

1 THE MULTI-PANEL ADVISORY BOARD

2
3 TRANSCRIPT OF HEARING PROCEEDINGS

4 Pursuant to notice duly given to all parties in
5 interest, this matter came on for hearing on the 29th day
6 of June, 2016, at the hour of 9:12 a.m., at the Laramie
7 County Library, Cottonwood Room, 2200 Pioneer Avenue,
8 Cheyenne, Wyoming before the Multi-Panel Advisory Board,
9 with Marge Bedessem, chairwoman, presiding, with the Waste
10 and Water Advisory Board Members, Mr. Dave Applegate,
11 Ms. Lorie Cahn, appearing by WebEx; the Wyoming Air
12 Quality Advisory Board, Chairman Tim Brown, Ms. Diana
13 Hulme and Mr. Douglas Vickrey; the Wyoming Land Quality
14 Advisory Board, Mr. Phil Dinsmoor, Mr. Micky Shober, Mr.
15 John Hines, and Ms. Natalia Duncan Macker appearing by
16 WebEx.

17 Mr. Todd Parfitt, DEQ Director; Mr. Alan
18 Edwards, Deputy DEQ Director; Ms. Elizabeth Morrisseau,
19 Ms. Eva La and Ms. Kelly Shaw, Assistant Attorneys
20 General, and Mr. Micah Christensen, intern to the Attorney
21 General's Office; and Ms. Gina Thompson, Water Quality
22 Division; and various audience members were also in
23 attendance.

24 Also Present: Mr. Terry Kilpatrick and
25 Ms. Sharron Kilpatrick, Shamrock Audio/Visual.

	I N D E X	
		PAGE
1		
2		
3	Chapter 1	13
4	Chapter 2	41
5	Chapter 3	67
6	Chapter 4	119
7	Chapter 5	122
8	Chapter 6	130
9	Chapter 7	133
10	Chapter 9	162
11	Air Quality Advisory Board Motion to Move Forward Chapters 1, 2, 3, 4, 5, 6 and 9	178
12	Ruling By the Board	179
13		
14	Land Quality Advisory Board Motion to Move Forward Chapters 1, 2, 3, 4, 5, 6 and 9	179
15	Ruling by the Board	180
16	Waste and Water Advisory Board Motion to Move Forward Chapters 1, 2, 3, 4, 5, 6 and 9	180
17	Ruling by the Board	181
18		
19	Waste and Water Advisory Board Motion to Move Forward Chapter 7	188
20	Ruling by the Board	188
21	Air Quality Advisory Board Motion to Move Forward Chapter 7	188
22	Ruling by the Board	189
23		
24	Land Quality Advisory Board Motion to Move Forward Chapter 7	189
25	Ruling by the Board	189

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

2 (Hearing proceedings commenced

3 9:12 a.m., June 29, 2016.)

4 CHAIRWOMAN BEDESSEM: Good morning. Okay.

5 Let the record show that this meeting is being convened at

6 I have 9:12, Wednesday, June 29, 2016 at the Laramie County

7 Library located at 2200 Pioneer Avenue, Cheyenne, Wyoming.

8 I'm Marge Bedessem, chair of the Water & Waste

9 Advisory Board and chair of the proceedings today. Also in

10 attendance from the Water & Waste Advisory Board are Lorie

11 Cahn on the phone, and Dave Applegate.

12 In attendance from the Air Quality Advisory Board

13 are Chairman Tim Brown, Douglas Vickrey, Diana Hulme and

14 John Heyneman.

15 In attendance from the Land Quality Advisory

16 Board are Phil Dinsmoor, sitting in for Chairman

17 Jim Gampetro, Natalia Duncan Macker, also on the phone,

18 Micky Shober, and John Hines.

19 Do I have all the board members? Am I missing

20 anyone?

21 MR. BROWN: No. John Heyneman is not here.

22 CHAIRWOMAN BEDESSEM: Thank you for that

23 correction. John Heyneman is not in attendance today.

24 We are here this morning to consider and discuss

25 and make recommendations regarding proposed revisions to

1 the Department of Environmental Quality's Rules of Practice
2 and Procedure.

3 The Department is proposing revisions to Chapters
4 1, 3, 5, 6 and 7 of the Rules of Practice and Procedure.

5 The Department is also proposing to repeal Chapter 4 in its
6 entirety, and to repeal Chapter 6 and replace it with a new
7 Chapter 9.

8 The proposed revisions adopt as much as practical
9 of the uniform contested case rules developed by the
10 Wyoming Office of Administrative --

11 BOARD MEMBER CAHN: Marge, we can't hear
12 you. The audio --

13 CHAIRWOMAN BEDESSEM: The proposed
14 provisions adopt as much as practical of the uniform
15 contested case rules developed by Wyoming Office of
16 Administrative Hearings in accordance with the Wyoming
17 Statute 16-3-102.

18 The proposed revisions also update and clarify
19 requirements applicable to rulemaking, petitions for award
20 of costs and expenses under Wyoming Statute 35-11-437(f),
21 director review, hearings before the department, and rare
22 or uncommon areas. The Department is requesting that the
23 advisory boards consider the proposed revisions and make a
24 recommendation of adoption to the Environmental Quality
25 Council.

1 On May 16, 2016, the Department published in the
2 Casper Star-Tribune a public notice of this meeting and a
3 request for recommended adoption to the EQC. The
4 Department posted a copy of the proposed revisions to the
5 Department's website located at deq.wyoming.gov and
6 maintained a hard copy in the Department's Cheyenne office
7 in accordance with the regulations.

8 Today's hearing will be conducted as a rulemaking
9 hearing, as provided under Chapter 3 of DEQ's rules of
10 practice and procedure currently. This is not a contested
11 case hearing. People offering statements today will not be
12 placed under oath and will not be subject to cross-
13 examination or to questions from audience. We will not
14 engage in open discussion or rebuttal of issues raised by
15 any participant. The presiding officer, which is me, and
16 this panel, our board members, may request additional
17 information or ask questions of any participant.

18 The scope of this hearing is limited to proposed
19 revisions to the Department's Rules of Practice and
20 Procedure. Comments should be directed toward
21 considerations which are within the legal jurisdiction of
22 the Department of Environmental Quality. After all
23 comments have been received, each board member will make
24 its decision regarding whether or not to recommend adoption
25 of the proposed changes to the Environmental Quality

1 Council.

2 The record on this matter will close at the
3 conclusion of this hearing. We appreciate the interest
4 expressed during this joint advisory board meeting. I want
5 to assure you that comments received by the Air Quality,
6 Land Quality and Water & Waste Advisory Boards prior to and
7 during this hearing will be carefully reviewed. We will
8 respond to everyone who comments and provides a legible
9 mailing address. The transcript of this hearing will be
10 placed in the department's file in the Cheyenne office.
11 Anyone wishing to obtain a copy of this record may contact
12 the Department's Cheyenne office.

13 So moving on. The procedure for today's hearing
14 is as follows: The DEQ and the Attorney General's Office
15 will present the rule package and respond to any questions
16 from the advisory board members. Considering that there
17 are numerous chapters, we will likely do questions
18 following the presentation on each particular chapter.
19 Once the DEQ is finished, we will take comments from those
20 who wish to testify in support or opposition of the rule
21 package. Each person who testifies may be asked questions
22 by the advisory board members. After that, DEQ will have
23 an opportunity to make any comments.

24 As I mentioned earlier, this is not a question-
25 and-answer hearing. Cross-examination of speakers will not

1 be allowed. We are here to gather information from the
2 public which bears the question of whether these proposed
3 revisions should be recommended for adoption to the
4 Environmental Quality Council.

5 Attendees were requested to sign in as they
6 entered today and indicate if they wish to make a
7 statement. I will begin by using the sign-in sheets and
8 call upon attendees in the order in which they signed up.
9 Of course, this is following the DEQ presentation and
10 question session based on the presentation.

11 Today's hearing is being recorded by a court
12 reporter. When your name is called, please come forward.
13 Please speak audibly and clearly so the board members can
14 hear you and the court reporter can transcribe your
15 comments for the record. This panel or the court reporter
16 may request that you slow down your statement or may
17 request that you repeat your comment in order to accurately
18 capture the comment for the record. When you start your
19 presentation, please state your name, the spelling of your
20 first and last name, and organization or company you are
21 associated with, if applicable.

22 So before the department representatives from
23 the Attorney General's Office come forward to present
24 the rule package, I would first like to introduce
25 Director Todd Parfitt for some opening remarks. Also,

1 members who proceed with their presentation, please do
2 introduce yourself before you begin your presentation as
3 well.

4 Director Parfitt.

5 MR. PARFITT: Thank you, Marge.

6 Todd Parfitt, the director of the Department of
7 Environmental Quality. And I want to thank all the board
8 members for their participation in this process. This is
9 the first time that I can recall that we've had all of the
10 boards together for a rulemaking. And I'll talk a little
11 bit about why that is here in a minute.

12 This is an opportunity also to recognize that we
13 have all of the administrators in the room, except for
14 Luke Esch, administrator for the Solid Waste Division,
15 who's on the phone, which is an amazing feat in and of
16 itself. I have a hard enough time having staff meetings
17 with all of them in the room. So we're pretty lucky to
18 have them all in attendance.

19 And I also recognize that it's very difficult to
20 get a quorum for three boards all at the same time. So
21 thank you for that.

22 So as you've heard, the purpose of today is to
23 discuss revisions to the rules of practice and procedure.
24 And this really gets to the crux of why all the boards are
25 here today together. We had some discussions with the

1 Environmental Quality Council within the last year
2 regarding how the rule packages move forward to the EQC,
3 and who can move those forward. And we had some
4 discussions with the Attorney General and got clarification
5 on that. And rules move forward to the Environmental
6 Council with the recommendation from the board -- or the
7 appropriate board, the administrator and the director.
8 That's how rules move forward, when they have that positive
9 recommendation from those entities.

10 This is the one rule that touches all divisions.
11 And in order to move the rule package forward to the
12 council, we need to have recommendations from each of the
13 boards. Rather than do those individually and then have to
14 go back and forth with whatever comments and questions and
15 changes that might occur from each of the individual
16 boards, we felt it was better to have all the boards
17 together so you can hear the discussions and that would be
18 more efficient way of doing that.

19 So we did receive public comments. We had three
20 public comments, comments from the Powder River Basin
21 Resource Council, from the Mining Association, and from
22 Klaus Hanson. So those were the comments. We appreciated
23 all the comments we received. A lot of good comments. We
24 made changes accordingly, which you'll hear about. And
25 then just so you know, this rule package is a product of

1 input not only from the DEQ, but from the attorneys for the
2 DEQ, the attorneys for the Environmental Quality Council,
3 and also from the Environmental Quality Council staff. So
4 there have been a lot of eyes on this. This isn't a rule
5 package that's being moved forward just solely by the DEQ.
6 We've tried to incorporate all the relevant players in this
7 as we moved it forward.

8 I do want to express my thanks to Gina Thompson,
9 Amber Potts -- if you can stand up, Amber, still working --
10 and Craig Hults from the Land Quality Division. Those are
11 the folks that helped orchestrate all of this and pull it
12 together. And that was no easy feat. And so thank you all
13 for that.

14 Now, if you do have questions for the divisions,
15 like I said, we have the administrators available. I
16 probably will step out at some point here this morning to
17 take care of some other business. But, again, just wanted
18 to thank you all for taking part in this.

19 With that, I will turn it back to Marge.

20 CHAIRWOMAN BEDESSEM: Thank you, Todd.

21 Let's now hear from the AG's office and making
22 your presentation.

23 MS. MORRISSEAU: Can you hear me? My name
24 is Elizabeth Morrisseau. I'm the Assistant Attorney
25 General who represents the Air Quality Division. I'll be

1 kicking this off. We'll all introduce ourselves as well.

2 MS. LA: Good morning, Madam Chair, board
3 members. My name is Eva La, and I'm Assistant Attorney
4 General.

5 MS. SHAW: Good morning. My name is Kelly
6 Shaw. I'm also an Assistant Attorney General. I primarily
7 represent the Solid Waste Division.

8 MR. CHRISTENSEN: Good morning. I'm Micah
9 Christensen, and I'm a summer intern with the Attorney
10 General's Office.

11 MS. MORRISSEAU: Again, I want to repeat
12 the director's gratitude. We thank everyone for coming
13 together. This is definitely a unique situation where all
14 the boards get to be involved in one very large rule
15 package. So what we've done in this package is there's
16 really two things that have gone through.

17 Gina, can you skip...

18 So this is an overview here. And basically the
19 purpose of the revisions to the rules is twofold. One of
20 them, under Wyoming Statute 16-3-102(d), the legislature
21 directed the Office of Administrative Hearings to adopt and
22 promulgate uniform rules.

23 BOARD MEMBER CAHN: Excuse --

24 MS. MORRISSEAU: Can you hear me? Do I
25 have to be into the microphone?

1 BOARD MEMBER CAHN: We could hear you. We
2 just --

3 MS. MORRISSEAU: Is that better?

4 BOARD MEMBER CAHN: -- couldn't see the
5 screen. So now we can see the screen. So yep.

6 MS. MORRISSEAU: Under Wyoming Statute
7 16-3-102(d), the legislature directed the Office of
8 Administrative Hearings to promulgate uniform rules for the
9 use of all state agencies responsible for contested case
10 hearings. And under Wyoming Statute 16-3-103(j), all state
11 agencies that are responsible for contested case hearings
12 shall adopt those uniform rules to the extent that they
13 don't conflict with a specific and distinct requirements of
14 the agency and any federal or state law that applies to
15 that agency.

16 So the first purpose of these revisions is to
17 adopt those uniform rules to the extent that they don't
18 conflict with statutory requirements for the DEQ and the
19 EQC.

20 And the second purpose of the revisions is while
21 we're in the process of looking at the rules of practice
22 and procedure, let's make all the other changes as well to
23 reflect practice before the council, to reflect practice
24 before the DEQ, and to make sure that the rules are clear.

25 So we'll start by discussing Chapter 1. Todd

1 gave an overview of what the comments were, so if you want
2 to turn to your handouts, you can -- or I can just kind of
3 talk through it. But essentially Chapter 1 is the general
4 rules that are applicable to contested case hearings.
5 They're applicable to rulemaking hearings. They're
6 applicable to general hearings before the agency. For
7 example, if there is a specific type of hearing that you
8 can have before an administrator, this section also applies
9 to those hearings.

10 And so the changes that we've made to Chapter 1,
11 the first part we've got some additions. So we've updated
12 and added some new definitions, and that is to incorporate
13 the language that was promulgated through the uniform rules
14 by the Office of Administrative Hearings. And as you look
15 through, there's a strike-through and underline version,
16 and you can see where the additions to the definitions have
17 been made.

18 And then in Section 3, we adopted the language
19 from the uniform rules related to how time and deadlines
20 should be calculated, and have also added some
21 clarification about additional three days when calculating
22 time and specifying that that is not applied to rulemaking
23 deadlines, but it does apply to contested case hearing
24 deadlines.

25 Section 4 is notice requirements. Again, that is

1 language from the uniform rules. And Section 8 is new.
2 This is related to the council's authority to grant
3 temporary relief during a contested case hearing. So
4 essentially while a contested case hearing is ongoing,
5 there's certain temporary relief that the council may
6 grant, and this clarifies what that relief can be. This is
7 not from the uniform rules. This is primarily to ensure
8 that these rules are consistent with SMCRA, the Surface
9 Mining Control and Reclamation Act.

10 And then Section 10 is just incorporation by
11 reference. Under Wyoming statutes the legislature
12 essentially says that if you're going to reference some
13 kind of matter and incorporate it into your regulations,
14 you have to be very specific. You have to say what it is
15 that you're incorporating, where it can be located on the
16 Internet, and so that section, just make sure that it
17 complies with those requirements.

18 And then just to bring your attention to two
19 changes as well. In the current version of the rules of
20 practice and procedure, there is 60 days that you have to
21 contest an action to the Environmental Quality Council.
22 And we've shortened that to a 30-day timeline. And the
23 reason for that is to be consistent with the appeal
24 timeline that something may be contested to the district
25 court. Under the Wyoming Environmental Quality Act, if

1 somebody wants to contest the action by the department,
2 they have 30 days to go to district court.

3 The Environmental Quality Act does not speak to
4 how much time you have before you go to the Environmental
5 Quality Council, so the current rules have 60 days. We are
6 unable to determine where that initial number came from.
7 And in the interest of having a consistent timeline, we're
8 going to change that to a 30-day timeline so that there's
9 essentially a 30-day window after an action by the
10 department that a person can choose to either contest it to
11 the district court or to the council. The problem of
12 having inconsistent timeline is that you're not sure if a
13 person is going to go to the Environmental Quality Council
14 after that 30-day window has gone up. So that's why we're
15 proposing to make that particular change.

16 And then the other change identified is just that
17 the initiation of proceedings section is moved to Chapter
18 2. Chapter 2 describes specifically how to initiate
19 proceedings that are contested case hearings. And then
20 Chapter 9 talks about initiating proceedings that are
21 before the department.

22 This goes into the sections that were removed.
23 The current version has a section that talks about the
24 Attorney General's presence at council meetings to provide
25 guidance. It doesn't seem necessary to have rules that

1 allow the council --

2 BOARD MEMBER CAHN: Gina, this is Lorie.

3 MS. MORRISSEAU: Can you hear me?

4 BOARD MEMBER CAHN: Excuse me. This is
5 Lorie. Would it be possible to share Gina's screen? I can
6 hear you, but I can't -- the screen is really blurry. I'm
7 wondering if it's possible to share the screen rather than
8 have a video projection.

9 MS. THOMPSON: Can I pause for a moment?

10 CHAIRWOMAN BEDESSEM: We're going to pause
11 for just one moment and see if we can adjust the technical
12 items.

13 BOARD MEMBER CAHN: I can actually -- I
14 just made my screen bigger. I think I'm going to be okay.
15 How are the other -- how are Luke and Natalia seeing the
16 screen? That works for me. Does that work for the --

17 CHAIRWOMAN BEDESSEM: Gina, does that work
18 for the attendees?

19 COMMISSIONER THOMPSON: I think so. So
20 they are going to present it through the application.

21 CHAIRWOMAN BEDESSEM: So we'll wait for the
22 WebEx to come up and then proceed.

23 BOARD MEMBER CAHN: This is Lorie. That
24 works great, what you just did. It's really clear. Thank
25 you.

1 CHAIRWOMAN BEDESSEM: Let's continue with
2 the presentation.

3 MS. MORRISSEAU: Thank you. Let me just
4 figure out how to turn my mic on.

5 Okay. So we removed a section related to the
6 Attorney General's presence. It seems unnecessary to have
7 something in the rules that would allow the council to do
8 something that they're already clearly allowed to do.

9 We removed a rule for prehearing conferences
10 before the council; however, the new Chapter 2, Section 17
11 deals with prehearing procedures which should handle this.
12 The settlement section is taken out of Chapter 1, again
13 because Chapter 1 is general rules, and Chapter 2 has more
14 specific sections related to settling contested case
15 hearings. There used to be a deviation and amendment
16 section essentially saying that these rules didn't have to
17 always be followed and they could be changed. Again, that
18 seems to be unnecessary language.

19 There was a rule about excluding disorderly
20 hearing attendees. Again, that seemed to be unnecessary to
21 have laid out in rule, whether it's the advisory boards or
22 the council, they can always exclude someone for that kind
23 of behavior and that rule seemed unnecessary.

24 And then there was a section related to
25 conducting meetings according to Robert's Rules of Order.

1 We chose to take out references to Robert's Rules of Order.
2 At any point if advisory boards want to use the Robert's
3 Rules, they may. However, if the rules specifically say
4 that you have to use the Robert's Rules, then we have to
5 select a specific edition to incorporate by reference, and
6 then you can only use the one that is incorporated by
7 reference. So by taking out this section, the council or
8 the boards, where appropriate, may use Robert's Rules of
9 Order, but they're not tied to a specific version.

10 Next slide.

11 Okay. So, Director Parfitt, did you want to give
12 a previous overview of comments received on Chapter 1?

13 MR. PARFITT: Okay. So for Chapter 1, the
14 first comment that we had was from the Powder River Basin
15 Resource Council to clarify that in case of conflict, that
16 the Environmental Quality Act, which controlled over the
17 Administrative Procedures Act because the Environmental
18 Quality Act is both newer than the Administrative
19 Procedures Act and more specific to the Environmental
20 Quality Council.

21 So the Department's response to this was that
22 adding some -- recommending some additional language that
23 in case of conflict between the Administrative Procedures
24 Act and the Environmental Quality Act, the Environmental
25 Quality Act should apply.

1 Okay. That is changed? We're good?

2 Okay. So that was the first comment from the
3 Powder River Basin Resource Council on Chapter 1. Second
4 comment was related to Section 1(c) should contain similar
5 clarification. The Department in all of these comments, as
6 I mentioned, we appreciated the comments from the
7 commenters. They were valuable. Our response is that all
8 hearings before the Council shall be held pursuant to these
9 rules, the provisions of the Environmental Quality Act,
10 and, "to the extent they do not conflict," was the added
11 language, the Wyoming Administrative Procedures Act.

12 So, basically, the same response. We felt that
13 was a good comment. We made adjustments accordingly to
14 address the commenter.

15 The third comment was from the Powder River Basin
16 Resource Council again. Section 2(d) should clarify that
17 the hearing officer for a specific hearing also presides
18 over all motions, practice discovery disputes, scheduling
19 and other nonhearing matters related to the docketed
20 matter.

21 We do not recommend this change at this time, and
22 the reason is that we believe this language from the
23 uniform rules adopted from the Office of Administrative
24 Hearings as mentioned previously. These rules were
25 proposed by OAH to establish common set of rules for

1 practice and procedure across all state agencies.

2 Additionally, the clarity sought by the Powder
3 River Basin Resource Council is provided through Wyoming
4 Statute 16-3-112(b).

5 Comment 4, was related to Section 4(b) should
6 indicate that there are specific types of hearings that the
7 Department must notice through newspaper publication under
8 the Environmental Quality Act and related regulations. The
9 Department and the Council should utilize additional
10 information -- notification methods, including through
11 newspaper publication and distribution of press releases to
12 newspapers and radio stations.

13 We are not recommending adoption of this comment
14 or any changes at this time. Section 4(b) was drafted
15 specifically to describe notice requirements applicable to
16 Council for hearings before the Council. It is not related
17 to and does not alter any statutory regulatory notice
18 requirements applicable to the Department. In the future,
19 either the Department or the Council may choose to utilize
20 additional methods of outreach comment.

21 Number 5, Powder River Basin Resource Council is
22 related to Section 5(a), and it should let parties waive
23 recordings of proceedings to save cost. The Council's
24 ability to order parties to pay costs of a court reporter
25 may deter groups from exercising legal rights to appeal

1 Department decisions to the Council. Additionally, this
2 section may create problems for primacy over regulatory
3 programs.

4 The Department's response was to amend the
5 language of Section 5(a), and in so doing, recommends using
6 the uniform language developed by OAH instead of obtaining
7 requirements from prior versions of the Rules of Practice
8 and Procedure. The suggested language would be the
9 referring agency -- adjudicative agency shall make
10 appropriate arrangements to assure that a record of the
11 proceeding is kept pursuant to the Wyoming Statute
12 16-3-10(o) and (p). Copies of the transcript taken at any
13 hearing may be obtained by any party, interested person, or
14 entity from the court reporter taking the testimony at such
15 fee as the reporter may charge.

16 And I think we have two more -- four more
17 comments related to Chapter 1.

18 Comment 6, again, was from the Powder River Basin
19 Resource Council, Sections 6 and 7 should contain more
20 procedural guidance to explain how member of Council should
21 or would declare a conflict of interest. Additionally,
22 these sections should be broadened to cover all hearings
23 before the Council, all Council members, not just hearing
24 officers.

25 We do not recommend making changes at this time

1 because modifying the language in either section could have
2 primacy indications for the Clean Water Act or the Clean
3 Air Act. Section 6 has been in effect and approved by EPA
4 for many years specifically to water quality. And the
5 Council has developed and uses a form related to Section 6
6 compliance, which they will likely revise to be able to use
7 for Section 7, pertaining to the Clean Air Act compliance
8 as well.

9 So Section 7 currently under review -- is
10 currently under review by EPA, is consistent with language
11 in our neighboring state, Colorado, in their regulations,
12 and has previously been approved by EPA.

13 And then, finally, we believe that the concerns
14 in this comment of Council member would not self-recuse in
15 the event of a conflict are minimized by the ethical laws
16 applicable to all Council members and specifically to
17 contested case hearing officers in Wyoming Statute 9-3-106,
18 9-3-112.

19 The Comment Number 7 was from Klaus Hanson. The
20 Department accepted the comment. These were -- well, not
21 in its entirety. We recognize that there was a change that
22 needed to be made from the term "he" to "they" to make the
23 correct reference to line 147 for grammatical consistency.

24 The Comment Number 8 was the Mining Association,
25 referencing Section 8(c)(iv) with concerns that may

1 conflict with the Environmental Quality Act.

2 We don't recommend any changes at this time. The
3 permitting right described in --

4 THE REPORTER: I'm sorry. Can you say that
5 again? 35 --

6 MR. PARFITT: Sorry. So it's the
7 permitting right described in Wyoming Statute 35-11-405(e).

8 This is one of those spots where I need to slow
9 down.

10 THE REPORTER: Just a little background
11 noise.

12 MR. PARFITT: It is not temporary relief
13 discussed in the proposed rule. There are certain
14 conditions necessary for a permittee to be entitled to a
15 permit renewal under Wyoming Statute 35-11-405(e) and the
16 Environmental Quality Act does not allow the Council to
17 renew permit -- a permit during the pendency of an action
18 contested the occurrence or nonoccurrence of any of those
19 conditions. In any event, Chapter 1, Section 1(b) is clear
20 that if there's an actual conflict between the rules and
21 the Environmental Quality Act, the Environmental Quality
22 Act prevails.

23 And in the last comment on Chapter 1 was from the
24 Powder River Basin Resource Council, Section 14(a), used to
25 require the Council and advisory boards to follow Robert's

1 Rules of Order, and that requirement should not have been
2 repealed. And as you heard Elizabeth explain the rationale
3 behind that.

4 So those were the comments and the responses
5 provided to those comments on Chapter 1. So with that, I
6 think we'll stop there. The intent was to stop there and
7 see if the boards have any questions on Chapter 1 before we
8 move into Chapter 2.

9 BOARD MEMBER DINSMOOR: Madam Chair.

10 Madam Chairman, I'm Phil Dinsmoor with the Land
11 Quality Advisory Board. I had two or three -- I'll try to
12 make them quick questions, if I may, on the Chapter 1. The
13 first goes to Section 3(b). And it's -- there are -- three
14 additional days are added to any specific time frame that
15 is less than 11 days. And it's very clear what it's
16 saying. I'm just kind of curious why. Why not just make
17 it 13 days?

18 MS. MORRISSEAU: Mr. Dinsmoor, so the three
19 days --

20 BOARD MEMBER CAHN: Can you get the
21 microphone --

22 MS. THOMPSON: There's no way they heard
23 that. So when you're speaking, can you --

24 MS. MORRISSEAU: I can rephrase the
25 question. So Phil Dinsmoor from the Land Quality Advisory

1 Board had a question on Chapter 1, Section 3(b) about the
2 addition of three days, whenever something had to be done
3 within a time period of under 11 days, and his question was
4 why can't you just increase it to 13 days or 15 days? Why
5 would you have something that says you get an extra three
6 days? Why not just give the extra three days and leave it
7 at that?

8 And the addition of three days is consistent with
9 Federal Rules in terms of how timing is calculated. So
10 that is the thought behind adding that language. I
11 understand your concern that it seems to be a little bit
12 less than common sense, but that's the kind of federal time
13 calculation approach when you have those short time lines.

14 BOARD MEMBER DINSMOOR: Okay. Thank you
15 very much. Is that better?

16 MS. THOMPSON: That's great.

17 BOARD MEMBER DINSMOOR: Question Number 2
18 is perhaps just an editorial. But in Section 6, it starts
19 out with the sentence, Members of the shall recuse
20 themselves. I think the word "Council" needs to be
21 inserted there.

22 MS. MORRISSEAU: That looks like a
23 typographical error, and we will make sure that is not in
24 the rules when they go before the Council.

25 BOARD MEMBER DINSMOOR: Okay. And my last

1 question is, as the Land Quality Advisory Board, I know we
2 are spending time listening to rules on the agreement state
3 for uranium, and early on you mentioned that this was being
4 done in concert with all the existing primacy agreements
5 with the State of Wyoming. And my question is: Are we
6 also looking forward and making sure that what we do with
7 the agreement state rules will be consistent here, or are
8 we going to have to revisit these once the agreement state
9 comes into being?

10 MS. LA: Board Member Dinsmoor, this is
11 Eva La. I'm the Assistant Attorney General, and I
12 primarily represent the uranium recovery program. So I can
13 address your question.

14 And to rephrase the question, it was Board Member
15 Dinsmoor essentially asked if as we go through the Rules of
16 Practice and Procedure today, are we accounting for the
17 uranium recovery program rules or are we going to have to
18 revisit those again once that program has stood up. And
19 the answer to that, Board Member, is that we have accounted
20 for the uranium recovery program rules. This is -- since
21 the uranium recovery program falls within Land Quality
22 Division, it -- these rules will apply to that, and
23 anything not accounted for -- I mean, everything practice
24 and procedurewise is accounted here, and any additional
25 requirements for primacy under that program is accounted

1 for in the uranium recovery program's own rules, which is
2 before the Land Quality Advisory Board.

3 BOARD MEMBER DINSMOOR: Okay.

4 MS. LA: Does that answer the question?

5 BOARD MEMBER DINSMOOR: It does. Thank you
6 very much.

7 MS. LA: Thank you.

8 CHAIRWOMAN BEDESSEM: Are there any other
9 questions from members of the Land Quality Advisory Board?

10 From the Air Quality Advisory Board?

11 BOARD MEMBER BROWN: No.

12 CHAIRWOMAN BEDESSEM: Water and Waste?

13 BOARD MEMBER APPLGATE: Hello. This is
14 Dave Applegate, representing industry on the Water and
15 Waste Advisory Board.

16 Could you again provide clarification on the
17 change from 60 days to 30 days in terms of appeal
18 notification under Section 8?

19 MS. MORRISSEAU: Sure. So in the prior
20 rules, there is a 60-day timeline before you could appeal
21 an action to the Council. And under the Wyoming
22 Environmental Quality Act, there is no guidance on what the
23 appeal timeline is before you go to the Council; however,
24 there's guidance under Wyoming Statute 35-11-1001 that
25 clearly says there's 30 days you have to appeal an action

1 to district court. And so the concern that we had was that
2 the 60-day timeline from the rules was not based in the
3 Environmental Quality Act and is inconsistent with the
4 timeline by which you can bring appeals to district court.
5 So the thought was to change the 60 days to 30 so that
6 there would be consistency with the time that you can go to
7 either Council or the district court.

8 This is consistent -- for example, this is kind
9 of how the EPA practices as well in terms of if you want to
10 challenge an action to the environmental appeals board or
11 if you want to challenge it to court, there's that similar
12 30-day window.

13 BOARD MEMBER APPELATE: Thank you.

14 In paragraph B of that section, again, just
15 clarification for me. It says within 30 days after
16 notification of the director's decision, and it has
17 the phrase "following informal conference governed by
18 Chapter 9, Section 2." I'm trying to understand, again,
19 the context that phrase following informal conference
20 version of Chapter 2 is for Surface Coal Mining Operations,
21 which is the title I see in Chapter 9.

22 MS. MORRISSEAU: That's right.

23 BOARD MEMBER APPELATE: So if you can help
24 me understand paragraph B. Does that refer to a subset of
25 appeals or all appeals?

1 MS. MORRISSEAU: So under SMCRA, there's a
2 specific type of informal conference that you can have with
3 the director before you would appeal action, either to
4 district court or to the Council. So the purpose of this
5 subsection is to clarify that in the event that there is an
6 action that results in an informal conference with the
7 director, when the director makes the decision after the
8 informal conference, that is what sets the timeline for the
9 30 days when you can appeal that action.

10 BOARD MEMBER APPLGATE: Is Section B,
11 though, referring to -- I mean, there can be other types of
12 appeals, right? This section applies to appeals for any
13 sort of permit conditions or whether it be a water permit
14 or air permit; is that correct?

15 MS. MORRISSEAU: That's correct.

16 BOARD MEMBER APPLGATE: So it just seems
17 a little unclear to me. Are you referencing that
18 Section 9, because you're saying that you can have
19 informal conference under any sort of permit scenario,
20 because, again, Section 9 seems to refer to surface mining
21 only? I'm trying to understand if there's informal
22 conferences apply to other permits.

23 MS. MORRISSEAU: Informal conferences are
24 just in the context of coal mining. So the -- essentially,
25 subsection B only applies to issues that relate to coal

1 mining permits. So for any actions that somebody would
2 want to contest, there's 30 days. Because for coal mining,
3 under SMCRA, there is this additional step of having an
4 informal conference. Section B provides the clarification
5 that if there's an action and a person goes to have an
6 informal conference with the director, they don't have
7 30 days from the action. They have 30 days from when the
8 director makes a decision after that informal conference.

9 BOARD MEMBER APPLGATE: Thank you for the
10 clarification. For me it was confusing that Section B,
11 which is under the general heading of Appeals, applies to a
12 specific condition which is surface coal mining informal
13 conference. So maybe it's just my lack of familiarity with
14 this particular part of the rules, but I found that
15 somewhat confusing.

16 It seems to me it should -- may not be a
17 subsection that is somehow referred to the fact that for
18 appeals related to surface coal mining, there's this
19 additional step.

20 I'm sorry. I have to come back one more time to
21 30 day 60 day. Is this rule change making less the number
22 of days available to a permit holder that they have in
23 terms of filing an appeal, meaning I'm trying to look at
24 the strikeout. Would -- would a former permit holder or
25 permittee now only have 30 days to file an appeal compared

1 to a previous 60 days or am I interpreting that
2 incorrectly?

3 MS. MORRISSEAU: Under the current version
4 of the rules an interested party would have 60 days to go
5 to the Council. And under the Environmental Quality Act,
6 you have 30 days to go to district court. There has never
7 been a challenge to the current rules that establishes
8 60 days to go to the Council. It is possible and entirely
9 unpredictable whether the 60-day timeline in the current
10 rules would be upheld. So we can say with certainty that
11 the Environmental Quality Act gives you 30 days to go to
12 district court. There's no clarity from the act about how
13 much time you have to go before the Council. So the answer
14 to your question is maybe. I'm sorry.

15 BOARD MEMBER APPLGATE: That's fine. I
16 think -- I'm not sure how strongly I feel about this, but
17 there is a sense that reducing time it takes for a
18 permittee to do an appeal to the Environmental Quality
19 Council, to me, is not necessarily a positive step in that
20 if one were going to appeal the decision by the director,
21 that obviously requires dialogue with folks like yourself,
22 attorneys, time to make the decision on whether or not one
23 wants to, you know, invoke that financial commitment. It
24 could be a technical review, especially if the permit is
25 complex, a RCRA permit or a surface water discharge

1 permits, those are rather complex.

2 So I think I'll just express my opinion, then,
3 although, from a purely legal perspective, it might be nice
4 to have dates lined up and be consistent from the
5 perspective of someone representing people that hold
6 permits and have, on occasion, desire to appeal permit
7 conditions to the Environmental Quality Council. I think
8 leaving 60 days in there for that to occur is perhaps a
9 better option, in my opinion. Thank you.

10 CHAIRWOMAN BEDESSEM: Additional questions
11 from board members? From anyone on the telephone? Any
12 board members on the phone?

13 BOARD MEMBER CAHN: Yes, Marge. This is
14 Lorie.

15 CHAIRWOMAN BEDESSEM: Lorie, go ahead.

16 BOARD MEMBER CAHN: Lorie Cahn from the
17 Water Waste Board. I had a little more hard time
18 hearing -- I had little bit of a hard time hearing Director
19 Parfitt's answer to the Powder River Basin Resource
20 Council's concern on Section 4(b) about saying the Council
21 may provide notice by posting through its website. And I
22 just want clarification that they -- posting to the website
23 is not the only posting done, that there's also -- in other
24 parts of the chapter, there's discussions and posting in
25 that -- or notifications in newspapers, et cetera.

1 So just would like some clarification on that.

2 Thank you.

3 CHAIRWOMAN BEDESSEM: Before you respond,
4 Director Parfitt. I would like to add a brief question,
5 hearing that.

6 These response to comments that you were
7 responding from, the document was posted on the Web on the
8 27th, but I notice a number of our board members do not
9 have that document. Are there any extra copies here that
10 you might provide the board members? That way -- so, for
11 example, you know, if Lorie's questioning something that
12 might have been in that document she might be able to
13 refer, you know, to that. But at least the other board
14 members should be able to see it. Thank you.

15 MR. PARFITT: Madam Chair, that -- can you
16 hear me all right?

17 CHAIRWOMAN BEDESSEM: Yeah.

18 MR. PARFITT: That's a good point. The --
19 because I was going to make the point that the responses
20 were in the document that was put on the Web; however, I
21 apologize that the board members do not have that.

22 And I don't know -- Lorie, do you have -- did you
23 see a copy of that, or can you access our website to see a
24 copy of that document that has the response of comments?

25 BOARD MEMBER CAHN: I will go on the Web

1 and see if I can find it. It will help if Gina could
2 quickly text me the exact location, would be great. I did
3 not know that there were comments posted on the Web, and
4 didn't receive copies, but I would be happy to print them
5 off and be able to refer to them.

6 MR. PARFITT: So, Lorie -- and that's what
7 we were talking about here. So apologies to you and the
8 rest of the board members for not having that in front of
9 you in advance. But I think everybody here had -- anyway
10 has a paper copy in front of them now, which should help
11 with clarification on some of the responses for those on
12 the phone, Gina give me the thumbs-up she was going to be
13 sending you the link to those comments on our website so
14 you'll have that shortly.

15 So, in response, and I'll go over this again
16 briefly, but I may look to Elizabeth to maybe elaborate a
17 little bit more on it for us but essentially we didn't
18 recommend any changes as a result of the comment, primarily
19 because the section was drafted specifically to address
20 notice requirements applicable to the Council for hearings
21 before the Council.

22 Section 4(b) is not related to and does not alter
23 any statutory or regulatory notice requirements applicable
24 to the department. So -- and I think the last part of it
25 was it doesn't preclude either the EQC or the Department in

1 future actions from using other mechanisms to get out
2 public information. So I think that was the crux of the
3 response there.

4 And, Elizabeth, did you have anything you wanted
5 to add to that?

6 CHAIRWOMAN BEDESSEM: Thank you, Director
7 Parfitt.

8 Do we have --

9 BOARD MEMBER CAHN: This is Lorie.

10 CHAIRWOMAN BEDESSEM: Go ahead, Lorie.

11 BOARD MEMBER CAHN: This is Lorie again.

12 So I guess my understanding, then, is that all the
13 requirements for a hearing before the Council, like having
14 the docket available for inspection on the website or
15 having public notification that those hearings -- those
16 all -- those things will all still continue. Is that --
17 because that's addressed separately, is that a good -- that
18 response?

19 MR. PARFITT: I think the response is that,
20 yes, those things can -- are still available, and it would
21 be up to the Council as to what other public distribution
22 methods that they want to utilize. So it doesn't preclude
23 them from doing that, so yes.

24 BOARD MEMBER CAHN: Director Parfitt, I
25 apologize, but I still need clarification. And maybe I'm

1 misinformed, is that the Council has other requirements
2 that are in effect, they have to put information on their
3 docket. They have to notice -- do public notice. Am I --

4 MR. PARFITT: Lorie, you cut out. I don't
5 know if you intended to stop speaking at that point, but it
6 sounded like you had more to say. Are you still there?

7 BOARD MEMBER CAHN: I'm still here. So my
8 question is -- my understanding is that the Council has
9 separate requirements for notice that they need to do, and
10 for instance, putting information in the docket, doing
11 public advertising of meetings, putting out notification of
12 the meetings. So, you know, doing public notice other than
13 what's on the website. So I just am trying to get
14 clarification that those other requirements that the
15 Council has doesn't change. This is just saying that in
16 addition they may provide the notice through its website.
17 So I'm a little bit -- I'm still confused on.

18 MS. MORRISSEAU: Lorie, this is Elizabeth.
19 Those requirements that exist from the Wyoming
20 Administrative Procedure Act are not changed in any way by
21 this section. This section comes from the uniform rules,
22 and it's -- it essentially says what has to be provided in
23 the notice that is put out by the Council related to
24 hearings. But in terms of other requirements, it doesn't
25 affect those. The purpose of this section is to take the

1 language from the uniform rules and use it so that it may
2 be applied both to contested case hearings and to
3 rulemaking hearings. Does that help provide the clarity
4 you're seeking?

5 BOARD MEMBER CAHN: Yes. Thank you.

6 And if I may go on, I just wanted to point out on
7 the section -- or line -- I'm on the -- let's see, Section
8 6, where the word Council was left out of the
9 redline/strikeout, in 185 and 186, it is in the clean
10 version. The word "Council" is in there.

11 CHAIRWOMAN BEDESSEM: Thank you, Lorie.

12 BOARD MEMBER CAHN: I had some questions on
13 why -- and then I had some questions as to a few things
14 that were left out that were struck out in this version of
15 Section 6, particularly B and C. B refers to the record in
16 the hearings shall include all relevant information
17 presented to the Council, and so I'm -- my first question
18 is why was that struck out? I guess we'll take them one at
19 a time.

20 MS. MORRISSEAU: Lorie, this is Elizabeth.
21 Bear with me while I kind of shuffle through pages here. I
22 am pretty sure that the reason that it was struck out is
23 because there's language in the uniform rules that
24 addresses it, and also because there is language in the
25 Wyoming Administrative Procedures Act that talks about what

1 should be in the record. So this information is,
2 essentially, superfluous.

3 BOARD MEMBER CAHN: Okay. And then for the
4 same thing for the old C, directly below it. The presiding
5 officer may afford all interested parties time in which to
6 submit additional written test -- so I'm just wondering if
7 there's some reason why that was struck as -- if I can -- C
8 was struck out. Thank you.

9 MS. MORRISSEAU: Again, Lorie, I am pretty
10 sure that the answer is that it was struck out because it
11 was put someplace else. And I'm -- if you give me just a
12 minute, I can find where that requirement is.

13 So in Chapter 1, Section 5, Record of Proceedings
14 subsection D, it says the Council shall make appropriate
15 arrangements to assure that a record of the proceeding is
16 kept pursuant to Wyoming Statute 16-3-107 (o) and (p). So
17 that's references to the Wyoming Administrative Procedure
18 Act. And that specific section of the Wyoming
19 Administrative Procedure Act talks about the general --
20 general procedures for contested case hearings. And
21 Section O -- if you want, I'll just -- I can just read this
22 out loud from the statute. So 16-3-107(o) reads, "The
23 record in a contested case must include: (1), all formal
24 or informal notices, pleadings, motions and intermediate
25 rulings; (2), evidence received or considered, including

1 matters officially noticed; (3), questions and offers of
2 proof, objections, and rulings thereon; (4), any proposed
3 findings and exceptions thereto; (5), any opinion,
4 findings, decision or order of the agency, and any report
5 by the officer presiding at the hearing."

6 And then Wyoming Statute 16-3-107(p), which is
7 the next section says "In all contested cases" -- and then
8 (p) talks about how testimony shall be recorded verbatim
9 and how things are transcribed.

10 Does that help you, Lorie, or are you still
11 concerned about the striking of the language, how at the
12 close of the hearing, interested parties -- is it that that
13 specific language is struck?

14 BOARD MEMBER CAHN: Yeah, just assurance.
15 Thank you for the assurance that that is covered someplace
16 else.

17 MR. PARFITT: So, Madam Chair, I just
18 wanted to add, you'll see in various parts of the changes
19 to the -- to the rule here -- and I think Lorie brings up a
20 very good point -- is that there are some areas where
21 language is struck. And recall that we're doing two things
22 here. One is to adopt the OAH uniform rules, but the other
23 is to follow the governor's direction to streamline our
24 rules, use less words and redundancy. And so if you
25 already have language that covers it, let's shorten up the

1 rules in the -- make sure that we're not duplicating
2 conditions. And so I think that's part of what we're
3 seeing here. So I thought that was just important to point
4 that out.

5 BOARD MEMBER CAHN: Thank you, Director
6 Parfitt.

7 So the next -- I have a minor comment on -- just
8 editorial for Section 8(c)(ii), and just -- it says, "The
9 persons requesting that relief shows..." So both persons
10 shows has an S at the end, so it just needs to be
11 consistent. It could be the persons requesting that relief
12 show or the person -- person requesting that relief show or
13 parentheses around the S, something. It's just a minor
14 editorial.

15 That's all the comments I have on this section.

16 CHAIRWOMAN BEDESSEM: I believe --
17 Mr. Applegate, do you have anything?

18 No? No additional comments?

19 I think, though, we'll go through the -- each
20 chapter and have discussion, but we may save corrections
21 until the very end. So we'll leave these for substantive
22 comments. If we've got additional grammatical, we'll
23 address those after public comment at the very end, in
24 the -- through the process of voting and so forth.

25 Are there any additional comments or questions on

1 Chapter 1? Hearing none, let's continue with the
2 presentation with Chapter 2, please.

3 MR. PARFITT: Madam Chair, I'll leave it up
4 to your discretion. I don't know if you wanted to take
5 this opportunity to see if there was any public comment
6 after each chapter, and then again at the end of the --
7 because it's a lot of information -- so just a suggestion.

8 CHAIRWOMAN BEDESSEM: That would be fine,
9 if you prefer to do those chapter by chapter. We can
10 certainly do that, if that would be appropriate.

11 Okay. So hearing no comments from the advisory
12 board at this time, we can accept any public comments there
13 may be with regard to Chapter 1. If you would like to
14 present comments, make sure you state your first and last
15 name before making a statement.

16 Are there any members of the public who would
17 like to enter any comments into the record regarding
18 Chapter 1?

19 I'm not hearing any, so I suppose we'll move to
20 Chapter 2. Thank you.

21 MS. MORRISSEAU: I'd like to introduce the
22 Deputy Director Alan Edwards, who is now going to be
23 sitting in for Director Parfitt now that he's left.

24 Can we go to the next slide?

25 So Chapter 2 are the rules for contested case

1 hearings. And so, again, the purpose of the changes to
2 Chapter 2 are to adopt as much of the uniform rules as is
3 consistent with the statutory requirements for the Council
4 and for the Department.

5 So I do want to make one caveat. Some of the
6 wording that is before you is slightly different from the
7 wording that is in the uniform rules. So when this rules
8 package goes to the Council, there might be some of that
9 word changing reverting. So in terms of the kind of the
10 grammatical questions, or I like this word over that word,
11 those things may change. Substantively this package is
12 what we hope to take to the Council after the Department
13 hopefully receives your recommendation at the end of it.
14 But I did want to clarify that because the directive from
15 the legislature is that the adoption of the uniform rules
16 must be verbatim. To the extent that there's some words
17 that are different here, they might change again to ensure
18 that they are the exact words that are in the uniform
19 rules.

20 Next slide, please. So I've identified some of
21 the reasons we have used language that is different from
22 the uniform rules that were propagated by the Office of
23 Administrative Hearings. Wherever there is section that
24 use general references to an agency or a referring agency,
25 we've changed those words to say Department or Council or

1 Boards, as appropriate, to provide that clarity. There's
2 some sections that were ambiguous. And because part of the
3 department -- the way the Environmental Quality Act is set
4 up to have all these different agencies interact and to
5 have citizens participate in the proceedings, to the extent
6 that there's portions of the rules that might be ambiguous
7 to a citizen practitioner, but would not be ambiguous to an
8 attorney, we've tried to make those changes to make sure
9 that these uniform rules, as used by the Department, comply
10 with the Department's requirement to be accessible to
11 citizens through the process.

12 And then there's some parts of the uniform
13 rules that are generally applicable, so we put them into
14 Chapter 1, as we've already discussed, so that they may be
15 used for hearings besides just contested case hearings.
16 And, again, that's part of streamlining rules.

17 And there's some portions we added additional
18 detail as well because of contested case hearing before the
19 Council has many specific things about it that are
20 different from a contested case hearing before the Office
21 of Administrative Hearings or before another body.

22 Next slide, please.

23 Alan, would you like to give an overview of the
24 public comments that were received on Chapter 2?

25 MR. EDWARDS: Yes.

1 Good morning, Madam Chairman. As indicated, my
2 name is Alan Edwards. For the record, A-L-A-N. I'm the
3 deputy director for the Wyoming Department of Environmental
4 Quality. In the director's absence, he asked me to sit in
5 and substitute on his behalf, so I'll try to do his -- his
6 confidence justice.

7 Chapter 2 had numerous questions. And I believe
8 more than the other chapters, so we'll go through those one
9 by one and the responses.

10 And as the director indicated, we -- with the
11 time and the effort that we spent to review this, and
12 public comments we received, we're very appreciative of the
13 time and effort that was put into that, and that will trend
14 through all the comments.

15 So Comment 10 from the entire package, it's the
16 first comment under Chapter 2 from the PRBRC. Section 3(a)
17 should require continuance motions for informal settlement
18 negotiations as well as more formal mediation and
19 arbitration.

20 We appreciate the comment and recommend adding
21 the following sentence at the end of Section 3(a). That
22 change is, "If the parties choose to engage in informal
23 settlement discussions, they may file a joint request for
24 continuance pending outcome of the informal settlement
25 discussions."

1 Comment 11 was common to both the PRBRC and the
2 Wyoming Mining Association relating to Section 4(a). The
3 comment was "and any other parties" in line 38 is vague.

4 While the Department appreciates the comment, we
5 do not recommend making any changes at this time. The
6 language is from the uniform rules adopted by OAH. As
7 mentioned above, these rules were proposed by OAH to
8 establish a common set of rules for practice and procedure
9 across all state agencies, not just DEQ.

10 Additionally, the clarity sought is actually
11 provided through Wyoming Statute 16-3-101(vi).

12 Comment Number 12 was from the Powder River Basin
13 Resource Council. Section 4(a)(i) should clarify that
14 service after the initial petition can be made through the
15 Council's electronic docket system, using the language from
16 Section 5(b).

17 The Department appreciates the comment, but
18 does not recommend making any changes at this time.
19 Section 4(a) relates to the commencement of a contested
20 case hearing and only discusses service of the initial
21 petitioner. Section 5(b) applies to all service
22 thereafter, and it would be redundant to repeat the
23 language from 5(b).

24 Comment 13, also from the PRBRC, Section 4(a)(ii)
25 should clarify what address to use for a permit applicant

1 because the organization sometimes uses the address of a
2 company's registered agent and sometimes uses the address
3 on a permit application and it would be easier to have a
4 definitive answer on what address is appropriate to use.

5 While we appreciate the comment, we, again, do
6 not recommend making any changes at this time. The law
7 governing whether a party has been properly served is case-
8 specific and regulations reporting to allow proper service
9 might not protect a person from a subsequent challenge to
10 improper service.

11 Comment 14, from the PRBRC, Section 4(a)(iii),
12 should be added to clarify that service should be to the
13 representative of a party, instead of a -- instead of to a
14 representative party.

15 We do not recommend making any changes at this
16 time to this section. The Wyoming Rules of Civil Procedure
17 make clear that when a party is represented by counsel,
18 service must be to the party's attorney. Additionally,
19 this is language from the uniform rules adopted by OAH, as
20 mentioned above, these rules were proposed by the OAH to
21 establish a common set of rules for practice and procedure
22 across all state agencies. In order to retain that
23 consistency, the Department does not recommend making any
24 changes at this time.

25 Comment 15 from the PRBRC, Section 4(a) and 4(c)

1 are inconsistent, and Section 4(c) should be deleted.

2 The Department appreciates this comment, but does
3 not recommend making any changes at this time. Section
4 4(a) describes how to file and serve an initial petition,
5 and Section 4(c) describes how to determine when a
6 contested case has commenced.

7 Comment 16, comment was common to -- with both
8 PRBRC and Wyoming Mining Association. Section 4(c):
9 Sixty days is too long for mailing to ensure service prior
10 to commencement of a contested case. PRBRC suggests an
11 alternative timeline of seven days.

12 The Department appreciates the comment and
13 recommends deleting Chapter 2, Section 4(c) in its entirety
14 and renumbering Chapter 2, Section 4(d) to Section 4(c).

15 Comment 17, from Klaus Hanson, on Section 7,
16 line 113, "recommended decision" is unclear.

17 The Department appreciates his comment, but does
18 not recommend making changes at this time. The language is
19 clear that the hearing officer makes the recommended
20 decision to the Council. This is language from the uniform
21 rules adopted by OAH. As mentioned above, these rules were
22 proposed by OAH to establish a common set of rules and
23 practice and procedure across all state agencies. And,
24 again, in order to retain that consistency the Department
25 does not recommend making any changes at this time.

1 Comment 18 from Klaus Hanson, on Section 7, line
2 134, biased or prejudiced is unclear.

3 While we appreciate the comment, we do not
4 recommend making any changes at this time. This is
5 language from the uniform rules adopted by the OAH. Again,
6 as mentioned above, these rules were proposed by OAH to
7 establish a common set of rules of practice and procedure
8 across all state agencies. In order to maintain that
9 consistency, the Department does not recommend making any
10 changes at this time.

11 Comment 19 from the Wyoming Mining Association
12 relating to Section 7(c)(ii): Concern that "interest" is
13 too broad, suggest including qualifiers to minimize
14 likelihood of parties stalling proceedings on frivolous
15 grounds.

16 Our response, the Department appreciates the
17 comments and recommend using uniform language developed by
18 OAH by making the following changes in line 127 under (ii),
19 "Has a material interest in the outcome of the action."

20 Comment 20, from the PRBRC, Section 7(d): In
21 some circumstances, an affidavit might be unnecessary to
22 support a motion for recusal, for example if publicly
23 available records such as websites could demonstrate a
24 conflict of interest.

25 The Department appreciates this comment, but does

1 not recommend making any changes at this time. This is
2 language from the uniform rules adopted by OAH. As
3 mentioned above, these rules were proposed by the OAH to
4 establish a common set of rules for practice and procedure
5 across all state agencies. In order to retain that
6 consistency, the Department does not recommend making any
7 changes at this time.

8 Comment 21, Klaus Hanson: Section 9, line 211,
9 contains a typographical error.

10 The Department recommends changing line 137 as
11 follows: If the -- strike "to" -- motion -- add "to" --
12 intervene is granted. So that would read, "If the motion
13 to intervene is granted."

14 Comment 22 from the PRBRC, Section 9(a) should
15 not allow motions to intervene to be filed at the hearing.
16 Instead, it should establish a deadline to ensure
17 intervenors can participate in discovery.

18 The Department appreciates the comment, but does
19 not recommend making any changes at this time. Although
20 there is benefits to inserting a deadline to ensure that
21 intervenors can participate in discovery, there are certain
22 instances where an interested party may not hear about
23 it -- a matter in advance of the hearing, and those parties
24 should not be barred from intervening due to late notice.
25 This is particularly true for 20-day hearings where a

1 neighbor or interested party might not hear about a
2 contested case hearing until the last minute. It is
3 crucial to the process that all interested parties be given
4 the opportunity to participate. The benefits of ensuring
5 that all timely intervenors participate in discovery do not
6 outweigh the cost of barring the participation of other
7 intervenors.

8 Comment 23 from the PRBRC, Section 9(a) should
9 describe how the petitioner and other parties may file
10 responses to opposition or in support of motions to
11 intervene, similar to Section 11.

12 The Department appreciates this comment, but does
13 not recommend making any changes at this time. Section 11
14 applies to all motions, including motions to intervene.
15 Therefore, the Department believes that no changes are
16 necessary.

17 To the court reporter. Am I coming across clear
18 enough?

19 Comment 24, Section 9(a) should refer to the
20 standards set out in Wyoming Rules of Civil Procedure Rule
21 24 instead of the phrase "legal right to intervene."

22 The Department appreciates the comments and
23 recommends changing line 197 as follows: "...intervene,
24 under the standards set out in W.R.C.P. Rule 24." It would
25 be the Wyoming Civil Procedures Rule 24, but for the change

1 it is abbreviated to W.R.C.P.

2 Comment 25 from Klaus Hanson, Section 22, line
3 429 contains a typographical error.

4 The Department appreciates the comment, but does
5 not recommend making any changes at this time. This is not
6 a typographical error. The language means that a case will
7 be heard as an expedited hearing, which is a type of
8 contested case. This is language from the uniform rules
9 adopted by the OAH. As mentioned above, these rules were
10 proposed by the OAH to establish a common set of rules for
11 practice and procedure across all state agencies. In order
12 to retain that consistency, the Department does not
13 recommend making any changes at this time.

14 To the board members here, I'd like to mention
15 that those two comments have been included in several of
16 our responses, so you've heard them before, but in order
17 for the transcript to be full and complete, I'm including
18 those as part of each one of our responses. So bear with
19 me on that.

20 Comment 26 from the PRBRC, Section 22 should not
21 use the word "expedited" because that term implies the
22 hearing will be prioritized over other hearings. Instead,
23 Section 22 should use the term abbreviated, which is a more
24 accurate description.

25 The Department appreciates this comment but does

1 not recommend making any changes at this time. The
2 language was provided in uniform rules adopted by OAH. As
3 mentioned above, these rules were proposed by the OAH to
4 establish a common set of rules from practice and procedure
5 across all state agencies. In order to retain that
6 consistency, the Department does not recommend making any
7 changes at this time.

8 Comment 27, Section 22 should include the
9 applicable provisions of Wyoming Rules of Civil Procedure
10 Rules 56 and 56.1.

11 Uniform rules adopted by OAH include wholesale
12 incorporation of certain Wyoming Rules of Civil Procedure.
13 To provide the clarity requested by PRBC, the Department
14 recommends adding the following section to Chapter 2 in
15 between the current Sections 16 and 17 based on language
16 developed by OAH in their uniform rules. "Summary
17 Disposition, 12(b)(6), 52(c), 56.1, and 56 Wyoming Rules of
18 Civil Procedure apply to contested cases."

19 Did you get all those?

20 Comment 28, from Klaus Hanson, Section 25, line
21 468, question about effective date.

22 The Department appreciates this comment, but does
23 not recommend making any changes at this time. As
24 mentioned above, when incorporating something by reference,
25 under Wyoming Statute 16-3-103(h)(ii), all of the

1 referenced matter will be incorporated as they were in
2 effect on the date of adoption of these rules. By
3 providing a date, the Department is providing clarity as to
4 what rules are to be followed.

5 Comment 29, from the PRBRC, Section 25(a) should
6 incorporate discovery rules or specify which, if any, apply
7 to Section 15.

8 Our response is please refer to the Department
9 response 27 above.

10 Comment 30, PRBRC, Section 25(a) -- (a-b) should
11 not only incorporate the Wyoming Rules of Civil Procedure
12 in effect on July 1, 2016 because they are only amended for
13 good reason after much deliberation by bar and bench.

14 The Department appreciates this comment, but does
15 not recommend making any changes at this time. Under
16 Wyoming Statute 16-3-103-(h)(ii), all of the reference
17 matter will be incorporated as it was in effect on the date
18 of adoption of these rules. However, if the incorporated
19 matter is amended, the Department can update the
20 incorporations similar to the process the Divisions use
21 that directly incorporate certain requirements under the
22 Code of Federal Regulations.

23 Comment 31, Section -- from the PRBRC, Section
24 25(c) contains an incorrect link.

25 The Department appreciates this comment and

1 recommends changing the link in line 469 to -- okay. It's
2 [http://www.courts.state.wy.us/Documents/CourtRules/Rules/
3 Wyoming_Rules_of_Civil_Procedure.pdf](http://www.courts.state.wy.us/Documents/CourtRules/Rules/Wyoming_Rules_of_Civil_Procedure.pdf).

4 Would you like me to read that again?

5 Madam Chairman, that concludes the comments on
6 Chapter 2 and our responses. And I'm glad to move forward
7 because I think I need a break here. So thank you very
8 much.

9 CHAIRWOMAN BEDESSEM: Thank you, Deputy
10 Director Edwards.

11 Do we have any comments or questions from members
12 of the Air Quality Advisory Board?

13 BOARD MEMBER VICKREY: I'd have one
14 comment. I guess one needs --

15 CHAIRWOMAN BEDESSEM: Hold on. Let me pass
16 the --

17 BOARD MEMBER VICKREY: I can yell loudly.

18 CHAIRWOMAN BEDESSEM: Hit the button till
19 it turns yellow.

20 BOARD MEMBER VICKREY: Thank you. Doug
21 Vickrey.

22 My one comment is I guess one needs to really be
23 able to sit down and go through a law book to understand a
24 lot of what's going on here, because I certainly don't know
25 how to keep up with some of this stuff. But I'm going to

1 do my best. Still a lot of this, at least in my uninformed
2 mind, requires somebody with somewhat of a law degree to
3 keep in tune with what's going on. I appreciate what
4 you're doing, and I'm going to do the best I can to keep up
5 with this, but bear with me as we go on. I'm probably
6 going to have some really dumb-sounding questions.

7 MS. MORRISSEAU: I want to respond really
8 briefly to Mr. Vickrey. I want to say thank you, first of
9 all, for paying attention to all these things. And to the
10 extent that you can highlight anything from this language
11 that seems confusing to you, as a layperson, that's helpful
12 because, as I've said before, a lot of the wording from the
13 contested case chapter was what was promulgated by the
14 Office of Administrative Hearings, and the Department has
15 to adopt it to the extent that it doesn't conflict with
16 statutory requirements. But part of the statutory
17 requirements applicable to the Department and the Council
18 are that citizens participate in these hearings before the
19 Council.

20 So if you, as somebody who does not have a law
21 degree, finds some of this wording confusing, it's helpful
22 to us for you to identify that and say where it could be
23 more clear.

24 BOARD MEMBER VICKREY: Okay. Thank you.

25 MS. MORRISSEAU: Thank you.

1 BOARD MEMBER VICKREY: Thank you.

2 CHAIRWOMAN BEDESSEM: Any other questions
3 or comments from the Air Quality Advisory Board members?

4 BOARD MEMBER BROWN: No.

5 CHAIRWOMAN BEDESSEM: No?

6 Land Quality Advisory Board, any comments or
7 questions?

8 BOARD MEMBER DINSMOOR: Yes, ma'am. I
9 can't not have something to say, Madam Chairman. I have a
10 couple of -- two or three questions, if I may.

11 The first is in Chapter 2, Section 4(c). And
12 this is a provision that talks about contested case being
13 deemed commenced on the date the petition is filed. And it
14 talks about filing within 60 days, and was this a provision
15 that was addressed by Assistant Director Edwards?

16 MS. MORRISSEAU: This was addressed by
17 Deputy Director Edwards in response to a comment from both
18 PRBRC and Wyoming Mining Association. What each felt was
19 60 days was too long a time period to allow service before
20 filing. So the Department made the recommendation to take
21 out the language about 60 days and commenced -- contested
22 case is commenced when it's filed with the Council. And to
23 not include the language about 60 days.

24 The one thing to be aware of, however, is that
25 the contested case -- that they happen with reference to

1 the Wyoming Rules of Civil Procedure, and Rule 3
2 essentially contains the same language about service and
3 initiation of a case and 60 days. So to the extent that
4 this ever became a question, if there was something that
5 was filed with the Council and the person was unable to
6 serve the Department in 60 days, which would never happen,
7 then we would look to this. But it's, I think, not
8 problematic to take this language out.

9 BOARD MEMBER DINSMOOR: Then I guess the
10 question that I have: Are all parties required to wait the
11 full 60 days, giving people the opportunity to provide
12 service before the contested case officially commences?

13 MS. MORRISSEAU: As long as they're served
14 within 60 days, you don't have to. And you don't have to
15 wait before commencing.

16 BOARD MEMBER DINSMOOR: But would you have
17 to wait the 60 to see whether you're going to be served or
18 not? Is that -- I mean, nothing can move forward until all
19 the service is complete and verified, or 60 days, whichever
20 comes first.

21 MS. MORRISSEAU: Right. What has always
22 come first historically is the Department being served or
23 where there's a permit application -- where there's a
24 permittee, them being served as well because when it's
25 filed with the Council, then the person also has to serve

1 the Department. And if there's a company, also serve that
2 company. And there has not been a situation where the
3 Department has been unable to be served within 60 days. So
4 it's never been a live issue.

5 BOARD MEMBER DINSMOOR: Okay. So it is
6 service to the Department.

7 MS. MORRISSEAU: Uh-huh.

8 BOARD MEMBER DINSMOOR: Thank you.

9 Okay. The provision in Section 7(c), where the
10 word material was added to describe material interest in
11 the outcome of an action. Is material interest either well
12 understood within the profession or otherwise defined for a
13 layperson? That didn't help me any, but that's okay.

14 MS. MORRISSEAU: Sure. And that would be a
15 term that is understood. The reason to add the word
16 "material" before "interest" is, for example, if there was
17 a contested case hearing before the Council and there was
18 one Council member who a party felt was going to be really
19 nice to the other side, they might try and come up with an
20 idea and say I'm going to call this council member as a
21 witness for something that's unrelated to the issue at all,
22 but what they really want to do is take the council off the
23 case -- that member off the case.

24 And, again, that word "material" was in the
25 uniform rules, and the thought was let's take the

1 "material" out because you don't want to create the
2 situation where there's argument back and forth about
3 whether something is material. But the fact is, it
4 provides more clarity to keep that language in, and that is
5 what was promulgated by the Office of Administrative
6 Hearings.

7 BOARD MEMBER DINSMOOR: Okay.

8 MS. MORRISSEAU: The other thing is -- and
9 I apologize for not mentioning this earlier, but there is
10 another document that was in the back of the room, and I
11 believe was provided to the board members, but I'm no
12 longer a hundred percent sure, which is a document that
13 compares the uniform rules with the language that has been
14 put into Chapter 1 and Chapter 2. So if the board members
15 have seen this document -- and you can look through it, and
16 you can see where the specific language from the uniform
17 rules was put into the rules that we brought before you,
18 and you can see where there are some changes that were made
19 from those uniform rules.

20 BOARD MEMBER DINSMOOR: Okay. I have one
21 last question. Section 9, entitled Intervention. I guess
22 formerly 7(b)(v), if I understand this correctly. And it
23 talks about proceedings related to surface coal mine
24 operations --

25 THE REPORTER: I'm sorry. Surface coal --

1 BOARD MEMBER DINSMOOR: It's referenced to
2 surface coal mining operations, and with references to
3 filing for intervention. And my question is, does that --
4 I'm sure that you guys have checked that with regard to
5 consistency with primacy under the SMCRA. And as a surface
6 coal mine, I just want to make sure that's the case.

7 MS. MORRISSEAU: Absolutely. Our -- my
8 colleague, Andrew Kuhlmann, who represents the Land Quality
9 Division, was involved in working on these rules. And he's
10 happily not here today because he's on his honeymoon, but
11 before he left and during all of this process, he went
12 through the rules to ensure that there would be no
13 challenges to primacy with OSM.

14 BOARD MEMBER DINSMOOR: Okay. Thank you
15 very much.

16 CHAIRWOMAN BEDESSEM: Thank you.

17 Does the Land Quality Advisory Board have any
18 more questions or comments for the deputy director or the
19 AG's office on Chapter 2?

20 Thank you.

21 Water and Waste Advisory Board, are there any
22 comments or questions?

23 Anybody on the telephone that might not have
24 heard that request? Are there any comments from our long
25 distance participants? Hearing none --

1 BOARD MEMBER CAHN: Yes. This is Lorie.

2 Can you hear me?

3 CHAIRWOMAN BEDESSEM: We can hear you
4 perfectly. Go ahead.

5 BOARD MEMBER CAHN: Marge, can you hear --

6 CHAIRWOMAN BEDESSEM: Yes. We can hear
7 you.

8 BOARD MEMBER CAHN: Just to kind -- just to
9 further -- the gentleman from Air Quality Board earlier, I
10 would be happy to just say a couple of terms that I, as a
11 layperson, do not understand. It starts out on Section 9,
12 in the formerly Section 8. This one is easy for me to
13 guess. The word "movant" in the redline/strikeout version
14 that's on line 337, that one I can sort of -- I've never
15 heard it before, but I can assume that that's somebody who
16 made a motion is a movant. But then it starts to get more
17 complicated when I go to Section 10, when it talks about
18 ex parte, P-A-R-T-E, I have no idea -- I had to Google to
19 figure out what ex parte means.

20 And then Section 20, underline -- I'm on the
21 redline version, so it could be Section 20(a) on line 592,
22 it talks about surrebuttal, S-U-R-R-E-B-U-T-T-A-L. I know
23 what a rebuttal is, but I don't know what a surrebuttal is.
24 I might not be pronouncing it right.

25 And then on Section 21, line 603, I do not know

1 what a prima facie case is. That would be ones that I, as
2 a layperson, would have to pull up my -- pull up Google and
3 look them up if I wanted to understand.

4 CHAIRWOMAN BEDESSEM: Thank you, Lorie. Do
5 you have any additional comments or --

6 BOARD MEMBER CAHN: Those are all the
7 comments for me on Chapter 2. Thank you.

8 CHAIRWOMAN BEDESSEM: All right. So --
9 thank you.

10 AG's Office, will you address that?

11 MS. MORRISSEAU: Lorie, do you think that
12 the rules would be more clear if there was a definition
13 provided? The words that you've all identified have a
14 specific term of art, and those who are legally trained
15 understand what those mean, but if you feel as if the rules
16 would be more clear if those were added into the
17 definitions section or some more clarity, that's something
18 that could be done.

19 BOARD MEMBER CAHN: Yes, I do think that
20 would help somebody -- a layperson like myself. Thank you.

21 MS. MORRISSEAU: And Lorie, one other
22 follow-up question that I had based on that is the strike-
23 through and underline version of the uniform rules, do you
24 have that document? Yeah, did Gina email that out to the
25 board members? So you've got that?

1 You know, to the extent that you have looked
2 through it, if you see any places where there was word
3 changes that you find particularly helpful, if you could
4 identify that. And I'm not saying you necessarily have to
5 do that at this moment. I'm sure there's going to be a
6 break and it's something you could bring back later on in
7 the hearing, but there were some word changes that were
8 made to the language from the Office of Administrative
9 Hearings. And if you identify any of those changes as
10 specifically providing more clarity to someone who's not
11 legally trained, it would be helpful to identify that.

12 BOARD MEMBER CAHN: Let me just make sure I
13 understand -- let me just make sure I understand which
14 document you want me to look at on the break. It's the --
15 actually, I'll just ask Gina to say the name of the file.
16 I have five files here.

17 CHAIRWOMAN BEDESSEM: Lorie, she's
18 checking.

19 MS. THOMPSON: Okay. Lorie, it's -- okay.
20 Lorie, it's Gina here. I believe it's the first
21 attachment. It's 2014-1017-OAH-Chapter2withexplanation
22 ofchanges.pdf. And it's blue and red. It's very colorful.
23 But I believe it's the first attachment.

24 BOARD MEMBER CAHN: Okay. Maybe on a
25 break, Gina, somebody could just quick give me a quick

1 phone call because I actually looked at that document,
2 scanned it and am a little confused about what -- I need a
3 little more explanation that maybe somebody can just call
4 me at a break and I'll be happy to look at it.

5 And, Gina, you have my number in Canada?

6 CHAIRWOMAN BEDESSEM: Thank you, Lorie.

7 So let me just double-check here and make sure
8 there are no additional comments or questions regarding
9 Chapter 2 from any members of the advisory board.

10 BOARD MEMBER BROWN: None from the Air
11 Quality Board.

12 CHAIRWOMAN BEDESSEM: Okay. So now we'd
13 like to entertain public comment. Are there any members of
14 the public who would like to come and speak, have questions
15 or comments regarding Chapter 2 of the proposed rules
16 changes? I'm not seeing any volunteers.

17 So at this time, we've gone through Chapter 1 and
18 through Chapter 2. I think that is an appropriate moment
19 for us to take about a 10-minute break. So we're going to
20 break for 10 minutes and reconvene -- let's say 15. We'll
21 reconvene at 10 minutes after 11:00. Thank you.

22 (Hearing proceedings recessed

23 10:55 a.m. to 11:10 a.m.)

24 CHAIRWOMAN BEDESSEM: It's 11:10, so we'll
25 reconvene our proceedings.

1 We'd like to start off with handing microphone to
2 Deputy Director Edwards to follow up on some comments with
3 regard to the definitions -- the legal definitions. Hold
4 on one moment.

5 MR. EDWARDS: Thank you, Madam Chairman.
6 This is Alan Edwards. We received a couple of comments and
7 questions in the earlier discussion of the chapters, and
8 it's primarily about definitions and clarity.

9 At a suggestion from a couple of the others, I'd
10 like to offer a suggestion. As far as the definitions and
11 the comments about some items being unclear, it was very,
12 very appreciated, because the rules are intended to be for
13 all parties to the case. So the terms need to be
14 understood.

15 Now, the terms that were referenced, like the
16 ex parte and the others are terms of art that may not be
17 familiar. Rather than define those within the rules, and
18 have them promulgated, what I would like to suggest and
19 offer up is to develop a glossary of terms. We can put
20 these in there with the definitions. And that way if
21 during the course of future events other people have
22 questions or they'd like something defined, we can continue
23 to update that glossary. The challenge would be to find an
24 appropriate place to post that so it would be available.
25 But if -- if -- and I know Lorie, you're the one who most

1 specifically had questions on that.

2 As opposed to definitions would a glossary that
3 is made publicly available to everybody as possible suffice
4 for this purpose? It would seem much simpler than looking
5 to promulgate these definitions because I would doubt these
6 are the only definitions that people might need help with.

7 BOARD MEMBER CAHN: So that would be
8 acceptable to me. I don't know how the board members feel.

9 CHAIRWOMAN BEDESSEM: Any other comments
10 from the boards?

11 BOARD MEMBER BROWN: From my perspective, I
12 think that is a very good idea.

13 CHAIRWOMAN BEDESSEM: I think that way you
14 can have, as you said, a living document, whereas issues
15 come up, you can keep editing it so that it's up to date
16 and addresses items of concern. And I -- I recall at break
17 that Deputy Director Edwards said they might use the board
18 members as guinea pigs to put it on the Web to make sure we
19 can find it, locate it, so that it's available for anyone
20 who is utilizing the rules.

21 Thank you.

22 So I believe now we can move on to Chapter 3.

23 MS. MORRISSEAU: Chairwoman, before we
24 proceed I just wanted to respond to a comment that
25 Mr. Applegate had in our discussions about Chapter 2,

1 specifically about the 60-day timeline being changed to
2 30 days, and the concern about the workload associated with
3 making a decision about whether to file an appeal and
4 whether cutting off that timeline would be problematic.

5 And I just wanted to clarify that in an appeal,
6 the workload is not filing the initial appeal. The initial
7 appeal is really just putting a book mark in. It's putting
8 a placeholder in, and the actual workload comes later down
9 the line. So in terms of that, I just wanted to provide
10 that clarification.

11 CHAIRWOMAN BEDESSEM: Thank you very much.

12 MS. LA: Okay. Madam Chair, board members,
13 if it's okay with you, we can move on to Chapter 3. And
14 the overview of Chapter 3 is really rulemaking and
15 rulemaking procedures before the advisory boards as well as
16 the Environmental Quality Council.

17 And before I get to the slides up here, I think
18 it's important to first give an overview of the purposes
19 behind the revisions to Chapter 3. And those are twofold.
20 The first purpose is to really clarify the rulemaking
21 process. Given DEQ's -- given that the rulemaking process
22 for the Department of Environmental Quality is a little
23 different than other agencies, it's important to really
24 clarify through these rules how that process works. The
25 second purpose is really to update the rules of practice

1 and procedure with regard to rulemaking to be consistent
2 with our most current statutes under the Environmental
3 Quality Act, as well as the Attorney General's opinion that
4 was released late last year.

5 So I'll go into more detail about those two
6 prongs in a minute, but I want to first kind of give an
7 overview here on the slide of what exists in Chapter 3.
8 And these are really the key points in Chapter 3. And
9 there are rules governing petitions for rulemaking and how
10 that is done. There are rules governing preliminary
11 rulemaking within the department, so before it goes to the
12 formal rulemaking process under the Wyoming Administrative
13 Procedures Act. There's preliminary rulemaking hearings,
14 and, essentially, that procedure before you all, before the
15 advisory boards.

16 And one of the new points, which is important to
17 highlight, is there are rules now governing how to
18 assemble -- or provide for an administrative record when
19 developing rules. And that's kind of new, and I'll point
20 those out here in a couple minutes.

21 And then, finally, the rules in this chapter
22 cover rulemaking hearings before the Environmental Quality
23 Council.

24 So moving on to the next slide, please.

25 So really the big things we did with Chapter 3 in

1 terms of revisions is one of the first things is we added
2 definitions applicable to rulemaking. And I want to give a
3 little bit more information.

4 As you all know, the process for rulemaking
5 involving Department of Environmental Quality, as well as
6 the advisory boards and the Environmental Quality Council
7 is a little bit different than other agencies. Some of the
8 other agencies don't have this kind of multiple-step
9 process. So what we've done is, if you look at the actual
10 rules, either the clean copy or strike-through and
11 underlined copy, the definitions we added provided clarity
12 in terms of kind of defining what each step is. So we've
13 added a definition for initial -- to initiate rulemaking,
14 preliminary rulemaking and preliminary rule. And this
15 really encompasses everything that happens before you get
16 to the point where you're going before the Environmental
17 Quality Council or initiating from a rulemaking.

18 And then we've also created a definition for the
19 proposed rule, which then, you know, encompasses things
20 after the rules are filed with the Environmental Quality
21 Council. So we added these just to provide clarity
22 because, like other agencies, we have a multiple-step
23 rulemaking process as required by the Environmental Quality
24 Act. So that's one of the things we did.

25 And the other making that we did was clarified

1 the rulemaking process with regard to procedures. And what
2 that means is practice before the advisory boards -- we
3 better define that in the rules -- as well as practice
4 before the Environmental Quality Council. And as you
5 recalled earlier, Director Parfitt mentioned that wasn't
6 done alone just by DEQ. We actually had input from the
7 Environmental Quality Council and its attorney -- its
8 attorneys. So those were all incorporated.

9 And, finally, what we wanted to do was
10 incorporate the conclusions from the Attorney General
11 opinion, which was issued on September 8, 2015, on
12 rulemaking under the Environmental Quality Act. And what
13 that opinion really did was it had a bunch of information.
14 But of significance here with regard to the rule of
15 practice and procedure in Chapter 3, the significant
16 findings in that opinion dealt with initiating rulemaking
17 and petitions for rulemaking.

18 So in the Attorney General's opinion, it stated
19 that the Environmental Quality Council does not have
20 independent rulemaking authority. And then it also defined
21 the process that that rulemaking undergoes when a party
22 petitions the Environmental Quality Council. And just for
23 ease of reference, I'm going to say EQC from here on out.

24 And what the opinion stated was that because the
25 EQC does not have independent rulemaking authority, they

1 have to work, you know, in relation with the DEQ to
2 promulgate rules. So if a petition for rulemaking is filed
3 with the EQC, it has a couple of options. It cannot move
4 forward independently and alone, but what the EQC can do,
5 is it can refer rulemaking to the DEQ, and the DEQ can give
6 a positive recommendation, and then they can move forward
7 or they can deny the petition for rulemaking.

8 And because of those findings, what we did was we
9 had to incorporate those into the rules of the practice --
10 the rules of practice and procedure because also identified
11 in that opinion is the fact that the EQA, the Environmental
12 Quality Act had been revised a couple of times and the
13 rules of practice and procedure regarding rulemaking had
14 not followed those revisions. So essentially they were
15 kind of outdated, so the goal really was to update the
16 rules of practice and procedure Chapter 3 to be in line and
17 consistent with the statutes as they sit in their current
18 form.

19 So moving on to the next slide, please. And I
20 think there's kind of a little action there, I don't know,
21 Gina. Try to move forward. There's some kind of arrow.

22 Okay. So just to kind of clarify the process
23 with rulemaking. One option is that rulemaking be done by
24 the Department in their own accord, right? Or the
25 Department can receive a rulemaking petition. If that's

1 the case, they have to work with the EQC to initiate the
2 rulemaking process.

3 If you kind of move up to the next bullet point
4 in the area -- oops. Sorry. Go back. There's kind of
5 that little side arrow. Essentially what that means is
6 rulemaking can be initiated through the Council with the
7 positive recommendation of the Department, so accounting
8 for what I just explained to you all.

9 So then once that's happened, you have -- you
10 know, the Department goes through the rules. Then you have
11 to go through the applicable advisory board, like we're
12 doing today. And the advisory board has to approve that.
13 And then it kind of goes through -- then formal --
14 initiation of formal rulemaking begins, and that's where it
15 starts on the EQC level. And then there's a hearing before
16 the EQC on the actual rules. So this just kind of gives an
17 overview of the rulemaking process and how we -- we've
18 tried to incorporate this process into the rules to clearly
19 reflect -- to clearly reflect the process.

20 So in addition to those changes, some of the
21 other changes that Chapter 3 does cover as well is the
22 administrative record, which I mentioned earlier. And what
23 the rules provide for now is that prior to the rules going
24 to the EQC, DEQ must prepare an index of materials that
25 they reviewed in approving -- or kind of going through the

1 rulemaking process, and then open up those materials for
2 the EQC to review. And why we do that is because the EQC
3 kind of approves the rules based on what has happened
4 before. So what DEQ has done before and what has gone
5 before the advisory boards. So we want to make sure
6 there's administrative record and a clear paper trail as to
7 why the rules are where they are and how they came to be.
8 And so providing that information to the EQC is really
9 helpful. So that's kind of one of the new points within
10 Chapter 3.

11 Other than that, I think at this point, I'd like
12 to open it to Deputy Director Edwards for response to the
13 comments that we received from PRBRC, WMA and Mr. Hanson.

14 MR. EDWARDS: Thank you, Eva.

15 This is Alan Edwards again. I'd like to note for
16 the board members present here that the bulk of the
17 comments we received and the questions were on Chapters 1
18 and 2. At this point, there's only seven more public
19 comments that were made, four of which are on Chapter 3.
20 So the number of comments is a lot less going forward. I'm
21 just trying to give you a little ray of hope here.

22 But there were four comments on Chapter 3.
23 Comment 32, which is an item that Eva just touched on from
24 the PRBRC, there's general disagreement with the new
25 interpretation of the Wyoming Environmental Quality Act

1 that limits the ability of the EQC to independently respond
2 to a citizen proposed rulemaking, as PRBRC believes it
3 improperly takes away some of the EQC's important oversight
4 authority over DEQ. The recommendation was that all
5 rulemaking petitions be filed directly with the Department.

6 While we appreciate the comment, we don't
7 recommend making a change at this time. The Environmental
8 Quality Act is clear that only the Department may initiate
9 rulemaking. However, Wyoming Environmental Quality Act
10 does not expressly bar citizens from petitioning either
11 agency. So it is reasonable to interpret this statutory
12 gap to allow citizens to submit petitions to either or both
13 the Department or the Council. This reasonable
14 interpretation enables the Council to provide input to the
15 Department upon receiving and analyzing citizen petitions
16 for rulemaking, even though only the Department may make
17 the decision to actually initiate rulemaking. The
18 suggested alternative, to fill the statutory gap by wholly
19 barring citizens from submitting petitions to the Council,
20 seems unduly harsh.

21 Comment 33 also from the PRBRC. Section 3 should
22 clarify that the process before the Advisory Boards is the
23 same as the process before the Council described in Section
24 4.

25 The Department appreciates the comment, but,

1 again, does not recommend making changes at this time. The
2 processes before the boards and the Council are different
3 under the Wyoming Environmental Quality Act, necessitating
4 different procedural sections. The Wyoming Administrative
5 Procedures Act, Wyoming Statute 16-3-103(a)(i) is clear
6 that rulemaking begins upon notifying the Attorney General,
7 Secretary of State, and, if applicable, the Legislative
8 Services Office.

9 The Wyoming Environmental Quality Act is equally
10 clear that prior to this stage the Department must first go
11 before the relevant advisory boards and obtain a
12 recommendation to begin a formal rulemaking. This
13 statutory framework necessitates a definition of
14 preliminary rulemaking before advisory boards, which is
15 different from what occurs before the Council after the
16 Department has initiated rulemaking under Wyoming Statute
17 16-3-103(a)(i).

18 Comment 34, also from the Powder River Basin
19 Resource Council. Section 4(b) appears to give the
20 advisory boards veto power over the Department's rulemaking
21 authority, which could have serious implications for
22 primacy over regulatory programs.

23 The Department appreciates this comment. As you
24 know, the Department is very sensitive and alert to issues
25 that could affect primacy in the state of Wyoming, but we

1 do not recommend making any changes at this time. Under
2 the Wyoming Environmental Quality Act, the Department may
3 not initiate a rulemaking if the affected advisory boards
4 do not recommend the rulemaking. The language identified
5 as potentially creating challenges over primacy for
6 regulatory programs has actually been in the Wyoming
7 Environmental Quality Act for many years, and neither the
8 Environmental Protection Agency or the Office of Surface
9 Mining have ever identified this language as problematic
10 for primacy.

11 Comment 35 from PRBRC. Oh, I'm sorry. Chapter 3
12 had three questions. I was moving into Chapter 5. So I'm
13 missing my -- my cues here.

14 With that, Madam Chairman, there were three for
15 Chapter 3, and those are as described.

16 CHAIRWOMAN BEDESSEM: Thank you, Deputy
17 Director Edwards.

18 Do we have any comments or questions from the
19 advisory boards? Let's start off first with the Air
20 Quality Board.

21 BOARD MEMBER BROWN: Doug, any questions?

22 BOARD MEMBER VICKREY: No, I don't.

23 BOARD MEMBER BROWN: No questions from Air
24 Quality Advisory Board.

25 CHAIRWOMAN BEDESSEM: Thank you.

1 From the Land Quality Board?

2 BOARD MEMBER DINSMOOR: I have one.

3 Thank you, Madam Chairman. I'm Phil Dinsmoor
4 with the Land Quality Advisory Board.

5 My question really goes to the presentation
6 Eva made earlier. I was not aware, and I did not -- I
7 never caught this in the rules, either as they currently
8 exist or as they are proposed. But I think you said that
9 the Environmental Quality Council, if they were to receive
10 a petition for rulemaking, whether the Department received
11 it or not, you said the EQC could not move forward with
12 rulemaking without a recommendation by the Department. And
13 I concur with that, based on my understanding.

14 What I didn't realize is that the EQC could
15 independently deny a petition without an approval or a
16 recommendation from the Department. And I want to make
17 sure I heard that correctly. That sounds like something
18 new and something I never understood before, and I'm
19 wondering whether that's real. I shouldn't say it that
20 way.

21 MS. LA: Yes. Give me a second. Let me
22 pull up the exact language from the Attorney General
23 opinion so that I can read that to you verbatim so that
24 it's clear.

25 MR. EDWARDS: Eva, in the meantime.

1 In partial response to the question, under
2 Comment 32, that issue was raised by the PRBRC. And as in
3 our response, we acknowledge that citizen petitions could
4 be filed with the Council. The Council, however, could not
5 initiate the rulemaking. But under these rules, the
6 Council would have the ability to forward that to the
7 Department with an offer of advice or suggestions. But
8 only the Department can initiate the rulemakings.

9 So under that -- and Eva will read the specific
10 language -- it is my understanding that the Council cannot
11 approve or deny the citizen petition, but they can forward
12 it to DEQ for interpretation -- or with their advice for
13 the Department to determine if rulemaking is appropriate.

14 MS. LA: Kind of building on what Alan --
15 or Mr. Edwards has stated, the statutes providing for
16 this -- for this -- for the petition for rulemaking is
17 unclear, and that's the reason why the Attorney General's
18 opinion was issued. And so under the Attorney General's
19 opinion, it interpreted the language to say that, of
20 course, like you said, EQC can initiate formal rulemaking
21 independently. So given that, what are EQC's options,
22 right?

23 The first is it can just say no and deny the
24 petition, or like Alan -- or Mr. Edwards says, it could
25 forward the packet to DEQ. But, in any event, it has to

1 work with DEQ to move forward on rulemaking.

2 So it's kind of more of a lack of what the
3 statute says and filling in and interpreting what the
4 statute means, given EQC's powers and abilities under the
5 statutes for petitions for rulemaking and what that statute
6 doesn't say, really filling in that gap.

7 And to -- just to clarify. So your concern was
8 with the Council's ability to deny a petition for
9 rulemaking. And, yes, they can -- they can -- they have
10 two options, right? Because if they haven't gotten
11 approval from DEQ, they can deny the petition or they can
12 forward that petition to the DEQ to consider and then move
13 forward.

14 BOARD MEMBER DINSMOOR: So let me ask a
15 clarifying question, then. I have always interpreted the
16 initiated rulemaking to be either a yes/no option. And
17 what you're saying is there's a yes option to initiate
18 rulemaking, but the no option does not -- no, I'm saying
19 that backwards. There is no yes option for the Council
20 independently, but there is an independent no option for
21 the Council, an option to say, no, we will deny the
22 petition without going to the DEQ?

23 MS. LA: Yes, and the reason is is because
24 if there is no yes answer with the approval of DEQ, there's
25 only limited -- let me rephrase this better.

1 Your summary is accurate. The yes we can move
2 forward with rulemaking cannot be independently stated by
3 the EQC. It must be done in -- with a positive
4 recommendation from DEQ. Now, because of that reason, the
5 no options are limited, right? They can either say no,
6 we're denying the petition, or they can say, no, we're
7 denying the petition and referring it to DEQ for positive
8 recommendation. And so the nos are really because the yes
9 is limited. Is that -- is that helpful, unhelpful or
10 medium helpful?

11 BOARD MEMBER DINSMOOR: I'll take your word
12 for it.

13 MR. EDWARDS: If I may. This is Alan
14 Edwards. I'll pose the questions to the attorneys, which
15 is always dangerous thing to do, but if the petition were
16 to go to the Council, the Council says, No, we do not
17 accept this, is there anything that would bar that same
18 citizen petition from being filed with DEQ for evaluation
19 and interpretation by DEQ?

20 MS. LA: No. So the language under the
21 Attorney General opinion is that the -- that the Council
22 should forward that petition to DEQ for consideration, or,
23 in the alternative, there's nothing that stops a petitioner
24 from filing the petition with DEQ in the first place. So
25 it's not saying that that's a complete bar to rulemaking in

1 and of itself. It just has to -- there has to be DEQ
2 input.

3 BOARD MEMBER DINSMOOR: But then if the --
4 if the Council were to deny a petition without a
5 recommendation from the DEQ, and then the petitioner took
6 that petition to the DEQ, the Council -- the Council -- or
7 rather the DEQ can act without prejudice based on the
8 Council's previous denial. Is that correct?

9 MS. LA: Yes, but at the same time, you
10 have to keep in mind that DEQ also cannot go through the
11 entire rulemaking process alone. It has to have
12 concurrence with the Council. So it's a checks and
13 balances system. Neither agency can act alone, given the
14 grand scheme and overview of the rulemaking promulgation
15 process. They have to act together. So if EQC denies a
16 petition and then it's referred to the DEQ, DEQ's still
17 going to have to get approval from EQC in the end to
18 promulgate the rules.

19 So bear with me. I know it's a confusing
20 process, but it is a checks and balances system. Neither
21 agency can act alone, and both agencies need the other
22 agencies at the end of the day to promulgate a rule.

23 BOARD MEMBER DINSMOOR: Yes. My primary
24 concern, though, is that the DEQ, who has the obligation to
25 implement any primacy requirements, whether it be for an

1 EPA-related program or SMCRA-related program or, in the
2 future, an NRC-related program, that same obligation is not
3 given to the EQC. So the EQC could deny a petition for a
4 rule that the DEQ might believe, and they may be correct,
5 is absolutely essential to maintaining or furthering their
6 primacy obligations, and that would be a shame, for lack of
7 a better term.

8 So there's always that opportunity for DEQ
9 regardless of the Council's response to a petition, to
10 initiate the process, knowing that they have to go through
11 the Council ultimately, but they've now got a hurdle, and
12 that is to convince the Council this is, in fact, a
13 meaningful and necessary obligation.

14 MS. LA: Board Member Dinsmoor, you're
15 absolutely correct. And that has been, I guess, a
16 challenge from the very beginning. Nothing's ever changed
17 with that dynamic. And you summarized that perfectly.

18 And just for more clarification, the rules for
19 practice and procedure, the proposed one, the new changes
20 to Chapter 3, also provides that for any petitions for
21 rulemaking, the director of DEQ shall be copied. And in
22 addition to, you know, the Council, if they do petition the
23 Council.

24 MR. EDWARDS: Only one other point too.
25 The discussion has been about the Council and DEQ. And I'd

1 like to just circle back and point out the obvious is that
2 all that rulemaking goes through the advisory boards, as
3 well, for that input and recommendation before going to the
4 Council. So there's actually three steps in there, and
5 then independent review by the advisory boards before it
6 even goes to the Council.

7 BOARD MEMBER DINSMOOR: Understood. Thank
8 you very much.

9 CHAIRWOMAN BEDESSEM: Does that conclude
10 the questions and comments from the Land Quality Advisory
11 Board?

12 Okay. Any comments or questions from the Water
13 and Waste Advisory Board?

14 BOARD MEMBER APPLGATE: Just a couple
15 clarifications. They were along the same lines as yours.

16 I'm on line 105 through 107, same section the
17 other board member was commenting on. And I read that to
18 say that if the EQC -- this is just a clarifying question.
19 If the EQC is petitioned, they can deny, as it was just
20 noted. They can also redirect the petition to the
21 director, and the director can choose to ignore that,
22 correct?

23 MS. LA: Yes.

24 BOARD MEMBER APPLGATE: So really the
25 proactive rulemaking is in the hands of the director,

1 whereas the ultimate ability to deny rulemaking is in the
2 hands of the EQC, ultimately, in terms of final approval.
3 Would that be a fair reading?

4 MS. LA: Board Member Applegate, so -- kind
5 of.

6 BOARD MEMBER APPLEGATE: Ultimately a rule
7 can't be approved without the EQC's approval. So they
8 don't have the proactive ability to make rules, but they
9 have the ability in all cases to deny rules. And any
10 proactive ability to make rules always is in the hands of
11 the director, who, regardless of whether received by
12 petition or direction from the EQC, can decide
13 independently whether or not they want to do rulemaking.

14 MS. LA: Yes. Yes. However, essentially
15 both parties, both the DEQ and the EQC, can also deny the
16 petition for rulemaking.

17 BOARD MEMBER APPLEGATE: Okay. I had a
18 question regarding the authority of the advisory boards as
19 it relates to lines 182 through 184. As it reads, the
20 language says, "The Department may not initiate rulemaking
21 and submit a proposed rule to the Council for consideration
22 without first securing a recommendation to adopt the
23 preliminary rule from the affected advisory board." That,
24 to me, seems a little different than what we have operated
25 under historically, but maybe I'll ask another clarifying

1 question.

2 If there was an aspect of a proposed rule that
3 the advisory board did not approve, would we have to deny
4 the rule in its entirety to cause that rulemaking to stop,
5 or could we deny that rule in some part in what they would
6 be taking to the EQC?

7 MS. LA: So what's traditionally been done
8 before each of the advisory boards is if you -- if the
9 advisory -- that specific advisory board does not agree
10 with or does not like a certain portion of the proposed
11 rules, what traditionally has been done is the advisory
12 board refers it back to the agency to fix, and then once
13 DEQ fixes that, brings it before the board.

14 And practically speaking, it's because when you
15 initiate -- before you can initiate formal rulemaking
16 before the EQC, you generally want an entire package, not
17 just parts and pieces. So that's been the general
18 practice.

19 BOARD MEMBER APPELATE: I wouldn't say
20 that maybe is not the case in terms of -- I don't know the
21 general practice, what that means. There would be specific
22 examples that come to mind in the ag use water policy,
23 which was a very contentious policy that went through the
24 board multiple times, in which the board did not reach
25 agreement on certain aspects of the policy. We went back

1 to WDEQ. They did not agree with the majority of the
2 board, and went forward to the EQC with a rulemaking that
3 had aspects of that rulemaking that were inconsistent with
4 the board's advice. That may be fine. And in the past I
5 was under the understanding that the board was simply
6 advisory. So I'm just trying to understand, again for
7 clarification purposes, how this should be read.

8 CHAIRWOMAN BEDESSEM: I believe
9 Administrator Frederick would like to add some comments
10 with regard to this.

11 MR. FREDERICK: Thank you. Kevin
12 Frederick, Water Quality Division Administrator.

13 Just for clarification on Mr. Applegate's
14 example. My recollection is that the advisory board did
15 move to approve the rule before the EQC; however, requested
16 the memorandum provided as well that explains some concerns
17 of some of the advisory board members.

18 CHAIRWOMAN BEDESSEM: Administrator
19 Frederick, is that with regard to the more recent Water
20 Quality chapter? I think Mr. Applegate is referring to the
21 ag use policy, which predates that. Goes back several
22 years.

23 MR. FREDERICK: Oh, excuse me. Yes, I'm
24 referring to similar situation on our rulemaking Chapter
25 25, I believe. Thank you.

1 CHAIRWOMAN BEDESSEM: Okay.

2 BOARD MEMBER APPLGATE: My intent in
3 asking is really for clarification, not arguing one way or
4 the other. It's just -- I know in the past, at least our
5 advisory board, has not been in agreement with all aspects
6 of the proposed rule, and there was a decision made to take
7 that rule to the EQC. And in some cases the rule that was
8 presented to EQC actually reflected what would not have
9 been the will of the board, at least in certain aspects.

10 MS. MORRISSEAU: So just to have some
11 clarification. You mentioned something that was a policy
12 that went before the boards and then went to the EQC, or
13 was it a rule? Because the -- my experience with Air
14 Quality is that sometimes we will bring -- the division,
15 rather, will bring permitting guidance or things -- things
16 that aren't rules through the rulemaking process to ensure
17 that we have adequate public participation. But the end
18 partic -- the end product is not a rule. So is that --

19 BOARD MEMBER APPLGATE: Yes. So the ag
20 use policy actually had a lot of history, of which I cannot
21 remember all of it, because it was a policy I think the EQC
22 wanted to make into a rule, which, in the end, I think
23 became a policy. So it's pretty convoluted.

24 But I guess my question in particular, without
25 using that example as necessarily a governing event, is

1 does this phrase suggest that the rule, in its entirety,
2 has to be approved by the board in order to go in front of
3 the EQC?

4 MS. LA: So with -- I guess not knowing the
5 information about that specific example, answering your
6 question, the statutes for the advisory board, which
7 specifically is Wyoming Statute Section 35-11-114(b) says
8 that the advisory board shall recommend to the Council,
9 through the administrator and director, the adoptions of
10 rules, regulations and standards to implement and carry out
11 the provisions and purposes of this act which relate to
12 divisions and variances therefrom.

13 So I guess my brief answer to that is
14 substantively, yes, the advisory boards must approve the
15 rules before them -- before they go to the EQC. So I
16 can't -- I can't, unfortunately, advise on that specific
17 example. But according to the statute I just read, yes.

18 BOARD MEMBER APPLGATE: Your answer is
19 satisfactory.

20 And in the spirit of having a temperament similar
21 to the AG here and wanting to have the last word, I would
22 say that in the terms of the previous comment, which I've
23 had more time to think about, the 60-day, obviously
24 attorneys don't have to have the entire brief prepared, but
25 in order to make the decision of whether or not you wanted

1 to appeal, you have to go through some analysis of whether
2 or not you think you can win on the merits. And if one
3 looks at a permit like a RCRA permit, which could be
4 multiple hundreds of pages, it can still take a fair amount
5 of analysis with engineers and attorneys to determine
6 whether or not one wants to put in what could be maybe just
7 a notification of appeal. So I appreciate the fact that
8 you wouldn't have to have a full brief, but you still would
9 have to have some analysis to give you some sense you might
10 win on the merits before you go down that road.

11 But feel free to have the last word.

12 CHAIRWOMAN BEDESSEM: Thank you, Dave. I
13 realize that last comment referred to Chapter 1, for the
14 record.

15 BOARD MEMBER APPLGATE: Yes.

16 CHAIRWOMAN BEDESSEM: I believe we have
17 some additional comments here.

18 BOARD MEMBER DINSMOOR: Thank you, Madam
19 Chair.

20 Phil Dinsmoor with the Land Quality Advisory
21 Board.

22 I wanted to follow up on Board Member Applegate's
23 comment because I am aware of instances in the past where
24 advisory boards have passed a rule on to the Council and
25 there was protracted discussion about provisions of the

1 rule, and maybe the advisory board didn't ultimately agree
2 with a specific piece or part of that rule, but they passed
3 it on anyway, and they passed it with a recommendation that
4 along with the rule that the record from the advisory board
5 meeting be presented to the Council also. So they could
6 see what that concern was, which I think begins to get
7 at what your concern was. And I know that from, actually,
8 a previous stint I had on the Air Advisory Board. So I
9 think there's a way to get that done and still move the
10 process forward.

11 MS. LA: Board Member Dinsmoor, and that's
12 a great point, kind of going back to what I discussed
13 earlier about the administrative record and the index of
14 materials. That's another reason why is because EQC also
15 has an opportunity to decide on those matters. So it's
16 important to have the discussion from the advisory boards
17 below.

18 CHAIRWOMAN BEDESSEM: To make an additional
19 comment about that, I think this is with regard to what
20 Administrator Frederick was bringing up. My recollection
21 from when the Water and Waste Advisory Board recommended
22 adoption of I believe it was Chapter 24 --

23 MR. FREDERICK: 25.

24 CHAIRWOMAN BEDESSEM: -- 25.

25 I recall you saying that you would not go through

1 that again. That the advisory board sending it to the
2 Council with a whole bunch of memorandum of caveats,
3 basically, did not work out as far as an efficient way to
4 do the rulemaking because it ended up coming back to the
5 advisory board; is that correct?

6 MR. FREDERICK: Thank you, Madam Chair.
7 That was a rather unusual rulemaking exercise. First, in
8 my memory were DEQ had been asked to essentially identify
9 some specific issues of concern, certainly of the advisory
10 board members, in a memorandum that we would attach to the
11 draft rule that the board had approved and moved before the
12 Council.

13 And, again, I think to the point that was
14 previously made, a transcript is available with the draft
15 rule that's moved from the advisory board to the Council.
16 And certainly I think in this case, Council would have had
17 the ability to review the issues of concern that the
18 advisory board asked us to essentially articulate in a
19 memorandum attached to the draft rule.

20 And I guess personally, in retrospect, I think it
21 was perhaps a little confusing when the board -- excuse me,
22 when the Council received that, and may have -- seemed to
23 suggest that, yes, there was an approval by the board, but
24 it was a reluctant approval. And I think I would certainly
25 question whether or not that's the appropriate path to

1 take, if I were asked to do that again. So I would consult
2 with the AG's office, I think, in that case. Thank you.

3 CHAIRWOMAN BEDESSEM: Thank you,
4 Administrator Frederick.

5 MR. EDWARDS: In light of that, if you
6 don't mind, what I would like to do is -- Director Parfitt
7 is more directly familiar with that. When you break for
8 lunch, assuming you will at some point here, I will check
9 with him as well and provide some additional clarification
10 on that matter.

11 CHAIRWOMAN BEDESSEM: Okay. Thank you. We
12 still have a few additional comments. I have a couple
13 additional comments. And Ms. Cahn might as well.

14 On I guess in the -- underline/strikeout copy, on
15 page 3-4 -- so in the list of materials that the Department
16 would provide to the advisory board for their review in
17 this -- as they're doing their preliminary rulemaking, I
18 don't notice any Statement of Principal Reasons. And so
19 I -- I guess I wanted to know if we're moving away from
20 doing any SOPRs and just moving to basically PowerPoint
21 presentations of the basis for -- the reasons why we're
22 doing the rulemaking and going through those explanations.
23 So if you would kind of elaborate on that, I would surely
24 appreciate it.

25 MS. LA: Madam Chair, with regard to the

1 Statement of Principal Reasons, that's generally a
2 requirement with regard to formal -- initiating formal
3 rulemaking before the Council. I believe that it's been
4 practice to provide those to the advisory boards for a
5 helpful clarification or additional information and
6 assistance.

7 Certainly, what's stated here in the rules is not
8 limited. DEQ and the different divisions can choose to
9 provide additional information to the advisory boards if it
10 is helpful or of use when considering the proposed rules.
11 So I guess it just depends. If the specific board prefers
12 having Statement of Principal Reasons provided, in addition
13 to all this information, they can certainly request that
14 from DEQ. And these rules don't prohibit that information
15 being provided.

16 And my colleague here indicates that they would
17 probably keep on providing it to you regardless of what the
18 rules say. I think the thing to note is that the rules of
19 practice and procedure isn't a limited list or an
20 exhaustive list. There can be additional information
21 provided.

22 CHAIRWOMAN BEDESSEM: So what you're saying
23 is we can still ask to have the SOPR provided. Because I
24 think it's helpful, not only for the advisory board members
25 to understand what's being presented, but also for us to

1 see what's going to be carried forward to the Council
2 because that document will go to the Council.

3 MS. LA: Absolutely. The Statement of
4 Principal Reasons and any other additional information
5 which that individual advisory board thinks would be
6 helpful to assist its determination.

7 CHAIRWOMAN BEDESSEM: Because the way the
8 rules say, it's any additional materials the divisions
9 believe are necessary. Doesn't say the advisory boards
10 believe are necessary. So I'm assuming that that's just
11 kind of part and parcel of this agreement, that that should
12 be requested, that would be provided.

13 MS. LA: Your point is well taken. And we
14 have a couple options. We can add language to say that the
15 divisions believe are necessary, and the advisory board
16 believes is necessarily helpful. So we can make that
17 change.

18 And the other thing to keep in mind is kind of
19 going back to Board Member Applegate's question is the
20 division has to go through the advisory board and get
21 approval. So, obviously, the divisions want to help the
22 advisory board as much as possible with that information.

23 So I'll leave it to you. If you want to propose
24 a suggested change, I think that's definitely an option.

25 CHAIRWOMAN BEDESSEM: I'd prefer it said

1 any additional materials the divisions and advisory boards
2 believe are necessary to explain the content of the
3 preliminary rules, so that we feel we have a little bit of
4 say in what -- in what's provided.

5 The other question I had is in part (b), when it
6 says so if we have a preliminary rulemaking hearing the
7 advisory board does -- and we have a couple of choices
8 about what the conclusion is at the end of that meeting.
9 And subset (i) here says "Schedule a special meeting or
10 additional public hearing to further discuss the
11 preliminary rule." So oftentimes we'll extend the public
12 comment period to the next advisory board meeting. And so
13 I'm curious as to why this says schedule a special meeting.
14 I mean, we can just schedule another meeting to address the
15 rulemaking. And I wasn't sure what "special" had to do
16 with anything.

17 And then whether the additional public comment
18 time period, whether that's covered by the language here
19 that says additional public hearing because oftentimes,
20 like I said, we'll just kick it to the next quarterly
21 meeting. It's not really a special meeting. It's just our
22 next meeting. And then we might extend the public comment
23 period to that time. And I want to make sure this language
24 covers what we traditionally do.

25 MS. LA: So the Environmental Quality Act

1 provides that the advisory boards shall meet a certain
2 minimum time. The special meeting, the answer to your
3 first question, is just that if that individual advisory
4 boards would like to convene and meet to discuss something
5 that maybe you didn't have time for, wasn't covered in one
6 of its regularly -- quarterly meetings, or whatever, that
7 they can have that opportunity.

8 Now, with regard to public notice and comment,
9 any time a meeting is held, whether it be a special meeting
10 or a regularly scheduled meeting, those meetings are still
11 subject to the public notice and comment requirements. So
12 in your case, in terms of holding the public comment notice
13 period, I believe that's sufficient, if it covers the
14 30 days or whatever's required by the statutes.

15 But if you're holding a -- and maybe -- and I
16 don't know what exact situation you're talking about, but
17 as long as your public comment period and notice covers the
18 time frame that it's required to do under the statutes for
19 that meeting or that special meeting, then you're okay.
20 You still have to -- I guess bottom line, you still have to
21 comply with the public notice and comment requirements for
22 any meetings that you hold where there is a quorum.

23 CHAIRWOMAN BEDESSEM: Can we extend the
24 public comment period an additional 30 days, but our public
25 hearing might not be, you know, until the next quarter,

1 whatever, but just allow us to extend the public comment
2 period?

3 MS. LA: Yes. There's no maximum time on
4 the public comment and notice requirement. I think there's
5 a minimum, but no maximum. So you can hold that open as
6 long as you like before the next meeting.

7 CHAIRWOMAN BEDESSEM: So my question,
8 basically, was does item (i) include that option for us to
9 just extend the public comment 30 days? There's nothing we
10 do with an actual meeting?

11 MS. LA: Yes. Yes. And the reason is
12 because those -- the requirements for public comment and
13 notice is separate statutory requirement that applies
14 regardless of these rules, so yes.

15 CHAIRWOMAN BEDESSEM: Okay.

16 MR. EDWARDS: Also, if I may. To me, the
17 operative words are at the conclusion an advisory board
18 may. So it's your option if you feel there's sufficient
19 urgency, you have the option to call a special meeting.
20 But as past practice, if the board's decision is to defer
21 it to the next meeting and is regularly scheduled, you
22 would have your notice and your posting requirements that
23 would -- would go along with that meeting.

24 But you have a minimum number of meetings, as was
25 identified, that you are required to hold. You're not

1 prevented from having others, should the circumstance
2 arise. So what I see is this just gives the boards that
3 option. But knowing how valuable and how stretched
4 people's time is, if the boards were to elect to go to the
5 next meeting, that is the discretion of the advisory board.
6 So the word is "may."

7 MS. THOMPSON: Can I add something here?

8 Gina Thompson with the Water Quality Division.

9 I believe the example that Chairman Bedessem is
10 pointing to you is occasionally at the end of a rulemaking
11 presentation to the advisory board, the board votes to not
12 necessarily promote the rule to the Environmental Quality
13 Council, but they will, on the record, note that they are
14 going to hold open the comment period. And, generally, in
15 the public notice, the comment period coverage notes that
16 it will be closed at the end of advisory board meeting.
17 But if the board votes to extend that for an additional
18 30 days, then the division complies with that. And I
19 believe Chairman Bedessem just wants to make sure that
20 they're not prohibited from doing that by this little -- by
21 (i).

22 CHAIRWOMAN BEDESSEM: Thank you, Gina. You
23 said that perfectly.

24 MS. LA: Absolutely not. You can state
25 after your meeting that you will hold the public comment

1 period open longer. And if there are comments, you could
2 essentially -- well -- and that's a tricky part because if
3 you've approved the rules, but held the public comment --
4 no, you haven't approved the rules. You just held it open?

5 CHAIRWOMAN BEDESSEM: Right.

6 MS. LA: Then you're fine. You can do
7 that. Just, if it's helpful, one of the things that Land
8 Quality Advisory Board is doing, which may shed light on
9 this, is, for example, uranium recovery program, since
10 we're trying to obtain primacy over a brand-new -- a
11 brand-new program takes, obviously, a lot of rules. And we
12 have about 9 to 10 chapters. And the Land Quality Advisory
13 Board has had to hold special meetings to cover all that
14 material, I believe, or will have to hold. At each one of
15 those meetings there's still public comment, public notice.

16 CHAIRWOMAN BEDESSEM: But, essentially, I
17 can also rely on Deputy Director Edwards' statement that
18 there's a "may" in here, so we have other options. It
19 doesn't have to be one of these three things. So if we
20 decide to extend public comment 30 days, that that may be
21 acceptable as well.

22 MS. LA: Absolutely. As long as you meet
23 the minimum requirements of the statutes, this doesn't
24 prohibit the advisory board from doing anything else.

25 CHAIRWOMAN BEDESSEM: Thank you very much.

1 Other additional comments from other members of
2 the Water and Waste Advisory Board?

3 Anybody online? Ms. Cahn?

4 BOARD MEMBER CAHN: Yes.

5 On the line you were just talking about, I was
6 confused about what is a special meeting, as opposed to an
7 additional public meeting. So we -- our advisory board
8 will typically refer to things as a public hearing with
9 accepting additional public comment, and in the meeting
10 where we're going to discuss the rule in detail, but we're
11 not accepting public comments, the public comment period is
12 closed. I'm just a little bit confused on the language of
13 what is meant by special meeting. And if, instead, we
14 could just re-word it as scheduled and additional public
15 meeting or period to further discuss the preliminary --
16 that might clarify.

17 MS. LA: So Board Member Cahn, to answer
18 your question with regard to the special meetings, that's
19 actually an option that the advisory -- advisory boards
20 have pursuant to statute. And Wyoming Statute Section
21 16-4-405(b) governs how special meetings can be called. So
22 it's actually a tool in your toolbox that you can use to
23 address anything in which you haven't had time to cover in
24 your regularly scheduled meetings or the meetings which are
25 required -- that each advisory board is required to have at

1 a minimum under the Environmental Quality Act.

2 So essentially, Board Member Cahn, a special
3 meeting is any meeting above and beyond or outside what
4 you're required to hold under the statutes. And
5 unfortunately, I wouldn't recommend that the board change
6 that language in the rule because it is a special tool that
7 you have pursuant to the Wyoming Administrative Procedures
8 Act, and it's one that the advisory boards utilize, so --

9 CHAIRWOMAN BEDESSEM: Thank you.

10 Lorie, do you have additional comments?

11 BOARD MEMBER CAHN: Yeah. So I would just
12 request that on this glossary sheet, perhaps we can include
13 a definition of special meeting so somebody like myself
14 understands it. That would be one thing.

15 And I think we also have an additional option,
16 but maybe, perhaps, since Deputy Director Alan [sic] has
17 said that we don't need to list all the options, maybe we
18 don't. But I think an additional option that we do have is
19 to have the additional public meeting where we aren't
20 taking comments but we're continuing a discussion.

21 MS. LA: Board Member Cahn, I think that's
22 definitely something we can add to the glossary. And then
23 you're right in terms of following up with Deputy Director
24 Alan's [sic] comment that you have additional options to
25 hold additional meetings.

1 MR. EDWARDS: And I might have missed the
2 specifics of your point, but to me, and I'll rely on the
3 attorneys for definition, but the options that the board
4 has is a special meeting that's outside your regularly
5 scheduled meetings or an additional public hearing. To me
6 additional public hearing implies additional testimony with
7 the required noticing, so under the ability to actually
8 hold an additional public hearing would seem to imply the
9 opportunity for further public input. So I'm not so sure
10 that additional definition, either in the glossary or
11 within the rule would -- would be helpful, because
12 basically I think the terms that you use there are -- are
13 defined to provide that opening and opportunity.

14 MS. LA: And Deputy Director Edwards is
15 correct in that even if you are holding a special meeting
16 or say a public hearing, you're still required to follow
17 and abide by the Public Meetings Act, which requires notice
18 and public comment as a rule. So that's a very good point.

19 BOARD MEMBER CAHN: Yeah, I'm --

20 MS. LA: I'm sorry. I misstated. Not --

21 BOARD MEMBER CAHN: I think I'm asking
22 something different than you're talking about. I'm talking
23 about --

24 MS. LA: And Board Member Cahn, just to
25 clarify. So public -- the public hearings is governed by

1 the Open Meetings Act, which still provides for public
2 notice, but not necessarily public comment. But for
3 rulemaking, there is public comment. Sorry. Just to
4 clarify that.

5 BOARD MEMBER CAHN: Okay. So what I'm
6 talking about on -- and you broke up just a little bit, so
7 I may have missed what you said. But what we sometimes do
8 is have at a regularly scheduled meeting, continue
9 discussion -- continue an item to the next regularly
10 scheduled board meeting but not allow public comment at
11 that meeting. It would be just board comment and
12 discussion with DEQ. And so that, to me, is different. I
13 see public hearing being different from public meeting or
14 public hearing. The word "hearing" implies you're hearing
15 comments from the public, whereas a meeting, not
16 necessarily taking public comments. But all of our
17 meetings are public and are properly noticed to the public
18 and open to the public. So I don't know if that helps to
19 clarify what we sometimes --

20 CHAIRWOMAN BEDESSEM: Sorry. Lorie, you're
21 just trying to say to cover everything, we've got special
22 meeting, regular meeting, additional public hearing or are
23 we covered because we have the option that we do more
24 things than are on this list?

25 BOARD MEMBER APPLGATE: Lorie, I think

1 we're seeking clarification, so let me try it as well.

2 Lorie's talking about what she would consider to
3 be a regular meeting that was not a public hearing. So it
4 would be a special meeting, it would be a public hearing,
5 or it would be just continued to talk about it. So I think
6 your question is do we need to say that or is that covered
7 by the language that's there?

8 MS. LA: I mean, I think we believe that
9 it's covered, but if the boards feel more comfortable, we
10 can definitely entertain some additional language which may
11 clarify it better. And we can propose some extra language
12 after we meet -- after we convene after lunch, if that's
13 helpful.

14 CHAIRWOMAN BEDESSEM: Let's do that. Thank
15 you.

16 BOARD MEMBER CAHN: Can I -- can I just add
17 a clarification before we -- before we break --

18 CHAIRWOMAN BEDESSEM: Yes.

19 BOARD MEMBER CAHN: -- of what I'm looking
20 for?

21 On page 230, Section 5, line -- on the
22 redline/strikeout, it's Section 5(a)(iv) so required -- the
23 Department is required to file the following with the
24 Council, and that's record of any public hearings. And I
25 think we have records of public meetings as well. And so

1 I'm kind of looking for -- I think it's an important
2 distinction between public hearing and public meeting. All
3 those things we need the record to be filed with the
4 Council.

5 MS. LA: Board Member Cahn, your concern is
6 well noted. And we will definitely, over the lunch break,
7 draft up some language and propose it to the advisory
8 boards for consideration that will help clarify your
9 concern with regard to the distinction between a public
10 hearing and a public meeting.

11 CHAIRWOMAN BEDESSEM: Thank you.

12 We want to make sure the record that goes to the
13 Council includes the deliberations from the Advisory Board
14 at meetings that may not necessarily take public testimony.

15 MS. LA: Uh-huh.

16 CHAIRWOMAN BEDESSEM: Thank you.

17 Any additional comments, Lorie?

18 BOARD MEMBER CAHN: Marge?

19 CHAIRWOMAN BEDESSEM: Yes.

20 BOARD MEMBER CAHN: Yeah, just one
21 additional. I think you just covered in this list in
22 Section 5(a), I think the minutes of advisory board
23 meetings should be included on that list that it would be a
24 recommendation.

25 And then just my last comment on this chapter.

1 The next page on Section 5(a), sorry, Section 5(ii). It
2 says, "All index materials shall be open for inspection by
3 any person at reasonable times during business hours of the
4 Department." And I'm thinking in this day and age, with
5 Internet connection and availability of Internet, that it
6 should also be available online, and particularly
7 considering how big our state is and how many months out of
8 the year we can have terrible driving conditions across the
9 state, it would be nice to just add in that stuff would be
10 available online. And that concludes my comments on this
11 section. Thank you.

12 MS. MORRISSEAU: Lorie, this is Elizabeth
13 Morrisseau. I just want to respond to the suggestion about
14 making all the material online. The reason that we've used
15 the language about having it available for inspection at
16 the department is many of the rule packages that come
17 before the boards and the Council are based on significant
18 amounts in paper of technical documents and information,
19 and it is very onerous to preemptively put them all online,
20 whereas if somebody wants to inspect them, it's relatively
21 easy to say this is the office of the engineer, who has
22 been working on this rule for the last however many months.
23 Here are the studies. Here are the portions of the Code of
24 Federal Regulations that he or she has been relying on.
25 And I think that the problem would be to say if you have to

1 require the Department to make all of that available
2 online, it would be a very big burden, whereas if there is
3 an event where a person wants to look at material and they
4 can't come down to Cheyenne for that one situation, they
5 can presumably work with the folks at the division -- at
6 the specific division responsible for that rulemaking to be
7 able to look at that material.

8 BOARD MEMBER CAHN: Okay. I was not
9 talking about that type of material. I was talking about
10 the types of things like a board packet, what the board --
11 stuff the board receives the public should receive online.
12 That should be available online. I'm not talking about
13 backup documentation from --

14 MS. MORRISSEAU: Board Member Cahn, I
15 think, as a matter of practice, if the Department provides
16 something electronically to board members, they'll also
17 post that online. I don't think that will change. But the
18 purpose of that language is to make sure that the
19 Department is not being required to scan all the technical
20 studies and information that they rely on when they put
21 together a rule package.

22 BOARD MEMBER CAHN: I agree. It was
23 just -- I'm not clear here that's what was meant. Thank
24 you.

25 CHAIRWOMAN BEDESSEM: Thank you. I think

1 you've addressed that.

2 MR. EDWARDS: I just want to go back just
3 to make sure, when we have our discussions internal and get
4 back to you after lunch, that we're covering all the
5 questions related to the meetings. So if you'll bear with
6 me for some clarification.

7 And, basically, as I understand it -- and to
8 phrase it in simpler terms, frankly, for me, simpler the
9 better. I get confused really easy. But you're asking
10 about can you hold a meeting, close the record, extend your
11 deliberations to a following meeting -- which I believe is
12 yes in almost all circumstances the Council does that -- if
13 you can have a hearing, extend your public comment period,
14 accept those comments, and have deliberations at the next
15 meeting; is there the ability to have what's called a
16 special meeting outside the normal circumstance, and then
17 distinction between a public hearing and a public meeting.
18 Would that kind of summarize the package that we're trying
19 to reach an understanding on?

20 CHAIRWOMAN BEDESSEM: Yes. And I believe
21 also making sure that the records of public -- public
22 meetings would also be included in the package that goes to
23 the Council.

24 Did we miss anything with respect to your
25 comments, Ms. Cahn?

1 BOARD MEMBER CAHN: No. Thank you.

2 CHAIRWOMAN BEDESSEM: Okay. Anyone else
3 on -- any other board members? So I think you've
4 summarized appropriately.

5 All right. So I'm assuming there are no more
6 comments from -- or questions from the advisory board
7 members on Chapter 3?

8 BOARD MEMBER BROWN: No, ma'am.

9 CHAIRWOMAN BEDESSEM: Then I will just make
10 a request. Are there any public comments on Chapter 3?
11 Hearing none, I think we should break for lunch. Shall we
12 return at 1:30 p.m. and continue with proposed language for
13 Chapter 3, and then move on to the additional documents?
14 Thank you.

15 (Hearing proceedings recessed

16 12:21 p.m. to 1:36 p.m.)

17 (Board Member Macker is no

18 longer present.)

19 CHAIRWOMAN BEDESSEM: Good afternoon,
20 everyone. We're going to reconvene the meeting at
21 1:36 p.m. We're going to start off with Deputy Director
22 Edwards trying to follow up on some of the general
23 discussion we were having this morning.

24 MR. EDWARDS: Thank you, Madam Chairman.

25 The couple of things I'd like to step back a little bit

1 just to the beginning, as well, put a little umbrella on my
2 comments because I'm hoping that will kind of help move a
3 few things along. One thing is that, you know, we talked
4 about, and I gave some thought to over lunch, is, you know,
5 this is -- even though our proposed rules here are mirrored
6 after the OAH rules and everything, basically this is a
7 departmental rule package. So a lot of the questions that
8 have been asked and are being asked are really departmental
9 kind of policy and our position. I perhaps have been
10 deferring to the attorneys too often. So what I'd like
11 to -- just simply from a standpoint, when it deals with the
12 Department and policy, I'll take -- I should and will take
13 the lead. And, clearly, the attorneys, they provided us a
14 very valuable role. They've got the technical and legal
15 background. But as it relates to the departmental, I'll
16 try to do a better job of focusing on that.

17 This rulemaking -- and I understand we've heard
18 it a couple of times already. The rulemaking is sort of
19 complicated. It makes references back to the act and --
20 the Administrative Procedures Act, and so it takes a little
21 while to get a person's head around it. And we fully
22 acknowledge and understand that.

23 Keep in mind that each of the divisions has their
24 own individual rules and regulations. So unless something
25 in here specifically changes those, which I'm not aware of

1 any that do, those regulations are still in place, the ones
2 that each of you are familiar with, continue to work with.
3 And so this rulemaking process would be what would be
4 applied if you go to make changes to those particular
5 operational rules and what you do.

6 And then back to, in general speaking, the
7 question on 3 -- page 3-4, and that is advisory board would
8 make a recommendation. To provide clarity on that, we're
9 not really looking at changing what is there now, because,
10 in essence, what the advisory boards, what we would be
11 looking to do, is if the rule is substantively complete and
12 everybody's in agreement that the package is complete, then
13 we would look for a recommendation to carry it forward to
14 the Council.

15 We know that there will always be areas of some
16 discomfort and some disagreement. You know, for example,
17 there was some portions within here that -- that director
18 and I, or even perhaps, you know, we would -- we might
19 prefer to go a different direction, but these work. And
20 the example would be the 60- versus the 30-day issue. You
21 know, we feel the 30-day makes it consistent with the
22 legal, and you may feel 60, but that's why we have these
23 discussions, because different people will view some of
24 these changes differently, and the values from that.

25 In response to an earlier question, when our

1 administrative rule package -- and I clarified this with
2 Gina -- when our administrative rule package goes to the
3 Council, the transcript is made available. So they have
4 access to all of the discussions and all the dialogs and
5 all the comments. So, you know, will we reach a situation
6 where there might be some significant areas of
7 disagreement? That could occur down the road.

8 But I would also point out in here that under
9 (b)(ii), that if a board has a very significant concern
10 about a rule, it says in here the board may remand the rule
11 back to the division. So I think the way this rule is set,
12 and at the higher level we can look at this, that if
13 there's major disagreement, the boards have the ability to
14 send it back to the Department to rework the whole
15 additional hearings, as it says in here.

16 But when we reach a point where there's
17 substantive agreement, disagreement on certain points, or
18 changes have been made, then that record is what goes to
19 the Council for their final consideration. And I'm
20 assuming they would fully look at all sides when they're
21 deliberating because they are -- they have that final
22 decision authority within this decision.

23 So rather than get into detailed specifics and
24 try to define a lot of terms, I think if we take a look at
25 within this context, there's going to be some disagreement,

1 but there's a process for moving forward and a process for
2 developing these. And to try to get into a lot of detail
3 that might add a little bit of clarification, it might not
4 be necessary to reach the broader agreement that we need to
5 move this forward.

6 And, again, I would reiterate this package is to
7 address the rulemaking process. The other rules still
8 apply that govern operations, permitting and everything
9 else. So this is the procedural, and, yes, it's very
10 substantive change. But I think if we -- if we come back
11 and we focus on does it get us what we need, then I think
12 that we kind of got to where our best position might be
13 because it would be important to get this moved forward to
14 the Council as well.

15 And I would reiterate, and to try to increase the
16 comfort level, which I very seldom increase people's
17 comfort level when I talk, but all the attorneys for all
18 the divisions have been involved. The attorneys for the
19 Environmental Quality Council have been involved in
20 drafting these. So within the legal structure, there's
21 really general agreement on the entire package. And it
22 isn't as if we're doing this in a vacuum without the
23 Council. So it's as much of an informed packet that we can
24 bring to you as possible.

25 So items like what is a special meeting, you

1 know, it says "may." So what this is -- when I look at
2 this provision, it says you don't have to just act within a
3 regular-scheduled meeting. It gives discretion to the
4 boards to do these other things. So it's not you shall or
5 whatever, but it gives you certain discretion and latitude,
6 if you feel, further conversation and anything needs done.

7 In past practice, Council does this, you may at
8 one meeting have a lot of public input, close the record.
9 There's nothing to say, in my view, that would restrict you
10 from or limit you from deferring actual and board
11 consideration until a special meeting or a later meeting.
12 So I think those provisions are already built -- built into
13 the process. And like a special meeting and that, there's
14 certain terms of art in the arena that already sort of
15 define that. But to some degree, it gives the boards
16 discretion. So I'm not so sure how tightly defined a board
17 would like to make that because right now it gives
18 discretion. The more tightly you narrow that down, define
19 it, the less discretion it provides. I mean, that's just a
20 question that I would pose for the boards.

21 Now, we did have some possible language to
22 consider on the one topic that came up. So in that regard,
23 I'd like to just move on and remind everybody there's four
24 more questions left. And so there are four questions on
25 the remaining three chapters. So the fact that most of the

1 questions were focused on 1 and 2 and some on 3, you know,
2 just the lesser volume of comments on the remainder would
3 tell me that those perhaps were more clear, more
4 straightforward. So I would hope, you know, the councils
5 would have the opportunity -- the boards -- to move through
6 this and take your action and move on for the day. It just
7 takes a lot of very personal time, and we know and
8 appreciate that.

9 So, Madam Chairman, if you don't mind, I'll turn
10 that over for the possible language.

11 CHAIRWOMAN BEDESSEM: Thank you.

12 MS. LA: Madam Chair, board members, before
13 I give it to Elizabeth for the proposed language, there was
14 a lot of talk earlier about what does a special meeting
15 mean, and what -- how's that different from a regularly
16 scheduled meeting. And I do want to point out there's a
17 document that our office had made, and it's called The
18 Public Meetings Act: A Summary. And, essentially, it
19 defines what those are and what your options, as advisory
20 boards are under those. And if it's helpful, I can have
21 Craig or Gina send it to you all after the meeting today as
22 a resource, if that's desired and helpful.

23 CHAIRWOMAN BEDESSEM: Yes, please.

24 MS. MORRISSEAU: So we have some suggested
25 language for Section -- Chapter 3, Section 4(b)(i). So we

1 would strikeout "schedule a special meeting or additional
2 public hearing to further discuss the preliminary rule."
3 And then replace it with "choose to continue discussion of
4 the preliminary rule at the next regularly scheduled
5 meeting or schedule a special meeting specifically to
6 discuss the proposed rule, retaining the ability in either
7 situation, to also extend the public comment period for the
8 proposed rule."

9 BOARD MEMBER BROWN: Would you read that
10 one more time, please.

11 MS. MORRISSEAU: Absolutely.

12 BOARD MEMBER DINSMOOR: Four more times.

13 CHAIRWOMAN BEDESSEM: Our goal here is to
14 have fewer words, but I understand we encourage more,
15 however it does seem more clear to me. Go ahead and
16 re-read.

17 BOARD MEMBER CAHN: Can I just suggest that
18 maybe Gina could type it on the screen that everybody can
19 see. Just type it up and maybe that would make it easier
20 if it needs any wordsmithing.

21 MR. EDWARDS: Madam Chairwoman, I would
22 point out it does add words, but the boards would be free
23 to abbreviate them shorter at your discretion. But it's
24 the concept and the principles that we wanted to get before
25 the boards.

1 CHAIRWOMAN BEDESSEM: So we'll wait a few
2 moments until the typed proposed revision is up on the
3 screen. And no pressure.

4 MS. THOMPSON: Can everyone see that?

5 CHAIRWOMAN BEDESSEM: Any comments on the
6 proposed revisions from board members?

7 BOARD MEMBER APPLGATE: Ask Lorie if she
8 can see that, maybe.

9 CHAIRWOMAN BEDESSEM: Lorie, can you see
10 that on the screen?

11 BOARD MEMBER CAHN: I apologize, but it's
12 too -- it just came up.

13 CHAIRWOMAN BEDESSEM: Can you see all of it
14 on the screen?

15 BOARD MEMBER CAHN: I can now. Thank you.

16 BOARD MEMBER DINSMOOR: Madam Chair? Madam
17 Chair, Phil Dinsmoor with the Land Quality Advisory Board.
18 It would seem to me, as best I understand the concerns that
19 were expressed this morning, that that language probably
20 addresses those concerns as well as we can, but we also
21 need to keep in mind that words are always limiting. In
22 this case we're trying to take a limiting tool, a word, and
23 provide opportunity -- or define that opportunity. So it's
24 almost a dichotomous sort of situation. And sometimes the
25 more you say, the more limiting, and the less discretionary

1 it becomes. So we need to be kind of careful with that.

2 CHAIRWOMAN BEDESSEM: I believe as long as
3 we continue to keep the word "may" in there, we'll be fine.

4 MR. EDWARDS: Madam Chair, you know, to me,
5 you know, like under (i), I understood what this is, but
6 some of the board members may not. And to Mr. Dinsmoor's
7 comment, it provides opportunity in there, whereas this,
8 you know, gives some more definition and helps define it.
9 But whether or not it gives the same latitude or not, I'm
10 not sure that would be -- this is just a suggestion. We're
11 not recommending, I guess would be way to put it. It's
12 something the board wanted to discuss.

13 CHAIRWOMAN BEDESSEM: Lorie, do you have
14 any feelings one way or another on this?

15 BOARD MEMBER CAHN: No. That looks
16 acceptable to me, thank you.

17 CHAIRWOMAN BEDESSEM: I think the
18 revision -- like I would be fine as long as we keep the
19 word "may" if there's a real concern about being so
20 specific that we're losing some flexibility. But it may
21 minimize questions from the advisory board members down the
22 road when we all leave our advisory boards. So thank you
23 for that proposal.

24 MR. EDWARDS: I notice, Madam Chairman, you
25 managed to work the word "may" into that.

1 CHAIRWOMAN BEDESSEM: May, yes.

2 Thank you.

3 Would you like to go ahead and continue with your
4 presentation, starting with Chapter 4?

5 Excuse me, did you make the change in Section
6 5(a)(iv) that to say "other meetings" as well?

7 MS. LA: Yes. We wrote that down. And it
8 is my understanding, Madam Chair, that we're going to make
9 the votes on the changes at the end of the meeting?

10 CHAIRWOMAN BEDESSEM: Yes.

11 MS. LA: Yes. We wrote that down for
12 notation at the end, to bring that back up.

13 CHAIRWOMAN BEDESSEM: Yes. Thank you.

14 MS. SHAW: Okay. Moving on to Chapter 4.
15 I'm Kelly Shaw. I work at the AG's Office, primarily with
16 the Solid and Hazardous Waste Division.

17 And as you can see, what we are proposing to do
18 with Chapter 4 is to actually repeal it in its entirety.
19 As it stands now, it's a pretty short section, and it
20 really only has one purpose. It allows people currently,
21 if they get a decision from the EQC that they disagree with
22 and feel was not rendered correctly, it gives them the
23 opportunity to seek rehearing at the EQC.

24 And the reason we propose to repeal this was
25 really for two primary reasons. The first being that this

1 wasn't a provision that we really saw people using.
2 Generally, people who are not happy with the decision that
3 the EQC rendered are not particularly eager to go back and
4 ask them to think about it again. Typically people that
5 want some kind of reconsideration would just go and take
6 their appeal up to district court. So we found that this
7 wasn't really a provision that people found useful or
8 helpful. And we also saw that it might cause some problems
9 when people did try to appeal these decisions to district
10 court because they have that right to appeal decisions,
11 under the Administrative Procedure Act, but that act
12 requires there to be a final agency decision. And there
13 was some concern that by having this opportunity to seek
14 rehearing, that people might not have a final decision that
15 they would be able to conclusively take to the district
16 court. So those were the main reasons that the Department
17 is proposing to eliminate the section in its entirety.

18 I don't believe we received any public comment on
19 this section from any of the commenters who submitted
20 comments, but at this time I'll turn the mic over to Deputy
21 Director Edwards to field any comments or questions you
22 might have.

23 CHAIRWOMAN BEDESSEM: With respect to the
24 basic repeal of Chapter 4, do we have any comments or
25 questions from the Air Quality Advisory Board members?

1 BOARD MEMBER BROWN: No comments from the
2 Air Quality Advisory Board.

3 CHAIRWOMAN BEDESSEM: Land Quality Advisory
4 Board?

5 BOARD MEMBER HINES: Madam Chair, I guess
6 what I was thinking about can the council member -- as I
7 read it, once the Council admitted -- made a decision on a
8 hearing, they or nobody can change it? A party would have
9 to go to court? Is there any other option?

10 MR. EDWARDS: Madam Chairwoman. That is
11 the effect of the repeal. As it had been historically, and
12 as explained, they have the right to request a rehearing,
13 but nobody has done that. So as it stands now, the repeal
14 of this section would be when the Council has ruled, if
15 somebody wishes to challenge that, the option they still
16 retain is their judicial review through the courts. So
17 that would be the option that's left.

18 BOARD MEMBER HINES: Thank you.

19 CHAIRWOMAN BEDESSEM: So --

20 MR. EDWARDS: We recognize, by the way too,
21 that a rehearing, on somebody's part, would take cost,
22 time, effort to prepare and try to make a new case. And so
23 typically they just do go to court, and they expend the
24 time and effort in that regard.

25 CHAIRWOMAN BEDESSEM: Thank you.

1 Any comments from Water and Waste Advisory Board
2 members?

3 Hearing none, any comments from the public? Then
4 let's move on to Chapter 5.

5 MS. SHAW: Okay. Chapter 5 is a somewhat
6 unique chapter. It's specific to SMCRA-related actions.
7 These are enforcement actions having to do with coal
8 industry. So we made some fairly minor in text changes to
9 this chapter. The primary thing we did was that we added
10 this subsection 1(c), which provides that proceedings where
11 people seek awards of costs after an enforcement action are
12 going to be handled like contested cases. This doesn't
13 mean they are contested cases, but it means that during
14 these specific proceedings, if there are questions about
15 how a proceedings should go forth, we will follow the same
16 rules for Chapter 2.

17 The main reason that we did this was when we
18 looked at all these rules that hadn't been updated in a
19 long time and tried to identify any gaps in the -- in the
20 current rules, we thought there was a lack of clarity about
21 how these hearings would proceed, that there were a lot of
22 gaps that we would have to fill in. And rather than trying
23 to add a whole bunch of specific unique procedures to this
24 one type of hearing, we thought that it would be simpler
25 and easier for people to understand and follow if these

1 just acted like other contested case hearings. So that's
2 what you see in 1(c), which is the main added language.

3 We also made a few adjustments to subsection (a),
4 just to kind of clean that up and make it clear that the
5 procedures that matter are the same ones that you would use
6 in any other kind of contested case.

7 And I will turn this over to -- yes. So we did
8 receive one comment, and I will let Deputy Director Edwards
9 go over that.

10 MR. EDWARDS: And I will cover that
11 comment, but I do want to make just a comment first that
12 this is -- this section is specifically related, as was
13 indicated to SMCRA, Surface Mining Control and Reclamation
14 Act, which does require making this provision available.

15 And we had one comment. And I guess as well one
16 thing I should make just as a general comment, relative to
17 all the comments we received, they are all provided in the
18 verbatim within the summary. So rather than a separate
19 summary, we elected to just include those, plus our
20 responses, on the thought that would flow better and would
21 tie everything together.

22 So Comment 35 on the package related to Chapter 5
23 was from the PRBRC. They expressed concern that Section
24 1(c) overcomplicates the procedure to obtain an award of
25 costs. Instead, a petition of award of costs should be

1 treated as summary proceeding, described in Chapter 2,
2 Section 22, instead of as a contested case hearing.

3 While we appreciate the comment, we're not
4 recommending making any changes to this provision. We
5 believe that Chapter 2, Section 22, which relates to
6 expedited hearings, would apply to these petitions as well.
7 In addition, as was indicated, it provides some other
8 consistency across cases and tries to uniformly apply that,
9 which I would presume to be easier for people who routinely
10 work with these provisions. They have one that they would
11 look at. So we're not recommending any changes at this
12 time to this, because we feel it's adequately covered.

13 CHAIRWOMAN BEDESSEM: Thank you.

14 Any comments or questions on Chapter 5 from the
15 Air Quality Advisory Board members?

16 BOARD MEMBER BROWN: No questions at this
17 time.

18 CHAIRWOMAN BEDESSEM: Land Quality Advisory
19 Board members?

20 BOARD MEMBER DINSMOOR: Thank you, Madam
21 Chair.

22 I think the question I want to ask Deputy
23 Director Edwards is that the comment that was received
24 suggests that you need to have a different reference
25 because you're making the award of costs a contested case.

1 That's how I read the comment. I don't believe that that's
2 what the rule is doing. It's merely taking you to the
3 procedure for awarding costs as it is already addressed
4 under contested cases. Is that correct?

5 MR. EDWARDS: That would be correct, yes.

6 BOARD MEMBER DINSMOOR: Okay. Award of
7 costs is award of costs, not a contested case?

8 MR. EDWARDS: Right. It's just handled
9 under that process.

10 BOARD MEMBER DINSMOOR: Okay. Thank you.

11 MR. EDWARDS: Thank you for the
12 clarification.

13 CHAIRWOMAN BEDESSEM: Any comments from the
14 Water and Waste Advisory Board members?

15 Anyone on the phone, any comments?

16 BOARD MEMBER CAHN: Yes. This is Lorie.

17 So I just -- I'm concerned on -- with meaning and
18 language. On -- and I'm looking at the redline/strikeout
19 section. It's lines 40 through 45. So it's Chapter 5,
20 Section 2, the entirety of the paragraph in Section -- or
21 (iii). For the -- for me, I can't understand what it says.

22 So, first of all, "To any person, other than a
23 permittee or his representative..." that should probably be
24 "their representative." But then it starts, "... from the
25 Department if the person initiates or participates..." So

1 I'm not sure if it's any person from the Department or if
2 it's -- does the Department award the fees or the person
3 does from the Department? That's -- that's confusing
4 language to me.

5 MS. SHAW: This is Kelly. I'll try to shed
6 a little bit of light on that structure.

7 One thing I do want to point out. We didn't make
8 a lot of changes to this section because it is tied to the
9 primacy that we have for SMCRA. So any significant changes
10 that we made could affect that primacy. So all this
11 language that you see in Section 2, except for some minor
12 typographical changes, is what was already there. And I
13 agree with you, Section 3 is a little bit confusing.

14 Generally, when this would apply is when a
15 citizen or somebody who was interested filed an action
16 alleging that a coal operation was violating some kind of
17 standard. And if that happened, there would then be a
18 contested case proceeding that went on, the parties would
19 appear and argue it. And when this section would come into
20 play, this Chapter 5, is after that hearing is concluded, a
21 person who brought that case could then seek to get an
22 award of costs following that contested case hearing. So
23 the reason that (iii) I think is a little bit hard to read
24 is it's dealing with the very specific situation of when
25 some person, a citizen who isn't a permittee, isn't the

1 department brings one of these actions and argues it and
2 then tries to recover their costs. So I do understand it's
3 difficult to parse through it, but I think that the
4 Department's opinion was that it needs to stay the way that
5 it is.

6 MR. EDWARDS: And Madam Chairwoman --

7 BOARD MEMBER CAHN: I'm not trying to
8 change --

9 CHAIRWOMAN BEDESSEM: Lorie, were you just
10 looking for an explanation? You're not necessarily trying
11 to change language?

12 BOARD MEMBER CAHN: I cannot read -- I'm
13 not trying to change meaning. I'm trying to understand
14 what the meaning is when I read it. So I think it's --
15 perhaps it's where the commas are. So really to any
16 person, other than permittee or their representative. It's
17 also other than from the Department; is that correct? I
18 just don't understand what this means.

19 MS. MORRISSEAU: Hi, Lorie. This is
20 Elizabeth.

21 It's possible -- so, Lorie, you have to start
22 reading, really, from (a) because appropriate costs and
23 expenses, including attorney's fees may be awarded to
24 any -- and then you have to then skip down to (iii) -- may
25 be awarded to any person. And then you go down that. So

1 essentially what that section is saying is that in the
2 situation where a person who is not a permittee or the
3 permittee's representative, that person brings an action,
4 and they suggest -- and they prevail in whole or in part
5 and the Council finds that that person substantially
6 contributed to a full and fair determination of the issues,
7 and, therefore, should get attorney's fees. That person
8 could be -- could try to get attorney's fees from the
9 Department.

10 CHAIRWOMAN BEDESSEM: So that's helpful to
11 know it can't be there on its own.

12 BOARD MEMBER CAHN: Okay. But what I'm
13 saying is that -- that makes it clear, but I think where
14 the words "from the Department" are in the sentence is
15 confusing because if you take out the clause "...other than
16 the permittee or their representative," now you're reading
17 "To any person from the Department..." And so even if you
18 put in "Appropriate costs and expenses including attorneys'
19 fees may be awarded: To any person from the Department,"
20 is it a person who is from the Department or is it awarding
21 fees from the Department to that person? And I think it's
22 the later meaning. So in order to clarify it, I think
23 the "from the Department" is -- that's where they're
24 getting their fees awarded from. So I think it needs to be
25 separated from "to any person."

1 BOARD MEMBER DINSMOOR: Madam Chair.

2 Madam Chair, I've got a suggestion. Maybe you
3 could make the language construction parallel to Section
4 2(a)(i), where "from the department" leaves off. So it's
5 "award from the Department to."

6 BOARD MEMBER CAHN: I love that. That's
7 wonderful. Thank you.

8 MS. MORRISSEAU: Would you also suggest
9 that change in (vi) or no? Just for (iii)?

10 BOARD MEMBER DINSMOOR: If you made them
11 all parallel.

12 BOARD MEMBER CAHN: It makes sense to do it
13 in (iv).

14 CHAIRWOMAN BEDESSEM: Thank you for that
15 suggestion.

16 MR. EDWARDS: If I understand correctly,
17 Mr. Dinsmoor, that would basically take the language from
18 four and follow the same theme under (iii), so it would say
19 "From the Department to," and that way they're both
20 consistent with each other.

21 BOARD MEMBER DINSMOOR: Correct. Right.

22 CHAIRWOMAN BEDESSEM: Thank you. Any other
23 comments on Chapter 5, Lorie?

24 MR. KILPATRICK: She may not have heard
25 you.

1 CHAIRWOMAN BEDESSEM: Lorie, make sure you
2 have no additional comments on Chapter 5 before we move on
3 to public comment.

4 BOARD MEMBER CAHN: I do not. Thank you.
5 I'm not sure of the clarification.

6 CHAIRWOMAN BEDESSEM: Thank you.

7 Do we have any comments from the public
8 concerning Chapter 5?

9 Hearing none, the Department would continue to
10 present Chapter 6.

11 MS. SHAW: Chapter 6 is another chapter
12 that we are proposing to repeal. Unlike Chapter 4, we are
13 actually going to save the pieces out of Chapter 6 and move
14 them into Chapter 9. So we'll talk about those when we get
15 to Chapter 9. But the pieces of Chapter 6 that are getting
16 repealed and are not moving forward to Chapter 9, the
17 primary one is Chapter 6 is current rules for how a person
18 could seek review before the director.

19 After looking at the statute and the rules, we
20 didn't think that it was necessary to have these procedures
21 clarified in rule. People can seek review with the
22 director without necessarily going through a formal
23 process. In fact, it's intended to be an informal process.
24 It's intended to be something that's more accessible and
25 more responsive to individual situations. And we believe

1 that having those kinds of procedures restricted by rule
2 does more harm than good. And for that reason, we are not
3 proposing to continue explaining how director review would
4 happen through rule. That will continue to be an informal
5 process that people can continue to seek. It just won't be
6 in the rules of practice and procedure anymore.

7 The other thing that was in this chapter was that
8 we relocated some of the rules for informal conferences
9 into Chapter 9. So tabling discussion of those informal
10 conference issues, I will turn this over for any public
11 comment.

12 MR. EDWARDS: Well, actually, yes, to
13 follow on from there. Like the informal conferences with
14 the director, when we get to Chapter 9, I think you'll find
15 those are moved and are covered.

16 CHAIRWOMAN BEDESSEM: Thank you. Do we
17 have any comments regarding Chapter 6 or questions from the
18 Air Quality Advisory Board members?

19 BOARD MEMBER BROWN: No questions.

20 CHAIRWOMAN BEDESSEM: Land Quality Advisory
21 Board members?

22 BOARD MEMBER DINSMOOR: No.

23 CHAIRWOMAN BEDESSEM: Water and Waste
24 Advisory Board members?

25 BOARD MEMBER APPLGATE: Again, just a

1 clarification. Chapter 6 applied to review of lots of
2 different things, correct, by the director? That -- almost
3 any decision by the director; is that correct?

4 MS. SHAW: Yes. This would apply to a
5 variety of decisions that the director or an administrator
6 could make.

7 BOARD MEMBER APPELATE: So Chapter 9
8 applies to surface coal mining operations in particular.
9 So I guess I'm just trying to understand, basically, rules
10 will be silent on review by a director. I mean, because
11 that's assumed to be an informal process that can occur at
12 any time?

13 MS. SHAW: Essentially, yes, Chapter 9 does
14 include a lot of SMCRA-related topics, particularly in
15 informal conferences. But there are some other options in
16 Chapter 9 that apply to all the divisions, so there is some
17 general applicability to Chapter 9 and the -- also some
18 specific aspects of Chapter 9 for SMCRA.

19 BOARD MEMBER APPELATE: So I think this
20 relates to earlier comment I had, as well as the title in
21 Chapter 9 says hearings before the department director --

22 THE REPORTER: You're going to have to slow
23 down.

24 BOARD MEMBER APPELATE: Chapter 9 includes
25 the terms surface coal mining operations in the title. So

1 if it were to apply to situations other than surface coal
2 mining --

3 MS. SHAW: I can see how the title to
4 Chapter 9 can read that way. That might be something you
5 might want to suggest an update to, but Chapter 9's title
6 should be read as Hearings Before the Department as one
7 items, and Director Review of Actions Involving Surface
8 Coal Mining Operations as a separate item. So it's not
9 just hearings before the Department for surface coal
10 mining. It's all hearings before the Department and
11 director review of SMCRA items.

12 BOARD MEMBER APPLGATE: Okay. I don't
13 know if you remember an earlier comment I had regarding
14 reference to this chapter, but that was the confusion I had
15 at that point in time as well. And I think at first blush
16 a person looks at this chapter and thinks it applies to
17 surface coal mining. So we can talk about that when we get
18 there. Thank you.

19 CHAIRWOMAN BEDESSEM: Any other comments on
20 this Chapter 6 from anyone on the phone?

21 Ms. Cahn, you have anything else?

22 BOARD MEMBER CAHN: No, I do not. Thank
23 you.

24 CHAIRWOMAN BEDESSEM: Okay. Thank you.

25 Any comments from the public regarding Chapter 6

1 revisions? Hearing none, let's move on to Chapter 7, Very
2 Rare or Uncommon Areas.

3 MR. CHRISTENSEN: My name is Micah
4 Christensen, M-I-C-A-H, and Christensen, C-H-R-I-S-T-E-N-
5 S-E-N.

6 Chapter 7 deals with very rare or uncommon areas.
7 The only slide in the picture, take advantage of that
8 quickly, that is Adobe Town. The Chapter 7 changes all
9 deal with updates from removal of power from the
10 legislature, so it's updated to reflect the changes the
11 legislature has made.

12 So move to the next slide. At one point, EQC had
13 the power to make very rare or uncommon areas, to designate
14 them. However, that was removed with Original House Bill
15 1 -- Number 152. That was in 2011. And so the chapter has
16 been updated to reflect that that power no longer exists
17 for the EQC. Some other redline language has also been
18 part of the chapter's been removed to update other
19 legislative changes/repeals in 1994, for example, of
20 definitions that no longer exist in the statute.

21 And I believe there are some public comments, so
22 I'll return this back to Deputy Director Edwards.

23 MR. EDWARDS: Thank you.

24 Madam Chairwoman, there's a lot of changes in
25 here, but, essentially, what it does is it strikes out the

1 language that previously had been approved by the
2 legislature that no longer rests in the statute. So it's a
3 process of elimination.

4 I do -- we had one comment on this, but I was
5 corrected, and I do want to correct for the record, the
6 comments that I referenced -- I've been referencing to is
7 from the Powder River Basin Resource Council came jointly
8 from the Powder River Basin Resource Council and the
9 Wyoming Outdoor Council. So it's not singular to PRBRC.
10 So my apologies not catching that early on.

11 One comment, and it was Comment 36 on the entire
12 document, under Chapter 7, Klaus Hanson. There was a
13 general concern about exclusion of Native American sites.
14 We appreciate the comment, but we're not recommending any
15 changes at this time. Federal statute such as the National
16 Environmental Policy Act, Native American Graves Protection
17 and Repatriation Act, and Section 106 of the National
18 Historic Preservation Act already ensure protection of
19 Native American sites.

20 Additionally, the enabling legislation of the
21 Department and Council, the Wyoming Environmental Quality
22 Act does not address these specific types of sites and,
23 therefore, they may be beyond the jurisdiction of this
24 rulemaking. So we recommend no changes in this comment.

25 CHAIRWOMAN BEDESSEM: Thank you.

1 MR. EDWARDS: And there was, by the way, a
2 second question, which I was just about ready to be
3 corrected. Also, on the same Chapter 7, comment from Klaus
4 Hanson. This relates to Section 9, line 228, noted that it
5 included a typographical error. We do appreciate catching
6 that, and we move through things as well, and sometimes the
7 obvious is missed. But we recommend changing the incudes,
8 I-N-C-U-D-E-S, to includes in line 228.

9 CHAIRWOMAN BEDESSEM: Thank you very much.
10 Do we have any comments on Chapter 7 from any of
11 the boards?

12 BOARD MEMBER BROWN: You guys have any?
13 Nope. None from Air Quality.

14 BOARD MEMBER DINSMOOR: Madam Chairwoman,
15 just a question of clarification.

16 So what this revision has done is it's removed --
17 and actually the legislature did it. They removed the
18 Council's ability to designate new areas. They did not
19 remove the -- any current designations themselves. And
20 they did not remove the Council's ability to react to a
21 petition to remove existing designations; is that correct?

22 MR. EDWARDS: Madam Chairwoman.

23 Yes, that is correct. And that statute was
24 passed several years ago, and this regulation has not
25 caught up with it until now.

1 CHAIRWOMAN BEDESSEM: Thank you.

2 Any other comments from board members? Hearing
3 none, any comments from the public regarding Chapter 7?

4 Let's --

5 BOARD MEMBER CAHN: Marge, excuse me.

6 CHAIRWOMAN BEDESSEM: Uh-huh. Go ahead,
7 Lorie.

8 BOARD MEMBER CAHN: I just had a few
9 things. On Section 2, under Definitions under Critical
10 Habitat, I believe there's a comma missing between listed
11 and throughout. So that's not just threatened. It should
12 be listed, threatened and endangered species.

13 And then on section formerly 6(a), so it's
14 Initiation of Proceedings, Section 4 in the
15 redline/strikeout version. It's lines 108 to 111. And
16 this is new Section (x), it says "A list of any special
17 designations or descriptions of the area made by other
18 governmental agencies," and then it lists those agencies.
19 I'm wondering, are they going to be notified of these
20 proceedings?

21 And I sort of have a question about (xii), below
22 two -- two paragraphs with below, it's "The names and
23 addresses of surface owners of lands contiguous to the area
24 proposed for removal." So, basically, I'm wondering about
25 notifications.

1 CHAIRWOMAN BEDESSEM: I'd like to make one
2 additional comment regarding the first comment Lorie made
3 with respect to listed threatened and endangered. Did you
4 mean listed as threatened or listed as endangered, in which
5 case shouldn't the word "or" be in there? It's not listed
6 threatened and endangered. It's listed as threatened or
7 listed as endangered?

8 BOARD MEMBER DINSMOOR: No.

9 CHAIRWOMAN BEDESSEM: No? Which is it?

10 BOARD MEMBER CAHN: Yeah, it could be
11 listed -- listed, threatened or endangered.

12 BOARD MEMBER DINSMOOR: If we're talking
13 about language that's coming from the Endangered Species
14 Act, there's listed species, threatened species and
15 endangered species.

16 CHAIRWOMAN BEDESSEM: So there should be a
17 comma there.

18 BOARD MEMBER DINSMOOR: The comma should be
19 after listed, --

20 BOARD MEMBER CAHN: Which is why --

21 CHAIRWOMAN BEDESSEM: I think they're
22 either listed as threatened or listed as endangered.

23 BOARD MEMBER DINSMOOR: Not under the --

24 BOARD MEMBER CAHN: That's why I made --

25 BOARD MEMBER APPLGATE: To be listed means

1 you're either threatened or endangered. That's the meaning
2 to me, I believe. Those are the two categories. It can be
3 way more than that. It can candidate species. There's
4 multiple categories.

5 BOARD MEMBER DINSMOOR: True. True. Let's
6 leave it to the --

7 CHAIRWOMAN BEDESSEM: Yeah, the attorneys
8 address that, please.

9 MS. MORRISSEAU: What we can do is we can
10 consult with language in the Endangered Species Act and
11 make sure the language we have here is parallel to that.

12 CHAIRWOMAN BEDESSEM: Thank you.

13 MR. EDWARDS: And if -- and if you would
14 bear with us on that because once the boards are acting
15 here today, we can do that as a house cleaning item before
16 it goes to the Council.

17 CHAIRWOMAN BEDESSEM: Sounds good.

18 Your second comment, Lorie? Maybe the Department
19 would like to address that comment. Lorie, did you want to
20 reiterate that? Lorie, could you briefly read --

21 BOARD MEMBER CAHN: Yes. Yes.

22 CHAIRWOMAN BEDESSEM: Thank you.

23 BOARD MEMBER CAHN: It has to do with what
24 proceedings are initiated in Section 4, whether or not the
25 organizations named -- it was listed in (x) and (xii) will

1 be notified.

2 MR. EDWARDS: Right. I think we would need
3 a little more clarification on the question because (x) and
4 (xii) are all part of what needs to be in the petition, and
5 so it's descriptive of what must be contained. So I'm not
6 sure I fully understand the question.

7 CHAIRWOMAN BEDESSEM: Lorie, can you
8 address that?

9 BOARD MEMBER CAHN: Yep. Yeah. So any
10 person may file a petition and that person doesn't
11 necessarily work for the USGS or the U.S. Fish & Wildlife
12 Service or the BLM. And when you receive a petition, do
13 you know to -- do you then notify the agencies that may
14 have some special designations on the -- on that end?

15 MS. MORRISSEAU: Lorie, this is Elizabeth.
16 So Section 5 gets into how you're going to be noticing the
17 hearing, not noticing the petition. And the hearing itself
18 has to be noticed in a newspaper of statewide circulation
19 and also a newspaper of general circulation in the vicinity
20 of the proposed area. There's not specific notice of the
21 hearing that would be provided to those different federal
22 agencies; however, what I want to emphasize is that these
23 particular rules and the Council's ability under the
24 Wyoming Environmental Quality Act do not trump any of the
25 designations that would be placed by any of those agencies

1 under federal acts.

2 So there would be no possibility in one of these
3 proceedings that the Council could remove designation that
4 would have any practical implication for areas that have
5 any kind of parallel federal designation. So if the
6 concern is that the rules don't specifically require notice
7 to the federal agencies and the Council could take action
8 that would impact the federal agency's authority, the
9 Council could not do that.

10 Does that answer your question, or did I answer
11 another question?

12 BOARD MEMBER CAHN: Okay. No, that
13 addressed my concern. You got --

14 MR. EDWARDS: This is Alan Edwards. A
15 couple of general things for background. This would be
16 information for the overall Council. The initiation of
17 proceedings, again, any person may initiate a petition that
18 it says it must include the following. Like (x), it says
19 you would provide any special designations that other
20 agencies have created. So that's simply a list. As far as
21 the interaction with all the different agencies, Fish &
22 Wildlife Service and others, we have already in place
23 established MOUs and protocols that cover and address how
24 those -- those discussions would occur, what the
25 notifications would be. So those are already covered in

1 administrative procedural documents that we've worked out
2 with the federal agencies.

3 So at no point in time here -- I can't envision
4 that at any point in time in here, that the items required
5 in the petition and then the notice would not involve or
6 include the notification of those agencies. We already
7 have those protocols in place. Thank you.

8 CHAIRWOMAN BEDESSEM: Thank you.

9 Lorie, was there a third comment that has not yet
10 been addressed, or did that take care of those?

11 BOARD MEMBER CAHN: That took care of
12 those. I have additional comments we haven't discussed
13 yet.

14 CHAIRWOMAN BEDESSEM: Continue on.

15 BOARD MEMBER CAHN: So in Section 7 --
16 sorry, Section 5, which was formerly (b), there's
17 discussion in (i), lines 158 and 159, about notification of
18 45 days before the hearing in the newspaper. And then it
19 goes on to (ii) and (iii) and (iv) about providing notice
20 of the hearing by personal service, all surface owners,
21 the -- to county commissioners. And my question there
22 is would -- would the 45 days apply to those three
23 paragraphs, (ii), (iii) and (iv)? It applies to (i), and I
24 would think the 45 days -- you don't want to notice, you
25 know, provide notice to the county commissioners two days

1 before the hearing, which doesn't give them any time there.

2 So I'm just wondering if that 45 days --

3 MS. LA: Board Member Cahn, this is Eva. I
4 want to just address your question.

5 So the 45 days under sub -- (i) or subsection (i)
6 only applies to that subsection. (ii), (iii) and (iv)
7 stand alone, and the 45 days do not apply to (ii), (iii)
8 and (iv). And how you can see that is romanette -- or
9 subparagraph (b) governs over (i), (ii), (iii) and (iv).
10 And if you read up there, it says subject to the review and
11 approval of the form of the public notice by the Council or
12 the hearing officer assigned to the petition, the
13 petitioner shall, and then they shall do those four
14 different things. So they stand-alone as four separate and
15 distinct requirements.

16 And with your concern, Board Member Cahn, on --

17 BOARD MEMBER CAHN: And so --

18 MS. LA: Go ahead.

19 BOARD MEMBER CAHN: Well, so then would
20 the -- I'm presuming that then the hearing officer would
21 then make some requirement about when those notifications
22 had to happen by?

23 MS. LA: Board Member Cahn, there's no
24 requirements under these rules as to when those -- those
25 notices have to be served on these entities. So possibly

1 they could be served the day before, two days before the
2 actual hearing, unfortunately. But there just isn't any
3 statutory guidance for this section on deadlines for those
4 requirements of when notice shall be provided.

5 MR. EDWARDS: This is Deputy --

6 BOARD MEMBER CAHN: Can we add in a --

7 MR. EDWARDS: This is Deputy Director
8 Edwards. The requirements are, as was noted, 45 days
9 specifically related to the public notice in the paper.
10 And keep in mind that this is an action before the Council.

11 Now (ii), (iii) and (iv), the petitioner has to
12 do those things. I think we could assume that the
13 petitioner is going to make notice early in the process or
14 that will be noted by the Council and discussed during the
15 council's deliberation whether that particular notice was
16 given appropriately and timely. So while there's no
17 specific notice and date in here, the Council would be very
18 aware of the dates on which those were served and would
19 likely raise questions if they did not feel that that was
20 adequate time. And so I would assume that that would be
21 part of their deliberations.

22 CHAIRWOMAN BEDESSEM: Lorie, does that
23 address your concerns?

24 BOARD MEMBER CAHN: Yeah. I mean, I
25 think -- I think Deputy Director Alan has a good point,

1 that if somebody wasn't given sufficient notice, they would
2 bring that up to the Council. So I'm good with that. I
3 thought it was unusual to say you have to give notice and
4 in one case you give a requirement for notice and the other
5 you don't give how many days ahead of time requirement, but
6 if everybody else is fine, we can -- nobody else has my
7 concern, we can move on.

8 MR. EDWARDS: This is Deputy Director
9 Edwards. Keep -- you know, I really do appreciate the
10 comments and catching that. So don't take, you know, any
11 of my responses wrong in that regard, but typically in the
12 rules and regs there's always very specific requirements
13 for publishing in the newspaper. So if I -- they always
14 identify a certain sequence, a number of times, and when
15 they would have to be completed, so as with -- my
16 understanding is -- my memory, anyway -- with all the
17 newspaper requirements, there are those specific guidance
18 and requirements. That particular one would be consistent
19 with how it's treated throughout the act.

20 CHAIRWOMAN BEDESSEM: Thank you.

21 Any other comments from the board regarding
22 Chapter 7?

23 Any comments from the public regarding Chapter 7?

24 BOARD MEMBER CAHN: I --

25 CHAIRWOMAN BEDESSEM: Go ahead.

1 BOARD MEMBER CAHN: I still have -- I'm
2 just going through my comments. I'm sorry.

3 CHAIRWOMAN BEDESSEM: Go ahead.

4 BOARD MEMBER CAHN: So my next -- my next
5 comment has to do with Section 7, which is formerly Section
6 11(a) on page 7 -- the redline/strikeout. It's lines 200
7 through 204. And this has to do with if a particular value
8 that was previously found to exist either no longer exists
9 or is no longer very rare or uncommon. And my concern on
10 that is, an example, if you're going to remove protections
11 because the -- say it no longer exists. For instance, if
12 it doesn't have to do with natural processes, but has to do
13 with, you know, somebody out there target shooting,
14 shooting the eagles that nested in the area, and now the
15 eagles are gone, but the habitat still exists, that doesn't
16 seem to me to be a valid reason for removing a designation.
17 So I'm wondering if we need to say something like

18 was previously found to exist, either no longer exists
19 through natural processes or is no longer very rare or
20 uncommon, or somehow include that it was because of a
21 natural process, not because of some vandalism. And so
22 I'll put that out for --

23 BOARD MEMBER APPLGATE: Lorie, I guess
24 comment I had to your question. It's a lot of work for one
25 Adobe Town designation that the legislature obviously

1 decided they wanted no more of. Was there anything in the
2 statutory language regarding criteria that would be used
3 for removal? So my comment actually goes the opposite
4 direction of Lorie's. I'm -- I would be hesitant to put in
5 criteria for removal if the statutory language was silent.
6 It seems to me that the EQC has the authority, perhaps -- I
7 haven't read the statute -- to simply by vote to remove the
8 designation on Adobe Town.

9 And so that's the question I have for the
10 attorneys. Where does the rationale for criteria emerge
11 from the statutory language?

12 MR. EDWARDS: Before I pass that to the
13 attorneys, I'd like to make a broader just general
14 statement of what I view this as reading, so if you'll bear
15 with me.

16 There were -- under the statutes and under
17 regulations, there were criteria for this, so -- if I am
18 not incorrect, but I believe I'm correct in that regard.
19 So there were criteria for listing certain things for rare,
20 unique or -- and so this, basically, looks at -- and I
21 understand Lorie's question. But what this says is those
22 criteria, for whatever reason, no longer exist. So if the
23 conditions that were used to establish it was rare and
24 uncommon, and for whatever reason, no longer exists, then
25 that basis for listing is no longer present.

1 So that -- that is why that's -- in my view, the
2 second sentence was included, was it gets back to the
3 original designation that identified things that were, and
4 this says they no longer are.

5 BOARD MEMBER APPLGATE: That doesn't
6 answer my question, though. If there was new statutory
7 language established, which, obviously, eliminated the
8 ability to give this power to the EQC, I'm curious what in
9 that language reflects any sort of criteria for removal of
10 the one rare and uncommon designation that existed in the
11 state of Wyoming?

12 MS. LA: Board Member Applegate, to address
13 your question, there isn't a lot of guidance. However,
14 this is a determination that the Council is going to have
15 to make whether or not they remove the designation for
16 Adobe Town. And I, for comfort, this is the section that
17 the EQC's attorneys looked at carefully in determining
18 proposing the language here today. So does that provide
19 any comfort to you?

20 BOARD MEMBER APPLGATE: Not really
21 because I -- I don't know what the statutory intent was.
22 All I can assume, I think, with some certainty, is
23 statutory intent was not to allow any more designations,
24 which different people could have different opinions on why
25 they made that statutory determination. But one might be

1 that they didn't agree with the previous statutory
2 determination, in which case they were perhaps lending to
3 the EQC the power to undo what they had done. All I'm
4 saying is by giving criteria of which is not based in the
5 statutory language, it perhaps reflects the intentions of
6 the Department and not of the legislature.

7 MS. MORRISSEAU: Board Member Applegate,
8 so the bill that removed the authority from the EQC to
9 designate additional areas contained no clarification
10 as to what determination the Council should engage in
11 when deciding whether to remove designation for, as you
12 noted, the one uncommon rare area, Adobe Town.

13 And so as my colleague Eva mentioned, the EQC
14 attorneys had the opportunity to provide additional
15 clarification through these rules about what the Council
16 would consider in the event that they did get a petition,
17 and they chose not to. And so the thought was to keep this
18 section bare of anything to consider because there was no
19 guidance from the legislature in the bill that changed this
20 part of the Wyoming Environmental Quality Act. And in the
21 event that the Council does receive a petition to remove or
22 partially remove the designation from Adobe Town, the
23 Council would then make the determination at that time
24 whether it's appropriate to remove or partially remove that
25 designation.

1 So we would not want to add additional language
2 to say anything beyond "no longer exists." I mean,
3 essentially --

4 BOARD MEMBER APPLGATE: Actually, I'm not
5 suggesting that. I'm suggesting that I think the language
6 that's included somehow provides hurdle of removal that
7 maybe was not the intent of the legislature, meaning we've
8 now made -- there was a hurdle for designation which was
9 achieved. The new statutory language doesn't appear to
10 provide any hurdles for removal of an area. So this idea
11 somehow the area would have to be degraded or changed in
12 some manner. I think that's an assumption that you've
13 written into the rules here, which really I hadn't noticed
14 until Lorie brought it up from the opposite direction.

15 I just don't think there's anything in the
16 statutory language that gives rise to this idea that the
17 previous criteria no longer exists. It seems to me that
18 the statutory language would give the EQC the ability to
19 simply say we don't need any criteria. We simply choose by
20 a vote of -- you know, they can simply vote on it and undo
21 the designation.

22 MR. EDWARDS: Madam Chairwoman.

23 Mr. Applegate, I did understand your question. I
24 was driving towards what I understood the driver for this
25 to be, and I knew I wasn't going to answer your specific

1 question. But as was indicated, there is no statutory
2 specifics. And this language was worked out with the
3 Environmental Quality Council input. You know, they -- and
4 as the advisory board, if, let's say, you felt it was more
5 appropriate to remove that last section, and the boards
6 agreed to do that, ultimately this is a decision that the
7 Council would have to make. I mean, whether or not they --
8 they eliminated or how they approach it. And so absent
9 direct statutory specific language, the Council would seem
10 to need to define how they would do it. So if they thought
11 this was good, that's fine. If you think another answer
12 would be more appropriate, ultimately the Council, I think,
13 was going to be the referee on which way that would go
14 because it's their decision.

15 So I'm just saying as -- if it's out, the Council
16 will note it was out and why. And then they'll deliberate
17 when they meet. I assume they'll touch on the same point.

18 MS. LA: And Board Member Applegate, just
19 to add onto Deputy Director Edwards' comment. I appreciate
20 your concern we're either adding hurdles or not adding
21 hurdles. I appreciate that. Just so you know, this was
22 language added by EQC's attorneys. And because this is an
23 EQC process, and at the end of the day EQC's going to have
24 to determine whether or not they can undesignate. We
25 deferred to their suggestions with regard to the specific

1 language because it's a specific Council -- I appreciate
2 what you're saying.

3 BOARD MEMBER APPLGATE: I think my request
4 would be you make clear to the Council they don't need to
5 have any criteria in the rules. If that's not clear to
6 them, then somehow it be made clear to them they can accept
7 this rulemaking. And because there's no statutory
8 language, they don't need to agree to any sort of criteria
9 for removal. And that somehow presenting this language to
10 them might suggest to them somehow -- I'm not saying that
11 would happen, but that could happen. I mean, we weren't
12 provided any context around the language. So I think it
13 would be important to share with them that there's no
14 statutorily driven language on criteria for removal. In
15 fact, it's within their prerogative to have no criteria if
16 they so choose, given the statutory language. So I would
17 make a -- I would make a request that that information is
18 shared with EQC.

19 MS. LA: And, fortunately, Board Member
20 Applegate, you stated your concerns and issues on the
21 record today, and this record will be available to the EQC
22 for their -- their consideration and their attorneys'
23 consideration and interpretation specifically at the
24 Council level.

25 BOARD MEMBER DINSMOOR: Madam Chair.

1 Board Member Applegate, I think I've got to take
2 exception to what you said. I think that because the area
3 was designated, that the criteria for that special
4 designation are out there and those hurdles, if that's what
5 you want to call them -- I wouldn't call them hurdles, I'd
6 call them corrals, if you will -- they define the reasons
7 why it was designated. So undesignating it, necessarily in
8 my mind, says you need to address those reasons why it
9 became special. And the legislature didn't have any
10 authority to -- or reason to undo that.

11 BOARD MEMBER APPLGATE: They had
12 authority. They might not have had reason to --

13 BOARD MEMBER DINSMOOR: I don't question
14 their authority to, but that's just amazing.

15 But, anyway, I would go on record as taking the
16 opposite position that the attorneys put a fence around
17 this, which properly, in my mind, defines why the area was
18 designated and, therefore, why it may or may not be
19 undesignated.

20 BOARD MEMBER HULME: Madam Chairman.

21 Diana Hulme --

22 BOARD MEMBER CAHN: I agree with you --

23 CHAIRWOMAN BEDESSEM: Diana Hulme.

24 BOARD MEMBER HULME: Lorie, Diana Hulme
25 with the Air Quality Advisory Board. I wanted to make a

1 comment.

2 In this section -- and I'm asking for maybe
3 clarification since we're talking about the statute a
4 little bit here. It says in considering removing
5 designations, the Council shall follow a two-tiered review
6 process. First the Council shall determine whether the
7 areas no longer eligible for designation by virtue of the
8 existence of one or more of the particular values specified
9 in statute.

10 So apparently there's some sort of value
11 statement in the statute that applies to this particular
12 designation, and, therefore, I -- I prefer to keep the
13 language as it's presented hereto, that obviously there
14 needs to be some way to show that these particular values
15 that were specified in the statute no longer exist.

16 BOARD MEMBER VICKREY: Can I -- I'm sorry.
17 I just -- for clarification for --

18 BOARD MEMBER CAHN: Yeah, I think you bring
19 up a really --

20 BOARD MEMBER VICKREY: I just -- on
21 definitions, I guess I need to know what uncommon areas
22 are. Very rare, quote, uncommon areas, that could
23 encompass virtually anything in the state of Wyoming. So I
24 think that needs to be defined maybe better, at least for
25 me.

1 CHAIRWOMAN BEDESSEM: Any --

2 MR. EDWARDS: The rare and uncommon, as I
3 understand it, was determined by the Council when they made
4 their interpretation. So it was a measure of what they use
5 to evaluate that. Relative to the Department, as a general
6 statement -- step out on a limb here, the director isn't
7 here. But as with the other regulations, there's -- there
8 is reasons why something is done, and then reasons why
9 something is undone. And so, to me, a real measure that
10 comes in is are the values that -- that equated to rare and
11 uncommon still exist in any place? And if they don't,
12 that's a test that the Council would have to evaluate as
13 does it still warrant that. And there might be other
14 values that are defined to come in on the other side. But
15 typically, in this particular case, there was -- and I'm
16 not familiar with the Adobe Town; I wasn't here when that
17 was done, so I'm not speaking from experience -- that there
18 were specific criteria that were evaluated for them to make
19 your judgment, certain values, certain features out there.

20 And so if that's what was used to make the
21 designation, it would seem appropriate that those be
22 evaluated as part of the process to undesignate, because
23 those are the criteria up front, absent any other statutory
24 direction that would, to me, seem to be a reasonable
25 measure of judgment.

1 CHAIRWOMAN BEDESSEM: Thank you, Deputy
2 Director.

3 On line 204, if the language is kept the same,
4 there appears to be extraneous "is" prior to the "either no
5 longer exists or is no longer..." So if you grab that,
6 that would be great.

7 Any other comments on Chapter 7?

8 Lorie, did you have additional ones?

9 BOARD MEMBER CAHN: I do. This is Lorie.

10 Yeah, just a couple. To go back -- I had some
11 additional, but also to go back. I agree with Phil from
12 the Land Quality Board, and I would just want to go on
13 record as also strongly disagreeing with Mr. Applegate from
14 Water and Waste Advisory Board.

15 I also think that Diana from the Air Quality
16 Board did bring up a really good point about the language,
17 saying that there's something in the statute. And since,
18 at least none of us on the board seems to be -- maybe
19 except for Mr. Applegate -- none of us -- I'm not familiar
20 myself, I can speak for myself -- not familiar with the
21 specific language in the statute.

22 But I'm wondering if adding in the words "no
23 longer" is completely changing the meaning of that
24 sentence. So, in other words, what is in the statute, and
25 does it now specifically talk about reasons why things are

1 no longer eligible, or is it in the past that the statute
2 talked about things that made them eligible. And I think
3 we have to be careful adding in the words "no longer" if we
4 don't know what the statute says.

5 BOARD MEMBER APPLGATE: So Lorie -- and I
6 would agree in the interest in knowing what the statute
7 says in terms of what existing statutory language is there
8 regarding rare and uncommon, is that something you can
9 provide to us? Meaning, I'm curious if there was statutory
10 language that was used for determining this, whether or not
11 that statutory language was struck in the revisions.

12 BOARD MEMBER DINSMOOR: Madam Chairman.

13 I feel like we're -- I'm not sure. The language
14 says -- it says a two-tiered process. And the first
15 process -- or the first tier is is it eligible? That's not
16 the reason for the designation. That is simply is it
17 eligible to be considered for a particular reason? And I
18 don't think we need to know that at our level to decide on
19 this rule. It's simply a -- that's truly a hurdle. If
20 it's, for example -- let me make something up.

21 BOARD MEMBER APPLGATE: There's only one
22 example that exists. It's Adobe Town.

23 BOARD MEMBER DINSMOOR: I don't know that
24 particularly matters. Adobe Town had to meet some
25 eligibility requirement. Now let's just pretend for a

1 minute that requirement was that it be colored green on the
2 map. If it was colored green on the map, it, therefore, is
3 eligible, and now we ask you the reason why do you want to
4 designate it special, that's the second tier. The first
5 tier was coloring it green. So I'm not sure that we need
6 to know what that was in order to decide on a rule for the
7 process to undo. And the rule that's presented to us is
8 the process for undoing it is it's no longer green on the
9 map, or the technical reason, it no longer exists. Two
10 separate and distinct reasons for consideration to
11 undesignate an area.

12 BOARD MEMBER APPLGATE: Yeah, I'll make
13 one last comment, and then I'll let you make the last
14 comment. So I'm not convinced I'm going to convince anyone
15 of my position today, nor am I really interested to doing
16 that. I'm interested in making sure the Department doesn't
17 go further than their statutory reach. It's purely that.

18 The legislature eliminated rare and uncommon as a
19 designation. I wasn't a part of that debate. I don't know
20 all the reasons. But there is no longer the ability to
21 designate rare and uncommon. I will read the statutory
22 language moved forward because I'm interested in what they
23 said regarding removal of that, and what their intent might
24 have been. I think the fact they tried to revise language
25 that was created on the understanding that designations

1 could occur may not be the right language moving forward
2 with designations are no longer allowed to occur. Adobe
3 Town was obviously a very political hotbed issue. It still
4 is. It's apparent by the discussion today. But, yeah,
5 that's my only interest in making sure that the rules, as
6 they're written, reflect the statutory intent. And without
7 reading the statute and understanding fully what was said
8 by the legislature, all I know for sure is they didn't want
9 future designations. What they intended regarding removal,
10 to me, is unclear, it sounds like, in the statutory
11 language. And the Department has made an assumption of
12 what that criteria should be for removal.

13 I'd be interested in talking to those people that
14 were part of the debate to see if the majority opinion of
15 the legislature aligns with the language that's now in the
16 rule. So that's my intent. It's just to make sure
17 rulemaking follows the spirit of the legislature, not
18 necessarily our own various opinions that we may have
19 regarding the value or nonvalue of designation.

20 BOARD MEMBER DINSMOOR: Sure.

21 CHAIRWOMAN BEDESSEM: I believe the
22 Department has additional comments.

23 MR. EDWARDS: Yeah. You know, the comments
24 about a test was like how we would normally apply a rule,
25 but generally I'll go back to what one of my earlier

1 comments was. These rules will -- basically will apply to
2 both the Department and to the EQC because these are
3 standard rules that will apply to both what's termed
4 agencies, so that would be the Council and the Department.

5 So as we get to it, the Council has already had
6 some input into the drafting. And when it gets to the
7 Council, since this is ultimately, you know, this decision
8 rests with them, I would expect it would be an area they
9 would address. And for the most part, since they're part
10 of this rulemaking process and these rules, it's unique in
11 this regard because these rules will also apply to the
12 Council. It's across the board. You want to be uniform.

13 I think that the Council is, really at this
14 point, maybe the best place to hear that because it will
15 have to not only understand the basis for it, but be
16 prepared to defend any decision they might make under this
17 process. I think the Council, once they get the
18 recommendation, will be, perhaps, the most appropriate
19 referee to determine this.

20 CHAIRWOMAN BEDESSEM: Thank you.

21 Any other comments from any of the board members?
22 Any public comment? Let's have the Department continue
23 their presentation.

24 BOARD MEMBER CAHN: Marge?

25 CHAIRWOMAN BEDESSEM: Yes. Lorie,

1 continue. Do you have additional comment?

2 BOARD MEMBER CAHN: So I noticed you
3 brought up editorial, and I thought we were going to --

4 CHAIRWOMAN BEDESSEM: Sorry about that.

5 BOARD MEMBER CAHN: Well, I just have a
6 question. I have two editorial comments, but I thought we
7 were waiting until the end to do editorial comments. I
8 can -- I have two quick ones, if you want me to do them
9 now, or if you want me to wait until the end. I know you
10 brought yours up, so I'm trying to get clarification if I'm
11 supposed to bring up editorial now or wait.

12 CHAIRWOMAN BEDESSEM: Elizabeth has her pen
13 in hand. So if you want to tell them to her quickly,
14 she'll get those down.

15 MR. EDWARDS: Comments from the public?

16 CHAIRWOMAN BEDESSEM: You want to give
17 those two quick --

18 BOARD MEMBER CAHN: On lines -- on line --
19 page 7-6, line 264 of the redline/strikeout, "which" should
20 be a "that." So it should read -- this is Section (x),
21 "Whether the area includes lands that are high priority,"
22 rather than "which are high priority."

23 CHAIRWOMAN BEDESSEM: Got that?

24 BOARD MEMBER CAHN: And then on page 7-7,
25 on line 310, it says, "values that are very rare of

1 uncommon," should be "or uncommon."

2 CHAIRWOMAN BEDESSEM: Is that it?

3 BOARD MEMBER CAHN: And I had an editorial
4 from -- I had an editorial from the previous chapter, but I
5 thought we were waiting until the end. Do you want me to
6 do that now or bring it up?

7 CHAIRWOMAN BEDESSEM: Yeah, we can do --
8 Lorie, we can go back at the end and pick up all the ones
9 that have been missed so we have those in a group. Okay?

10 BOARD MEMBER CAHN: Okay.

11 CHAIRWOMAN BEDESSEM: Thank you.

12 Were there any --

13 BOARD MEMBER CAHN: Okay. Thank you.

14 CHAIRWOMAN BEDESSEM: -- public comments
15 regarding this chapter?

16 There don't appear to be any public comment, so I
17 think the Division can continue on.

18 MS. SHAW: Okay. Madam Chair, members of
19 the board, if you will notice that we are skipping right
20 over Chapter 8. That is because this is a fairly small
21 chapter that we looked at, and since it had been updated
22 more recently than any of the others in 1997, which,
23 believe it or not, was recent compared to many of these
24 rules, we determined that it did not need any substantial
25 overhaul or changes. It currently provides for small

1 business voluntary disclosure incentives, and we are not
2 proposing any changes to that today.

3 So we will move right on ahead into Chapter 9.
4 And Chapter 9 really covers two major areas. And if you
5 have read first the first section of the new proposed
6 Chapter 9, it explains what it covers. This chapter shall
7 apply to any hearings, informal conferences or review
8 before the department, the director, and administrator or
9 any combination thereof.

10 This chapter does not apply to rulemaking
11 hearings, contested case hearings or other hearings before
12 the Council. What this does apply to is hearings before
13 their department. And there are several instances where
14 this happens.

15 A couple of examples: If somebody requests a
16 variance from one of the regulations under the
17 Environmental Quality Act, the Department is required to
18 hold a hearing on that variance. These are different from
19 contested case hearings. They're a little bit unique,
20 which is why we've made this a different chapter.

21 Some other areas where this happens, sometimes in
22 setting Water Quality standards the Department will have to
23 have a public hearing or when receiving public comment on
24 several other issues throughout the Environmental Quality
25 Act.

1 So what this chapter does is it provides a
2 standard procedure for these assorted hearings that can
3 happen before the Department. And that's what you'll --
4 you're going to see in Section 4, 5, 6 and 7, is just how
5 those kinds of hearings should proceed.

6 The second thing that this chapter does, and
7 you'll see this in Sections 2 and 3, is it provides some
8 procedures for hearings before the Department or informal
9 conferences that are specific to the Surface Mining Control
10 and Reclamation Act. So Sections 2 and 3 simply provides
11 some procedures for these hearings that happen in relation
12 to coal exploration or development.

13 I believe we received one public comment on this
14 section, which I will have Deputy Director Edwards address.

15 MR. EDWARDS: Before I get to the
16 question -- to the one comment, I'd like to take
17 Director -- or Mr. Applegate's question, which picked up on
18 a very good point. While 2 and 3 address surface coal
19 mining, if you look at Number 4, it does refer to all other
20 hearings before the Council as -- or before all other
21 requests as defined under the Environmental Quality Act.
22 So any other -- any of the other provisions in the act that
23 they made an allowance for that, here's how that process
24 would occur. So it is, in fact, all -- I view that as
25 basically all requests for hearings as defined by the --

1 with Special Sections 2 and 3 for the surface coal mining.

2 CHAIRWOMAN BEDESSEM: So this was -- I'm
3 sorry. A brief question that I had because it's confusing
4 to me that the title says "involving surface coal mining
5 operations," but unless you're in surface coal mining and
6 know which Wyoming statute applies to it, you would not
7 know that it is Sections 2 and 3 that apply to that. And
8 it seems to me that having "involving surface coal mining
9 operations" in the title of the chapter isn't helpful,
10 while it would be more helpful if it was in the title of
11 Sections 2 and 3 so that you knew 2 and 3 only applied to
12 surface coal mining. Because I think right now the only
13 way you can tell is because it references Wyoming statute
14 that applies to surface coal mining. But your average Joe
15 will not know that and won't know those sections don't
16 apply. It's just a comment.

17 MR. EDWARDS: No. And that's a good
18 comment. And we look for the advice from the advisory
19 boards on that.

20 CHAIRWOMAN BEDESSEM: I'm sorry. I didn't
21 wait until the comment time. Continue. I got carried
22 away.

23 MR. EDWARDS: It's a good point, but the
24 earlier comment had been raised about the policies as
25 defined under Section 4 --

1 CHAIRWOMAN BEDESSEM: It does.

2 MR. EDWARDS: -- and all it is.

3 BOARD MEMBER APPELATE: So since we're
4 here, why don't we do a suggestion, which you say here is
5 before the department and director review of actions, and
6 then in Section 2 and Section 3 say request for informal
7 conferences involving surface coal mining operations, and
8 number 3, request for informal, you know, title -- title or
9 involving surface coal mining operations.

10 CHAIRWOMAN BEDESSEM: Is there a reason
11 that can't be done?

12 MS. MORRISSEAU: Since our Land Quality --
13 since our Land Quality attorney is not here today, and he's
14 the one who's most intimately familiar with the Surface
15 Mining Control and Reclamation Act, we are not going to
16 commit to what makes sense one way or another in terms of
17 changing a title so as to avoid potentially creating
18 challenges with OSM and with primacy. But we'll take those
19 comments back from you to Andrew to consider.

20 MR. EDWARDS: And I also understand that
21 surface coal mining operations was specifically entitled to
22 address some of the primacy type of concerns and to
23 highlight that. But as we get into that, whatever comments
24 that you have, we could take back to Andrew, as was
25 indicated, work on that before it goes to the Council and

1 get -- make sure we've got those bases covered.

2 Back to the comments, since I skirted right past
3 that myself. We received one comment on Chapter 9 from
4 Klaus Hanson. Suggested using "reasonable" instead of
5 "reasoning" in line 68.

6 We don't recommend making changes at this time.
7 The word "reasoning" basically encompasses multiple
8 reasons. There could be more than one reason. Whereas the
9 word "reason" implies there can be only be a singular
10 reason to make a particular request, and there could be
11 multiple reasons. So we felt "reasoning" was a more
12 appropriate term for that to leave the multiple options
13 open. And that was the only comment, and that was the last
14 comment we received for the record.

15 CHAIRWOMAN BEDESSEM: Thank you.

16 Do we have any comments from the Air Quality
17 Advisory Board regarding Chapter 9?

18 BOARD MEMBER BROWN: No. No comments.

19 CHAIRWOMAN BEDESSEM: From the Land Quality
20 Advisory Board?

21 BOARD MEMBER DINSMOOR: Yes, Madam
22 Chairman. Next time I'd like to have my own microphone.
23 No.

24 I agree fully with the recommendation you made
25 earlier regarding the title of the chapter and splitting it

1 into Sections 2 and 3. And one of the responses I would
2 expect the attorney from the Attorney General's Office to
3 have is that when we do that, if we somehow indicated to
4 the OSM, the federal agency that administers SMCRA, that we
5 indicated to them that the other chapters in the -- or
6 sections in this chapter no longer apply to surface coal
7 mining operations, which, if they reach that conclusion,
8 they will conclude that primacy may be jeopardized. So
9 you're walking -- there's a slippery slope here, and I
10 think we need to give you guys authority to try to solve
11 the problem without knowing what that resolution might be
12 today, but the suggestion was a good start anyway, and the
13 attorneys could decide that's not going to work.

14 MR. EDWARDS: And, Mr. Dinsmoor, that's
15 really where we're at as well. We get the -- you know, the
16 comment and the guidance from the boards as to what they
17 like to see. We do definitely need to run that by the Land
18 Quality Division attorney for those very reasons, and we
19 would commit to do that.

20 CHAIRWOMAN BEDESSEM: So I have a question.
21 Section 4 says "request for all other hearings." Does that
22 mean that Section 2 and Section 3 are considered hearings?
23 I thought they were for informal disposition conferences
24 and informal conferences.

25 MR. EDWARDS: The request for hearings

1 refers to -- well, let me defer to legal counsel.

2 CHAIRWOMAN BEDESSEM: Okay. Thank you.

3 MS. LA: No. What this is referring to
4 here, "request for all other hearings," is all other
5 hearings account for, for example, rulemaking hearings
6 before the EQC and -- and the advisory boards. Does that
7 answer your question?

8 CHAIRWOMAN BEDESSEM: So other hearings
9 besides --

10 MS. LA: I'm sorry. I'm sorry. I'm sorry.
11 Can you rephrase your question once more?

12 CHAIRWOMAN BEDESSEM: So Section 4 is
13 request for hearings for the Department. A request for all
14 other hearings. Other than what? So does that mean
15 Section 3 are considered hearings?

16 MS. LA: Yes. It's referring to the
17 four -- the hearings under SMCRA, which are Section 3.

18 CHAIRWOMAN BEDESSEM: Okay. Since
19 Section 3 calls itself "request for informal disposition
20 conferences," it's not clear to me, as a layman reading
21 this, that Section 3 is talking about hearings. So when I
22 get to Section 4 and it says "request for all other
23 hearings," I find that confusing.

24 MS. SHAW: So part of the confusion we were
25 trying to avoid here is that there are multiple kinds of

1 hearings that DEQ and EQC is involved in. These include
2 contested case hearings, rulemaking hearings, and also
3 these other kinds of hearings that happen before the
4 Department. So the confusion we were trying to avoid is we
5 did not want to have any confusion that this chapter might
6 apply to rulemaking hearings or contested case hearings.

7 So the language "all other hearings" is intended
8 to apply to other kinds of hearings before the Department.
9 If that isn't clear, there might be a better way to explain
10 that confusion.

11 CHAIRWOMAN BEDESSEM: Can you -- you
12 attempt to clarify that in Section 1, because in Section 1,
13 you explained what this chapter applies to, correct?

14 MS. SHAW: Yes. That's right.

15 CHAIRWOMAN BEDESSEM: Simply instead of
16 saying "all other hearings," can you just say "request for
17 hearings in accordance with Section 1," so that everybody
18 knows that it's what you said, it applied to Section 1 and
19 not something else?

20 MS. SHAW: We will note that clarification.

21 CHAIRWOMAN BEDESSEM: That would help me.
22 Thank you.

23 So I think we went through Air Quality and Land
24 Quality. Do we have other comments from the Water and
25 Waste Advisory Board members?

1 Lorie, do you have additional comments on the
2 water -- excuse me, on Chapter 9.

3 BOARD MEMBER CAHN: Yes. So now I'm -- you
4 bring up a good point, Marge. Now I'm confused about
5 Section 1 because the last -- first talks about what it
6 applies to, any hearings, informal conferences. And it's
7 any hearings. So to me that's kind of inclusive of all
8 hearings. But then it says it "does not apply to
9 rulemaking hearings, contested case hearings." And then it
10 says "or other hearings before the Council." So I'm really
11 confused about what it applies to now because we have the
12 first part that says, basically, any hearing is part of
13 this, and then second sentence says it doesn't apply to
14 other hearings. So now I'm really confused of the
15 clarification.

16 CHAIRWOMAN BEDESSEM: Well, perhaps if we
17 take the "all other hearings" out of that second part, that
18 conflict will disappear.

19 MS. LA: I think your suggestion, Madam
20 Chair, about just relying on the language in Section 1
21 would help clarify the concerns here, and we can just
22 remove "all other hearings" from this section.

23 MS. SHAW: And Board Member Cahn, if you
24 read through Section 1, the first section of that provides
25 that "This chapter shall apply to any hearings, informal

1 conferences or review before the Department..." So I think
2 that clarifies that this doesn't apply to the types of
3 hearings that happen before the Council. These are
4 specific to hearings before the Department.

5 CHAIRWOMAN BEDESSEM: Thank you.

6 BOARD MEMBER CAHN: Thank you for that
7 clarification. I missed that subtlety. I apologize.

8 My other comment is in Section 3, it's talking
9 about request for informal disposition conferences, and
10 then it also adds conferences through review notice for
11 abatement and cessation orders. So my question is is the
12 second set of conferences also informal or are those also
13 formal?

14 MR. EDWARDS: It appears the legal
15 interpretation is they both refer to informal conferences.
16 They're just two different topics that would be covered
17 under informal conferences.

18 MS. LA: Just to add on to --

19 BOARD MEMBER CAHN: Okay. Then that --

20 MS. LA: Board Member Cahn, just to add on
21 to Deputy Director Edwards' comment. It provides more
22 information with regard to Wyoming Statute 35-11-902 and
23 then 35-11-437. Those both are informal -- referred to as
24 both informal processes.

25 BOARD MEMBER CAHN: Okay. Then what I

1 would like to, as part of my -- after that clarification,
2 then, in Section 3(h), the very last paragraph of this
3 section talks about formal review proceedings. So I'm
4 wondering if we need a separate section to discuss formal
5 review proceedings since this -- this section is on
6 informal. So does it -- basically, does this belong under
7 request for informal review or does it need separate
8 section on formal review proceedings? Thank you.

9 MS. MORRISSEAU: This is Elizabeth
10 Morrisseau.

11 Chairperson [sic] Cahn, the purpose of Section 3,
12 subsection (h) is to say that statements or information
13 that come about through the informal conference can't be
14 used as -- or it sort of specifies how they can be used as
15 evidence at subsequent formal proceedings before the
16 Council. So it just gets to if there is an informal
17 conference, and if there's statements made during it and
18 evidence that's put together into it, it describes how that
19 would then relate to a subsequent formal proceeding before
20 the Council, which would be an appeal before the Council.

21 BOARD MEMBER CAHN: Okay. Thank you for
22 that clarification.

23 CHAIRWOMAN BEDESSEM: Do you have
24 additional comments, Lorie?

25 BOARD MEMBER CAHN: Not on this chapter. I

1 just have two additional editorials on other chapters.

2 CHAIRWOMAN BEDESSEM: Okay. Let me ask for
3 public comment first. Do we have any additional comments
4 from the board or any public comments at this point in time
5 on Chapter 9?

6 Hearing none -- Director Edwards, you'd like to
7 speak?

8 MR. EDWARDS: Madam Chairwoman, just as
9 the overarching caveat, again, relative to Chapter 9,
10 sensitivity in that for primacy, we would ask the
11 board's -- collective boards' sort of discretion, if
12 there's changes made to this, that we be allowed to run
13 that back through our attorney who specifically addresses
14 this, and then carry that forward to the Council so the --
15 if you have comments and changes in this, we'll make sure,
16 to the best we can, we understand the intent and try to
17 work it in. But with that overarching layer, we would
18 appreciate the consideration of being able to do that
19 before it goes to the Council and carry it, and we'll make
20 sure we identify the reason and basis for that.

21 CHAIRWOMAN BEDESSEM: Thank you.

22 So I believe we're at the point now where the
23 Department has concluded their presentation. Lorie, did
24 you have a -- I guess at this point we can take some
25 additional -- any minor editorial corrections you want to

1 take down? So anybody else on the board have not
2 substantive changes they want to transmit?

3 Do you have brief ones, Lorie?

4 I was just asking if Ms. Cahn had some brief ones
5 she can send you, otherwise she would do that following the
6 meeting.

7 BOARD MEMBER CAHN: They are very brief.

8 CHAIRWOMAN BEDESSEM: They're very brief.
9 Go ahead.

10 BOARD MEMBER CAHN: On page 7-3, on line
11 121 of the strikeout version -- strikeout/underlined, after
12 the word removed, there's an extra space before the period.

13 MS. MORRISSEAU: Thank you.

14 BOARD MEMBER CAHN: And on page 1-6,
15 just -- on 262, just in the interest of getting away from
16 gender-specific language, if we could change "he" to
17 "they."

18 MS. MORRISSEAU: Thank you.

19 BOARD MEMBER CAHN: And that's all I have
20 for editorials because we already covered my other
21 comments.

22 CHAIRWOMAN BEDESSEM: Thank you.

23 So the department has completed their
24 presentations. We are at the point of entertaining
25 motions. So we're going to talk about if any board members

1 have any recommended changes, but I believe Mr. Applegate
2 has a comment.

3 BOARD MEMBER APPELLEGATE: Just one request
4 of the Chair, that we vote on Chapter 7 separately from the
5 other chapters in terms of motion.

6 CHAIRWOMAN BEDESSEM: The other -- are you
7 saying that you're fine with doing the others as a group?
8 Okay. Well, we will talk about proposed changes chapter by
9 chapter, if there are any.

10 So, first off, we're going to start with
11 Chapter 1. Do we have any recommended changes from any
12 board members regarding Chapter 1? So I'd like to ask a
13 procedural question. Besides motions that come from the
14 board, there may be -- based on our previous discussions
15 and comments, there may be revisions we have agreed upon
16 through the earlier discussion that would have to
17 essentially be put forward or explained by the agent's
18 office. How would you like to handle that?

19 MS. MORRISSEAU: Well, what we can do --
20 we've had a pretty good conversation about some specific
21 changes to be made in terms of commas and word choices, and
22 the Department and the AG's Office have responded either
23 where there's one we can definitely make changes or ones
24 we'll need to do further consultation. I think one way to
25 go forward would be to move to recommend the package with

1 the attached -- or all the comments and conversations that
2 have occurred during the course of the day, so -- and I
3 understand that Chairperson [sic] Applegate wants to do a
4 separate motion related to Chapter 7. So you could
5 consider moving everything else -- moving to recommend them
6 with the understanding that attached to that recommendation
7 are all of the specific grammatical concerns and
8 conversations that have occurred over the course of this
9 meeting. I think that would be practically easier than
10 saying line this and line that.

11 CHAIRWOMAN BEDESSEM: Much, much easier.

12 MR. EDWARDS: And if I might also offer, we
13 picked up on things, like under Chapter 7, even though that
14 will be later, we'll check Endangered Species Act for the
15 correct wording, and so we'll take a look at some of those
16 based on the comments of the board.

17 CHAIRWOMAN BEDESSEM: Okay. Thank you.

18 So then at this point, then, we will just go
19 through each advisory board to make sure that each board is
20 comfortable with this package because all the boards have
21 to reach consensus on any recommendations, and then we will
22 have to do a motion from each board to forward the package
23 to the Environmental Quality Council.

24 So at this point in time we are only looking
25 at -- we're not looking at any separate or different

1 motions, just what has gone on through our agreements
2 through this discussion today. And so first I would like
3 to call upon the Air Quality Advisory Board for -- to move
4 and second approving the chapters with the changes as
5 agreed upon today to the Environmental Quality Council.
6 And so we'd like to hear from the Air Quality Board first
7 for all the chapters, except Chapter 7, which we will
8 address separately.

9 BOARD MEMBER HULME: I was just going
10 to -- you just clarified for me, Marge -- Chairman. I was
11 just going to ask if that's -- if we were still keeping
12 Chapter 7 separate, and you said yes, we are. So kind of
13 we're going to make a motion on the other chapters right
14 now; is that correct?

15 CHAIRWOMAN BEDESSEM: Yes, chapters --
16 every one except Chapter 7.

17 BOARD MEMBER HULME: Okay. I guess I'll
18 make the motion to accept all chapters, with the exception
19 of Chapter 7, as discussed today, incorporating proposed
20 changes to language, and that will be determined by the
21 Attorney General's Office.

22 BOARD MEMBER VICKREY: I would second that.

23 BOARD MEMBER BROWN: It's been moved and
24 seconded. Any discussion?

25 Okay. Let's put this to a vote.

1 All in favor.

2 BOARD MEMBER HULME: Aye.

3 BOARD MEMBER VICKREY: Aye.

4 BOARD MEMBER BROWN: Aye.

5 All ayes. Okay. Air Quality Advisory Board
6 recommends that we pass that with the recommended changes
7 for all chapters, with the exception of Chapter 7, for the
8 recommendation moving up forward to the Environmental
9 Quality Council.

10 CHAIRWOMAN BEDESSEM: If you would just
11 pass the mic to the land board.

12 BOARD MEMBER DINSMOOR: I don't know if you
13 guys were aware of this, but Kyle asked if I would step in
14 for Jim today while Jim was ill. So I'll ask if there's a
15 motion.

16 BOARD MEMBER HINES: I guess I'll make the
17 motion to accept.

18 BOARD MEMBER DINSMOOR: Motion has been
19 made to accept, and I presume you're using the same
20 language that the Air Advisory Board used?

21 BOARD MEMBER HINES: Yes.

22 BOARD MEMBER DINSMOOR: Okay.

23 BOARD MEMBER SHOBER: Second.

24 BOARD MEMBER DINSMOOR: Okay. We have a
25 motion and second. Any discussion that we need to have?

1 BOARD MEMBER SHOBER: About where a --

2 BOARD MEMBER DINSMOOR: No comment?

3 Okay. All in favor of the motion, please say
4 aye.

5 BOARD MEMBER HINES: Aye.

6 BOARD MEMBER SHOBER: Aye.

7 BOARD MEMBER DINSMOOR: There being no
8 others to oppose -- and Natalia is not on the phone; is
9 that correct? She left us?

10 MS. THOMPSON: That is correct.

11 BOARD MEMBER DINSMOOR: That being the
12 case, the Land Quality Advisory board has agreed to move
13 the proposed rule package forward with the attorneys' input
14 here as proposed.

15 CHAIRWOMAN BEDESSEM: Thank you.

16 BOARD MEMBER APPELEGATE: I'll make a motion
17 we approve the chapters we've discussed today, with the
18 exception of Chapter 7, with the comments and review as
19 outlined by the attorneys.

20 CHAIRWOMAN BEDESSEM: Do I have a second?

21 That would be you, Lorie?

22 BOARD MEMBER CAHN: I seconded. I don't
23 know if you could hear me.

24 CHAIRWOMAN BEDESSEM: Thank you for the
25 second.

1 Any discussion?

2 Water and Waste Advisory Board, all those in
3 favor of recommending moving this package, except for
4 Chapter 7, on to the Environmental Quality Council respond
5 with aye.

6 BOARD MEMBER APPELATE: Aye.

7 CHAIRWOMAN BEDESSEM: Aye.

8 BOARD MEMBER CAHN: Oh, aye.

9 CHAIRWOMAN BEDESSEM: Thank you.

10 Motion passes.

11 So the motion and second has been made by all the
12 boards, and is identical, passed by all boards.

13 So now we'll go through this process again with
14 respect to Chapter 7. We'll start with the Land Quality --
15 the Air Quality Board.

16 BOARD MEMBER DINSMOOR: Madam Chair, before
17 we do, since the exception came from the Water Board, would
18 it be appropriate to start there?

19 CHAIRWOMAN BEDESSEM: That would be fine.

20 So, Water and Waste Advisory Board, we're looking
21 for a motion to transmit Chapter 7, as recommended and with
22 minor changes that have been approved through this
23 discussion to the Environmental Quality Council.

24 Lorie, can I have a motion?

25 BOARD MEMBER CAHN: I'm in a quandary here,

1 since I don't know what the statute says, and I think that
2 is fairly critical to our discussion. So I'm not sure --
3 I think that this distinction between what Dave wants and
4 what I'm suggesting or that's there, I think it's a fairly
5 significant distinction and really depends on the language
6 in the statute or the intent. So I don't know. I'm going
7 to punt right now while I think.

8 CHAIRWOMAN BEDESSEM: So am I hearing that
9 I don't have a motion or second for two -- my two members
10 of the Water and Waste Advisory Board? I'm not hearing
11 anything.

12 BOARD MEMBER APPELEGATE: Is it possible
13 that we -- I have -- I have a question on process. So if
14 the other two boards were to pass it as is, would it be
15 possible for us to pass it as is in a follow-up meeting if
16 we got clarification from you guys on the statutory
17 language?

18 MS. LA: I can read the statutory language
19 for you, but I think we've closed discussion, so I'll leave
20 it to Madam Chair to determine if you'd like me to read the
21 statutory language, and if that helps or not, and what you
22 all would like to do.

23 BOARD MEMBER APPELEGATE: So, again, I have
24 clarifying questions. Again, I was not really
25 understanding or reading the enabling legislation because

1 I'm interested in what they did in terms of previous
2 legislation. Did they strike it, or did they modify it,
3 or -- I'm just -- I'm not familiar with that.

4 MS. MORRISSEAU: To answer your process
5 question, if the Water and Waste Advisory Board does not
6 want to act on this chapter at this time, and the other
7 boards do want to act on it, that's a fine process for that
8 chapter. If, in the alternative, you wanted to reopen
9 discussion to look at the actual bill, to look at the act,
10 and then consider acting on this chapter, that would be an
11 appropriate process.

12 If the Air Quality Advisory Board and the Land
13 Quality Advisory Board wanted to move to recommend this
14 chapter, and the Water and Waste Advisory Board wanted to
15 make a conditional recommendation based on subsequent
16 discussions or based on some kind of condition, that would
17 also be procedurally appropriate as well. So we really
18 leave it to you to the choice you want to make.

19 MR. EDWARDS: To address that answer in a
20 little different direction. If -- as you know, the water
21 advisory -- water and waste only has three members, so it
22 would take all three to vote to do that. The challenge
23 would be as if the air and the water approve to accept it,
24 let's say as it is, and then the Water and Waste Advisory
25 Board makes other changes, potentially significant, the

1 question that we would have then is procedurally would we
2 want to carry that back to the other two advisory boards as
3 well to get their advice on that before it goes to the
4 Council. So a difference on yours, between theirs, while
5 procedurally it could work, it would likely limit our
6 ability to carry this forward to Council until we had
7 agreement by all three boards. We're looking for the
8 advice on what the final language is, and the other two
9 boards might be absent the benefit of your changes.

10 CHAIRWOMAN BEDESSEM: I would like to
11 reopen discussion to allow the representatives from the
12 Attorney General's Office to provide us with information
13 with respect to the statutes.

14 MR. EDWARDS: Bear with us a few minutes.
15 We're in intense, earnest conversation.

16 MS. LA: So what I'm going to do is I'm
17 going to read what the statute reads in its current form,
18 and then what I'm going to do is identify what the change
19 the legis -- what change the legislature made to make the
20 language how it is today.

21 THE REPORTER: Slowly please.

22 MS. LA: Of course.

23 Currently Wyoming Statute Section 35-11-112(a)(v)
24 reads -- and, actually, I'm going to have to go back
25 because it's larger language because that's a romanette, so

1 I'm going to have to -- okay.

2 So Wyoming Statute Section 35-11-112(a) reads:

3 "The Council shall act as a hearing examiner for the
4 department and shall hear and determine all cases or issues
5 arising under the laws, rules, regulations, standards or
6 orders issued or administered by the department or its air
7 quality, land quality, solid and hazardous waste management
8 or water quality divisions. At the council's request, the
9 office of administrative hearings may provide a hearing
10 officer for any rulemaking or contested case hearing before
11 the council, and the hearing officer may provide
12 recommendations on procedural matters when requested by the
13 council. Notwithstanding any other provision of this act,
14 including this section, the council shall have no authority
15 to promulgate rules or to hear or determine any case or
16 issue arising under the laws, rules, regulations, standards
17 or orders issued or administered by the industrial siting
18 board -- or by the industrial siting or abandoned mine land
19 divisions of the department. The council shall: (v),
20 designate at the earliest date and to the extent possible
21 those areas of the state which are very rare or uncommon
22 and have particular historical, archaeological, wildlife,
23 surface geological, botanical or scenic value. When areas
24 of privately owned lands are to be considered for such
25 designation, the council shall give notice to the record

1 owner and hold a hearing thereon, within a county in which
2 the area, or major portion thereof, to be so designated is
3 located, in accordance with the Wyoming Administrative
4 Procedures Act. No new designations shall be made pursuant
5 to this paragraph after July 1, 2011, but the council shall
6 retain the authority to remove designations made prior to
7 that date."

8 That is currently how the statute reads. Now
9 going back to the session laws. The change that the
10 legislature made to this statute in 2011 was specifically
11 to add the language at the end of (a)(v), which reads: "No
12 new designations shall be made pursuant to this paragraph
13 after July 1, 2011, but the council shall retain the
14 authority to remove designations made prior to that date."

15 MS. MORRISSEAU: And one thing I would add
16 on is that when we interpret language from the legislature,
17 you're supposed to do so on the assumption that the
18 legislature is aware of relevant case law and things that
19 are going on in the background. So there is an important
20 case that had to do with this language in 1993, prior to
21 the amendment. That's Rissler and McMurry Co. versus the
22 Environmental Quality Council. The citation is
23 856-P2d-450. And in that case, the court found that the
24 council under that section could not classify lands within
25 the state as, quote, very rare or uncommon without first

1 putting out regulations that establish standards for those
2 classifications.

3 So that's where the criteria from the original
4 regulations came from, because a court had essentially told
5 the council you may not designate without first having
6 rules that establish criteria for designating them. So in
7 retaining those classifications and applying them to
8 removing, that would be consistent with the case law, and
9 would basically put the Council in the position of using
10 the criteria that they established to designate lands to
11 also use to remove, if they so chose to.

12 And so the concern about removing the standards
13 that are in the rules is that it would go against this case
14 law, which presumably was in the legislature's mind when
15 they amended Wyoming Statute 35-11-112 (a)(iv) -- (a)(v) to
16 add that section about removing.

17 BOARD MEMBER APPLGATE: Yeah, I appreciate
18 that. I think the fact that the modified language retains
19 the general list or criteria by which the previous
20 designation was made -- I'm not an attorney, but that seems
21 important in my mind, that that was not revised or deleted
22 in this new edition makes me more comfortable with the
23 language as it's currently construed.

24 CHAIRWOMAN BEDESSEM: Thank you.

25 Any other questions regarding the reading of the

1 statute, which obviously now still lists the values that it
2 had originally for designation.

3 Can we close discussion at this point, then?

4 Okay. So we are now going to revert back to
5 Water and Waste Advisory Board in hopes that we can --

6 BOARD MEMBER APPELATE: Move forward.

7 CHAIRWOMAN BEDESSEM: -- move forward and
8 address this particular issue.

9 BOARD MEMBER APPELATE: I'll make a motion
10 we accept Chapter 7 with the comments that have been
11 provided being reviewed.

12 CHAIRWOMAN BEDESSEM: Do I have a second?

13 BOARD MEMBER CAHN: I second the motion.

14 CHAIRWOMAN BEDESSEM: Thank you. All those
15 in favor?

16 BOARD MEMBER APPELATE: Aye.

17 CHAIRWOMAN BEDESSEM: Aye. Lorie, did you
18 say aye?

19 BOARD MEMBER CAHN: Aye.

20 CHAIRWOMAN BEDESSEM: Okay. All in favor.
21 So the motion passes.

22 Looks like now we can pass it on to the other
23 advisory boards.

24 BOARD MEMBER HULME: I would make a motion
25 that the Air Quality Advisory Board adopt Chapter 7 as

1 written, considering the discussion of changes from today's
2 meeting.

3 BOARD MEMBER VICKREY: I second that.

4 BOARD MEMBER BROWN: It's been moved and
5 seconded. All in favor?

6 BOARD MEMBER HULME: Aye.

7 BOARD MEMBER VICKREY: Aye.

8 BOARD MEMBER BROWN: Aye.

9 No one here to say no, so Air Quality Advisory
10 Board recommends accepting the changes to Chapter 7 and
11 moving it forward to the Environmental Quality Council.

12 BOARD MEMBER SHOBER: I move we accept
13 Chapter 7 as presented.

14 BOARD MEMBER HINES: Second.

15 BOARD MEMBER DINSMOOR: Okay. The Land
16 Quality Advisory Board has a motion and seconded. We'll
17 vote.

18 All in favor, please say aye.

19 BOARD MEMBER SHOBER: Aye.

20 BOARD MEMBER HINES: Aye.

21 BOARD MEMBER DINSMOOR: There being no one
22 to oppose, the Land Quality Advisory Board also recommends
23 moving this forward to the Environmental Quality Council.

24 CHAIRWOMAN BEDESSEM: I believe we have
25 made the appropriate motions, seconds and approvals to pass

1 your entire package to the Environmental Quality Council
2 with the changes that were discussed today.

3 Does the Department have any additional comments?

4 MR. EDWARDS: Madam Chairwoman, if I may be
5 given the opportunity, I would like to go back to where the
6 director started this conversation. This is a first for
7 us. And getting all the boards together, we know that this
8 is not the most convenient location for most of the people,
9 but the flexibility and everybody in the location and the
10 time is greatly appreciated.

11 It's a difficult rule and a difficult process,
12 and we felt that the discussion would be much more informed
13 if all of the boards were together and could listen to the
14 other conversations.

15 Lorie, I know you're on the phone, but -- and you
16 weren't able to make it, but we definitely appreciate you
17 taking the time out of your schedule to join us by call.
18 And your comments were very helpful and very appreciated.
19 So we do thank you for joining us through the conference
20 call.

21 Like I say, this is a difficult rule because it
22 was kind of new. It's not what any of us traditionally get
23 to. And I know if the director were here, he would echo my
24 thanks for your time and your effort associated with this
25 entire process. It's a value to us, and it's going to be

1 valuable to the Council. So thank you very much.

2 CHAIRWOMAN BEDESSEM: Thank you, Deputy
3 Director. We would also like to thank your excellent
4 staff. They were Johnny-on-the-spot providing the
5 information we needed so we could get through this rule
6 package today. Excellent job. Excellent presentation.
7 Thank you very much.

8 MR. EDWARDS: I notice you didn't thank me
9 for an excellent job.

10 CHAIRWOMAN BEDESSEM: We do thank you as
11 well.

12 BOARD MEMBER CAHN: I want to thank you.

13 CHAIRWOMAN BEDESSEM: And with that, I --

14 BOARD MEMBER CAHN: Thank the tech guys.
15 Hello? I want to thank the IT staff and Gina for the
16 wonderful -- WebEx was the best this has ever worked out
17 for these meetings, so I appreciate all the effort and
18 everybody spending time yesterday making sure it was
19 getting --

20 CHAIRWOMAN BEDESSEM: Thank you. We could
21 not have done that without you guys setting this up so
22 well. So thanks again.

23 If there's no additional comments, no other
24 attendees are making any other statements, we can close the
25 hearing at 3:50 p.m.

1 Thank you all very much for attending, and we
2 have moved the rules on. Congratulations.

3 MR. EDWARDS: Thank you, Marge, for taking
4 the -- taking charge and being willing to be moderator for
5 this. You've done a good job.

6 CHAIRWOMAN BEDESSEM: No problem. My
7 pleasure. Thank you.

8 (Hearing proceedings concluded
9 3:50 p.m., June 29, 2016.)

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C E R T I F I C A T E

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

Dated this 29th day of July, 2016.


KATHY J. KENDRICK
Registered Professional Reporter



