

WAQD Meeting

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WYOMING AIR QUALITY ADVISORY BOARD

TRANSCRIPT OF MEETING PROCEEDINGS

Pursuant to notice duly given to all parties in interest, this matter came on for meeting on the 12th day of December, 2017, at the hour of 9:02 a.m., at the Wyoming State Library, 2800 Central Avenue, Cheyenne, Wyoming before the Wyoming Air Quality Advisory Board, Board Member Diana Hulme presiding, with Board Member Klaus D. Hanson, Ph.D. and Board Member John Heyneman in attendance by videoconference.

Ms. Nancy Vehr, Air Quality Administrator, Ms. Amber Potts, Ms. Darla Potter, Mr. Darion Donnelly, Mr. Mike Morris, Mr. Rob Leteff of the Air Quality Division; and Ms. Allison Kvien, Assistant Attorney General, were also in attendance.

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I N D E X

ALSO PRESENT:

MR. RYAN BEAVERS
MS. LEXIE HERDT
MR. ZACH MANGIN
MS. NATALIE KUHLMANN
MR. CASEY QUINN
MS. MARY FLANDERKA
MS. GINA THOMPSON
MR. JOE FRANKEN
MR. KEITH GUILLE

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

2 (Meeting proceedings commenced

3 9:02 a.m., December 12, 2017.)

4 BOARD MEMBER HULME: All right. We'll call
5 today's meeting to order of the Air Quality Advisory Board.

6 Do we want to do any introductions, maybe, for
7 John's benefit; staff that's in the room, board members,
8 just so he knows? I don't know if he can see anybody on
9 the little screen, so...

10 MS. VEHR: That sounds like a great idea.

11 BOARD MEMBER HULME: I guess we can start
12 as the board members. Diana Hulme, vice chair of the Air
13 Quality Advisory Board is here.

14 BOARD MEMBER HANSON: Klaus Hanson, member
15 of the board.

16 BOARD MEMBER HULME: John, you're there on
17 the phone, right?

18 BOARD MEMBER HEYNEMAN: Yes, ma'am.

19 MS. VEHR: John, could you state your name
20 for the court reporter.

21 BOARD MEMBER HEYNEMAN: John Heyneman,
22 Sheridan, Wyoming, board member.

23 MS. VEHR: And are there any other board
24 members on the phone?

25 BOARD MEMBER HULME: So there's three of us

1 today. I don't know if you want do staff introductions
2 quickly.

3 MS. VEHR: Sure. This is Nancy Vehr. I'm
4 the Air Quality Administrator, and I'll introduce the folks
5 from Team Rules with the Air Quality Division first, and
6 then we have some other staff that are in the audience at
7 this hearing today that will that we'll introduce. So I'll
8 first start with Team Rules.

9 MS. POTTS: I'm Amber Potts.

10 MR. LETEFF: Rob Leteff.

11 MR. DONNELLY: Darion Donnelly.

12 MS. VEHR: And then we'll go to the -- oh.

13 MR. MORRIS: Sorry. Yeah, Mike Morris also
14 here with Team Rules.

15 MS. VEHR: Almost forgot Mike.

16 And then we'll start with the Air Quality
17 Resource Management Program.

18 MS. POTTER: I'm Darla Potter. I'm the Air
19 Quality Resource Management Program Manager. And I've got
20 several staff with me here today. What I encourage them to
21 do is attend when the board is in town so they can observe
22 the board meeting before they actually have to appear in
23 front of you. I'm speaking from my own personal
24 experience. It's usually an easier way.

25 So we have Ryan Beavers is with our emissions

1 inventory section and handles our Smoke Management Program.
2 Lexie Herdt is with our planning section, and is one of our
3 forecasters for the Upper Green River Basin and also works
4 with our impact information management system. Zach Mangin
5 is also in our planning section, and he is our lead
6 forecaster for the Upper Green River Basin and one of our
7 leads on our Impact Information Management System technical
8 support.

9 And you want to do Natalie?

10 MS. VEHR: Yep. And then last member of
11 the Air Quality Division that's here observing is our
12 newest member of the Division, and that's Natalie Kuhlmann.
13 And she's our records manager that started last week. So
14 she's got a lot of background in electronic data management
15 and the records. And so we're very excited to have her on
16 board. And that's all from the Air Quality Division here.
17 We'll go to you.

18 MR. GUILLE: I'm Keith Guille. I'm with
19 the Wyoming Department of Environmental Quality. I'm the
20 public information officer.

21 MR. FRANKEN: I'm Joe Franken with Wyoming
22 Department of Environmental Quality Administration.

23 MS. KVIEN: I'm Allison Kvien. I'm with
24 the Attorney General's Office, and I represent the Air
25 Quality Division.

1 MS. THOMPSON: I'm Gina Thompson. I'm with
2 the Department's Water Quality Division, and I'm assisting
3 with this rulemaking.

4 BOARD MEMBER HULME: Thanks, everybody, for
5 the introductions.

6 I guess looking at the agenda, I think I'll ask
7 board members if there's any requests to make changes or
8 amendments to the agenda at all. Or anyone?

9 BOARD MEMBER HANSON: No.

10 BOARD MEMBER HULME: No?

11 Then we'll go ahead and start with the first
12 order of business, which is approval of the minutes from
13 the September 26, 2017 meeting.

14 BOARD MEMBER HANSON: I'll move it.

15 BOARD MEMBER HULME: Do I have a second?

16 BOARD MEMBER HANSON: John?

17 BOARD MEMBER HULME: John, are you there?

18 BOARD MEMBER HEYNEMAN: I am. Second.

19 BOARD MEMBER HULME: Great. All in favor
20 approval of those minutes.

21 BOARD MEMBER HANSON: Aye.

22 BOARD MEMBER HEYNEMAN: Aye.

23 BOARD MEMBER HULME: Aye.

24 Thanks. So we'll go on to Item Number 2, New
25 Business, General Updates from the Division.

1 Nancy.

2 MS. VEHR: This is Nancy Vehr,
3 Administrator, Air Quality Division.

4 I'll start out as I usually do just talking about
5 our vacancies and personnel. I mentioned that we have
6 Natalie Kuhlmann here today. We had two administrative
7 vacancies, and she filled our records position.

8 On December 19th, our administrative support
9 position will be filled by Bobby Helvig, so we'll have all
10 of our administrative support positions filled with Bobby's
11 arrival.

12 On New Source Review, that's our construction
13 permitting program, we currently have two vacancies. One
14 is an engineering support permit writer that has been
15 vacant since Richie moved into an engineering position.
16 And -- I think I've got vice -- mixed up. It's the
17 engineer position that's vacant. Richie moved into the
18 engineering support position. And we do have applicants
19 and hope to conduct interviews starting in January for that
20 position.

21 The other position has been vacant since March.
22 It's an engineering 12 supervisor position. It requires a
23 PE, and that also requires some Air Quality background.
24 And that is a very challenging position to fill. We've
25 advertised it in state. We've done outreach in state.

1 We've done outreach with businesses, with other groups, and
2 we've also advertised it nationally at the American
3 Association of Pollution Control Agencies, and we just have
4 not had a qualified applicant. So it got kicked back to us
5 from Department of A&I, I believe, for having been vacant
6 too long. So we're evaluating that position. It's
7 critical, as we have quite a few New Source Review
8 construction permit applications, and this affects our
9 ability to process that and do other agency work.

10 An upcoming vacancy is in our operating permits
11 program. You may have recalled last spring the operating
12 permits program did a presentation on the new basis state
13 for operating permits so we could address a permitting
14 backlog that we had. That program manager, Lori Boccino,
15 her husband's been down in Denver for the past four years.
16 Her children -- last child graduated from high school in
17 the spring, and so she's trying to address her family now.
18 So we -- it will be a great loss. She's been with the
19 Division for I believe over 10 -- 10 to 15 years and has
20 led that program. So she will be leaving the 2nd of
21 January, so we will start looking for a program manager for
22 that program.

23 And then the next program is our compliance
24 program. One of the inspectors up in Sheridan had a -- a
25 tragic accident and passed away, and so he -- we have a

1 vacancy in the compliance program that we're looking at
2 filling. His name was John Gallatin and he'd been in the
3 program in that office a couple of years. So that's --
4 that's our -- kind of our personnel status update.

5 The next kind of business item that I'd like to
6 address is related to the leg -- upcoming legislative
7 session. The legislature convenes in February, and
8 this is a budget year, and so last Friday, the 8th, the
9 Department of Environmental Quality presented its budget
10 and governor recommendations to the Joint Appropriations
11 Committee. The -- it's all posted online, but for the
12 board's benefit, the Air Quality request for the '18-19
13 biennium is \$20.7 million. Out of that funding mix,
14 30 percent is from general funds, roughly 7 percent is
15 the federal grant dollars that we receive from EPA, and
16 61 percent is from special revenue. And those special
17 revenues include permit fees that applicants pay to get
18 construction permits through our New Source Review Program.
19 And they also are the ton-per-year fee for emissions that
20 are major sources, Title V sources pay, and those help run
21 our programs.

22 So we presented it, answered some questions for
23 the legislature, and we'll take it from there as it -- as
24 it goes through.

25 The Air Quality Division has not proposed any

1 legislation for this current session. At the Joint
2 Minerals meeting in October, I believe it was, there was a
3 bill related to small mine gravel permits, and it had a
4 provision addressing land -- that would affect Land Quality
5 statutes, and then it had a provision that would affect air
6 quality permitting dealing with waiver requirements and
7 general permits. And so we anticipate that bill will be
8 introduced in the legislature this session.

9 And so that's kind of the legislative and
10 business updates. I have some program updates also for the
11 board. The first one I'll start with is on ozone. The --
12 there's two standards out there right now. There's the
13 2008 ozone standard of 75 parts per million, and the 2015
14 standard of 70 -- is it parts per million or billion? B,
15 billion. Sorry. I always say that, and then I correct
16 myself. My apologies. So the 2008 standard is 75 parts
17 per billion and the 2015 standard of 70 parts per billion.
18 So it's a lower standard in 2015.

19 The -- and I'll give you an update on 2008
20 standard. Wyoming had all areas of Wyoming, except for an
21 area in the Upper Green that was carved out that comprised
22 all of Sublette County, a portion of Lincoln and a portion
23 of Sweetwater County. That area was designated as
24 nonattainment.

25 Under the Clean Air Act, when you designate

1 nonattainment, you have a certain amount of time to come
2 back into attainment and meet the standard. That area met
3 the standard -- EPA determined it had met the standard by
4 the 2015 deadline. EPA determined it had met the standard
5 in May of 2016. And so that sets up the area to be
6 redesignated as attainment. There's a process to go
7 through, and there is what I would call a heavy lift
8 process that requires a lot of resources from the Division
9 and others. And then there may possibly be a lighter lift
10 process.

11 In late 2016, EPA had proposed when they came out
12 with their proposal for the 2015 standard, a process that
13 would, if you met the 2015 standard, would allow less work
14 to get the 2008 standard removed. A lot of these
15 standards, when you go to implement them, they're
16 duplicative and sometimes conflicting requirements. So the
17 intent is not to remove requirements that prevent the area
18 from having problems again, it's designed so that we can
19 streamline and have only one set of requirements to apply.
20 That rule was proposed but never finalized. So we hope
21 that the EPA will address that concept in the coming
22 months.

23 The other item under the 2008 standard is last
24 spring EPA disapproved Wyoming's demonstration of the
25 what's commonly called the Good Neighbor Standard or the

1 transport prong, and had mentioned in terms of their
2 disapproval that the emissions from the entire state of
3 Wyoming were impacting I believe it was two or three
4 maintenance receptors in the Denver area nonattainment.
5 And we are currently in -- Wyoming appealed that under a
6 petition for review process to the Tenth Circuit Court of
7 Appeals, and also filed a petition for reconsideration with
8 EPA Administrator Pruitt. The petition is pending, and
9 the -- in the Tenth Circuit. That appeal is in mediation
10 right now. And so we're having discussions to see if we
11 can come to resolution.

12 So those are the two items under the 2008
13 standard. Under the 2015 standard -- I got some more
14 uplifting news. And under the 2015 standard, back --
15 states had to make a designation recommendation to EPA one
16 year after the standard is promulgated. So in October of
17 2016, Governor Mead recommended that all counties of
18 Wyoming be designated as either attainment or attainment/
19 unclassifiable. And that the Upper Green River Basin area
20 also be designated as attainment/unclassifiable, because
21 all areas -- all the monitoring data and information that
22 Wyoming had showed we were meeting this newer lower
23 standard of 70 parts per billion.

24 EPA had one year to take action. And I believe
25 it was in late November they designated all the counties in

1 Wyoming as individual counties attainment/unclassifiable
2 for this new 2015 standard. They did not designate Albany
3 County, and they did not designate Laramie County. Those
4 designations we are still waiting from EPA to make. But
5 the monitors in Albany County and the monitors in Laramie
6 County all demonstrate attainment of the standard. EPA
7 just did not take action on those two particular counties.

8 So we're still waiting for some action from EPA.
9 On a national level, several states and other groups and
10 possibly individuals filed challenges with EPA for failing
11 to act within time frame on the standard, and so we're
12 waiting EPA's response on that as well.

13 BOARD MEMBER HULME: Nancy, do we know why
14 they didn't make a designation for Albany and Laramie
15 Counties?

16 MS. VEHR: We think we know why. EPA, for
17 areas that had nonattainment, had surrounding counties that
18 they did -- where they didn't make designations. Denver
19 area has counties, I think Larimer and Weld Counties, that
20 touch the Wyoming counties. And so just as they did within
21 the particular states that had nonattainment areas, EPA
22 elected not to do designations for those I'll call them
23 ring counties. But we -- our monitors are demonstrating
24 attainment of the standard, so we --

25 BOARD MEMBER HANSON: We have -- close to

1 my home in Laramie, we have one of those monitor wagons,
2 whatever, sitting by the Spring Creek River. It's been
3 sitting there for I would say six months now. And I was
4 wondering how long this is going to stay there. Nobody
5 seems to know. But this has apparently to do with the
6 attainment question here or not?

7 MS. VEHR: Is the monitor that's close by
8 you mobile monitor?

9 BOARD MEMBER HANSON: Yes.

10 MS. VEHR: Looks like a trailer?

11 BOARD MEMBER HANSON: Yes. It's a trailer,
12 yeah.

13 MS. VEHR: Those are, generally, in place
14 about a year.

15 Let me take a look at Darla to see if there's any
16 indication that's going to be there, at this stage, longer
17 than a year.

18 BOARD MEMBER HANSON: He's taking a shower
19 now.

20 MS. VEHR: Back online.

21 MS. POTTER: So Darla Potter, Air Quality
22 Resource Program Manager.

23 At the -- the mobile monitor currently placed
24 within the city of Laramie is there based on a finding in
25 our 2015 network assessment for our ambient monitoring

1 network to monitor in certain micropolitan statistical
2 areas, of which Laramie is one. And current -- current
3 information that's been collected so far is not indicating
4 that it will be there longer than a year. We like to leave
5 those in place for a year to collect good data on a variety
6 of pollutants, not just ozone. And if you go to our
7 website www.wyvisnet.com, you can see the information from
8 that monitoring station as well as the other continuous
9 stations that we have throughout the state. So you can
10 look at any point in time and see what that air quality is
11 based on that monitoring location that's in Laramie right
12 now.

13 MS. VEHR: Klaus, one of the things I'd
14 like to offer is we -- the monitoring section does do tours
15 of the monitor, and I believe they had some students from
16 the university go out to that mobile monitor and take a
17 look.

18 BOARD MEMBER HANSON: Okay.

19 MS. VEHR: If that's something you're
20 interested in, let myself, Amber, Darla know and we'll get
21 you out there.

22 BOARD MEMBER HANSON: Thank you. Thank
23 you.

24 MS. VEHR: Yeah.

25 So on the 2015 standard, Wyoming is in good

1 shape, and we're just awaiting action from EPA on those two
2 remaining counties to be designated. The other item with
3 respect to ozone I'd like to discuss is in relation to the
4 Upper Green River Basin. That area had exceedances of the
5 standard during the wintertime, which generally runs from
6 I'll say sometime in January through generally ends before
7 the beginning of April. And that's where the
8 meteorologist, Darla's group and others within the division
9 pay close attention and have implemented various
10 strategies, worked closely with the community, with
11 industry, and then on the regulatory side to address ozone
12 issues up there.

13 And the -- two weeks ago we had our ozone --
14 prewinter ozone season open house. We had presentations
15 dealing with emission inventories that show the level of
16 emissions have decreased in that area. And then had
17 presentations -- poster presentations about a pond study
18 that we were -- had been working on for the past several
19 years, presentations related to permitting, presentations
20 related to new communication strategies. One of the items
21 that we're trying this year is what's called an ozone
22 outlook to kind of do just like forecasting when you have a
23 watch that say, hey, pay attention if you're interested in
24 what the ozone level is, kind of pay attention for whatever
25 the time period is.

1 And then our Ozone Action Day, again. The Ozone
2 Action Day and Voluntary Ozone Contingency Plan Program we
3 expanded this year. So it's been focused and targeted at
4 industry, and we've expanded our outreach efforts to get
5 industry participation. But we've also had individuals
6 express an interest. And so we have an option there for
7 individuals and businesses where they can sign up to
8 participate in that program as well.

9 We had good attendance. There were members in
10 addition to DEQ and Air Quality Division staff. There were
11 also members from the public that participated and group
12 CURED had a booth and then a couple of industry
13 associations. So we -- we'll start implementing things in
14 early January with that particular program.

15 BOARD MEMBER HANSON: One comment. I think
16 Darla always pointed out that the impact of snow was
17 important. We've had very little snow this year. So I
18 presume when you report that pollutants are lower at this
19 point, this may have something to do with the snow impact
20 that we've had? I don't know. Is that the case or not?

21 MS. VEHR: There's -- and I'll turn to
22 Darla.

23 BOARD MEMBER HANSON: Darla would know.

24 MS. VEHR: I'll turn to Darla. Last
25 year -- and that's one of the presentations we had was the

1 record of snow. The amount of snow we can't control.

2 BOARD MEMBER HANSON: Correct.

3 MS. VEHR: We have other measures that we
4 put in place and this board may remember from several years
5 ago an existing source rule that came through. That
6 existing source rule had a step -- couple of implementation
7 steps. The last one being in January of 2017. Sources
8 were required to do, if they had a greater than
9 4-tons-per-year threshold, some inspections of certain
10 parts of their facilities. And so that occurred during
11 last year's first quarter, which falls within our winter
12 ozone season.

13 We had several exceedances last year of the
14 ozone. I believe it was 73 --

15 MS. POTTER: Was our fourth.

16 MS. VEHR: Was our fourth high, was 73. So
17 it was above the 2015 standard level for that one reading
18 on average -- no. It was below the standard. But, yes,
19 weather plays a part we can't control. And there's still
20 some unknown areas as that area of science develops.

21 BOARD MEMBER HANSON: Thank you.

22 MS. VEHR: Uh-huh.

23 And I believe Darla, anything else from Ozone?

24 Okay. The next item in terms of update is on
25 regional haze. The board, again, several months ago, we

1 had brought forward a proposed change to our rules and our
2 State Implementation Plan dealing with regional haze and a
3 settlement that Basin Electric and EPA had regarding the
4 regional haze. That went to the Environmental Quality
5 Council last week, and so they approved it. And it is now
6 forwarded on to I believe it's legislative review and
7 governor signature. So just wanted to update the board on
8 the status of that rulemaking package.

9 The other item related to regional haze is EPA
10 adopted changes to the Regional Haze Rule last year. And
11 that State of Wyoming and all the other states are going to
12 be having to do State Implementation Plan submittals. And
13 so we're working on that.

14 I believe, Amber, is it 2021?

15 So 2021 is when we have to submit new Regional
16 Haze State Implementation Plan revisions. So last week,
17 Amber and Rob went down to a group called WESTAR -- and
18 that's the association of western states dealing with air
19 quality -- to start talking amongst the state on regional
20 haze. It's a long, costly process, and that's why we start
21 now, even though the plans won't be due until 2021. So
22 you'll probably hear more on that as time develops.

23 The other item I wanted to let you know is on a
24 couple of proposed EPA actions. Right now EPA has proposed
25 repeal of the Clean Power Plan. And so if there is a

1 comment, I believe it's early January -- yep, early January
2 when comments are due on that. EPA last week announced
3 that they would be holding a hearing -- a listening session
4 in Gillette. I don't know when that date is, but if the
5 board is interested, just kind of keep an eye out for that
6 or let Amber and I know and we can get that information to
7 you when I find out.

8 The other item that's been in the news fairly
9 recently was in terms of the Volkswagen settlement. And
10 under the Volkswagen settlement Wyoming will receive some
11 funds over the course of the next 10 years, roughly
12 \$800,000.

13 MS. KVIEN: \$8,125,000, I believe.

14 MS. VEHR: Yeah. So roughly \$800,000 a
15 year that we could receive.

16 BOARD MEMBER HANSON: 8 million or --

17 MS. KVIEN: \$8 million -- there's some
18 restrictions on how fast the State can pull it out. But
19 the total allocation that we would get under the mitigation
20 trust as a State would be approximately 8 million. But we
21 wouldn't be able to withdraw all of it at once. So we
22 would have to spend it over --

23 MS. VEHR: 10 years.

24 MS. KVIEN: Right.

25 MS. VEHR: So with respect to that, the

1 first step was having the trust agreement filed, and then
2 having the State express an interest in being a beneficiary
3 under there, and that's been taken care of. So that is
4 being worked through at the State level.

5 BOARD MEMBER HANSON: Can I go back to your
6 previous one? EPA has proposed to repeal the Clean Power
7 Plan. Does that play into the statement we've heard from
8 the federal government to bring coal back and whatever? I
9 think that's a -- sort of a step backwards, if we repeal
10 that plan, you know, and have more pollution again.
11 What -- what does this mean? I have -- I'm kind of
12 confused here.

13 MS. VEHR: Okay. My understanding is that
14 in terms of the Clean Power Plan, when EPA proposed the
15 Clean Power Plan, there were a number of states that filed
16 in support of EPA and a number of states that filed
17 lawsuits opposing EPA's action. Wyoming was in the group
18 opposing EPA's action. And when you look at the impacts to
19 Wyoming, this is one where there were the Clean Power Plan
20 is different than other rules that deal with air quality,
21 because this was looking at the energy mix and they called
22 it building blocks at the time.

23 And so a lot of states had Public Service
24 Commissions involved -- Wyoming did as well -- because of
25 the economic impacts. There's -- it would be pollution

1 aspect and then there's the economic aspect. And so
2 Wyoming's position's been laid out in the litigation. It
3 got stayed by the U.S. Supreme Court. The Clean Power Plan
4 rule and the litigation got stayed by the U.S. Supreme
5 Court, and then there was briefing in the D.C. Circuit
6 court -- or I'm not sure which level of courts, but there
7 was briefing that has occurred. And then my understanding
8 is that part was also stayed. And the current -- when the
9 new administration came in, they, I believe, asked for the
10 stay and also said we will be working on some I'll call it
11 replacement.

12 My understanding is that the first step they were
13 going is proposing repeal of the Clean Power Plan. The
14 next step that they will be doing is a proposed
15 replacement. We haven't seen what that proposed
16 replacement looks like. So to your question, whether it's
17 step-backs, or whether it's pro this or pro that, I don't
18 know yet. We will take a look at that when it's proposed,
19 but we haven't seen it, so I don't know what it will look
20 like.

21 So this proposed repeal is for the Clean
22 Power Plan that's on the books right now, and then we
23 anticipate -- EPA has said they will come out with a
24 proposed replacement, but what that looks like and the
25 timing, I don't know.

1 BOARD MEMBER HANSON: Thank you.

2 MS. VEHR: Yep.

3 And then the other three items I wanted to let
4 you know one of the things the agency is looking at is --
5 and especially with the -- I'll say items that come down
6 and the current, you know, budget situation, we look to
7 streamlining and efficiencies and one of those that we
8 brought before the board has dealt with electronic data
9 management system that we call IMPACT, and it dovetails in
10 with today's rulemaking in that one of the modules we have
11 under development is related to our public information
12 website accessibility. We don't have that fully developed
13 yet, so it will be sometime later, probably the second
14 quarter of this year, that we'll be able to do a
15 demonstration to the board of what this public website
16 looks like. So it will make certain documents that are
17 frequently requested by the public, permits, permit
18 applications, those type of items, so it's self-serve.
19 Someone can do it from their home and not have to consume
20 agency resources and time and then have delay on receiving
21 that information. So we think that's one of those great
22 public service features that will be very, very helpful to
23 the public.

24 The other item that is currently under
25 development is related to permit conditions as well as

1 inspection and compliance. And we think those are tools
2 that while there's a large workload associated internally
3 at the division with deploying them, once they're in place
4 and we have that transition from paper to electronic, over
5 time this will help sources comply. It will help us
6 maintain a better handle on compliance as well. So the
7 results might take a couple years, but we'll hope to bring
8 that back to the board as well as we get those various
9 tools as part of our streamlining efficiency measures.

10 And then I wanted to do a shout out to one of our
11 Air Quality staff members that has been appointed to the
12 EPA's Board of Scientific Counselors. So there's been a
13 lot in the press about EPA's scientific boards and
14 representation. And we have a staff member, Cara Kessler,
15 who's in charge of our monitoring program, that was
16 appointed recently to the Board of Scientific Counselors.
17 And this board advises EPA's Office of Research and
18 Development. And we think that she will bring a great
19 perspective of western issues from a grounds -- hands-on-
20 the-ground approach. So I'm thrilled for her on her
21 appointment.

22 And that's all of the items I have, unless you
23 have questions.

24 BOARD MEMBER HANSON: Go ahead.

25 BOARD MEMBER HULME: No, you first.

1 BOARD MEMBER HANSON: Oh, just one
2 question. We're discussing fees today, and you're talking
3 about accessibility to public -- to the public website.
4 Will there be a fee involved?

5 MS. VEHR: So the information that we have
6 in terms that we are making publicly available --

7 BOARD MEMBER HANSON: Uh-huh.

8 MS. VEHR: -- there is no fee charged to
9 that. The legislature had already appropriated the funds
10 for this IMPACT system.

11 Now, what I can't say is in the future, if
12 there's new features to be developed, how those will be
13 I'll say financed. But for the information that we're
14 making and developing right now, that is not a fee-based
15 system.

16 BOARD MEMBER HANSON: But the way I would
17 understand it, that fee is sort of -- that information is
18 sort of generic, not a -- tailored to somebody's question,
19 but rather here's information for you, if you can use it,
20 it's available. Is that the way it works?

21 MS. VEHR: That would be -- so it would be
22 the kind of -- we looked at what type of records request we
23 commonly receive, and we make that information publicly
24 available. It's going to take another level of effort to
25 obtain. That would fall under this other program.

1 BOARD MEMBER HANSON: The fee.

2 MS. VEHR: Yep.

3 BOARD MEMBER HANSON: Okay. Thank you,
4 sorry.

5 BOARD MEMBER HULME: No. You're fine.

6 Just for updating on the existing source rule.

7 MS. VEHR: Sure. So on the existing source
8 rule, we had that implemented. And, again, there were
9 different measures that companies had to start complying
10 with, with the latest one being in January of 2017 related
11 to going out and doing quarterly inspections. And, again,
12 there's certain thresholds. And the existing source rule
13 applied to -- applies to sources in the Upper Green River
14 Basin, essentially, that were constructed or permitted
15 before January of 2014.

16 And the -- so this past winter, as you mentioned,
17 was a lot of snow in the Upper Green. It was very, very
18 difficult to get out to facilities because you had to plow
19 your way out there to the facilities. So it was very
20 challenging for our compliance inspection crew as well.
21 There was a lot of snow on roads and you always have safety
22 concerns getting people out and about in the winter.

23 But once -- once the winter cleared, we were able
24 to have the folks in Districts 4 and 5 and the two
25 inspectors in Pinedale go out to inspect facilities that

1 were covered under this existing source rule. I don't have
2 the numbers with me.

3 Did anybody that's here remember from the
4 presentation in the Upper Green open house what numbers we
5 had from -- okay.

6 They did -- they had the compliance staff, Jeff
7 went, Shayla Schell and Cindy Etch -- Etcheverry -- sorry,
8 my memory slipped on her last name -- Cindy Etcheverry, and
9 then Lars Lone, our compliance program manager, were there
10 and answered numbers of questions about the number of
11 inspections. But my understanding is that they kind of
12 flooded that area this summer and did a lot of inspections
13 and had a fairly high rate of compliance.

14 I don't remember the total number of facilities
15 that were in compliance, but I want to say it was greater
16 than 90 percent. So we feel that program and the companies
17 have been doing a very good job. And I can get you more
18 details on that if you'd like.

19 BOARD MEMBER HULME: I was just wondering
20 this last time we discussed the implementation of existing
21 source rule --

22 THE REPORTER: I'm sorry. I can't hear.

23 MS. POTTS: Can we ask John to phone?

24 BOARD MEMBER HULME: Hey, John, are you
25 there? This is Diana.

1 BOARD MEMBER HEYNEMAN: Yes, I'm here.

2 BOARD MEMBER HULME: Will you be able to
3 mute your phone, possibly? We're getting a lot of
4 background noise. So you can hear us, we can't --

5 BOARD MEMBER HEYNEMAN: Will do.

6 BOARD MEMBER HULME: Great.

7 MS. VEHR: The other part in terms of --

8 THE REPORTER: Hold on. Can you repeat
9 your question.

10 BOARD MEMBER HULME: Last time we met we
11 discussed implementation of the existing source rule on a
12 larger areal extent. I was just wondering where we were on
13 that.

14 MS. VEHR: Okay. So I think what you're
15 referring to is the presumptive BACT Guidance.

16 BOARD MEMBER HULME: Right.

17 MS. VEHR: So the existing source rule was
18 one of the items we did just for the Upper Green River
19 Basin.

20 BOARD MEMBER HULME: Right.

21 MS. VEHR: And then there's what we have
22 called the rest of the state, statewide area. Sometimes
23 portions of that statewide area have been termed
24 concentrated development areas or statewide area.

25 And so the existing source rule, we -- that was

1 developed to address the nonattainment situation in the
2 Upper Green River Basin. That existing source rule, as I
3 mentioned under the 2015 standard, Wyoming is attaining the
4 standard. So there is -- there is no regulatory
5 requirement to impose to get an area back into attainment.
6 We're already attaining that standard. So that existing
7 source rule expansion to the rest of the state is not
8 something that the Division is looking at right now because
9 we're -- we've just been designated as attainment for that
10 2015 standard.

11 What we always do and how we've achieved
12 attainment of standards is through a combination of
13 programs. And one of the items that we have done is
14 through our New Source Review construction permitting
15 program. When we have sources of emissions come into the
16 state, we look at those sources to see what type of
17 controls they need to put in place. And that has allowed
18 Wyoming to maintain attainment.

19 There are a variety of sources throughout the
20 state. The existing source rule addressed production sites
21 in the Upper Green. There are other types of sources
22 throughout the state. We've got gas plants. We've got
23 gravel. We've got oil and gas. We've got many, many types
24 of sources throughout the state. So whenever we look at
25 getting and achieving a standard, we've got to look at all

1 the types of sources that emit those pollutants. So the
2 existing source rule was focused on volatile organic
3 compound reduction. And a lot of that has to do with oil
4 and gas production in the Upper Green River Basin.

5 Our Presumptive BACT guidance addresses oil and
6 gas production sites for the Upper Green, the Jonah area
7 and the statewide area. And it looks at NOx. It looks at
8 volatile organic compounds. And we are currently in the
9 process of updating that guidance.

10 The BACT piece of it stands for Best Available
11 Control Technology. And when you have a standard source
12 coming into the state, that source gets a permit and has to
13 go through a process before they can construct. And the
14 control technology is one of the items we look at. It has
15 gone down over time in terms of the emissions that are
16 allowable so that we can have enough room for sources to
17 come in the state. The BACT guidance is one option for
18 sources to use where the Division comes out, looks at it,
19 says this is what the -- we will accept as meeting that
20 Best Available Control Technology.

21 And we are in the process of revising it. We
22 have thought we would have something to present at this
23 board meeting in terms of revision, and we don't. We have
24 missed that schedule a couple of times, and we hope to have
25 it again by the spring now.

1 Again, we've had two vacancies in our New Source
2 Review Permitting Program for quite some time, and those --
3 that's the program that's trying to issue permits and do
4 all this.

5 The good news is we are in attainment of all the
6 Air Quality Standards based on our monitors throughout the
7 state. So we don't want to have that change, and that's
8 why it's important to get this out. But we also have a
9 number of challenges that we're working with at the same
10 time. So that may be what you were referring to.

11 BOARD MEMBER HULME: That's what I was
12 referring to, yes. Thank you.

13 BOARD MEMBER HANSON: I just want to
14 mention, we discussed before -- and I forget the name of
15 the city right now -- that had a street problem. Which
16 city was that?

17 MS. VEHR: Sheridan.

18 BOARD MEMBER HANSON: Sheridan, that's
19 right. So that probably has been solved, speaking of best
20 available control. I think they put whatever down to keep
21 the dust from emitting into the air, and that's one of
22 those very simple control technologies that seems to have
23 worked.

24 MS. VEHR: So the city of Sheridan was
25 designated as nonattainment for particulate matter.

1 BOARD MEMBER HANSON: That's right. That's
2 right.

3 MS. VEHR: And they had a lot of dirt
4 roads. They had used some substance for I'll say
5 application, and there were I'd say other airborne
6 pollutants that kind of contributed. They've met the
7 standard for quite some time.

8 I'll say about 20 years, Mike?

9 MR. MORRIS: 25.

10 MS. VEHR: 25 years they've been meeting
11 the standard. But, again, to be designated from
12 nonattainment to attainment takes a great deal of state
13 resources, time and effort to pull these plans together.
14 And so it was not until Mike came on -- Mike Morris came on
15 board that we were able to pull a plan together and ask EPA
16 to redesignate that area as being in attainment for that
17 standard that we met for 25 years.

18 BOARD MEMBER HANSON: Uh-huh.

19 MS. VEHR: And what that allows is some of
20 those economic consequences to businesses in the area to be
21 lifted. That was submitted down to EPA for action, and EPA
22 is evaluating it. We're hopeful -- we were hopeful it
23 would happen before the end of this year. We're hopeful it
24 still might either happen before the end of this year or at
25 least in the first quarter that EPA would publish a

1 proposed approval of our -- of our plan. So we'll see what
2 they say, but we met the standard for 25 years.

3 BOARD MEMBER HANSON: Good. Thank you.
4 Sorry to hold us up.

5 BOARD MEMBER HULME: John, did you have any
6 questions about any Division updates that Nancy just gave?

7 BOARD MEMBER HEYNEMAN: No. I think I
8 got -- I've been following most of them. Thank you.

9 MS. VEHR: Thank you.

10 BOARD MEMBER HULME: Thanks, Nancy.

11 So we'll move on to item 2B on the agenda --
12 sorry -- rulemaking proposed changes to the DEQ's rules of
13 practice and procedure.

14 Oh, Nancy, do you --

15 MR. FRANKEN: Shall we go?

16 MS. VEHR: Sure. We'll turn that over to
17 Joe Franken.

18 MR. FRANKEN: Thank you.

19 Good morning, Madam Chairman, and board members.
20 I had an opportunity -- I guess I didn't realize you were
21 on the Water and Wastewater Advisory Board. So this will
22 be a refresher, maybe.

23 BOARD MEMBER HANSON: Oh, I love it. Look
24 forward to it.

25 MR. FRANKEN: My name is Joe Franken. I'm

1 the Management Services Administrator for DEQ. I'll try to
2 slow down too.

3 Thank you for giving us the opportunity to
4 discuss the incorporation by reference of the Department of
5 Administration and Information's A&I Uniform Rule. This
6 statutory mandated rule, Uniform -- titled Uniform
7 Procedures, Fees, Costs and Charges for Inspecting, Copying
8 and Producing Public Records allows -- allows for a
9 standardized approach for all state agencies to charge a
10 fee for the production and construction of electronic
11 public records and establishes copy and transmittal fees.

12 What I think's very important -- and I'll bring
13 it up here at the beginning -- is A&I conducted the public
14 notice and public comment process concerning the uniform
15 rule. Therefore, the rule has been vetted through a public
16 review and public comment period. Incorporation by
17 reference allows agencies to incorporate the rule in its
18 entirety, given the required public review and comment
19 processes have been completed. And --

20 MS. KVIEN: IBR.

21 MR. FRANKEN: I just want to finish that
22 up.

23 Public comment during the A&I process happened
24 16 February through 8 April and actually extended the
25 public comment process to 9 May of 2016. So the initial

1 public process -- excuse me, public comment period was
2 16 February of 2016 through 8 April of 2016. They felt
3 like they didn't get enough public comments, so they
4 extended it another 30 days through 9 May of 2016, holding
5 a public hearing on 12 May of 2016.

6 So do you want to speak briefly about
7 incorporation by reference?

8 MS. KVIEN: Sure. So in this rulemaking
9 Air Quality is proposing to adopt the rule by incorporation
10 by reference. And I think that's a term that a lot of
11 folks are generally not really aware what it means. So I
12 thought I would speak briefly about what incorporation by
13 reference means. So this means that we're planning to --
14 Air Quality is proposing to take A&I's rule in full and
15 essentially put it into our rules. And the reason why
16 we're doing that in this circumstance is because A&I was
17 tasked to create uniform rules for public records for the
18 use of all state agencies. And DEQ is a state agency and
19 state agencies are required to adopt as much of A&I's rules
20 as possible that would not conflict with the agency's
21 statute. And myself, as the Air Quality attorney and then
22 also the Water Quality attorney, the Waste -- Solid and
23 Hazardous Waste attorney and the Land Quality attorney,
24 we've all taken a hard look at the Environmental Quality
25 Act, and then also our primacy agreements and the federal

1 statutes that DEQ implements, and we've all determined that
2 there's nothing in any of those that would prohibit us from
3 adopting A&I's uniform rule in full. Therefore, we felt
4 because there was nothing standing in the way of adopting
5 the rule in full and because state agencies are required to
6 adopt as much of the rule as possible that is consistent,
7 we feel DEQ does not have the authority to make any changes
8 to A&I's rule as it is written, so that is why we're
9 proposing to essentially drop the rule in full into our
10 rules and that's called incorporation by reference.

11 MR. FRANKEN: So today we're seeking the
12 board's recommendation to the council for approval to
13 incorporate by reference the uniform rule into DEQ's Rules
14 of Practice and Procedure, Chapter 1, General Rules. A&I
15 proposed the uniform rule to comply with the legislative
16 mandate outlined in Wyoming Statute 16-2-204(e), which
17 directed that A&I shall adopt uniform rules for the use of
18 state agencies establishing procedures, fees, costs and
19 charges for inspection, copies and production of public
20 records under Wyoming Statutes 16-4-202(d)(i),
21 16-4-203(h)(i) and 16-4-204.

22 This rule complies with that mandate and creates
23 uniform rules for use by state agencies. Additionally,
24 Wyoming Statute 16-3-103(j)(ii) requires that each state
25 agency ultimately adopt the new -- adopt these uniform

1 rules. These uniform rules establish production and
2 construction costs related to electronic public records
3 authorized under Wyoming Statute 16-4-202(d)(i).

4 Production and construction costs may include,
5 but are not limited to the time spent retrieving,
6 compiling, sorting, reviewing, formatting, converting or
7 copying the electronic public records, as well as
8 activities required to create or construct a new electronic
9 public record from existing data sources.

10 The uniform rules also establish production and
11 construction costs at \$15.50 per hour for clerical staff
12 time; \$30 per hour for IT staff time; and \$40 per hour for
13 professional staff time.

14 In addition, these uniform rules create a minimum
15 dollar threshold that must be met prior to any production
16 or construction costs being charged for electronic public
17 records. If production and construction costs for
18 electronic public records are less than or equal to \$180,
19 the applicant or requester will not be charged any
20 production or construction costs.

21 And within DEQ, we believe the majority -- the
22 vast majority of electronic public records request to the
23 Department will fall within the threshold; therefore, no
24 costs will be charged.

25 And Keith's going to elaborate on that a little

1 bit.

2 MR. GUILLE: Yes. Thank you.

3 Generally, what this -- what this rule really is,
4 it's about how, when someone comes to any type of state
5 agency, whether that's Game & Fish, whether that's the
6 governor's office, when they are doing a records request
7 that they already know what the rule -- what the rules of
8 the game are. That if you're going to do a copy or going
9 to do a scan, this is what the charge is going to be. If
10 you're going to be requesting emails, correspondence, this
11 is what -- this is what the rules are to be able to get
12 those emails.

13 And from our standpoint, you know, we certainly
14 have had some challenges with records. I mean, you can
15 probably imagine 40 years of records that we've compiled.
16 A lot of them have been physical records. And we've been
17 definitely working to develop those in more of an
18 electronic format. We don't want to be in the middle
19 as much as we don't have to be so people can get their
20 records -- or get our records. This is the public record.

21 And what we've been developing is scanning most
22 of our records. We're working towards that process. The
23 Abandoned Mine Land Division has finished scanning all
24 records, and you can actually go through the State Archives
25 now to do a search for those records. So as new records

1 get developed, they are putting them into the system.

2 I know that Air Quality Division has been working
3 through the IMPACT system to start scanning their records.
4 I know it's going to take some time, but would you say
5 about the last two or three years of records have been
6 scanned?

7 MS. VEHR: A lot of records have been
8 scanned, but we have 26,000 facilities, so they go back
9 quite a few years. So we have quite a bit more to do.

10 MR. GUILLE: Certainly. And you can
11 probably imagine the idea there is as well is that
12 ultimately you'll have a facing website the public
13 themselves can go to from their home and search those
14 records.

15 The Land Quality Division has also been working
16 to scan their records. They have a system similar to
17 IMPACT. It's called MIDAS. And ultimately the idea will
18 be having a facing website, again, to be able to search
19 those records.

20 Our Solid and Hazardous Waste Division has
21 finished all their legacy documents. And those are in the
22 cloud now. And it certainly helped the staff respond to
23 records requests where they can put those -- you know, send
24 those to the requestor. The ultimate idea, again, is to
25 have a system through our website where they can do their

1 own search. It's just going to take time.

2 Our Water Quality Division, they have not started
3 that effort, but they are working on it. As well as
4 Industrial Siting Division, that has, obviously, a lot
5 smaller division so they have smaller records, but we have
6 a lot of their permits and other items right now on the
7 website. Ultimately the idea would be having all their
8 records on there as well.

9 Currently, we receive about 500 to 600 records
10 requests a year. The vast majority are what we call
11 Phase I, where the public are doing their due diligence on
12 a property. It may be an environmental firm. It may be
13 some type of engineer. It may be someone that's interested
14 in actually purchasing a property. They want to know what
15 those environmental impacts are prior to doing the work out
16 there or purchasing a property.

17 We can respond to those fairly quickly. I would
18 say within a week. The vast majority probably are within a
19 few days. Ultimately, what we like to have is a website.
20 It is available now, but we're trying to have it connect to
21 all the databases that would be on a mapping system. You
22 can put in an address and ultimately you can pinpoint the
23 records on that property. Ultimately, I'd like to have
24 that available. It's just going to take some time.

25 The rest of the records requests, which are the

1 challenge for us, are email correspondence. Certainly we
2 want to make those available to the public, but there is a
3 process when we get an email records request, that we have
4 to go through. We don't hold those emails within -- on our
5 computers. They're held through ETS, or the IT -- the
6 State IT office. And we have to request those, and we have
7 to go through the AG's Office to do that. After the AG's
8 Office collects those, they forward them on to us in a --
9 it's like an Outlook file, and we have to review each and
10 every one of those emails. And the reason is there may be
11 personnel, there may be trademark, copyright, maybe
12 attorney-client. Any of those reasons we can't release
13 those emails. So we have to go through each one to ensure
14 that we're doing our due diligence as well.

15 Here's a good example of what we would face.
16 Recently this year we received a records request for five
17 coal-fired power plants. And it encompassed three
18 divisions. And just one division, the Air Quality
19 Division, for one facility they did an email search.
20 45,000 emails. Luckily, we were able to work with the
21 requestor to reduce those down to 7,000 emails. And that's
22 great, but if you do your calculations, let's just say a
23 minute that we spend on each email, that's 7,000 minutes,
24 divide that 60, that's 116 hours, man-hours, that someone
25 would have to spend. So that's three weeks one FTE would

1 have to spend on reviewing those records and ultimately
2 releasing them. So -- and that only encompassed one
3 division. So I would say that's one-fifteenth the request.
4 And so the challenge for us is not that we don't want to
5 release them. It's that if someone does do a request, that
6 they know exactly what they're requesting and they will
7 actually reimburse the state for time spent.

8 To address some of the comments that have been
9 brought forth to the Department, some of the concerns. You
10 know, it's already been mentioned that we don't believe
11 that this is in conflict with the Environmental Quality
12 Act. And the AG has done their review, as well as we don't
13 believe the primacy of the federal programs are -- it's not
14 going to be in conflict. And we'll be able to retain our
15 primacy. That's obviously very important for us. In fact,
16 44 out of 50 states, we did a review that have a
17 DEQ -- or a DEP, as they would be called, already do charge
18 in some form for records -- for those type of records.
19 Certainly correspondence. So, certainly, they have found
20 that they wouldn't be getting in conflict for their
21 primacy.

22 MR. FRANKEN: And I think it's important to
23 note that inspection of records, there's no charge to
24 inspect records. This is strictly the production and
25 construction, as Keith talked about, those -- those

1 voluminous requests where we spend hours getting emails and
2 sending them over to the AG's office. And he said a minute
3 per email. I'm thinking it's going to be more than a
4 minute per email. Might be easily two or three minutes per
5 email. You have 7500 emails and spend three minutes per
6 email to go through that and redact and look for personnel
7 information, that adds up. And I think the importance of
8 this rule is that it sets a level playing field throughout
9 the state that all agencies are doing it the same way.
10 Because -- and I also think it's important to note that
11 there's been numerous state agencies that have already
12 incorporated this rule. I think there's been 12 or 15
13 state agencies, to include Water Development Commission,
14 WYDOT, Board of Speech Pathology, the governor's office,
15 State Auditor, Attorney General, A&I.

16 So the way I look at this, DEQ is just simply
17 following the legislative mandate to incorporate this
18 reference, this rule, that's already been public vetted --
19 publicly vetted and make sure that we're doing it
20 consistent with -- across the board with other state
21 agencies.

22 Yes, sir.

23 BOARD MEMBER HANSON: Going through this
24 once more, the comment on my last board was the difference
25 between electronic and hard records that for electronic

1 records up to the cost of \$180, it's free. Over that, it's
2 just -- it's even -- it's only prorated. You know, the
3 first 180 are still free, and what comes beyond that is
4 charged. While on the nonelectronic, of course, the charge
5 starts at the first copy.

6 MR. GUILLE: Yes.

7 BOARD MEMBER HANSON: And that was, by the
8 board's discussion, that we had -- which took for hours and
9 hours and hours -- objectionable. You know, that sort of
10 was felt to be unfair. I can see where you are going with
11 this because you want everything to be electronic because
12 that's easier. But as the situation exists right now, some
13 of those records are not electronically available. No
14 fault of anybody's, but that's the way history started it.

15 And so that was -- the feeling was that this is
16 unfair from this perspective of, you know, one is -- has a
17 threshold of \$180, the other one does not. And it's the
18 luck of the draw which ones you need to access there that
19 you're going to be charged or not charged. And that was
20 primarily -- that was the primary objection. I think there
21 was not that much of an objection to a fee structure, but
22 the unevenness of it was under discussion.

23 Then, of course, there was further discussion on,
24 you know, the price of some of these may be too high or
25 whatever. And, of course, the mandate, basically, to

1 keep -- and you can read the comments that came back -- to
2 keep records requests free, because the public has a right
3 to attain those and now we are being charged for it.

4 The big question, of course, is we are in a
5 financial downturn. The State needs to see where it can
6 make up some of the loss that we don't have in finances,
7 but whether this was the right one to do it with was
8 questioned by that other board.

9 MR. FRANKEN: Right.

10 BOARD MEMBER HANSON: So I'm just reporting
11 to you what went on there. And it was quite amusing
12 because I re-read the comments in that -- in our board, you
13 know, and it was the kind of discussion of discussing
14 something we really have no control over and then having to
15 vote on it, even though we can make no suggestions as to
16 changes, which was kind of discussing something I would
17 refer to as in a cloud, you know.

18 MR. FRANKEN: Right. And, sir, I think we
19 go back to the public comment process that A&I did --

20 BOARD MEMBER HANSON: Correct.

21 MR. FRANKEN: -- back in 2016, which they
22 extended, and actually called, from my understanding, based
23 on the comments they have in here, they actually called the
24 Press Association and said, hey, we put this out for public
25 comment, didn't get a lot of comments. We're going to

1 extend it for another 30 days and encourage you to provide
2 comments. And if I could just briefly, in statute here,
3 kind of addresses what you had just talked about. And it
4 says -- this is 16-4-204. Right of inspection, copies,
5 printouts or photographs fees. It says in all cases in
6 which a person has the right to inspect and copy any public
7 records, he may request that he be furnished copies,
8 printouts or photographs for a reasonable fee to be set by
9 the official custodian. And it says where fees for
10 certified copies or other copies, printouts or photographs
11 of the record are specifically prescribed by law, the
12 specific fee shall apply.

13 So if we contrast that versus the production and
14 construction of electronic public records, which A&I, in
15 their comments, talked about that they weren't required to
16 do the \$180 threshold, but they felt like, because as Keith
17 had talked about, a lot of the smaller requests that we
18 get, which are the vast majority -- so it was -- the \$180
19 was that threshold that -- that the State -- the rule
20 allowed.

21 Here, based on that, there's just an actual fee
22 for the nonelectronic public records, which is, you know,
23 10 cents a page if you want copies, things like that.

24 BOARD MEMBER HANSON: Correct.

25 MR. FRANKEN: So I think that was the

1 distinction between a nonelectronic public record versus an
2 electronic public record. And I apologize at the last
3 board we didn't really have that. But after that last
4 board, we sat down and actually talked to the author of the
5 rule and tried to understand better that distinction.

6 BOARD MEMBER HANSON: Uh-huh. So,
7 basically, if -- the way I understand it is was the hard
8 records, the nonelectronic records, the average request
9 will probably accrue a fee of how much? Do you know?
10 Somewhere below \$180, obviously, because as you mentioned,
11 the requests are relatively small. You know, you want
12 maybe --

13 MR. GUILLE: If I can --

14 BOARD MEMBER HANSON: -- so many pages.

15 MR. GUILLE: If you can address that.

16 Those are operating costs, if that makes sense.

17 BOARD MEMBER HANSON: Correct.

18 MR. GUILLE: So those copiers, they're on a
19 lease. So we get charged every copy or scan when someone
20 puts through, as well as the paper. Currently if someone
21 comes in and wants, let's say, a thousand pages scanned or
22 let's say made copies. We're not going to -- we're not
23 going to make those copies in our office. There's just no
24 way we have those resources.

25 BOARD MEMBER HANSON: You farm that out.

1 MR. GUILLE: We work through a third party,
2 like a Kinkos or whatnot, to do a chain of custody and have
3 those printed off. So in this sense, this kind of offers
4 that opportunity to do so, but we're going to recuperate
5 those costs.

6 BOARD MEMBER HANSON: Thank you.

7 MS. VEHR: Could I -- if I may, I know this
8 is the presentation from DEQ. But an example to Air
9 Quality. The files that Air Quality maintains, when we
10 have electronic -- you'll get to see the display of our
11 electronic system later in the spring. We had to make
12 sure, because we don't want our computer systems
13 compromised by someone accessing it, so we have,
14 essentially, a duplicate system that will be built. When
15 people come in now, we have to have unopened thumb drives,
16 and that's so we can know that we're not compromising our
17 computer system. Contrasting that with the hard copy
18 records, when you have a hard copy file, we, as records
19 custodian, when you come in to look at that record, I need
20 to be assured that I will get all those pages back in the
21 same order --

22 BOARD MEMBER HANSON: Order.

23 MS. VEHR: -- and the same quality
24 unaltered. So we have to have someone -- inspection is
25 free, but it has a cost to the agency because I have to

1 assign someone to be there when that person inspects the
2 record so that a page isn't torn out or someone doesn't
3 cross through. I'm not saying someone's doing something
4 malicious, but when you go to the library and you see
5 alterations on books, that's why -- and I'm not making the
6 assumption on why this was put into the record, but it is
7 not free to the agency to have someone come look at a piece
8 of paper. There's a cost we incur to have a staff member
9 taken away from other -- other duties.

10 Sounds like an echo, so...

11 But that -- to get to your point of why is there
12 a difference. I don't know for the rulemaking perspective,
13 from the practical application, someone is pulled off their
14 assignment to make sure that records are not altered from
15 the very moment someone comes in to inspect those records.

16 MR. FRANKEN: And that's actually addressed
17 in the rule, talks a little bit about that, about the
18 reason, rationale for having somebody supervise those
19 records. And there -- I think it talks about in the rule
20 that if there's -- there is this huge request for a
21 nonelectronic public record, that we have the ability,
22 working with the requestor, to get a third party, you know,
23 a copy facility. And to maintain chain of custody, we can
24 deliver those records. They would make the copies, and we
25 would get the records back and then the requestor would

1 then pay the -- the third party, so...

2 BOARD MEMBER HANSON: Uh-huh.

3 MS. KVIEN: I just thought it would be good
4 to know. I think Joe might have talked about this briefly.
5 But during A&I's public comment process, A&I did consider
6 the public comments. And then I believe did make some
7 adjustments to pricing. And I don't have the particular --

8 MR. FRANKEN: And I actually do have that.

9 MS. KVIEN: -- numbers --

10 BOARD MEMBER HANSON: Is that the list?

11 MR. FRANKEN: Yeah. So what I think you're
12 talking about are the changes here.

13 MS. KVIEN: Right. The changes that -- A&I
14 did make changes in response to the public comment process
15 that occurred last year.

16 MR. FRANKEN: And so one example was in the
17 initial rule they were going to charge -- the
18 recommendation was to charge a dollar per page for
19 scanning, which seemed exorbitant. So they changed it to
20 10 cents.

21 BOARD MEMBER HANSON: 10 cents.

22 MR. FRANKEN: Yeah. Those types of things.
23 That's a great point, that A&I did take public input and
24 adjust four or five things based on input from the public.

25 BOARD MEMBER HANSON: There's lots that say

1 actual cost, so you just don't know what this is.

2 MR. FRANKEN: Right.

3 BOARD MEMBER HANSON: That was another
4 objection that was raised, you know. What does that mean?
5 Does that mean 5 bucks or does it mean 10 cents? You know,
6 we just don't know. Okay.

7 MR. FRANKEN: I was just going to give one
8 other example. Keith gave an example earlier about the
9 power plants. And I work with HR, and another example we
10 had an employee that left on not the best terms, and so
11 over -- before my time. So over a course of several years,
12 he's filed multiple and multiple public records requests
13 wanting emails that go back for years. And so we -- we're
14 working through ETS, we're able to get those emails. But
15 then we had to have those redacted. And still to this day
16 we're still going through those thousands and thousands of
17 emails. And one of the -- the intent of the rule is to try
18 to get him to narrow the scope instead of asking for this
19 broad -- we can get him to narrow the scope, because you
20 still want to get them the records, but we want to do it in
21 a way that works for them and then lessens the burden on
22 the state agency spending hundreds of hours redacting
23 emails when we're not getting permits out that we should be
24 getting out, so...

25 MR. GUILLE: Right.

1 BOARD MEMBER HULME: John, this is Diana.
2 Do you have any comments or questions about what you've
3 heard so far?

4 BOARD MEMBER HEYNEMAN: I'm not very
5 familiar with it. And I understand the desire to cut
6 costs, but that's also the obligation of the agency to
7 provide the information. I don't know -- I don't know
8 what -- where the middle ground is, having malicious
9 intents -- malicious requests for information would be
10 obnoxious, and I can imagine if you're redacting thousands
11 of emails, that would be an incredible financial burden.

12 On the other hand is the honest attempt for
13 information in the vast bureaucracy that exists that's
14 really important to provide. So I -- I don't know what the
15 right answer is. I think pass along real costs is probably
16 attractive. I don't know if it's a significant barrier to
17 people to -- significant barrier or not. Maybe it's fair.

18 BOARD MEMBER HULME: Okay.

19 BOARD MEMBER HEYNEMAN: I don't have any
20 answers for you.

21 BOARD MEMBER HULME: That's okay. I wanted
22 to make sure if you had anything to say, I didn't want to
23 leave you out.

24 BOARD MEMBER HEYNEMAN: Yep. Thanks.

25 BOARD MEMBER HULME: Yeah. I mean, I'll

1 just make a comment, then I actually have a question. But
2 I work for a quasi-government agency as well and have been
3 on the employee end of having to respond to public records
4 requests that took multiple days of my time off and on for
5 two years with a very laborious request that really we knew
6 wasn't going to go anywhere and didn't see the point. We
7 don't assess fees at all, but it was talked about a lot
8 just because of the huge time sink it took for me, and
9 then people in the high levels of upper administration
10 with our general counsel office and everything too. So
11 I understand that. But I also see the point of --
12 especially with environmental subject matter -- where, you
13 know, assessing -- when everybody knows what the fees are
14 you can say it's a level playing field. But when you have
15 industry that can afford those costs for public records
16 requests and you have nonprofits or individuals that may
17 not have the financial means, I can see that's -- you're
18 somehow -- it seems a little bit of an unfair situation for
19 people that have that circumstance.

20 So I guess in my experience of being in
21 government over 20 years, haven't had too many public
22 records requests that have been super intrusive like the
23 one I had recently where I work now, but most of them are
24 pretty minor and don't take that much time. And I always
25 felt that was part of the job, was part of the public

1 service of working for a state agency, was that's part of
2 what you do. It's just part of the job description and not
3 an extra -- an extra duty that should be paid for
4 separately.

5 But that said, I guess I just have a question on
6 where do these fees go? What do they go -- what account do
7 they go into? What do they fund? I mean, they're
8 obviously not going into the employee's paycheck, but what
9 operations or -- do they serve for each agency -- or
10 division, or DEQ in general? Does it go into DEQ's pot of
11 money and disbursed some for expense, or does Air Quality
12 keep what Air Quality generates from a request or --

13 MS. VEHR: Before I turn that back to Joe
14 and team for that. On the information that will be
15 accessible via the website through our IMPACT, that is no
16 fee.

17 BOARD MEMBER HULME: Correct. Correct.

18 MS. VEHR: So you're talking about the
19 limited requests that would be other items.

20 BOARD MEMBER HULME: Particularly for hard
21 copy stuff at this point, which is a big expense it looks
22 like.

23 MS. VEHR: So with the other fees, I'll
24 turn that back over. But I wanted to make sure the fees to
25 access what someone can do from the website --

1 BOARD MEMBER HULME: Right. Is free.

2 MS. VEHR: -- is going to be free.

3 BOARD MEMBER HULME: Right. I get that.

4 But in the meantime, not every decision has, as you said,
5 has their -- not up to speed to that point, so there's
6 going to be costs --

7 MR. GUILLE: Those would go back into the
8 general fund.

9 BOARD MEMBER HULME: Okay. For DEQ or
10 state general fund?

11 MR. GUILLE: State general fund.

12 BOARD MEMBER HULME: Okay.

13 MR. GUILLE: We don't have the ability
14 to -- because we're not in control of the purse, right?
15 The legislature is.

16 BOARD MEMBER HULME: Right.

17 MR. GUILLE: They mandate how we do our
18 expenditures, so that would go back into the general fund.

19 BOARD MEMBER HULME: We don't know -- so
20 then it's their discretion where those --

21 MR. GUILLE: That's correct.

22 BOARD MEMBER HULME: That could be any
23 number of places it goes.

24 MR. GUILLE: That's right.

25 BOARD MEMBER HULME: Thank you.

1 Any questions from board members?

2 BOARD MEMBER HEYNEMAN: So you're not
3 really making anything up, then, with the fees?

4 BOARD MEMBER HULME: Not for the agency.

5 BOARD MEMBER HEYNEMAN: Not department --
6 from a department perspective --

7 MR. GUILLE: It's for the State. Since we
8 represent the State, it would go back into the general
9 fund.

10 MS. VEHR: And just to give you a -- a
11 point I made at the beginning in terms of the legislature.
12 Two years ago -- well, almost two years ago, had approved
13 that Air Quality Division's request for a new position,
14 which is here today, Natalie Kuhlmann, that's our
15 informations and records management. So the legislature
16 has given support to the DEQ and the governor's
17 recommendation that we have someone dedicated to records.
18 That was a brand-new position.

19 Of the fee portion, at the beginning I mentioned
20 that we went in front of the legislature for our budget
21 request, Joint Appropriations Committee, and the DEQ was
22 funded 30 percent by general funds and 7 percent by federal
23 funds. So while we do not directly receive fees from a
24 records request that would be generated, if they're coming
25 into that general fund pot, I would assume that that's a

1 portion of where the legislature will look to fund the
2 state agency through general funds.

3 BOARD MEMBER HULME: Thank you.

4 Klaus.

5 BOARD MEMBER HANSON: The question, I
6 think, is one of philosophy. The philosophy, of course --
7 or the statement was the public has a right to receive
8 records that they want to receive. Implementing the
9 fees, that's the way it was discussed in the other meeting
10 that I attended, is an impediment to that particular
11 aspect, namely to make the -- the information generally
12 acceptable -- accessible to the public. And so there are
13 two philosophies playing against each other here. Namely,
14 charging a fee to offset costs versus the free flow of
15 information out to the public. And I have no answer how to
16 marry these two together. I think they will be two
17 different parts of the same problem here. And I can see
18 where the agencies, of course, need to recover the costs.
19 And I think an important point was raised by Diana, namely,
20 that the agency directly doesn't see any benefit from that,
21 only indirectly that they may get another position. But
22 that is a circuitous route which occurs only in the long
23 distance somewhere.

24 So the objection still, I think, was by many in
25 the public. I have a whole slew of information here, you

1 know, short statements from all kinds of people who said we
2 object to the fees. But since there is no discussion
3 possible --

4 BOARD MEMBER HULME: Right.

5 BOARD MEMBER HANSON: -- I rest my case.
6 Adopt the darn thing and be done with it because we have no
7 objection possibility anyway. Thank you.

8 BOARD MEMBER HULME: I agree with that.
9 There's not a whole lot we can do other than, I guess,
10 people could contact their legislator -- legislators --

11 BOARD MEMBER HANSON: That's right. That's
12 right.

13 BOARD MEMBER HULME: -- go through a
14 process, look at statute changes and then subsequent rule
15 changes at this point, another comment period.

16 I think we had a comment from somebody in the
17 audience.

18 MS. VEHR: Sorry. I'll move and then --

19 BOARD MEMBER HANSON: I can move.

20 BOARD MEMBER HEYNEMAN: You don't have to
21 move for me, Diana. I can hear everybody very well. And
22 see you, in fact. Haha.

23 BOARD MEMBER HANSON: Haha. We can't see
24 you yet.

25 BOARD MEMBER HEYNEMAN: Very shy.

1 MR. QUINN: Where do you want me? Right
2 here?

3 BOARD MEMBER HULME: That's fine. We need
4 you to please state your name and affiliation.

5 MR. QUINN: All right. Thank you,
6 Ms. Chair, members of the board.

7 My name is Casey Quinn, and I'm here on behalf of
8 the members of the Powder River Basin Resource Council.
9 We've submitted comments and my colleagues have spoke up
10 north in the Land Quality Division as well. I'm just going
11 to touch some main points, try not to take up too much of
12 your time. I have some notes here.

13 So our organization frequently requests access to
14 DEQ records so we can participate in open comment periods
15 that are part of DEQ's decision-making process. We also
16 use DEQ records for citizen compliance review and sometimes
17 enforcement. We oppose these rules because we believe they
18 conflict with DEQ's requirement under the Environmental
19 Quality Act to make records available for the public's
20 review.

21 While most --

22 BOARD MEMBER HULME: She needs to hear you.

23 MR. QUINN: I'm sorry. While most DEQ
24 permit files and official correspondence for those permits
25 are generally open for inspection at DEQ's offices,

1 electronic correspondence and some electronic-only
2 documents are not. And some topics don't really have a
3 single file, like a -- work on the Pavillion investigation,
4 making it hard to go into a DEQ office and look at the
5 records.

6 Also the \$180 threshold does not get you far
7 enough, especially when you consider Attorney General time,
8 staff time, IT staff time, in addition to the records
9 staff. There's also concern that DEQ might not even get
10 these fees back, as was discussed. If they're going to the
11 general fund, that negates the argument that the fees are
12 used to compensate the agency's work directly.

13 Additionally, a lot of emails produced through
14 requests end up being duplicates because multiple staff
15 members receiving the same email and with replies, with
16 forwards, we would have to pay for the duplications as
17 well.

18 And then there are also the fees regardless of
19 the threshold, pay for copying, scanning, staff
20 supervision, time reviewing records, using an agency
21 copier. That is a significant change from current agency
22 policy and will definitely create barriers for us as an
23 organization.

24 We are greatly concerned about the purpose and
25 intent of these rules and believe they will limit public

1 access and we oppose them. Thank you.

2 BOARD MEMBER HULME: Thank you.

3 BOARD MEMBER HANSON: We've heard the same
4 thing.

5 MR. QUINN: Okay. Thank you.

6 MS. FLANDERKA: Good morning.

7 BOARD MEMBER HANSON: Good morning.

8 MS. FLANDERKA: I'm Mary Flanderka. I'm a
9 policy advocate with the Wyoming Outdoor Council. And
10 thank you for hearing public testimony today. I appreciate
11 it.

12 First of all, I'm going to go in reverse. I
13 think you do have a choice. I don't think these rules were
14 given to you to say here -- you don't -- you know, they're
15 not saying these are yours. You have a choice to vote on
16 them. And I'd like to explain why I think a vote no would
17 be appropriate.

18 So A&I started this in 2016. Yes, they were
19 supposed to develop rules of uniform nature, which they
20 did. But you had mentioned their outreach. Their outreach
21 was very limited. And A&I doesn't have a huge public
22 following. You know, they don't have a huge public
23 constituency. Basically the agencies are their
24 constituency.

25 And I believe in order to do a better public

1 outreach, that they should have come to the boards, they
2 should have gone to the commissions, and they should have
3 asked you all for your constituency to reach out to them.
4 The AP, the Press Association, is not an appropriate place
5 to do constituent outreach. You all know how to do
6 outreach, you know how to reach out to folks, and you have
7 done that very well. I think they could have taken their
8 lead from your agencies. A&I has given you the uniform,
9 and it's now proceeding to walk through. Doesn't mean it's
10 right, though. I think a vote no would say back to A&I
11 that there's something wrong with these. That there's a
12 better way of doing this. And I think that's appropriate.

13 I don't disagree with uniform. I don't disagree
14 with some of the examples you gave. I survived the
15 Freudenthal FOIA request that was huge. Millions of hours.
16 Maybe not millions, but a lot. It was very deep. And
17 those are excessive, I agree. And it wastes people's time.
18 But I do think that there's a better way of dealing with
19 uniform rules, especially, as you had mentioned,
20 Ms. Chairman, that for the public and for nonprofits, they
21 do -- this is -- I work for a government agency and I saw
22 that as my job, is to explain the work of the public,
23 because that's what we all do. And I think it's fair to
24 say no. I think there are other options in these rules
25 that could be followed that would be less onerous.

1 BOARD MEMBER HANSON: Thank you.

2 MS. FLANDERKA: Thank you. Thank you,
3 everybody.

4 BOARD MEMBER HULME: Any other comments?
5 Questions? Comments?

6 Can we take a vote? We have a motion to --

7 BOARD MEMBER HANSON: I'm even hesitant to
8 move to a vote, because we've been told there is no choice.
9 And I object to a process like this. Why spend our time
10 discussing something that we have no vote -- no real vote
11 on anyway? You know, you couldn't even make -- that was
12 the -- the issue, again. We couldn't even make suggestions
13 for changes, or, you know, tweaking the thing. It was said
14 it's coming down to us as a fiat and there is no choice.
15 Then why bother the commission with discussing it?

16 MS. KVIEN: I think I can speak a little
17 bit briefly to that point. So this is the way that our
18 rulemaking process has been set up. And there have been
19 circumstances in the past where we've done other rules of
20 practice and procedure where a federal statute required a
21 specific carveout. So, for example, if the water attorney
22 believed that there was a certain provision of the Clean
23 Water Act that would necessitate that we carve out an
24 exception for a particular kind of record, then we might be
25 able to -- not in the rule itself that A&I has written, but

1 in -- in the text through which we incorporate that rule,
2 we could say, you know, we are proposing to adopt it,
3 incorporation by reference, and then -- but with the
4 exception being for Clean Water Act section, whatever,
5 this does not apply. So it does allow agencies, when
6 necessary, to make very particular carveouts, which I
7 suppose is kind of a necessary part of the process, but it
8 does -- I understand the frustration with something where
9 we've determined that there is no conflict. It seems
10 duplicative and burdensome to kind of go through this
11 process at each one of the advisory boards and then the
12 environment -- ultimately the Environmental Quality
13 Council. But in this particular circumstance, myself and
14 the other three DEQ attorneys at the Attorney General's
15 Office have found nothing definitive that would give us --
16 that we feel would give us the authority to make the kind
17 of changes, like adjusting numbers in different directions,
18 because A&I has already gone through its own process and
19 made its own adjustments, and there's nothing in our
20 statute that we feel gives us the power to make adjustments
21 one way or the other, because A&I has already done that.

22 MS. THOMPSON: If I may also make another
23 statement. The three advisory boards and the council are
24 not our only concern for approval. Whenever we do a rule,
25 whether it be small or large, whether it be in any of the

1 divisions, it has to go through the Legislative Services
2 Office. And this particular rule is considered a new rule,
3 because it's based on legislative -- a legislative mandate
4 that agencies adopted. So it gets an extra flag. So it
5 goes to the Legislative Services Office. They flag it for
6 their management council. And so the management council
7 and any of the legislators that worked on that statutory
8 amendment that said the agencies have to do this, they take
9 an extra look at that. And if we're deviating and we don't
10 have a good statutory backup, if we don't have a primacy
11 package to back up into, they can flag it and recommend
12 disapproval at the governor's level too.

13 So when we are disagreeing with these statutory
14 actions, we have to be very careful and make sure we have
15 good documentation. And our staff at the AGs have reviewed
16 it multiple times. And we don't have any backup to
17 deviate. We don't have anything definitive in the
18 Environmental Quality Act that says, well, in this case DEQ
19 can do something different. And if we don't have any
20 backup, we don't have -- we don't have the support we need
21 at the Legislative Services Office to let us have a pass,
22 and we would be -- it would be stricken and we get to do
23 this all over again. And that's -- that's not the happiest
24 of news, and I'm totally -- I -- I hear your frustration,
25 but, you know, the -- I believe it was called the big,

1 giant bureaucracy. We have all these checks and balances
2 that we have to get through, and the Legislative Services
3 Office, that's a very big balance check to make sure we can
4 get through them as well, because those legislators, they
5 do have a pretty loud voice when we're -- when we're
6 developing rules that interpret a statute or that kind of
7 enforces statute. And that's what this is doing.

8 So while I hear that you're very frustrated with
9 this process, we have additional steps that we also have to
10 take in a given rulemaking to make sure that it goes all
11 the way to the end, all the way to the governor's
12 signature, and that we've done all of our due diligence,
13 and that we have that necessary legal backing, because if
14 we didn't, then we shouldn't be here today.

15 BOARD MEMBER HANSON: Madam Chair, one
16 analogy that can be drawn and that helps, maybe, is that we
17 constantly incorporate by reference what comes from the
18 federal side, which we have, again, no choice over. We
19 simply incorporate it because that's the way it goes.

20 This is the same situation here. We incorporate
21 by reference something that came down from a higher
22 authority, so to speak. I think what would have been
23 appropriate is to say in the same way we incorporate this
24 rule by reference, rather than we approve it. And this is,
25 I think, what -- what the previous commission that I was on

1 objected to. You know, we even had a discussion of it,
2 because when we take federal incorporations, we're not
3 discussing them. We're simply accepting them and do that.
4 And this would have, for my tastes, have been the correct
5 process to use, to say please go ahead and incorporate by
6 rule and we could have said, thank you. Yes, we will
7 incorporate it by rule, and save ourselves a lot of
8 discussion on this. Because I think -- that is where I
9 think the process went somewhat wrong, to bring this to us
10 to say discuss it. And I see why it came to us, because
11 you pointed that out very clearly, in case there was
12 anything that can be handled through a legal counsel that
13 looks at this and says there is a process or there's a
14 fault here somewhere that we need to take care of as far as
15 your agency is concerned, but to bother us with this, I
16 think, under the circumstances, was a bit onerous, and I
17 object to it from that per -- particular aspect. Thank
18 you.

19 MS. THOMPSON: You have a commenter from
20 the audience.

21 BOARD MEMBER HULME: Yes, Mary.

22 MS. FLANDERKA: Thank you. So I guess the
23 question -- the concern is not so much about the statute,
24 but about A&I and the way they've processed it. So
25 wouldn't a no vote kind of indicate to A&I they have to

1 relook at it? Because it's really about A&I's rules, not
2 about the statute.

3 MS. THOMPSON: With all due respect, ma'am.
4 Multiple other agencies have already adopted or in the
5 process of adopting this rule.

6 MS. FLANDERKA: Sure.

7 MS. THOMPSON: And so I -- I guess I would
8 have to say it might not signal to A&I that they have a
9 problem with the rule. It might signal to them that DEQ
10 has a problem and that's it. I don't know that we would
11 have -- because the other agencies have adopted it, the
12 governor, the AG's office, the Game & Fish, multiple other
13 agencies -- Oil and Gas Conservation Commission just had
14 their hearing to adopt these rules. And everyone else --
15 everyone else adopted it. DEQ is special in that we get an
16 extra -- an extra council review step. So the other
17 agencies, they have one hearing. They have one oversight
18 body, one hearing examiner. And we have -- we have the
19 three individual boards plus the Environmental Quality
20 Council. So we get to do a little extra hoop jumping here.

21 The other agencies didn't have -- they received
22 some of the same comments, and those comments were
23 addressed by those other agencies, but there weren't any
24 other departments that said, you know, through this process
25 we can't adopt this because the public has a concern. And

1 so I don't know that -- in my personal opinion, I don't
2 know that it would come across as the A&I has a problem.
3 It might appear as DEQ has a problem. And I don't know --
4 I don't know that it would make the impact that you would
5 wish for.

6 MS. FLANDERKA: And I might just say that
7 there were other no votes also on the other agencies, and I
8 think they felt compelled they had to do it, and they
9 didn't feel they had a choice.

10 BOARD MEMBER HULME: Did you have --

11 MS. KVIEN: I was just going to say the
12 impact of saying no to this rule could put the agency out
13 of compliance with a legislative mandate, so...

14 BOARD MEMBER HANSON: Correct.

15 MS. KVIEN: I think it would become DEQ's
16 problem rather than A&I's problem.

17 BOARD MEMBER HULME: I just want to
18 comment. I'm in agreement with Klaus on this. Jokingly,
19 do we get to assess fees for our time to do this when
20 there's --

21 BOARD MEMBER HANSON: Sure. Right.

22 BOARD MEMBER HULME: -- for something that
23 seems it's just -- we're just going through motions and
24 checking a box, apparently.

25 I agree with the comment personally that, you

1 know, I can vote yes on the rule. I kind of want the
2 record to reflect that I'm not in favor of the way the
3 process went down either, so...

4 BOARD MEMBER HANSON: Same here, of course.

5 BOARD MEMBER HULME: And in separating
6 what's on the paper and in the rule and on statute,
7 whatever, from the process. And so we can't vote on those
8 two things separately, but I just want to reflect that I
9 think this process was probably not done in the best way
10 possible for all parties.

11 BOARD MEMBER HANSON: And I would suggest
12 in the future that you bring this forward as an
13 incorporation by reference to what came down to us.

14 BOARD MEMBER HEYNEMAN: This is John
15 Heyneman. Seems like I guess I may be missing part of what
16 I think Amber [sic] described, but we are an advisory
17 board, and this is -- this is a touchy, perhaps contentious
18 topic. We're asked for our advice. I'm happy to give my
19 advice. Doesn't have authority. And the advice -- I don't
20 see how that buying -- how see that binding the department
21 if they do want to take advice or not.

22 MS. VEHR: And, John, this is Nancy. With
23 the permission --

24 BOARD MEMBER HULME: Yes, please.

25 MS. VEHR: I think that Allison can comment

1 on the rulemaking process on how the advice of the boards
2 and how that fits into the rulemaking process with the
3 general framework that rules come through upon
4 recommendation of the director and up through the advisory
5 boards to the Environmental Quality Council. And so that
6 rulemaking process, the record includes all of the comments
7 that are submitted, the transcript that is being prepared
8 today, and notes that the comments of the individual
9 advisory board members to frame the concerns so that when
10 it goes in front of the Environmental Quality Council, they
11 understand the concerns that have been raised by the
12 public, the individual board members, and that package is
13 what the director recommends.

14 But, Allison, you may want to speak to that
15 advice piece that John was referring to.

16 MS. KVIEN: Right. So in the rulemaking
17 process, if it's a rule that affects all of the divisions,
18 like we have in this circumstance, because it is a rule of
19 practice and procedure, we would bring it in front of all
20 of the advisory boards before we would take it to the
21 council. So this isn't the final step of approval of this
22 rule. We would need to seek the recommendation from each
23 one of the individual advisory boards. And then upon
24 receiving -- upon receiving the sufficient votes to bring
25 it in front of the Environmental Quality Council, then the

1 Environmental Quality Council would also have another, I
2 guess, bite at the apple, so to speak.

3 And I imagine if the rule goes -- goes through
4 today, we will be having the same discussion sometime next
5 spring and the Environmental Quality Council will
6 ultimately be -- the -- the decisionmaker there.

7 So in the rulemaking process, although it is
8 frustrating to have to -- to have this conversation so many
9 times, when it feels like it's the same conversation,
10 that's the way that the process is set up, and we do need
11 to seek through recommendation before we attempt to bring
12 it before the Environmental Quality Council. So that's
13 what we're seeking today is Air Quality's -- the other two
14 advisory boards have recommended that we go forward, that
15 we proceed with this rulemaking and bring it before the
16 Environmental Quality Council. And so today, we're seeking
17 the Air Quality Advisory Board's recommendation that we go
18 forward with incorporating these rules by reference. And
19 it -- it is a necessary step in this case because it is a
20 rule that affects all of the divisions. So even though --

21 BOARD MEMBER HEYNEMAN: Excuse me. Were
22 the other divisions -- did the other boards vote
23 unanimously?

24 MS. KVIEN: No. The other boards did not
25 vote unanimously. But at each board, the rule did

1 ultimately -- ultimately was recommended to go forward with
2 proposing it to the EQC, and that's what we're seeking
3 today at the Air Quality Advisory Board.

4 BOARD MEMBER HULME: And was that
5 recommendation as it was written? There were no
6 recommended changes?

7 MS. THOMPSON: That's correct. That's
8 correct.

9 MS. KVIEN: Right.

10 MS. VEHR: Klaus, it may get to your point
11 in terms of approval. The language is under Statute
12 35-11-114(b). The Advisory Board shall recommend to the
13 council, through the administrator and director, the
14 adoption of rules and carry out regulations and standards
15 to implement and carry out the provisions and purposes of
16 this act which relate to their divisions and variances
17 therefrom. So it asks -- the statutes ask for a
18 recommendation. So that's the -- to your concern with the
19 word choice of approve and some of the implications that
20 might come from it. This is -- the statute says "the
21 advisory board shall recommend to the council." If that's
22 the word choice, in term of the recommended incorporation
23 by reference, if that's the word choice you were concerned
24 with.

25 BOARD MEMBER HANSON: You, as the attorney,

1 I think give us a good way out. If we can incorporate
2 instead of saying we approve, we say we incorporate this
3 rule by reference. But we can't, can we?

4 MS. THOMPSON: Well, when you -- when you
5 vote and you make your statement that you're voting on, the
6 statement that we need the board to make is that the board
7 is voting to recommend approval. So you're voting to make
8 a recommendation to the council.

9 BOARD MEMBER HANSON: Okay.

10 MS. THOMPSON: The final approval comes
11 from the council. The council is our hearing examiner, and
12 their approval is the final approval that puts the -- the
13 final pieces in place.

14 BOARD MEMBER HANSON: Okay.

15 MS. THOMPSON: So we're seeking your
16 recommendation of approval.

17 BOARD MEMBER HEYNEMAN: A number of us have
18 strong objections.

19 MS. KVIEN: Some of the public comments
20 have been, I believe, from members of your organizations.
21 The commenters that we had today with us in person, the --
22 the Powder River Group and the Wyoming Outdoor Council.

23 MS. FLANDERKA: And Liberty Group too.

24 MS. KVIEN: What's that?

25 MS. FLANDERKA: Liberty Group.

1 MS. KVIEN: And Liberty group. Right.

2 I should have noted I believe some of the groups
3 did have a chance and did submit -- did participate in
4 A&I's rulemaking comment process too. So I believe that
5 they were also involved during that initial process when --
6 when A&I had the authority to make changes.

7 MR. FRANKEN: That's correct. There's
8 actually a letter dated May 9, 2016 from PRBRC to A&I when
9 they were doing their rulemaking.

10 BOARD MEMBER HULME: Well, Board Members,
11 we need a motion of some kind.

12 BOARD MEMBER HANSON: I guess we cannot
13 move to approve by -- by incorporation -- approve
14 incorporation by reference.

15 MS. THOMPSON: So just to kind of maybe
16 explain what we're doing here.

17 BOARD MEMBER HANSON: Yeah.

18 MS. THOMPSON: The rule change that DEQ is
19 bringing before you today is a statement in Chapter 1. At
20 the -- at the end of the chapter we've included a new
21 section -- or we are proposing a new section that says we,
22 as DEQ, are incorporating by reference A&I's rule as of
23 said date. So we are -- we are asking for you to recommend
24 approval of the insertion of that language.

25 BOARD MEMBER HANSON: Yeah.

1 MS. THOMPSON: So that is the
2 recommendation we were seeking today. We are seeking a
3 recommendation of the proposed revisions.

4 MS. KVIEN: Right. To go to the
5 Environmental Quality Council.

6 MS. THOMPSON: Correct.

7 MS. KVIEN: Right.

8 BOARD MEMBER HANSON: We can say we approve
9 or we vote to approve to incorporate this rule by
10 reference?

11 MS. THOMPSON: We -- I think we would ask
12 you to recommend approval of the proposed revisions of the
13 proposed added language to Chapter 1 as written.

14 BOARD MEMBER HULME: Then we would vote.

15 BOARD MEMBER HANSON: Sure.

16 MR. FRANKEN: What we used for the previous
17 boards it was we're seeking the board's recommendation to
18 the council for approval to incorporate by reference the
19 uniform rule into DEQ's Rules of Practice and Procedure
20 Chapter 1, General Rules.

21 BOARD MEMBER HANSON: I'll move that. So
22 we get off the dime.

23 BOARD MEMBER HULME: So moved.

24 Do I have a second, or does anyone need the
25 motion restated?

1 Will you -- do you have the motion down?

2 BOARD MEMBER HANSON: John, did you hear
3 the motion?

4 BOARD MEMBER HEYNEMAN: I did. I don't
5 know that I -- is there a way to include despite -- despite
6 this language? This doesn't feel very good at all.

7 BOARD MEMBER HULME: I think then -- I
8 mean, we have the motion, then I would assume we just vote,
9 unless you want to amend the motion, we can discuss that.

10 BOARD MEMBER HEYNEMAN: No. I'll second
11 the motion.

12 BOARD MEMBER HULME: So all those in favor
13 of the motion to recommend approval of the new language of
14 Section 11 into Chapter 1 of the General Rules to go to the
15 Environmental Quality Council, say aye.

16 BOARD MEMBER HANSON: Aye.

17 BOARD MEMBER HULME: All those opposed.

18 BOARD MEMBER HEYNEMAN: Aye.

19 BOARD MEMBER HULME: Aye.

20 BOARD MEMBER HANSON: It failed.

21 BOARD MEMBER HULME: There we go.

22 BOARD MEMBER HANSON: We'll let the
23 legislature deal with it.

24 BOARD MEMBER HULME: Next item on the
25 agenda is to schedule the next meeting.

1 MS. POTTS: If it's the board's pleasure, I
2 can send out a Doodle poll and make sure that first quarter
3 fits in your time frames and schedules.

4 BOARD MEMBER HANSON: What months are we
5 talking about?

6 MS. POTTS: January to March, so...

7 BOARD MEMBER HANSON: Okay.

8 BOARD MEMBER HULME: Not January.

9 MS. POTTS: Not January, I'm hopeful for.
10 Probably towards the end of that quarter.

11 BOARD MEMBER HANSON: And where would we be
12 meeting?

13 MS. POTTS: I'm not certain. That could
14 also be a question out to the board. We like to spread it
15 around the state, and -- you know.

16 BOARD MEMBER HANSON: Just thinking of, you
17 know, we're way off for several of us. The weather is
18 always a consideration.

19 MS. POTTS: Absolutely. And, you know, I
20 think we're just testing the waters with the electronic
21 board meetings here, and if that's something that works for
22 us, we can certainly look into that and make that work.

23 MS. VEHR: John, we can't hear you.

24 BOARD MEMBER HEYNEMAN: I've been watching
25 you the whole time. It performed very well.

1 MS. POTTS: All right. So I can send out a
2 poll and then also another poll for where we'd like to
3 conduct the next board meeting or if you'd like to do it
4 electronically.

5 BOARD MEMBER HANSON: Good.

6 BOARD MEMBER HULME: All right. Is there
7 any other comments or questions? I move to adjourn.

8 BOARD MEMBER HANSON: Second.

9 BOARD MEMBER HULME: Those in favor?

10 BOARD MEMBER HANSON: Aye.

11 BOARD MEMBER HEYNEMAN: Aye.

12 BOARD MEMBER HULME: Aye.

13 Thanks, John.

14 (Meeting proceedings concluded
15 10:56 a.m., December 12, 2017.)

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C E R T I F I C A T E

I, KATHY J. KENDRICK, a Registered Professional Reporter, do hereby certify that I reported by machine shorthand the foregoing proceedings contained herein, constituting a full, true and correct transcript.

Dated this 28th day of December, 2017.


KATHY J. KENDRICK
Registered Professional Reporter

