

In Re: Water Quality Division

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WYOMING WATER AND WASTE ADVISORY BOARD

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IN RE: WATER QUALITY DIVISION  
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TRANSCRIPT OF MEETING PROCEEDINGS

Pursuant to notice duly given to all parties in interest, this matter came on for meeting on the 22nd day of September, 2017, at the hour of 9:09 a.m., at Wyoming Game and Fish Department, Jackson Regional Office, 420 North Cache Street, Jackson, Wyoming before the Wyoming Water and Waste Advisory Board, Ms. Marjorie Bedessem, Chairwoman, presiding, with Ms. Lorie Cahn and Mr. Klaus Hanson and Mr. Alan Kirkbride in attendance.

Ms. Gina Thompson, Water Quality Division; Mr. Bill Tillman, Water Quality Division, were also in attendance.

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

2 (Meeting proceedings commenced  
3 9:09 a.m., September 22, 2017.)

4 CHAIRMAN BEDESSEM: Okay. I'd like to call  
5 the meeting of the Water and Waste Advisory Board to order.  
6 We'll start off with introductions of the board.

7 Marge Bedessem. I represent the public at large.

8 BOARD MEMBER HANSON: Klaus Hanson. I'm an  
9 elected official.

10 BOARD MEMBER KIRKBRIDE: Alan Kirkbride. I  
11 represent the agriculture sector.

12 BOARD MEMBER CAHN: Lorie Cahn. I  
13 represent the public at large.

14 MS. THOMPSON: And we have -- Madam  
15 Chairman, we do have one additional member who will not be  
16 joining us today.

17 CHAIRMAN BEDESSEM: But who has submitted a  
18 comment.

19 MS. THOMPSON: Yes. Right.

20 CHAIRMAN BEDESSEM: That's Brian Deurloo --  
21 Brian Deurloo, who represents industry.

22 And I believe we're going to start off with Water  
23 Quality Division presentation regarding Chapter 1 on  
24 Wyoming surface Water Quality Standards.

25 I'll turn it over to water quality.

1 MS. PATTERSON: Do you have the  
2 presentation?

3 MS. THOMPSON: I do. Go ahead and  
4 introduce yourself.

5 MS. PATTERSON: I'm Lindsay Patterson. I'm  
6 the supervisor of the Water Quality Standards program in  
7 the Water Quality Division.

8 So we're here to revisit the proposed changes to  
9 Chapter 1 to add a new section specific to discharger-  
10 specific variances. I basically just wanted to give you  
11 guys a recap of the rationale for the proposed rules, you  
12 know, why we want to do this. And so one of the main  
13 reasons why we want to do this is because when we adopt  
14 surface water quality standards, we want the criteria that  
15 we have to support designated uses to be protective of  
16 those uses. And they don't take into consideration the  
17 costs associated with treating to the criteria, and so we  
18 have a situation where you have small municipalities that  
19 may not be able to meet water quality criteria or effluent  
20 limits that are based on water quality criteria. And so  
21 that's mostly the reason why we wanted to initiate the  
22 proposed rule.

23 And then I was going to walk through the comments  
24 that we received during the last comment period, and we can  
25 discuss the recent comments that we received.

1           Keep going. There you go.

2           So, as I mentioned, we have a situation where we  
3 have effluent limits that are based on water quality  
4 criteria that we've adopted into the standards. In one  
5 situation recently a total maximum daily load that was  
6 developed for a water that had been identified as impaired  
7 due to exceedances of ammonia criteria. A small community  
8 received a waste load allocation for ammonia. They  
9 currently have a lagoon wastewater treatment system that  
10 they've had for a number of years. They've never had  
11 ammonia effluent limits until the CMBL came into place.  
12 It's a small community, about 300 hookups or so. And when  
13 they look at the technology that they would need in order  
14 to meet those effluent limits, they're looking at 8 to  
15 \$10 million. And so that's a significant cost for a  
16 community that size to -- to bear. Even if they were able  
17 to get grants and loans, which is often the case. And so  
18 that's one of the main reasons why we wanted to move  
19 forward with this proposed rule.

20           In 2013, EPA released revised recommended  
21 criteria for ammonia. So even though we have existing  
22 ammonia criteria that's potentially causing issues for this  
23 small community, the 2013 recommended ammonia criteria,  
24 which we haven't adopted yet, the chronic criteria, which  
25 is typically the basis for a lot of the effluent limits

1 that permittees get, it's about half the existing criteria  
2 that we have in Water Quality Standards. And so we're  
3 anticipating that if we were to move forward with adopting  
4 those recommendations that there would be a number of  
5 lagoon treatment systems that would have difficulty meeting  
6 that or that would be looking at significant capital costs  
7 in order to be able to meet to those effluent limits.

8           And the other thing we're working on in the  
9 watershed protection program is developing numeric nutrient  
10 criteria. And so this is concentrations of total  
11 phosphorus, total nitrogen, that are necessary to protect  
12 recreational uses, aquatic life uses, in some cases  
13 drinking water uses, to prevent primary productivity, large  
14 algal blooms and things like that that you can sometimes  
15 see on, you know, some of our surface waters.

16           And so we're also anticipating that the numeric  
17 criteria, in order to protect those designated uses, is  
18 very stringent, and so would be very difficult for a number  
19 of wastewater treatment plants to meet, especially lagoons.  
20 But it might also be the case the mechanical treatment  
21 plants that we have across the state would have difficulty  
22 meeting the nutrient limits because they're just very low,  
23 in order to prevent the types of algal productivity that  
24 you see in streams and lakes.

25           Okay. So just -- this is the same as what I just

1 said. Most -- we have, you know, maybe 70 municipalities  
2 in the state. About 60 of those have lagoons. And, you  
3 know, there might be another 10 mechanical treatment  
4 plants.

5           And so it's just a significant cost, that it  
6 would help facilitate, I think, adoption of the criteria  
7 that we think is necessary to protect the designated uses,  
8 to provide a mechanism for these permittees to get  
9 additional time to meet the limits. And not that -- and we  
10 also aren't interested, necessarily, in changing the goals.  
11 We don't want to sort of, for lack of a better term, water  
12 down the criteria, you know, based on what people can  
13 afford. We'd rather have the criteria actually support the  
14 uses and then give these facilities additional time to meet  
15 it.

16           So that's where the discharger-specific variances  
17 come in. This is a tool that has been around since the  
18 1970s. EPA has allowed states to adopt variances to their  
19 Water Quality Standards. And they have seen it as being  
20 consistent with the Clean Water Act. When they release the  
21 2013 ammonia criteria, they recommended as one of the  
22 potential options for states to pursue was variances. And  
23 in 2015, they revised the federal regulations to include  
24 additional details about variances within the federal  
25 regulations.

1           So as I was mentioning, it's -- these are  
2 recommended when it's not currently economically feasible  
3 to meet a use and a criteria, but it may be feasible in the  
4 future,, as economic conditions change, you know, maybe you  
5 have an influx of population, potentially you have  
6 additional income that's coming to a community, maybe the  
7 tax structure changes and they're able to generate more  
8 revenue or technology becomes cheaper and maybe the small  
9 community's not looking at 8 million or \$10 million worth  
10 of infrastructure. Maybe now it's only going to cost them  
11 2 or 3 or, you know, significantly cheaper than they  
12 thought.

13           So the proposed rule basically gives the  
14 administrator the ability to grant a variance to a  
15 permittee. The permittee must demonstrate that meeting the  
16 water quality-based effluent -- those are the effluents  
17 that are derived from the water quality criteria that are  
18 in Chapter 1. They have to demonstrate that it would  
19 create substantial and widespread economic and social  
20 impacts.

21           And the permittee that's also in the proposed  
22 rule, they have to complete a comprehensive alternatives  
23 analysis and compile the economic data in order to  
24 demonstrate this economic hardship -- economic social  
25 hardship.



1           If a permittee qualifies, the rule also goes  
2 through -- and much of the rule is a mirror of the federal  
3 regulations. So these terms are essentially pulled from  
4 the federal regulations. They have to be the highest  
5 attainable condition. And they also need to develop and  
6 implement a pollutant minimization program, which is  
7 essentially a number of activities that will help them  
8 reduce the parameter in the effluent stream.

9           So there's a term associated with each of the  
10 variances. It's based on how long the permittee  
11 anticipates it will take them to achieve the highest  
12 attainable condition. And then the variance has to be  
13 reviewed every five years. And so you're looking at all  
14 the economic data. You're looking at, you know, treatment  
15 technologies that have potentially become available so that  
16 you can ensure that the permittee -- the original  
17 conditions behind the variance are still in place, the  
18 economic conditions, social conditions are still the same,  
19 and that there hasn't been significant improvements in  
20 technology so that the costs are much cheaper.

21           And then you also want to make sure that they're  
22 doing the best they can, and that's where the highest  
23 attainable condition comes in, so you're not getting a pass  
24 to meeting Water Quality Standards. There will be  
25 essentially a dialogue between us and the permittee to

1 figure out, okay, if you can't get all the way there right  
2 now because it's cost prohibitive, what can you do? And  
3 let's make sure that that's based on your economic  
4 condition as well.

5           And so the first comment period we went up for  
6 scoping in February, and closed in March. We received  
7 comments from these six entities. And so we addressed  
8 those comments in advance of the June Water and Waste  
9 Advisory Board. During that comment period that closed at  
10 the last advisory board, we received comments from these  
11 four -- I guess you guys and then these three other  
12 organizations. And we had received some of those comments,  
13 you know, right at the time you guys were considering the  
14 proposed rules. So, basically, took the -- you know, took  
15 the rule back and responded to those comments in the -- in  
16 the interim between that, between then and now.

17           So EPA's comments from the June comment period,  
18 they recommended removing language from the definition of  
19 discharger-specific variance. That references the  
20 condition of the receiving water. And so I think they were  
21 just concerned that it wasn't broad enough, so -- and that  
22 in some cases we would want to represent the variance as an  
23 effluent condition. And so kind of this weird dynamic  
24 where you're giving a permittee a time limited designee to  
25 use a criteria, but it might be hard to actually specify

1 what that will be in the receiving water. You know, so if  
2 you're taking ammonia, you can say, okay, well, you're  
3 supposed to meet these Water Quality Standards, but instead  
4 you need to meet these. In a lot of cases it's going to be  
5 easier to have them identify what the effluent quality is  
6 going to be rather than what the receiving water quality is  
7 going to be. And so that's the origin of this comment.

8           And so it makes sense we recommended making the  
9 change, and so the new proposed rule reflects that. And  
10 then we also removed language from 37(c)(ii) that mentions  
11 of the receiving water.

12           And a similar comment EPA made about the highest  
13 attainable condition represented as an effluent condition,  
14 and we made those recommended changes to the definition.

15           So EPA and the Wyoming Outdoor Council also  
16 recommended during that June comment period that we remove  
17 the language in section 37(g) that says the variance shall  
18 become effective either upon EPA approval or 90 days after  
19 submittal, whichever comes first.

20           And then EPA submitted comments to us just last  
21 week that reiterated this point. And so you'll see in the  
22 response to comments, the Clean Water Act is where that  
23 60-day, 90-day time frame comes from. It outlines that EPA  
24 should basically approve state standards within a 60-day  
25 time frame or disapprove them within a 90-day time frame

1 and lets states know what they need to do in order to make  
2 them consistent with the Clean Water Act.

3           And so this is reiterated in the federal regs in  
4 this section. It's the same language as from the Clean  
5 Water Act. And then the federal regulations also have  
6 these other statute -- other sections of the regulations  
7 that say EPA has to approve a water quality standard before  
8 they become effective for Clean Water Act purposes. And so  
9 you kind of have this -- I guess people view it  
10 differently, but you could see it as potentially  
11 inconsistency where it does require them to act within a  
12 certain time frame, but we also can't move forward with  
13 implementing our standards if they don't approve them. So  
14 it sets up a very strange position, I think, for the state.

15           So in the Water Quality Standards Section 34 we  
16 have this language that talks about basically when we  
17 submit a designated use change to EPA it will become  
18 effective after 90 days, or if they approve it within that  
19 period. And so we kind of have a precedent of doing that,  
20 of implementing our water quality standards in that way so  
21 that we aren't waiting for EPA sort of indefinitely.

22           And then when we do proposed changes, just like  
23 any other chapters, when the governor approves them, that's  
24 what we have on the books to implement, even though under  
25 the Clean Water Act we submit those Water Quality Standards

1 to EPA, pursuant to the Clean Water Act, they will act on  
2 them at some point, but in Wyoming that they become  
3 effective once the governor has, you know, approved them.  
4 And that's how we've handled it for a number of years.

5 CHAIRMAN BEDESSEM: Go ahead.

6 BOARD MEMBER CAHN: So what happens if EPA  
7 at 90 says, no, they're not approved, and you've already  
8 given them to the governor and the governor's approved  
9 them, then what happens?

10 MS. PATTERSON: So if the governor signs  
11 off on Chapter 1, then we would submit them to EPA, and  
12 then EPA would have typically -- we don't give them another  
13 60 days or another 90 days after that, typically. They're  
14 just sort of effective as of that date that the governor  
15 signs them into rule.

16 BOARD MEMBER CAHN: But what if you hear  
17 from the EPA in 90 days that they don't approve them, then  
18 what happens?

19 MS. PATTERSON: Then we essentially would  
20 go back and try to revise the rules, typically is what  
21 happens.

22 BOARD MEMBER CAHN: And so then are they no  
23 longer effective at that 90 days? Are they then in  
24 noncompliance?

25 MS. PATTERSON: Right. So EPA would say we

1 shouldn't be implementing them for Clean Water Act  
2 purposes. And I think it depends, if there's some really  
3 important decision that's made, we might delay action on  
4 that. Like if we were to make an impairment listing or  
5 something like that based on rules the EPA disapproved,  
6 then we would probably -- probably wouldn't move forward  
7 with that, or we would determine, you know, whether it was  
8 something that we disagreed with EPA on, and then we would  
9 move forward with that. Does that make sense?

10 BOARD MEMBER CAHN: (Shakes heads.)

11 MS. PATTERSON: No?

12 BOARD MEMBER CAHN: No.

13 MR. WATERSTREET: Lindsay, this is David  
14 Waterstreet.

15 We do have some experience with this. I mean,  
16 there have been times in the past when we have adopted a  
17 rule that EPA did not agree with after the fact after we  
18 had the governor's signature. However, they've never  
19 really played out in a manner that required some  
20 significant discussion about a conflict. Typically, we  
21 just don't have a situation where they -- they get  
22 crosswise. However, we -- we've had a couple, and we just  
23 had to work through it as Lindsay's described. We've had  
24 to go back and then negotiate with them what that process  
25 and procedure would be moving forward. We don't

1 necessarily agree with their -- with their disagreement all  
2 the time. So there's typically some negotiation that  
3 occurs when they disagree with -- with us and we have to  
4 decide internally how we're going to address their  
5 disagreement.

6 CHAIRMAN BEDESSEM: So what you're saying  
7 here is that in Section 34 of Chapter 1, you have -- have  
8 that language that you originally proposed also in Section  
9 37. But you're now taking it out of Section 37 based on  
10 EPA's request?

11 MS. PATTERSON: No. We'd like to retain  
12 it --

13 CHAIRMAN BEDESSEM: Okay.

14 MS. PATTERSON: -- because of the precedent  
15 we have in Section 34 and the precedent that we have in  
16 just the implementation of our Water Quality Standards in  
17 general with the governor's approval.

18 MR. WATERSTREET: And, Lindsay, one more  
19 note that I'd like to make is kind of -- EPA has a history  
20 of holding onto things far longer than that 60 and 90 days  
21 regardless. So the idea of us putting language within the  
22 rule that basically suggests that we will not move forward  
23 until we have EPA approval could mean that they can  
24 essentially hold our rulemaking indefinitely based on that  
25 additional language. So it's our interpretation that

1 regardless of the fact that we need to wait on them until  
2 they have approval, they also have an expectation of the  
3 60- and 90-day time frame. So we've historically worked  
4 under that process and we've always moved forward.

5           Sometimes EPA will come back and they will  
6 completely approve of our standards, our regulatory  
7 decisions; however, it might take them one to three years  
8 before they're able to come to that. And in the meantime  
9 we've had permits renewed. We've had total maximum daily  
10 loads that have gone through. We've made impairment  
11 decisions. And we would essentially have to hold our new  
12 decision as to how to have those Water Quality Standards  
13 until EPA approved of them. So we have found it a more  
14 manageable system to hold them to the 60 and 90 days, and  
15 then if there is some conflict between their decision and  
16 our decision, then we negotiate that after the fact.  
17 Hopefully, that helps a little bit with context.

18           CHAIRMAN BEDESSEM: Thank you. I  
19 appreciate that clarification. Gotcha.

20           Any other questions?

21           BOARD MEMBER KIRKBRIDE: Klaus has one.

22           BOARD MEMBER HANSON: I have two concerns.  
23 And that is the exceptions that we're discussing seem to be  
24 based on two criteria, namely price. It's too expensive to  
25 do it. And the other one the limits that have been



1 established are being exceeded. What, to my mind, is  
2 missing is limits on either one of those criteria because I  
3 have the feeling we could open ourselves for a lot of  
4 litigation if, you know, we approve an exceeding by  
5 one unit or they said it's too expensive -- what is  
6 expensive here, how much is it -- and we approve that and  
7 then the next unit comes and says, well, we have the same  
8 problem, but ours is so much higher or so much lower.

9           And so I have the feeling there should be quite a  
10 measurable criteria which says you can exceed by so and so  
11 much in percentage or whatever or you can exceed by a  
12 certain amount. You know, if it -- if it's more expensive  
13 than -- I'm picking a figure out of my head -- a million  
14 dollars or something like that, then it is too extensive.  
15 But if it's only \$25,000, it's not too expensive.

16           I have the feeling, since neither one of those --  
17 and I don't know whether that's at all workable -- neither  
18 one of those appear within the documentation that I saw.  
19 It becomes sort of a very -- amorphous process, you know.  
20 We don't know when will the department approve it and when  
21 will it not approve it. Reading this thing, I thought to  
22 myself -- and now I get a statement here that it's not  
23 federally required. It's something that we are doing. I  
24 have the feeling we may lay ourselves open for a lot of  
25 litigation by people who say, well, why not my case,

1 because I can't meet it, et cetera.

2           So that's my -- my whole observation. I read  
3 this very carefully, but I thought to myself that's the one  
4 thing, for my taste, that's sort of missing. Some kind of  
5 objective criteria or numerical criteria on both those  
6 items that would say yes/no.

7           MS. PATTERSON: So the first thing, when  
8 EPA says in their letter that it's not required, they're  
9 specifically saying the authorizing provision. So each  
10 individual variance is technically a water quality  
11 standard.

12           BOARD MEMBER HANSON: Uh-huh.

13           MS. PATTERSON: And so what they were  
14 saying in their letter is if states choose to adopt an  
15 authorizing provision, which is what we're doing here,  
16 we're giving the administrator the authority to grant a  
17 variance --

18           BOARD MEMBER HANSON: I understood that.

19           MS. PATTERSON: -- you don't have to do  
20 that, because you could technically adopt Water Quality  
21 Standard in Chapter 1, but we want to do a different  
22 process going through rulemaking for each one of these  
23 individual cases. So they're saying you don't have to do  
24 an authorizing provision, but if you do, we have approval/  
25 disapproval over that under the Clean Water Act.

1           So then I guess the other thing is that EPA has  
2 guidance, the 1995 economic guidance that they use to  
3 interpret that social and widespread economic and social  
4 impacts. And they've had states rely on that guidance in  
5 order to demonstrate that it would essentially create  
6 economic hardship. And so what that guidance lays out is  
7 that for municipalities, you would essentially be looking  
8 at the cost of the project and comparing that to the median  
9 household income as a percentage, and so there are fixed  
10 numbers within that guidance document that outline, okay,  
11 we're expecting that 1 percent of median household income  
12 is not too much for people to pay for wastewater treatment  
13 unless in some extreme circumstances, you know, they're in  
14 tons of debt or there's a bunch of other factors that you  
15 would add on top of the overall cost of the project.

16           And then the other expectation is that you're  
17 somewhere in between 1 to 2 percent of median household  
18 income to pay for wastewater treatment expenses. If you  
19 get above that 2 percent threshold, you're starting to get  
20 to the point where it's pretty substantial, the cost that  
21 that community -- the individuals in that community would  
22 have to incur to put in that treatment technology. And so  
23 there are some -- some numbers in that guidance. And we  
24 are -- I'm working on drafting guidance that would go along  
25 with the rule, but I just didn't want to put that out while

1 we were still working on the language of the rule. And so  
2 I guess I would point to those documents, then EPA's '95  
3 guidance, and then this guidance document that we'll be  
4 putting out after the rule is adopted that will help  
5 explain to everybody, you know, are you even a good  
6 candidate for a discharger-specific variance? For  
7 municipalities, it's a little bit more straightforward.  
8 Most of the variances have been approved by EPA. And  
9 there's not that many. It's a pretty new phenomenon,  
10 honestly. Even though the ability has been around for a  
11 long time, it seems like states have mostly figured out  
12 ways around that. But when you start looking at ammonia  
13 and nutrients, the criteria are just so stringent. And the  
14 technology for many small communities is just not there.  
15 And so a lot of states are exploring this as an option sort  
16 of more recently. And so that's the best answer I can give  
17 to that. And then they also have criteria for private  
18 entities, where you're looking at cash flow and you're  
19 looking at, you know, sort of the solvency of the  
20 particular entity that's applying for it.

21 But, you know, when I started drafting the  
22 guidance, it also talks about other ways that you  
23 potentially modify your effluent limit by working with a  
24 permitting program. In some cases it may be appropriate to  
25 modify the designated use or to modify the criteria, since

1 in some cases those aren't applied. You know, in the most  
2 precise way, they might be based on more general  
3 information. And so it kind of walks the permittee through  
4 other options to explore before you get to a  
5 discharger-specific variance.

6 BOARD MEMBER HANSON: Thank you -- Madam  
7 Chair -- that makes sense to me.

8 And only question that I would have, why isn't it  
9 in the documentation because I think it would be good for  
10 the operators to know that --

11 MS. PATTERSON: Sure.

12 BOARD MEMBER HANSON: -- you know.

13 So I would hope that eventually gets included in  
14 some fashion. You haven't addressed the other aspect. How  
15 much of an exceedance is permissible --

16 MS. PATTERSON: Right.

17 BOARD MEMBER HANSON: -- and how much is  
18 not. I think that would be the other question. You know,  
19 you could have --

20 MS. PATTERSON: Right.

21 BOARD MEMBER HANSON: -- a million parts  
22 per whatever, or you have 10,000. You know, what --  
23 what --

24 MS. PATTERSON: Right. Again --

25 BOARD MEMBER HANSON: What's the limit

1 there?

2 MS. PATTERSON: -- comes down to how the  
3 rule is written, where you're requiring each permittee to  
4 meet the highest attainable condition. And so part of  
5 identifying what that is is to look at the economic  
6 situation of each of the individual entities and then  
7 looking at treatment technologies in order to determine,  
8 okay, well, what can you afford? What's not going to trick  
9 you into that sort of economic hardship boundary? And so  
10 maybe it's 1 percent for one community. It might be 1 and  
11 a half percent. It could be 2 percent for the community,  
12 depending on sort of their debts. And, you know, how much  
13 revenue they're able to generate through other sources and  
14 things like that. And so it's sort of a sliding scale, but  
15 it's pretty well defined. But, generally, it will be based  
16 on what they're able to do, right, and then the costs of  
17 the technology.

18 But I think at some point we'll probably start to  
19 have conversations with each of the municipalities to say,  
20 well, are you at least charging 1 percent of household  
21 income? Or is that what your sewer bills are? If you're  
22 not there, you probably need to get up close to that  
23 because in order to -- for you to be at the highest  
24 attainable condition, that's sort of the minimum  
25 expectation.

1           And it's a difficult conversation, I think, that  
2 we'll have to have with each of the individual entities.  
3 But in order to get more time to meet the limits, you know,  
4 we still want to work towards the goals of meeting the  
5 Water Quality Standards. There will be those expectations.

6           BOARD MEMBER HANSON: Thank you. That  
7 clarifies a few things for me because I'm on city council.  
8 I have to approved these rate changes.

9           MS. PATTERSON: Yep.

10          BOARD MEMBER HANSON: And I'd like to see  
11 some kind of a mechanic -- mechanism, a method, whereby,  
12 you know, I can for the citizens say, yeah, we need to do  
13 this. But I'd like to see some numerical criteria that are  
14 being established. And I would love to see them in the  
15 regulations because that way it would be easier for me,  
16 from a -- from a standpoint of having to justify rates, you  
17 know --

18          MS. PATTERSON: Right.

19          BOARD MEMBER HANSON: -- to come up with  
20 some kind of a statement.

21          Thank you very much, Madam Chair.

22          CHAIRMAN BEDESSEM: Thank you.

23          MS. PATTERSON: And the reason why they're  
24 not in the regulations is because it -- it depends, I think  
25 is the short answer, is that it's going to really depend on

1 each individual situation. And then if we start putting in  
2 sort of these minimum requirements that there might be an  
3 exception to that. So we would be concerned about laying  
4 out these strict guidelines that we would use to develop  
5 each individual variance when some community might be  
6 slightly outside of that norm because of some extenuating  
7 circumstances. And so EPA hasn't included that in their  
8 regulations either. They still have this guidance  
9 document. And so that would be my recommendation moving  
10 forward, would be to work it out on a case-by-case basis  
11 using the EPA guidance as a baseline. Ultimately, EPA's  
12 going to go approving it, and, you know, we can take the  
13 guidance document through the process, get feedback from  
14 the public and whether it's spelled out sufficiently. But  
15 if we included it in the rule, I think we would regret it  
16 because there would be ultimately exceptions.

17 BOARD MEMBER HANSON: Could always add the  
18 word "normally."

19 MS. PATTERSON: Right. Right.

20 BOARD MEMBER HANSON: I just stick by my  
21 point. You know, I think for city administrations and city  
22 government, it would be easier for -- municipal government  
23 in general -- it would be easier to have something of a  
24 statement, you know, this constitutes A, this constitutes  
25 B. And I know you try to avoid that because situations are



1 always different. But I think it -- it opens itself to a  
2 lot of litigation. You know, people say why they -- why  
3 not me? You know, this kind of situation.

4 Thank you very much.

5 CHAIRMAN BEDESSEM: So now I'm assuming  
6 that Chapter 1 -- I appreciate very much, I just want to  
7 tell you that your recap, since I was not at the last board  
8 meeting. So this has been very helpful. And I see we had  
9 comments from EPA just a few days ago, and I'm assuming the  
10 comment period then ends at the close of this meeting. And  
11 so perhaps before we have more board discussion or  
12 comments, let's go and see if we have any additional public  
13 comments here.

14 So do we have anybody in the public who would  
15 like to come up and share comments on Chapter 1, surface  
16 water monitoring?

17 Okay. Please come up and identify yourself and  
18 who you represent. Thank you.

19 MR. HEILIG: My name is Dan Heilig. I'm  
20 with the Wyoming Outdoor Council. Thank you very much for  
21 the opportunity to comment.

22 We have been involved in the rulemaking process  
23 for quite some time now. We've submitted two sets of  
24 comments previously, so this will be our third comment  
25 pertaining to this proposed rule.

1           I'd like to thank the Department and particularly  
2 Lindsay for her efforts here. No small undertaking to  
3 develop a regulation like this. And I think largely the  
4 Department has been very responsive to public comment.  
5 However, there are a few remaining issues I think that are  
6 very important that should be resolved.

7           One, I think the most important one, is the  
8 comments submitted by EPA, which we addressed in our  
9 previous comments, talking about automatic approval of  
10 variances if EPA fails to take action within the statutory  
11 time period 60 or 90. Our concern is there's nothing in  
12 the Clean Water Act that authorizes the variance to go into  
13 effect without EPA approval. There's no provision that  
14 triggers an automatic approval if EPA fails to act.

15           And although it may be appropriate in state law,  
16 you know, this is a case where Wyoming is operating a  
17 program under federal authority. And so I think it's  
18 important for the state to be consistent with federal  
19 regulations. And EPA has stated several times, as had we,  
20 this is a problem, this automatic approval.

21           Our concern is that it places this regulation at  
22 some risk if EPA is continuing to express concerns about  
23 it. More importantly, I think it could place  
24 municipalities at some risk of legal action if they were to  
25 go forward adopting a variance that's written into their

1 NPDES permit without EPA approval. That makes me a little  
2 uncomfortable. It could put the municipality in the middle  
3 of a greater conflict between the State of Wyoming and EPA  
4 over this particular issue.

5 I think what I see is the state kind of setting  
6 up a legal issue here between itself and EPA where  
7 fundamental questions of authority under the concept of  
8 federal -- federalism. So I would urge the board to heed  
9 the EPA's advice and remove the provision that allows the  
10 state to provide for automatic approval if EPA fails to act  
11 within the statutory time frames.

12 Number 2, I'm afraid I don't have a copy of the  
13 draft in front of me, but there was -- there was -- I think  
14 I can --

15 BOARD MEMBER HANSON: You need one?

16 MR. HEILIG: I don't know that I could find  
17 it. Let me see if I can wing it here.

18 There is a provision that we supported in the  
19 rule that was added that addresses the increase of  
20 pollutants based on the issuance of a variance. I think  
21 it prohibits the increase of a pollutant based on -- so  
22 that -- an increase of a pollutant is prohibited. I don't  
23 know where that that is in the rule, but maybe Lindsay can  
24 quickly put her finger on that.

25 And what I'd like to suggest is the change, small

1 change, but I think an important change to that phrase "a  
2 pollutant," I'd like to -- the board to consider changing  
3 that to any pollutant or a pollutant -- the pollutant.  
4 Excuse me, the current language says "the pollutant."

5 MS. PATTERSON: "Of the pollutant."

6 MR. HEILIG: Yeah.

7 MS. PATTERSON: Because each variance will  
8 be specific to a particular pollutant.

9 MR. HEILIG: Right. So what I'd like to  
10 suggest is that phrase "the pollutant" be changed to "any  
11 pollutant" or "a pollutant." And the reason is if the  
12 variance say, for example, is for nitrogen, it's clear  
13 under existing proposal that there can be no increase in  
14 nitrogen, right, as a result of the variance. But concern  
15 would be what if there's an increase in phosphorus or  
16 ammonia or some other pollutant as result of a variance? I  
17 don't know if that's, you know, possible or --

18 MS. PATTERSON: Right.

19 MR. HEILIG: -- you know, based on the  
20 technology that's in use. But it would cover my concern  
21 that there would be an increase in some other pollutant  
22 related or not to the pollutant that is the -- the subject  
23 of the variance.

24 That's all I have. Thank you.

25 CHAIRMAN BEDESSEM: Thank you very much.

1 BOARD MEMBER HANSON: Thank you.

2 CHAIRMAN BEDESSEM: Anyone else present who  
3 would like to submit a comment?

4 Gina, is it appropriate at this time for me to  
5 read the --

6 MS. THOMPSON: I believe so. And I wanted  
7 to let you know, Madam Chairman, that I just checked the  
8 comment portal, and we have not received any comments on  
9 this chapter this morning. So I believe that all of the  
10 written comments that have come in during the period, that  
11 you have seen them and --

12 CHAIRMAN BEDESSEM: They've been addressed.

13 MS. THOMPSON: That's correct, so...

14 CHAIRMAN BEDESSEM: So then what I'd like  
15 to do is read into the record a comment from Brian Deurloo,  
16 who is an advisory board member who was not able to attend  
17 today. This comment was submitted Wednesday,  
18 September 20th. It says I have reviewed the packet. I  
19 have only one comment and it pertains to Chapter 1, Section  
20 37. The rule as proposed is very limiting and only allows  
21 variances for ammonia and nutrients compliance levels --  
22 nutrient compliance levels. I understand these variances  
23 are incorporated to help small municipalities that may have  
24 difficulty meeting WDEQ standards for ammonia and  
25 nutrients. I believe the rule should be written so a

1 variance may be granted for any parameter with just cause  
2 at administrator approval. I also believe the U.S. EPA  
3 allows for variances such as this, and Wyoming is being  
4 more stringent than the Federal Rules.

5 As the industry representative to the Water and  
6 Waste Advisory Board, I speak for industry when I say that  
7 a broader scope of variances must be allowed for the  
8 economical extraction of resources. Of course our waters  
9 of the state must be protected and all best management  
10 practices should be employed to protect these waters when  
11 considering a variance level.

12 And then there's attached some comments from  
13 Wyoming Mining Association. They've already submitted  
14 their comments separately.

15 MS. THOMPSON: Correct.

16 CHAIRMAN BEDESSEM: I think that sums up  
17 Brian's remarks. So I think with that, that ends this --  
18 we can turn it toward the board for comments and  
19 discussion.

20 BOARD MEMBER KIRKBRIDE: Madam Chairman, I  
21 was wondering what is the scope of the problem? In other  
22 words, how many of our -- how many of our systems are on  
23 the edge of needing such variances?

24 MS. PATTERSON: Right now we are aware of  
25 the one, that small community that has the ammonia effluent

1 limit. And then when we started to look at sort of the  
2 universe of facilities that might be impacted by the  
3 revised ammonia criteria, I think it might be 30 or so, but  
4 I don't know if they would necessarily be good candidates  
5 for a discharger-specific variance. It would kind of  
6 depend on how much those folks are paying for their  
7 wastewater treatment and what the cost would be to get that  
8 facility into compliance. It was more of a -- we -- before  
9 we can adopt the criteria, we need to have a mechanism for  
10 these communities to potentially give them more time to  
11 meet the criteria. And so we're sort of in this position  
12 where we can't move forward with adopting more stringent  
13 Water Quality Standards until we have the variance  
14 provision in place.

15           So I think the universe is -- you know, it could  
16 be half of our facilities. But then when you add on  
17 nutrient criteria potentially in the future, it could be  
18 almost all of the wastewater facilities in the state. It  
19 might be, you know, the 70 municipalities. And then we  
20 have private entities too, that -- that have package plans  
21 and other things that they discharge. Like that's just  
22 under a homeowners association. It's not necessarily a  
23 municipality.

24           So I think the full universe, when we look at  
25 ammonia, was 110 facilities. But, again, not all of those

1 are candidates. Some of them are discharging to receiving  
2 waters that have a lot of dilution. And so the effluent  
3 limits aren't particularly stringent for them.

4 BOARD MEMBER KIRKBRIDE: You know, and I  
5 was wondering about that also. Was this a significant  
6 change? I mean, it was touched on about the -- considering  
7 less about the receiving water than about the effluent  
8 limits, right? Does that sort of a change of emphasis --  
9 we're not going to consider so much about -- can you just  
10 speak to that a minute?

11 MS. PATTERSON: Sure. It's just to be able  
12 to specify instead of us trying to quantify, like what the  
13 ammonia concentrations would be in the, say, the Snake  
14 River here or Flat Creek here, we're going to say, well, we  
15 are more confident in saying what the effluent quality is  
16 going to be, instead of trying to predict what the  
17 receiving water conditions are going to be. And so the  
18 language just allows that flexibility that if we want to  
19 define what the variance is, we'll just make it what the  
20 effluent quality is supposed to be.

21 BOARD MEMBER KIRKBRIDE: Yeah, I think I  
22 understand.

23 CHAIRMAN BEDESSEM: I was just hoping that  
24 you could speak a little further toward the Outdoor  
25 Council's two comments they made today.



1                   MS. PATTERSON: Sure. Yeah. And I guess  
2 going back to the 60-day/90, you know, we discussed that  
3 previously. It's still our recommendation that we move  
4 forward with allowing EPA the 90 days to disapprove, that  
5 we've established that precedent. It seems like in  
6 circumstances where -- so Chapter 1 -- the last revision of  
7 Chapter 1 would be submitted to EPA in maybe November 2013,  
8 they don't act on that until August of 2016. And the thing  
9 about variances, a lot of the information that goes into it  
10 is time sensitive, and so you're basically looking at  
11 economic data, the cost of treatment technologies at that  
12 point in time. I think we have concerns about just giving  
13 them as much time as, you know, they want to take or need  
14 to take in order to review it for us to move forward with  
15 implementing something that we've already done all the  
16 legwork with. We've taken public comments on, you know,  
17 that administrator's approved it. There will be an appeal  
18 period within the state. And so I think that's just the  
19 sort of the final step, is to have EPA approval.

20                   The other thing I would say about that is even  
21 though we're intending for Chapter 1 to be consistent with  
22 the Clean Water Act, not everything under there is  
23 technically under EPA's purview. There may be some cases  
24 where we would adopt a discharger-specific variance that  
25 technically EPA doesn't have authority over, if for

1 example, it wasn't to a waters of the United States. And  
2 so when you give them the authority right to approve/  
3 disapprove every single aspect of the standards and us to  
4 have to wait for them to approve it, it eliminates some  
5 flexibility that the state has.

6 And then the other piece related to -- of the  
7 pollutant. I can't remember exactly what the federal  
8 regulations say on that, but I think we can really only be  
9 specific to the particular pollutant that we're writing the  
10 variance to, and it would be difficult to try to predict,  
11 you know, if, say, you were writing a variance for ammonia,  
12 if the wastewater treatment potentially has an increase in  
13 the amount of nitrate, they would still be required to meet  
14 all the other effluent limits that were included. And if  
15 it came back through a permit renewal that somebody was  
16 concerned about the receiving water quality and that they  
17 thought the permit didn't have the appropriate effluent  
18 limits, I think there's an opportunity for the public to  
19 comment on that if they were concerned about concentrations  
20 of other pollutants, but that it would be -- it would be  
21 difficult to constrain the facilities to look at all of the  
22 potential pollutants that could be in their effluent.

23 CHAIRMAN BEDESSEM: I would think that  
24 particularly with nutrients, if you are writing a variance  
25 with respect to one form of nitrogen and you're working

1 with the community to take interim steps for things they  
2 can do to reduce the amount of, for example, ammonia  
3 they're discharging, those steps may increase another form  
4 of nitrogen, like nitrate, and as long as they're not, you  
5 know, exceeding their effluent limits, that should be an  
6 option for them. And if you say don't increase anything in  
7 your effluent, that hampers the -- the way you can  
8 design mechanisms for treatment. So I would think that you  
9 would have to keep it as just the pollutant or could be  
10 extremely complicated.

11 MS. PATTERSON: Right.

12 CHAIRMAN BEDESSEM: Anyway, thank you for  
13 addressing both of those. The discussion between WDEQ, EPA  
14 and municipality and the positions that each of them are in  
15 when there's a conflict, seems to me to stem from when EPA  
16 doesn't follow their own rule and respond in the  
17 appropriate time frame. And so it's almost like there's  
18 this expectation based on past history that EPA will not  
19 follow its own rules.

20 MS. PATTERSON: Yes. I don't know of an  
21 approval that we've gotten within that time frame, so --  
22 it's certainly not their precedent to act within their time  
23 frames.

24 CHAIRMAN BEDESSEM: But how long has  
25 Section 34 been on the books where you've been able to

1 negotiate afterwards because these time frames have passed?

2 MS. PATTERSON: Since 2001.

3 CHAIRMAN BEDESSEM: Okay. So Section 34  
4 has been written that way and managed to work out whatever  
5 conflicts that have arisen based on Section 34 --

6 MS. PATTERSON: Right.

7 CHAIRMAN BEDESSEM: -- since 2001?

8 MS. PATTERSON: Right.

9 CHAIRMAN BEDESSEM: All right. Thank you.

10 Any other comments from the board?

11 Lorie, go ahead.

12 BOARD MEMBER CAHN: I have some questions.

13 Could the state be fined by the EPA for  
14 noncompliance? So if we go ahead with this that says if  
15 we don't hear from you -- if we don't hear from them in  
16 90 days, you're going to go ahead and approve it. Could  
17 then -- if they then two years later say, "Oh, we don't  
18 approve it," could you be fined for noncompliance during  
19 that two-year period?

20 MS. PATTERSON: I don't think we would be  
21 fined as the state. It does potentially create a situation  
22 where the permittee would be in compliance with permit that  
23 we wrote, and then EPA would later come back and say, "Oh,  
24 that permit" -- EPA would also have an opportunity to  
25 appeal the permit, I guess typically what the situation

1 would be. Right? So that we would approve in our  
2 standards the variance. A discharger-specific variance  
3 would lay out, you know, all the conditions. We develop a  
4 WYPDES permit based on that that would specify, okay, well,  
5 this is all the conditions variance. You have to meet this  
6 effluent quality for this amount of time. And then you'd  
7 have a public comment opportunity with the permit. And so  
8 EPA would have the ability to object to that permit until  
9 the variance was approved technically. I don't think they  
10 would fine the state. They would object to the permit.

11 BOARD MEMBER CAHN: Could they fine the  
12 community?

13 MS. PATTERSON: I think it would depend on,  
14 you know, what was in the permit. And whether they were --  
15 but typically the state does that. I don't know if EPA  
16 typically would fine a municipality. So it would be a  
17 situation where the state would be -- or the municipality  
18 would be in compliance with the state permit, right? But  
19 there would potentially be an objection from EPA, but I  
20 don't recall knowing that.

21 David, do you have any insights?

22 MR. WATERSTREET: And this is David  
23 Waterstreet back at the Cheyenne office.

24 I don't have any history of that. That's not  
25 typically the way something would play out. Typically,

1 their authorities are to strip us of our decision and then  
2 overrule our decision, and they can come through and say,  
3 for example, that permit limit is not appropriate. We have  
4 not approved of it, so we are, therefore, placing this  
5 particular provision or expectation over the top of the  
6 DEQ. And we have -- we have to honor, you know, that type  
7 of decision.

8 But typically the way that these play out in  
9 those circumstances in the permitting world -- and, again,  
10 Lindsay and I are in the Water Quality Standards side, so  
11 we're kind of speaking from secondhand rather than personal  
12 knowledge. But typically the way that works out is there's  
13 some negotiation process between us and them, and it's not  
14 between them and the permittee. We're the ones that work  
15 with them on those disagreements and come to some kind of  
16 conclusion.

17 That's probably the best way I can answer it with  
18 the knowledge I have. We would have to ask the permitting  
19 program for any better history about that.

20 CHAIRMAN BEDESSEM: Thank you.

21 BOARD MEMBER CAHN: Could the state lose  
22 some kind of authority for the Clean Water Act based on EPA  
23 not -- you know, not agreeing with this 90-day issue if we  
24 don't put that in? Could you lose your authority?

25 MS. PATTERSON: I don't think so. I mean,

1 we -- you know, we sort of have this precedent. So the  
2 states under the Clean Water Act are delegated authority to  
3 adopt -- you know, develop and adopt Water Quality  
4 Standards. EPA would promulgate standards potentially, you  
5 know, sort of their recourse if they don't agree with what  
6 the state does. I think in this case, if they really  
7 didn't like that language, they could always disapprove  
8 that portion of the language that we would adopt. But it's  
9 not clear from the discussions that I've had or from EPA's  
10 comments, you know, how uncomfortable they are with it,  
11 whether they would actually go through the process of  
12 disapproving.

13 In the past, they -- they often don't take action  
14 rather than disapprove portions of the standards. So then  
15 you do have the situation where things kind of just tend to  
16 roll on for a long period of time, because they -- they  
17 don't want to go through the legal hurdles on their end to  
18 do a formal action and disapprove a portion of the  
19 standards. There's a handful of things in Chapter 1 from  
20 the previous revision in 2013 that they just decided not to  
21 act on. So it could be one of those circumstances.

22 But, you know, that we have delegated authority  
23 to implement the 402 program, which is a permitting  
24 program. And I think it would be something -- it would be  
25 really bad for it to come to that. The EPA really doesn't

1 have the resources to take over those programs from the  
2 states in general. And we would try to address most of  
3 EPA's concerns, like through the rulemaking process.  
4 That's typically been -- our process is to take their  
5 comments and integrate it into the rule. It would be the  
6 same thing as with a variance, just like with any UAA, that  
7 we would have them as part of the process like early on so  
8 that we could come up with a product that would be  
9 approvable. It's typically not our process to, you know,  
10 sort of ignore their comments. And so I think in most  
11 cases they'll be able to approve it and that they wouldn't  
12 run into those situations.

13 BOARD MEMBER CAHN: Thank you.

14 CHAIRMAN BEDESSEM: I see this as something  
15 that WDEQ wants to be able to operate on a daily basis and  
16 not being held waiting for two years for an approval.

17 MR. HEILIG: Dan Heilig, Wyoming Outdoor  
18 Council.

19 If I may, I'd just like to address the question  
20 from the advisory board member about the legal questions  
21 surrounding the -- the discussion we're having about the  
22 variances that are approved automatically if EPA fails to  
23 take action within the statutory time frame. A concern I  
24 would have would be if the EPA -- excuse me, if the DEQ  
25 were to approve a variance, and that variance goes into



1 effect for Clean Water Act purposes, but it'd discharge  
2 into a water of the United States without EPA approval,  
3 then there's a potential for anyone, really, to bring an  
4 action to challenge the variance as a violation of the  
5 Clean Water Act. If EPA hasn't approved it, it's not  
6 effective for Clean Water Act purposes. So it puts a  
7 municipality, I think, into a difficult spot where it may  
8 have state approval for its variance, but no federal  
9 approval, and, therefore, legal exposure under the Clean  
10 Water Act to legal actions that could challenge the permit.  
11 And its activity that's under the permit.

12 Thank you very much.

13 CHAIRMAN BEDESSEM: Thank you very much.

14 Additional comments from the public or the board?

15 BOARD MEMBER CAHN: Does DEQ have a --

16 CHAIRMAN BEDESSEM: Response?

17 BOARD MEMBER CAHN: -- response to Dan's --

18 MS. PATTERSON: I think we could have a  
19 dialogue with a municipality if they felt like they wanted  
20 to wait for EPA's approval. I mean, that's always their  
21 discretion.

22 I think, you know, one thing to keep --

23 BOARD MEMBER CAHN: What would they do in  
24 the interim? They keep discharging?

25 MS. PATTERSON: They're basically just

1 doing what they're -- you know, I think the only thing  
2 would be if they had secured funding as part of the  
3 variance. You know, I think that's the issue we were  
4 running up against with the small municipality. We started  
5 to work through some of the economic information, and we're  
6 working with our consultants and looking at options, and it  
7 just seemed like we don't know how long it will take to do  
8 the rulemaking. We don't want to secure this funding.  
9 It's only going to be available for this limited amount of  
10 time. And they have a lot of things that they'll be  
11 weighing, I think, including this compliance issue, you  
12 know, whether they'll be out of compliance. But they're  
13 just going to continue to discharge at what they've been  
14 discharging. So they're not making more progress. It's  
15 just stalled, essentially.

16 CHAIRMAN BEDESSEM: They don't really have  
17 the option to not discharge. I mean, they're --

18 MS. PATTERSON: No. Exactly.

19 CHAIRMAN BEDESSEM: They're going to  
20 continue to discharge --

21 MS. PATTERSON: Right. It's just --

22 CHAIRMAN BEDESSEM: -- whether or not --

23 MS. PATTERSON: -- a matter of what quality  
24 it is.

25 CHAIRMAN BEDESSEM: Yeah.

1 MS. PATTERSON: Right?

2 BOARD MEMBER HANSON: It has to go  
3 somewhere.

4 CHAIRMAN BEDESSEM: Yeah, it has to go  
5 somewhere. It's not like you can just discharge and not  
6 have a conflict between EPA and WDEQ win the municipality  
7 in the middle. If EPA does not approve it according to  
8 what their rules say they're supposed to be doing, within  
9 that time frame, then municipality's going to be in that  
10 spot regardless because they will continue to discharge.

11 MS. PATTERSON: Right. Just they won't be  
12 making any of the improvements that we've outlined in the  
13 variance as a condition.

14 CHAIRMAN BEDESSEM: But the improvements  
15 are always a better thing than just discharging as they  
16 have been for the last 20 years and so forth.

17 BOARD MEMBER HANSON: It strikes me  
18 that -- talking about my own municipality, which is fairly  
19 sizeable -- we are very careful to follow all the rules and  
20 not discharge when we're not allowed to discharge. And we  
21 are very, I think, competent operator to do that. So,  
22 again, I can't speak for every community, but I think the  
23 issue is not -- is probably a nonissue in most cases that I  
24 can think of. You know, we are very careful in what goes  
25 into the streams. We have lagoon and everything, whatever.

1 So that's -- I just wanted to observe that. You know, that  
2 it's not we do this, what's the word, willy-nilly --

3 MS. PATTERSON: Right.

4 BOARD MEMBER HANSON: -- let this all go.  
5 Thank you.

6 CHAIRMAN BEDESSEM: Please come up.

7 MR. GUILD: I'm Rick Guild, public works  
8 director for the Town of Mountain View. I also work for  
9 the Fort Bridger Sewer District.

10 I'm totally on board with some sort of a variance  
11 situation because -- I've worked for -- I worked for this  
12 industry for 32 years. And what I've seen over 32 years  
13 is ammonia, for instance. They can sit down and they can  
14 make these rules and they can make these regulations and  
15 they can -- they can send them out for us to try to deal  
16 with -- ammonia, for instance, several years ago, the  
17 criteria was so stringent on ammonia, the lagoon systems --  
18 if you have a lagoon system, it is extremely hard and your  
19 hands are tied as far as meeting these criteria.

20 And so if you don't have -- and so what happened  
21 with that ammonia situation is virtually there's tons of  
22 lagoon systems in the state of Wyoming that's not being  
23 able to meet this, you know, regulation. So what did they  
24 do? They -- they backed off the regulations because --  
25 because nobody could meet it.

1           My concern is the Town of Mountain View, we put  
2 in what's called a SAGR. And -- through the construction.  
3 And, actually, it was working extremely well. But through  
4 the construction -- it's like a big shoebox full of rock,  
5 and your effluent goes into there and -- but during the  
6 construction, there was -- the material that was put in was  
7 too fine, and so it settled and plugged it off.

8           So we went through litigation, and we won the  
9 litigation in theory, but -- but you come out through the  
10 litigation, you come up with enough money to pay for only a  
11 portion to rebuild it. We're still 30 percent short of  
12 rebuilding it. So -- so what I chose to do is we went to a  
13 Bio-Dome system, which is basically the same as a SAGR  
14 system, other than it's a bunch of individual bio-domes  
15 that you can use instead of having this SAGR system. And  
16 we have great hopes that this is going to work for us.

17           And since then I've also done -- I've done  
18 something else. I've actually removed all the rock out of  
19 the SAGR system, and I have -- and I have -- the air is  
20 still working in there, so I'm going to use that as a  
21 holding cell. So I have the ability, with the Town of  
22 Mountain View, I think to turn out a very good effluent.  
23 My concern is not so much the ammonia that scares me as  
24 much as the nutrients, because the industry -- and this is  
25 what I've seen over many years. They write the rules, but

1 the industry is -- you try to get help to try to -- to be  
2 able to meet this criteria. And the industry is -- they  
3 got ideas, and the engineers and everybody's doing their  
4 thing, trying to come up with the answer to do this, but  
5 the reality is is most people don't have the answer.

6           And so -- so us, as the communities, you're  
7 trying to do what you can do to meet this criteria, and the  
8 technology, it's getting there, but it is a slow process.  
9 And -- and so the technology is there a whole lot better  
10 for ammonia right now, for instance. But when you get into  
11 the nutrients, the technology is going to be -- for  
12 instance, the people that are building the SAGR, okay?  
13 They're -- they're working with a process to where they can  
14 put the air into the SAGR for, say, three hours on, three  
15 hours off, three hours on, three hours off. But they're  
16 just barely starting to work with that to see if they can  
17 meet the nutrient rules.

18           The same with the Bio-Dome people. They're just  
19 starting to work with their bio-domes as far as timelines  
20 on/off to be able to still meet the DOD requirements, but  
21 also try to be able to -- and your ammonia and your E. coli  
22 and all the above, but still trying to touch into the  
23 nutrient.

24           If we don't have some sort of a variance deal,  
25 then what I see is back to the deal. They write the rules

1 for their ammonia and they come in and they put that on the  
2 State of Wyoming and virtually nobody that has a lagoon can  
3 meet it. And then you're going to see that with the -- I  
4 believe you're going to see that with the nutrients.  
5 They're going to write these rules and they're going to put  
6 them out there for us to meet, and there's going to be lots  
7 of communities that are going to struggle, and to struggle  
8 meeting the nutrients. And as a community, you can only do  
9 what you can do. I mean, the Town of Mountain View, we  
10 have -- we have done and done and done. We used to have --  
11 sewer rates was \$12 a month. Our base rate now is \$56 a  
12 month.

13           You know, and every year -- and we've -- we've  
14 had rate increase -- we've had that evaluated and stuff.  
15 For years and years I worked for the Town of Mountain View  
16 and we never had any rate increases. Okay? Now -- just  
17 had council meeting the other day and we voted again to --  
18 because we raise 3 to 4 percent every year now. Because if  
19 we don't raise 3 to 4 percent, it will just be a matter of  
20 time and our facility will be broke because it's a business  
21 and it has to be run as a business.

22           But I'm telling you that when you get to \$56 a  
23 month, when you was at \$12 a month, the people start coming  
24 out of the woodwork. And so to a certain extent -- I am  
25 not -- I'm not against clean water. I am not. But the

1 EPA, they could sit down at a desk and they can write rules  
2 nobody can meet. And if you don't have a variance process,  
3 it backs you into a corner. You can't get blood out of a  
4 turnip, you know.

5 And I worked for the Fort Bridger Sewer District,  
6 which is -- it's a very small community. Doesn't have very  
7 many hookups, but are -- and right now I'm going through a  
8 process of trying to put -- to fix the aeration system in  
9 that -- in that. And so I had the engineer, I wanted him  
10 to look at putting these bio-domes in. Well, bio-domes  
11 cost us a half-million dollars to put in. Fort Bridger  
12 Sewer District, in talking to the engineer the other day,  
13 they're thinking that it's going to be about the same for  
14 Fort Bridger. Fort Bridger cannot -- there is no way  
15 they're going to be able to handle a half million dollars  
16 worth of bio-domes.

17 And so -- and right now I don't think Fort  
18 Bridger fits -- right now Fort Bridger doesn't fit into the  
19 criteria of needing to apply for the variance because --  
20 because right now our ammonia is low and we are -- we're  
21 meeting the other criteria. But when the nutrients come  
22 on, Fort Bridger could be in trouble. Well, Fort Bridger  
23 will be in trouble when the nutrients come on.

24 So I guess I'd just like to go on record saying  
25 that the Town of Mountain View and Fort Bridger are totally



1 onboard with the variance process that is being -- that's  
2 on the table.

3 CHAIRMAN BEDESSEM: Thank you.

4 MR. GUILD: Thank you.

5 CHAIRMAN BEDESSEM: That was very  
6 informative.

7 BOARD MEMBER CAHN: So, Lindsay, just  
8 explain to me how EPA is coming up with these nutrient- and  
9 ammonia-based limits. Is it based on an eco or a human  
10 health risk assessment so it's -- or aquatic life criteria  
11 as opposed to best available technology?

12 MS. PATTERSON: Right. Yeah. So ammonia  
13 as an example, it's a toxicity-based criteria. It's pH and  
14 temperature dependent, and so essentially they compiled all  
15 the toxicity tests that they had available for these  
16 different organisms.

17 The most recent update took into consideration  
18 the sensitivity of fresh-water mussels, which we do have in  
19 Wyoming. We have six species of unionid mussels. And so  
20 it's just purely based on toxicity tests primarily. And  
21 they aren't taking into consideration technology, the cost  
22 of meeting the criteria.

23 And then with nutrients, it's a similar thing,  
24 except EPA has these eco regional criteria that they put  
25 out in the early 2000s which are based on reference

1 conditions. And so most states have not adopted those  
2 criteria. And EPA is allowing states to kind of use those  
3 as a starting point for criteria development. And so the  
4 state is working on that ourselves. And that will be  
5 looking -- primarily we started with the Wyoming basin  
6 lakes, since there's not a lot of discharger to those. And  
7 we have the most available data on those lakes, kind of the  
8 south central part of Wyoming.

9           And so what we've been working on is primarily an  
10 aquatic life end point, looking at shifts in the algal  
11 communities that are in the lakes, so you weren't getting  
12 too many like blue-green algae, for example. And so in  
13 addition to that, if there's drinking water supplies, we'll  
14 want to take that into consideration when we're developing  
15 criteria, and EPA's been working on recommended cyanotoxin  
16 criteria, which relates indirectly to nutrients, because  
17 when you have these algae blooms they can produce  
18 cyanotoxins, which can get into drinking water supplies.  
19 It can affect use of the waters for recreation, also  
20 aquatic life. And so nutrients potentially has multiple  
21 endpoints. Ammonia is really an aquatic life end point.

22                   CHAIRMAN BEDESSEM: Thank you.

23                   BOARD MEMBER HANSON: I just looked at the  
24 list of definitions. I'm, again, in over my head. I was  
25 going to find out what nutrients really are.

1 MS. PATTERSON: Oh, sure.

2 BOARD MEMBER HANSON: There's no definition  
3 here. Maybe you should add that as a term.

4 MS. PATTERSON: Sure. Yeah.

5 BOARD MEMBER HANSON: What are nutrients?

6 MS. PATTERSON: Total nitrogen and total  
7 phosphorus is typically what we refer to as nutrients or  
8 nutrient pollution.

9 BOARD MEMBER HANSON: Okay. So it's  
10 nothing that nurtures us, but rather --

11 MS. PATTERSON: Well, you have to have them  
12 in order for --

13 BOARD MEMBER HANSON: Okay.

14 MS. PATTERSON: -- you know, all organisms  
15 to live. It's just when you get too much of them, you can  
16 get a lot of algae growing or a lot of plants and it sort  
17 of gets out of control pretty quickly.

18 BOARD MEMBER HANSON: But let me suggest to  
19 add it as a term here.

20 MS. PATTERSON: Yeah. Uh-huh.

21 BOARD MEMBER HANSON: Thank you.

22 I was going to educate myself but couldn't.

23 CHAIRMAN BEDESSEM: Okay. Any more  
24 comments from the board? Additional discussion?

25 Okay. So now these revisions to Chapter 1

1 have -- this is the second time it's been to the board, and  
2 comment period is over, and so we're at the point of  
3 determining whether there are any suggested changes other  
4 than what has been mentioned.

5 Are there any on the board's perspective?

6 Then we're in a position to entertain a motion to  
7 move this on to the EQC. Do I hear a --

8 BOARD MEMBER CAHN: I move -- actually, do  
9 you have a --

10 MS. THOMPSON: Madam Chair. Are you --  
11 Ms. Cahn, are you looking for the language that you need to  
12 make the proper motion?

13 I believe that the statute lays out that your  
14 role as the board is to make a motion to recommend approval  
15 to the Environmental Quality Council. So I believe that  
16 when you're putting that motion forward, if we could use  
17 the words "recommend" and "adoption."

18 And for the folks in the room who may not be  
19 familiar with rulemaking, when -- when they recommend  
20 approval, if they vote to do that, it doesn't mean the rule  
21 is effective. It just means that now we have permission to  
22 ask for more permission to move forward. So I will just  
23 outline that.

24 But I believe the words that we need to use in  
25 the motion are, you know, a motion to recommend approval of

1 adoption.

2 BOARD MEMBER CAHN: I want to say so moved.

3 CHAIRMAN BEDESSEM: But is this as  
4 presented, but with the additional requests that --

5 BOARD MEMBER CAHN: With the additional  
6 definition of nutrients added. So recommend moving this  
7 chapter to EQC.

8 BOARD MEMBER HANSON: I'll second.

9 CHAIRMAN BEDESSEM: So we have a motion and  
10 a second to -- to approve --

11 MS. THOMPSON: Recommend approval.

12 CHAIRMAN BEDESSEM: -- recommend  
13 approval --

14 MS. THOMPSON: Yeah.

15 CHAIRMAN BEDESSEM: -- for adoption by the  
16 EQC. Okay.

17 All those in favor say aye.

18 BOARD MEMBER KIRKBRIDE: Aye.

19 BOARD MEMBER CAHN: Aye.

20 CHAIRMAN BEDESSEM: Aye.

21 BOARD MEMBER HANSON: I was going to ask a  
22 question before.

23 CHAIRMAN BEDESSEM: Oh. Okay. Sorry.

24 BOARD MEMBER HANSON: We had a discussion  
25 before about definitions of exceedance, et cetera, et

1 cetera. You said you were going to bring something  
2 forward. For the rules or as a compendium? Where is this  
3 going to be?

4 MS. PATTERSON: It's guidance.

5 CHAIRMAN BEDESSEM: It's guidance.

6 BOARD MEMBER HANSON: Because I'm still  
7 interested in that.

8 BOARD MEMBER CAHN: It's guidance.

9 CHAIRMAN BEDESSEM: It's guidance.

10 BOARD MEMBER HANSON: In the guidance. So  
11 we don't need it in the rules. Okay.

12 BOARD MEMBER CAHN: For clarification, the  
13 guidance would come before the board again? That would  
14 come to us?

15 MS. PATTERSON: That would be up to you, if  
16 you would prefer to see it.

17 CHAIRMAN BEDESSEM: We would.

18 BOARD MEMBER CAHN: We would like to see  
19 guidance.

20 BOARD MEMBER HANSON: Yeah, we'd like to  
21 see that. Yeah.

22 CHAIRMAN BEDESSEM: We don't have approval  
23 authority over guidance, but if you would inform the board  
24 and present, we'd appreciate that. Particularly when we're  
25 looking at a rule that we are feeling comfortable approving

1 because we are being told that there's going to be  
2 companion guidance, we'd like to see that follow through.

3 BOARD MEMBER CAHN: And I think in the past  
4 we have made recommendations for changing policies or  
5 guidance too, so...

6 CHAIRMAN BEDESSEM: Correct.

7 MS. THOMPSON: And, Madam Chair, Ms. Cahn,  
8 if we commit to doing that today, I will ensure that that  
9 comes to you. As soon as it's nearly ready for, you know,  
10 public release, we'll put it on your agenda. So we can  
11 commit to bringing that to you as per your wishes, so...

12 CHAIRMAN BEDESSEM: So thank you. That  
13 vote tally was all for votes --

14 BOARD MEMBER HANSON: Sure.

15 CHAIRMAN BEDESSEM: -- in the affirmative  
16 for the recommendation of for -- we approved our  
17 recommendation to move it forward for the EQC to adopt.

18 MS. THOMPSON: Okay.

19 CHAIRMAN BEDESSEM: Okay. It's close  
20 enough.

21 BOARD MEMBER CAHN: For EQC --

22 CHAIRMAN BEDESSEM: To consider adoption.

23 BOARD MEMBER CAHN: -- to consider.

24 MS. THOMPSON: Consider. Excellent  
25 bureaucratic process.

1 CHAIRMAN BEDESSEM: Right.

2 MS. THOMPSON: Thank you for your patience  
3 on that.

4 Madam Chair, I believe that we had discussed  
5 perhaps taking a short break.

6 CHAIRMAN BEDESSEM: Yes.

7 MS. THOMPSON: -- to give our lovely  
8 transcriptionist a break, and also for our staff in  
9 Cheyenne to switch. So the next agenda item would be the  
10 rules of practice and procedure. So if you're here to  
11 comment on those, on that Chapter 1, we're going to take a  
12 short break.

13 CHAIRMAN BEDESSEM: I have one additional  
14 question on that.

15 MS. THOMPSON: Yes, ma'am.

16 CHAIRMAN BEDESSEM: I saw that Luke Esch  
17 had been signed on and then left. Is solid waste  
18 presenting or not presenting at all today?

19 MS. THOMPSON: That is a good question. I  
20 emailed Mr. Doctor overnight, and he said he will -- he  
21 will be willing to brief you because he believes Mr. Esch  
22 is very busy today. So we are going to call him at the end  
23 of the rulemakings and just do a briefing for the board to  
24 explain where solid waste rules and regulations are in the  
25 process and what that's going to look like to you as it



1 comes to you in the future.

2 CHAIRMAN BEDESSEM: And what about the set  
3 of documents that he forwarded via email?

4 MS. THOMPSON: I believe I'm going to ask  
5 Mr. Doctor to simply state what's in the documents, as -- I  
6 didn't have an answer from him before I made my run to  
7 Staples, and I don't have copies for your reference. And  
8 so I believe -- I think it's most appropriate to just ask  
9 him to tell you. We're not at a spot where we're going to  
10 ask for your vote or your oversight. I believe it's just  
11 an informational briefing --

12 CHAIRMAN BEDESSEM: Okay.

13 MS. THOMPSON: -- to kind of lay some  
14 groundwork for some rulemaking we're going to bring to you  
15 in 2018.

16 CHAIRMAN BEDESSEM: All right. Thank you  
17 very much, Gina, for checking that out. Appreciate it.

18 So we will now take a break, a technology break,  
19 for 10 minutes.

20 MS. THOMPSON: Yes.

21 CHAIRMAN BEDESSEM: Thank you very much.

22 (Meeting proceedings recessed

23 10:26 a.m. to 10:44 a.m.)

24 CHAIRMAN BEDESSEM: The Water and Waste  
25 Advisory Board is now reconvening.