

AQD Meeting Proceedings

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1 WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY

2 AIR QUALITY DIVISION

3 WYOMING AIR QUALITY ADVISORY BOARD

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7 TRANSCRIPT OF MEETING PROCEEDINGS

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11 Pursuant to notice duly given to all parties in
12 interest, this matter came on for meeting on the 27th
13 day of April, 2018, at the hour of 12:00 p.m., at the
14 University of Wyoming BP Collaboration Center, 1020 East
15 Lewis Street, Laramie, Wyoming, before the Wyoming Air
16 Quality Advisory Board, Board Member Timothy Brown
17 presiding, with Board Members John Heyneman, Diana Hulme
18 and Klaus Hanson, Ph.D., present and Board Member Doug
19 Vickrey on speakerphone.

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1 WDEQ STAFF PRESENT:
2 NANCY VEHR
3 AMBER POTTS
4 ALLISON KVIEN
5 ADAM DEPPE
6 ALEXANDRIA HERDT
7 NATALIE KUHLMANN
8 DARION DONNELLY
9 ROBERT LETEFF
10 JOE FRANKEN
11 GINA THOMPSON
12 KEITH GUILLE (by speakerphone)

13 I N D E X

	Page
14 Approval of 12/12/17 meeting minutes	7
15 IMPACT public-facing web site presentation	8
16 NextRequest presentation	40
17 Rulemaking presentation	52
18 Public comments	
19 Shannon Anderson	89
20 Mary Flanderka	94
21 Motion to continue discussion	105
22 Approval of motion to continue discussion	109
23 General update from the Division	113
24 Motion to adjourn	131
25	

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

2 (Meeting proceedings commenced
3 12:00 p.m., April 27, 2018.)
4

5 BOARD MEMBER BROWN: Welcome, everybody, to the
6 Air Quality Advisory Board meeting.

7 What's on the agenda today, DEQ, Department of
8 Environmental Quality, is requesting proposed revisions
9 to DEQ's Rules of Practice and Procedure, Chapter 1,
10 General Rules, Section 11, Public Records, to the
11 Environmental Quality Council. The proposed revisions
12 incorporate by reference the Wyoming Department of
13 Administration and Information, Director's Office,
14 Chapter 2, Uniform Procedures, Fees, Costs, and Charges
15 for Inspections, Copying, and Producing Public Records,
16 as required by Wyoming Statute 16-3-103.

17 This meeting is now in session. The first
18 thing we should do is introductions, starting down at
19 this end.

20 MS. VEHR: My name is Nancy Vehr, and I'm the
21 Air Quality Administrator. And thank you for those that
22 are attending and the Board to get down here to Laramie.

23 I'll just add one thing, in terms of the
24 introductions, for the purposes of the court reporter
25 for the hearing, we do need to speak up loudly. When

1 you are speaking, if you can identify yourself, that way
2 she can make a proper record.

3 Thank you.

4 BOARD MEMBER HEYNEMAN: I'm John Heyneman, a
5 Board member from Sheridan, Wyoming.

6 BOARD MEMBER HULME: Diana Hulme, Board member
7 from Laramie, Wyoming.

8 BOARD MEMBER BROWN: Tim Brown, Board member,
9 Green River, Wyoming.

10 BOARD MEMBER HANSON: Klaus Hanson, Board
11 member of Laramie. I didn't have far to go.

12 BOARD MEMBER VICKREY: I'm Doug Vickrey. I'm
13 in Daniel, and I'm the telephone. Board member.

14 BOARD MEMBER BROWN: Any other folks you want
15 to introduce from your group?

16 MS. VEHR: From the Air Quality Division, we
17 have a number of staff here. And I think what we'll do,
18 just for purposes -- Tim, if this would work, is wait
19 until they come up to speak and do their introductions
20 at that time.

21 BOARD MEMBER BROWN: Absolutely.

22 MS. VEHR: Okay.

23 BOARD MEMBER BROWN: All right. This meeting
24 is called to order. The first item on the agenda is
25 approval of minutes from the December 12th, 2017,

1 meeting.

2 Any comments?

3 BOARD MEMBER HANSON: Yes, sir, I do have a
4 comment. Something happened in the minutes on page 14.
5 It says, quoting me, "He's taking a shower now," in the
6 middle of a conversation. And I don't know where that
7 came from.

8 BOARD MEMBER HEYNEMAN: One I remember you
9 saying that. It was a strange tangent, Mr. Klaus.

10 BOARD MEMBER HANSON: I don't know what that
11 was all about. But since it has nothing to do with the
12 proceedings, I just wondered what happened there. You
13 remember me saying that? No. I think we probably ought
14 to strike that because it makes no sense whatsoever.
15 Maybe I was on the telephone or something like that.

16 BOARD MEMBER BROWN: I'm sorry I missed the
17 meeting.

18 BOARD MEMBER HANSON: It was kind of fun.

19 I have just one other question of information,
20 and that was on page 13. There is reference to not
21 designating Albany County and they did not designate
22 Laramie County. Those designations are still waiting
23 from EPA to be made. And I just wondered whether they
24 have been made or not because it's listed in the minutes
25 here.

1 MS. VEHR: If that's a question for me, I can
2 answer that.

3 BOARD MEMBER HANSON: Yes.

4 MS. VEHR: So, yes, they have made the
5 designations for Albany and Laramie as attainment slash
6 unclassifiable.

7 BOARD MEMBER HANSON: Okay. Thank you. That's
8 all I have.

9 BOARD MEMBER BROWN: Diana.

10 BOARD MEMBER HULME: Yeah. I have one, looks
11 like a typo, on page 55 of the minutes, line 4. And it
12 says, "But in the meantime, not every decision has, as
13 you said, has their. . ." I think the word "decision"
14 should be "division" because the discussion is about the
15 different divisions of DEQ having their records
16 electronically. I think the word should be "division,"
17 not "decision," there.

18 BOARD MEMBER BROWN: Change division to --

19 BOARD MEMBER HULME: Change the word "decision"
20 to the word "division."

21 BOARD MEMBER BROWN: Do we have to vote on the
22 changing of -- any other comments?

23 BOARD MEMBER HEYNEMAN: I move for approval of
24 the minutes, with those corrections.

25 BOARD MEMBER HULME: Second.

1 BOARD MEMBER BROWN: All those in favor?

2 BOARD MEMBER HEYNEMAN: Aye.

3 BOARD MEMBER HULME: Aye.

4 BOARD MEMBER HANSON: Aye.

5 BOARD MEMBER BROWN: All those opposed?

6 BOARD MEMBER VICKREY: Aye.

7 BOARD MEMBER BROWN: That was an aye, though.

8 BOARD MEMBER VICKREY: Yes, aye.

9 BOARD MEMBER BROWN: All those opposed?

10 Okay. Approval of the minutes, as requested
11 with the changes on page 14 to strike Klaus's comment,
12 page 13 designation -- do we need to mention the
13 designation of the attainment status of Albany and
14 Laramie County? Then correction of the typo on line 4,
15 page 55, change "decision" to "division."

16 Next on the agenda is new business. And item A
17 is IMPACT, a public-facing web site presentation. And
18 I'll turn it over to DEQ.

19 MS. VEHR: Thank you, Tim.

20 Generally, when we use -- when we've done the
21 Air Quality Advisory Board minutes, we've gone ahead and
22 had general business first and then other items for the
23 Board's consideration. We have some time/schedule
24 commitments today, so we appreciate the Board allowing
25 us to kind of flip-flop those two items.

1 So in terms of the IMPACT public-facing web
2 site, Adam Deppe from the Planning section of our Air
3 Quality and Resource Management Program is going to be
4 doing a presentation. I think last -- at the last Board
5 meeting we talked about some of the things that were
6 coming, in terms of public records and accessibility to
7 the public, and we didn't have them teed up. They were
8 still in the development phase. And this is one of
9 those items. We think it's a pretty exciting new
10 feature that's going to be available.

11 So Adam is going to walk us through that. Also
12 with Adam is Lexie Herdt from the Planning section, and
13 she's been working on this project as well.

14 So, with that, Adam, we'll turn it over to you.

15 MR. DEPPE: Thank you, Nancy.

16 So, as Nancy said, I'm going to be kind of
17 presenting a little bit on the new IMPACT public-facing
18 web site. You should have a brochure in front of you.
19 There is additional brochures at the table. One thing,
20 the current URL that you see in there is not active at
21 this point. We're looking at probably summer 2018, so
22 coming up here in the next few months, to have this go
23 live. So, for right now, we're just going to look at it
24 in our staging system. But you'll see the exact same
25 thing once we promote that into production.

1 So what you're seeing on the screen right now,
2 this is what you'll -- when you go to the public-facing
3 web site, you first come into a disclaimer page. This
4 disclaimer is kind of a standard disclaimer telling you
5 about the data.

6 MS. VEHR: Adam, if you could, for the benefit
7 of the Council, explain what IMPACT is. Just give kind
8 of a high-level overview of IMPACT so they could see how
9 this fits in that system.

10 MR. DEPPE: Got it.

11 So IMPACT is our Inventory, Monitoring,
12 Permitting and Compliance Tracking data system, so
13 IMPACT. What that allows us to do is we now can manage
14 a lot of our records, permits, all of that data
15 electronically. There is also a portal part of this,
16 what we call kind of the second phase. And that allows
17 industry to submit permit applications, emission
18 inventories, compliance reports, stack tests all
19 electronically to us in the Division. So all of that
20 then we can review online and create data records for.

21 Other features that we have is we're able to
22 track specific data elements and then do reports and
23 queries out of the system to help with data records
24 requests or also any internal information that we need.

25 So that's kind of what IMPACT is. And then the

1 third phase of IMPACT is the public-facing web site. So
2 as we get into the public-facing web site, after we
3 click "Agree" on the disclaimer, we'll kind of show a
4 little bit on how that will look and then what are some
5 of the data that you can extract and view, kind of as a
6 self-serve free option.

7 Are there any questions? As I'm going along,
8 feel free to ask any questions.

9 BOARD MEMBER HANSON: That web site, that's
10 that address there, <https://openair.wyo.gov>?

11 MR. DEPPE: Yes. So that's not online yet, but
12 it will be coming here summer 2018.

13 BOARD MEMBER HEYNEMAN: Why the emphasis on
14 public-facing? Is that meaningful terminology or not?

15 MR. DEPPE: That's kind of what we call it
16 because right now we have the IMPACT internal system, we
17 have the IMPACT portal system, so this is the IMPACT
18 public-facing web site. Because we have those three
19 phases, we just, I guess to avoid confusion, clarify
20 those three. Yeah, it could be called just IMPACT, but
21 because we have those three phases. . .

22 BOARD MEMBER HEYNEMAN: That makes sense.

23 MR. JOHNSTON: So would you have access to the
24 same data you'd be looking at internally, in terms of
25 generating reports and looking at trends in data,

1 et cetera?

2 MS. VEHR: Could you identify yourself, please.

3 MR. JOHNSTON: I'm Greg Johnston.

4 MR. DEPPE: So the answer to that is yes,
5 you'll have -- some of the same data that we see
6 internally you'll also be able to view. There's a
7 little bit of a difference. Only, for example,
8 submitted applications will be visible. Permit
9 applications will be visible, both NSR, so New Source
10 Review, and Title V. Reviewed stack tests and reviewed
11 compliance reports will also be visible in the portal --
12 in the public-facing web site.

13 MS. VEHR: Could I just suggest, in terms of
14 having questions from the public, that Adam walk through
15 his presentation. A lot of this will be covered as he
16 does, and I think then if the Board wants that, we can
17 do that.

18 MR. JOHNSTON: Certainly.

19 MR. DEPPE: I'm going to go ahead and click
20 "Agree." And so when we first get into the system,
21 you're directed to the facility search. At this point
22 you can do a bunch of different options. If you were
23 curious about an air quality district and you wanted to
24 see the facilities in there, you could search there. We
25 also have it by county. Facility class, so if you

1 wanted to see Title V's versus other types, minors.
2 Facility type, if you were looking for specifically a
3 trona industry or a uranium industry type, facility
4 type, we can do that. It really kind of depends.

5 So for the purpose of this example, I'm going
6 to be using our AQD test facility. So a lot of the data
7 in there is just data that was put in, so it may not be
8 realistic. But for the purpose of this, I'm just going
9 to search for that particular facility.

10 The asterisk is our wild card character, so
11 that allows you to search by facility name. So we'll go
12 ahead and go to our test facility. So once you get a
13 search option, you'll then be able to click the facility
14 I.D., the hyperlink, and then that takes you to the
15 actual facility detail information. So in here you get
16 things like operating status, API numbers associated
17 with it. The facility tree is what we call this on the
18 left-hand side. This indicates the emission units that
19 are located at this particular facility. If you click
20 on the hyperlink of the emission unit, you'll get to
21 more detailed information. And we'll do that here in a
22 little bit.

23 We really classify kind of -- navigation is a
24 little bit different. So you'll first see that the back
25 button is disabled, and that's simply to ensure data

1 quality for our internal systems, but it's also disabled
2 on the web version. The public-facing web site will
3 work better with browsers like Firefox or Google Chrome.
4 Internet Explorer, it works a little bit, not as well,
5 but if you get the right compatibility mode, it will
6 work fine with Internet Explorer as well.

7 As for navigation, we kind of have three
8 levels. As we call it, the first-level navigation is
9 here at the top. That's where we see IMPACT Home, we
10 see Tools, and the AQD Monitors. So I'll go there
11 first. So you're home. If you click the home button,
12 this will always take you to the facilities search
13 screen, where we were just located. If we go to the
14 tools section, this is going to bring up our spatial
15 data map. In here you'll see different areas
16 highlighted. It includes, like, different NEPA
17 projects, as well as different counties and things that
18 we've highlighted. And at the bottom you can turn those
19 on or off, depending on what you're looking for.

20 Then finally, AQD monitors, these are the AQD
21 monitors that are not associated with any of our
22 facilities. If you want any additional information for
23 those particular monitors, you can come and search for
24 that information here.

25 So I'm going to go back to the facility. And

1 then we'll go and talk a little bit about the
2 second-level menu option. The second-level menu option
3 is the blue bar here. So from there, you can get in --
4 look at applications. So if I click on applications,
5 these are the submitted applications that we have for
6 this particular facility. Again, this is all just test
7 data, so a lot of it probably doesn't have realistic
8 values in it. But if you do need to look at a
9 particular application, you can click on the hyperlink
10 here and it will take you to the actual application that
11 was submitted. So, in this case, this is the
12 application and you can see all of the information that
13 was filled out for this particular application.

14 Note again the facility tree on the left-hand
15 side. The three dots indicate that that is an emission
16 unit that has been included in the application. The
17 little non-included yellow kind of strike there
18 indicates that that emission unit was not included in
19 the application.

20 Next we'll go ahead and look at emission
21 inventories. So, again, when you click on emission
22 inventories, it's going to take you to the list of
23 approved emission inventories for that particular
24 facility. Again, clicking on any of -- the emission
25 inventory hyperlink will take you to the actual emission

1 inventory data. So as this comes up, we'll take a look
2 at it.

3 So you'll be able to see the criteria air
4 pollutants table, so you'll be able to see, for this
5 facility, how many tons was emitted for PMs, the CO,
6 NOx, SO2, VOC. There's also a second table for
7 additional pollutants and you'll be able to see the
8 emission reported for those amounts as well.

9 Yes.

10 BOARD MEMBER HULME: Could I ask, why is there
11 a fugitive amount column, all pollutants? I know there
12 could be fugitive particulate and VOCs, but why would
13 you want a fugitive column for --

14 MR. DEPPE: So in some of the cases, the way
15 our things are permitted, we don't have a
16 hundred-percent capture. So you may have an emission
17 unit that goes to a control device, but that control
18 device doesn't have a hundred-percent capture. In those
19 situations you'll have a small amount of fugitive, as
20 well as the emissions coming out of the stack. So
21 that's why we have both to capture that.

22 Any other questions?

23 BOARD MEMBER BROWN: If you hit the locate
24 button, is that going to take you to those sources?

25 MR. DEPPE: Great question. It actually does.

1 If I click the locate button, it will tell me the
2 emission units that -- hold on. Another thing is, as
3 you use it, you'll have to turn off your pop-up blocker.
4 Let me do that quick.

5 If I click the locate button, a pop-up will
6 appear and it will show me where -- what emission units
7 emitted. In this case we're looking at PM, primary, and
8 then the particular processes associated with that. And
9 if there is more than one, it will show more than one.

10 BOARD MEMBER BROWN: Perfect.

11 MR. DEPPE: Next we'll go ahead and look at the
12 permits. So when we get to permits, again, this is --
13 the two permit tables we have are NSR permit table, as
14 well as our Title V permit table. So, depending on what
15 you're looking for, you'll be able to see additional
16 information here.

17 So if you -- when we do bring this live, what
18 you'll see is the final permit document. You'll be able
19 to click that, as well as any of our public notice
20 documents. You'll see the start/end date for our public
21 notice. You'll also be able to see a description, as
22 well as the final issuance date for that particular
23 permit. So a lot of information in here regarding the
24 permits.

25 There is also a work flow diagram link. This

1 actually will show where in the process DEQ is in
2 issuing that permit. I can click that. And it will
3 bring up a work flow. And, again, we don't have all of
4 our data and stuff in here, but you'll be able to see
5 different boxes highlighted through the work flow and be
6 able to see where that permit is and where we are in
7 that process and how close it is to being issued final.

8 BOARD MEMBER BROWN: That's obviously read
9 only --

10 MR. DEPPE: Yes.

11 BOARD MEMBER BROWN: -- but downloadable,
12 correct?

13 MR. DEPPE: The permit or the --

14 BOARD MEMBER BROWN: Yeah, like the permit or
15 any kind of information.

16 MR. DEPPE: Absolutely, yes. When you click on
17 it, you'll be able to download that information, yes.
18 And that goes for our public notice analysis documents
19 or anything like that.

20 BOARD MEMBER BROWN: Okay. Thank you.

21 MR. DEPPE: The work flow diagram, though, is
22 not. I guess you could take a screenshot if you needed
23 it.

24 Next we'll go ahead and go to the stack tests.
25 So the stack test, again, this is -- the reviewed stack

1 tests are located here. I'll just click the stack test
2 I.D. So this will give you information on the stack
3 test.

4 And great question about, can we download it.
5 There's a couple different ways to do that. If you
6 click the attachment type, you can actually download the
7 actual report that we would get from the stack test
8 company. Otherwise, to get the information that's
9 actually located here, you'll click the download print
10 button. The download print button will give you the
11 option to download it either as a PDF or a zipped file,
12 which will also include any attachments.

13 Next we'll go to the compliance report section.

14 Sorry for the delay. We're connecting, but I
15 have to portal in from here into our DEQ account to be
16 able to show you the staging environment. So here is
17 our -- the compliance report list. Again, this will
18 show you reviewed compliance reports. So I'll go ahead
19 and click a compliance report. So, again, in this case,
20 you'll see the description of the compliance report and
21 then the attached compliance report. So, again, there's
22 that download print. Otherwise, you can also click here
23 just to view the attachment and download the attachment.

24 Then, finally, we'll go to the ambient
25 monitoring. This will tell you information about any

1 monitors that are associated with this particular
2 facility. And so you can look at report, monitor,
3 ambient monitoring reports, as well as dig deeper and
4 look at the particular sites associated with this
5 facility.

6 For right now, there's a couple other options I
7 want to show. If we go back to the current facility
8 inventory tab, that's going to take us back to our
9 facility detail page. And then at this location, this
10 is where we get our third-level menu option. So a
11 couple other things that we can see on the third level
12 is we have our CEMs/COMs limits, so you'll be able to
13 see any limits that are associated with any of the
14 monitoring that's going on, especially for the CEMs/COMs
15 or the CMS monitoring. The next item there also is the
16 actual monitor, so you'll be able to click on the
17 monitor I.D. and dig deeper into that particular
18 information.

19 We've already looked at compliance report, so
20 I'll skip that. Some of the options on the third-level
21 menu duplicate what's on the second-level menu.

22 But I'll go ahead and click next on the control
23 equipment. This will give you a table of the control
24 equipment that is located at this facility. Again, if
25 you want further information, you can click on the AQD

1 control equipment I.D. and that will bring up more
2 information about that particular piece of control
3 equipment.

4 BOARD MEMBER BROWN: Is there protection in
5 place for confidential business information?

6 MR. DEPPE: There is. So anything that a
7 company has identified as trade secret -- and we have a
8 specific attachment type for trade-secret information --
9 they're asked to give a public version and a
10 trade-secret version. Any trade-secret information is
11 not shown on the public web site.

12 Next I'll go ahead and click on the emission
13 unit tab. The emission unit tab, this is where it will
14 give you a table of all the emission units at this
15 facility. I want to point out a couple things. Any
16 tables that we have in the system, you'll note that
17 there's a printable view and an export to Excel view.
18 The printable view gives a little bit easier printable
19 option of the table. You can also export any table that
20 we have to Excel and do different filtering and things
21 like that. Additionally, if you click on any table
22 header, you can also sort that particular table, either
23 numerically or alphabetically, so if you need to do
24 anything like that.

25 The next item -- again we'll skip emission

1 inventories because that's the same as we already looked
2 at. But we'll go to facility inventory history. What
3 the facility inventory history does is each time there's
4 something that has been changed in the facility profile
5 and that's submitted to us, there is a new version
6 created. So if you -- to look back at historical
7 versions or how that facility has potentially changed,
8 you'll be able to do this and click the different
9 version I.D. to see how things looked a couple years
10 ago, or things like that, or how things looked when a
11 particular emission inventory was submitted.

12 The next item we have is owners. This will
13 give you the facility ownership change history. So, for
14 example, in this case you can see that Wyoming AQD owned
15 this test facility from 2014 to 2017 and then we had a
16 change in ownership to the Wyoming Air Quality Division.
17 So you'll be able to see that entire facility change
18 history. Note, if it doesn't have an end date, that
19 indicates that's the current owner.

20 Again, we've already covered permits and stack
21 tests. So the last item that I want to look at is the
22 release points. So, again, this will be a table that
23 shows the particular release points located at this
24 facility. Again, the same type of sorting. You can
25 click on the hyperlink AQD I.D. to get additional

1 information.

2 Then the final thing that we'll just take a
3 look at, I want to show, is if you do click -- there is
4 the expand facility tree. So if you click this button,
5 you can kind of see the different facility tree
6 components. The three dots in the circle indicates the
7 emission unit; the one dot indicates the process; the
8 hammer indicates the control device; and then the little
9 stack indicates the release point. So any of these are
10 clickable.

11 So if you click on, for example, this dehy
12 unit, it's going to bring me to specific information on
13 that particular dehy unit with information that helps us
14 do kind of our permitting and compliance jobs.

15 With that, are there any questions related to
16 the IMPACT public-facing web site?

17 BOARD MEMBER BROWN: Any questions from the
18 Board?

19 Any questions from the public?

20 Please stand and identify yourself.

21 MS. ANDERSON: Sure. Shannon Anderson with
22 Powder River Basin Resource Council.

23 I assume there will be trainings, webinars,
24 information sheets. This is a pretty complicated system
25 for the public to navigate.

1 MR. DEPPE: Yes. We've started to create some
2 of our outreach. Make sure you pick up a brochure. But
3 we will also be having additional trainings for the
4 public and resources that they can call to ask
5 questions.

6 MS. VEHR: Adam, you might want to mention the
7 testing that you did in developing this with the -- I'll
8 say the school that you used.

9 MR. DEPPE: Yes. So, as part of this, we
10 actually went to a school for the blind to help make
11 sure that the web site was being able to be accessed by
12 all individuals that we have throughout the state and
13 country. So we've tested this web site to make sure
14 that it's usable for all people.

15 BOARD MEMBER BROWN: I didn't see a help
16 button. Is there a help button on there?

17 MR. DEPPE: There is not a help button.

18 BOARD MEMBER BROWN: Any other questions?

19 MR. JOHNSTON: Greg Johnston with Chesapeake
20 Energy.

21 Quick question on the compliance report. Would
22 there be any indications there if you had a finding of
23 noncompliance or, say, a deviation on the condition and
24 any subsequent finding of violation or notice of
25 violation or a settlement agreement? Any of those kinds

1 of links that you'd have available in the report?

2 MR. DEPPE: So the compliance report will
3 have -- and I'll have to double-check on this. Let me
4 go back to the compliance reports quick. But we don't
5 have any enforcement information located on the web
6 site. The compliance reports -- let me just -- so all
7 the compliance reports will say is your category
8 description and then your attachments. But there isn't
9 any specific enforcement-related information going to be
10 located on the public web site.

11 MS. VEHR: I'll expand on that a little bit.
12 The enforcement information is already on our web site.
13 That's accessible to the public under notices of
14 violation. If you go to the DEQ Air Quality Division
15 web site, there's lots of publicly available
16 information, one of them being notices of violation.
17 And then, when we resolve that, the settlement agreement
18 or consent decree or letter is already posted there.

19 So this public-facing web site is in addition
20 to what is already out there. You'll hear from speakers
21 later on today that talk about the types of information
22 requests that the Division commonly receives. We tried
23 to capture those facility-based information requests in
24 this public-facing web site. Permits, permit
25 application, compliance reports, and the like. So

1 that's how this was designed.

2 When Adam was talking about our IMPACT system,
3 the legislature gave the Division funding a number of
4 years ago to develop electronic systems to move from a
5 paper-based system to electronic. And to go paperless,
6 we still need additional funding. This is part of that
7 effort. So it started with having a facility-based
8 information system, where all the data comes in on a
9 facility. So the people that can see the most
10 information is the Division; the second most are
11 companies that are submitting the information. And then
12 we did a third level, which is this public-facing web
13 site, so that we didn't have things that are covered
14 under confidential business or items that would need
15 additional eyes to look before we can release it.

16 So that's how this public-facing web site was
17 designed, is so that most people can self-serve, once
18 we've given the training and have those tools that we're
19 currently developing. They can go out, 2:00 a.m.,
20 3:00 a.m., go in and get this information, download a
21 copy of a permit.

22 And it will dovetail. In a minute you'll hear
23 from some other speakers on our public records request
24 system that we've got in place. So it's not
25 all-encompassing, but it covers the vast majority of the

1 information requests that we receive specific to
2 facilities, with some other items being located
3 elsewhere on our web site.

4 BOARD MEMBER BROWN: Another question?

5 MS. BOCCHINO: Lori Bocchino with Trinity
6 Consultants.

7 Will inspection reports be visible to the
8 public?

9 MR. DEPPE: So, at this point, inspection
10 reports are not located on the public web site. That is
11 due to the fact that we've been trying to -- doing an
12 internal kind of changing of -- I guess updating our
13 inspection reports. So we're just kind of finishing
14 development of our new inspection report feature. And
15 so, once that gets put in internally, then there's a
16 possibility, if we have some additional funds and things
17 like that, that we can update the public-facing web site
18 to include inspection reports.

19 MS. VEHR: And I'll just expand on that. Right
20 now, a lot of the stuff that has been done by the
21 Division has been paper-based. So our inspection
22 reports have essentially been a Word document that then
23 goes through a manual signature process and a drafting
24 revision process.

25 The system that Adam is talking about will go

1 through this electronically. And so, at that point,
2 when we can get it to be released and have it be
3 public-facing, it will be a much easier way to get it
4 out there. So that's something, I think, in June we'll
5 have at least the inspection report module developed,
6 and then we can look at how we can get other things
7 available. So we chose not to have a paper system and
8 this new system right now.

9 BOARD MEMBER BROWN: Will the inspectors have
10 iPads or something?

11 MS. VEHR: Interestingly enough, a lot of
12 facilities where inspectors go have various restrictions
13 on electronics, and so we did not go that route. There
14 are some situations where the inspectors may have that
15 capability. But it's not been designed so they can
16 bring that in and do it there.

17 BOARD MEMBER BROWN: Thank you.

18 Go ahead.

19 BOARD MEMBER HULME: I wanted to follow up on
20 Shannon's point about notices of violation. And, Nancy,
21 you mentioned there's a separate link on your web site
22 for that. Is there any value, if people think this is
23 an all-encompassing portal to view information, of
24 adding a tab for notices of violation, just having it
25 link to what you already have so it's just another,

1 easier way for people to find that?

2 MS. VEHR: So the system that you're going to
3 hear about, again, from later speakers is, when someone
4 has a records request, they will go in through -- and I
5 don't want to steal the thunder away -- but they will go
6 in through a public records request portal. And in
7 that, as they're searching, it has a feature that allows
8 you -- I'm looking for a permit, and it will take you --

9 BOARD MEMBER HULME: Oh.

10 MS. VEHR: If you want a permit, can you go
11 here, and it will take you there. I'm looking for a
12 notice of violation. And they're developing those tools
13 right now. The cost to do that on our IMPACT system,
14 because IMPACT was designed for facilities, and this
15 data information, right now we don't have the funds to
16 do it. Not that it's not a good suggestion to do. Help
17 buttons are good, all those features. We're just going
18 to have to, because of the funding, come up with -- I'll
19 call it a patchwork.

20 But they are working on the frequently asked
21 questions and dovetailing all of this --

22 BOARD MEMBER BROWN: You can capture it there
23 anyway.

24 MS. VEHR: -- so that we can make it as public
25 friendly as possible.

1 BOARD MEMBER HULME: Thank you.

2 BOARD MEMBER HANSON: Looking at it from
3 Laramie's perspective right now, let's say we have the
4 feeling we are having some impact from someplace in the
5 region because we can smell the air. There's something
6 going on. So that somebody in the city, our inspectors,
7 could go, or whoever is in charge of that, could go to
8 the site and look where the stations are and which one
9 could conceivably, since this is a public access system,
10 could conceivably have some impact on our air that
11 particular day or something like that.

12 MS. VEHR: So information can be used in a
13 whole variety of ways. If someone -- this is Nan Vehr,
14 Air Quality Administrator, talking -- if someone feels
15 they're being impacted by emissions, my first suggestion
16 is going to be, call the air quality district engineer.
17 They know the sources, they -- that's what they're
18 designed to do. We get lots of information requests
19 that way. Hey, I'm smelling something; hey, I'm seeing
20 something.

21 Someone could certainly try and do their own
22 work. But there's a skill set involved that some people
23 may have and other people may not. This is certainly
24 designed -- if they wanted to get information about the
25 location of different sources, EPA has some tools out

1 there that have the location of -- there's a lot of
2 tools out there.

3 What this purpose is for our public-facing web
4 site is to get information -- make it publicly available
5 to people -- of commonly requested information about
6 facilities. It's not going to be all-inclusive. It's
7 most common. So, to answer your question, yeah, someone
8 could certainly do that, but it would probably take a
9 skill set I know I don't have. I would say call up your
10 district engineer --

11 BOARD MEMBER HANSON: That seemed, to me, the
12 case. I understood some of the basics, but I thought
13 you do need somebody -- now, you talked about the
14 district engineer. Who is our district engineer? Is
15 that somebody in Cheyenne or --

16 MS. VEHR: So we have -- there's five districts
17 throughout the state, so there's only -- I'll say
18 there's four counties with district engineers, but they
19 cover more than one county. So district engineer for
20 Albany County is in Cheyenne, and his name is Brian
21 Bohlmann. And there's currently two, but there will be
22 three, staff for that district. So that's -- we have
23 that on our web site as well. Calling the Air Quality,
24 we can also get you the information that way, if someone
25 doesn't know who their district engineer is.

1 BOARD MEMBER HANSON: I'm just asking the
2 practical question. This is for any kind of community,
3 especially also in the Powder Basin and so on, how they
4 go about monitoring this, not themselves, but calling
5 the engineer.

6 MS. VEHR: Yeah, call the engineer. We've got
7 a great web site that is a starting point to find, who
8 do I call, what's a phone number to call. We've got a
9 lot of information out there and we can get people
10 navigated to the right spots.

11 BOARD MEMBER HANSON: Thank you for clarifying
12 that.

13 MS. FLANDERKA: Mary Flanderka with the Wyoming
14 Outdoor Council.

15 I'm assuming -- I know you beta-tested it with
16 some folks with disabilities. Did you beta-test it with
17 people from the public? And as people come up with
18 suggestions, how will you be able to take those thoughts
19 in?

20 MR. DEPPE: So it was not necessarily tested,
21 beta-tested, with anybody from the public. It's still
22 been in our staging environment. How we came about this
23 was, as Nancy said, we kind of picked our most requested
24 public information requests and then, based upon that
25 information, that's the information that we wanted to

1 provide as a self-serving public web site. But, yeah,
2 so we did take it to a school for the blind and used
3 their software to make sure that it was usable for them.

4 But as for suggestions or potential
5 enhancements, we're definitely open. If you see
6 something, feel free to give us -- send us an email.
7 However, funding is really short, so we don't have a lot
8 of funding to work with.

9 Nancy, do you want to add something?

10 MS. VEHR: Yeah. I'll add on that, again,
11 without stealing the thunder from some speakers that are
12 coming, there is a public information request system.
13 The NextRequest system is what it's called. That's how
14 the public enters. That's been tested quite a bit
15 nationally.

16 This system is for facility-based information.
17 And so one of the constraints that we have in a
18 facility-based information is how we have the facilities
19 submit the information to us. So that's the platform
20 that we have. We can certainly take suggestions. It's
21 just a limited ability to change the information
22 platform that we've got.

23 MS. FLANDERKA: I think I just was worried
24 about navigability.

25 MS. VEHR: Yeah, and that's the part where we

1 have the frequently asked questions and the tools that
2 we're developing. That will be really helpful. Because
3 I've told staff, test it on me, because I don't have the
4 technical -- so having different people is great because
5 we can develop more robust frequently asked questions.

6 MR. DEPPE: And we also started -- right now we
7 have about a 60-slide PowerPoint that, when the
8 public-facing web site goes online, that we'll make
9 available. It's a step-by-step. It shows you where to
10 click and things like that to help with navigation.

11 MS. FLANDERKA: Just a suggestion. For NREX,
12 when they built NREX, which is the governor's system,
13 they did have people come and try it to help streamline
14 some of those questions.

15 BOARD MEMBER HANSON: One more question. I
16 took Nancy's advice and I visited the monitoring
17 station --

18 MS. VEHR: I thought you were going to say
19 money-making station.

20 BOARD MEMBER HANSON: -- monitoring station
21 here in Laramie when it was here. My question is only,
22 are they included in this system to see how they are
23 doing at a specific time?

24 MR. DEPPE: So, if you're looking for specific
25 information, current air quality information, you should

1 still go to WyVisNet.com. However, we do include -- if
2 you go to the AQD monitors, you will be able to see
3 information on the different monitors, but it's not
4 linked to see any of the real-time information.

5 MS. VEHR: So it will give you background
6 information about the particular monitoring site. The
7 values that it's reading will be on WyVisNet. But this
8 will give other information about reports and stuff
9 associated with that.

10 BOARD MEMBER HANSON: Again, the people in
11 Cheyenne know how to access that and --

12 MS. VEHR: Yeah. And we will have up there all
13 the different contacts for -- if there's problems, Adam
14 and his group are -- they're the ones that are most
15 familiar with the IMPACT system. So we'll make sure we
16 have the right people.

17 BOARD MEMBER HANSON: Thank you.

18 MR. DEPPE: Just to answer, if you go to one
19 of -- the monitoring and then you go to the site I.D.,
20 we actually do have WyVisNet linked to this. So if you
21 needed to see specific information about what we're
22 monitoring at this site, you can see that and then be
23 able to click the link and that will take you to the
24 actual station and see the real-time values.

25 BOARD MEMBER HANSON: Good.

1 MR. DEPPE: Sorry.

2 BOARD MEMBER BROWN: What I was going to say,
3 it's more of a comment than a question, because I deal
4 with comment from the portal side. And there is a
5 learning curve. But once you get it, it's kind of
6 intuitive, but you've got to play with it. But it's
7 very powerful. And I think this will be handy for
8 everybody that has any question about any kind of
9 emission unit or source, once you learn how to navigate.

10 So I think that would be my suggestion, is
11 there's got to be some sort of public education. And I
12 think it would alleviate a lot of public information
13 requests and save a lot of time, once this is up and
14 running and it's debugged.

15 MS. VEHR: If I could add on to that, Adam's
16 team is working on developing not only frequently asked
17 questions, but also video and different ways to reach.
18 So once we get those developed, it sounds like having
19 some of that testing and run it past real, live people
20 will be important.

21 BOARD MEMBER BROWN: Like tutorials or
22 something. Like you go on YouTube to learn how to do
23 something at your house.

24 MS. ANDERSON: An acronym list would be
25 incredibly helpful.

1 MS. VEHR: We can provide that as well. Yes.

2 BOARD MEMBER BROWN: You've got the learning
3 curve on both sides, actually, because you want to make
4 sure you give the people what they can use.

5 MS. VEHR: But we're very excited. We think it
6 is a powerful system and we think that this will help a
7 lot of the -- meet the information requests that people
8 have that right now we're having to process.

9 I don't think anything else, Adam.

10 MR. DEPPE: All right.

11 BOARD MEMBER BROWN: Any other questions for
12 Adam or anyone regarding this?

13 BOARD MEMBER HANSON: My question would still
14 be, where would the most requests come from? From the
15 public, from industry, or from units like a city? Where
16 do you expect this system being used?

17 MS. VEHR: For facility information, it's all
18 of those. We get information requests from the general
19 public. I would like a copy of the permit, and they
20 give a specific facility. Or from a company. I would
21 like a copy of a permit for whatever facility. There
22 are companies that buy and sell their assets and they
23 want to get copies. I want a copy of a hundred permits.
24 I want all the permits for a specific company. I want
25 all the permits in this county.

1 And we will have the tutorials that show how
2 you can make those different queries, because it is very
3 intuitive and it drops it into the list and you can
4 sort. I want all the Title V's, I want all the minor, I
5 want all the stuff on trona, I want all the production
6 sites. So you can organize it in different ways. And
7 we do get those requests from the public; we get them
8 from companies and consultants. We have a consultant
9 here. So we get a lot of different requests.

10 BOARD MEMBER HANSON: So you mentioned, for
11 example, buying -- what do you call it? -- pollution --

12 MS. VEHR: So if a company wants to buy another
13 company's facilities.

14 BOARD MEMBER HANSON: Their emission -- or they
15 have lower emission and you want to buy that -- what am
16 I saying?

17 BOARD MEMBER BROWN: I think she's saying, if a
18 company wanted to buy another company, another facility,
19 and they wanted to look into the history of that
20 facility before they bought it.

21 BOARD MEMBER HANSON: But, remember, there is
22 this exchange of -- you don't do that.

23 BOARD MEMBER BROWN: I wouldn't think through
24 this.

25 MS. VEHR: No, we don't do any trading.

1 BOARD MEMBER HANSON: That's what I'm talking
2 about, yeah.

3 MS. VEHR: This is simply information. It's
4 public information because companies have submitted it
5 to us about their facility. There are some types of
6 information that companies submit to us that is
7 protected information.

8 Tim mentioned trade secret. They may have a
9 process out there for how they process that gives them a
10 competitive business advantage over another company, and
11 so it's proprietary. When they submit something to us
12 in that category, they have to submit something to us in
13 a publicly releasable version and a trade secret. We're
14 not going to be releasing this trade secret version
15 here. We're going to be releasing the public version.

16 There are other types of information that, when
17 people request, we have to do -- oh, this is -- they may
18 say, guess what, state, you're wrong, that isn't a trade
19 secret. Well, we need to take a look at it and see if
20 we can justify it. So that's why it's not publicly
21 available self-serve, because it has to go through other
22 levels of review process.

23 BOARD MEMBER HANSON: My question was this
24 emission trade kind of business. We don't do that
25 through this system.

1 MS. VEHR: No. This isn't an emission trading
2 accounting. The emissions inventories that are
3 mentioned here are not those kind of trading emissions.

4 BOARD MEMBER HANSON: Okay. Thank you.

5 BOARD MEMBER BROWN: Any other questions or
6 comments?

7 Thank you, Adam.

8 MS. VEHR: I think we've got another speaker.
9 I don't know if you want us to keep going or need a
10 break or anything like that.

11 BOARD MEMBER BROWN: Anybody need to take
12 break? If not, we can keep going and then take a break
13 after the next presentation.

14 MS. VEHR: Thank you. So this next presenter
15 is also from the Air Quality Division, and her name is
16 Natalie Kuhlmann. And Natalie, we are so pleased to
17 have her working here. She started in December, came to
18 us from state archives, and this is a brand-new position
19 that the Air Quality Division had for records manager.
20 So a lot of the challenges that we've had in terms of,
21 again, a paper-based system, moving to an electronic
22 system, and managing public records requests, Natalie
23 has been helping us get back into shape and timely
24 address those. And so she's going to present about
25 NextRequest.

1 MS. KUHLMANN: Thank you, Nancy.

2 As she addressed, we are going to a new system,
3 DQI, to manage information requests that come in, and
4 it's called NextRequest. Currently, when you go to the
5 DEQ web site and you make a request, you fill out a form
6 through the site and submit it that way to our public
7 information officer. Now, with NextRequest, you'll be
8 taken to this portal, the DEQ open public records
9 portal, and you'll have two options. There's one
10 called -- I don't know if that's going to show up. I'll
11 just go over. There's one for search and one for make a
12 request. I will talk about search towards the end.

13 So when you want to make a request, you'll hit
14 the make request button. And then you'll be brought to
15 a form which is going to ask for similar information as
16 what you fill out currently on the DEQ web site. One of
17 the features that had started to be addressed by Nancy,
18 they're called alerts. When you start typing
19 requests -- for example, I started typing, I am looking
20 for an AQD NOV -- you'll get a yellow message that pops
21 up that says, you may be looking for an air quality
22 issued notice of violation, please visit this site. It
23 will take you then to the DEQ site that lists all
24 notices of violation.

25 Again, with anything with monitoring, it will

1 take you to the WyVisNet web site. As IMPACT, the
2 public interface, becomes available, if someone starts
3 searching for key terms like "permits" or "applications"
4 or "compliance reports," they will be directed to visit
5 the public portal for IMPACT.

6 If they are not able to self-serve and find
7 that information, then they can continue making the
8 request. Additionally, they'll put their contact
9 information and create an account. And by creating an
10 account -- there is no charge for that -- you'll have
11 the ability to log in and check in on the status of the
12 request, as well as receive notifications throughout the
13 process.

14 So when the requester makes the submission,
15 internally, on our end, I'll get notification that a new
16 request has come in. I'll be able to click on that
17 request and be taken to the request tracking page. From
18 that page, there are a lot of different options for
19 actions. It will summarize the request and the contact
20 information from -- for the requester. I am
21 additionally able to upload any responsive documents
22 that may pertain to the request. I can assign
23 additional DEQ Air Quality staff members to help assist
24 with it as well.

25 And then any actions that are taken it will

1 generate into this time line on the right portion of the
2 screen to show all of those actions.

3 There is an additional menu above here that has
4 a couple different icons, and through that we can
5 communicate with the requester, communicate internally
6 among different staff that are working on the requests.
7 We can upload the attachments that way or through this
8 documents area. And we would be able to pause the
9 request, in case we need additional information from the
10 requester, as well as close the request.

11 When we work towards closing the requests, we
12 can do -- each staff member has the opportunity to then
13 put in and track their time, which is great for us to
14 have one central location where any staff member that is
15 working on a request can keep all that time related to
16 public information requests. Additionally, the system
17 is really great that it's all in one system to make sure
18 that we capture all these requests and nothing falls
19 through the cracks. When we close the requests, there
20 is also the option that we can publish them.

21 And I mentioned about the feature on the portal
22 that said search. And so when we publish those
23 requests, the public has the option to do a search of
24 any of those published requests that have come in to
25 find any information they may be seeking or to prevent

1 any duplication.

2 FEMALE SPEAKER: Can you repeat that?

3 MS. KUHLMANN: Sure. There is a search feature
4 on the main portal. There is this option here, and it
5 says, search eight requests and counting. When we close
6 out a request at the end, we have the ability to publish
7 that request. So when the public goes to search, they
8 can then see all the different requests that have come
9 in, and they have free access to that.

10 Are there any additional questions? I'll do my
11 best. I may have to defer to Keith. He's our public
12 information officer.

13 BOARD MEMBER BROWN: So what differences -- is
14 this just going to complement the IMPACT forward-facing
15 or work side by side?

16 MS. KUHLMANN: It will be a huge help. With
17 the public interface for IMPACT, when you go back to
18 that make-a-request page, where you put in the
19 description, that will direct people who may not
20 necessarily go to the IMPACT portal first. So if they
21 start typing they're wanting permits, they'll be
22 directed that they can go to that site.

23 BOARD MEMBER BROWN: Okay. That's what I was
24 wondering. This is DEQ-wide, though, so --

25 MS. KUHLMANN: This is for all divisions.

1 MS. VEHR: So sometimes, Tim, what will happen
2 is someone wants all of the permits associated with a
3 facility. Air Quality only has air quality; Water has
4 water. So they could come in here and, for the air
5 quality piece, it could say, go to this IMPACT site.
6 For water, it may have some other message.

7 And then sometimes people want information that
8 goes beyond what we'll have about a particular facility.
9 And so, in that case, the request would come through and
10 eventually get to Natalie, appropriate staff, to do
11 those other parts.

12 BOARD MEMBER BROWN: That's when human
13 intervention would take over.

14 MS. VEHR: Yes.

15 MS. KUHLMANN: Yes. And with the alerts we can
16 choose a lot of different ways to phrase things to
17 capture those key terms as people enter it. In this
18 instance, I did AQD NOV. But, for the alerts, I also
19 wrote out, Air Quality Division notices of violation. I
20 tried to use as many different terms that would refer to
21 air quality and NOVs to get it captured and to direct
22 the requester to that site.

23 Hopefully, this can help them self-serve as
24 much as possible. Obviously, if there are no records to
25 be found, they can complete the records request process

1 so that we can go through that channel.

2 BOARD MEMBER HULME: I'm sorry if I missed it.
3 Did you say when this would be available or is it up and
4 running now?

5 MS. KUHLMANN: It's not up and running now.
6 We're hoping very soon.

7 Keith, do you have any information on that?

8 MR. GUILLE: Sure. This is Keith, K-e-i-t-h,
9 G-u-i-l-l-e. I'm a public information officer.

10 So what we're hoping -- I've done most of the
11 training with all the internal staff. And, hopefully,
12 here next month is my hope that we can get this live.
13 There's a couple little guidance and policy changes we
14 needed to update because we have a new system. I just
15 need the administrators to review that, and then we'll
16 move forward.

17 BOARD MEMBER HULME: Thank you.

18 BOARD MEMBER HANSON: Again, I'm the slow
19 learner in this group. What would be helpful to me
20 is -- for example, we have a cement plant south of town
21 here and I want to know how they're doing. Can you run
22 this through for me and see what I do to use the system,
23 make a request here and see how it works?

24 MS. VEHR: So this is a PowerPoint. But you
25 wanted to know, if that's the information you wanted to

1 get, how would you do it?

2 BOARD MEMBER HANSON: Yeah. How could I do it?

3 MS. VEHR: So Klaus wants to submit a public
4 record request.

5 BOARD MEMBER HANSON: I want to know a request
6 about the cement plant south of town.

7 MS. VEHR: Natalie, if Klaus said, hey, I want
8 to know about the cement plant south of town, he would
9 come into this NextRequest. . .

10 MS. KUHLMANN: Yes. Once you got to the
11 portal, the home page, and you clicked on Make a
12 Request, this would be the next screen you would have.
13 And this is the description box where you would enter
14 that information in.

15 BOARD MEMBER HANSON: Go ahead and do it.

16 MS. KUHLMANN: This is a PowerPoint. I can't
17 bring up --

18 BOARD MEMBER HANSON: Oh, you can't do it.

19 MS. KUHLMANN: It's still in staging. It's
20 still a test portal.

21 BOARD MEMBER HANSON: Okay. All right. So you
22 would put it in there.

23 MS. KUHLMANN: Yes, you would put all the
24 information in there. If we had information available,
25 you might get an alert at the bottom of that text box

1 that directed you to a web site. You could then go and
2 get additional information. Otherwise, you fill out
3 your information and you would submit the
4 make-a-request.

5 BOARD MEMBER HANSON: All right.

6 BOARD MEMBER BROWN: Is this going to be on the
7 DEQ home page web site? Just go to Wyoming DEQ and then
8 there's going to be a link?

9 MS. VEHR: Yes. It's going to be very clear
10 when people -- just like now, when people need to make
11 public information requests, there's a place they come
12 into the web site. And there will probably also be
13 links if they come in different avenues.

14 MS. KUHLMANN: Currently on the DEQ web site,
15 there's a section under the administration tab that says
16 records requests. So when you go to that, you'll be
17 directed to the NextRequest portal, instead of the
18 online form.

19 MR. GUILLE: And, additionally, right now on
20 the main web site, off to the bottom right, there's a
21 tab for records requests as well.

22 MS. VEHR: And this -- again, when Natalie
23 gets, hey, I want information about the cement plant,
24 and maybe someone doesn't want to go do these other
25 self-serve, and the request comes in through to Natalie,

1 she'll say, well, I need to clarify this request to find
2 out what it is exactly you want. She'll clarify that
3 request.

4 But if it means you have to go to that web site
5 to pull up the facility information yourself, you will
6 be going to that facility to pull it up, because the
7 bandwidth that we have for addressing public information
8 requests is not a bandwidth where -- we can help people
9 along, but doing the actual work, we're now making it
10 available to them, and so they will do the work to
11 locate the information. We'll get them there, but
12 they'll have to hit it and read it. They can still come
13 into our office and take a look at information that
14 we've got hard copy. But if it's electronic that is
15 facility-based that we've provided, they'll be doing
16 their self-serve.

17 BOARD MEMBER HANSON: It works -- for example,
18 the Water Division, because we have monitoring, for
19 example, on an aquifer or something like that, Water
20 Division works the same way.

21 MS. VEHR: Water Division, the request would
22 come in and go to the Water Division, and however they
23 handle it. We're just talking Air Quality.

24 BOARD MEMBER HANSON: Yeah, yeah, I understand.

25 BOARD MEMBER BROWN: One other question. I

1 just thought about it. Not everything is digitized or
2 scanned, right? So if we're looking for old records
3 that are 15 years old, those are still archived paper
4 copies?

5 MS. KUHLMANN: Yes. And they would have to be
6 requested.

7 MS. VEHR: Yeah. So the requests, that's how
8 these systems -- we're trying to address paper records
9 and electronic records. This system here, if we had no
10 electronic records and it was paper, then Natalie would
11 look and see if we have any information in archives to
12 fulfill that request. Then you'd have to come in and
13 take a look at the hard copy.

14 MS. KUHLMANN: Yeah, we're using our internal
15 side for the tracking of the requests. I could send
16 communication to the requester to notify them that
17 nothing is available electronically, the files have
18 been -- there's hard-copy files, they're at archives,
19 and I could let you know when they come in for your
20 review.

21 BOARD MEMBER BROWN: How far back do we have
22 electronic copies of stuff, about?

23 MS. VEHR: The farther back you go, the less we
24 have.

25 BOARD MEMBER BROWN: That's what I was

1 wondering.

2 MS. VEHR: And it depends on what media you're
3 looking at because I'm sure there's some square things
4 and maybe some round things, maybe they've deteriorated
5 in an archive box someplace.

6 So there's a whole -- we are -- just to let you
7 know, one of the projects that Natalie is working on is,
8 as we have these platforms like IMPACT, we want to have
9 as much information in those -- in that platform on a
10 facility as possible. We've got some facilities that
11 are -- that predate Air Quality and some that are
12 brand-new. As we get brand-new facilities, we can keep
13 up with that information. We are still trying to manage
14 how we're going to get older information.

15 BOARD MEMBER BROWN: Yeah, because the IMPACT
16 we use has only been out for a couple years. That's how
17 we upload the stuff. So I didn't know if there would
18 be --

19 MS. VEHR: Yeah. So there's going to be --
20 most likely, for most facilities, there will be a
21 combination. It's not going to be all electronic or all
22 paper. It's probably a combination.

23 BOARD MEMBER HEYNEMAN: IMPACT and NextRequest
24 are department-wide?

25 MS. VEHR: The NextRequest is department-wide.

1 IMPACT is the Air Quality system. Water Quality has its
2 own facility-based system, Land Quality has its -- so we
3 each have different systems.

4 MS. KUHLMANN: Any other questions? Okay.
5 Thank you.

6 BOARD MEMBER BROWN: Thank you.

7 Do we want to take a quick ten-minute break
8 before we go to the next order of business? We'll meet
9 back at 1:25.

10 (Recess from 1:07 p.m. to 1:22 p.m.)

11 BOARD MEMBER BROWN: Let's reconvene.

12 Got some housekeeping things we need to take
13 care of first. Can everybody here that's going to make
14 a statement, or not, please sign in, because that will
15 be in the record. And then that way we can associate
16 the name with the comments.

17 Anything else that we need to discuss? That
18 was the primary thing. I needed to make sure everybody
19 signed in.

20 BOARD MEMBER HEYNEMAN: Mr. Chairman, I wanted
21 to make sure we have Keith online. He was going to call
22 back, so. . .

23 BOARD MEMBER BROWN: Keith, are you online?

24 MR. GUILLE: I sure am.

25 BOARD MEMBER BROWN: Doug, are you back? No.

1 Let's proceed.

2 MR. FRANKEN: Good morning, Mr. Chairman and
3 Board members. My name is Joe Franken. I'm with the
4 Management Services Division with the Department of
5 Environmental Quality. We have Keith Guille online and
6 Allison is here from the AG's office. We're all going
7 to kind of tag-team this discussion.

8 First I want to thank you for giving us an
9 opportunity to discuss the incorporation by reference of
10 the Department of A&I's uniform rule. As part of
11 Governor Mead's policy on streamlining government and
12 providing consistency across state agencies, the Uniform
13 Procedures, Fees, Costs, and Charges for Inspecting,
14 Copying, and Producing Public Records uniform rule was
15 adopted. And I think you guys have in your handout
16 some -- it was an editorial that Governor Mead had
17 written for the Wyoming Lawyer which highlights what his
18 initiative was.

19 So this statutory mandated rule allows for a
20 standardized approach for all state agencies to charge a
21 fee for the production and construction of electronic
22 public records. And, additionally, it establishes copy
23 and transmittal fees.

24 So the reason we're back today, back in
25 December at the meeting, the Air Quality Advisory Board

1 had a quorum, but, however, per statute, all decisions
2 must be approved by a majority of the total membership
3 of the Board. Because there wasn't a majority decision,
4 we're here today reintroducing the incorporate by
5 reference of the uniform rule before the entire Board.
6 And I'm hoping Mr. Vickrey can make it back by the time
7 we're finished.

8 So just a little background. A&I conducted the
9 public notice and public comment process concerning
10 uniform rule. So I think that's important to understand
11 because this rule has gone through the public vetting
12 process. There were public comment areas that A&I
13 conducted to which a lot of folks that will comment here
14 today commented at A&I's public vetting process. That
15 happened 16 February of 2016 through 8 April of 2016.
16 And A&I decided that they didn't get enough public
17 input, so they actually extended it beyond what was
18 required and extended it through 9 May of 2016. So
19 then, on 12 May of 2016, they held the public hearing.

20 So a lot of folks came and commented at the
21 public hearing and identified questions and specifically
22 identified, hey, will this work for DEQ because of the
23 Environmental Quality Act. And those issues were
24 brought up at this initial public vetting, public
25 comment period back in 2016.

1 At the last Board there was a question about, I
2 think -- and, actually, all the Boards -- if this has
3 already gone through that public vetting process, why
4 are we wasting the Advisory Board's time to come here
5 because, do they have an input, since it's already gone
6 through A&I's public vetting process.

7 Well, I guess I would argue that this is very
8 important because if you, as the Advisory Board, find
9 that there's an issue with the Wyoming Environmental
10 Quality Act that this uniform rule is in conflict with,
11 then we need to know that. From our perspective, using
12 the AG, we have not found that. And I think we'll talk
13 a little bit later about the number of states in the
14 country that currently has a similar rule as to what
15 Wyoming is trying to incorporate, or what DEQ is trying
16 to incorporate.

17 So, as I mentioned, we're going to tag-team
18 this a little bit. Allison is going to review a couple
19 things, incorporate by reference, and a couple other
20 things, and then I'll step back up.

21 MS. KVIEN: So I just wanted to speak a little
22 bit about what incorporation by reference means because
23 I don't know that everyone knows what that term means.
24 So I wanted to give a little bit of an explanation of
25 what the term means and why the rule is being treated

1 that way.

2 So, in this rulemaking, DEQ is proposing to
3 adopt A&I's uniform rule by incorporating it by
4 reference. That means that we're taking A&I's uniform
5 rule in full and putting it into our rules. The reason
6 why we're doing that is because A&I was tasked to create
7 uniform rules for public records for use by all state
8 agencies. And state agencies are required, by Wyoming
9 Statute 16-3-103(j), to adopt as much of the rule as
10 possible that would not conflict with the agency statute
11 and legal obligations.

12 Specifically, that statute says, quote, Each
13 state agency shall adopt as much of the uniform rules
14 promulgated pursuant to the following provisions as is
15 consistent with the specific and distinct requirements
16 of the agency and state or federal law governing or
17 applicable to the agency. End quote.

18 In order to deviate at all from the uniform
19 rules that A&I was tasked to create, a state agency must
20 give a statement of reasons for varying from the uniform
21 rules that is grounded in a conflicting legal
22 obligation, under Wyoming Statute 16-3-103(a)(i)(K).
23 Myself and the other attorneys who represent the
24 Department of Environmental Quality, who work at the
25 Wyoming Attorney General's Office, have taken a look at

1 the Environmental Quality Act, DEQ's primacy agreements,
2 and the federal statutes that DEQ implements and have
3 determined that there is nothing in any of those that
4 would prohibit DEQ from adopting A&I's uniform rule in
5 full.

6 Therefore, because there is nothing that DEQ --
7 nothing standing in the way of DEQ adopting that rule in
8 full, and state agencies cannot deviate from the rule
9 unless they have a conflicting legal obligation, we have
10 advised DEQ to incorporate this rule by reference
11 because we do not believe that it has the authority to
12 deviate from A&I's uniform rule.

13 And I want to talk a little bit about some of
14 the legal analysis that we performed in arriving there,
15 just for everyone's benefit.

16 So one example that we found that is
17 informative, we believe, the Clean Water Act, in
18 33 USC 1318(B), says that, quote, any records, reports
19 or information obtained under this section. . .shall be
20 made available to the public. That is the same phrasing
21 that the Environmental Quality Act uses in Wyoming
22 Statute 35-11-1101. And I'll read that statute's
23 language so you can compare it for yourself.

24 That statute reads, Any records, reports, or
25 information obtained under this act or the rules,

1 regulations and standards promulgated hereunder are
2 available to the public. So that phrase "available to
3 the public," and it being mandated, is the exact same as
4 what the Clean Water Act requires.

5 And the Environmental Protection Agency, the
6 federal Environmental Protection Agency, developed its
7 own rules, at 40 CFR 2.107, to charge fees for public
8 records. Those rules do not make any exceptions for
9 Clean Water Act records, which means that the federal
10 government has interpreted "available to the public" as
11 not prohibiting reasonable copying and assembly-type
12 costs for those records.

13 Similarly, most other state environmental
14 agencies have rules for charges to public records and
15 those states have not been found to be in violation of
16 the Clean Water Act or their federal primacy agreements
17 as a result of those rules.

18 Furthermore, it's a well-established statutory
19 interpretation principle to avoid reading conflict
20 between statutes. Statutes should be read harmoniously
21 whenever possible. The U.S. Supreme Court case *Watt v.*
22 *Alaska* held that they must read potentially conflicting
23 statutes to, quote, give effect to each, if we can do
24 so, while preserving their sense of purpose. End quote.
25 That's at 451 US 267. That case was decided in 1981.

1 The Wyoming Supreme Court has held the same
2 thing on several occasions, stating, quote, If two
3 sections of legislation appear to conflict, they should
4 be given a reading that gives them both effect. End
5 quote. A few cases that say that phrase specifically
6 are Seherr-Thoss v. Teton County Board of County
7 Commissioners, and the citation for that is 2014 Wyoming
8 82. That case also cites Rodriguez v. Casey, which has
9 a citation of 2002 Wyoming 111. That case also cites
10 Florez v. Florez; that citation is 979 P.2nd 947.

11 Therefore, we have come to the conclusion that
12 the Wyoming Environmental Quality Act's provisions
13 requiring records be made available to the public must
14 be read harmoniously with the Wyoming Statute
15 16-3-103(j)'s provision that all state agencies adopt as
16 much of the uniform rule as is consistent with the
17 agency's requirements.

18 So I wanted to give a bit of that background so
19 that you could understand our thought process and how we
20 arrived at our conclusions.

21 Thanks.

22 MR. FRANKEN: Thanks, Allison.

23 So today we're seeking the Board's
24 recommendation to the Council for approval to
25 incorporate, by reference, the uniform rule into DEQ's

1 Rules of Practice and Procedure, Chapter 1, General
2 Rules.

3 I just want to talk a little bit about A&I's
4 process. A&I proposed the uniform rule to comply with
5 the legislative mandate outlined in Wyoming Statute
6 16-2-204(e), which directed that A&I shall adopt uniform
7 rules for the use of state agencies establishing
8 procedures, fees, costs, and charges for inspection
9 copies and production of public records under Wyoming
10 Statute 16-4-202(d)(i), 16-4-203(h)(i), and 16-4-204.
11 So this rule complies with that mandate and creates
12 uniform rules for use by state agencies.

13 Additionally, Wyoming Statute 16-3-103(j)(ii)
14 requires that each state agency ultimately adopt these
15 uniform rules. These uniform rules establish production
16 and construction costs related to electronic public
17 records -- and that's an important distinction --
18 authorized under Wyoming Statute 16-4-202(d)(i). So to
19 define production and construction costs, they may
20 include, but are not limited to, the time spent
21 retrieving, compiling, sorting, reviewing, formatting,
22 converting, or copying the electronic public records, as
23 well as activities required to create or construct a new
24 electronic public record from existing data sources.

25 So these uniform rules also establish

1 production and construction costs at \$15.50 per hour for
2 clerical staff time, \$30 per hour for IT staff time, and
3 \$40 per hour for professional staff time. So I met with
4 A&I, the director, and I wanted to know how they came up
5 with that. He said that the rates were compiled looking
6 at the average cost of average salary of state
7 employees. So these rates were put together based on
8 relevant data.

9 So that's the cost. But I think a key part of
10 this rule is, in addition, these rules create a minimum
11 dollar threshold that must be met prior to any
12 production or construction cost being charged for
13 electronic public records. If production and
14 construction costs for an electronic public record are
15 less than or equal to \$180, the applicant or requester
16 will not be charged any production or construction cost.
17 For DEQ, that's very important, and that's what Keith's
18 going to talk about in just a second.

19 We get up to 600 public records requests in a
20 year. Keith's analysis, which he'll talk about in a
21 second, shows how many would fall beyond that \$180
22 threshold.

23 I don't know, Keith, if you could hear us, if
24 you wanted to address that.

25 MR. GUILLE: Sure. Thank you.

1 As Joe said, we do get about 600 records
2 requests a year. The majority of our records requests
3 would be phase one or people doing environmental
4 assessments of property. And those type of requests we
5 can fulfill within a few hours, at times, so it's fairly
6 fast that our staff can respond. The minority of the
7 requests we receive are about 5 percent a year and those
8 where we would see them possibly going above that
9 threshold and those really detailed about records
10 requests involving correspondence by email.

11 So the process of how that works is, when we
12 get a request for email correspondence, we have to go
13 through ETS, the IT agency, and they would pull those
14 records. And then ultimately it would go to the AG's
15 office and then come to us for review. So one of
16 those -- we receive those about -- I would say about 10,
17 20 a year. One recently from last year was from the
18 Sierra Club, and theirs was pretty significant request.
19 They had a request for five facilities and that also
20 detailed for three different divisions. So just for Air
21 Quality, for example, when they pulled those records
22 requests for email correspondence, they received 49,000
23 emails back for review. So, certainly, that's a lot of
24 emails to review.

25 So the Division worked with Sierra Club to try

1 to narrow that scope, and they were able to narrow that
2 down to about 7,000 emails. Certainly, that's a lot
3 better, but it does take time. If you kind of did the
4 math in your head of how long it would take to review
5 those emails, think two minutes per email. Let's use
6 that as a number. That would be 14,000 minutes.
7 Certainly, through that process, it would take about
8 almost a month for one PE working eight hours a day to
9 review all of those emails. That was for one facility
10 and for one division.

11 So, certainly, those are the types of requests
12 that this rule is really targeting.

13 MR. FRANKEN: Just to kind of move on -- and if
14 we have questions for Keith specific to DEQ, we can jump
15 back in there, if that's okay.

16 During their public hearing, A&I addressed
17 several commenters that opposed the rules and had
18 concern about A&I's legal authority to create these
19 uniform rules. A&I explained that during the 2014
20 legislative session, the legislature created 16-204(e),
21 which required A&I to adopt uniform rules for electronic
22 public records and non-electronic public records.

23 Wyoming Statute 16-4-202(d)(i) specifically
24 addresses electronic records inspection and copying and
25 requires that the reasonable cost of producing a copy of

1 the electronic public records shall be borne by the
2 party making the request. The cost may include the cost
3 of producing a copy of the public record and the cost of
4 constructing the record.

5 And it's important to note that A&I was very
6 accommodating when they created that \$180 threshold
7 because they were not required to do that. But comments
8 they received, looking at all the comments from
9 different entities, organizations, state agencies,
10 public, they came up with a \$180 threshold.

11 So DEQ believes these rules make electronic
12 public records requests and the subsequent production or
13 construction of those more efficient by encouraging
14 specific and detailed requests which help both the
15 requester and the state agency. I think the example
16 Keith gave answers that. That original request was for
17 45,000 emails, 45,000 emails, which was able -- was
18 narrowed down, after working with the Sierra Club, in
19 this case, to -- I think it was 7500 or 7,000 emails.

20 As Keith said, if you look at the amount of
21 time, because we have to go in, we have to work with
22 ETS, the IT folks, we have to work with the AG's office.
23 Our staff has to go in and look at all of those emails.
24 Again, the important point is we don't get a whole lot
25 of those every year. The vast majority of the 600 falls

1 well within that \$180 threshold.

2 Some commenters expressed the concern that cost
3 for the production -- cost of electronic public records
4 could lead to less transparency in government. A&I,
5 during their rules process, or the public hearing and
6 commenting process, stated that the fees are not
7 designed to create less transparency in government but,
8 rather, to follow the legislative mandate to encourage
9 more specific and detailed requests for electronic
10 public records and to alleviate the burden on state
11 agencies.

12 Further, A&I believes, by creating the
13 threshold, the belief is that the electronic public
14 records process will become more efficient and effective
15 for both the requester and the state agency.

16 So that's A&I. That's kind of a little
17 overview of some of the comments they received.

18 DEQ received several comments, one being, DEQ
19 should comply with the Environmental Quality Act's core
20 mandate of open records to make all agency information
21 available without charging an access fee. DEQ has
22 reviewed this and confirmed the incorporation by
23 reference of the uniform rule is not in conflict, as
24 Allison said, with the Wyoming Environmental Act.

25 Another comment -- and these were several kind

1 of lumped together -- DEQ should not charge a fee to the
2 public related to records that are part of the agency's
3 permitting, enforcement or rulemaking process. It's
4 very important, the distinction is there is no fee for
5 the inspection of public records. The uniform rule
6 allows for a reasonable fee for the production and
7 construction of electronic public records. Anybody can
8 come into the agency and look at public records, paper
9 copies of public records, if we have them in paper copy.

10 And we would love to have an appointment
11 instead of somebody just showing up. A lot of times we
12 have that and we're able to accommodate that. But on
13 big records requests, if we have an appointment, we can
14 make sure we have the right folks there to be able to
15 get those permits out, and they can go and take a look
16 at them.

17 And then another commenter stated that DEQ
18 needs to develop internal procedures that produce
19 records faster and make more information available to
20 the public, as opposed to limiting access to public
21 records. And as we had the presentation a little bit
22 ago, we are in the process of doing that. NextRequest,
23 ultimately -- and Keith has been intimately involved
24 with NextRequest -- we would like to have a lot of our
25 records scanned. We've got contracts right now scanning

1 records. Solid and Hazardous Waste has got most of
2 their records scanned. Land Quality, AML.

3 We can get them scanned and then we can post
4 them out there and have access where the public can go
5 in and click on that and the record would be available.
6 That's down the road. That's where we want to get to.
7 Air is in the process -- maybe it was Water -- of
8 working on a contract to have somebody come in and scan
9 records. So that contract is in the maze somewhere.
10 But we're confident that it will get approved.

11 Finally, a commenter suggested, adopting
12 uniform rule will violate the terms of DEQ's primacy
13 agreements with both EPA and in Land Quality's division
14 that -- with the OSN. So DEQ has reviewed this, and
15 uniform rule will not violate terms of primacy. In
16 fact, in the handout that you have, 44 other states -- I
17 think we mentioned this a little bit ago -- DEQs or
18 environmental agencies charge for records in some
19 capacity, including, it sounds like, the EPA.

20 So, to wrap this up, in no way is DEQ
21 attempting to limit access to public records.
22 Absolutely not. Voluminous public records requests
23 stretch agency resources, and this legislatively
24 mandated uniform rule will lessen the burden on state
25 agencies and assist the applicant in narrowing the

1 request. And I think in another handout, thus far,
2 approximately 40 Wyoming state agencies, commissions or
3 boards have adopted or are in the process of adopting
4 the rule.

5 Back to what we opened with today, what our
6 goal is, DEQ is requesting the Board's recommendation to
7 the Council for approval to incorporate, by reference,
8 the rule into DEQ's Rules of Practice and Procedure,
9 Chapter 1, General Rules. And what we've proposed doing
10 is adding a new Section 11 to that Chapter 1, General
11 Rules, which would be titled "Public Records Requests."

12 So that's why we're here and that's our goal,
13 to, again, ask for this Board's recommendation, going
14 forward, to the EQC for them to adopt this.

15 So with that, if anyone has any questions,
16 hopefully, between the three of us, we can address any
17 questions you may have.

18 BOARD MEMBER BROWN: I've got the list of
19 people that would like to make comments.

20 And, Shannon, would you like to --

21 MS. VEHR: Sorry. Did you want to do questions
22 first?

23 BOARD MEMBER BROWN: We can do questions or
24 comments, whatever you guys want to do.

25 Doug, are you on?

1 BOARD MEMBER VICKREY: I am. I'm listening,
2 yeah.

3 BOARD MEMBER BROWN: So you're getting caught
4 up?

5 BOARD MEMBER VICKREY: I am.

6 BOARD MEMBER BROWN: Got any new cows?

7 BOARD MEMBER VICKREY: I've got one and one's
8 happening, but it will be a while.

9 BOARD MEMBER BROWN: Congratulations.

10 Okay. We'll do questions first. Questions for
11 the Board, questions for --

12 BOARD MEMBER HULME: I have a question. The
13 \$180 threshold, can that be circumvented by splitting up
14 your requests to smaller requests?

15 MR. FRANKEN: A&I addressed that in the rule
16 because that was one of the things that came up, that
17 somebody could do a small request then a small request.
18 That's going to be up to the agency to take a look at
19 that and say, wait a second, this person or entity is
20 doing that. So that would be something, I think, that
21 we can take a look at.

22 BOARD MEMBER HULME: In my mind, would it
23 matter? I mean, if the request is small and under the
24 threshold and then, two months later, you ask again. . .
25 Could be me or anybody doing that.

1 MR. FRANKEN: So Sierra Club could ask for
2 however many it would take to get under the \$180. Yeah,
3 I think we, as looking at that, would say that violates
4 our ability to be able to say, wait a second, you're
5 breaking those up, it should be one request.

6 MS. VEHR: Can I just give a little bit of a
7 response to that from a practical standpoint of having
8 to fulfill some of these requests? So I mentioned
9 before that we get sometimes the companies wanting to
10 purchase facilities and we might get a request for this
11 permit and then we might get another request for this
12 permit and the like. We triage those as they come in.

13 We have a -- generally, with the big requests,
14 we will not see them come in as a little bit at a time.
15 They have a specific -- they want -- they'll be phrased
16 broad. We want all information about a very broad
17 category, so you're going to capture lots of
18 information. That request could be broken down into
19 smaller bites, in which case, we can manage that at that
20 particular level and respond.

21 The challenge will become, if we have 10,000
22 requests coming in from one requester about one
23 facility, on how we triage that. I don't know how to
24 respond to that right now. I think what Joe is saying,
25 that we're going to have to take a look at it as

1 appropriate because what we don't want to do is then not
2 be able to address the request coming in from other
3 people as you get into this queue. That's why we've
4 developed what I'll call free tools that allow that
5 self-service.

6 So when -- we're saying, if that tool is out
7 there and it's publicly available, that person will be
8 directed there so that we can take those resources and
9 look at it appropriately. There will be some
10 unanticipated things we're going to have to address. I
11 see someone trying to do that as a lot of work, to break
12 it down into small requests. It's possible they could
13 do it. From a practical standpoint, we haven't seen
14 that.

15 BOARD MEMBER HULME: I guess, just to follow
16 up, with what we saw today with IMPACT and NextRequest,
17 so those types of documents will be free. You can
18 access it through any of those sites; that's free. I'm
19 thinking about the email situation. In my mind, it
20 seems like some of the things people might be looking
21 for, if they have an issue with procedure or how
22 something is permitted, that's where there might be some
23 really valuable information for people to get that is
24 not available.

25 So, you're right, it would take some real

1 thought on a person or an entity's part to try and break
2 down to stay under this threshold because the costs are
3 higher to get the emails because you have to go to IT,
4 you have to go to the AG's office and those are the
5 higher dollar amounts. And in just six hours or four
6 and a half hours, depending on where you are, you've
7 busted your \$180 threshold.

8 I don't know if it's practical to do it. I
9 just thought I'd ask the question. But, in my mind, the
10 things that people might be most interested in pursuing,
11 if they feel there's a real problem with some process or
12 a decision that was made within the agency, it's within
13 the emails. I've seen that here on this campus. The
14 issue that -- I don't want to say the dirt, but the dirt
15 is mostly in the emails.

16 MS. VEHR: To get to that, in terms of looking
17 at it, the practical reality is, when you put eyes on it
18 to look at, it means we're not issuing a permit, it
19 means we're not doing -- going out and doing an
20 inspection. It has practical consequences because we
21 have to take the resources to take a look at it. I'm
22 not saying it doesn't need to be done, but the
23 legislature has said, this is the way to do it. And so
24 there are those ramifications that we have to look at.

25 That's when -- and this is looking at it from

1 the Air Quality perspective. The legislature has said,
2 this is the determination the legislature has made.
3 When I look to see who sets policy for the state of
4 Wyoming, that's clear it's the legislature and it's
5 clear it's the governor's office. The Air Quality
6 Division is part of the Executive Branch.

7 I'm hired into my position; other people are
8 appointed into their positions. And I am not the
9 elected official from the voice of the public. That's
10 how they exercise if someone's not doing something. So
11 I have to carry that out, and I do that to the -- and
12 the Division does that to the best of their ability.
13 Sometimes there is an exercise of judgment and we find
14 out, oh, there are practical challenge to this and we
15 need to bring it back through the process, in this case,
16 back through the A&I process, to address some of those
17 challenges.

18 That's how I'm looking at it practically as we
19 gain experience on it. We do sometimes have a requester
20 do a clarification request and find out they do want
21 additional information. That's generally a separate
22 request, not part of a combined one. They look, they
23 find, and they say, oh, this is a whole different avenue
24 I want to go down. So there will be those challenges.

25 BOARD MEMBER HULME: Just one more comment.

1 I'm not trying to argue; I'm just pointing out some
2 things. I understand there's regulatory reality and
3 there's legal reality and we're not violating anything
4 by statute. I get that. But then there's public
5 perception and public reality too. So I'm just trying
6 to reconcile this. I get the whole legality of it, that
7 it doesn't seem to be violating any statutes. And I
8 understand where you guys are.

9 BOARD MEMBER HEYNEMAN: My question is -- it
10 came up in a previous meeting and we did this before. I
11 guess I have two questions. One, did anybody know that
12 we have to pass everything by majority and not --
13 because I've only been on here for a little while. And
14 I'll bet we've gotten quorum decisions and not majority.
15 I don't know that. That's it. I don't need an answer
16 to that question, but that's a technicality that --
17 that's why we're doing this again because of that
18 technicality. So that's worthy of keeping in our
19 collective consciousness going forward.

20 The second real question is, if this is a state
21 mandate, why does the Council need -- I don't know the
22 connection, that connection. Why does the Council need
23 our recommendation if the department has been mandated
24 to do this?

25 MS. THOMPSON: Gina Thompson with the Water

1 Quality Division. And I'm helping Joe through the
2 various Board processes.

3 The reason we're here today is because the
4 statute requires that we seek a recommendation of
5 adoption from the Advisory Board before we go to the
6 Council. We can't go to the Council unless we have your
7 recommendation of adoption. And the way the legislature
8 wrote the legislation that directed A&I, it didn't give
9 us any loopholes for agencies. We were expected to
10 follow our statutory obligations in rulemaking.

11 DEQ has like a two-step process that we're
12 required to follow. Each of the divisions that has an
13 advisory board is required to present our rulemakings to
14 the advisory board. And I'm sure that our Air Quality
15 folks have presented those to you before. At the end of
16 those, we ask for your vote. And if we have a majority
17 decision, as you noted, if we have three out of five
18 voting, then we can proceed to that. If we have three
19 out of five people vote and that's the supported vote,
20 then we can move forward to the Council.

21 It's very specific. They wanted to make sure
22 we gave the public as much chance as they could to weigh
23 in, so the public can weigh in at this stage and also at
24 the Council stage. The Council stage is the formal
25 rulemaking stage that all of the agencies follow. We

1 have a notice of intent. And then, as part of our
2 notice-of-intent stage of the statute, we're required to
3 present it to the Council. The department can propose a
4 rule. The Council can adopt a rule. We have to work
5 together. One can't do what the other has been
6 prescribed to do, so we have to have both steps.

7 So we're following our statutory obligations to
8 go through each advisory board. And then we will go
9 propose the rule to the Council, and then the Council
10 will consider that request and they will vote to adopt
11 the rule or they will advise the agency to go back. But
12 they have those two choices.

13 So we are here today because the statute
14 directs us to do rulemaking in this way. And the
15 legislature did not provide an alternative route for
16 this particular rule.

17 MS. VEHR: I think, John, to your point,
18 Allison had mentioned -- I think it was in your
19 presentation, Allison -- on the purpose of why it's
20 important to come to the Air Quality Advisory Board,
21 that there is a role in terms of looking at -- and I
22 might capture this wrong -- but the statute said that it
23 had to be adopted unless there was a legal reason not to
24 adopt. And the attorney general's office had reviewed
25 it to see if there was any legal conflict and couldn't

1 find it.

2 But just in case that review is -- I'll say
3 someone questions that, this is the time to bring that
4 particular part forward to the Board to say, hey, there
5 is a legal issue that -- did I capture that, in terms of
6 what --

7 MS. KVIEN: Yes. I'll just add a little bit on
8 that point.

9 So each state agency has its own rulemaking
10 process. And there are policy reasons why the
11 legislature might not essentially adopt the rule for us,
12 even though we're being mandated to adopt it.

13 In this rule, each state agency looks at its
14 legal obligations. And for this agency, the AG's Office
15 has determined that there is not a conflicting legal
16 obligation. But, perhaps for a different state agency,
17 that might not be the case. So the legislature is
18 providing an opportunity for the state agency to deviate
19 from the rule, if it needs to, legally.

20 So if a state agency was required to adopt this
21 rule and this rule was in conflict with their state
22 statute or federal obligations, then the adoption of
23 this rule could put that agency in jeopardy. We haven't
24 made that determination for the DEQ. But this
25 rulemaking process is important so that each state

1 agency can have the opportunity to identify any legal
2 conflicts, if they exist. Certainly we wouldn't want to
3 put a state agency in jeopardy because that analysis
4 hadn't been made.

5 So this is part of that process. And going to
6 each advisory board is an important part of that
7 process.

8 BOARD MEMBER BROWN: So you've gone through
9 this process of going before each advisory board?

10 MR. FRANKEN: Yes, we have. So we started off
11 with the Water and Wastewater Advisory Board, then we
12 went through Land Quality Advisory Board, and then the
13 initial with Air Quality Advisory Board back in
14 December, and now this is a follow-up to that based on
15 that issue about the quorum versus majority.

16 BOARD MEMBER BROWN: What's the status of the
17 other boards?

18 MR. FRANKEN: It passed in both other boards,
19 not unanimously. I don't recall exactly. If you have
20 that. . . But it did pass in both other boards.

21 BOARD MEMBER BROWN: This list is all the state
22 agencies that have or preparing to adopt?

23 MR. FRANKEN: That is correct. That's the
24 current state agencies that have either adopted or are
25 in the process of adopting the rule. As I think we

1 mentioned earlier, we don't have DEQ on that list. But
2 back to your initial question, Water, Solid and
3 Hazardous Waste, and Land have all approved it.

4 BOARD MEMBER BROWN: Go ahead.

5 BOARD MEMBER HANSON: Thank you, Mr. Chair.

6 I notice --

7 BOARD MEMBER VICKREY: Can I ask a question?

8 This is Doug Vickrey. So what happens if we don't pass
9 it?

10 BOARD MEMBER BROWN: Allison is going to
11 respond to this.

12 MS. KVIEN: Well, we're required by statute to
13 adopt the rule. And I can't say with certainty what the
14 next step will be, but likely we will come back to the
15 Air Quality Advisory Board to seek its recommendation
16 because we are required to adopt this rule, by statute.

17 BOARD MEMBER VICKREY: Then what are we voting
18 on it for? I mean, if we're required to do it, seems to
19 me like it's an inconsequential thing for us.

20 MS. KVIEN: Right. I think this kind of
21 circles back to my earlier point that this is an
22 important part of the process because this is a part of
23 the process where we can identify conflicting legal
24 obligations, if there are any. My advice, and my fellow
25 attorney general's advice, was that there was not a

1 conflicting legal obligation. But this is the time to
2 raise them, if anyone believes that there is a
3 conflicting legal obligation.

4 BOARD MEMBER VICKREY: Well, obviously, I'm not
5 astute enough to raise a legal question. But I guess
6 I'm just curious, if it's going to happen, why are we
7 involved in it happening? That's all I'm wondering.

8 MR. FRANKEN: Mr. Vickrey, you may have been
9 out when we talked a little bit about that. This is
10 A&I's rule, and it's a uniform rule, that the goal is
11 that all state agencies will adopt this rule. A&I went
12 through the public vetting of this rule, received
13 comments, and then made a determination based on those
14 comments at a public hearing.

15 What our goal here today, as Allison talked
16 about, was if A&I followed the statute, which they did,
17 promulgated the rule, adopted the rule, now this gives
18 this advisory board and the other advisory boards to
19 look at something that may be in conflict with the
20 Wyoming Environmental Quality Act.

21 We, on our side, the AG, has not found
22 anything. But this gives citizens, entities that
23 opportunity to say, wait a second, you didn't look at
24 this. So I think that's why it's very important that
25 the Air Quality Advisory Board have an opportunity to

1 provide advice and input to this process.

2 BOARD MEMBER BROWN: Did that help, Doug?

3 BOARD MEMBER VICKREY: Yeah, that explained it,
4 but. . . From a legal standpoint, I guess. I'm just
5 going to listen now.

6 BOARD MEMBER BROWN: Klaus has a question.

7 BOARD MEMBER HANSON: Several observations. I
8 think last time we discussed this we went through the
9 statement, if we have to incorporate it by reference, we
10 have no choice about it, we'll simply say, yeah, we'll
11 incorporate it by reference. Is that where we are
12 today? I don't know. That's my first question.

13 The other question is, of course, in what was
14 read about the incorporation by other entities, it was
15 interesting to me because it was always about, the
16 public records shall be available, and there was no
17 statement either with a charge or without a charge.
18 That was left open, that question, because it's not in
19 their statement, you know, whether it is with a charge
20 or without a charge. Because, before, it was without a
21 charge, so there was no necessity for a statement. It's
22 kind of devious then not to include it in the other
23 statements that it is now with a charge.

24 The statement that we made before, which I
25 think addresses one of the concerns that we had, was the

1 up evenness of means to pay for these things. It was
2 kind of interesting that the request that was higher
3 than the threshold fee came from the Sierra Club. The
4 Sierra Club is probably not in a situation, like
5 industry, to pay for these things in the same way. So
6 that gets back to the question of the evenness of making
7 these records available to everybody who is requesting
8 them because the means of paying for that is not even.
9 It may be different for different agencies or for
10 different entities who are finding requests.

11 The last statement that I have is, we get a
12 whole pile of statements from people who strenuously
13 object to these things. You know, quite frankly, I come
14 out of a different field; I'm an elected official. I
15 try to listen to what the public says and vote
16 accordingly. Sometimes I have to vote differently than
17 what the public wants. But in this case I'm kind of at
18 a loss as to voting for something that the public seems
19 to -- or the concerned folks so strenuously object to.

20 That's my concern. If we have to incorporate
21 this by reference, be my guest. Let's do it and
22 incorporate it and be done with it. But then I did not
23 vote on it, quite frankly. We simply incorporated it,
24 like we do any federal mandate that comes down to us.

25 Thank you very much.

1 BOARD MEMBER BROWN: Diana.

2 BOARD MEMBER HULME: I guess I have another
3 question too. We're an advisory board. And on any
4 other things, if we voted no on something and it goes to
5 the EQC, do they not have prerogative to overturn us?
6 Wouldn't it be akin to, say, a planning commission
7 making a recommendation to the county commission? The
8 commission doesn't have to -- they can take or reject
9 whatever the planning commission says. Could not the
10 EQC do the same with us? If we vote not to pass this,
11 incorporate this by reference, cannot the EQC just
12 overturn it anyway? Like any other. . .

13 They're the ultimate decider in this.

14 BOARD MEMBER BROWN: We're not deciding; we're
15 just recommending.

16 BOARD MEMBER HULME: They can say, oh, Water
17 Board said yes -- Water and Wastewater Board said yes,
18 Air Board said no, but we say no. Whatever.

19 MS. VEHR: So since -- I'm not on the EQC, but
20 I think Allison is going to address some of the -- that
21 recommendation process and our rulemaking process, where
22 we do have a role in that.

23 BOARD MEMBER HULME: That's what I'm not clear
24 on.

25 MS. KVIEN: Right. So the rulemaking process,

1 again, for each agency is different. Our statutes are
2 set up in different ways. I don't know of any instance
3 where DEQ has gone to the EQC before trying to get the
4 recommendation of an advisory board. So that's why
5 we're here today, as an important step in our rulemaking
6 process.

7 MS. VEHR: The only thing I would note is that
8 the EQC itself may need to adopt these rules for itself.
9 I don't know where they are in that process. But the
10 rule -- I'll say the statute and the rule apply to all
11 state agencies. So that's where I think what Allison
12 was saying, each one has to look at and see if there's
13 any legal impediment -- I don't know where this is in
14 the EQC's process for adopting it themselves. There's
15 kind of two things. One is DEQ and one is EQC.

16 MS. KVIEN: Is there anything else I can answer
17 on that point?

18 BOARD MEMBER HULME: I don't know if that
19 really answers my question, but. . .

20 BOARD MEMBER HANSON: Nancy, I don't know
21 whether this rises to the level of a legal impediment,
22 but my statement that I made was the unevenness of means
23 by institutions to request these things in the full
24 breadth of what they want in face of the statement that
25 all records should be available publicly. Is that an

1 impediment of sorts? Because some institutions simply
2 will not be able to make the full breadth of their
3 request because they don't have the financial means to
4 do that.

5 MS. VEHR: I want to clarify one point in that
6 statement that you made that dealt with -- the Public
7 Records Act says that records shall be made available
8 for inspection. And the different state agencies have
9 charged for copies of records, so they haven't been
10 provided free all the time to people, depending if the
11 agency went through its rulemaking to charge a fee. I
12 believe what Joe had said was the fee is in terms of
13 compilation for electronics pieces.

14 The Air Quality Division and DEQ itself tried
15 to show, through NextRequest, if a request has been made
16 and it becomes -- I can't remember the word that Natalie
17 used -- but publicly available, it's on the list that
18 they can search, that's not something that's charged
19 for, once it's available. If somebody said, I want all
20 the records for the cement plant in Laramie, and they
21 got that, it becomes publicly available. It's out there
22 as public information that's free.

23 The IMPACT system that we have facility-based,
24 that's free. The legislature has already set aside the
25 funding that we used to develop that. That's why it's

1 free out there.

2 BOARD MEMBER HANSON: That's the system we
3 talked about earlier.

4 MS. VEHR: That's the system that will be
5 coming online right about June-ish.

6 What Keith had mentioned about 5 percent of the
7 requests that the department as a whole receives, much
8 less in terms of, I would say, percentage that the Air
9 Quality Division receives, are these ones that are
10 extremely extensive and require lots of staff resources
11 to handle. We are slow on those. It takes time to get
12 staff to look at those. They usually have a component
13 that's -- like I said, a lot of these big facilities are
14 very old and they have the paper. The paper part won't
15 be under the charge. It will still be available for
16 someone to come in and inspect. They will still need to
17 bear the cost of getting a hard copy of that paper.

18 So if they want to make a copy of 10,000 paper
19 records, they will still bear that cost. It doesn't
20 look at -- we don't look at it, does it come from Sierra
21 Club or Klaus or anything like that. We look at the
22 request itself. And the reality is, we have a very
23 minute amount that's on electronic. It's getting bigger
24 as time goes on. But we're trying to make those tools
25 out there so people can access the most common stuff.

1 It's usually the ones that require lots of eyes on.

2 And that may not get to all of your concerns,
3 but we do try to make the most available information.
4 Online, if you go to our web site and you see that
5 WyVisNet, people don't have to do a records request to
6 see real-time. There is a cost to running the agency
7 that we're trying to make sure that we use the state
8 resources how the legislature is directing us. Kind of
9 a roundabout way, but we try to get as much information
10 available out there as possible.

11 BOARD MEMBER HANSON: The only response that I
12 would have is you're talking yourself out of the system
13 because of this system. It might not be necessary
14 anymore because it will all be available.

15 MS. VEHR: If it's facility-based, most of it.
16 And maybe there will come a time when all of it will be.
17 But, right now, most of it. Just as an aside, we're
18 working closely to keep that momentum going. It's very
19 important to us. It's high value.

20 BOARD MEMBER HANSON: Thank you.

21 MS. THOMPSON: If I might just expand on the
22 answer to the question of what happens if you decide
23 that you don't want to adopt these rules today.

24 Last year, or the summer before, this Board and
25 the other two other boards sat with us to look at

1 adopting, in a similar fashion, the Office of
2 Administrative Hearings rules on contested cases. And
3 those rules -- our AG's office looked at our primacy
4 agreements and found that if we adopted those by
5 reference, incorporated those by reference, we would be
6 in violation of some of our primacy agreements. So we
7 pieced out what we could out of those to satisfy our
8 agreements.

9 And one of the rules that you all had adopted,
10 and we proceeded to the Council and they adopted and the
11 governor signed it into effect, is our chapter that
12 governs our rulemaking process for the agency as a
13 whole. So it's out of the Department of Environmental
14 Quality Rules of Practice and Procedure, it's Chapter 3,
15 Rulemaking. And in Section B it says that the
16 department may not initiate rulemaking and submit a
17 proposed rule to the Council for consideration without
18 first securing a recommendation to adopt the preliminary
19 rule from the affected advisory board.

20 At the conclusion of a preliminary rulemaking
21 hearing, an advisory board may choose to continue
22 discussion of the preliminary rule at the next regularly
23 scheduled meeting or schedule a special meeting
24 specifically to discuss the proposed rule, retaining the
25 ability in either situation to also reopen and extend

1 the public comment period for the proposed rule.

2 You also can remand the preliminary rule to the
3 division for further action, including addressing
4 questions regarding specific aspects of the preliminary
5 rule; or recommend that the department initiate
6 rulemaking and submit the preliminary rule to the
7 Council for adoption.

8 Part of the duties of the advisory board that
9 the statute lays out is that when we bring you
10 something, we're expecting you to advise us and counsel
11 us. So our preference would be that you would vote in a
12 majority fashion to recommend adoption of this rule to
13 the Council so that we may proceed to initiate formal
14 rulemaking. However, if you are deciding against that,
15 then we need specific advice and counsel, so that you
16 remand the preliminary rule back to us for further
17 action, including addressing questions regarding
18 specific aspects of the rule.

19 So those are the duties outlined in the Rules
20 of Practice and Procedure and also by the statute.
21 That's why we're here, because we're governed by rules
22 and statutes in every way because we're the government.
23 So that's why we're here and that's what we would like
24 you to do, adopt -- to recommend adoption or give us
25 specific advice and counsel.

1 BOARD MEMBER BROWN: Any more questions from
2 the Board?

3 Okay. Comments from the public.

4 Shannon Anderson.

5 MS. ANDERSON: Yeah. Thank you, Mr. Chairman.

6 Shannon Anderson. I'm a staff attorney with
7 the Powder River Basin Resource Council. When I speak
8 to you, I represent about a thousand Wyomingites. When
9 I make records requests, I make those records requests
10 on behalf of those Wyomingites. I am the conduit to our
11 membership, to members of the media, and to the public
12 at large about what the DEQ is doing, how they're
13 permitting facilities, how they're carrying out their
14 oversight and enforcement, inspection procedures.

15 So that's why we make these records requests.
16 We don't make them to make the DEQ busy, to make sure
17 they can't do other work. We make these records
18 requests in the public interest. So it is really
19 important to consider that.

20 You just heard that other states and even the
21 EPA charge fees. A lot of those other states and the
22 EPA have fee waiver provisions for public-interest
23 requesters. So they may charge fees, but they don't
24 charge fees for everyone. That's really important.
25 Wyoming does not have a similar fee waiver provision.

1 So I've been doing my job for about ten and a
2 half years. I've never once paid a dime for any records
3 from DEQ, never once. And this will fundamentally
4 change that. I can almost guarantee it. Keith
5 mentioned there's about six requests maybe that will be
6 above the \$180 threshold. I would probably say four or
7 five of those are mine that I do, again, on behalf of
8 our members.

9 Recently I've made a couple of requests. I
10 would just kind of like to go over how these record
11 requests get made, how they're reviewed.

12 We've been dealing with the proposed coal mine
13 in Sheridan County. We had an Environmental Quality
14 Council hearing. They're now trying to fix their permit
15 in response to that hearing. We made a request at the
16 end of November, November 27th, 2017. The records from
17 the DEQ were sent to the attorney general in December,
18 so December 20th, probably about a month later. We
19 finally got the response just a couple weeks ago,
20 April 18th. So it sat with the attorney general's
21 office for four months, that records request.

22 We got, through that records request, about 546
23 pages of emails and calendar appointments. Those
24 records would not be available in the public
25 correspondence file, if I walk into the Sheridan DEQ

1 office and look for that information. It's not
2 available to the public, except through a records
3 request that we would have to pay for.

4 I did another recent request on the Jim Bridger
5 Power Plant, which is a large power plant near Rock
6 Springs. It was a very discrete request, narrowly
7 tailored. It was about a specific permit that was
8 coming in at the end of the year. That request was made
9 December 13th, 2017. The response was received
10 April 4th, 2018, so, again, about four months later.
11 Most of the records were unrelated to the requests. I
12 had to provide further inquiry about potential missing
13 records. And I'm still waiting for the attorney
14 general's office to get back with me about whether those
15 records are available.

16 So that's the process. It takes time. It
17 takes a lot of staff time, particularly at the attorney
18 general's office. The DEQ staff, in general, is great.
19 They're very -- they're easy to get their records, they
20 get them over to the attorney general's office, and they
21 sit for months. I don't know how many \$40-an-hour bills
22 would accrue in that time, but my guess is quite a few.
23 Definitely over the \$180 threshold.

24 So I would just like to go back to the
25 Environmental Quality Act and the mandate you have here,

1 which is that records are supposed to be available to
2 the public. Again, that's an important mandate. It
3 allows the public to participate in permitting
4 proceedings; allows them to be informed about impacts to
5 their lives, to their health, to their families, to
6 their quality of life, their livelihoods, their ranching
7 operations. It's a really important mandate that the
8 DEQ has, and it comes from that public purpose and
9 mission.

10 And I hear you about the staff time and the
11 workload and the governor's legislature. But think
12 about the DEQ. Think about that public purpose. It's
13 different than any other state agency. And it has to
14 deal with that public involvement. The public is your
15 stakeholders. That is who you're responsible to. That
16 is who you have to provide this information to.

17 The other thing I would add just here about the
18 fees, as you've been told, the fees actually don't even
19 go back to DEQ. They go to this general fund of the
20 state. So to the extent that we're trying to compensate
21 DEQ staff time or somehow make sure that DEQ is
22 compensated for the time that it spends on these records
23 requests, it doesn't even get to them. So I don't know
24 how that helps in terms of dealing with that staffing
25 issue, if the DEQ doesn't get fees that would be

1 collected.

2 The other thing I would add is that there are
3 two sets of fees. It's important to think about those
4 two sets in the rule. The first set is about the
5 electronic records, so the staff time. The second set
6 is for copies and notably scanning. So there's now a
7 scanning fee at 10 cents a page. Again, even if you go
8 into a DEQ office, you look at files that are open and
9 available to the public, which I regularly do, I take
10 those files a DEQ copier, now there is a supervision fee
11 for a DEQ staff member to watch me using that copier.
12 And there's a 10-cents-a-page scanning fee.

13 So even if I go to the DEQ office and the
14 records are there, there's now fees associated with
15 those records requests that have never been charged to
16 us before.

17 You might get the impression here we're a
18 little concerned about this rule and what it really
19 means for the public interest. Just like you, we don't
20 know how it's going to work in practice. Again, DEQ has
21 never charged us fees before, so there's going to be a
22 learning, I think, phase on everybody's standpoint, if
23 it gets adopted, what it really means in practice. I
24 will tell you, from our organization's perspective, it
25 will deter requests. It will make us much more

1 judicious about what we go to the DEQ to ask to look at.
2 It will make us less responsible to our members and it
3 will make DEQ less transparent. Those are all things
4 I'm very concerned about.

5 I thank you for your time, for your review.
6 And as you've heard the roundabout rulemaking process,
7 even if you don't recommend these rules, I don't really
8 know where they'll go, but I hope you do take that
9 route. Thank you for your time.

10 I'd be happy to answer any questions you have.

11 BOARD MEMBER BROWN: Thank you.

12 We've got one more public commenter, Mary
13 Flanderka.

14 MS. FLANDERKA: Great. Thank you.

15 My name is Mary Flanderka and I'm with the
16 Wyoming Outdoor Council and my office is in Cheyenne.

17 First of all, I'd like to thank the staff for
18 what they're doing on public records and making them
19 available. What you're doing is very technical and very
20 difficult work, so thank you for doing that.

21 However, today I would ask -- I would agree
22 with Shannon that you'd vote no. But as the attorney
23 had suggested, that you need to supply a recommendation,
24 and I'll offer what that recommendation might look like.

25 I had attended the previous Air Quality

1 Advisory Board meeting and had testified something
2 similar. Since that time, I went in and actually did
3 get the comments of the letters that A&I had asked and I
4 did listen to the testimony. It was very interesting.
5 I don't have the exact numbers with me, and I apologize
6 for that. I don't want to get into an argument with
7 anyone.

8 I would like to just share what my impression
9 was, is that the public was definitely against the A&I
10 rule. The folks for it were all the administrators or
11 the directors of the agencies. And I understand that
12 they need to be efficient and all those type of things,
13 but it basically sent a chill on public requests. They
14 don't want -- the sense I got from those letters is that
15 they have more important things to do than to respond to
16 these. I don't believe that A&I listened to those
17 comments or went back and tried to re-engage the public
18 on how they could improve that.

19 That is my recommendation, is that you all vote
20 no and that A&I take another look at this and look at
21 the chill that this might provide and look for ways of
22 providing for exceptions in costs and waivers.

23 The other thing that I wanted to say is that I
24 do think that DEQ's -- I went back and I looked at the
25 mission statement. I couldn't find it on the web site

1 today. Hopefully, it'll get back up there. But I did
2 look to the statute, and the statute really doesn't say
3 anything about granting permits. It does talk about
4 protecting air and water and land quality. It talks
5 about protecting people's health and welfare and to --
6 looking at private nuisances that may be harmful to
7 wildlife, fish or aquatic life.

8 I understand -- I work for a state agency as
9 well, and I understand the pressures to be able to get
10 out work. But I think that the work of agencies is also
11 to be able to explain to the public and listen to the
12 public, their concerns about the various impacts that
13 they're charged with monitoring.

14 The other thing is -- I had to laugh -- that
15 all the other states are doing that. I don't think
16 we've ever done that in Wyoming. We've never said we
17 had to do something because another state did. I think
18 that we look at the opportunity of engaging the public
19 here. Collaboration has always been a strength here and
20 we've been able to work things out.

21 So I ask that you vote no and you provide the
22 recommendation that the rules go back to A&I and take a
23 look at this again. Thank you.

24 BOARD MEMBER BROWN: Thank you.

25 I've got one question. Maybe it's for Allison.

1 If -- say it goes back with recommendation, with
2 specific recommendations, and then A&I or whoever comes
3 up, adds those recommendations. Would it have to go
4 back through every Air Quality Advisory Board, every
5 approval process with those changes?

6 MS. KVIEN: That's a good question. If this
7 Board votes not to recommend this to the Environmental
8 Quality Council, the rule will not go to A&I. A&I
9 created this rule to be uniform for all state agencies.
10 I believe that list in front of you is a list of the
11 state agencies that have already adopted this uniform
12 rule.

13 So if this Advisory Board votes no, the rule
14 will not legally go back to A&I. We, DEQ, will have to
15 make an assessment about how to proceed. A&I will not
16 be forced to rewrite its rule because one state agency
17 is having trouble adopting it. That's what my legal
18 analysis that I would provide to DEQ is.

19 BOARD MEMBER BROWN: Yes, Mary.

20 MS. FLANDERKA: Thank you.

21 Yes. And I just wanted to add that
22 corporations committee, the legislative committee, is
23 looking at public records requests. And I would really
24 encourage this Board and other members of other boards
25 to explain the A&I jail that the statute has put

1 everyone in. Thank you.

2 BOARD MEMBER BROWN: Okay. I guess we're going
3 to do a little discussion, comments.

4 BOARD MEMBER HEYNEMAN: I'd like it if we'd
5 work on coming up with specific suggestions. I don't
6 know if -- I doubt if we can do that today. Specific
7 suggestions and counsel.

8 BOARD MEMBER BROWN: Klaus.

9 BOARD MEMBER HANSON: Well, I don't know
10 whether we are prolonging an inevitable process or
11 whether we are making a statement. I have serious
12 concerns about that because there are two things that
13 are in conflict here: Making these available,
14 regardless of who is coming, in its full form; and the
15 ability of some folks not to be able to do that. So
16 that negates the first one, namely, to make it
17 available, no matter who is coming. So whether -- you
18 know. . . But if we have to incorporate it by
19 reference, I don't know. We can do that. Yeah, I think
20 we do it all the time.

21 Then, by golly, let's do it and be done with
22 this. And then we have made a statement that we don't
23 like it, we object to it because it flies in the face of
24 general, uniform availability to everybody. But since
25 we have no choice, we go ahead.

1 I'm at a quandary, you know. As I say, I'm an
2 elected official. I have to vote all the time. But my
3 vote counts. If my vote doesn't count, why the hell am
4 I voting? So that's -- I'm sorry to use rather graphic
5 language.

6 BOARD MEMBER HULME: My comment is I chose to
7 be on this Board because I'm representing a
8 constituency, and I think everybody on this Board is
9 representing a constituency. You have an industry seat,
10 there's a land owner/agriculture seat, at-large seats.
11 So I feel I'm speaking for the public. And I'm with
12 Klaus. I have all the stacks of comments we've received
13 from the public. There isn't one single public comment
14 in support of this. It is the agencies that are in
15 support of it. I get it. I respond to public records
16 requests, too, with my job. But I feel -- and I did it
17 when I worked for DEQ. But I feel that's part of my job
18 as a public servant, that I'm working for the government
19 because I'm a public servant. Yeah, it's
20 time-consuming, but I wasn't collecting fees on behalf
21 of my entity at the time for doing it either. I just
22 thought it was part of the job.

23 I'm in the same quandary as Klaus, but I feel I
24 always have a choice. And I feel I owe it to the people
25 that I'm sitting on this Board for to vote what they

1 presented in the comments.

2 BOARD MEMBER BROWN: John.

3 BOARD MEMBER HEYNEMAN: I --

4 BOARD MEMBER VICKREY: I'm sorry. Go ahead.

5 BOARD MEMBER BROWN: Go ahead, Doug. I'm just
6 working my way through the group.

7 BOARD MEMBER VICKREY: Okay. I'm really -- I'm
8 kind of on the fence on this deal. I think with some
9 sort of a, say, cover charge, if you would, it limits
10 the frivolent (sic) requests when they show up, and
11 there will be those that show up. But it gets the
12 requests down to the nuts and bolts of the issue. On
13 the other hand, kind of like Diana, I represent a
14 constituency that I have not heard a word from. So I'm
15 sitting out here on my own wondering what is the best
16 way to go? Do I vote yea or do I vote nay?

17 If I vote yea, then I believe it will have a
18 positive impact on the number of requests that show up.
19 But on the other flip side of that is, if you've got a
20 small group of folks that are definitely concerned about
21 what's going on and they cannot come up with the
22 necessary funds to explore everything, then that's not
23 right either.

24 I'm of the old school too. When somebody puts
25 me in a corner, I kind of bristle my neck just a little

1 bit. And that's what we're doing here, is putting us in
2 a corner, saying, you will. And I have some issues with
3 that. As Klaus said, we're really not voting; we're
4 just there. If our votes counted for sure on this
5 thing, then we wouldn't be talking about incorporation.

6 When you call for a vote, I don't know which
7 way I'm going right now.

8 So I guess it must be John's turn.

9 BOARD MEMBER BROWN: Yeah. It's John's turn.

10 BOARD MEMBER HEYNEMAN: I started. I would be
11 comfortable working -- if the letter of our obligation
12 is to offer specific counsel and advice, then let's work
13 on some specific counsel and advice. Changing the
14 threshold would make everything. If other states -- if
15 there are examples of waiver programs that make sense,
16 consider that. I don't see why that's -- I don't know
17 how you -- I don't know what those specifics would be,
18 but it would be worthy of consideration.

19 It doesn't feel good as it is. I know that.

20 BOARD MEMBER BROWN: Nancy, you looked like you
21 had something to say.

22 MS. VEHR: I don't want to interrupt the
23 Board's discussion. But what I was going to suggest, if
24 the Board was looking at something along those lines,
25 that Allison, in terms of what the charge of the rule is

1 and what Gina had mentioned with what the direction is,
2 that that may be helpful to review because if the charge
3 for the direction and advice is, what are the legal
4 impediments to adopting, that's a different one than
5 what are the practical implications of the rule, like a
6 charge for a waiver, like the substantive piece of it.

7 So that would be my only recommendation, is if
8 the Board desires to do that, that it may be helpful to
9 have Allison review that piece and have Gina review the
10 Rules of Practice and Procedure, so that the Board has
11 that in mind to come up with what those recommendations
12 might be.

13 BOARD MEMBER BROWN: Okay.

14 BOARD MEMBER VICKREY: Is there a reason we
15 have to vote on this today?

16 MS. THOMPSON: That would be your prerogative.
17 You would need to schedule an additional meeting to
18 vote. It's not that it goes away or that we don't come
19 back to you with it.

20 I'm pulling up the regulation as I speak here.

21 BOARD MEMBER BROWN: I know we did this with
22 the ozone issue, too, that we sent it back with
23 recommendations and it came back. We did a phone vote
24 on something too. I don't know if it was that. But I
25 remember we did something via the phone.

1 MS. VEHR: The Board can have meetings by
2 phone, so it doesn't have to be in-person meetings. If
3 you decide you want to have -- I think it was a special
4 meeting that was referenced.

5 MS. THOMPSON: The option is to choose to
6 continue discussion of the preliminary rule at the next
7 regularly scheduled meeting or schedule a special
8 meeting specifically to discuss the proposed rule,
9 retaining the ability in either situation to also reopen
10 and extend the public comment period for the proposed
11 rule. Or you can remand the preliminary rule to the
12 Division for further action, including addressing
13 questions regarding specific aspects of the preliminary
14 rule; or recommend that the department initiate
15 rulemaking and submit the preliminary rule to the
16 Council for adoption.

17 BOARD MEMBER BROWN: So our next step is we
18 either put it to a vote or delay it and come up with
19 some specific recommendations that we can give to the
20 attorney general or the Division. But we have to have
21 some concrete -- yeah, you're right, it's coming back.
22 It's going to come back every month.

23 BOARD MEMBER VICKREY: I'm looking at all the
24 agencies that have passed this thing. And if there was
25 anything out there, from a legal standpoint, that was

1 unsettling, I'm sure somebody, by now, would have found
2 it. I think what we're looking at is not a legal, but
3 kind of a moral obligation to the people who want more
4 information and where does it stop, as far as charges
5 go. That's the issue, I believe.

6 MS. VEHR: Would it be helpful to the Board --
7 or you heard it already -- the part that was the shell
8 from the -- Allison, what you had read before in terms
9 of --

10 BOARD MEMBER HULME: I need to go. I have an
11 appointment at 3:00 that I can't miss.

12 My personal recommendation would be to continue
13 this discussion at another time, whether that includes
14 coming up with -- from the legal standpoint, what Doug
15 said was crystal-clear. He's right. I don't see
16 legally there's an issue with it; it's the moral issue
17 that he mentioned. That's where I have heartburn too.

18 BOARD MEMBER HANSON: I think one thing would
19 make sense to me. If there were no fees involved, if
20 you go into the agency and ferret out the information
21 there by yourself. What we hear is there is now a
22 supervisory fee, there is a copy fee, et cetera,
23 et cetera. And those are fees. If you separate it out,
24 if you want to have it done by the agency and it reaches
25 the \$180 threshold, yeah, I can see that -- I would even

1 support that fee.

2 But if you want to go into the agency and
3 ferret this out there, you should be able to do that
4 without any fees of any sort, including copy fees and
5 supervisory fees, et cetera. If you want a
6 recommendation, that would be my recommendation, to
7 divide it in that fashion, so that there is at least an
8 option of getting the full plethora -- that's a good
9 word -- of information if you choose to ferret it out by
10 yourself at the agency.

11 BOARD MEMBER BROWN: I think -- let's put it to
12 motion. Come up with a motion of what you suggest we do
13 and then we'll vote on that motion, whether it's to
14 approve or to send it back for further discussion. I
15 think that's where we're at right now.

16 BOARD MEMBER HULME: I would move to, either in
17 a special meeting or at our next regular meeting, to
18 continue this discussion.

19 BOARD MEMBER VICKREY: I would be in favor of a
20 special meeting. We could put this off forever and
21 still not come to a consensus if we don't -- we just
22 don't say this is going to be it. In the meantime, if
23 there is some more information that can be shared with
24 us from the attorney general's office, I'd love to see
25 it.

1 MS. KVIEN: This is Allison Kvien.

2 I just wanted to ask Board member Doug Vickrey
3 if there is anything specific that you would like to see
4 provided from the attorney general's office.

5 BOARD MEMBER VICKREY: I guess the one thing --
6 the one word in this whole thing that is maybe the -- is
7 maybe what can make it go or not go is the word
8 "threshold." Could the threshold be raised, where it's
9 a little more -- I'm going to use the word "convenient"
10 because I can't think of another word for it. But if
11 the threshold was raised, and I'm not saying
12 exorbitantly so, but where it was a little bit more --
13 help me out here with a word -- it was more amenable to
14 some folks who apparently cannot afford the 180 bucks,
15 would that be an issue with the attorney general's
16 office?

17 (Board Member Hulme exited the room.)

18 MS. KVIEN: So I can speak to that briefly. My
19 advice, and my fellow assistant attorney general's
20 advice, on the alteration of this rule is DEQ does not
21 have the legal authority to make alterations to this
22 rule unless there's something legal that we can ground
23 that in.

24 My advice to DEQ would be that we cannot make
25 alterations to this rule, unless there is something

1 specific that we can point to that gives us the
2 authority to make those alterations, because this rule
3 is supposed to be uniform for all state agencies so that
4 folks know what they're getting when they walk into any
5 state agency. All the rules are going to be the same.
6 I think that's one of the policy reasons why A&I was
7 directed to adopt uniform rules for the use of all state
8 agencies.

9 I could provide something in writing, if
10 necessary, about alterations to this rule and what the
11 advice I gave DEQ was. I don't know that it would be
12 anything that we haven't already heard today.

13 BOARD MEMBER HEYNEMAN: Do we have to move to
14 bring this back?

15 BOARD MEMBER BROWN: There's a motion out there
16 right now.

17 BOARD MEMBER HEYNEMAN: I'll second the motion
18 to bring it back at a special meeting.

19 BOARD MEMBER BROWN: Okay. The motion is --
20 Doug, can you hear me? Doug?

21 BOARD MEMBER HANSON: I think we lost a quorum.

22 BOARD MEMBER BROWN: No, we have a quorum. We
23 don't have a majority.

24 MS. THOMPSON: I might point out that if you
25 unanimously voted to bring it back, then you would be in

1 conformance with that provision of the statute that says
2 that any vote, binding vote, has to have a majority of
3 the body and not just a majority of the members present.
4 It's just that -- we have a quorum -- it's just that you
5 would have to vote unanimously in your motion to be the
6 majority of the body as a whole.

7 BOARD MEMBER BROWN: Because I see us coming
8 back to the exact same discussion, especially if it's
9 uniform. Then if we make changes ourselves, it's no
10 longer uniform and then it totally -- we're being
11 obstructionists.

12 BOARD MEMBER HANSON: It negates the vote.

13 BOARD MEMBER BROWN: Right. So I'm kind of at
14 a loss because this is going to happen, no matter what,
15 with or without us.

16 BOARD MEMBER HANSON: No, it's not happening
17 without us. That's the problem.

18 BOARD MEMBER BROWN: Land Quality, Water --
19 have we had these same discussions with Land Quality and
20 Water Quality?

21 MS. KVIEN: DEQ has already secured the
22 recommendation of both other advisory boards on this
23 rule.

24 BOARD MEMBER HANSON: And I'm on one of those.

25 BOARD MEMBER BROWN: Yeah. I don't see the

1 difference, Air Quality versus Land Quality and Water
2 Quality. That's what -- I can't wrap my head around why
3 other advisory boards approved it and we can't.

4 BOARD MEMBER HANSON: Water Quality was
5 unanimous.

6 BOARD MEMBER HEYNEMAN: Bring it back.

7 BOARD MEMBER BROWN: So the motion is to bring
8 it back on a special meeting, because I think the
9 sooner, the better. So all those in favor of postponing
10 it and bringing it back?

11 BOARD MEMBER HEYNEMAN: Aye.

12 BOARD MEMBER HANSON: Aye.

13 BOARD MEMBER BROWN: Aye.

14 Doug?

15 BOARD MEMBER HANSON: He's gone.

16 BOARD MEMBER BROWN: Okay. So it's been moved
17 and approved and seconded to bring this back for another
18 meeting, a special meeting, and then we better have some
19 discussion points to bring forward.

20 BOARD MEMBER HANSON: Mr. Chairman, I think we
21 did give some, informally, some discussion points that
22 are important to us.

23 BOARD MEMBER BROWN: Okay.

24 MS. VEHR: Can I just ask a couple of
25 clarifying points? One is, in terms of the special

1 meeting, in terms of trying to get dates, would you want
2 Amber to go through the whole process, like setting up a
3 traditional Board meeting but get a special meeting?

4 BOARD MEMBER BROWN: Yeah.

5 MS. VEHR: Is your preference to do it by
6 telephone at the special meeting or to convene a
7 location where the Board would --

8 BOARD MEMBER BROWN: My preference is do it by
9 phone because we're more apt to do it, especially
10 because we don't want to wait three months for the next
11 quarterly meeting. That's my suggestion.

12 MS. VEHR: Then in terms of looking at the time
13 frame between now and the next quarterly meeting, in
14 terms of the Board's pleasure, are you thinking about
15 two weeks, a month, a week? What kind of time frame?

16 MS. POTTS: So for a special meeting, that is a
17 public meeting and we will need to public-notice that.
18 So I would request that you at least give me a week
19 prior to that special meeting that we could put that in
20 the Casper Star, let the public know. And then I could
21 secure, like, a conference call line for everyone as
22 well.

23 BOARD MEMBER HEYNEMAN: Not before mid May, if
24 that gives you enough time.

25 BOARD MEMBER BROWN: Right. I'm thinking the

1 week of -- well, that's Memorial Day, the 28th. The
2 last week of May, like the 31st. That's a Thursday.

3 MS. VEHR: And Amber can send out some dates.

4 BOARD MEMBER BROWN: That's just a month away.

5 BOARD MEMBER HEYNEMAN: Let's start there.

6 BOARD MEMBER BROWN: We'll need somewhere in
7 between there to have an internal discussion as well.

8 MS. VEHR: And in terms of internal discussion,
9 whenever the body meets, that's considered a public
10 meeting and so the public notice requirements would
11 apply.

12 BOARD MEMBER BROWN: Right. Then we have to go
13 through Amber before we did anything. Absolutely.

14 MS. VEHR: The other part goes to what you had
15 just mentioned, Klaus, is that you felt there were a
16 couple of points that had been raised in your
17 discussion. Would it be helpful to the Board and would
18 you want the transcript to be able to review that before
19 the Board meeting?

20 BOARD MEMBER BROWN: Yes.

21 BOARD MEMBER HANSON: Not only -- I think we
22 raised some very cogent points. I don't know. We are
23 again at a quandary. We can't change any rules, but
24 that's basically what we are suggesting, that -- for
25 example, my suggestion would be that if you go into the

1 agency, you can assemble whatever you need free of
2 charge. So if that can be at least mentioned as a
3 change of the rule, or other suggestions, so we're
4 getting off the dime somehow because, I mean, if we're
5 just coming here again in two weeks or meet by telephone
6 or whatever and discuss the same thing again and be told
7 we can't change anything, the meeting is fruitless.

8 So that's not what I'm here for. I think we
9 would like to effect some modification -- let me not say
10 change -- some modification to the way this is going
11 forward. Okay. Does that make some sense?

12 MS. VEHR: Yeah.

13 BOARD MEMBER HANSON: I don't want to meet
14 again in two weeks and just rehash what we rehashed
15 today and be told, you can't change anything.

16 MS. VEHR: See if I captured this in that.
17 Take the example that you had and then, looking at it
18 from the legal precept that Allison had that said it
19 needs to -- there needs to rest a legal foundation for
20 doing the change is what you're looking at to see if we
21 can accomplish that or if that is not meeting that legal
22 precept.

23 BOARD MEMBER HANSON: Correct.

24 MS. VEHR: Okay. We can do that.

25 BOARD MEMBER HANSON: Okay.

1 BOARD MEMBER BROWN: We can discuss dates with
2 the Doodle poll too. We don't have to decide that
3 today.

4 BOARD MEMBER HANSON: Let's noodle again.

5 BOARD MEMBER BROWN: Any other --

6 MS. VEHR: We have regular business. But in
7 terms of this, I just wanted to see if there was
8 anything else. Otherwise we'll proceed.

9 BOARD MEMBER BROWN: So next on the agenda is
10 just a general update from the Division.

11 MS. VEHR: Yeah. I wanted to just run through
12 in terms of the -- between our last meeting and now, the
13 legislature met. We got through the budget session. We
14 have funding going forward. So those were all good
15 points.

16 Just picking up on what had been mentioned
17 earlier about Air Quality Division funding, we do
18 receive a great majority of our funds from general fund.
19 I think someone had mentioned about -- just using the
20 public records as an example, those fees don't come
21 directly to DEQ, but they go into a general fund. The
22 majority of funding for Air Quality Division is from
23 general fund. We receive only 7 percent of our funding
24 from EPA, and then we have some special revenues that we
25 receive from our Title V sources, based on emission fees

1 and some of the permitting, our New Source Review
2 permitting.

3 So we made it through the legislative session
4 in pretty decent shape. We did not lose any positions.
5 And I mentioned that Natalie was one of the positions
6 that the legislature had funded previously specifically
7 for records. So we really appreciate that from the
8 legislature. That allows us to serve the public well.

9 We do have several vacancies in the Air Quality
10 program. In our inspection, compliance inspection
11 program we have two vacancies currently. Both are
12 inspectors. One is in the District 1 level -- excuse
13 me -- District 1 office. That's an entry-level
14 position. We've got applicants and we're in the
15 interview process. The other is one that was out of
16 District 3 up in Sheridan. We've moved that position
17 down to the Casper office and they are starting the
18 process of getting applicants and will then do
19 interviews.

20 And our operating permit program, we have a
21 program manager position that's vacant that will be
22 advertised soon. And then we have one of the Title V
23 permitting engineers that's retired, Despina, and she's
24 moving to Bulgaria. So we'll be filling that -- next
25 week, I think, is her last week and we'll be filling

1 that position.

2 Those are kind of our -- we have also, in the
3 planning section that you saw do the IMPACT program, we
4 have an engineering vacancy there as well.

5 Then on our -- I wanted to give you an update
6 in terms of ambient pollutant. So ambient pollutants,
7 we set those levels. EPA establishes ambient pollutant
8 standards that meets the health and welfare. And then
9 the goals of states are to implement measures, through
10 our state implementation plans, to achieve those
11 numbers. All areas of Wyoming are in attainment. That
12 means they're meeting the standards. We had two
13 nonattainment areas. One is the Upper Green Wintertime
14 ozone area and the other was the Sheridan PM10. We are
15 now down to just the Upper Green that needs to get
16 redesignated. All areas -- Sheridan just got
17 redesignated, which is a huge milestone for that.

18 To the point about what -- when you look at the
19 purpose for the Environmental Quality Act and it talks
20 about health and welfare, one of the other is for the
21 productive use of those resources. So it does have an
22 economic component to it. By lifting an attainment
23 area, you are able to have some economic restrictions
24 from development. Our goal and task is always to
25 maintain air quality so that that continues. So we look

1 at control measures that are in place and we put those
2 into our plan. So that's a significant accomplishment.

3 On the ozone 2008 standard, we are still
4 maintaining that standard, which is an accomplishment
5 for the Upper Green River Basin. And we had this year
6 some requires assistance from both the regulated
7 community, the government entities, and the public to
8 all do implement measures out there to keep the
9 precursor emissions low. And it also has some weather
10 components that are all tied together. This year we did
11 have a different weather situation than we did last
12 year, but we also had all those other efforts and I
13 don't want to let those go unrecognized either. It is
14 an accomplishment.

15 We still have a component that we're working on
16 related to what's called the Good Neighbor Provision of
17 our infrastructure set related to the 2008 standard.
18 But we're moving forward on that right now.

19 On the 2015 ozone standard, to your point,
20 Klaus, all areas of Wyoming received an attainment/
21 unclassifiable designation from EPA. That is a huge
22 accomplishment. That's a lower standard than the 2008.
23 2008 was at 75; it's now at 70. We're meeting that even
24 in the Upper Green River Basin. It's on a three-year
25 average --

1 BOARD MEMBER HANSON: In our two counties?

2 MS. VEHR: In your two counties here, yeah. So
3 that is a significant accomplishment and we're really
4 proud of that. We do look at those precursor emissions
5 continually to see, as development occurs, where we can
6 plan for those types of emission reductions and we have
7 controls in place.

8 The other pollutant, sulfur dioxide, it's a
9 one-hour standard. And EPA had rolled that standard out
10 in 2010 and then there's four phases of implementation
11 in terms of designation. We just finished round three,
12 which is areas in facilities that had over a certain
13 threshold, 2,000 tons, and they had to model. All the
14 areas that we submitted that had demonstrated attainment
15 by modeling were designated attainment/unclassifiable.
16 The remaining sources that will be in the fourth and
17 final round are what's known as monitored sources. They
18 had to put monitors and locate those for three years.
19 That three years started January 1st, 2017. So when
20 that three-year period runs, we will submit those down
21 to EPA for recommendation on attainment/unclassifiable
22 or nonattainment. But still in the works.

23 Wanted to give you an update -- and there's
24 other criteria pollutants, but those were kind of the
25 active ones right now.

1 Wanted to give you an update in terms of our
2 New Source Review construction permitting program.
3 That's the program that sources come in before they can
4 construct a facility that will operate and emit
5 pollutants in the air. One of the -- that program has
6 traditionally had anywhere between 1200 to 1600 permit
7 applications per year. When the downturn in the
8 industry -- excuse me -- energy economy hit, there was a
9 slight downturn in that, but only by 1 to 200 permit
10 applications per year. And it's still holding in what I
11 would call the -- not hit our high, but it's holding in
12 a significant number. We had lost a couple positions
13 before on that. But some of the measures that you saw
14 in terms of streamlining with our electronic permitting
15 have allowed us to continue to issue permits for
16 facilities. And that's a critical part of the work that
17 we do in the Division. We're still seeing about the
18 same kind of tight -- source tightness in that arena.

19 On the operating permit program, that's our
20 major sources, our Title V sources that emit a large
21 amount of pollutant, either criteria or hazardous
22 pollutants. And we run about 120 to 130 of those
23 sources at any given time. There's usually some new
24 ones coming in and some that have decreased their
25 emissions and are exiting the program. So that one

1 stayed pretty steady.

2 We do have a significant backlog and I think a
3 couple of -- might have a year or two ago, year and a
4 half ago, maybe almost two years -- we had a
5 presentation about what we called the Permit Basis State
6 to move those forward and we have seen a reduction in
7 some of that backlog. It's going to take us -- it will
8 take about 18 months of permitting time frame, so it's
9 going to take us a little bit longer to fully address
10 that backlog. We think that has a benefit, again, to
11 the citizens, to the industry, and to the regulators for
12 implementing those particular permits.

13 On our Air Quality resource management program,
14 that deals with emissions inventory planning on NEPA and
15 monitoring. On the emissions inventory side, we have --
16 annually we collect emissions inventory from our Title V
17 sources and we issue invoices and collect fees. That
18 runs that particular programming, including our
19 compliance. We've sent all of those out, so that annual
20 work is being done.

21 Every three years we do a minor source
22 inventory, and so that work has started as well. We
23 call that our triennial inventory. We are working
24 closely with EPA so that we can have communication
25 electronically as we get these inventories submitted

1 into our system. They can get uploaded or, if the
2 industry source submits it through EPA, they can come
3 down to us. That's still a couple years' process, but
4 we have a gentleman on our staff that's actively
5 involved in those kind of discussions.

6 The planning and NEPA process, there's been a
7 lot at the federal level related to NEPA, so we still
8 have staff engaged. Usually Wyoming is a cooperating
9 agency on the NEPA projects that go forward. Air
10 Quality just looks at the air quality aspects of those,
11 but we're involved in part of that state cooperator
12 team. But at the federal level, you've probably seen
13 things that come out in relation to projects moving
14 forward that we're engaged in at the state level process
15 with that to keep an eye on it. That's an area where
16 there has not been movement. Some of these projects
17 have been out there for many, many years and some are
18 newer projects, but we stay engaged through the state
19 process on that.

20 Monitoring, again, we have the WyVisNet. We
21 have state-run monitors out there collecting lots of
22 information. We have the three mobiles. We mentioned
23 the one in Laramie. And we look at moving those around.
24 We're coming up on our annual monitoring network plan,
25 putting that out for comment so we can get feedback on

1 where those monitors should be located. And anybody
2 that wants to participate can in that process as well.

3 Compliance. We have a compliance program and
4 underneath that we have our asbestos and our enforcement
5 arm, and we also do compliance assistance with
6 facilities. We always encourage companies to come in,
7 call up their district engineer if they have compliance
8 concerns, get on the radar early, that we can help them.
9 So we do lots of compliance assistance. We do lots of
10 facility inspections. This previous winter and
11 continuing into this winter we did focused efforts in
12 the Upper Green River Basin, going into the season, so
13 that we could assure we had as much reduction in
14 pollutants as possible.

15 We have what I would call a firm but fair
16 program of enforcement. And some of the issues are
17 handled at the district level and others rise to where
18 we actually do formal enforcement cases. We bring some
19 of those in front of the Environmental Quality Council.
20 Others get resolved by agreement of the parties. So we
21 have some of those pending right now. And then, on
22 occasion, we will involve EPA on a particular matter if
23 we need their assistance. But we've got a little bit of
24 everything going on in that arena.

25 Team rules. I know that we've got a couple of

1 items, I think, that will be coming forward -- I want to
2 say -- I know the one that I'm thinking about in
3 particular, we've got general permits that we'll be
4 starting to look at internally that will require a
5 process where we develop a process for general permits.
6 I think Water Quality Division does general permits
7 right now, but we're going to take a look at that. And
8 then you have to develop the actual substantive permits.

9 So if you do it for a gravel source or you do
10 it for a specific other type of source, you've got to
11 develop that actual permit. That we'll probably start
12 working on sometime this summer. We will be using the
13 Board at the next regular scheduled meeting to also
14 bring forward our presumptive best available control
15 technology guidance, which is related to that NSR
16 permitting that I mentioned earlier.

17 So that's kind of what we've got in the works.
18 Does incorporation by reference, is that -- not yet.
19 Okay.

20 BOARD MEMBER HEYNEMAN: The best available
21 control technology, that's going to -- you're going to
22 have those -- you'll have those to us next meeting?

23 MS. VEHR: That is our intent. That's the
24 agenda item. When we look at developing the agenda,
25 having a special meeting would mean that we wouldn't

1 have somebody competing for the agenda time. So that's
2 what we're looking at bringing forward for the next
3 regular scheduled Board meeting.

4 BOARD MEMBER BROWN: Is that presumptive BACT
5 just for oil and gas or --

6 MS. VEHR: We developed it for the oil and gas,
7 yeah. So it was developed back in, like, 1997 or
8 thereabouts and it's just been the oil and gas side of
9 things. Everything else has been --

10 BOARD MEMBER BROWN: Right. They're expanding
11 this?

12 MS. VEHR: No. This is just that same oil and
13 gas presumptive BACT guidance.

14 BOARD MEMBER HANSON: One question about
15 compliance. We've had -- we look out this window and
16 you see it -- a lot of urban renewal or university
17 renewal in this particular area. And you go a few
18 blocks down, we just razed a whole high school building
19 down there. Speaking of asbestos issues, does that
20 apply also, your compliance, to buildings that are being
21 razed, that are being eliminated? Because many of them,
22 I think, have quite a bit of asbestos in them. Do you
23 monitor that? What's happening there? I'm just talking
24 because of this happening in this town very, very much
25 so.

1 MS. VEHR: Yeah. So asbestos, the regulations
2 apply to demolition and renovation. And there are
3 certain requirements on threshold amounts of material.
4 There are notice requirements that -- for commercial.
5 We don't do residential under the Act, but we do
6 commercial.

7 BOARD MEMBER HANSON: And public.

8 MS. VEHR: Yeah, public buildings are included.
9 So there's a notice provision. If you ever have any
10 concerns, again, just calling up Air Quality, we can get
11 you to the right person that you can say, hey, did
12 someone turn in a notice? What's going on here?

13 BOARD MEMBER HANSON: In this particular case,
14 this whole block, of course, was residential, then
15 changed and is now, of course, university buildings.
16 When the residential buildings were eliminated, would
17 that fall under your regulations? Because it now
18 becomes, of course, public property. How does this
19 work?

20 MS. VEHR: EPA has what are called
21 applicability determinations, so some of these questions
22 have arisen in that context. Some of them are pretty
23 fact-specific. So on that scenario that you just gave,
24 there's a couple of key facts that it could turn on
25 whether we would have jurisdiction or not. So we take a

1 look at those when they're brought to our attention to
2 see where they fall.

3 BOARD MEMBER HANSON: Thank you for halfway
4 clarifying that.

5 MS. VEHR: When it changes from private to
6 commercial or public, there are some key facts that make
7 a difference.

8 BOARD MEMBER HANSON: Thank you.

9 BOARD MEMBER HEYNEMAN: The discussion around
10 the BACTs, the next regular meeting --

11 MS. VEHR: Yeah.

12 BOARD MEMBER HEYNEMAN: -- that is the ozone
13 and also other particulate issues. That's a time which
14 we talk about the projections for oil and gas activity
15 in the state is tremendous, and that is not a
16 coincidence that BACTs are being revisited and perhaps
17 stretched out statewide?

18 MS. VEHR: So there's a couple parts to your
19 question that I'll try to address. So the development,
20 that if there's a federal development, it goes through
21 the NEPA process. And so at that level there is an air
22 quality component for oil and gas development. So the
23 Air Quality Division is engaged, looking as a
24 cooperator, part of the state cooperator, on those
25 particular projects. So I think there is a project in

1 Converse County that was just -- I think comment may
2 have closed recently on that. But that was one that was
3 announced.

4 There's multiple projects at various stages in
5 this NEPA process. So we're not bringing any of those
6 before the Board at all. Those are handled in the NEPA.
7 Those are -- federal agencies are the lead agencies.
8 We're just a cooperator.

9 When it comes to the actual oil and gas
10 permitting, there's the Oil and Gas Conservation
11 Commission that play a role, so they look at something
12 for applications for permits to drill. And part of that
13 looks at maybe a wildlife component as well before it
14 ever even gets to the Air Quality Division. So we look
15 at it -- and the wildlife I'm talking about is in terms
16 of sage grouse. There's a governor's order to look at
17 sage grouse. If another state agency has looked at
18 that, we can say, hey, they looked at it and they're not
19 changing their footprint when it comes to us.

20 When we look at the air quality emissions
21 associated with that particular source, once we get a
22 permit application, that's where that presumptive BACT
23 guidance comes into play. So on the presumptive BACT
24 guidance, we are not bringing it forward to the Board
25 for your recommendation or consideration. We're

1 bringing it forward in terms of saying, hey, public,
2 this is out here for your review and comment. The Board
3 can certainly weigh in, but it's not the kind of thing
4 that we need a recommendation to move it on.

5 When we do a construction permit, one of the
6 requirements under our permitting is that a source apply
7 best available control technology. Because with the oil
8 and gas industry there are some standardizations on
9 that, we've done it in this PBACT as an efficiency
10 measure so that someone can still make an alternative
11 demonstration, if they want to, or they can use this
12 presumptive demonstration as well. So that's the
13 context for the PBACT. Some other processes, we have to
14 do a lot more case-by-case analysis. We try to make it
15 efficient. Instead of case by case, do it all at one
16 time.

17 So we do look at things that are in place that
18 are required. BACT is a four-stepped process, so you
19 get to kind of an emission level for that so it's kind
20 of interwoven in.

21 BOARD MEMBER BROWN: Any other --

22 MS. VEHR: That's the only thing that I wanted
23 to give you in terms of report. I did want to mention
24 that at the Division -- and this is again for the Board.
25 We don't need an answer today, if you want to consider

1 it. We always want to see if there's specific
2 trainings. I know we've done some on-site-type
3 trainings. We can have the attorney general's office
4 provide specific trainings on matters. One of the items
5 that I was kind of mulling about recently is where we
6 have various items come before the Board. We've also
7 recently had some citizens that want to get information
8 in front of the Board. We want to make sure that
9 everybody gets all the same information.

10 We also have a concern in terms of something
11 what I would call ex parte communication, where we don't
12 want to put any of the Board members in a situation
13 where we're going through a rulemaking, we have these
14 procedural requirements, and maybe you're getting
15 contacted and want to know, how do I address this so I
16 don't taint that particular process.

17 So in my head I wanted two things that I wanted
18 to put before the Board for consideration, is think
19 about how people get information and your preferences
20 for getting information to you. And if we can play a
21 role as -- I'll call it an executive secretary role of
22 gathering the information, making sure we get it
23 distributed, kind of some of those just practical
24 considerations. Just weigh on that. Maybe next meeting
25 we can talk about that further on getting your

1 preferences for it.

2 The second one is in terms of if there is
3 something like an ex parte communication or a role that
4 the Board has that you want education on, we'd be happy
5 to provide those kind of education and trainings.

6 MS. POTTS: Allison just let me know that there
7 is a Board -- a statewide Board training May 4th at
8 WYDOT in Cheyenne that I didn't know if you guys were
9 aware of, I certainly wasn't aware of. I can do some
10 digging, if anyone is interested and has time on
11 May 4th. But I can also reach out to -- I would assume
12 this is the governor's office doing this, and make sure,
13 on future Board training opportunities, that we were
14 aware of those.

15 So that just came up on the drive over. It was
16 like, oh, goodness.

17 MS. VEHR: That might take care of things like
18 the rulemaking ex parte thing. That would totally be
19 addressed in there.

20 BOARD MEMBER BROWN: Any other comments?

21 MS. VEHR: No. That's all I had.

22 BOARD MEMBER BROWN: Scheduled next meeting. I
23 guess we've got a special meeting and regular meeting
24 that I guess we'll just do the Doodle poll. Can't
25 schedule those just yet.

1 Should we adjourn?

2 Oh. I'm sorry.

3 MS. FLANDERKA: I don't want to be ex parte.

4 BOARD MEMBER BROWN: I didn't see your hand.

5 MS. FLANDERKA: That's okay. I wanted to hand
6 out, and I've asked Keith to share with the members who
7 aren't here. Is that appropriate?

8 MS. VEHR: Actually, Amber helps with the
9 Board, so if you can make sure Amber's got a copy and
10 all of that.

11 MS. FLANDERKA: I just wanted to share a little
12 bit about LDAR, Leak Detection and Repair. That will be
13 part of the PBACT, presumptive best available control
14 technology. I'll just let you look at that because I
15 know you need to get home. But if you have any
16 questions. . .

17 MS. VEHR: Anything rulemaking, if it's just
18 information, we want to make sure that there's a process
19 for getting it forward to the Board. If we don't have a
20 rulemaking on this, we just want to make sure that the
21 Board -- yeah, but however they want to get information,
22 whether it's -- could get a thousand pages of something.
23 No, we don't have a rulemaking on this, Mary.

24 MS. FLANDERKA: Okay. So I just wanted to
25 share this. This is a little bit of LDAR, part of the

1 rulemaking --

2 MS. VEHR: The guidance.

3 MS. FLANDERKA: The guidance. Okay, I got it.

4 MS. VEHR: So PBACT is different. PBACT is not
5 a rulemaking. LDAR could be a component of PBACT.

6 MS. FLANDERKA: Okay. What she said. Perfect.

7 MS. VEHR: Presumptive BACT, presumptive best
8 available control technology. PBACT. It's an acronym
9 that we use for the permitting process.

10 BOARD MEMBER BROWN: I'd say we --

11 BOARD MEMBER HANSON: Move to adjourn.

12 BOARD MEMBER HEYNEMAN: Second.

13 BOARD MEMBER BROWN: It's been moved and
14 seconded. All those in favor?

15 BOARD MEMBER HEYNEMAN: Aye.

16 BOARD MEMBER HANSON: Aye.

17 BOARD MEMBER BROWN: Aye. All those opposed?

18 This meeting is adjourned. We'll schedule some
19 more meetings.

20 (Meeting proceedings adjourned at

21 3:25 p.m., April 27, 2018.)

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C E R T I F I C A T E

I, Lisa D. Anthony, a Registered Professional Reporter and Certified Realtime Reporter, do hereby certify that I reported by machine shorthand the foregoing proceedings contained herein, constituting a full, true and correct transcript.

Dated this 7th day of May, 2018.


Lisa D. Anthony
LISA D. ANTHONY, RPR, CRR