

WWAB Meeting

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WYOMING WATER AND WASTE ADVISORY BOARD

IN RE: WATER QUALITY DIVISION

TRANSCRIPT OF MEETING PROCEEDINGS

Pursuant to notice duly given to all parties in interest, this matter came on for meeting on the 23rd day of June, 2017, at the hour of 9:12 a.m., at the DEQ Field Office, 152 North Durbin Street, Suite 100, Casper, Wyoming before the Wyoming Water and Waste Advisory Board, Mr. Klaus D. Hanson, presiding, with Mr. Alan Kirkbride and Mr. Brian Deurloo in attendance, and Ms. Lorie Cahn attending by phone and videoconference.

Mr. Kevin Frederick, Water Quality Division Administrator, and Ms. Gina Thompson, Water Quality Division, were also in attendance.

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A P P E A R A N C E S

ALSO PRESENT: MS. LINDSAY PATTERSON
MR. RICHARD CRIPE
MR. DENNIS LAMB
MR. IAN SMITH
MR. JOHN ROBITAILLE
MS. MEGAN TAYLOR
VARIOUS UNIDENTIFIED AUDIENCE MEMBERS

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

2 (Meeting proceedings commenced

3 9:12 a.m., June 23, 2017.)

4 BOARD MEMBER HANSON: Good morning, Lorie.

5 We'll call this meeting to order. This is Klaus,
6 because our esteemed chair isn't here today.

7 So we'll do roll call first. Okay.

8 Would you do the roll call? Okay? All right.

9 All right. Lorie? You are present?

10 BOARD MEMBER CAHN: This is Lorie Cahn.

11 BOARD MEMBER HANSON: Yes. You are
12 present.

13 BOARD MEMBER CAHN: This is Lorie Cahn
14 representing the public at large.

15 BOARD MEMBER HANSON: Okay. Mr. Kirkbride.

16 BOARD MEMBER KIRKBRIDE: Alan Kirkbride.

17 I'm here.

18 BOARD MEMBER HANSON: Mr. Deurloo.

19 BOARD MEMBER DEURLOO: Brian Deurloo, here.

20 BOARD MEMBER HANSON: Okay. And Klaus
21 Hanson.

22 So we're four out of five. Our esteemed chair is
23 absent today.

24 Welcome, Lorie. And I think we can hear you
25 clearly. All right.

1 We have done the call to order. We'll do the
2 next thing, which is -- on the agenda, which is the Water
3 Quality Division briefing on the March 24th meeting and
4 comment period.

5 Mr. Frederick.

6 MR. FREDERICK: Thank you, Mr. Chairman.

7 Kevin Frederick, administrator of the Water
8 Quality Division.

9 Lorie, can you hear me okay?

10 BOARD MEMBER CAHN: Yes, I can. Thank you.

11 MR. FREDERICK: Okay. Good. So at the
12 March meeting, the chair asked if we would provide some
13 guidance with respect to the ability of the board to
14 utilize the Attorney General for an opinion regarding
15 clarification with respect to the board's ability to
16 essentially review and comment on portions of regulations
17 that we bring before the Advisory Board that we aren't
18 suggesting any modifications to, and we aren't asking the
19 board to necessarily make any considerations about.

20 We've given that a lot of thought. I've had some
21 conversations with the director, and he suggested that we
22 simply try to make those clarifications in a memo to the
23 advisory board from myself and the director, keeping in
24 mind that as Water Quality administrator, I'm also the
25 executive secretary for the advisory board. So we intend

1 to have that before you -- before the next advisory board
2 meeting. And I think it will be real useful to share some
3 clarification with respect to those sort of questions that
4 have come up in the past with respect to dealing with other
5 portions of the regulations that the board would wish us to
6 consider to make modifications to, other than those that we
7 bring before you for considerations. So we'll have some
8 more discussion on that at the fall board meeting.

9 BOARD MEMBER HANSON: Uh-huh. Thank you.

10 Any reaction? Any comment? Lorie, any comment
11 on the statement?

12 BOARD MEMBER CAHN: No. Thank you for
13 that. We'll look forward to the clarifications.

14 MR. FREDERICK: Okay.

15 BOARD MEMBER HANSON: Thank you very much.

16 Then we'll go on to Item Number III on the
17 agenda, Water Quality Division rulemaking, watershed
18 program, WQRR Chapter 1.

19 MR. FREDERICK: Thank you, Mr. Chairman.

20 BOARD MEMBER HANSON: Just remember we'll
21 have the Chapter 14 after the break, then. We'll discuss
22 it later. Okay?

23 MR. FREDERICK: Thank you.

24 BOARD MEMBER HANSON: Thank you.

25 MR. FREDERICK: Joining me here today is

1 Lindsay Patterson. Lindsay works in our watershed section
2 and is essentially the Department's lead on Surface Water
3 Quality Standards and so forth that we're going to be
4 discussing here today.

5 Surface Water Quality Standards are essentially
6 memorialized in Chapter 1. We're proposing some
7 modifications to the Chapter 1 that would provide some
8 authority to the Department to grant variances to Water
9 Quality Standards to specific dischargers in cases where
10 meeting a water quality-based effluent would result in
11 substantial and widespread economic and social impacts.

12 Today Lindsay is going to be presenting the board
13 essentially an overview of our suggested recommendations
14 with respect to modifying the regulation to accomplish this
15 purpose. We'll talk a little bit about the responses to
16 comments that we've received. I'd also like to inform the
17 board that we received some additional comments from EPA
18 and a Wyoming nongovernmental organization late yesterday.
19 It will take us some time to develop written responses to
20 those comments. So after today's review with the board and
21 conversation with the board, public comments and so forth,
22 I expect that we'll have to take those comments back to
23 Cheyenne for consideration by the director and others in
24 making further modifications as suggested by EPA. And that
25 we will likely have a revised regulation before the

1 advisory board at the fall meeting.

2 So just so you know, that's where I see this
3 effort going today, at least. With that, I'd like to have
4 Lindsay provide us an overview.

5 BOARD MEMBER HANSON: And just to mention,
6 the board hasn't really seen the additional comments that
7 came. Neither has the public, of course. So they are --
8 that's all news to all of us. Okay? Thank you.

9 MR. FREDERICK: Thank you.

10 BOARD MEMBER HANSON: Go ahead, please.

11 MS. PATTERSON: Thank you. As Kevin said,
12 I'm Lindsay Patterson. I'm responsible for the
13 development/adoption of Wyoming Surface Water Standards.
14 And so I just wanted to give you basically an overview of
15 the proposed rules, a little bit of background on Water
16 Quality Standards and how the different pieces fit
17 together, the main reasons why we're proposing the
18 revisions to the rule, some of the details -- specific
19 details about the rule, and then go through a little bit of
20 the comments that we received on the initial version.

21 BOARD MEMBER HANSON: Lorie, can you hear
22 clearly?

23 BOARD MEMBER CAHN: I can hear most of what
24 you're saying. Maybe just put the microphone closer to
25 Lindsay.

1 BOARD MEMBER HANSON: Sure.

2 BOARD MEMBER CAHN: Thank you.

3 MS. PATTERSON: I'll try to speak up a
4 little bit.

5 Just fundamentally, though, surface water
6 standards are intended to be consistent with the federal
7 Clean Water Act. And so they're comprised of three main
8 components. The designated uses, which are things like
9 primary contact, recreation, fisheries, agricultural uses.
10 And then we have water quality criteria to support those
11 designated uses.

12 And then we have antidegradation provisions,
13 which protect water quality in circumstances where it's
14 better than the criteria that we need to support the uses.

15 So a little bit more about water quality
16 criteria, since that's one of the main reasons why we're
17 here today, to talk about providing a mechanism to allow
18 temporary modifications. So the water quality criteria
19 that we adopt into the standards, there are concentrations
20 of pollutants or in narrative statements. We have
21 narrative standards in circumstances where we can't come up
22 with a numeric value for a particular pollutant, so it's
23 more of a catchall. And so those are derived to protect
24 the uses, and they don't take into consideration the costs
25 of meeting the criteria or what available treatment

1 technologies there are. And so sometimes you have a
2 disconnect between what you need in order to protect a
3 particular, say, fish or aquatic mussel or something that's
4 in the waterbody, and what a facility could potentially
5 treat to. But that's how it's set up.

6 So as I laid out, this is basically what becomes
7 kind of the issue for some of the point source discharges
8 because we used the water quality criteria to develop
9 effluent limits. And so the effluent limits can either be
10 technology based or they can be water quality based,
11 depending on whatever you need in order to protect the
12 particular receiving water that they're discharging into.

13 And so the way that these water quality-based
14 effluents are calculated is that you obviously use the
15 water quality criteria, you use the flow of the effluent,
16 you use the low flow of the receiving water, and then you
17 use the background concentration of that particular
18 pollutant in the receiving water. So the water quality
19 criteria, depending on what the solution is of the
20 receiving water, can have a big impact on what the entity
21 is required to meet.

22 And a particular discharger can get a water
23 quality-based effluent limit either during an initial
24 permit development through reasonable potential analysis,
25 like I laid out. Basically, a permit writer would look at

1 the standards. They would look at the effluent that
2 they're discharging and determine whether they needed a
3 particular program -- a different effluent limit or
4 particular effluent limit for a particular pollutant.

5 The other way that a facility could get a water
6 quality-based effluent limit is through completion of a
7 restoration plan through a totaled maximum daily load. And
8 so that happens when you have identified a water as being
9 impaired. So it's exceeded its water quality standards.
10 It gets identified on our 303(d) list of impaired waters,
11 that section of the Clean Water Act, and basically develop
12 a pollution budget for that particular water body. And so
13 in cases where there's a point source discharging and you
14 need a reduction from the point source to meet the
15 standards, a facility could potentially get a water
16 quality-based effluent through that process.

17 BOARD MEMBER KIRKBRIDE: I have a question.

18 MS. PATTERSON: Yeah.

19 BOARD MEMBER KIRKBRIDE: So it's
20 different -- different dischargers will have different
21 limits?

22 MS. PATTERSON: They will. Absolutely.
23 Yep. It will depend on how much they're discharging, what
24 the low flow is of the receiving water. So if you're
25 discharging to the North Platte, it can be very different

1 than if you're discharging to Crow Creek in Cheyenne.

2 BOARD MEMBER DEURLOO: But the watershed
3 has a singular TMDL through it, right?

4 MS. PATTERSON: The load reductions might
5 be different, depending on where you are in the particular
6 watershed. So if you had multiple dischargers, they would
7 still take into consideration, you know, the dilution
8 available in the receiving water.

9 BOARD MEMBER DEURLOO: Right. Yep.

10 BOARD MEMBER HANSON: I think one other
11 factor is obviously time factor to remediate this -- the
12 situation, correct? That is one of the sticking points in
13 here?

14 MS. PATTERSON: Sure. Right. Yes.
15 Absolutely. How long is it going to take them in order to
16 get into --

17 BOARD MEMBER HANSON: Correct.

18 MS. PATTERSON: -- compliance.

19 BOARD MEMBER HANSON: Yeah.

20 MS. PATTERSON: Yes. And so that's one of
21 the aspects of this rule is the timing of how quickly they
22 would be required to meet --

23 BOARD MEMBER HANSON: Correct.

24 MS. PATTERSON: -- the limit. Yep.

25 And so we do have some options currently

1 available, through the permitting program and through the
2 Water Quality Standards, to basically modify what an
3 effluent limit might be. There's some flexibilities
4 through the input parameters, say, you know, they could get
5 more detailed information if a water quality criteria is
6 dependent upon, say, the pH or temperature of the receiving
7 water, they could collect more data on that. If they
8 thought that the critical low flow of the water body was
9 not accurate, they could collect some more information on
10 that. So there's some tweaks that could potentially be
11 done through the permitting process through that
12 calculation.

13 The other option they have through the permitting
14 program is called a compliance schedule, and so sometimes
15 those are given to a discharger in cases where they know
16 the specific activities that they're going to make in order
17 to get into compliance. And typically that's a one permit
18 cycle, which is a 5-year period or it might be a 10-year
19 period. But the main thing with a compliance schedule is
20 that they have to lay out these specific actions that
21 they're going to take in order to get into compliance by a
22 specific point. And so it doesn't really work very well in
23 circumstances where the point source doesn't know whether
24 they can ultimately get into compliance.

25 And then we do have some options through the

1 standards. Like I mentioned, the standards are comprised
2 of those three different parts, so you could potentially
3 modify designated use, if you can demonstrate that, say, it
4 doesn't support a coldwater fishery, but it supports a
5 warmwater fishery and the criteria were lower and they
6 could potentially meet that other criteria, that might be a
7 good option for them. It doesn't help in circumstances
8 where the designated use is correct, you know, where there
9 are coldwater fish and they do need that water quality to
10 survive. And so we're kind of limited in that way.

11 The other opposition would be to modify the
12 criteria on a site-specific basis where you can
13 demonstrate, well, the organisms that were used to derive
14 the original criteria, we don't have those organisms in
15 this stream and so let's recalculate it without, you know,
16 those most sensitive organisms. That would potentially be
17 an option. But, again, it's not a great option, if, you
18 know, you need to protect something that's actually in the
19 stream.

20 And so I think we're basically at the point where
21 we're looking at adopting additional standards that we have
22 on point sources that are receiving effluent limits that we
23 think they're having trouble meeting, and they don't know
24 if they can ultimately meet. And so I think we're
25 essentially at a crossroads with the Water Quality

1 Standards where I feel a little bit hamstrung in terms of
2 what we can adopt because of the cost prohibitiveness of
3 some of the standards that we're looking at adopting.

4 But here's an example of something that's come up
5 in the last handful of years. There's a small community.
6 They received an ammonia effluent limit from a total
7 maximum daily load. The TMDL was finalized in August of
8 2013. And the situation that this community's looking at,
9 the in-stream criteria is very, very low. It's less than a
10 milligram per liter for ammonia. That's based on the
11 temperature and pH of the receiving water. Ammonia gets
12 more toxic the higher the pH is, the higher the temperature
13 is, and so they have they have a circumstance where the pH
14 of the receiving water is pretty high. They also -- the
15 critical low flow of the receiving water, there isn't any,
16 and so they basically don't have any dilutions. So they
17 have to meet the criteria at the end of the pipe that
18 they're discharging. And they have a lagoon wastewater
19 treatment plant that wasn't designed for ammonia removal.
20 And previously they didn't have an ammonia limit. And so
21 now this community is looking at potentially significant
22 upgrades to their lagoon in order to meet ammonia.

23 So they've been working with an engineering
24 company. Their preliminary estimates for a mechanical
25 plant, which our engineers think are probably the only way

1 that they can reliably treat to those levels of ammonia,
2 would be between 8 and \$10 million. And so if their --
3 typically communities would finance that over a 20-year
4 time frame. They might be able to get some grants from the
5 Clean Water SRF or might be able to finance it over that
6 period, but, you know, if you have only 300 households to
7 divide that cost amongst, it's pretty significant. And if
8 you're just looking at a capital cost of 8 to a hundred --
9 to a hundred -- 8 to \$10 million, that's 110 to 140 per
10 month just to pay for the capital costs.

11 And, again, the operation maintenance, you'd have
12 to add on to that. And so when you think about what you
13 can pay for sewer, you can see that that's pretty
14 substantial amount that people would be paying. And so if
15 you're looking at a median household income in that
16 particular community of about \$60,000, they're paying
17 between 2.2 and 2.8 percent of their median household
18 income just to sewer. And so it's something that we
19 think -- we thought it was important to provide another
20 mechanism within the standards to allow for a way for those
21 communities -- basically a longer time frame to get into
22 compliance. Because in this situation, a site-specific
23 criteria is really not appropriate. A designated use
24 change is really not appropriate. A compliance schedule,
25 it's -- I don't think they really -- a mechanical plant

1 might not work for a community this size. I think that's
2 the other thing that comes into play, is that they probably
3 aren't going to be able to hire an operator and maintain an
4 operator in a community that size. And so in the long run,
5 it might make more sense for them to go to a nondischarging
6 system. But they can't acquire the land right away, and so
7 taking more incremental steps might make more sense for a
8 community like this. Especially when they're looking at
9 such significant costs.

10 So the --

11 BOARD MEMBER HANSON: May I ask a question?

12 MS. PATTERSON: Of course.

13 BOARD MEMBER HANSON: If you have a
14 nondischarging system, that would mean the material, the
15 water, would have to be shipped someplace else or into the
16 system that exists, right?

17 MS. PATTERSON: Yeah. There's a couple
18 different options. Like they could look at combining with
19 a larger community. You know, who's able to -- has a
20 mechanical plant that can treat, that would be one option.
21 They can look at evaporation ponds potentially where
22 there's just no discharge at all and you just evaporate off
23 the water.

24 Another thing that other communities have done is
25 a reuse. So basically they treat the wastewater to a

1 pretty good quality, and then they apply it to parks or
2 other fields and you basically can use the wastewater that
3 way.

4 BOARD MEMBER HANSON: And evaporation would
5 not have any issue with the air quality, would it?

6 MS. PATTERSON: I'm not sure.

7 MR. FREDERICK: Shouldn't.

8 MS. PATTERSON: Yeah, I think there's quite
9 a few evaporation ponds in the state.

10 BOARD MEMBER HANSON: I happen to be on
11 that board too, so it will come back to me.

12 MS. PATTERSON: Yeah. Sure. Right.

13 BOARD MEMBER HANSON: Thank you.

14 BOARD MEMBER KIRKBRIDE: That was a
15 question I had.

16 MR. FREDERICK: Reinjection is also an
17 option.

18 BOARD MEMBER DEURLOO: That's what I was
19 thinking of.

20 MR. FREDERICK: Expensive.

21 MS. PATTERSON: So the other thing we're
22 coming up against is revisions to our ammonia criteria.
23 EPA typically recommends criteria for states to adopt. And
24 so this was a criteria that they released in 2013 for
25 protections of aquatic life. And the chronic criteria,

1 which is typically what would drive those water quality
2 limits, is about half of the existing criteria that Wyoming
3 has.

4 We adopted our -- the criteria we have was put
5 out by EPA in 1999. We adopted it in the early 2000s, and
6 so a lot of the discharge facilities are -- have water
7 quality-based effluence based on that '99 criteria. So
8 this is an update to that. So when EPA released this 2013
9 criteria, they recognized it's very stringent and very
10 difficult for communities or other wastewater treatment
11 plants who have the means to meet, because they aren't
12 designed to treat to those very low levels of ammonia.

13 And so when they put out that criteria document,
14 they also put out this flexibilities document to basically
15 summarize for states ways you can potentially modify the
16 criteria or basically address that situation where it might
17 not be economically feasible for a community to meet the
18 limits that were based on this criteria.

19 So the first four options are what we currently
20 have available in Wyoming, that we talked about. The first
21 two are permitting options. The second two are standards
22 options. And then the fifth one there is the variances,
23 which is what we're talking about here.

24 And so EPA, during -- between the time that they
25 released this flexibilities document, they also revised

1 their federal regulations related to Water Quality
2 Standards and included a long section on variances. The
3 previous version of the regulations had a very brief
4 mention, like a one-word mention of variances. And it's a
5 tool that a lot of states have been increasingly looking at
6 due to the stringency of the criteria.

7 And so the other thing that we're working on as
8 an agency is nutrient criteria. And I talked to you guys
9 about this during the last board meeting. And so we're
10 working on developing numeric criteria for lakes and
11 reservoirs. And then eventually streams and rivers. We
12 know, based on the work that EPA has done, other states
13 have done, that the criteria to support the uses is very
14 stringent, and that most wastewater treatment plants,
15 they're not designed to treat at those low levels,
16 particularly lagoons, but also some of the mechanical
17 plants would have to install additional technologies in
18 order to meet a water quality base limit.

19 So a quick look at our municipal wastewater
20 facilities. And, you know, when we were proposing these
21 rules, we primarily have municipalities in mind, but
22 there's, you know, another subset of dischargers that
23 aren't municipalities that potentially can be impacted by
24 these criteria in the effluent limits. But just a little
25 bit -- look. So we have about 70 municipal wastewater

1 facilities. Ten of those are mechanical plants. The
2 mechanical plants, like I said, they would probably need
3 some upgrades in order to meet the nutrient standards. The
4 60 lagoons were not designed to meet the low levels of
5 ammonia or nutrients. It happens that 15 of those lagoons
6 discharge to receiving waters that have a lot of dilution,
7 and so currently they don't have ammonia limits, and they
8 may not get nutrient limits, so...

9 BOARD MEMBER DEURLOO: What are lagoons
10 traditionally used for? I mean, I imagine some are
11 downstream side of the wastewater treatment plant. Are
12 they designed to get rid of other pollutants?

13 MR. FREDERICK: Mr. Chairman. I'd like to
14 call on Rich, who is not here right now.

15 MS. PATTERSON: I can talk off the cuff.
16 Let me preface by saying --

17 BOARD MEMBER DEURLOO: Yeah, I don't need
18 an expert --

19 MS. PATTERSON: -- I'm not a wastewater
20 engineer.

21 BOARD MEMBER DEURLOO: Yeah.

22 MS. PATTERSON: But EPA also has these
23 secondary treatment standards that facilities are required
24 to meet, and a lot of lagoons are designed to meet those --
25 so things like biological oxygen demand, you hear that BOD

1 term. And then I think they also have to meet -- let's
2 see. BOD is the main one. And total suspended solids is
3 another one that are typically included in the secondary
4 treatment standards. So most of them were designed to meet
5 those. Kind of, okay, we think everybody across the board
6 who is discharging into a surface water should meet these
7 at a minimum. And then you have these water quality-based
8 limits that have sort of come on top of that.

9 BOARD MEMBER DEURLOO: So are lagoons
10 usually on the -- sorry, Mr. Chairman.

11 BOARD MEMBER HANSON: Go ahead.

12 BOARD MEMBER DEURLOO: Lagoons are used on
13 the back end of the wastewater treatment plant?

14 MS. PATTERSON: There's no plant.

15 BOARD MEMBER DEURLOO: Oh, it's just --

16 MS. PATTERSON: It will basically go into
17 the --

18 BOARD MEMBER DEURLOO: -- go --

19 MS. PATTERSON: -- lagoon as far as I know.

20 THE REPORTER: All right. One at a time.

21 MS. PATTERSON: Oh, sorry.

22 BOARD MEMBER DEURLOO: It's usually just a
23 single -- a single-system lagoon is the single system to
24 treat the water --

25 MS. PATTERSON: Right.

1 BOARD MEMBER DEURLOO: -- from a
2 municipality or whatever --

3 MS. PATTERSON: Yeah.

4 BOARD MEMBER DEURLOO: -- before being
5 discharged to a stream?

6 MS. PATTERSON: Right. And they might have
7 multiple cells, and they might have added aeration, which
8 will basically convert the organic nitrogen and the ammonia
9 into nitrates, and so some of them are able to treat the --
10 to lower levels of ammonia if they include an aerator.

11 BOARD MEMBER DEURLOO: Okay.

12 MS. PATTERSON: If you remember the pattern
13 nitrogen cycle where, you know, you have ammonia,
14 basically, and each -- you know, in your wastewater, and
15 you add an aerator that runs a lot and that's going to
16 basically turn it into nitrate, and that's what ends up
17 coming out of the wastewater stream through those lagoons.

18 BOARD MEMBER DEURLOO: Okay.

19 MS. PATTERSON: So that's what some
20 facilities have done is add aerators to meet and to help
21 deal with I think the --

22 BOARD MEMBER HANSON: The specialist is
23 there.

24 MS. PATTERSON: Right.

25 MR. FREDERICK: If there's additional

1 questions, we'll certainly ask Mr. Cripe.

2 BOARD MEMBER DEURLOO: No. I'm fine.

3 Thank you.

4 BOARD MEMBER HANSON: I have one more
5 question.

6 Of the mechanical plants that would like to --
7 would likely need upgrades, are the communities all
8 different sizes or is it the smaller ones, smaller
9 communities, that have price questions anyway or -- give me
10 some kind of an indication.

11 MS. PATTERSON: I think it would be a
12 range.

13 BOARD MEMBER HANSON: It's a range. Okay.

14 MS. PATTERSON: It would be a range. I
15 mean, you have, so Kemmerer-Diamondville, as example, that
16 has an oxidation ditch similar to what Laramie has. And
17 then you have a Cheyenne that has a different system.

18 BOARD MEMBER HANSON: Okay.

19 MS. PATTERSON: But, I mean, those are --
20 the bigger -- but Kemmerer-Diamondville's not that big of a
21 community. So there are some smaller communities that have
22 a mechanical plant.

23 BOARD MEMBER HANSON: Okay.

24 MS. PATTERSON: Buffalo, Sheridan, those
25 are the ones that have mechanical plants. Riverton, I

1 think, Rock Springs are examples.

2 BOARD MEMBER HANSON: Yeah. Thank you.

3 BOARD MEMBER CAHN: Lindsay, this is Lorie.
4 I have a question about when you say that 60 of the lagoons
5 of the 70 lagoons aren't designed to meet these low limits,
6 so how many -- and you're saying 45 of them would need
7 significant upgrades. So how many of those 45 do you think
8 would end up applying for variances and how many do you
9 think are large enough communities that they can afford to
10 make the changes?

11 MS. PATTERSON: Yeah. We had done some
12 estimates originally. I think a lot of it comes down to
13 what the communities are currently paying for pollution
14 control. If they're close to kind of that 1 percent of
15 median household income to 2 percent of median household
16 income already, then additional capital cost might be cost
17 prohibitive for that community. But if a community hasn't
18 sort of kept pace with their sewer bills, and, you know,
19 they're only charging \$10, or, you know, very small
20 percentage of the median household income, they -- they
21 would probably qualify, because it's just going to be such
22 a big hurdle for them to get up to compliance. So it
23 really has -- it really depends quite a bit on, you know,
24 how big the facility is, the number of people that you can
25 spread the cross -- the costs across, you know, what

1 they're currently paying and what kind of upgrades they
2 would need.

3 So I don't really have a good guess. It's
4 definitely not all of them, because some of the larger
5 communities just wouldn't qualify because they have such a
6 large population to divide the costs among.

7 BOARD MEMBER HANSON: Lorie, do you have
8 more questions?

9 BOARD MEMBER CAHN: Not on that particular
10 slide. Thank you.

11 BOARD MEMBER HANSON: Thank you.

12 MS. PATTERSON: And the last point is
13 just the costs to upgrade are considerable. So I mentioned
14 that previous example, where if they have a lagoon, it
15 wasn't designed for ammonia. It might be between 8 and
16 \$10 million in order for them to get into --

17 BOARD MEMBER KIRKBRIDE: Well, one -- I'll
18 pursue one thing. So how many -- what percentage of our
19 state systems are doing fine?

20 MS. PATTERSON: Are currently in
21 compliance?

22 BOARD MEMBER KIRKBRIDE: Yeah.

23 MS. PATTERSON: I think most of them are in
24 compliance right now. And so it's just a matter of when
25 you lower the effluent limit by a half, how many of them

1 are going to potentially be able to meet it.

2 BOARD MEMBER KIRKBRIDE: Okay.

3 MS. PATTERSON: So it's not right now,
4 other than the TMDL example, that they potentially can't
5 meet the existing standards. It's mostly the pending
6 standards that we're trying to get in front of.

7 BOARD MEMBER KIRKBRIDE: Thank you.

8 BOARD MEMBER CAHN: Lindsay, my
9 understanding, though, is that you're saying 45 of the
10 70 are going to have a hard time -- will need significant
11 upgrades in order to meet the new standards.

12 MS. PATTERSON: They may, yeah. So we
13 haven't done a site-by-site analysis. It's mostly we were
14 trying to look at kind of the universe of facilities that
15 we would potentially want to look at. So some of those
16 discharge to Class IV waters that don't have aquatic life
17 protections. Some of those discharge to Class IIIs, but,
18 you know, that's kind of the whole universe. And then
19 there's another subset, which isn't even included in that
20 analysis of small facilities that might be a number of
21 homes that are on their own system, and so those aren't
22 captured. So there's about another 40 facilities that
23 combined industrial dischargers and these smaller kind of
24 mom and pop -- like if you had, you know, a cluster of
25 homes and surface water treatment, then they might have an

1 effluent limit that would be really difficult for them to
2 meet depending on the receiving water.

3 So a little bit about the details of the rule,
4 kind of laid out what we're looking at in terms of issues.
5 So a discharger-specific variance basically is a time-
6 limited modification to the use of the receiving water and
7 then the criteria associated with that use. And then we
8 would potentially grant it to a specific permittee. So
9 whoever's discharging to that receiving water.

10 And then as a condition of the variance, you'd
11 want to make sure that the receiving water that they're
12 discharging to is basically as good as it can be. So they
13 don't get off hook completely. It's mostly, well, let's
14 look at your finances and figure out how do we get -- how
15 do we evaluate, you know, what you can actually afford to
16 get the best water quality in the receiving water that you
17 can. So that's where the term "highest attainable
18 condition" comes in.

19 And I apologize for the terminology, but a lot of
20 this comes from the federal regulations and -- because
21 ultimately we want our standards to be consistent with the
22 federal regulations, since the standards get submitted to
23 EPA, try to be consistent with the nomenclature and just
24 the verbiage.

25 So a discharger-specific variance would be

1 recommended when it's not currently economically feasible
2 to meet the use and the criteria, but it may be feasible in
3 the future. In some cases you may be able to modify a
4 designated use based on economics. And so that would be
5 something that we would want to talk with the specific
6 discharger. You know, does it make sense to modify the use
7 if there's no way they're ever going to meet the limit or
8 the criteria, or is it something that we think makes sense
9 to make incremental progress.

10 And so the big thing comes down to do economic
11 conditions change? Maybe there's more industry in the
12 area, maybe the population increases. There's more
13 revenues or something like that where it changes the
14 financial condition of the particular community or entity
15 that's dealing with the problem or maybe technology becomes
16 cheaper. I know a lot of people are looking at ways to
17 more effectively treat for these parameters. So that might
18 be something that happens in the period of time.

19 BOARD MEMBER HANSON: Before you go on. On
20 the first point, is there a seasonal factor included? I
21 could imagine in the summer it might be higher than in the
22 winter or something like that.

23 MS. PATTERSON: Right.

24 BOARD MEMBER HANSON: So what do you take
25 as the highest attainable condition, then, the -- over the

1 whole year? I presume which one is --

2 MS. PATTERSON: Sure.

3 BOARD MEMBER HANSON: -- when it's the
4 highest.

5 MS. PATTERSON: I think you could write the
6 permit as a seasonal permit. We do now. Sometimes some
7 permits are written on a monthly basis, depending on, you
8 know, what the temperature, pH, of the receiving water
9 would be. So I think it's something that could be modified
10 on a seasonal basis.

11 BOARD MEMBER HANSON: To take that -- the
12 season into consideration.

13 MS. PATTERSON: Yep.

14 BOARD MEMBER HANSON: Okay. Thank you.

15 MS. PATTERSON: So the specifics of the
16 rule lays out that the administrator of the Water Quality
17 Division, after we have a hearing, with a minimum of
18 45 days notice, they would be able -- he would be able to
19 grant a permittee a variance for ammonia and nutrients. So
20 it's specific to those two pollutants right now.

21 In order for the permittee to demonstrate that it
22 would create this substantial and widespread economic and
23 social impacts -- again, that's language from the federal
24 regulations -- we're asking that the permittee complete a
25 comprehensive alternatives analysis where they would

1 essentially look at these are the -- you know, 10 or
2 16 ways that we think we can meet the effluent limit. And
3 we talked about some of those earlier. Injection wells and
4 maybe you go to a partial discharging system, if it was a
5 seasonal thing, or maybe you do reuse. But they -- we
6 would want them to look at all those options in order to
7 meet the standards and then figure out what's the most
8 cost --

9 BOARD MEMBER HANSON: Effective.

10 MS. PATTERSON: -- effective, right, method
11 of meeting the limit.

12 And so then you basically would take that most
13 cost-effectiveness and then you would determine whether
14 that would create social and economic hardship. And I'll
15 just call it economic hardship.

16 BOARD MEMBER HANSON: And it could be a
17 combination of --

18 MS. PATTERSON: It could.

19 BOARD MEMBER HANSON: -- several methods?

20 MS. PATTERSON: Yep.

21 BOARD MEMBER HANSON: Good.

22 MS. PATTERSON: And so EPA, in 1995, they
23 put out this guidance document to help states determine
24 what is and isn't economic hardship for a community. And
25 it was intended to provide guidance on variances and

1 designated use changes, antidegradation reviews. And so
2 the details -- basically how you would look at the economic
3 situation of the different entities. And so for public
4 entities, it looks at, essentially, like I've been saying,
5 the proportion of the income for the people in that
6 community that would be directed towards wastewater costs.

7 And then also the ability of the community to
8 take on and repay debts. You know, if they already had a
9 lot of debts, a lot of loans, they maybe would face more
10 issues dealing with a -- dealing with meeting the -- the
11 effluent limits than another community that maybe has more
12 cash on hand. So those are the types of things you look
13 at.

14 For a private sector, you basically would look at
15 the ability of the entity to pay pollutant control costs.
16 So things like the profitability of the company. Like how
17 much do they have in savings. Those types of things. And
18 you look at that basically --

19 BOARD MEMBER CAHN: Lindsay.

20 MS. PATTERSON: Yeah.

21 BOARD MEMBER CAHN: Sorry. I'll let you
22 finish that thought then I had a question.

23 MS. PATTERSON: For the private sector
24 entities, you basically look at, okay, what's their
25 economic standing now and what would it be if they were

1 required to meet this effluent limit, you know, within a
2 permit cycle or something like that.

3 BOARD MEMBER HANSON: Go ahead, Lorie.

4 BOARD MEMBER CAHN: So, you know, EPA
5 requires you to look at the economic and social impacts and
6 you got -- we got comments from Wyoming Fish & Game about
7 looking at environmental impacts, particularly to aquatic
8 life -- aquatic life seems to be fairly -- you know, more
9 sensitive, typically, than -- than human health or
10 concerns. And so I'm just wondering if you can kind of
11 adjust the philosophy about, you know, not looking at
12 permit environmental analysis perspective. Thank you.

13 MS. PATTERSON: Yeah. And I think it's --
14 from Game & Fish's comments, they basically were concerned
15 about increases in the discharge of pollutants, and so we
16 did clarify between the February version of the rule and
17 the current version of the rule that you can't have an
18 increase in the effluent for our particular discharge. So
19 the variance isn't a mechanism for that. And so what we
20 would anticipate happening is that you would have a
21 particular effluent quality currently, but then as a
22 condition of the variance, they would have to improve that
23 over time, not get worse. So to me it didn't make sense to
24 monitor the aquatic life because it should be -- conditions
25 of the stream should be improving for aquatic life.

1 BOARD MEMBER HANSON: Sure.

2 THE REPORTER: Did she go off?

3 MS. THOMPSON: I'm afraid so.

4 MS. PATTERSON: Do you have a follow-up,
5 Lorie?

6 (Off-the-record discussion.)

7 BOARD MEMBER CAHN: Hi, this is Lorie. Hi,
8 I'm sorry. I hit the unmute -- I hit hang up. My fault.
9 Error on my part. I'm sorry. Could I get Lindsay to
10 repeat the answer to my question? I'm so sorry.

11 MS. PATTERSON: Oh, sure. So it was my
12 understanding, when Game & Fish provided those comments,
13 that they were under the impression that the variance would
14 allow an increase in the discharge of pollutants, and that
15 was what their comments had mentioned. And so they were
16 concerned about circumstances where you'd have an increase
17 in the amount of nutrients or the amount of ammonia that
18 was being discharged. But the variance is not intended to
19 allow dischargers to increase the amount of the pollutant
20 in the effluent. And so we did clarify that as part of the
21 revisions to the rule since the February version, that it
22 really -- we can't allow an increase in the discharge of
23 the pollutant. And so really the intention is for you to
24 give additional time for the facility to get into
25 compliance, not to degrade the water quality or the aquatic

1 resources over time. So it should result in an improvement
2 in the aquatic resources, if that's what you're concerned
3 about, or an improvement in water quality over time, not a
4 degradation.

5 BOARD MEMBER HANSON: Lorie, does that
6 satisfy --

7 BOARD MEMBER CAHN: Yes. I'm -- yeah, I'm
8 here. Thank you. Thank you.

9 BOARD MEMBER HANSON: Go ahead.

10 MS. PATTERSON: So I mentioned this
11 previously. So in lieu of meeting the water quality-based
12 effluent limit, the discharge will be required to basically
13 do as best as they can in the receiving water. And so this
14 is the definition that's included -- currently proposed in
15 the revision. So it's basically -- instead of the
16 underlying use and criteria, it's this modified aquatic
17 life use and criteria that they can basically afford.

18 BOARD MEMBER KIRKBRIDE: I assume that's
19 worked out with DEQ --

20 MS. PATTERSON: It is.

21 BOARD MEMBER KIRKBRIDE: -- and the
22 community.

23 MS. PATTERSON: Yes.

24 BOARD MEMBER KIRKBRIDE: And the
25 discharger.

1 MS. PATTERSON: There will be a lot of back
2 and forth between us and the permittee and us and the
3 engineers the permittee has hired about what that
4 potentially would be. But we would want to see, you know,
5 a cost analysis too of, okay, this is what we're currently
6 paying for wastewater. We think we can increase our rates
7 up to this before we kind of get that -- to that critical
8 threshold that really is too much for, you know, the people
9 that are paying for wastewater to afford. And so between,
10 you know, those levels, they should be able to do something
11 to approve water quality in the effluent.

12 BOARD MEMBER HANSON: And coming back to
13 this, because since that last part always dangles on there,
14 on this condition --

15 MS. PATTERSON: Right.

16 BOARD MEMBER HANSON: -- who would make the
17 decision as far as the substantial and widespread economic
18 impact? Is that the polluter puts it in there or is there
19 some -- or is it the -- your agency that decides the impact
20 statement? Because I think reading the whole document,
21 that was always a little unclear to me --

22 MS. PATTERSON: Right.

23 BOARD MEMBER HANSON: -- how we are going
24 to come to that kind of a statement this is too much.

25 MS. PATTERSON: Right.

1 BOARD MEMBER HANSON: This is -- and I
2 think probably in the -- in the documentation that could be
3 a little more elucidated and a little more clear as to who
4 is responsible here --

5 MS. PATTERSON: Right.

6 BOARD MEMBER HANSON: -- you know, and how
7 their process is arrived at.

8 MS. PATTERSON: Right.

9 BOARD MEMBER HANSON: Thank you.

10 BOARD MEMBER CAHN: Yeah. This is Lorie.
11 I agree with Klaus. I thought there was one place where it
12 wasn't clear who was going to do this analysis, so I think
13 it would be a simple, you know, word to -- additional word
14 to add to the sentence to make it clear that DEQ's not
15 doing this analysis, but the -- you know, the facility is
16 doing the analysis.

17 MS. PATTERSON: Yeah. And we have
18 intentionally, I think, left it a little bit ambiguous.
19 Some states have taken on that role of developing variances
20 for communities or working in conjunction with variance --
21 with a community to develop a variance. Some states have
22 done these multi-discharger variances. Kansas is working
23 on that for ammonia. Missouri is working on that for
24 ammonia. And Wisconsin is working on that for total
25 phosphorus. And so in some cases it might be the

1 individual facility. In some cases it makes more sense as
2 a state for us to do it collectively. You know, we can
3 look at a handful of dischargers that are very similar and
4 the costs would be similar. In some cases it might make
5 sense for the state to do that, so we didn't want to
6 eliminate that option. But in terms of identifying what's
7 too much, we would rely on the EPA guidance from 1995,
8 which talks about median household income and kind of the
9 scale -- sliding scale between 1 percent and 2 percent of
10 median household income. And I think, you know, we would
11 be looking to the communities to do as much as they can,
12 but if they're not paying already now like 1 percent of
13 median household income, they probably wouldn't qualify.
14 You know, or if the pollution control costs, what don't hit
15 1 percent, then they probably won't qualify for a variance
16 so we would kind of be looking for them to be in that
17 range.

18 BOARD MEMBER HANSON: Ballpark.

19 MS. PATTERSON: Exactly. So there is quite
20 a bit of detail in that '95 guidance about determining kind
21 of that sweet spot.

22 And so we've mostly went through this piece of
23 it. Just talks about the other pieces of the highest
24 attainable condition. We basically would come up with an
25 interim effluent limit for the facility that reflects, you

1 know, the greatest pollution reduction that they possibly
2 can achieve.

3 And then we would also want to see them develop
4 this pollutant minimization program. And so we added a
5 definition of pollutant minimization program to the
6 proposed rules. And it essentially lays out activities
7 that the permittee would do in order to maintain their
8 wastewater treatment system and then potentially improve
9 those processes or the pollutant controls so they can make
10 sure that they're getting, you know, the best effluent
11 quality that they can.

12 I thought it was important to include this
13 provision. The earlier version of the rule didn't include
14 this, even for facilities. I think you have kind of
15 this -- depending on what they're paying for pollutant
16 controls, you know, a community's already paying 1 percent
17 or 2 percent of their median household income for pollution
18 control, they might not be able to afford a lot more,
19 right, as part of this. But we would want them to look at
20 the different options, but then also maintain their
21 facility as best they could.

22 But then you might also have a circumstance where
23 a community needs to upgrade their facility in order to
24 kind of meet that economic threshold. And so they could do
25 an add-on to their lagoon, for example, or can do reuse --

1 partial reuse or something as part of achieving the highest
2 attainable condition. But we still would want to make sure
3 that they're maintaining those improvements so that they're
4 getting the best effluent quality.

5 And all that would be included as a condition of
6 the variance. And it would be translated into their
7 discharge permit. So as a condition of the permit they
8 would essentially lay out these activities that they were
9 going to do. So they might have to maintain a certified
10 operator. They might have to keep the operator trained.
11 They would -- for a lagoon maybe you'd have to remove all
12 the -- remove the solids. You know, sort of the basic
13 maintenance things that would be required.

14 They could also do some additional things. If
15 they had a pre-treatment program where they're getting a
16 discharge from another industrial discharger, they can make
17 sure that wasn't going to increase. There could be
18 something like that so they're not having a reduction in
19 the quality of the effluent.

20 BOARD MEMBER HANSON: One thing that
21 occurred to me -- it's not in the documentation in any way,
22 shape or form -- but could an operator simply say I'm going
23 to leach this into the ground, so we have a groundwater
24 problem. I presume they wouldn't do that, but does one
25 have to state that explicitly or is that understood by

1 anybody who operates? I'm just especially thinking of
2 private entities. Would that be something that we should
3 explicitly state, you know, don't take the easy way out and
4 just dump it into the ground?

5 MR. FREDERICK: Sure, Mr. Chairman. That
6 type in particular of land application or a subsurface
7 disposal would also require a permit from DEQ --

8 BOARD MEMBER HANSON: Yeah.

9 MR. FREDERICK: -- through the Underground
10 Injection Control Program or the Land Application
11 Permitting Program. So the purpose of those programs of
12 permitting process is to ensure that groundwater
13 contamination doesn't exist.

14 BOARD MEMBER HANSON: Thank you.

15 MR. FREDERICK: We would catch that.

16 BOARD MEMBER HANSON: Thank you. I just
17 wondered whether you wanted it in here or whether -- you
18 don't think it's necessary?

19 MR. FREDERICK: No.

20 BOARD MEMBER HANSON: Okay. Thank you.

21 MS. PATTERSON: So the other component of
22 the rule is how long would the variance be for. And so the
23 federal regulations lay out that you basically want to make
24 it as long as it's going to take them to achieve kind of
25 the best quality that they can in the receiving water. And

1 so that's where this -- it's only as long as necessary to
2 achieve the highest attainable condition.

3 And so, in general, EPA's comments, we looked at
4 those. The original language talked about the fact that we
5 wanted them to develop a variance for, oh, how long is it
6 going to take you to meet the underlying limit. But EPA's
7 comments on that were, well, if they can meet the limits,
8 then you should give them a compliance schedule. They
9 don't need a variance. You know, if it's going to take
10 them 10 years or if it's going to take them 15 years. And
11 so it's trying to make a distinction between a compliance
12 schedule, which, oh, you can definitely afford it. You can
13 definitely get into compliance. It's just going to take
14 you longer. And the discharger specific variance where you
15 probably aren't going to be able to get all the way there
16 even in, you know, a 10-to-15-year, 20-year period.

17 BOARD MEMBER HANSON: Reading some of the
18 comments, I think that was a question that came up again
19 and again. You know, 20 years is too long, or whatever.
20 And I think there was a little bit of misunderstanding, as
21 far as the comments were concerned, as the -- the
22 compliance length was concerned, whether that was open to
23 interpretation or to specific statements.

24 MS. PATTERSON: Right.

25 BOARD MEMBER HANSON: Or whether there were

1 defined limits set. And the way I understood it was it
2 depends on the particular case that you set a limit that is
3 supposed to be adhered to. Is that what --

4 MS. PATTERSON: Right.

5 BOARD MEMBER HANSON: -- is to take place?

6 MS. PATTERSON: Yeah. And EPA's like
7 preliminary version of their regulations included a 10-year
8 limit on any variance.

9 BOARD MEMBER HANSON: Yeah.

10 MS. PATTERSON: So when they revised the
11 final rule, there's no maximum duration included.

12 BOARD MEMBER HANSON: That's correct, yeah.

13 MS. PATTERSON: But then it has to be
14 reevaluated every five years so that you're always looking
15 at, well, what's the quality of the effluent? Are they
16 doing as best they can? Do they still qualify for a
17 variance? Have economic conditions changed? You know, is
18 technology cheaper now? And so I think it's going to be a
19 case-by-case determination for what an appropriate term is.
20 I mean, if a facility is going to look at financing some
21 significant upgrade, the upgrade may not get them all the
22 way, you know, to the water quality-based effluent limit,
23 but they still may require significant financing like a
24 20-year financing in order to put in that pollution
25 control. And so maybe in that case, a 20-year time frame

1 is appropriate for them, but it sort of will just depend on
2 the circumstance.

3 BOARD MEMBER HANSON: However, it was never
4 stated that it was limitless. It has always a time limit
5 on --

6 MS. PATTERSON: There is for each
7 individual variance. But the federal regulations and our
8 rules do make it clear that if at the end of that duration,
9 they still qualify for another variance, then they can, you
10 know, propose. It's not like it's a one and done thing.
11 You know, as long as they're making incremental progress,
12 that's the main component of it.

13 BOARD MEMBER HANSON: Any other -- thank
14 you.

15 Lorie? Okay.

16 MS. PATTERSON: So we talked just a little
17 bit during that discussion about the reevaluation. But the
18 rules lay out this reevaluation process, and that what we
19 would look at, what we would want the permittee to submit
20 to us in advance of the permit renewal, the rules go
21 through that, you know, we could, as maybe a public comment
22 comes in during a triennial review or something, it says
23 you guys should look at in variance. We can also initiate
24 our reevaluation at any time during the duration of a
25 variance. But they have to occur at least every five

1 years.

2 So those are the types of things that we would
3 want to look at. Are the conditions the same? Did they
4 comply with conditions of the variance? Like I said, the
5 population, has that changed, so you can divide the costs
6 amongst more people, maybe. Maybe they have more revenue
7 now. Those are the types of things.

8 And then that whole piece of the highest
9 attainable condition, you know, when the original variances
10 were in, we would include effluent limit based on kind of
11 these estimations of what they think, you know, if they're
12 going to put in additional pollution control or use their
13 existing system but make some modifications, maybe they
14 need to do some maintenance. We would be making sure that
15 their effluent limit was as stringent as it can be. Oh,
16 and then each evaluation -- reevaluation has a comment
17 period associated with it, and then final determination and
18 then there's a process to appeal the decision.

19 So as I mentioned we --

20 BOARD MEMBER CAHN: Lindsay.

21 MS. PATTERSON: Yeah.

22 BOARD MEMBER CAHN: Lindsay, you mentioned
23 the triennial review.

24 MS. PATTERSON: Uh-huh.

25 BOARD MEMBER CAHN: So I'm just trying to

1 remember. Seems like we did triennial review of Chapter 1
2 fairly recently, if I recall. And so when's the next
3 triennial review schedule, and I'm assuming this review is
4 not part of the triennial review because the whole of the
5 chapter is not up for review --

6 MS. PATTERSON: Right.

7 BOARD MEMBER CAHN: -- just this,
8 basically --

9 MS. PATTERSON: Right.

10 BOARD MEMBER CAHN: -- for changes.

11 MS. PATTERSON: Right. Yeah, so we -- the
12 governor last approved Chapter 1 in September of 2013. We
13 submitted that to EPA right after the approval. So in the
14 fall of '13. EPA just acted on that last August. And so
15 we were anticipating, you know, opening the triennial, but
16 we decided that it was important for us to do the variance
17 rulemaking in advance of doing the triennial because of
18 that community that has the TMDL. We wanted -- they were,
19 you know, basically at the point where they were ready to
20 sign the dotted line to start construction on a type of
21 pollution control, and so we wanted to make sure that they
22 were able to explore this option before they spent a lot of
23 money. And then us later on said, oh, well, we have this
24 variance option that's now available and so we were -- we
25 are still anticipating that we'll open the Chapter 1 for

1 scoping either late this year or early next year, depending
2 on, you know, where we are in this process of revising
3 Chapter 1.

4 BOARD MEMBER CAHN: Thank you.

5 MS. PATTERSON: So these are the entities
6 that we received comments from during that initial comment
7 period. And Gina had mentioned we received a couple of
8 additional comments just recently, and so I think, you
9 know, there was some comments that were in support of the
10 proposed rules. The Town of Mountain View-Fort Bridger
11 Sewer District. Mountain View recently did a big
12 improvement, so they increased their sewer feeds from \$12
13 to \$56. I know they were concerned about potential costs
14 moving down the road, and so they are looking for any
15 assistance that the State can provide.

16 EPA provided comments on a lot of the specific
17 language that was in the rule and matching that up against
18 the federal rule language. And so I think we did a pretty
19 good job of addressing that.

20 We talked a little bit about the Game & Fish
21 comments earlier. I think that those are mostly addressed.

22 The Wyoming Mining Association provided comments
23 on that they wanted the rule to be broader, that basically
24 we would want to take advantage of the full range of
25 possibilities that are allowed under the federal

1 regulations. They were concerned about pollutants like
2 selenium, and conductivity is one that EPA has released the
3 field-based methods for conductivity. And the Wyoming
4 Outdoor Council and Powder River Basin Resource Council
5 provided comments on the proposed rules. Again, a lot of
6 it related to how consistent we were being with the federal
7 regulations, and so we did make a number of changes to the
8 rule language between that February version and this
9 version. So...

10 MR. FREDERICK: Thank you, Lindsay.

11 BOARD MEMBER KIRKBRIDE: I have an ultimate
12 question. What if a community -- community especially --
13 cannot or won't meet standards -- EPA standards? You can't
14 shut them down exactly.

15 MS. PATTERSON: No.

16 BOARD MEMBER KIRKBRIDE: So what happens?

17 MS. PATTERSON: So if they can't meet them
18 ever or they can?

19 BOARD MEMBER KIRKBRIDE: Yeah.

20 MS. PATTERSON: So I think we would
21 potentially look at a designated use change where you would
22 say, Okay. Well, in this particular circumstance we aren't
23 going to be able to meet the in-stream ammonia that we
24 think is necessary to protect the aquatic life, so maybe we
25 can adopt, you know, a site-specific criteria that's based

1 on what they can afford. And it would be something that
2 you would want to do with, you know, the assistance of the
3 public to make sure that they were all aware of what you
4 were doing, and the fact that you're sort of -- I don't
5 want to say they're giving up, but I like the variance
6 process as opposed to that designated use process because
7 it allows you to make incremental progress rather than to
8 just say we're never going to meet it. It's too extensive.
9 Because you don't know what the future potentially holds
10 for that community or for technology that might make it so
11 at some point in the future it might be economically
12 possible for them to meet it.

13 BOARD MEMBER KIRKBRIDE: Okay.

14 MR. FREDERICK: Mr. Chairman.

15 BOARD MEMBER HANSON: Thank you.

16 MR. FREDERICK: Any further questions or
17 requests from the board?

18 BOARD MEMBER HANSON: I thought the
19 comments I -- I read cursorily through them -- they were
20 quite extensive, I think. They were very good. And the
21 one concern I already mentioned that was repeatedly
22 mentioned in there. But, otherwise, what I was impressed
23 with is your -- your answers that either you address this
24 particular issue, and there was the question for me in
25 addressing that, is that already in the documentation of

1 the -- of the regulation as it is written down?

2 MS. PATTERSON: Yeah.

3 BOARD MEMBER HANSON: And there were other
4 points where you said -- I mentioned one before, where it's
5 not necessary to address that particular issue. So I
6 thought the comments were very helpful as far as I was
7 concerned. Thank you.

8 Any comments?

9 BOARD MEMBER KIRKBRIDE: Agreed.

10 BOARD MEMBER DEURLOO: No.

11 MR. FREDERICK: So, Mr. Chairman, as I
12 mentioned, we intend to address any comments that are
13 presented here today, as well as those written comments
14 that we received yesterday. We'll take those into
15 consideration, modify the regulations, if necessary,
16 accordingly, and prepare to -- public notice a draft
17 revision prior to the next board meeting, and we'll bring
18 it back and essentially review any modifications that we
19 made with the board at the fall meeting.

20 BOARD MEMBER HANSON: You had mentioned to
21 me before that you wanted to request a break. And the
22 question is, did you want to address this before the break
23 or you want to take a break a little early and then come
24 back? How -- what would be your desire?

25 MR. FREDERICK: Sure, Mr. Chairman. You

1 may want to offer an opportunity for any public comment at
2 this time, and then afterwards I would recommend a break.

3 BOARD MEMBER HANSON: Good. All right.
4 This is time for public comment. If you'd please come
5 forward so -- there's a chair right there, right -- thank
6 you. Identify yourself and make your comment, please.

7 MR. SMITH: My name is Ian Smith, and I'm a
8 legal intern with Wyoming Outdoor Council, one of the
9 commenters in the original period. I'm a student at the
10 University of Wyoming, the college of law. And I've been
11 working with the Wyoming Outdoor Council this summer on
12 this as one of the projects.

13 Thank you, first of all, for the opportunity to
14 come here and comment. Thank you for your time and your
15 effort. We appreciate it.

16 We'd also like to thank the DEQ and the WQD for
17 the March proposals and comments and responses. We thought
18 the DEQ did a great job of responding favorably to many of
19 the concerns that we had. Also, in the way that they
20 responded to a lot of the EPA comments, too, we felt like
21 they're really on the right track with a lot of that. That
22 being said, we do have some concerns.

23 First of all, economic analysis, as we spoke
24 about earlier, it does seem a little vague in the
25 documents. And it is something that we think could be

1 spruced up to make it easier for people to understand what
2 exactly goes into those economic analyses. They did, in a
3 comment -- I believe after the March session you had a
4 document that we saw that gave us a link to the interim
5 economic guidance for Water Quality Standards. I think
6 that would be great to have maybe in the rulemaking, as
7 well as that people could link, click to it to find it
8 easier.

9 One of the quotes I read after reading that
10 document, which is 90 pages long, so, you know, it's kind
11 of a monster of a document, but I really like this quote.
12 It was "Demonstration of substantial financial impact is
13 not sufficient reason to modify a use or grant a variance
14 from water quality standards. Rather, the applicant must
15 also demonstrate compliance would create widespread
16 socioeconomic impacts on the affected community."

17 And that is in the language that we saw, and you
18 need to show both substantial financial impacts, but also
19 widespread socioeconomic impacts. And the standards for
20 those are different whether it's public or private. And so
21 having, you know, a way for both private groups and
22 municipals to figure out how to demonstrate that, I think,
23 would be a great part of clarifying that.

24 We also want to applaud the DEQ for recommending
25 that there's going to be a guidance document created that

1 will help permittees -- potential permittees or variance
2 seekers to navigate the process.

3 Guidance documents are often essential mechanisms
4 in administrative regulatory processes, as I'm sure you all
5 are aware. And I'm just learning, as a law student,
6 administrative law is a pretty cumbersome thing to deal
7 with.

8 So we would -- we would really encourage the DEQ
9 to reach out. And we would love to help look over those
10 guidance documents to make sure that they're paralleling
11 the federal rules that they're supposed to be.

12 As far as application requirements go, one of the
13 comments and responses that we got about -- we would prefer
14 to have licensed and qualified professionals creating these
15 documents that are being submitted for the variances. We
16 understand that in some small towns that might not be
17 feasible to have an engineer come out and look at these
18 different wastewater treatment facilities. So in a way to
19 maybe get around the fact that we would prefer to have
20 license involved by professionals, but we'd also maybe like
21 a statement in the form that would ensure that the
22 information that was provided by that person was certified
23 to be truthful and accurate.

24 Also, the application should have an easily
25 navigable checklist of the necessary requirements to ensure

1 all the parameters are being met because there's a lot of
2 hoops they have to jump through to get these permits
3 granted. These variances granted. Sorry.

4 I think this would help deter private companies
5 from submitting applications with information that might
6 not be reliably accurate or complete. Again, a lot of the
7 applications I think are going to be coming from small
8 municipalities, but because we are allowing private
9 companies to also seek these variances, I think we need to
10 be weary of that.

11 And as far as the EPA approval we saw in this
12 last revision that was sent out, in the initial proposal
13 that the DEQ sent out, specifically Section 37(g), the new
14 model that we have 37(g) has a second sentence that was
15 added to it. So when we first made comments, 37(g) was
16 not -- we weren't able to make comments on it because they
17 changed the sentence subsequently.

18 The second sentence was not in the previous
19 document, and we think it should be omitted. That sentence
20 reads "The variance shall become effective either upon EPA
21 approval or 90 days after submittal, whichever comes from
22 first." This language is inconsistent with the EPA rules
23 as set forth in 40 CFR 131.14, which is kind of a --

24 BOARD MEMBER DEURLOO: Say that one again,
25 please.

1 MR. SMITH: 40 CFR 131.14, which is
2 basically the federal rules and regulations that are
3 derived from the Clean Water Act.

4 And that rule says -- and it's specifically the
5 one that deals with the variances. It says that the EPA
6 must review and approve Water Quality Standards before they
7 become effective. So, therefore, the variance would not
8 become effective until the EPA approved it. So this
9 language of "more than 90 days after submittal" doesn't
10 really seem to be consistent with the way that the federal
11 regulations are set out.

12 Other than that, that was -- we felt like this
13 was a great process, and we really liked working with the
14 DEQ on this. And thank you very much for your time.

15 BOARD MEMBER HANSON: Just to clarify,
16 Section 37(g), this is one on page 1-27, "Following
17 administrator approval and opportunity for appeal the
18 variance shall be submitted," is that the section --

19 MR. SMITH: Yes.

20 BOARD MEMBER HANSON: -- you're referring
21 to?

22 MR. SMITH: And the next sentence after
23 that is the one we prefer to be omitted.

24 BOARD MEMBER HANSON: Okay. All right.

25 MR. SMITH: All right. Thank you.

1 MR. FREDERICK: Do you have a copy?

2 MR. SMITH: Yeah.

3 BOARD MEMBER HANSON: Is there anybody else
4 that would like to comment?

5 Thank you very much, Mr. Smith.

6 Anybody else? Going once? At city council we go
7 three times. Going twice? Going three times?

8 Thank you. And I'll close the section of the
9 public comments section at this point.

10 Is there anything else before the break?

11 MR. FREDERICK: No, Mr. Chairman.

12 BOARD MEMBER HANSON: Okay. Shall we then
13 institute a break? How long?

14 MS. THOMPSON: About 10 minutes.

15 BOARD MEMBER HANSON: 10 minutes?

16 MS. THOMPSON: Yeah.

17 BOARD MEMBER HANSON: Make it 15.

18 MS. THOMPSON: Okay.

19 (Meeting proceedings recessed

20 10:20 a.m. to 10:35 a.m.)

21 BOARD MEMBER HANSON: Okay. I call us back
22 to order at this point. We have everybody on board as far
23 as the committee is concerned. Thank you.

24 The next item on the agenda is the rulemaking
25 water and wastewater program, Chapter 14.