all fit in the same category. So at this time, we are proposing to remove this paragraph because we do have an effective standard, and having that in there is going to make it very difficult for us to then take this and submit this to EPA and get it adopted as part of our SIP.

Wendy Hutchinson: So I guess my question is, once this rule gets approved or this gets deleted out of there, how are you going to enforce this standard?

Tina Anderson: The way that we implement the standard is by way of an Implementation Rule. EPA actually hasn't even proposed the rule. It is supposed to come out in September, and then it should be promulgated about a year after that in terms of how we follow up on the standard. Probably most of you know that we already have a PM_{2.5} network up. We are collecting the data. But there are finer points as to how you measure PM_{2.5} from a stack test. They are still trying to work out the details. We should get some more direction on that, but the implementation is coming slowly.

Wendy Hutchinson: Are you going to start requiring industry to monitor for it?

Tina Anderson: We won't require the monitoring, you mean at the stack level?

Wendy Hutchinson: I mean at the edge of my coal mine.

Tina Anderson: We have PM_{2.5} monitors out in the state already as part of the State network, which at this time I know is acceptable to EPA as representative of the air of Wyoming. As far as I know, Dan maybe you know better, but there are no plans to extend that network. It is sufficient at this time.

Dan Olson: I don't think there are any plans on the horizon to extend that. Matter of fact, there is movement by EPA nationally to reduce the number of PM_{2.5} monitors and translate that into a toxic monitoring network. I don't anticipate that there is going to be that kind of an implementation strategy when it comes out. There will be rules relative to stack monitoring for PM_{2.5} and those will come out as New Source Performance Standards or MACT Standards as things go down the road. Like Tina said, the implementation proposal on how we are going to address this particular thing relative to public health is something that we are anticipating this year.

Tina Anderson: The proposal is due out like next month. That will give us a good idea of what the picture looks like and then it will be a year or two before they get it promulgated, and it means a lot more to a state that has a nonattainment area than for a state that is completely in attainment. For us, the threshold is mostly a demonstration that we have the ability to actually deal with the standard.

Wendy Hutchinson: So the monitors that you have across the state, have any of them ever gotten close to exceeding the standard from the data that you have?

Dan Olson: No. We have in some cases four or five year's worth of PM_{2.5} data, and on the basis of that data we were able to get the designation of attainment or classified. We have a pretty extensive network in places that we are not even required by federal regulation to have a network. You are familiar with the PM_{2.5} network in the Powder River Basin, that is not a requirement, but that is a network that we have and that network also shows low levels of PM_{2.5}.

Mark Gordon: Mr. Hearing Examiner.

Richard Moore: Mr. Gordon.

Mark Gordon: Can you tell me about Sheridan? Is Sheridan still a nonattainment area?

Tina Anderson: Sheridan is still a nonattainment area, but it is a nonattainment area for PM₁₀, which is 10 microns and smaller. We have demonstrated compliance with that standard on the ground since the early nineties. We haven't gone through the redesignation process for a couple of reasons. One, they promulgated the new standards. In 1997 they were going to drop the old standard and revoke those old nonattainment areas. We thought that would be the easiest way just to make the transition. Well that didn't happen because EPA got sued and the whole ball of wax was too complicated. So we thought that we would bide our time. The other hurdle is that you have to actually go through a demonstration, a modeling demonstration, to show that you are in attainment with the standards. Those of you that work with models know how difficult that is, even though on the ground you can demonstrate compliance. EPA is actually in the process right now of promulgating new standards that will affect that PM₁₀, and we are hoping once again we can shortcut that redesignation process when they revoke the old standard. We have our fingers crossed on that. The City of Sheridan is not having to do a great deal to meet their nonattainment requirements and they are comfortable with it. They have actually gotten a boom out of the whole process because they have been able to procure AML funds because of their status of nonattainment for paving roads, so they are okay with it too. We don't have a lot of large industry in Sheridan that is being cramped because of that status. If you had a power plant that wanted to go into the City, that would be a different story. That is the update on that.

The next item that we are proposing to change is on page 2-3. It is under the ambient standards for ozone, under c. What we are proposing to do here, as you can see from the strikeout, is to remove the one-hour ozone standard. Right now we have two ozone standards. We have an eight-hour ozone standard and a one-hour ozone standard. In April of 2004, EPA published their final rule to implement the eight-hour ozone standard just like I was talking about a final rule to implement the PM_{2.5}. They just finished the process for the ozone standard, which came out again in 1997. So it took them seven years to actually come up with the rule for implementing that standard. At that time, they also published the eight-hour designations. Again, the State of Wyoming submitted designations to EPA demonstrating attainment with the eight-hour ozone standard. Again, EPA determined that we were in attainment or unclassifiable for all areas of the state that were measuring ozone. The third thing that they did in that Federal Register article was to allow states that are meeting that eight-hour ozone standard to remove the one-hour ozone standard. Only those areas that have demonstrated that they are clean with respect to ozone can do that, and that became effective on June 15, 2005. So we no longer have a federal requirement for a one-hour ozone standard. So what we are proposing to do is follow up by removing our one-hour ozone standard at the state level so that our state standards are consistent with federal standards with respect to health and welfare protection. Any questions about that? Okay, then moving on to page 2-5, under the ambient standards for lead. This is a very small change from our perspective, a big

change from EPA's perspective. What the change basically says is that when you measure for lead, as an ambient pollutant, you have to measure by the reference methods specified in 40 CFR 50.12 Appendix G, or you can use an equivalent method and you can't use an equivalent method unless you choose a method in accordance with the procedure for choosing equivalent methods specified under 40 CFR part 53. We are okay with that because I don't think that we would be coming up with alternative measurement programs for lead. We don't do much measurement for lead as it is. This is part of EPA's huge effort to try to go in and retain authorities that they are very particular about, and one of them is approving alternative methods. They have gone through and picked out every single one of these in our regs, and every time we see them we try to fix them. So that is what that is all about. That is all that I have for Chapter 2.

Richard Moore: Any additional questions for Ms. Anderson on Chapter 2?

Tina Anderson: Okay, that takes us up to Chapter 5. Chapter 5 is a delegated program, and I should mention that the first two chapters that I just went over, including the equipment malfunction which we are going to discuss later, is part of the State Implementation Plan or our SIP, and these two chapters are delegated programs and the difference is simply the mechanism by which EPA adopts and follows through on their oversight to states in these programs. I need to say all of this to you because part of the requirement of putting things in your SIP is that you let the public and the Boards know that this is a part of the SIP. So Chapters 1 and 2 are SIP changes and these are not SIP changes. SIP changes usually involve areas of your regulation when you tailor the regulation to meet specific state needs, where you rewrite the language because it needs to say something special for the State of Wyoming. Delegated programs are typically where you just take the federal language and stuff it into your state program verbatim. Then EPA backs off. The state then enforces the program. The state does the permitting. The state does the recordkeeping, but EPA retains an oversight ability. Until you actually go through the delegation process, all of the sources are required to send all of their material to EPA. So it is really important that we keep going through this delegation process. Our sources have to send their permits down to Region VIII. They have to send all of their recordkeeping down to Region VIII and EPA is actually the enforcer when there is a compliance situation. So it is important that we continue to keep our delegations up to date. We try to do this once a year and you will see quickly here that we have skipped a couple of years because of Regional Haze. So we are quickly trying to catch up. So if you will turn to page 5-1. There are two parts to Chapter 5. There is the National Emissions Standards and the National Emissions Standards for air toxics or NESHAP, is the second part which is in Section 3. The National Emissions Standards which is under Section 2, is our New Source Performance Standards and those deal with the criteria pollutants like SO_x, NO_x, and particulate. These are the older National Emission Standards. Unlike the ambient standards, these are standards that are established at the stack or at the source. The ambient standards are protective of the general outdoor air. They are all source specific. You will see that all of these sources have their own set of standards. Power plants have one set, cement kilns have another, and refineries have another. So it is source by source. On page 5-1, we are now updating those to reflect the CFR for 2004. The CFR is where all of these regulations are codified.

So every place where it used to say 2001, the last time that we did this, now says 2004. Any questions about this process? Okay, then if you will turn to page 5-8, we are trying a little bit different method here for incorporating by reference. Normally we refer to the Code of Federal Regulations, which is only printed once a year, and on July 8, 2004, an important New Source Performance Standard came out for stationary gas turbines, which is a significant category of sources for the State of Wyoming. That is one of the ways that we move natural gas around the state or out of the state. This particular subpart was revised to actually provide some relief to the sources in terms of the recordkeeping and reporting for fuel nitrogen and fuel sulfur in the natural gas. In the older New Source Performance Standard they were actually required to report that daily. As the natural gas came in, they were allowed to come up with a schedule for stretching that out if they actually went through the process of coming up with the schedule, but it is a significant burden on every natural gas turbine facility. EPA has probably from comment and pressure from the natural gas industry, realized that there isn't much sulfur or fuel nitrogen that translates into air pollution in the natural gas, so what they have done is remove that requirement as long as you can provide contract information showing that your natural gas meets the definition of natural gas. All of the twenty-five or so source operators of these types of facilities came to us, or many of them came to us, and said, can we meet the new requirement. Obviously, it is easier for them to comply with the new requirement, and Dan actually issued a policy on this in 2004 saying that it would be okay for them to meet the new requirements even though their Title V permit says that they are required to meet the old requirement. What we would like to do today is stuff this one in here so that it gets adopted faster than the Code of Federal Regulation publishing date so that these sources are not in that precarious position of having to rely on a policy and can rely on a regulation to comply. Does that make sense?

Richard Moore: Ms. Anderson, on page 5-5 you cite as part of the regs that aren't being changed, 40 CFR part 60, Subpart GG – does there need to be something added here?

Tina Anderson: The part that is listed here is, these are the regulations that would have been, you are right, there may have been some conflict. This refers back to a 2004 publishing date of July 1, and probably what I need to do is cross that out, Subpart GG.

Richard Moore: So you are recommending that we just strike that standard to the language on page 5-5 because the Federal Register will replace it?

Tina Anderson: The only thing that is giving me pause at this point is typically when EPA revises something in the Federal Register they don't revise the whole thing. They only show the revisions. I don't want to throw out the baby here with the whole process.

Richard Moore: Would you ponder that and we will come back to it before we make a decision on how to deal with it.

Tina Anderson: I think that I need to retain all but that section pertaining to monitoring and recordkeeping.

Richard Moore: It may be that a reference on page 5-5 to the updated section on 5-8 would be appropriate, or something like that.

Tina Anderson: I would have to come up with some wording there to make those two work. Thank you, that is a good thing to note.

Richard Moore: Okay. Any other questions? Mr. Gordon.

Mark Gordon: Are nitrogen contents typically reported in gas transactions relative to commercial?

Dan Olson: The gas transportation normally takes care of that, but there are certain requirements for pipeline quality gas, which identifies some level of nitrogen and sulfur. If a producer is putting gas into the pipeline to meet those pipeline specifications, it is below those levels in the New Source Performance Standard anyway. The question with the gas industry is why do we have to take measurements every day to prove that we are putting pipeline gas into the pipeline because the pipeline authority won't let us put it in there unless it meets those specifications. So it was kind of a double hit. It was a burden that wasn't necessary.

Mark Gordon: Okay, thank you.

Tina Anderson: That takes us up to page 5-10, and there we are simply removing the phrase "the term" from the term "commenced". It is part of the way that we used to define stuff when we did our regulations way back, and it just didn't get pulled out. So that is just a cleanup issue. On page 5-13, this I don't want to happen, so what you see there is okay as it stands. These are definitions for standard conditions that are in the federal NSPS. An issue came up after one of our Board Meetings from a Board Member about the inconsistency with the way that we define it. I had given some thought to try and make those consistent, but I have rethought that and would like to keep the definition specific to NSPS and NESHAP. They are identical and they are what the feds have in there and I think that it is simpler if we just leave them in there the way they are. The 29.92 inches of mercury at sea level is a little bit redundant. So it is redundant in Chapter 1, not here, because at sea level that is what the barometric pressure is, it is 29.92. We should have just left this alone. So strike that change.

Wendy Hutchinson: So you want to keep the stuff that has a line through it?

Tina Anderson: The existing language, yes. That is for both the NESHAP and the NSPS. That is a mistake on my part. Okay, so that takes us up to page 5-31, small correction under paragraph (v), you will see "Section 22(k)" struck out. When we did the restructuring that little set of words didn't get struck, so we just caught it and it needs to come out. That used to be our old Section 22. That takes us up to page 5-38, which is the beginning of the National Emissions Standards for Hazardous Air Pollutants. I have inserted a sentence in there that is critical that wasn't in there before. Again, my oversight. It says that the specific documents containing the complete text of the

regulations are found in 40 CFR part 63 as revised and published as of July 1, 2004. It just indicates where you find the regulations that we are adopting by reference and wasn't in there before. It is one of those things that is so obvious, I didn't even catch it until about three years later. As much as you try to perfect these things, you actually create more mistakes every time you get in there and muck about. Then underneath that change on page 5-38 under paragraph (b), again we are doing the same thing that we indicated under New Source Performance Standards, we are updating the date by which we adopt them, 40 CFR part 63, July 1, 2004. Then you will see about ten pages indicating every place that we have a new NESHAP. There are a lot more NESHAPs because air toxics is a new area of air pollution and EPA has only recently completed the suite of standards that affect sources which emit air toxics. There are one hundred eighty-eight air toxics and many sources that are covered by these different source categories. If you would like, I can point out which ones impact Wyoming. We made the decision back in 1998 just to adopt them lock, stock and barrel so you will see many that we don't even have sources for – boat manufacturing, marine vessel loading, copper smelting, those kinds of things. But we do have some of them, the one on the top of page 5-44, which is a NESHAP for petroleum refineries. Down below, Subpart EEEE, which is organic liquids distribution, is also found at refineries. We used to have a surface coating for metal cans and delisted the pollutant that is critical, and so we no longer have one of those. On page 5-46, we do have stationary combustion turbines, which we were talking about before, only in this case they are regulating for air toxics instead of criteria pollutants and right below that we have stationary reciprocating internal combustion engines. Those are two big categories. If you go to page 5-48, you will notice once again we have tried to sneak one in here through the Federal Register. Again, it is a category that is big enough that it is painful to make these people wait another year. Again, they will have to send all of their permitting down to Region VIII, which we are a little frightened about anyway, all of their reporting and recordkeeping. This one happens to be for boilers and process heaters. These are fairly large boilers. It is a brand new category so we don't have the same problem that we had before. That is what we are attempting to do there. Below that item you will see where we have updated the appendices that go along with those. The last item is on page 5-64, and this is that standard condition problem that I created myself, and again, I would like to retain the original language there. That is what we are proposing to do with Chapter 5.

Richard Moore: Are there any questions on Chapter 5? Thank you, Ms. Anderson.

Tina Anderson: If you propose to adopt those, what happens next is we package up the New Source Performance Standard section. We are required to then request delegation from the EPA and then they turn around and review what we have done, and it is pretty straightforward because we are not proposing anything out of the ordinary and then they will send us back a letter saying you are delegated these standards, except that we retain the following authorities, and they will list those. With the NESHAPs it is a little different. As soon as you adopt them they are delegated to the State. It is an automatic delegation. Why they will do it for the NESHAPs and not the NSPS is a bit mysterious, but that is the procedure. That takes us through Chapter 5 and that takes us to Chapter 11 which is our National Acid Rain Program. We have told you that Chapters 1 and 2 are

part of our SIP. Chapter 5 is part of a delegated program and Chapter 11 is more mysterious. It is a national program which we are required to adopt as part of our Title V Operating Permit Program and we don't administer the program, all we do is continue to update the adoption. It is completely run by the Federal Government. It is a market-based trading and emissions averaging program that they run to reduce sulfur dioxide and nitrogen oxide emissions that create acid rain problems. So all that we have done on page 11-1 is to update the July 1, 2004 CFR reference. That is all that we are proposing.

Richard Moore: Any questions on Chapter 11? Any questions from the Council on anything that we have covered with the exception of Chapter 1, Section 5? If not, I will ask if anyone in the audience cares to address the Council on any of the rules with the exception of Chapter 1, Section 5. Okay, we will proceed on to Chapter 1, Section 5. I understand you would like a short break to get set up, so let's take a fifteen-minute break.

We will call this Hearing back to order. Ms. Anderson, you may proceed on Chapter 1, Section 5.

Tina Anderson: As the Chairman indicated, we are just starting Chapter 1, Section 5, which is our revised equipment malfunction section. I would like to give you a little background. This regulation is about thirty-five years old. It became part of our SIP in 1970. It is part of the original grouping of our old regs back when we were with the Department of Health, I believe. It deals with excess emissions. Emissions in excess of what is established in our regulation limits, but even more specifically, it deals with those excess emissions which result from unavoidable equipment malfunction. The classic examples are you have a power plant with an electrostatic precipitator, a big thunder storm, a lightning bolt strikes the electrostatic precipitator and knocks the precipitator out and then you have emissions coming out of your stack because it is suddenly uncontrolled. That would be the most clear-cut case of an unavoidable equipment malfunction. It might be something less dramatic. It could be a wiring problem within the precipitator, let's say, and it would go out and then you would have maybe a two-second excess emission. It might not necessarily be a mechanical thing. Maybe your plant is on strike and one of your disgruntled workers takes a gun and blasts holes in the electrostatic precipitator. Again, it is beyond the control of the operator at the time the equipment goes down. These are really blatant cases. Most of what we get is probably much more subtle. You could have a baghouse, you bought bags, the bag's guaranteed for maybe two years. It lasted a whole week and it broke and you had to get a new bag and you started noticing puffing out of your baghouse. So what we have right now in our Chapter 1, Section 5, is language that basically says that if your facility, and I am just rewording it here, experiences excess emissions beyond your ability to control, and you call up the Division within twenty-four hours and say I had this problem and I am going to go out and buy a new bag and I will have it in by next Wednesday, end of problem. Maybe a follow-up letter. And this kind of thing has worked in Wyoming for about twenty-eight years, and quite well. In fact, Marion Loomis even remarked at the last Board Meeting if it is working, why are we fixing it? That is what I am going to try and tell you today, why are we having to fix something that doesn't look like it is broken. It begins with a policy, it is not the whole story, this is the beginning of the story, EPA

approved all of the SIPs back in 1970, including ours. Of course, their focus in 1970 was approving Air Quality SIPs for the first time. When a state submitted a SIP and was focusing on cleaning up the air, that was their priority at the time. They weren't looking that closely at that particular language. By 1978, however, they had gotten in there and they actually had a policy by 1978 that said adopting an excess emission policy disallowing their policy actually disallowed automatic exemptions, which is what we actually have on the books, is an automatic exemption from a violation, because we said if you do all of this, there is no violation. EPA in 1978 said all periods of excess emissions were considered violations of the applicable standard. Since 1978, we have seen numerous reiterations of that policy, refinements of that policy. The rationale for disallowing automatic exemptions goes like this. The malfunction provisions are part of the SIP, which we talked about before. The basic purpose of the SIP is to provide for the attainment and maintenance of ambient standards. If you allow these automatic exemptions you may aggravate air quality so as not to provide for the attainment of those standards. That is their line of thinking. That is why they disallow these automatic exemptions. By 1999, EPA Headquarters issued more policy, this time specifying that all periods of excess emissions must be considered violations, automatic exemptions were prohibited, states could choose, however, not to penalize, and this is the new part, if the circumstances were beyond their control, then a source had to present a defense which included certain claims. If you look at that 1999 policy you will see that is where the language comes that we have adopted into our current proposed regulation. Also in that 1999 policy they requested regions, like Region VIII in our case, to review these SIPs for their states in light of this clarification and take steps to insure that the SIPs were consistent with what they had put into this guidance. That is where the regions became involved.

Dan began to respond to some of those concerns as well as concerns from interest groups around the states and issued a memo to the staff in 1998 and to the affected facilities in 1999, explaining what the State's position is on this matter beginning with the statement that there would be no automatic exemptions, and this was done through a policy that was created and shared with the regulated industry. He also said in there that an incident report has to be filed, a corrective action plan has to be sent in and every individual case had to be investigated thoroughly and a case-by-case decision was made, but no automatic exemptions. So as of 1998 we have actually been implementing this policy. In 2002, Buckingham Lumber, a sawmill in Buffalo, Wyoming, was undergoing their Title V renewal process and some citizens were objecting to the air pollution from the sawmill. But one of the tools they used to make their case was to object to the issuance of this Title V permit, and in the Title V permit they said that the malfunction provisions, which are referenced in Chapter 1, Section 5, were inconsistent with EPA policy. This went all the way to the EPA Administrator who made a decision in November 2002 agreeing with these petitioners and told Region VIII, in Denver, that they needed to review the Wyoming SIP and initiate corrective action within ninety days. By January 2003, the first discussions began with the State. In the spring of that year, Region VIII and the Division worked out draft language which is similar to what you see today. We held our first Air Quality Advisory Board meeting that spring to share with the public what was going on and all of the information that had transpired so far, all of this being part of the

public record. Then in July, that is not on your little slide there, I stuck that one in, we actually had approval for our restructured regs that was printed in the Federal Register, and has nothing to do with the subject, but in that approval there is an agreement that was worked out with the State and EPA that if they approved this restructuring the State would go back and address this problem among other problems, but we agreed to a schedule for addressing this problem. So there were a lot of things that were pushing the State to examine this particular provision. By the fall of 2004, we had another Air Quality Advisory Board Meeting incorporating the changes that we had talked about at the first Air Quality Advisory Board Meeting and again, all of this was aired with the public. The Wyoming Mining Association was there. They commented. At that time we had received no comments from PacifiCorp or Black Hills Power and Light. This brings us up to the summer of 2005. Part of the lag in there is because of all of the other rulemaking that we were required to do in between – the Smoke Regulation, the Trading Program for SO₂. So that pretty much brings us up to date and provides you with a little background on how we got to this point. Any questions about that?

Alright, so the new language, and this is just kind of a paraphrase of what the new sections are, there is a requirement to notify the Division of the excess emission incident within twenty-four hours. That is not new if you compare the old with the new, but there is more detail worked in there. We didn't have fax machines in 1970 so those kinds of things are mentioned. There is a requirement to submit an incident report and corrective action within two weeks. That is not new, and as we mentioned before, all of the new language has been implemented since 1998. But the refinement of the language has been continuing since that time, more detail. Then we have a requirement that the owner or operator file the incident report. That part is new. What used to happen is that they'd call and the district engineer typically would take notes. Sometimes they would write a letter explaining what happened, but it would be the district engineer that would put together the report and that is actually what would go in the files. Now the burden for putting together that incident report is shifting to the source. This is one of the things that EPA has asked for in their guidance is that requirement be placed upon the source. Then we also have an exclusion in there for 111 and 112 sources, 111, our New Source Performance Standard sources, that is that Chapter 5, Section 2 stuff that we just went through, and 112 sources are Chapter 5, Section 3 sources. The reason that we put those exclusions in there is because many of them already have equipment malfunction provisions in them. If they don't have them in them, that applies to some of the older source categories, then this would apply to them, but for those NSPS and NESHAP sources that don't address abnormal equipment malfunction, then this doesn't cover them. You can't have a federal regulation addressing it in the state regulation. There would be too much conflict. So we added that part. The new part is the no automatic exemption language. It has been in the policy since 1998, but the effort to change it through rule has not occurred until today. The enforcement discretion section, while it was in there I guess in part, it has been expanded to make that perfectly clear that the Administrator has the discretion to look at each of those on a case-by-case basis and decide whether or not to enforce against them. What we will do next would be simply to submit these to EPA around November of 2005 as a SIP revision. These are follow-ups to an order that we received from the EPA Administrator and our agreement with EPA in

our restructuring package and a follow-up to our policy changes that were instituted in 1998. That takes us up to the actual language change, and if you would like to haul out your actual regulation, that might be useful at this point. That is all that I have for a slide show. If you look on page 1-6, beginning again in paragraph (i), this is the phone call requirement and the reference to the corrective program and the fourteen-day turn around. The second paragraph (A) refers to all of the things which must be included in the incident report. These came from EPA. They were ironed out with the State and EPA, but they are on their list of things which they would like to see in these incident reports. But most of the facilities are already sending these in now. If you have a large facility that is having exceedances several times a year, you get into a routine and put these together pretty easily. The second paragraph is the burden of proof change, and then 111 and 112 are under (iii), and then the (b) section refers to the enforcement discretion section. So that is it for our formal presentation.

Richard Moore: Thank you, Ms. Anderson. Does the Council have questions for Ms. Anderson? If not, we will go ahead and take public comment on Chapter 1, Section 5. Gene Marshall with PacifiCorp. Please identify yourself by your name and address for the record and who you are testifying on behalf.

Gene Marshall: My name is Gene Marshall. I am an environmental manager with PacifiCorp. Address is 1407 WN Temple, Salt Lake City, Utah. We appreciate the opportunity to comment. For some reason I don't think that we knew about the Advisory Board Meeting when they heard this, because it kind of hit us cold when we saw the notice. We generally do not oppose rules, State rules, but we do in this case. Our position isn't unique to this rule. We proposed a similar rule in the State of Utah and that rule, at this point, has been withdrawn. The State is trying to decide what they are going to do. We operate four coal-fired power plants in Wyoming. This rule is important to us. We have used the existing Equipment Malfunction Rule in the past when we have had problems at our power plants. We have submitted a letter, and I think Dan gave each of you a copy. I am not going to go through eight pages of comments mainly because I didn't write them. But we believe the existing rule that is in the existing Wyoming rules is sufficient. We think that it meets the needs of the State and of the sources. We oppose the fact that the State is making rule based on EPA policy. That policy is not a rulemaking. It never went through public comment. I never went through a rulemaking process and EPA is imposing that and asking the State to codify their policy. We oppose that. We think that the draft rule has a significant number of problems, particularly the amount of days that are required if you want to assert an equipment malfunction. If you look at that there are things that are very tedious, and if we were to assert that, that would require us to hire extra personnel to collect that data. The fact that we have to demonstrate that we do not have a design deficiency, we don't know when a design deficiency occurs. How often do we have to correct design deficiencies to make design good to demonstrate that we don't impact ambient standards? It is very difficult for us to take an episodic event and demonstrate that that one event had any impact or adverse impact on that ambient standard. We have addressed many of those issues in the written comments. I am not going to go through them. We also don't believe that Wyoming should embrace the guilty until proven innocent concept that every exceedance is a

violation. We think that there are exceedances that are not violations. We would like to have an opportunity to assert a defense and not have that defense taken away from us. We would like to work with the State in formulating a rule that we think would meet our needs and the State's. We don't think that this one does. We appreciate the opportunity to comment. Thank you.

Richard Moore: Any questions from the Council for Mr. Marshall?

Dennis Boal: Your Honor.

Richard Moore: Mr. Boal.

Dennis Boal: Mr. Marshall, evidently there was a policy issued regarding equipment malfunction?

Gene Marshall: Yes, the 1999 EPA policy.

Dennis Boal: Your company is complying with that policy?

Gene Marshall: No, we do not comply with that memo. We comply with the State rules. That memo sets forth what is required from an affirmative defense and we do not collect all of that data now.

Wendy Hutchinson: Can I ask a point of clarification? Are you asking him if he is complying with an EPA memo or Dan Olson's memo?

Dennis Boal: I wasn't very clear. The Division's policy.

Gene Marshall: Yes, we comply with the policy as the State has it in their rules now.

Dennis Boal: This rule is significantly different than that policy statement?

Gene Marshall: Yes.

Dennis Boal: How so?

Gene Marshall: The amount of information that is required. The assertion that every exceedance is a violation. A statement that blankets. The idea that EPA sets policy and requires the State to codify it. If EPA wants this to be rule, then EPA should go through the rulemaking process and make it rule, not ask the State to make rule out of their policy, which is what they are doing here.

Dennis Boal: Does the Air Quality policy require you to file an incident report?

Gene Marshall: Yes.

Dennis Boal: Is the incident report that would be required by this rule more detailed? Is that the concern?

Gene Marshall: Yes. The incident report required by this rule would require us to address design, whether or not we used adequate manpower, we called out people on overtime, requirements to assess our ambient impacts, among other things.

Dennis Boal: Okay. So the impression I got was that most of the sources were doing this anyway, and you are telling me that is not really true.

Gene Marshall: In complying with the existing rule, if we have an equipment malfunction and we want to assert that defense we would file a report with the State telling them what happened and why it happened. Then they would make a ruling at the discretion of the Administrator as to whether or not that falls within this exemption.

Dennis Boal: Okay. Thank you, Mr. Chairman.

Richard Moore: Certainly. Other questions? Thank you, Mr. Marshall. I guess there is a question for you. Ms. Hutchinson.

Wendy Hutchinson: I guess part of what I find difficult in the rule, and I am reading it but I am not completely through your letter yet, in the rule they talk about trying to submit written proof that you have tried to avoid everything that has been done, and to me I would view that as quite a challenge to try to document every incident why something was unavoidable. Did you do the maintenance, that sort of thing. I was wondering if you have a few more comments on how a person could even comply with that. I know that you have made comments about that you would have to hire more staff to do these types of investigations. I was wondering if you had any more comments.

Gene Marshall: We are really sure how we would prove that we have done everything physically possible. We are not sure where the economic break is. You can do a lot of things if you throw enough money at it. So if you have done everything possible and spent a hundred million dollars to keep your retro acidic precipitator from failing or have someone sitting there watching the controls of the precipitator making sure that it doesn't fail and if it does they can take over manually. We don't really know how we would provide that proof. I don't know how anyone could evaluate the proof we provide to see that we have done everything possible. We don't know how to do that. The other ones like the ambient impact, do we have to model every episode? If we had an unavoidable breakdown do we have to do a CALPUFF model or an ISC? What do we have to do to prove that it didn't impact ambient standards? Our emission limits are set hopefully to protect the ambient standards and a small episode certainly wouldn't impact them. There are a lot of issues that we are not sure how we would address if we had to.

Richard Moore: Mr. Gordon.

Mark Gordon: Thank you. Could you just walk me through a little bit of how you currently practice it now? If you have an exceedance and you would notify the Department within twenty-four hours which would include a detailed statement of what happened.

Gene Marshall: Let me give you an actual example. At our Wyodak Plant, I think it was this last winter, we had a situation where the scrubber failed, the lines were freezing to the scrubber and we couldn't shut it down because then it would freeze solid, so we had to continue to operate in a semi-operational mode. We were in exceedance of our standard. We notified DEQ by phone and by letter of what was happening and that was an unavoidable equipment breakdown. We gave them the details of our operation. What was happening to us, why we felt we couldn't shut down and they agreed with us and gave us that defense. So it was more of a dialog between us not going down through a list of this information which may or may not be meaningful and asserting whether or not we acted in a proper manner.

Mark Gordon: Okay. Then DEQ then comes out, this is the part I guess I am trying to come to grips with, they do a more complete study with your staff? They are responsible for putting the detail in –

Gene Marshall: Not to my knowledge. We provided them the information and they made a determination.

Mark Gordon: I think I was probably misunderstanding what Ms. Anderson had said earlier.

Gene Marshall: We had no investigation that I know of by DEQ staff, other than talking to our plant personnel.

Mark Gordon: Okay.

Wendy Hutchinson: Along that same line of questioning. So when you had your discussions with the DEQ staff about what was going on, this was a verbal conversation for the most part, you did submit something in writing but you didn't receive anything in writing from the DEQ, did you?

Gene Marshall: Yes, we did.

Wendy Hutchinson: You did, okay.

Gene Marshall: They confirmed in writing what we said. We also had cases where they said no, because in their view what happened was not an unavoidable equipment failure. It had been a repeated problem and we hadn't fixed it and when the plant tried to assert the defense the DEQ said no, that is not defensible. You need to fix your problem, which I think demonstrates that the existing rule works.

Richard Moore: Mr. Marshall, I do have one question for you and that is with your concern regarding impact on ambient air quality and how you were going to determine whether there was an impact on ambient air quality. When I read the proposed rule it says to me all possible steps were taken to minimize the impact of excess emissions on ambient air quality. To me, that doesn't mean that you have to measure it and determine what the ambient air quality was. It is demonstration by the source that they have taken steps to try to make sure that they didn't adversely impact ambient air quality to the maximum extent they could, given the fact that it is a malfunction.

Gene Marshall: That is true, and the way that the Wyoming rule is written. The EPA guideline policy makes a different statement.

Richard Moore: We are not adopting the EPA policy.

Gene Marshall: I am still not sure how I demonstrate that I have protected ambient standards.

Richard Moore: To me, it doesn't say that you are protecting ambient standards. You are taking all possible steps to minimize the impact.

Gene Marshall: I am not sure how I do that.

Richard Moore: Go ahead and ask the question. The example that you gave with Wyodak, you said that you reduced the level of operation. So that would be a step that you took to reduce the impact on ambient air standards, ambient air quality. You couldn't shutdown because, in your example, it would freeze. So you could list things that you have done like that that are reducing the emissions or helping control the emissions during your malfunction. That is the way that I interpret it.

Gene Marshall: Although I think that part could be taken without impacting anything to do with what the rules intent is.

Richard Moore: We understand your position. Thank you. Mr. Grant.

Matt Grant: Mr. Chairman and Members of the Environmental Quality Council, my name is Matt Grant. I am the Assistant Director at the Wyoming Mining Association. One of our members is PacifiCorp. The Mining Association also does not support the rule as written. We would support the changes that are proposed here today. The Wyoming Mining Association represents twenty-three different mining companies that mine coal, trona, bentonite, gold and uranium. Wyoming leads the nation in the production of coal, trona, bentonite, and uranium. In 2004, the WMA member companies generated \$660 million in royalties and tax revenue to the State of Wyoming and an additional \$500 million in federal royalties share and federal taxes. These operations employed almost eight thousand people with an annual payroll over \$670 million.

Air quality is an issue that the WMA is very concerned about and the member mines perform certain measures to control the amount of dust. Within the Powder River Basin for example, some coal mines are improving air quality by watering haul roads, applying magnesium chloride on roads, reducing the amount of acres that are stripped of topsoil and creating wind entrapments to limit the amount of dust.

With the existing air quality improvement measures already being taken, the WMA would like to comment on the proposed changes in Chapter 1, Section 5. Below are the suggested changes to this Chapter.

I can go through all of the changes that are listed here if you like. I can read them out loud.

Richard Moore: It would probably be better if you just try to summarize the changes that you would like, rather than reading the letter verbatim.

Dennis Boal: Your Honor. Mr. Grant, has the Air Quality Division seen this before?

Matt Grant: No.

Dennis Boal: Did these suggested changes go in front of the Air Quality Advisory Board?

Matt Grant: No, they did not. We compiled these –

Dennis Boal: So the Division is seeing this wording for the first time today?

Matt Grant: Correct.

Dennis Boal: They are seeing PacifiCorp's wording for the first time what, yesterday?

Matt Grant: That is correct.

Dennis Boal: The Air Quality Advisory Board didn't see any of this?

Matt Grant: No.

Wendy Hutchinson: We do need to take some exception. WMA did make comment at that Advisory Board on these very issues.

Dennis Boal: Did they provide this language?

Wendy Hutchinson: No, because they did provide language at the time, but essentially they just stated, if I read the minutes, they stated that they wanted it eliminated. Then they heard the Division's point of view on why the Division felt that the rules were

needed and came back and said well maybe we could make it better, and these are the suggested changes. This is typical in the Hearing process.

Dennis Boal: Go ahead and finish your presentation.

Matt Grant: WMA believes there are aspects of the proposed changes to Chapter 1, Section 5, Abnormal conditions and equipment malfunctions, that are either unclear, outdated, unnecessary, redundant and/or overly subjective. WMA agrees that it is necessary to promptly notify the Division of emissions in excess of established regulatory limits or standards resulting from an unavoidable equipment malfunction. It is proposed that the last sentence in Section 5(a)(i) be rewritten for clarification as follows:

“A detailed description of the circumstances of the incident as described in paragraph 5(a)(i)(A) of this section, including a process and schedule to correct the existing malfunction along with a corrective program directed at preventing future such incidents or provide evidence that the incident is not reasonably avoidable, i.e., acts of nature, must be submitted within fourteen days of the event.”

Section 5(a)(i)(A)(2)

WMA believes that the requirement to include evidence that “the excess emissions could not have been avoided by better design, operation, or maintenance” is not supportable for the following reason:

The major reason there is the Air Quality rules currently require the use of Best Available Control Technology and that would refer back to the comments made earlier by Mr. Marshall. There is no way for the State to prove that you are not using the Best Available Control Technology. I will skip over to page 3.

WMA proposes that the requirement to include evidence that “the excess emissions could not have been avoided by better design, operation or maintenance” be eliminated and the following language be included in the currently proposed Section 5(a)(i)(A)(4) and (5).

“the operator proposes an action plan that will reduce or eliminate the probability of recurrence of the malfunction or provide evidence that the incident is not reasonably avoidable, i.e., acts of nature.”

Section 5(a)(i)(A)(6)

WMA believes that the requirements to include evidence that “all possible steps were taken to minimize the impact of the excess emission on ambient air quality” is unnecessary for the following reasons:

The requirement in (A)(6) - to include the evidence that “the amount and duration of excess emission including any bypass were minimized to the maximum extent practicable,” already requires an accounting of the actions through which one could practically and reasonably “minimize the impact of the excess emissions on ambient air

quality.” The requirement in Section 6 is therefore redundant and impractical and should be removed from the proposed regulation.

Based on WMA comments specific to Section 5(a)(i)(A)(2) which is above, the requirement in (A)(7) should be revised as follows:

1. “(7) the excess emissions are not part of a recurring pattern.”

Section 5(b)(i)

WMA takes issue with the following statement: “regardless of cause, emissions in excess of established emissions limits are considered a violation.”

This approach overrides the focus of this proposed regulation which is – “unavoidable equipment malfunction” and proposes that permittees are “guilty until proven innocent.” This is an outdated regulatory approach that likely led to unreported incidents in the past. WMA proposes that protection of ambient air and public health would be accomplished to a much greater degree with a more proactive approach and proposes the following language:

“The Division shall review the required information as described in paragraph 5(a) of this section. Additional information may be requested as necessary. The Administrator may extend the fourteen day time period for the submission of the incident report for cause. The Division will make a determination as to whether the incident qualifies as an “unavoidable equipment malfunction.” If this is the case, no further action will be taken. If it is determined that the malfunction was avoidable, the Division will initiate appropriate enforcement action.”

In addition to the proposed language suggested above, WMA requests that the Division develop and propose language for public review and comment that details the specific criteria that the Division will use to determine whether the incident qualifies as an “Unavoidable Equipment Malfunction.” This is necessary in order to ensure a consistent decision making and, when appropriate, enforcement process.

In conclusion, the WMA would like to see more consistency in the proposed rules and a more jurisprudence approach to enforcing the rules and not a guilty until proven innocent interpretation.

WMA would also like to work with the Air Quality Division in creating these new rules. Thank you to the Environmental Quality Council for allowing me to make these comments.

Richard Moore: Thank you, Mr. Grant. Questions by the Council of Mr. grant?

Mark Gordon: I have a question.

Richard Moore: Mr. Gordon.

Mark Gordon: Mr. Grant. I have a couple of questions. This may not be fair to ask you, but it is something that is coming through my mind as we have talked here today. What I am talking about is Section 5(a)(1)(A)(2) where you point out the excess emissions could not have been avoided by better design operation and maintenance. My question kind of goes to the previous speaker's example where there was a freeze up on a piece of equipment that had to be handled over a certain period of time. I believe the point that you are making, and correct me if I am wrong in this, is that already with Best Available Control Technology there is no need to review this better design approach because you have the Best Available Control Technology. Is that more or less a statement of what you are trying to get to there? .

Matt Grant: Correct, and it's also in the permit, in the mining operations permit that they use the Best Available Control Technology.

Mark Gordon: Sure, sure. What I am getting at is unforeseen circumstances. You have the Best Available Control Technology, but environmental circumstances may have lead to a malfunction. That is what this deals with. I guess I am wondering how the technology can be improved over time. If you just sort of say the design constraints of this particular equipment fails at zero degrees centigrade and that is the best that we can do, then how can you do the redesigns? I am really just pondering a question here. But you understand my point. There may be different manufacturers of a particular type of control technology and some of those manufacturers may have a process that works better. I understand the permit would control those things, but how can you make sure that you are reviewing and understanding the parameters of the equipment?

Matt Grant: I guess the best way would be just to listen to the employees, if they have a better idea, or just to look at all of the options that are out there and that is total speculation. Technology is changing by the day so you would just have to be aware of the changes that are occurring.

Mark Gordon: Okay.

Wendy Hutchinson: Did you say that one of your member companies is here that actually drafted these and I don't know if they have any comments, more specific.

Matt Grant: Yes, Wanda Burget with Powder River Coal. She helped draft the comments and would answer any questions.

Wanda Burget: I am Wanda Burget with Powder River Coal Company, Caller Box 3034, Gillette, Wyoming 82717. This is something that we really took into account a lot. You asked a good question, and in reality when you look at this in terms of a regulation we have to ask the question – what are we doing here? We are allowing fourteen days to go back and review proposed technology. If you truly believe in the concept of continuous improvement, and we do, we would have to answer this question as well, yes, we can go in and we can improve technology. We believe that. So the next question is

what does that mean by enforcement then? What criteria is the State going to use when we answer that question, at least in theory that yes, we can improve design. We can improve technology. What does that mean? What does that mean to us? So the only real opportunity that we have is to say we use Best Available Control Technology. We turned in the design when we went through the permitting process. The design, the operation and the maintenance was all approved. It is all part of the permit and whenever we change any of that we go through a permit revision process where the State actually reviews it again. So I think that we have a situation here where we have an opportunity to look at design, but not in fourteen days. It is probably months in terms of process in looking at design. So that is the problem that we have with this. Certainly there are opportunities there, but within the time frame that we have we can't say anything more than we use Best Available Control Technology. Does that make sense?

Richard Moore: Let me follow up on what you just said, and what you said makes sense to me for the first incident of a certain type, and assume that it doesn't happen, again it makes perfect sense. But what happens if you have a recurrence of those types of incidents and you know that you can change out a circuit board and your controller and it will improve the operation. That is a change in design. Or you could say we are not operating this or maintaining this correctly, we have discovered that. That is a change in maintenance or operation and is not reflected in your permit, but which could, if implemented, avoid a future malfunction. Don't you think that it is incumbent upon you to advise the Air Quality Division of that? Yes, we figured this out and we are going to make that change because of this, so when they go to decide if this is an enforcement or a violation or not that they have something to base it on that you are taking a proactive step to either identify the problem and you are going to fix it, or that you can say we could change out this design parameter but it would cost more than the equipment is worth to do that. Then again, they can say well this mine next door doesn't have this problem because they have equipment that was BACT in 2004 and ours was BACT in 2001. So we are not able to have the same reliability.

Wanda Burget: I think that you bring some good points to bear and I think that the mining industry, in particular, has an excellent track record in actually initiating new controls as Best Available Control Technology actually improving ambient air concerns. Because of that, we have gone from essentially baghouse type controls that had a lot of problems with them and actually had actual emissions into the air to essentially zero emission technologies, and we are actually volunteering those retrofits. So on our own, we have done those types of things already in terms of the ongoing improvements in terms of technologies and seeing that and see what it means, not just for ambient air, but what it means for cost of maintenance, requirements for maintenance, several other aspects, energy requirements to run the controls. We have looked at all types of different things and made some determinations that there are better controls out there than what was considered Best Available Control Technology voluntarily.

Richard Moore: Okay, thank you. Ms. Hutchinson.

Wendy Hutchinson: Just to reiterate your point. It seems to me this issue of better design is not necessarily something that you are going to discover during the first failure. It seems to me that is how things work. It is just like working on your car. Your fuel filter fails once and you think the fuel filter failed. But if it does it again and again and again, you know that you have another problem. You have a design issue here. You are right, this is somewhat redundant because of all of these things, the design operation, the maintenance, all go through a separate permitting process so this is kind of a bit of an inappropriate discussion when it is something that has already gone through a permitting process and in order to change it, goes through another permitting process. Like you said, any other piece of equipment that you run you want to go through and improve it as life goes on, and there may be definite improvements that you can make like the zero emissions technology that you are using now that you obviously take to the State and say hey, let's try this. But that is separate from an unavoidable equipment malfunction. We didn't go put these new systems on just because you were having a million unavoidable equipment malfunctions in your baghouses, I presume.

Wanda Burget: No, you are correct.

Wendy Hutchinson: It was a separate thought process.

Wanda Burget: That is right, but it was acknowledging that new technology developed and new technology came into being and new applications for that new technology made more sense than what we were currently using.

Mark Gordon: Just following up. I want to make clear, I think there are a lot of issues here that relate to vocabulary and I am simply looking at a particular process. I am not meaning to imply violations and I am not meaning to imply penalties. I am talking about the ability to improve technology, as I understood you were saying that too. I guess the question I have is, if you review, on a routine bases, BACT as part of the permitting process and you don't have a history of how that technology has performed, this is a little bit obtuse if you will, perhaps I am asking someone in the regulated community how a regulator thinks, but I guess the question that I have is, how would you have any experience, and carefully evaluate what that technology is, or does technology just show up, and it seems like it would work and that would be a good thing to do. Do you see my point? I guess what I am saying is you have a history of the types of technologies that are used and you know what their operational parameters are and then you can make some judgment about what is Best Available Control Technology within the permit that you are now issuing. Does that make sense?

Wanda Burget: Not really, no. Can you rephrase the question? What is the question?

Mark Gordon: Let me try it one more time. I am just asking, if you don't review your technology and what things might have failed and submit that, and as a regulator how would you have any experience of how that technology has failed? If it keeps failing over time and you don't have any history of what those circumstances are that caused it to fail.

Wanda Burget: I think you are right. I think what you are getting to is really kind of what we are trying to say here too. You are caught between a rock and hard place. First of all we have a technology that is in place that presumably fails. So when we come to this kind of question in our incident report, how do we answer it? Do we answer it, well sure there is a probability that there is technology, that there is new design out there that we can look at. We may even know about it. Sure we can do that. Or do we fall back and say – within the time frame that we have, within the knowledge that we have, the only answer that we can really give you is that we have applied Best Available Control Technology as agreed through the permitting process. I don't think that is the right answer. I think the right answer is to allow us the opportunity to go out and evaluate new design, new technology and communicate that. The problem is now that you have that enforcement hammer, how is it going to fall? Is it going to fall on your fingers by saying yes, I think that we can go out and look at new technology? Or are you going to be safe and keep the hammer back by saying no, we are following our permit?

Mark Gordon: I think you are right and that is why I prefaced by saying vocabulary is very difficult here. I wanted to set aside violation, enforcement from this discussion.

Wanda Burget: I think what really concerned us, concerned my company when we looked at this, is that it almost required us not to be able to look at new technology because of the enforcement that hangs over the top of us. We would much rather look at what is new out there. Look at what may work better and work cooperatively with the agency rather than this guilty until proven innocent posture that seems to be going forward here.

Wendy Hutchinson: You are stating that you are all for looking at new design stuff, but not in this context under this time frame, under this rule?

Wanda Burget: I don't think that it is possible under the time frame, number one, because I think that you have to be able to demonstrate somehow – does that mean bringing it in and putting it in place or running tests on it? That could take months. So how do you evaluate this whole requirement to look at an abnormal equipment malfunction in terms of new design?

Wendy Hutchinson: That is a very good point.

Richard Moore: Mr. Boal.

Dennis Boal: Mr. Olson, my good friend Rick Moore just showed me the minutes from the Air Quality Advisory Board Meeting and my correct perusal of that, it sounded to me like the regulated industry just said let's don't change it. These two comments that we are receiving today is their first effort to deal with this specific language in the proposed rule. Is that correct?

Dan Olson: Yes.

Dennis Boal: When I read through their comments, I think they make a lot of good points. I guess what I am wondering is if the agency needs a chance to examine the points that they make and give some sort of response or some sort of review of that. For instance, words like “possible”, using it in a regulation is really a tricky thing. You can always argue that there was something else that they could have done. That is one of their points. I think I agree with that. So that stuff needs to be looked at. The point about saying that will be deemed a violation. That causes me real concerns too. I like the approach of the Mining Association that said “we would determine whether it was an unavoidable malfunction or not and then we would determine what enforcement action would take place if we need to.” I thought that was a good approach. I think there are several suggestions in the two sets of comments that are worthy of consideration. So I was wondering if the agency wanted to evaluate those and give us a written response?

Dan Olson: We can do that. I wouldn't object to that. If I could, and with all do respect to the people making comment, I think some of the issues that are raised, and I am not diminishing the value of the comments and the suggestions on how we might word this, but the whole focus of this particular regulation is not to say you are guilty until you are proven innocent. The mechanism is to try to give the industry a mechanism to not be subject to penalties because of something they don't have control over. When you are talking about BACT design, when we do a BACT review we don't do a BACT review on the total design of a control system. The design may be faulty in the respect that a pump is under sized for this thing or that a very important process line that should be heat treated if it is going to be installed in a place like Wyoming ought to be part of the design and wasn't. Those are design issues. It doesn't mean that you are going back and doing a BACT review, which I agree you can't do in fourteen days. But BACT and malfunctions are different things. Faulty designs and a piece of equipment are not necessarily part of the BACT review. The BACT review is – is this system able to limit emissions to a certain level. That is the BACT. My staff does not do a detailed engineering design review of a total system component.

Dennis Boal: We understand that.

Dan Olson: Those are issues that are not germane to this particular issue. Now the question about whether or not the information asked is difficult to obtain, all I can say is – since 1999 we have indicated that if a company wants to have relief from an excess emission beyond their limits, they need to explain to us what was the cause, what they did about it, what they did to minimize the impact of the environment and all we are doing is putting this language in the rule so that it is clear to everyone what the basis is.

Dennis Boal: It sound like finally you have folks focused on the language and I do believe that made some good points in their comments. What I would like is an evaluation of their comments. The other thing that I would like evaluated is – PacifiCorp says that the notice of rulemaking was inadequate. I would like that looked at. If indeed it was or it wasn't. The other point made by PP&L was that it was their contention that the EPA Policy hasn't been made part of the rule record, the rulemaking record. I would

like to know if that is in fact the case, if we have made that part of the record. When I read through their comments they were saying that we need to add the word "reasonable" here, we need to add the word "practicable" here, a lot of those things made sense to me. But rather than the Council trying to craft something out here today on the spot, it would make sense to me if the agency analyzed the comments and gave us some sort of response. And they share that with the others. Because it doesn't look like there was any focus on the rule, the wording of the rule until today and maybe yesterday. They do have, I think some legitimate points that deserve worthy consideration. I don't like the idea that we use that word "violation." I think that we need to do it differently and words like "possible" as I indicated. They could have shut down their plant. Did they take all steps necessary to mitigate impacts? They could have shut down their plant. Now are we going to require that? No. We need to say instead of all steps possible or all things possible, reasonable, we need to use some words like that. At least, I think, those considerations ought to be thought about. If we were talking about a few corrections, I would say let's do it on the run, but there are several points in there that I think need to be evaluated by the Division and then give us their thoughts and then we go from there. That is my horse manure opinion, Your Honor.

Richard Moore: What I would like to do is to see if there are additional public comments before we go any further into this discussion.

Mark Gordon: I too, wanted to follow-up on his comments. I too, wanted to commend the commenters, good points and I think very excellent things have been said here. Mr. Boal, I don't know if you would agree with me, but for example, and I am not picking this out for any particular reason other than it just caught my eye, on the Wyoming Mining Association comments on Section 5(a)(i)(A)(7) language that is proposed, "the excess emissions are not part of a recurring pattern" which then truncates the sentence in the proposed regulation which would go on to say, recurring pattern indicative of an adequate design, operation or maintenance. I guess the caveat that I am offering here is I am hoping the commenters will have the opportunity to review these from the point of view of how valuable a comment is. Let's say that you have an operator, and I am not picking any particular operator, big or small, mom and pop, or huge corporation, I am just saying that if you have an operator who routinely does not maintain their equipment and it fails on a recurring basis, it would be nice to have a sense of whether the maintenance was properly done. The language itself may have merits, but I just wanted to make that caveat.

Wendy Hutchinson: With your caveat, you like the phrase they truncated?

Mark Gordon: I am not offering an opinion.

Wendy Hutchinson: Okay, I am sorry.

Mark Gordon: I am just saying that I think that we need to consider those good operators and poor operators.

Richard Moore: Any other members of the public that wish to comment at this time.
Ms. Throne.

Mary Throne: I don't really have a comment. I just have a question. Are you going to consider keeping the comment period open?

Richard Moore: We haven't decided that yet.

Mary Throne: I wanted to throw that out as a point to consider.

Richard Moore: Any other members of the public? Mr. Olson, does the Air Quality Division wish to respond to any of the comments at this time?

Dan Olson: I just want to say that I think Mr. Boal's suggestion is something that we certainly will be willing to do. We will provide our analysis of those comments. We will attempt to make changes if necessary to reflect the intent to those comments as much as we can understand it, and provide that information to the Council for their further consideration. However you want us to do that. When I have seven and eight-page comment letters I don't feel very comfortable telling everybody they are all wet, but a basic starting point anyway.

Richard Moore: Ms. Hutchinson.

Wendy Hutchinson: I think your comments were great, Dennis. I wouldn't have gotten in front of the train because I would like to see where it ended up. I have one question. Maybe this is a question for Terri or maybe it is a question for the AG's office, but one of the points that was made in the PacifiCorp comment was – what is obligation to change Wyoming Rules based on an EPA policy? Does the State of Wyoming have, we hear a lot from not just this Division but the Divisions on maintaining State Primacy and we change our rules to match the federal rules or to make them at least as stringent as the federal rules. What is our obligation to keep our program based on a policy? I was wondering if that is something perhaps that is a question we should specifically address to the Attorney General because it has far more reaching implications than just this. Is anyone aware of a statement already made by the Attorney General's office for our State on how we comply or not comply with things that are in policy versus what is in federal rule?

Dan Olson: Don't look at me.

Wendy Hutchinson: I am looking at you all. I guess beyond the response to these comments, I think it would be great for the Air Quality Division to do it. It almost seems like it might be appropriate for the Council to pose just philosophically this question to the Attorney General and ask for an opinion on this. Maybe we don't want to do that, but I would like to offer that up for discussion amongst the Council Members.

Terri Lorenzon: I think it should be addressed. There are many things that may affect it. I think some of it might be the SIP. What is in the agreements that the State has on the primacy designation. I don't know that it would actually address this, but it is an interesting question, and then how far you want to take it would be the sequel question that you ask, whether we are required to follow their policy with a rule or whether just having policy. For Wyoming, as they have done, is sufficient. But I think that it is a question that should be addressed.

Wendy Hutchinson: I guess I would like to ask that we get a copy of the official EPA policy.

Tina Anderson: I can give you a copy of it right now.

Wendy Hutchinson: Maybe officially give it to the Council. Is it like 100 pages long?

Dan Olson: While we are giving the Council policies, I would like to give them my 1999 policy so that they can have that. I only have one copy of that.

Terri Lorenzon: You can give it to me I will make copies.

Wendy Hutchinson: Can I ask another question? Another document sort of has come into the fold, it is the issue from Buckingham Lumber where Christie Todd Whitman apparently agreed with these petitioners.

Dan Olson: Want a copy of that?

Wendy Hutchinson: Yes.

Tina Anderson: Maybe we should make those copies and distribute them to Terri back in Cheyenne because it is going to be a major copying project.

Richard Moore: We are rapidly moving to a decision not to try to make a decision this week is what I am hearing.

Dan Olson: It would be nice if the Council could make a decision excepting a decision on Chapter 1, Section 5.

Tina Anderson: We have a problem with that, too. I don't want to start different time tables for the follow-up stuff. So I would as soon you sit on the whole thing.

Mark Gordon: Tina, I have a question. Just a quick question about the term "violation". Is there a specific reason why violation and enforcement have to be in those regulations? Can we use exceedance?

Dan Olson: Here is the issue. Whether you have an emission limit, which is set by a state permit that is federally enforceable or whether you have an emission limit that is set

by a NESHAP standard or a New Source Performance Standard, that is the limit that says if you are above that limit you are in violation of the permit or the regulations and you are basically in violation of the law. So, any exceedance of that limit EPA treats as a violation. The purpose of the malfunction rule and the startup and shutdown and malfunction rules that are in some of the EPA NSPS standards is to recognize that sometimes you can't maintain those limits when you are either in a startup or a shutdown or when you have an unavoidable malfunction, and so the mechanism for this whole thing is to be able to use enforcement discretion as long as the information is available to the permitting agency that everything was done that could be done and it is not a result of something that they had no control over, then that can be excused from enforcement. That is the issue. Now you can argue about whether or not EPA has taken the policy that any exceedance of an established limit is a violation or not, but the plain fact of the matter is that is the limit and you exceeded it. So if it is not a violation and you can't explain it away because of your inability to control that problem, what do you call it?

Wendy Hutchinson: Can I do another hypothetical here? You have two coal mines. One coal mine you are still operating a baghouse and you have permitted emissions off of the baghouse that are dribbling out there under this control. You have another mine that has spent the money to retrofit to do the technology to put these new fogger systems on which are at zero emissions. So these guys are permitted to emit and these guys essentially are permitted, but they say that they are not going to emit anything.

Dan Olson: They actually have a limit of zero.

Wendy Hutchinson: Right.

Dan Olson: Where the baghouse has a limit of 20 percent.

Wendy Hutchinson: Right. So let's say the guy running the fogger, the system breaks down and the compressor fails, but essentially the thing is running and putting out some emissions for a few hours, but in the course of a twenty-four hour period that was probably a lot less emissions than this baghouse that was just cruising along anyway. I am just sort of pointing out the –

Dan Olson: I will point out to you another inconsistency and probably an inequity in this malfunction rule and that is – neither your baghouse nor your fogger has a continuous emissions monitor on it. So unless one of my inspectors is standing out there and seeing this thing go south and dust going all over you are not reporting anything. There is no record. If you are doing what you are supposed to do, which is to maintain your equipment, then you are fixing that as fast as you can and you don't report it to me. Do you? Did you report it when your compressor went out?

Wendy Hutchinson: Yes, I did.

Dan Olson: This is the kind of a situation, and Gene Marshall is the perfect culprit, if I can use that word in the spirit of the guilty until proven innocent, they have continuous

emission monitors on their stacks. They measure everything that comes out of that thing. We have a policy which is a HPV policy for EPA that says hey, as long as they are controlling that equipment so that they don't have excess emissions in excess of five percent in a quarter, then I am not going to go after them. I think they are doing the best they can. Now if they are running along and they have more than normal problems and they have malfunctions that happen that cause them an extended period where they are exceeding their emissions that would throw them over that five percent level where I would be forced to take enforcement action, they can then give me data, information that says, Mr. Olson, this was an unavoidable incident and this is why. We looked at this, we looked at that, we took these actions, we took these actions and this is something that we couldn't take care of. I can then pass judgment on what they have told me and say I agree with you, you couldn't do anything about it. End of story and I am not going to issue a notice of violation. That is what this thing is supposed to be working for. As Mr. Boal said there may be some language problems in here that we need to fix, but that is the spirit of this thing. This is not designed to tell the coal mines that their Best Available Control Technology that they have implied on any particular part of their operation is a bad design. It has to do with are you maintaining it properly? Are you operating it properly? If it requires certain kinds of components to be on spare parts because they typically wear out do you have those spare parts on hand or are you waiting for the next part to come and it takes three months to get there. Those are the kinds of issues that you are talking about.

Mark Gordon: Dan, let's step it down a little bit. I am just saying you have a sawmill that exceeds and the citizens get upset about it and the way they address their particular problems are, well it didn't seem to be a problem this morning, but we got cold this afternoon and we have this big problem now or the wind changed direction, or whatever. Then I guess the question that I have is, unless the citizen calls you, you are not going to get that report most likely. My point is again, there are operators who understand more than others maybe, or have a better sense of how things ought to be done. The problem for you, I think as a regulator is to make sure that it is done consistently but not in a way that hampers good operators but still enforces ones who need to be educated.

Dan Olson: That is what is called enforcement discretion here. Unfortunately, that requires that the people depend on the Air Quality Administrator to be consistent and fair and not to be capricious and arbitrary. Absent that kind of trust, what we are going to have to do is try to figure out a list for every different kind of source that operates in the State of Wyoming on what qualifies as good maintenance and bad maintenance and I don't think that we can go there. That is the problem that we are having. We need to have some enforcement discretion. We need to have some ground rules on how you respond to what a company may feel is an unavoidable event and then allow the regulator the discretion to try to make a decision based on the information that is provided to him on whether that was avoidable or not and that is where we are at.

Richard Moore: Mr. Boal.

Dennis Boal: Terri, help me. What is the proper way to do this? Do we close the Hearing and we just allow public comment until the next meeting? Do we keep the Hearing open until the next meeting?

Terri Lorenzon: If you would like more public comment, then you keep your record open. You need to tell us how much comment you want, 30 days, 45 days, whatever, and then when we go back to Cheyenne and Dan's staff and our staff, mostly Dan's staff, will do this. They have all of these forms and we will all check the dates and make sure that we are on the right page. Once we get everything set and figure out when you want the comment period to end and when you can meet next time, when you want to make your decision then, we will go back and issue a supplemental Public Notice. Dan's shop will. Then that will go out and tell people that the record is still open and then some point after that you would want a staff analysis from DEQ from all of the comments that they have received and any additional comments. They will get that to you and you will want a little time to review that and then have your meeting.

Dennis Boal: I make that motion.

Richard Moore: Can we do that by our September Meeting that is scheduled in Jackson, or is that kind of too tight?

Terri Lorenzon: Well it just kind of depends on how much public comment that you think that you need to add if you are going to add it. If you don't have public comment or a very short one, then we have a shot of getting that done. But it takes about a week to prepare the public notice and to get the papers to publish it.

Wendy Hutchinson: Mr. Examiner. Here is my question. If we say hey, we comment on these comments to the Division and they make their comments and they revise some wording in the rule, are we allowed to close like the written public comment, let's just say today or something, can we open it up for oral comments when they bring their analysis of comments back? After they review these and let's say they want to change a few sentences, is there a mechanism for that?

Teri Lorenzon: We can develop one, sure. The part that would get confusing is that if you wanted to shut the public comment down and then reopen it at a later date. I would suggest that you just keep it open. We could craft something in the public notice that tells people that there will be a staff analysis that will be available at a certain point and if you wish to see it and comment on that also that you contact the Division for a copy or something like that. Just give enough time in there so Dan has a chance to do a staff analysis.

Richard Moore: My take on it is that there is very little reason for additional public comment other than to comment on any changes that the Division would make in repose to the comments that they have just received. So to me, the first step would be to have the Division analyze the comments, prepare a staff analysis and suggested changes to the

language. Make that available to the public who have commented and ask them to provide comments on that and then for the Council to meet and hear those.

Mark Gordon: So moved.

Richard Moore: We need to get the process of what we are going to do and then we need to talk about the date we want to put in there before we so move. So, that was my question a minute ago to Terri, was can all of this be done by our scheduled September meeting date?

Wendy Hutchinson: I think that is something that Air Quality needs to answer, how quickly they can comment on the comments, but on a separate track, if we are going to make this request to the AG's office do we have to put EPA policy into Wyoming rules? That to me is a separate time frame of equal importance for this rule package.

Teri Lorenzon: Let me ask a quick question. Do you want, and most of us have dealt with this before, do you want a formal opinion or do you want just an opinion?

Richard Moore: We don't want a formal opinion.

Teri Lorenzon: Because a formal opinion would obviously take longer because of all of the things that go along with that. We could just ask for an opinion of the Air Quality's attorney to give us an opinion. We could work something out where we –

Richard Moore: Legal advice not even an opinion.

Teri Lorenzon: So that makes a big difference. If you want advice and opinion then we can do that and work with the AG on it.

Dan Olson: Another thing I think the Council needs to recognize is that EPA may have comments on the comments as well.

Richard Moore: Mr. Olson, how much time do you think you and your staff will need to put together an analysis of the comments received on the proposed changes to the proposed rule?

Dan Olson: To be honest with you, I would like to have it done by the time of your Jackson meeting, but I just don't think that is probable. We have got so much stuff going on. I just don't think that is enough time for us to really give adequate thought to the suggestions by the commenters and to try to figure out how we can recognize their concerns. It is going to take a little bit of thought. It took us several months to get this far in dealing with just one entity who had a very specific agenda.

Richard Moore: So can we recess the Hearing for a date undetermined until we determine when those comments will be available and when the Council will meet again?

Teri Lorenzon: Okay, now if you want to allow the public an opportunity to address his response then I think we can keep the record open, but I think we keep the comment period open also just to eliminate any future confusion if it starts and stops.

Richard Moore: My question was can we keep it open for an indeterminate amount because we don't know when we are going to be meeting again?

Wendy Hutchinson: Let me offer another suggestion. Can we just kind of make a statement today something like – the Division will analyze the comments and post them on the website or whatever the heck, and we won't continue the Hearing until at least 30 or 45 days after those comments have been posted. Can we make a generic time frame like that?

Dan Olson: To tie it down a little bit, I guess the Council can ask the Division to respond to the comments and make suggested changes to the language by the end of September. Then you can go from there.

Teri Lorenzon: Then we can just allow 30 days past that or whatever.

Wendy Hutchinson: Knowing that time frame, why don't we just state that the Hearing will be scheduled during our September meeting.

Mark Gordon: That sounds fine to me.

Richard Moore: So the comment period will be left open until further notice.

Teri Lorenzon: Because you want to have additional oral comment opportunity.

Wendy Hutchinson: It will be left open through whatever the day of the Hearing or whatever.

Richard Moore: Until the rescheduled Hearing. So we have a motion by Mr. Boal and a second by Mr. Gordon to recess the Hearing.

Tina Anderson: Can we limit the public comment to Chapter 1, Section 5?

Mark Gordon: I have only one question with that in mind. Tina, when you gave us the presentation today there was some language that was struck out and language that was inserted that you wanted to reverse. Do you think there will be any problems with putting the language you propose, the actual language you proposed today in those regulations?

Tina Anderson: I wouldn't have any problem. When you get to your final motion when you resolve this, I guess, you would say that we propose to adopt it as it was originally written before the strikeouts.

Mark Gordon: I guess I am really asking technically, I don't know if the Advisory Board would have any problem with you doing that. I don't know if they commented on that or if you should go ahead do that, the original language.

Tina Anderson: We make revisions after the Advisory Board process all of the time. That is standard procedure.

Wendy Hutchinson: What if we did this. By the end of September, presuming you make a change you are going to post it on the website or whatever, so it is available to the public and then at that point does it make sense to post this change, this other change you do not want to put in that version of the rules?

Teri Lorenzon: If you revise your strike and cap, just make that available as the current proposed language. Then people who are interested are advised to review this to see the current status of the Department's recommendation. We can put that in our notice and on our website.

Richard Moore: To answer the first question. It is a lot cleaner if we just leave the entire record open until we close it, then there is no question of what was out there for comment or not. So we will leave the entire record open. You can make the changes to the redline/strikeout version as appropriate based on comments you received on both Section 5 and other chapters today. The only other changes that I noted were page 5-13 and 5-64 where you didn't want to make the change and on page 5-5 when we were talking about the New Source Performance Standards for gas turbines. I think the simple fix for that that we discussed off line was just moving the reference to the Federal Register notice up to the CFR reference so that they follow one another. So you can make those changes. We will keep the record open.

Mark Gordon: Last question, Dan. Could you pursue, do you feel that it would be an opportune time for you to be able to pursue some alternative to the word "violation?"

Dan Olson: We can pursue that. I don't know what blind alley I will get down to, but we can certainly try. We can do anything we want to do. The only thing is in spite of the fact that there are certain misgivings about doing things because EPA says you have to do them. In the final analysis they are the ones that approve the SIP. So we need to deal with that with that in mind, because a disapproved SIP means you fix it the way that they told you to in the first place or they will fix it for you. That is the problem.

Mark Gordon: I understand that and that is the attempt to try to circumvent that but without making –

Dan Olson: But if we can figure out how to get past that hurdle we will certainly try to do that.

Richard Moore: Then we expect that your analysis will tell us what you have determined on that one way or another. If the SIP rests on this critical issue, then we

need to know that. Okay, motion on the floor to recess the Hearing until further notice and that the Air Quality staff will address the comments received and provide a written copy as to the people who have commented and on the website, etc. Any other discussion on the motion? All in favor signify by saying "aye". Opposed, say "nay". Motion carries. I would like to thank everybody for attending and providing us with your input today. It is important to us in our process to try to do the right things. So thank you for your time. With that I will recess the Hearing.