

WWAB Meeting

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RE: WATER AND WASTE ADVISORY BOARD MEETING

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TRANSCRIPT OF MEETING PROCEEDINGS

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Pursuant to notice duly given to all parties

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in interest, this matter came on for meeting

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on the 18th day of October, 2018, at the hour of

13

9:02 a.m., at the Casper Community College, Strausner

14

Hall, Room 207, 125 College Drive, Casper, Wyoming before

15

the Wyoming Water and Waste Advisory Board, Ms. Marjorie

16

Bedessem, Chairwoman, presiding, with Ms. Lorie Cahn, and

17

Mr. Alan Kirkbride in attendance by videoconference.

18

Ms. Suzanne Engels, Permitting & Corrective

19

Action Manager; Ms. Jody Weikart, Solid Waste Permitting &

20

Corrective Action Program, District 1 Supervisor; Mike

21

Jennings, GW Monitoring; and Ms. Gina Thompson, Water

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Quality Division, were also in attendance.

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4	Solid Waste Program Rulemaking, Chapter 4,	
5	Construction and Demolition Landfill Regulations;	
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1 P R O C E E D I N G S

2 (Meeting proceedings commenced

3 9:02 a.m., October 18, 2018.)

4 CHAIRMAN BEDESSEM: I would like to call
5 the third quarter Water and Waste Advisory Board meeting to
6 order. We have three members of the advisory board here
7 today. I'm Marge Bedessem. I represent the public at
8 large.

9 BOARD MEMBER CAHN: I'm Lorie Cahn. I
10 represent the public at large.

11 CHAIRMAN BEDESSEM: And we have Alan. Go
12 ahead and introduce yourself.

13 BOARD MEMBER KIRKBRIDE: Yeah, Alan
14 Kirkbride.

15 It's breaking up right now, but we'll hope it
16 gets better.

17 Alan Kirkbride, representing agriculture.

18 CHAIRMAN BEDESSEM: Alan, actually, you
19 sound wonderful, so --

20 BOARD MEMBER CAHN: Alan, if you mute --

21 BOARD MEMBER KIRKBRIDE: That's pretty
22 good. No wonder.

23 BOARD MEMBER CAHN: If you mute when you're
24 not speaking, I wonder if that would help.

25 BOARD MEMBER KIRKBRIDE: Yeah, I was

1 working on being able to do that.

2 BOARD MEMBER CAHN: Okay.

3 BOARD MEMBER KIRKBRIDE: Let's see now.

4 CHAIRMAN BEDESSEM: That's it.

5 BOARD MEMBER CAHN: Do we sound better?

6 CHAIRMAN BEDESSEM: We don't know. Just
7 nod your head.

8 As long as he can hear us, hear the proceedings,
9 we're good to go.

10 So looking at the agenda, the first thing up is
11 the Solid and Hazardous Waste Division, Solid Waste Program
12 Rulemaking, Chapter 4, Construction and Demolition Landfill
13 Regulations; and Chapter 6, Transfer, Treatment and Storage
14 Facility Regulations.

15 So I will hand it over to WDEQ.

16 MS. ENGELS: Thank you, Madam Chair. My
17 name is Suzanne Engels. I'm the program manager for the
18 Solid Waste Permitting and Corrective Action Program.

19 Today I have two staff members with me. Jody
20 Weikart. She is out of the Cheyenne office. And Mike
21 Jennings, who is based in Casper.

22 As you mentioned, the first item on the agenda is
23 the Solid Waste Rules and Regulations Chapters 4 and 6.
24 This is our second time appearing before the Board with
25 these rules. We last presented them in March of this year

1 and received some comments from the Board, and the
2 Department went back, evaluated those comments, made some
3 revisions, went back out to public comment and opened up
4 the public comment period on August 17th.

5 We had a change in the meeting date. We extended
6 the public comment period. Requested comments by
7 October 8th, close of business at 5:00 p.m. And we
8 received one comment through our online portal on Chapter 4
9 on October 10th. I then forwarded on to all the board
10 members, and I have hard copies here. I don't have --
11 well, I think Alan has a hard copy in Cheyenne too, and I
12 can give this to you now.

13 CHAIRMAN BEDESSEM: Thank you.

14 MS. ENGELS: Reach across the table. Thank
15 you.

16 And I thought I would go through and highlight
17 some of the changes that the Department made in -- starting
18 with Chapter 4.

19 CHAIRMAN BEDESSEM: Sounds great.

20 MS. ENGELS: So if we can look at -- and I
21 think there were a few different versions of the rules. We
22 have a strike-through, strike-through with comments, and a
23 clean version. It would be great if we could look at
24 Chapter 4 strike-through with the comments.

25 MS. THOMPSON: That's the green one.

1 MS. ENGELS: With the green revisions.

2 Overall, the Department reformatted this rule.
3 We heard -- we received feedback that the sections were
4 hard to find in Chapter 4 and also Chapter 6. So we
5 compared how the rule was structured with the Secretary of
6 State's rules on rules, and we were able make the section
7 title stand out bold and underlined. So hopefully those
8 are easier to find.

9 We also included a reference to the Wyoming
10 statutes and Chapter 1 for definitions. And we also made
11 the grammatical changes that the Board recommended
12 throughout Chapter 4.

13 I would like to highlight three sections where I
14 think warrant a little bit more discussion based on the
15 comments received. If we flip to page 4-24 of Chapter 4
16 with the comments, it's Section 6(k). There was some
17 discussion at the last board meeting about what the
18 Department meant by standards in Section (k)(i)(A) there on
19 line 911.

20 The Department clarified this language so that
21 it's also consistent with language found in Chapter 2 and
22 other language found later in Chapter 4. So it's
23 referencing Department guidance or equivalent methods.

24 BOARD MEMBER CAHN: So I have a question
25 about that.

1 MS. ENGELS: Sure.

2 BOARD MEMBER CAHN: Guidance, though, this,
3 in essence, is making guidance enforceable?

4 CHAIRMAN BEDESSEM: I don't think it is.

5 BOARD MEMBER CAHN: No?

6 CHAIRMAN BEDESSEM: And the reason I think
7 is because everything says "may."

8 BOARD MEMBER CAHN: Okay.

9 CHAIRMAN BEDESSEM: Okay. The
10 Administrator may require. If you're not consistent, you
11 know, with the guidance, then they may require it if what
12 you're doing doesn't seem reasonable.

13 BOARD MEMBER CAHN: Okay. I'm okay with
14 that. Thanks.

15 CHAIRMAN BEDESSEM: I think if it didn't
16 say "may," we'd have an issue with it.

17 BOARD MEMBER CAHN: Thanks.

18 MS. ENGELS: Okay. Great.

19 The other part of this section that we clarified,
20 it's more clear that a performance-based design
21 demonstration is also an option at a CD landfill, where I
22 think the concern previously was it wasn't very clear that
23 that's what we were getting at in that section.

24 The other section that I would also like to
25 highlight is Section 7(s).

1 BOARD MEMBER CAHN: Before you leave the
2 performance-based design demonstration.

3 MS. ENGELS: Yes.

4 BOARD MEMBER CAHN: We're probably missing
5 hyphens in there.

6 MS. ENGELS: Okay.

7 BOARD MEMBER CAHN: So -- because -- Gina's
8 nodding her head.

9 CHAIRMAN BEDESSEM: Between performance and
10 based.

11 BOARD MEMBER CAHN: And, design, because
12 you've got demonstration after it. So it's modifying
13 demonstration.

14 MS. ENGELS: Oh, okay.

15 CHAIRMAN BEDESSEM: Everything is.

16 BOARD MEMBER CAHN: Everything is, yeah.

17 CHAIRMAN BEDESSEM: Multiple hyphens.

18 Gina's going --

19 MS. ENGELS: In between performance --

20 BOARD MEMBER CAHN: And based.

21 MS. ENGELS: -- and between based --

22 BOARD MEMBER CAHN: And design.

23 MS. ENGELS: -- and design.

24 THE REPORTER: One at a time.

25 MS. ENGELS: Sorry. Okay.

1 BOARD MEMBER CAHN: So what's the
2 difference between providing a performance-based design and
3 a performance-based-design demonstration? If the operator
4 does not provide a performance-based design showing the
5 concentrations of pollutants, do we need demonstration in
6 there? Is there a reason that --

7 MS. ENGELS: I think it's all of the work
8 that goes into the performance-based design. It's that
9 demonstration. It's -- all of that information is the
10 performance-based design.

11 BOARD MEMBER CAHN: So --

12 CHAIRMAN BEDESSEM: I think it might be
13 consistent with the language we have in other chapters.

14 MS. ENGELS: Chapter 2, I think, is where
15 we also see the performance-based design language.

16 BOARD MEMBER CAHN: I guess I would just --
17 to me, you could say if the operator does not provide a
18 performance-based design that demonstrates that
19 concentrations of pollutants will not exceed that. To me
20 is just clear, simpler language.

21 CHAIRMAN BEDESSEM: Uh-huh.

22 MS. ENGELS: I think we can look at that
23 and see how it compares to Chapter 2, because I know -- I
24 shouldn't say "I know," but I'm pretty sure that Chapter 2
25 has that language in there. No? You're giving me --

1 CHAIRMAN BEDESSEM: It's on my phone, so
2 it's easy to check.

3 MS. ENGELS: Easy to check.

4 Could you search Chapter 2 to see if there's
5 performance-based design? And that might even be in
6 statute.

7 CHAIRMAN BEDESSEM: In which case, you
8 might be stuck with that language.

9 MS. ENGELS: Stuck with that language.

10 CHAIRMAN BEDESSEM: Although this is
11 simpler because it demonstrates the verb as opposed to, you
12 know --

13 BOARD MEMBER CAHN: I think you need to
14 speak so she can hear you.

15 CHAIRMAN BEDESSEM: That's why she put me
16 next to her.

17 MS. ENGELS: So your suggested language is
18 if the operator does not provide a performance-based design
19 that demonstrates --

20 BOARD MEMBER CAHN: That concentrations.

21 MS. ENGELS: -- that concentrations.

22 CHAIRMAN BEDESSEM: Uh-huh.

23 MS. ENGELS: Okay.

24 BOARD MEMBER CAHN: In that case you would
25 have performance-based and no hyphen between based and

1 design.

2 MS. ENGELS: Okay.

3 CHAIRMAN BEDESSEM: Because it would be
4 modifying demonstration.

5 MS. ENGELS: Uh-huh.

6 CHAIRMAN BEDESSEM: I've learned most of my
7 grammar in here.

8 BOARD MEMBER CAHN: Osmosis.

9 CHAIRMAN BEDESSEM: Osmosis.

10 So we can come back to that after she looks it
11 up.

12 MS. ENGELS: Okay. So then jumping to
13 Section 7 as on page 4-28. Previously the Board provided a
14 comment about the language in this section that the
15 language did not provide -- the proposed language did not
16 provide the Department enough flexibility to determine when
17 a facility would have to close or line future units. This
18 was one of the public comments that we also -- or a section
19 that we received public comments on. The City of Casper
20 provided a comment suggesting changing Section 7(s) to not
21 remove the struck language. After reviewing the chapter as
22 a whole and considering the Board's comment, the Department
23 agrees with the Board, that building flexibility into the
24 rule is something that the Department desires, and we feel
25 as though there is the requirement for groundwater

1 monitoring within this rule. And there's also language
2 incorporated into this chapter that says if the
3 administrator requires an engineered containment system at
4 CD landfill, we have the rules in place for that design
5 information. So the Department -- the Department's
6 position is to leave the language struck.

7 The next section that I would jump to is
8 Section 8 on page 4-32. It starts on line 1270, with
9 assessment monitoring. We received some comments from the
10 Board about clarifying the language in this subsection of
11 (v), and we made those modifications. And I would also
12 point out that we received public comment from the City of
13 Casper to change some of the language in this section that
14 it might be better for me to just point out specifically to
15 the line number and read it.

16 Starting on line 1272, if there is a
17 statistically significant increase over background for one
18 or more Appendix C constituent --

19 THE REPORTER: You're going to have to slow
20 down.

21 MS. ENGELS: Sorry. Would you like me to
22 start again?

23 THE REPORTER: Yes, please.

24 MS. ENGELS: If there is a statistically
25 significant increase over background for one or more

1 Appendix C constituent in any well, the Administrator may
2 require the operator to analyze groundwater samples for the
3 constituents found in Chapter 2, Appendix A or B. The
4 comment that we received suggests changing the word may in
5 that sentence, where it says "the Administrator may
6 require" to "will require."

7 The other comment -- I think I'm just going to
8 address both of the public comments at one time. I direct
9 you, then, to line 1297. You see similar language where it
10 says "The administrator may require the owner or operator
11 to characterize the nature and extent of the release,
12 conduct an assessment of corrective measures, and institute
13 correction action remedies approved by the Administrator."
14 The Department feels as though having the word "may" allows
15 us flexibility to consider site-specific information when
16 making these determinations of what a facility is required
17 to sample for. And there's some similar flexibility built
18 into Chapter 2 when it comes to determining assessment
19 monitoring for Appendix C constituents. So the
20 Department's position would be to leave the language as is
21 proposed now.

22 BOARD MEMBER CAHN: I like the "may." I
23 think just for personal, you know, professional experience,
24 there's plenty of places where there's reasons why you get
25 a statistically significant increase over background that

1 may not require further sampling. So I think I'm -- I like
2 what you've done.

3 I would suggest after constituent on line 1273 --

4 MS. ENGELS: Yes.

5 Board MEMBER CAHN: (s).

6 MS. ENGELS: Okay.

7 Board MEMBER CAHN: Because you've got one
8 more Appendix C constituents.

9 CHAIRMAN BEDESSEM: I was going to say
10 that, but I wasn't positive of my grammar, so I'm glad you
11 did.

12 MS. ENGELS: Thank you.

13 Those are the sections that I would like to
14 highlight on Chapter 4. If you have additional questions
15 on Chapter 4 at this point, I'd be happy to hear them, or
16 if you'd like me to move into Chapter 6, I'm able to do
17 that too. I do know there are members of the public in
18 attendance today, and I imagine they would also --

19 CHAIRMAN BEDESSEM: I would like to do one
20 chapter at a time.

21 MS. ENGELS: Okay.

22 CHAIRMAN BEDESSEM: So if we can then
23 proceed onto public comment and then we can have our
24 comments and then get through Chapter 4 before you move on,
25 come back to you for Chapter 6.

1 MS. ENGELS: Okay.

2 CHAIRMAN BEDESSEM: So if any members of
3 the public would like to come up and speak. Probably this
4 chair on the end will work well.

5 MS. THOMPSON: Thank you for making your
6 way through the maze. We appreciate it.

7 BOARD MEMBER CAHN: Should make a little
8 cut-through.

9 MS. LANGSTON: This school's changed so
10 much when I went here 35 years ago. I shouldn't admit that
11 I dye my hair. It's like -- sorry.

12 CHAIRMAN BEDESSEM: Did you get that in
13 the --

14 MS. LANGSTON: Dye, D-Y-E.

15 THE REPORTER: State your name.

16 MS. LANGSTON: Hi. I'm Cynthia Langston.
17 I'm the City of Casper Solid Waste Director. And I am the
18 secretary/treasurer for the Wyoming Solid Waste and
19 Recycling Association. And I'd like to start by
20 apologizing to all the members here and Suzanne. My
21 comments are very late. And Suzanne's predecessor used to
22 be very angry with me when I'd do this. Unfortunately, I'm
23 not retired like some people that I can spend time doing
24 some of these fun things.

25 And to me this is somewhat fun, but it's very

1 serious, I'm not here to talk about technical points today
2 on Chapter 4. I'm here to talk about -- philosophically
3 about our future in landfills and what we have learned in
4 the past. We have a huge problem with leaking landfills in
5 this state. MSW landfills. Municipal solid waste
6 landfills. And we didn't think they were going to leak.
7 We did not think they were going to leak. And they are
8 leaking. And there has been other unlined facilities in
9 the United States that are leaking.

10 And my comments -- I knew the first one you guys
11 probably weren't going to put back in, but there was a
12 reason Bob Doctor, Suzanne's predecessor, put that language
13 in there. It was because the Wyoming Solid Waste &
14 Recycling Association did not want to go through and repeat
15 history about leaking landfills. And these C&D landfills
16 are unlined. It's scary. And the City of Casper is so
17 scared about it that we've implemented some very, very
18 strict, strict screening at our landfill.

19 But, you know, when I do retire here in 5 to
20 10 years, who knows, they may hire my dog to run the
21 landfill, who really does not know the history of why we're
22 so strict, and say, oh, you know, this isn't customer
23 friendly because we require you to be escorted. We go
24 through every single load to make sure nothing's going in
25 that unlined landfill that's going to potentially leak.

1 So a lot of the communities in Wyoming don't have
2 the resources of the City of Casper, and sometimes they're
3 open without any screening. It happens. And I think it
4 will continue to happen. And I'm just concerned with the
5 word "may" versus "will" on my second and third comment.
6 When you have an SSI of something, even if it's chloride,
7 I'm not saying you can't challenge the SSI. You can. I
8 mean, we've challenged SSIs. You get into the technical
9 weeds, well, what's your background, your upgradient, your
10 ground -- that's not what I'm here to say. If you have an
11 SSI, and something's getting in there -- I don't care what
12 it is -- to your groundwater, it's an indicator right on.
13 We know from history we're going to have a problem. That's
14 why the Wyoming Solid Waste & Recycling Association said if
15 you have that, flippin' close it and then go through the
16 rules and regulations and demonstrate it's not going to
17 happen again, that it is some weird fluke SSI. But to do
18 that, there are rules. But you go into assessment of
19 monitoring and you're required to look at other things.
20 And I think it's critical that we do that. Not that we may
21 do it. We should be doing this.

22 And that word "may" just really scares me. And
23 it's not about even in the next 10 years. It's about our
24 children and our future and groundwater. And I know a lot
25 of these landfills aren't in the situation like the City of

1 Casper is, to where the groundwater has a direct tie right
2 to the North Platte River, which is really clear. A lot of
3 these remote areas. But I'm telling you, in the future --
4 I think we can all agree on this -- water is a precious
5 commodity. And we need to treat it like that.

6 This is a -- this room right here, and the
7 gentleman on the screen, you have a say in what happens in
8 the future for decades by one little word. I'm saying we
9 tell our state regulators that it's not a "may." There's
10 no flexibility about this. We will look at this seriously.
11 We will -- we still have the challenges of -- we can still
12 challenge an SSI. I'm not saying you can't challenge an
13 SSI and make it site specific. What I'm saying is you have
14 to go through the rules and do your assessment monitoring
15 and figure this out, because I'm telling you the future --
16 I'm not looking into a crystal ball. I'm looking at the
17 past. When you have a chloride or something else,
18 something else is going to leak. It's just going to take a
19 little bit longer to find.

20 We need to strengthen this up and think about the
21 future. And that's my philosophical discussion for this
22 group.

23 And again, Suzanne, I'm very sorry I did this so
24 late in the process.

25 I was going to call her and talk to her. And I

1 didn't get a chance to do that. I didn't get a chance to
2 talk to Marge. Unfortunately I have a demanding job, and
3 none of the other WSWRA board members can make it either,
4 because they have demanding jobs. So I apologize to the
5 Board for that, but that's what I have to say today.

6 CHAIRMAN BEDESSEM: I have a question.

7 MS. LANGSTON: Yeah.

8 CHAIRMAN BEDESSEM: So you mentioned the
9 Wyoming Solid Waste Recycling Association a number of
10 times, but that comment letter is on City of Casper
11 letterhead.

12 MS. LANGSTON: It is.

13 CHAIRMAN BEDESSEM: So the comment is from
14 the City of Casper, not from WSWRA.

15 MS. LANGSTON: It is, because I did not
16 have a chance to talk to WSWRA. But I will tell you that
17 that comment that was struck --

18 CHAIRMAN BEDESSEM: I'm talking about the
19 "wills" and "mays."

20 MS. LANGSTON: Yes. Yes.

21 CHAIRMAN BEDESSEM: Do you know -- I mean,
22 it seems like if we want to know that WSWRA supports that,
23 we would have to get a letter from WSWRA.

24 MS. LANGSTON: I'm happy to do that, if the
25 Board's asking me to do that, because I can go back today

1 and get them on a phone call, but it's going to take me
2 probably a couple of days to do that. And I'm fairly
3 confident they're all going to agree with me, because they
4 all agreed with that language to put in there to close
5 them -- to line them.

6 One thing I want to point out to this, because
7 the legislators do too. The Board is one that puts it on
8 letterhead, and the Board is a representation of the entire
9 body. And you might have one entity -- I don't know,
10 Meeteetse, I'm going to pick on Meeteetse -- that didn't
11 agree because they're, you know, 100 people or whatever.
12 But that Board's mission is to protect groundwater and to
13 operate landfills to protect the environment. So I'm
14 confident that they will, but I did not do my due diligence
15 and actually get that --

16 CHAIRMAN BEDESSEM: So we don't have
17 something from the WSWRA Board on that at this current
18 time?

19 MS. LANGSTON: That's correct.

20 CHAIRMAN BEDESSEM: You know, you elect
21 representatives, but it's not -- you don't typically --
22 when you make decisions as a Board, you don't go to your
23 constituency and ask them what they think.

24 MS. LANGSTON: That's --

25 CHAIRMAN BEDESSEM: Okay.

1 MS. LANGSTON: We do that once a year.

2 CHAIRMAN BEDESSEM: Uh-huh. But not --

3 MS. LANGSTON: Yes.

4 CHAIRMAN BEDESSEM: But not on a specific
5 item.

6 MS. LANGSTON: That's correct. Do it once
7 a year when we go through what we are doing --

8 CHAIRMAN BEDESSEM: Yeah, --

9 MS. LANGSTON: -- with the legislation.
10 That's correct.

11 CHAIRMAN BEDESSEM: Okay. Thank you.

12 MS. LANGSTON: You bet.

13 CHAIRMAN BEDESSEM: Any other questions for
14 Cindy?

15 Appreciate the comments.

16 MS. LANGSTON: Again, I apologize for being
17 late on it.

18 CHAIRMAN BEDESSEM: Well, it was
19 considered.

20 MS. ENGELS: It was considered.

21 CHAIRMAN BEDESSEM: That's what's
22 important.

23 MS. LANGSTON: I appreciate it very much.
24 Like I said, I apologize to the Board for being late, and I
25 appreciate you at least looking at it, so...

1 CHAIRMAN BEDESSEM: Thank you, Cindy.

2 MS. LANGSTON: You bet.

3 CHAIRMAN BEDESSEM: Any other comments from
4 the public? Anybody else would like to come up and say a
5 few words?

6 Okay. Then I will assume the public comment is
7 over. Public comment period ended earlier, but then any
8 comments that are added today.

9 So even, Cindy, if they had not considered those
10 comments, if you had entered them in the record today, they
11 would have been considered as well.

12 MS. LANGSTON: Thank you, Marge.

13 CHAIRMAN BEDESSEM: Uh-huh. So I'm going
14 to move now to some Board comments or questions regarding
15 the rule.

16 There was one tiny change for me on page 4-21.
17 Section 5, Geology and Hydrology. Geology and Hydrology.
18 So on the second line wouldn't you want to have local
19 geologic and hydrologic information instead of "or"?

20 MS. ENGELS: Oh.

21 BOARD MEMBER CAHN: Yeah.

22 MS. ENGELS: I'm sorry, Madam Chair. This
23 line, 793, there wasn't any changes previously made, but
24 you're suggesting to change that "or" to "and"?

25 CHAIRMAN BEDESSEM: Yeah, because the title

1 is "and."

2 MS. ENGELS: "And."

3 CHAIRMAN BEDESSEM: I'm sure you want
4 "and." And I'm pretty sure in Chapter 2 it's "and."

5 MS. ENGELS: Yes. I would agree.

6 CHAIRMAN BEDESSEM: I think it's
7 accidentally "or."

8 MS. ENGELS: "Or" for some reason.

9 CHAIRMAN BEDESSEM: Right. I don't know,
10 but I don't think it's a purposeful reason. I think it's
11 an accidental reason. So if we can just switch that to
12 "and" so it's consistent.

13 MS. ENGELS: Okay.

14 CHAIRMAN BEDESSEM: And I know we talked
15 about the way these are organized before. And this is --
16 there's a part in the generally -- general facility
17 information where you have potential impacts surface and
18 groundwater, and then the actual request for information is
19 back in Section 5. It still seems really odd to me, but I
20 know that it's consistent with Chapter 2. It seems like if
21 you were going to have them in two places, you would have
22 them flipped and have the information in the list of
23 information you need and the interpretation later on in
24 Section 5. But someday in the future, when a whole
25 different group of people are here, they can fix both

1 chapters at the same time. So for right now at least you
2 have all the information in there, but, you know, you'll
3 have -- we'll have the direct people to look into spots for
4 the geology and hydrogeology information. But you got
5 everything you need in there and the language is fine, so
6 it's all good. And switch the "ands," I'm happy camper.

7 MS. ENGELS: And, Madam Chair, that was one
8 of the topics I was going to highlight in Chapter 6,
9 because I think there was more discussion at a previous
10 board --

11 CHAIRMAN BEDESSEM: Different, right?

12 MS. ENGELS: -- meeting. And you're
13 correct, that we left the chapter structure as it was
14 originally proposed.

15 CHAIRMAN BEDESSEM: Uh-huh. And I should
16 have paid more attention when we did Chapter 2, so that
17 this was organized better. But since we didn't catch it in
18 Chapter 2, both will be the same and somebody will fix it
19 10 years from now. Anyways, as long as it has an "and" in
20 there, it covers everything you need, so I'm fine with it.

21 MS. ENGELS: Okay.

22 BOARD MEMBER CAHN: Before we leave that,
23 Madam Chair.

24 So I would prefer instead of hydrology in both --
25 and hydrologic, we say hydrogeology and hydrogeologic,

1 because I think of hydrology as encompassing surface water
2 as well, and none of the description in here is on surface
3 water. It's all really groundwater aquifers and things.
4 So if it can be geology and hydrogeology for Section 5
5 title. And then on line 793, could read -- so the sentence
6 on 792 would read the application shall include a summary
7 description of available local geologic, or -- sorry -- and
8 hydrogeologic information.

9 CHAIRMAN BEDESSEM: I feel like we
10 mentioned that last time.

11 BOARD MEMBER CAHN: I did. It's in another
12 section, so...

13 MS. ENGELS: Madam Chair, that was
14 commented in Chapter 6.

15 CHAIRMAN BEDESSEM: We missed it in 4.

16 MS. ENGELS: We made those changes in
17 Chapter 6, but did not evaluate Chapter 4 for that
18 comment. So just jumping to Chapter 6 -- and I won't go
19 any further -- but this section title in Chapter 6 is
20 Geology, Hydrology and Hydrogeology, where we have all
21 three. Would it be sufficient to make the Section 5 in
22 Chapter 4 match that section title in Section 6?

23 BOARD MEMBER CAHN: I guess I don't see the
24 need for the hydrology --

25 MS. ENGELS: Hydrology.

1 BOARD MEMBER CAHN: -- if we're not talking
2 about surface water.

3 CHAIRMAN BEDESSEM: But, I mean, you
4 evaluate, you know, what -- how close you are to surface
5 water monitoring and --

6 BOARD MEMBER CAHN: That's true, yeah.

7 CHAIRMAN BEDESSEM: -- so forth.

8 BOARD MEMBER CAHN: All three is good,
9 then.

10 MS. ENGELS: Okay. We will make the change
11 to include all three.

12 BOARD MEMBER CAHN: So then this would read
13 geology, hydrology and hydrogeology.

14 MS. ENGELS: Yes.

15 CHAIRMAN BEDESSEM: And then did we
16 change -- so we have to look at Chapter 6 to see -- does
17 it -- it doesn't have "or" in there, does it?

18 MS. ENGELS: I'm sorry, Madam Chair. What
19 was your question?

20 CHAIRMAN BEDESSEM: In Chapter 6, does that
21 section have "or" in there that we were changing, or is
22 that fixed in that one?

23 MS. ENGELS: If you are looking at
24 Section -- Chapter 6 with comments, it's on -- you can find
25 it on page 6-20.

1 CHAIRMAN BEDESSEM: It says sites. So
2 we're not consistent. We have geology, hydrogeology --
3 hydrology and hydrogeology, but it -- we have "and," but it
4 says geology and hydrogeology.

5 MS. ENGELS: And we omitted the hydrology.

6 CHAIRMAN BEDESSEM: Uh-huh.

7 MS. ENGELS: We will add that --

8 CHAIRMAN BEDESSEM: So both of them will
9 match.

10 MS. ENGELS: Yes.

11 CHAIRMAN BEDESSEM: Okay. And then what
12 did Jody find out about 2?

13 MS. ENGELS: Madam Chair, I do not believe
14 language specific to performance-based-design demonstration
15 or evaluation is included in Chapter 2. It just states
16 performance-based design and then has a colon. However,
17 looking back in the statute in 35-11-526, it states
18 performance-based design and performance-based evaluation
19 in consideration and approval of engineered containment
20 systems as part of municipal solid waste landfill permits.

21 CHAIRMAN BEDESSEM: So it sounds to me that
22 it's --

23 MS. ENGELS: Demonstration was an added
24 word.

25 CHAIRMAN BEDESSEM: So we can say that

1 demonstrates and shorten it.

2 MS. ENGELS: Yes. Yes.

3 CHAIRMAN BEDESSEM: Thank you for checking
4 all those pieces. Because sometimes whatever language is
5 in the statute, we just have to repeat them. It's not a
6 perfect world.

7 MS. ENGELS: Right.

8 CHAIRMAN BEDESSEM: So you can change that?

9 MS. ENGELS: Yes.

10 CHAIRMAN BEDESSEM: Because it says the
11 same thing --

12 MS. ENGELS: Yes.

13 CHAIRMAN BEDESSEM: -- just fewer words.

14 MS. ENGELS: So, Madam Chair, jumping back
15 to page 4-24 where we find that language, I would just like
16 to confirm the language that we will be changing on
17 line 914 to read performance-based design that demonstrates
18 that concentrations.

19 CHAIRMAN BEDESSEM: Uh-huh.

20 MS. ENGELS: Is that correct?

21 CHAIRMAN BEDESSEM: Uh-huh.

22 BOARD MEMBER CAHN: Yes.

23 CHAIRMAN BEDESSEM: Perfect.

24 MS. ENGELS: Thank you.

25 CHAIRMAN BEDESSEM: Okay. Those are the

1 only comments that I had that fell in the minutia category
2 of wordsmithing, so I hand it over to Lorie.

3 BOARD MEMBER CAHN: I need a little more
4 time. Let's see if Alan has --

5 CHAIRMAN BEDESSEM: Okay.

6 BOARD MEMBER KIRKBRIDE: I don't really
7 have anything. Okay. Got it.

8 CHAIRMAN BEDESSEM: Okay. Thanks, Alan.

9 BOARD MEMBER CAHN: Okay. I'm going to
10 reverse my comment based on what Cindy said. On page 4-32,
11 4-33, changing the "mays" to "wills" as requested by the
12 State of -- by the state of Casper --

13 CHAIRMAN BEDESSEM: State of Casper.

14 BOARD MEMBER CAHN: City of Casper. And
15 the reason is I think that there's enough wiggle room for
16 the owner-operator to demonstrate within 90 days for -- it
17 says an alternative time frame -- that the statistically
18 significant increase over background is not due to the
19 solid waste disposal unit, but that -- so --

20 CHAIRMAN BEDESSEM: So what line are you
21 looking at changing?

22 BOARD MEMBER CAHN: Well, I'm on line 1254.
23 So the owner-operator instead of "may," say "will," because
24 I was mis -- I was misreading the line. And there's enough
25 of the things that you can demonstrate that wouldn't

1 require you to move into assessment monitoring from
2 detection monitoring. There's -- there's -- all the things
3 I was looking for are in there. And so basically if -- if
4 you can't demon -- so you have the option to demonstrate
5 that it's not the landfill that's causing this. And if it
6 is the landfill, then you will be -- and you should be
7 required to initiate -- to go from detection to assessment
8 monitoring, if you -- so that's -- that's just --

9 CHAIRMAN BEDESSEM: Uh-huh.

10 BOARD MEMBER CAHN: And then on line 1297.

11 Now here if the -- it says unless the owner or operator
12 demonstrates that the statistically significant increase
13 was caused by another source, resulted from an error in
14 sampling analysis or statistical evaluation or from natural
15 variation in groundwater quality. So you've got all of
16 those things in there. So if you can't demonstrate those
17 things, then the administrator should require the owner-
18 operator to characterize the nature and extent of the
19 release. So then you'd be -- well, at that point I guess
20 we're moving into corrective action.

21 CHAIRMAN BEDESSEM: So, Jody, are you
22 busily looking in Chapter 2?

23 MS. WEIKART: Yes, Madam Chairman.

24 CHAIRMAN BEDESSEM: Read my mind. She's
25 checking for "mays" in 54 and --

1 MS. ENGELS: Madam Chair, are you
2 interested in the language found on line 1297, if that's
3 consistent in chapter -- with Chapter 2?

4 CHAIRMAN BEDESSEM: Uh-huh. And on 1254.

5 MS. ENGELS: So I believe the language
6 found in 1297 would be similar -- Jody, you can double-
7 check this too -- in Chapter 2, Section 9(b)(i)(F)(3) or
8 romanette capital III, I'm not sure, with numbers 1 and 2.
9 And it might be helpful to find a page number for Chapter
10 2. I think you're looking at Chapter 4. Okay.

11 CHAIRMAN BEDESSEM: Yeah. If you have page
12 numbers on Chapter 2, that would be helpful, because I'm
13 looking on my phone.

14 MS. ENGELS: Are you? I believe the title
15 is Assessment Monitoring for Appendix C, if you're looking
16 on your phone, Madam Chair.

17 CHAIRMAN BEDESSEM: Can you give me a hint
18 on page numbers, because there's a lot of tiny writing
19 here. Ah. Here we go.

20 MS. ENGELS: It looks like it starts on
21 page 2-24, Madam Chair.

22 CHAIRMAN BEDESSEM: Thank you.

23 MS. ENGELS: And it looks like it goes on
24 to page 2-25, number 1, sort of in the middle of the page,
25 unless the owner-operator demonstrates that the -- that the

1 statistically significant increase was caused by another
2 source, resulted from -- I'm sorry. Do you mind if I --

3 CHAIRMAN BEDESSEM: It's got "may."

4 MS. ENGELS: Yes, it has "may."

5 CHAIRMAN BEDESSEM: And I think -- I
6 think -- I don't want to make the assumption that DEQ isn't
7 going to do their job, and that if -- if -- that you've got
8 engineers and geologists hired to make these, you know,
9 recommendations to the administrator as to -- that within
10 90 days to initiate assessment monitoring in cases that are
11 worthwhile. But it seems particularly with facilities
12 where you don't have the best background data, a lot of our
13 facilities don't, or the longest record of data where
14 requirements on -- you know, this is not a profit-making
15 institution. These are usually municipalities running
16 these things. That to have the flexibility to make those
17 decisions based on technical reasons is an important thing,
18 and it doesn't make sense to me to make the construction
19 demolition landfill chapter more stringent than the
20 municipal solid waste chapter and to reduce -- and to
21 reduce that flexibility.

22 And, you know, like that one whole section we
23 took out could all have been construed as being more
24 stringent than Subtitle D. And so I think, you know,
25 you -- you really need to think about the consistency

1 between the two and not make a lot of things more onerous
2 for C&D, when a lot of communities are wanting to do these,
3 and not doing these ends up with significant financial cost
4 to the taxpayer.

5 And you don't want to be requiring taxpayers to
6 pay for something that doesn't make technical sense. And
7 so I think that you should be -- that the agency should
8 have the technical discretion, because, you know, there's
9 lots of times where we -- you know, they got one background
10 well and it doesn't reflect the variation that's in that
11 aquifer.

12 And then you have an SSI and then we've got to go
13 to assessment monitoring, when actually the problem is that
14 maybe you need another background well to be looking at the
15 variability in that aquifer. To kick into something that's
16 significant cost for a municipality based on what might not
17 be sufficient data, I would like to think that we hire
18 engineers and geologists to, you know, do that job as
19 opposed to someone who just reads rules and checks the box,
20 oh, the stat report said we did this, and so now you have
21 to do this, without any of that technical evaluation.

22 BOARD MEMBER CAHN: But what's miss -- what
23 would you think is missing from this list that we have
24 statistically -- that the statistically significant
25 increase over background is not due to the solid waste

1 disposal --

2 CHAIRMAN BEDESSEM: A lot of times you
3 can't figure that out.

4 BOARD MEMBER CAHN: -- but the difference
5 is due to another source of pollution, error in sampling
6 analysis to support natural variation in groundwater
7 quality.

8 CHAIRMAN BEDESSEM: A lot of times you
9 can't figure that out, or the expense to do so is
10 outrageous. So I don't -- I guess if the situation
11 warrants it, then the administrator will do it. I don't
12 think you should be changing "mays" to "wills" and have it
13 be inconsistent with what we have in other chapters.

14 BOARD MEMBER CAHN: Except for that the
15 City says online, so --

16 CHAIRMAN BEDESSEM: Yeah.

17 BOARD MEMBER CAHN: So -- so --

18 CHAIRMAN BEDESSEM: Yeah, but if you
19 have -- I would like to think that if you have -- you don't
20 make it more stringent because -- I don't believe because
21 they're online. I think it's the burden is on the agency,
22 is that if you have any kind of issue, then you need to
23 enforce it and that's their job. But you also don't want
24 to put costs on a community when there isn't something that
25 technically supports that. And the only reason you're

1 doing it is because it says "will" and when you evaluate it
2 technically it makes no sense. So I think I have respect
3 for the profession and think that those decisions will be
4 made appropriately. Instead what will happen is the agency
5 will be not complying with their rules fairly often, which
6 is not a good thing. So you want to make rules that are
7 reasonable and the agency can comply with.

8 So, like I said, I don't want to be more
9 stringent than Subtitle D. I want to be consistent with
10 municipal. And I -- I think they have the ability to do
11 that. I think if you make it a "will," it's -- you may be
12 doing things that make no technical sense. And because I
13 would say more often than not you think that there's
14 another soft source, but the costs for figuring out what
15 that other source is way exceeds this, and so we're
16 spending money for something that is not a problem. So
17 I -- like I said, I -- I think flexibility is important for
18 both the applicant and the agency, and that it doesn't
19 necessarily translate to poor environmental protection. I
20 mean, we're making the assumption if you have "may," you're
21 not going to do your job and we're going to have an
22 environmental problem, and I don't think that's necessarily
23 the case.

24 MS. ENGELS: Madam Chair, I would agree
25 with what you are describing and saying. The Department

1 wants to be able to comply and enforce our rules and use
2 technical information to make decisions at facilities.
3 Although the construction and demolition landfills are
4 unlined, the waste that is going into them is not MSW.
5 There are -- there are different types of landfills. It's
6 very important to screen the waste that is going into them.
7 And that is a responsibility of the facility, to make sure
8 that they are implementing those screening mechanisms. So
9 it's really a joint effort. I feel like between the
10 facility and the Department when they're doing the up-front
11 work with the screening and the Department is evaluating
12 those groundwater monitoring reports and making decisions
13 with the information that's provided.

14 BOARD MEMBER CAHN: So what check does the
15 Department have on the screening that an individual sees
16 the landfills doing?

17 MS. ENGELS: Similar to Chapter 2
18 facilities, the MSW landfills, the applicant puts in
19 information into their permit about their screening
20 procedures, frequencies, how they're going to implement
21 that. And then the Department also conducts inspections to
22 see how a facility is doing. And if there's issues,
23 they're noted in inspection reports and followed up on. If
24 there's complaints to facilities, the Department responds
25 to those too.

1 BOARD MEMBER CAHN: So would the agency be
2 more inclined to require additional work if the feeling --
3 if this was a may and the feeling was that they weren't
4 doing a good job with their screening?

5 MS. ENGELS: Madam Chair. Yes, we
6 definitely communicate with the facilities saying, for
7 example, if there's a litter issue at a facility, we have
8 them revisit their litter collection program. We would do
9 the same with waste screening. If there's an issue with
10 what's actually being placed in the CD cell or unit, and we
11 find that they're not implementing their screening
12 procedures effectively, we would definitely work with them
13 to improve those.

14 CHAIRMAN BEDESSEM: Yeah.

15 MS. ENGELS: I'm sorry. Go ahead.

16 CHAIRMAN BEDESSEM: As I said, I don't
17 think having a "may" in there as opposed to "will" is -- if
18 you have a situation where there's a pollution problem,
19 that the Department is any less likely to require it. I
20 think, though, it gives the Department the flexibility that
21 if you have, like you said, you know, a situation -- for
22 example, like this is talking about significantly --
23 significant increase over background, but it's not even
24 talking about above any groundwater protection standard.
25 It's just an increase.

1 BOARD MEMBER CAHN: Right.

2 CHAIRMAN BEDESSEM: You know, so chloride
3 went from 300 to 350, and then they're going to have to go
4 into assessment monitoring. I have a hard time with saying
5 the Department has to do that. That's different than if
6 you, you know, have some other constituent that's not in
7 the background water and shows up and it's, you know,
8 anthropogenic or something like that.

9 But, you know, assessment monitoring can be a
10 fair amount more expensive, and I think the DEQ can -- can
11 use their technical expertise to know when it's appropriate
12 and when it's not appropriate based on the groundwater
13 monitoring program.

14 And if they are -- if the facility has been
15 permitted according to the guidance and has gone through
16 this permitting process, it shouldn't be a facility that's
17 sited where it's likely to leak.

18 MS. ENGELS: That is correct.

19 CHAIRMAN BEDESSEM: So they're not putting
20 any facilities, you know, 10 feet from groundwater, 5 feet
21 from groundwater, so...

22 MS. ENGELS: Right.

23 CHAIRMAN BEDESSEM: So, anyway, that's --
24 you have two different opinions.

25 BOARD MEMBER KIRKBRIDE: Well, from my

1 perch, I find -- Madam Chairman, I find your argument
2 persuasive. I think that -- I kind of think the
3 flexibility is worth a lot. And we have good people and
4 good systems and that "may" is a good way to -- a good word
5 to hear.

6 CHAIRMAN BEDESSEM: Thank you, Alan.

7 Is there anything else you wanted to -- so
8 there's the issue with "may" and "will" in that case, and
9 then anything else in Chapter 4 that we need to discuss or
10 change? I think you made a lot of good changes where it's
11 improved.

12 MS. ENGELS: Thank you.

13 I don't believe I have additional sections I
14 would like to point out at this time in Chapter 4. I
15 guess --

16 CHAIRMAN BEDESSEM: So you want to wait
17 until we go through Chapter 6 and then entertain potential
18 motions thereafter --

19 MS. ENGELS: I think so, because we
20 would --

21 CHAIRMAN BEDESSEM: -- since it's a
22 package.

23 MS. ENGELS: -- like to move forward or
24 evaluate them together.

25 CHAIRMAN BEDESSEM: As a package?

1 MS. ENGELS: Yes.

2 CHAIRMAN BEDESSEM: Do you have anything
3 more, Lorie, on 4? We can move to 6?

4 MS. ENGELS: Yes.

5 CHAIRMAN BEDESSEM: Okay.

6 MS. ENGELS: So, Madam Chair, if we pull up
7 Chapter 6 with comments, with the green version.

8 CHAIRMAN BEDESSEM: Okay.

9 MS. ENGELS: Look at my notes too.

10 Similar Chapter 4, we reformatted the rule,
11 highlighting sections, bolding, underlining, I think
12 that's -- that was a big improvement to both of these
13 chapters. We also included a reference to the statutes in
14 Chapter 1 for definitions for consistency and referencing.

15 We also made the grammatical changes throughout
16 Chapter 6 that were -- that were received. Again, I have
17 three sections. I -- I don't know why three is the lucky
18 number, but it is for highlighting sections with these two
19 rules. The first section I'd like to point us to is
20 Section 3 (c), found on page 6-6. It is the access
21 agreement language.

22 We received -- the Board provided a comment for
23 the Department to evaluate the language found here. There
24 was some concern about the language found starting on line
25 424, that -- the sentence says that must be kept under the

1 conditions of any permit. The Department -- or, I guess,
2 the Board's concern was that the language of "any permit"
3 is pretty broad-reaching. The Department looked at this
4 language. It's language that was received from the
5 Attorney General's Office. It's identical to the access
6 agreement language found in Chapter 2.

7 There is the potential that the Department would
8 have to evaluate county permits when we're looking at
9 location standards. And the Department at this time does
10 not make -- does not recommend making any changes because
11 of those reasons. And towards the bottom of this section,
12 on line 427, it refers us to the purposes of ensuring
13 compliance or as otherwise authorized by the appropriate
14 rules and regulations of the Department. So the Department
15 doesn't feel that it's opened the door to any permit
16 that an applicant or a facility would potentially have.
17 It's just all related back to the information specific to
18 Chapter 6.

19 The second section I would like to point us to is
20 Section 4(f), found on page 6-16. The Board provided a
21 comment to clarify the language of Section 4(f) found on
22 line 887 of the Wild & Scenic Rivers Act. The Department
23 evaluated the language of the National Wild & Scenic Rivers
24 Act and decided not to make any changes so that we remained
25 consistent with that federal act.

1 And I also realized, as I was going through all
2 of these comments, that all of the sections I'm
3 highlighting for you are the sections where the Department
4 did not make changes in Chapter 6. So the next section is
5 Section 5. We've talked about it a little bit. It's on
6 page 6-20. The Board suggested moving this section into
7 Section 3 and having it incorporated there with -- and
8 Section 3 is the general facility information. And the
9 Department left the structure as is. The Department wanted
10 to have similar rule structure throughout the chapters, and
11 felt as though Section 3 is general facility information,
12 more higher level. And this section would contain more
13 detailed information. And I also have in my notes to make
14 the changes we just discussed in Section 5.

15 Those are the three sections I wanted to
16 highlight. The Department did not receive any public
17 comments specific to Chapter 6.

18 CHAIRMAN BEDESSEM: And I assume that's
19 primarily because Chapter 6 doesn't have any specific
20 groundwater monitoring, because these are typically
21 facilities that -- I mean, there's not burial going on
22 here. There's not disposal of wastes.

23 MS. ENGELS: That's correct.

24 CHAIRMAN BEDESSEM: Thank you for checking
25 on those items that were mentioned at the last Water and

1 Waste Advisory Board meeting so that we can make those
2 corrections if they had been necessary.

3 I don't have any specific changes in Chapter 6.
4 Let me ask, just to make sure, is there any public comment
5 related to Chapter 6? Anybody that would like to come and
6 speak?

7 Okay. That must be the case, because there isn't
8 a groundwater monitoring item.

9 MS. LANGSTON: That would be right.

10 CHAIRMAN BEDESSEM: That would be right.

11 So this one gets passed. So -- so any other comments
12 about -- I mean, we went through a lot of it in the last
13 time we went through this rule. So it's good to know that
14 we're down to the end, and thank you for those explanations
15 and the changes that did not happen.

16 Alan, do you have any comments on 6?

17 BOARD MEMBER KIRKBRIDE: No. No. It's
18 fine.

19 CHAIRMAN BEDESSEM: Lorie, is there
20 something that we need to check in 6?

21 BOARD MEMBER CAHN: Yeah. I would like to
22 just take a 10-minute break.

23 CHAIRMAN BEDESSEM: Uh-huh.

24 BOARD MEMBER CAHN: I'm just -- so I can
25 just --

1 CHAIRMAN BEDESSEM: Look up stuff,
2 whatever?

3 BOARD MEMBER CAHN: Yeah.

4 MS. ENGELS: Sounds good.

5 CHAIRMAN BEDESSEM: 10-minute recess.
6 We'll be back at -- what time is it now?

7 MS. THOMPSON: 10:00.

8 CHAIRMAN BEDESSEM: 10:00. So we'll be
9 back at 10:10.

10 (Meeting proceedings recessed
11 10:02 a.m. to 10:25 a.m.)

12 CHAIRMAN BEDESSEM: I'd like to call the
13 third quarter water and waste advisory Board meeting back
14 to order after break.

15 Lorie pointed out to me that we probably needed
16 to define -- we were talking SSIs, that those are
17 statistically significant increases, in case anybody in the
18 audience didn't know the acronym.

19 I believe we might be being filmed. If that's
20 the case, can you identify yourself, who you are?

21 MR. RIPPY: I'm Carl, Carl Rippy, KCWY News
22 13 here in Casper, Wyoming USA.

23 CHAIRMAN BEDESSEM: Thank you.

24 Okay. So DEQ, have you concluded your
25 presentation on Chapter 4 and Chapter 6?

1 MS. ENGELS: Madam Chair, we have, yes.

2 CHAIRMAN BEDESSEM: Okay. So it is our
3 understanding that DEQ would like a vote on whether to send
4 these chapters with the corrections that were discussed
5 today, which are minor, to move forward to the
6 Environmental Quality Council, which will be, I think, the
7 first quarter 2019 --

8 MS. ENGELS: Yes. That's correct.

9 CHAIRMAN BEDESSEM: -- by the time it would
10 be at EQC.

11 So I'm looking forward for a motion from one of
12 my board members.

13 BOARD MEMBER CAHN: I move to approve
14 Chapters 4 and 6 as we've amended in our discussions on to
15 DEQ for consideration.

16 BOARD MEMBER KIRKBRIDE: I would second
17 that.

18 MS. THOMPSON: Madam Chair, if I could
19 clarify, that you were recommending to move them to the EQC
20 Council?

21 BOARD MEMBER CAHN: Sorry.

22 MS. THOMPSON: Sorry to be nitpicky.

23 CHAIRMAN BEDESSEM: Just don't want to --

24 MS. THOMPSON: Right. I want to make it
25 easy for AG, when they do our statutory authority review,

1 to make sure that we've said everything in the way we're
2 supposed to --

3 CHAIRMAN BEDESSEM: So the motion is
4 correct.

5 MS. THOMPSON: -- for the record.

6 Yeah. Thank you.

7 BOARD MEMBER CAHN: Thank you.

8 CHAIRMAN BEDESSEM: So we have a motion on
9 the floor to approve Chapters 4 and 6 as amended, to
10 approve them for consideration by the Environmental Quality
11 Council. All those --

12 BOARD MEMBER CAHN: Madam Chair,
13 discussion.

14 CHAIRMAN BEDESSEM: Uh-huh.

15 BOARD MEMBER CAHN: I've been sitting here
16 in this meeting kind of waffling back and forth between the
17 "may" and the "will." And a part of -- a part of the issue
18 is, as Ms. Langston brought up her issues for the City --
19 on behalf of the City of Casper. And also I'm balancing
20 that with my experience with landfills where there is
21 constituents that are not above -- that are background
22 constituents that you can have statistically significant
23 increases, and then they go away and then they increase,
24 where there's poor characterization of background or
25 there's natural variation in background constituents. That

1 would not warrant necessarily moving into -- from detection
2 monitoring into assessment monitoring. And the other
3 issue, though, that's also on my mind is I also am
4 concerned about political pressure being applied as we're
5 seeing right now in EPA, where I see a lot of good
6 environmental regulations being rolled back in EPA, and
7 making things less protective for human health and the
8 environment. So I -- we can all see how political pressure
9 can bring to bear on agencies to not be as environmentally
10 protective, and I find that very concerning. So I guess
11 I -- it's -- I'm in a difficult position. And I also feel
12 like we don't have a complete board here where, you know,
13 two other members of the board, you know, could vote on
14 this issue of "may" versus "will," because it could be an
15 important -- or it is an important issue.

16 So I just want to kind of lay that on the table.
17 Is Luke Esch here?

18 MS. ENGELS: Madam Chair, it does not
19 appear that our administrator, Luke Esch, was able to join.
20 I know he had some other commitments and meetings scheduled
21 for today in Cheyenne, and he was going to try and join
22 Mr. Kirkbride in Cheyenne, but it doesn't appear as though
23 he's been able to do so.

24 BOARD MEMBER KIRKBRIDE: He's just been in
25 here during the break, but he said he had to go to another

1 meeting upstairs, and so he was going to try to get back
2 just as you have just responded.

3 CHAIRMAN BEDESSEM: So --

4 MS. ENGELS: Madam Chair, I would point out
5 too that in my discussions with our administrator it is the
6 Department's position to -- we did consider the City of
7 Casper's comment, and it's our position to leave the
8 language as proposed with this Chapter 4.

9 CHAIRMAN BEDESSEM: So are you hoping
10 Mr. Esch would be able to respond to your concerns
11 regarding political pressure?

12 BOARD MEMBER CAHN: Yes.

13 CHAIRMAN BEDESSEM: Which you probably are
14 not in the position to do?

15 MS. ENGELS: I probably am not.

16 BOARD MEMBER CAHN: Maybe if he's coming
17 back, maybe we could go on with the meeting and defer the
18 vote until we have a chance to talk to --

19 CHAIRMAN BEDESSEM: This is when you should
20 text him and say --

21 MS. ENGELS: Yes, we can. I'll reach out
22 to --

23 BOARD MEMBER CAHN: I'm not sure he's going
24 to be able to answer my question.

25 MS. ENGELS: -- Luke to look to see if he's

1 available. I'm not exactly sure what meetings he had
2 scheduled. If he's with our director, for instance, he may
3 not be able to step away.

4 CHAIRMAN BEDESSEM: Uh-huh, but maybe if
5 he's with the director, maybe that's something the director
6 can respond to. But I think it's important to have on the
7 record that that is a concern.

8 MS. ENGELS: Uh-huh. Yes.

9 BOARD MEMBER CAHN: So maybe we could just
10 defer the vote, if we could, until later on when we might
11 be able to get --

12 MS. ENGELS: That sounds reasonable to me.

13 CHAIRMAN BEDESSEM: Okay. So then that
14 means that you're probably done with everything else
15 related to, or is Mike presenting anything?

16 MS. ENGELS: Madam Chair, Mr. Jennings is
17 not. I asked that he join us today in case there were any
18 questions in his specific arena, but there were none. So
19 he -- as he stated earlier, he's the eye candy of DEQ.

20 CHAIRMAN BEDESSEM: Okay. Thank you.

21 MS. LANGSTON: Did you really say that,
22 Mike?

23 MR. JENNINGS: Now that's in the
24 transcript.

25 CHAIRMAN BEDESSEM: Okay. He's officially

1 turning red.

2 So I know that what had been on the agenda for
3 the Water Quality Division had been postponed. So I
4 don't -- so I guess I want to know if there are other
5 updates that we will be receiving from Solid Waste or from
6 Water Quality.

7 MS. ENGELS: Madam Chair, Solid Waste does
8 have one other update for you. We'd like to give the Board
9 an update on the coal combustion residual rule, CCR.

10 CHAIRMAN BEDESSEM: That's correct.

11 MS. ENGELS: And for that update, I'm going
12 to turn it over to Jody Weikart, and I'm going to step away
13 and try to reach Luke. Thank you.

14 CHAIRMAN BEDESSEM: Welcome, Jody.

15 MS. WEIKART: Thank you.

16 Good morning. Thank you for allowing us to give
17 you an update on the current status of the coal combustion
18 residual, or the CCR rule, as it is more commonly referred
19 to.

20 Prior to giving --

21 BOARD MEMBER CAHN: Can you speak just a
22 little louder, please?

23 MS. WEIKART: Sure. Sorry.

24 CHAIRMAN BEDESSEM: Also the speaker's over
25 here, so you're going to have to project.

1 MS. WEIKART: Right. So before I give you
2 an update specifically on what we are doing here in Wyoming
3 at DEQ, I'd like to give you just a brief background on the
4 CCR rule, so we can all know exactly what we're discussing.

5 Back on December 22nd of 2008, there was a large
6 coal ash spill that occurred at the Tennessee Valley
7 Authority Power Plant in Tennessee. This spill flooded
8 over 300 acres of land and released coal ash into the Emory
9 and Clinch Rivers. This event prompted the EPA -- or the
10 Environmental Protection Agency to assess coal ash surface
11 impoundments and gather information from various other
12 facilities with coal ash across our nation.

13 Approximately six years later, it was in December
14 of 2014, the EPA signed the Disposal of Coal Ash Residuals
15 from Electric Utilities final rule. This rule is commonly
16 referred to as the CCR Rule.

17 CHAIRMAN BEDESSEM: You're not on mute
18 right now.

19 MR. ESCH: All right. Hello, Board.

20 CHAIRMAN BEDESSEM: Okay. So we're --
21 we're going to continue for a moment with Jody. How long
22 is your talk?

23 MS. WEIKART: I do have a little bit more.
24 If you'd like to go back to the Chapter 4 and Chapter 6.

25 CHAIRMAN BEDESSEM: Since we don't know how

1 long we have Luke here, let's go ahead and switch back to
2 Administrator Esch.

3 MR. ESCH: Hello, Board. Thank you for
4 participating today. I hear you have a question. How can
5 I help?

6 BOARD MEMBER CAHN: So, Mr. Esch, we are --
7 we've been discussing the use of the word "may" and "will"
8 in Chapter 4, in terms of detection monitoring moving to
9 assessment monitoring and assessment monitoring moving into
10 corrective action, based on demonstration by the owner-
11 operator of the exceedance was not due -- whether -- if
12 they can show that it was not due to a bunch of different
13 things like background variation or sampling error, et
14 cetera.

15 And so I just have -- I'm going to put you on the
16 spot. You may or may not be able to answer my question,
17 but one of the things that -- that I'm concerned about is
18 just the political pressure that can come to bear on
19 agencies as we've seen right now with EPA. And so, you
20 know, where regulations are being rolled back that are
21 becoming less environmentally protective, based on I would
22 just say political pressure, not technical things. And so,
23 you know, in one sense I like the flexibility the DEQ has
24 in the language "may," because I've seen the -- you know,
25 I've seen background issues at landfills that, you know,

1 are statistically sig -- and also know that with a limited
2 number of samples, you can have high false positive rates.
3 So I'm sensitive to that and on the one hand I like the
4 flexibility given to DEQ. On the other hand, I'm concerned
5 about -- or just want to hear from you in terms of
6 political -- I don't know how you can address my question
7 on political pressure, but I think you know where I'm
8 going. That, you know, if the language is "will," DEQ will
9 require these things, then that is less prone to political
10 pressure where -- whereas "may" you could be prone to
11 political pressure to not necessarily do the right thing
12 for the environment.

13 So I don't know how to ask you the question, but
14 I think you know where I'm going, and I don't know if
15 you're at liberty to answer.

16 MR. ESCH: Well, Madam Chair.
17 Councilwoman -- it's Lorie -- let me just say Lorie. It's
18 kind of a difficult question. I think our proposal in
19 modifying to "may" because there's a lot of factors as you
20 come into consideration for those assessment and corrective
21 measures. It's not only, okay, yes, you get certain number
22 of hits in your monitoring wells, are there other factors
23 that may be taking place that would lead to that. Also,
24 bringing -- considering the fact that if there are -- if
25 there are questions about the data, do you want a will or a

1 shall in place of a may in order to allow the Department to
2 take into consideration additional information that would
3 provide additional information for the Department to make
4 an affirmative decision one way or the other?

5 With regard to the political pressure, I -- I
6 don't really feel that we have much of the political
7 pressure. I think if we have the information and it's --
8 and it's there and it's clear, I don't really feel
9 political pressure to make a decision one way or the other.
10 I think you have to take into consideration the community's
11 ability to do anything at all. I mean, if you have
12 information in front of you that says something and this
13 community should do something, but there's no resources to
14 do it, do you want a "may" or a "shall" or a "will" to, you
15 know, put them between a rock and a hard place, or would
16 you rather a "may," which allows the administrator to
17 continue working with those folks to address the issue?
18 And so that's my position on where the "will" or the "may,"
19 the differences are -- the "shall" -- the differences are.

20 I'm not sure if that addresses your question, but
21 I think there's a lot of -- a lot of factors to take into
22 consideration, which I think may, as it provides that
23 latitude to the Department, to consider resources of the
24 individual community, as well as the more technical details
25 surrounding that particular facility.

1 CHAIRMAN BEDESSEM: And I would expect then
2 you could work with the community to find funding, and so
3 forth, for addressing issues, which might not necessarily
4 be able to happen in that short time frame.

5 So I think you said something with respect to
6 political pressure as far as your assessment of how you
7 feel at the current moment that you are not seeing those
8 kinds of things on your decision making at this point.

9 But I don't know that anybody could ever promise
10 you anything. You know what I mean? But he tried to
11 address it.

12 BOARD MEMBER CAHN: Yeah. And I appreciate
13 that. And I realize, you know, nobody has a crystal ball
14 to look at the future of political pressure that may come
15 to bear. You know, hopefully the pressure won't come to
16 bear on the states as it has on the national scene for EPA.
17 So, anyways, thank you. I appreciate your comments.

18 CHAIRMAN BEDESSEM: Okay.

19 MR. ESCH: Did I contradict something that
20 Suzanne already said?

21 MS. ENGELS: No. We're on the same page.

22 CHAIRMAN BEDESSEM: No. Yeah.

23 Are there any other questions for Administrator
24 Esch?

25 Well, great. Thank you for stepping away from

1 your other meeting to join us so that we can get your input
2 on that particular item.

3 MR. ESCH: I'm happy to be here. So thanks
4 for, I guess, convening today and listening to our
5 presentations on Chapters 4 and 6, as well as the CCR
6 presentation that Jody's going to be presenting later.

7 CHAIRMAN BEDESSEM: Right. She might have
8 to start over.

9 MS. ENGELS: That's okay.

10 CHAIRMAN BEDESSEM: It's okay. Shall we go
11 to the 4 and 6?

12 BOARD MEMBER CAHN: Sure.

13 CHAIRMAN BEDESSEM: And then we can move
14 mentally over to the CRR rule. So we have a motion on the
15 floor to approve Chapters 4 and 6 for consideration by the
16 Environmental Quality Council to enact those rules. Any
17 further discussion?

18 Not hearing anything, all those on the Board in
19 favor say aye.

20 BOARD MEMBER CAHN: Aye.

21 BOARD MEMBER KIRKBRIDE: Aye.

22 CHAIRMAN BEDESSEM: Opposed? None.

23 Abstentions? None.

24 The rules have passed and will be on their way to
25 the EQC.

1 MS. ENGELS: Thank you, Madam Chair.

2 MR. ESCH: Thank you.

3 CHAIRMAN BEDESSEM: Thank you.

4 Well, congratulations. Is Solid Waste coming up
5 with any more rules besides this CCR?

6 MS. ENGELS: Madam Chair, none that are
7 coming to mind. I believe our next focus will be the CCR
8 rules. I know that we will try and evaluate our rules
9 ongoing, but we just did major revisions to Chapters 1 and
10 2. With 4 and 6 passing now, I think we will --

11 CHAIRMAN BEDESSEM: Tackle the CCR.

12 MS. ENGELS: -- tackle the CCR.

13 CHAIRMAN BEDESSEM: Thank you very much.

14 So, Jody, can you like start over from the
15 beginning?

16 MS. WEIKART: Of course, Madam Chair.

17 CHAIRMAN BEDESSEM: Sorry. Appreciate it.

18 MS. WEIKART: Of course. Please allow me
19 to give you a brief history.

20 CHAIRMAN BEDESSEM: Uh-huh.

21 MS. WEIKART: Back on December 22, 2008,
22 there was a large coal spill that occurred at the Tennessee
23 Valley Authority at a power plant located in Tennessee.
24 The spill flooded over 300 acres and released coal ash into
25 the Emory and Clinch Rivers.

1 This event prompted the EPA to assess coal ash
2 surface impoundments and to gather information from various
3 facilities managing coal ash from across the nation.

4 Six years later, EPA signed the Disposal of Coal
5 Ash Residuals from Electric Utilities as a final rule.
6 This is commonly referred to as the CCR rule.

7 In summary, not to get too far into the weeds of
8 the rule, it essentially discusses protective liners for
9 new CCR units or expansions to existing structures. Owners
10 of existing surface impoundments must demonstrate
11 acceptable liners exist or commence closure. Landfills and
12 surface impoundments must implement groundwater monitoring
13 assessment and corrective action if local groundwater
14 protection standards are exceeded. This includes during
15 closure and also postclosure activities.

16 On December -- in December of 2016, the Water
17 Infrastructure Improvement for the Nations Act was signed
18 by the president. This gave the EPA the ability to allow
19 states to take on the CCR program themselves.

20 And so how does this affect us here in Wyoming?
21 We have currently 15 impoundments and three landfills that
22 fall under the CCR rule. And those are currently permitted
23 by DEQ's Water Quality, and also the Solid Waste group.
24 And then they also fall under the CCR rule.

25 DEQ is planning to ask EPA to delegate authority

1 to DEQ for the CCR program. And the EPA does support DEQ's
2 request in this.

3 In order to delegate this authority, DEQ will
4 first need to develop rules that are at least as protective
5 as the federal CCR rule. These rules must be in place
6 prior to the EPA delegating authority to us. We plan to
7 complete this task by incorporating the Federal Rule by
8 reference into our rules, and we hope that we'll be able to
9 present a rule package before the Board in either December
10 of this year or the first quarter of next year.

11 CHAIRMAN BEDESSEM: So I have a question.

12 MS. WEIKART: Yes.

13 CHAIRMAN BEDESSEM: So right now, the 15
14 surface impoundments are regulated through Water Quality,
15 and the three landfills are regulated through Solid &
16 Hazardous Waste.

17 MS. WEIKART: That's correct.

18 CHAIRMAN BEDESSEM: So how will these rules
19 be administered within DEQ? Will they be under Water
20 Quality or under -- how's that's all going to work?

21 MS. ENGELS: Madam Chair, that will be
22 implemented through the Solid Waste permitting program. So
23 our program is taking the lead in incorporating the rules.
24 We -- those impoundments are at the same locations as the
25 landfills. And so we are working with Water Quality to

1 ensure that we're incorporating aspects of their rules into
2 our final rule package. But, ultimately, it will be solid
3 waste that will be responsible for reviewing permit
4 applications and issuing the operating permits.

5 MS. THOMPSON: Additionally, Madam
6 Chairman, the Water Quality Division will be doing some
7 rulemakings to point folks in the direction of the Solid
8 Waste group so that there isn't confusion as to who will be
9 their regulator, which program will be regulating them. So
10 we will be bringing rulemakings to you in the next year. I
11 don't have a firm schedule on that. We're currently
12 assessing which rules have references that we need to amend
13 to point them in the direction of this new upcoming rule.

14 CHAIRMAN BEDESSEM: So it's not going to be
15 a combined package?

16 MS. ENGELS: No.

17 CHAIRMAN BEDESSEM: Okay. So the CCR rule
18 for Solid Waste will come first.

19 MS. THOMPSON: Yes.

20 CHAIRMAN BEDESSEM: And whatever changes
21 need to be made, once that rule is approved, will then come
22 forward from Water Quality?

23 MS. THOMPSON: Yes, ma'am.

24 BOARD MEMBER CAHN: That was confusing.

25 MS. ENGELS: We will figure it out, Madam

1 Chair.

2 MS. THOMPSON: I believe that there is an
3 interest in bringing them quite close together, so I don't
4 believe that there will be a lag. We're currently
5 regulating under two completely separate rule programs,
6 which is part of the confusion.

7 CHAIRMAN BEDESSEM: It will simplify it for
8 the applicant.

9 MS. THOMPSON: It will.

10 MS. ENGELS: Yes.

11 MS. THOMPSON: That's our belief. So
12 hopefully we will not be bringing them, you know, years in
13 advance. It will be within a few months of the Solid Waste
14 rulemaking, so that will be fresh in your mind, and it will
15 be clear for operators as well.

16 CHAIRMAN BEDESSEM: Uh-huh.

17 BOARD MEMBER KIRKBRIDE: I'm curious if
18 there are -- if we are looking at a significantly different
19 set of rules than we have now. Different standards.

20 MS. ENGELS: Madam Chair. The standards
21 for CCR, the Department imagines -- or envisions, I should
22 say, that they will be very close to the federal rules.
23 There is additional requirements that are found in the
24 federal rules than what we currently have. Right now those
25 facilities are regulated by Chapter 3 of the Solid Waste

1 Rules and Regulations. So they will now be regulated under
2 a new chapter. There are differences between the state
3 rules and the federal rules, which is why the Department
4 believes incorporation by reference would be the cleanest
5 process forward.

6 BOARD MEMBER KIRKBRIDE: Well, do we have
7 facilities that are going to be out of compliance with the
8 newer regulations?

9 MS. ENGELS: I do not believe that they
10 will be. The federal CCR rule right now is
11 self-implementing. So they -- the facilities are in
12 compliance with the federal rule now and are required to do
13 notification. I believe some inspections on their own.
14 It's just above and beyond what the state currently
15 requires.

16 BOARD MEMBER KIRKBRIDE: Uh-huh. Thank
17 you.

18 CHAIRMAN BEDESSEM: So let me get this
19 straight. The State is going to take over this program as
20 far as the implementation dates and so forth. Are they
21 currently abiding by the federal CCR rule?

22 MS. WEIKART: Yes.

23 CHAIRMAN BEDESSEM: So it's just -- we're
24 just taking it over?

25 MS. THOMPSON: Uh-huh.

1 MS. ENGELS: That's correct.

2 MS. WEIKART: Correct.

3 CHAIRMAN BEDESSEM: So it's not a new thing
4 to them. It was new when the federal rule came out?

5 MS. WEIKART: Yes.

6 MS. ENGELS: Yes.

7 CHAIRMAN BEDESSEM: Okay. I'm sure they
8 would prefer to be dealing with one agency and one division
9 of one agency.

10 MS. ENGELS: And, Madam Chair, that's
11 correct. That's what we've been hearing from facilities,
12 because they are maintaining compliance with the federal
13 CCR rule, and then also maintaining compliance with their
14 Chapter 3 industrial landfill permit with the Department.

15 CHAIRMAN BEDESSEM: Uh-huh. Okay. That's
16 all the questions I have.

17 Anything further?

18 BOARD MEMBER KIRKBRIDE: No.

19 CHAIRMAN BEDESSEM: Thank you, Jody, for
20 the update.

21 MS. WEIKART: Thank you.

22 CHAIRMAN BEDESSEM: When are you
23 thinking -- what quarter in 2019?

24 MS. ENGELS: Madam Chair, very
25 optimistically, December of 2018.

1 CHAIRMAN BEDESSEM: That's optimistic.

2 MS. ENGELS: That's correct. But probably
3 more realistically first quarter of 2019.

4 CHAIRMAN BEDESSEM: All right. Thank you.

5 MS. ENGELS: Yes.

6 CHAIRMAN BEDESSEM: Okay. So I think Solid
7 Waste Division has wrapped up.

8 MS. ENGELS: Yes. Thank you for your time.

9 MS. THOMPSON: So, Madam Chairman, we --
10 the Water Quality Division sent you notification earlier
11 this week that we would be withdrawing our request to
12 propose a rulemaking for our water quality surface
13 standards.

14 And Mr. Bill DiRienzo from our WYPDES program is
15 in attendance today. We wanted to make sure that we were
16 available to answer any questions that the Board might have
17 regarding that withdrawal. And so if -- if you have any
18 questions for the Division, we would be happy to take
19 those. But before you adjourn for the day, we would also
20 like to discuss scheduling and any other concerns that the
21 Board might have for the agency to consider
22 administratively.

23 CHAIRMAN BEDESSEM: So we're looking at a
24 fourth quarter advisory board meeting?

25 MS. THOMPSON: To accommodate our Solid &

1 Hazardous Waste program, that would potentially be of an
2 interest for the agency. However, if the Board is feeling
3 that your schedules are not going to make that possible, I
4 believe that we would be open to pushing out.

5 CHAIRMAN BEDESSEM: Considering that
6 it's -- that this meeting is so late in October, I would
7 think we could wait until -- you know, because normally it
8 would have been in September.

9 MS. THOMPSON: Correct.

10 CHAIRMAN BEDESSEM: But since this is late
11 in October, I would think we could postpone it until
12 January.

13 I would like feedback from -- Alan, does that
14 sound good to you?

15 BOARD MEMBER KIRKBRIDE: Yes, that's fine.

16 BOARD MEMBER CAHN: I could support a
17 meeting -- I could be here in December, but I could support
18 a remote meeting. But, you know, if --

19 CHAIRMAN BEDESSEM: So either December or
20 January, depending on how far we've gotten along. But for
21 you to do a December, then you have to have 30 days public
22 notice. So you'd have to know you were at that point not
23 very far from now.

24 MS. THOMPSON: Correct.

25 MS. ENGELS: Correct.

1 And does Water Quality have any issues for the
2 Board in December or would it just be Solid Waste?

3 MS. THOMPSON: I would have to discuss that
4 with Administrator Frederick. My understanding earlier
5 this week was that we did not, but we're in an ever-
6 changing climate. And sometimes these projects or up --
7 briefing items come up quite quickly. So before I
8 incorrectly state that the Division doesn't have anything,
9 I'd like to confirm with him, and then we will work
10 together with Solid and Hazardous Waste Division to see
11 what items they need to bring before you and then we'll
12 send out some polling.

13 CHAIRMAN BEDESSEM: Okay.

14 MS. THOMPSON: But either way we will give
15 you -- we can email you with an update. And we'll have
16 additional -- little administrative things. We have our
17 annual report that's due, and I'll need to update you on
18 those types of things anyway. So I can throw it all
19 together.

20 BOARD MEMBER CAHN: Obviously, it probably
21 goes without saying that we don't -- wouldn't support a
22 Water Quality meeting in December and a Solid & Hazardous
23 Waste meeting in January.

24 MS. THOMPSON: Yes, ma'am.

25 BOARD MEMBER CAHN: Hopefully you guys

1 always coordinate.

2 MS. THOMPSON: That's correct. And the
3 agency prefers that economy of scale. Let's keep it
4 together so as not to overtax our Board. So definitely
5 that's -- that's definitely a consideration, ma'am, so...

6 CHAIRMAN BEDESSEM: So we don't have the
7 advice, at least with our three members, as far as huge
8 blocks of time that we're unavailable in the next few
9 months.

10 BOARD MEMBER CAHN: Yeah, I just wouldn't
11 be able to physically be at a meeting, but I can attend
12 remotely, so...

13 MS. THOMPSON: And that is perfectly
14 acceptable. As you can see, our equipment has gotten a lot
15 better performancewise.

16 CHAIRMAN BEDESSEM: My goodness, yes.

17 Alan, you're coming over on the screen just
18 beautifully. We can hear you beautifully. It's a great
19 thing.

20 MS. THOMPSON: It's a marked improvement,
21 as you're aware.

22 BOARD MEMBER CAHN: Yes. Thank you for all
23 your hard work.

24 MS. THOMPSON: Thank you.

25 So, yes, we will work together on that next

1 meeting point, so...

2 CHAIRMAN BEDESSEM: So and I don't know if
3 Bill needs to answer this or whether you can give us the
4 short version as to just a quick explanation to the Board
5 as to why -- okay.

6 Mr. DiRienzo.

7 BOARD MEMBER CAHN: You want to sit here?

8 MR. DiRIENZO: Yes. Thanks, Madam Chair.

9 What we're doing here -- what's really going on
10 is there's a gas field operating out in Moneta Divide.
11 Their permit expired, and we're in the process of trying to
12 review their discharge permit. And Aethon -- Aethon
13 Energy.

14 BOARD MEMBER CAHN: Hold on just a second?

15 Can you hear okay? I see you kind of --

16 UNIDENTIFIED MALE: Not real well.

17 MR. DiRIENZO: Oh, okay.

18 BOARD MEMBER CAHN: -- trying to figure

19 out --

20 UNIDENTIFIED MALE: I can move.

21 MR. DiRIENZO: I can move to here.

22 BOARD MEMBER CAHN: I noticed your body
23 language that you couldn't hear. And I'm sensitive to that
24 myself.

25 MR. DiRIENZO: Okay. So I'm just giving a

1 little background on how this all came about. And so
2 Aethon, they bought the -- they bought the operation
3 several years ago. It had been previously operated by
4 EnCana. And the way the permit is written right now,
5 because there's a Class I water 40 miles downstream, we
6 limit the total discharge, the total load from that field
7 to not cause negative impact on the river, which -- so they
8 have a permit now with basically a simple limit of 908 tons
9 of salt a month, without any limits on chloride, sulfate,
10 because all those had been grandfathered 60 years ago,
11 50 years ago, when they developed the field.

12 So EnCana, they want to increase production.
13 There's a lot of gas in the field that they feel they can
14 make. They want to increase production, but they're
15 limited by that 908 tons. They felt -- the 908 tons, the
16 basis for that permit limit, came from back in 1979 when
17 the river was designated as Class I, that field was there
18 and that was the amount of load of pollution that they were
19 discharging when the river got designated. So that was
20 grandfathered in. So that was the basis for that limit,
21 just that. No studies, nothing like that.

22 So Aethon believes that there's -- there is
23 actually dilution available that they can put a larger
24 load -- there's an assimilative capacity there that would
25 be lost in the background of the river that has never been

1 accounted for, and they wanted to explore that. So spent
2 the last two years doing a model to determine exactly the
3 fate and transport of salts and all the different
4 pollutants that would be involved in their discharge, what
5 exactly happens to them and how much could be added to the
6 river without being able to show any measurable change on
7 the river 40 miles downstream. And they did that.

8 So they completed that study, and we were ready
9 to go ahead with a permit renewal. But it also came to
10 light, through this process, that Bad Water Creek is listed
11 as a Class II water. And with it is a 230 milligram per
12 liter chloride limit, which they have never -- which has
13 never been met in the river since DEQ existed, because this
14 discharge had been grandfathered as anywhere from 2 --
15 anywhere between 2 and 3,000 parts chloride they've been
16 discharging for all that time.

17 So we approached it and tried to take a common
18 sense approach to it and just revise the permit that --
19 revise the permit -- revise the standard -- the in-stream
20 standard to be -- to recognize what has been legally
21 allowed in that stream up until now. And so we drafted
22 this use attainability analysis along those lines. We're
23 hoping to move that through, get that done, so that when we
24 reissue the permit, we don't have a conflict with the
25 standard that they're not meeting.

1 EPA -- we met with EPA on that, though, and they
2 have advised us they cannot support that. And, of course,
3 being a water quality standard, if we go through this whole
4 process, they don't act on it until we've gone through the
5 whole process and adopted the standard and then we send it
6 down there and have them reject it, which we don't want to
7 do that.

8 And so they advised us that's -- just that
9 concept of basing the criterion on this historic water
10 quality doesn't fit within the -- and that they -- in order
11 for us to change that criterion, they need a different type
12 of UAA, one that will require a study of the stream. For
13 how long, we don't know yet. We don't exactly know what
14 the study's going to look like. But the purpose of the
15 study has to be to establish what the highest attainable
16 uses on that stream are and then determine what the
17 appropriate criteria to support those uses would be. So
18 that's what they said that they would consider, if they
19 wouldn't consider this.

20 So that basically -- we just met with them last
21 week, and so it all came about very quickly. And we
22 thought we need -- we don't -- we shouldn't go along with
23 this until we sort this whole thing out. So as far as when
24 we -- we will be coming back with something in the future.
25 We do intend to address this somehow, but that's unclear at

1 this point. It won't be in front of you in the near future
2 for sure, until we sort that out.

3 CHAIRMAN BEDESSEM: Thank you. That's
4 really helpful explanation of what is going on. So it
5 might be a year from now or more?

6 MR. DiRIENZO: Yes. It could be at least
7 that.

8 CHAIRMAN BEDESSEM: So what happens with
9 their permit in the meantime?

10 MR. DiRIENZO: That too is -- right now
11 it's on a continued basis. Right now could be argued, you
12 know, the permit is written. And it's the same limits
13 they've had for 50 years. And I don't know -- we're not
14 going to -- right now it's just continued. I don't know
15 what would happen if we'd even try to reissue that with the
16 same limits, whether that would run into a problem at this
17 point. So, you know, in the next few weeks we'll be
18 addressing that pretty tightly with EPA to figure out
19 exactly what we can do here.

20 CHAIRMAN BEDESSEM: Okay. Thank you very
21 much.

22 Any questions from the Board?

23 Thank you. You'll refresh our memory when you
24 come back. Thank you.

25 Is there any additional business before the Board

1 today?

2 BOARD MEMBER CAHN: Madam Chair.

3 CHAIRMAN BEDESSEM: Yes.

4 BOARD MEMBER CAHN: I -- this issue has
5 come up before. I went onto the website that talks about
6 the board members, and it looks like there should have been
7 a link that if you click on our underlined names you should
8 get contact information of ours, but there's nothing there.
9 It's just our names and who we represent.

10 MS. THOMPSON: Yes.

11 BOARD MEMBER CAHN: I've talked about it
12 before, and I would like -- and we have had before -- I
13 would like to see our emails and our phone numbers that we
14 prefer to be contacted at, because especially when, you
15 know, I represent the public at large, it's not easy for
16 them to figure out how to get ahold of me or Marge. And I
17 think industry probably knows how to get ahold of, you
18 know, Alan -- or --

19 I don't know, Alan, if you feel, you know -- not
20 industry, but agriculture -- knows how to get ahold of you.

21 But, you know, I -- you may feel also like -- I
22 mean, I would like to see everybody's information down.
23 You know, probably the only one who everyone knows how to
24 get ahold is Brian for industry.

25 So, anyways, sorry. I'll shut up and let you

1 talk.

2 MS. THOMPSON: That's okay. Madam
3 Chairman, I will go ahead and speak to this as a concern.

4 The agency has reviewed the Board -- the
5 individual Board pages. And I believe it was back in the
6 late '90s the Environmental Quality Council had -- had an
7 issue or there was some concern about ex parte
8 communications. And, essentially, what that means is that
9 there is a concern that boards remain unbiased when they're
10 considering matters. So if we bring you a matter or the
11 public brings you a matter, we -- it's important for the
12 Board and for the agency to protect yourselves from bias.

13 So what does that mean as far as contact
14 information goes? There's a sense that -- or there's an
15 idea that we have -- if we have -- if we allow the public
16 to contact you directly, that that could potentially bias
17 you and we wouldn't know it. We prefer the public to
18 follow the commenting channels that we lay out in front
19 of -- that we lay out in our public notices. We offer
20 multiple opportunities for commenting, and we all -- we
21 offer multiple methods of commenting as well.

22 The Water and Waste Advisory Board was the only
23 Board in the agency that was posting specific personal
24 contact information for its members. The Environmental
25 Quality Council does not do that. None of the --

1 CHAIRMAN BEDESSEM: They have an office.

2 MS. THOMPSON: Right. So the idea is that
3 if we do have a member of the public or industry or one of
4 the other groups that's represented by the Board members,
5 that we -- that we would prefer that they contact the
6 agency so that we can make sure that that question or
7 comment is disseminated equally and fairly so as to prevent
8 any individuals from having a look of bias.

9 Yes, ma'am.

10 CHAIRMAN BEDESSEM: I recall when we went
11 to the Attorney General's Office training, that they
12 suggested that we use -- that every Board have wyo.gov
13 emails.

14 MS. THOMPSON: Correct.

15 CHAIRMAN BEDESSEM: Potentially one email
16 for the entire Board so that any concerns that were brought
17 to the Board would be brought to everybody on the Board.

18 MS. THOMPSON: That is correct.

19 CHAIRMAN BEDESSEM: And so I -- I guess it
20 would be nice if -- if there was a way to do that,
21 therefore, then it wouldn't have a risk of ex parte
22 communication, but it is another avenue, when people have
23 an issue, it may not be when there's a public comment
24 period that happens to be open at that time.

25 MS. THOMPSON: Correct.

1 CHAIRMAN BEDESSEM: And so is it possible
2 for you to look into that? I know that they told us to
3 contact our, you know, AG about individual ones. I don't
4 feel I need an individual -- I don't need another email.

5 MS. THOMPSON: Uh-huh.

6 CHAIRMAN BEDESSEM: But they also suggested
7 that too, because if there was any concern about
8 communication and there was a public information request,
9 it would just go to -- it would be related to Board
10 business, that email account as opposed --

11 MS. THOMPSON: Yes.

12 CHAIRMAN BEDESSEM: -- to our personal
13 emails, because then it would be too voluminous.

14 MS. THOMPSON: Yes.

15 CHAIRMAN BEDESSEM: So is that something
16 you can check for us, whether we can have a contact for the
17 Board in general on that page?

18 MS. THOMPSON: I would not -- I had not
19 been aware of the single contact concept. One of the other
20 board members that had attended had expressed an interest,
21 and so we had worked with ETS -- or our Enterprise
22 Technology Services to get that wyoboards specific domain
23 address set up for him. But I can --

24 CHAIRMAN BEDESSEM: Can you inquire about
25 that --

1 MS. THOMPSON: I will do that.

2 CHAIRMAN BEDESSEM: -- because --

3 MS. THOMPSON: And I will do that in
4 advance of your next meeting, because I -- I get that it is
5 important for people to contact you, and we want to be
6 transparent. We also want to protect you from any like --

7 CHAIRMAN BEDESSEM: Issues.

8 MS. THOMPSON: -- any sniff of bias,
9 because we don't want you to be subject to a government --
10 the governor's executive order. I mean, you are subjected
11 to that, but we don't want that to be an issue for you, we
12 don't want there to be a legal proceeding against any of
13 you.

14 CHAIRMAN BEDESSEM: Well, so I know like --
15 the reason I suggested the one email is I know like for our
16 county commissioners -- I know if you have an issue to
17 bring up to county commissioners, there's one email that
18 you can -- that reaches all of them.

19 BOARD MEMBER CAHN: But you can also call
20 individual an commissioner and say, hey, and just talk to
21 them about it as well. So, I mean, you know, a lot of them
22 will say -- especially now in election season, a lot of
23 them say here's my cell phone number. If you have any
24 questions or concerns, anything you want to talk about,
25 give me a call. So...

1 MS. THOMPSON: So if it would be all right,
2 can I take a moment and -- I believe the ex parte order in
3 question is posted on the Council's website, because I
4 believe it was directed specifically at them. So I'll just
5 pull this up and see if we can get some helpful information
6 from that.

7 CHAIRMAN BEDESSEM: It was an intriguing
8 discussion at that kind of educational seminar that the
9 AG's Office put on, but it was very focused towards boards
10 and commissions who are approving licenses and that kind of
11 thing, which we do not do. So it's -- it's hard for us. I
12 don't think they put a lot of thought into what the
13 difference might be for a group like us.

14 MS. THOMPSON: I agree.

15 CHAIRMAN BEDESSEM: Also, because they
16 would say, "well, your AG," and we don't have an AG that we
17 can call directly.

18 MS. THOMPSON: That is correct. You don't
19 have one that's currently assigned. And I believe that
20 the -- the option is out there that if the Board does see
21 a need to have legal counsel on, you know, your direct
22 behalf -- because when we bring our -- the AG that's
23 assigned to our divisions, when we bring them to speak to
24 you, they can't represent us both because that's a
25 conflict, right? But the Council has an appointed attorney

1 that reviews matters on their behalf and can advise them
2 when they have questions of a legal nature. So potentially
3 you could also have an AG appointed to you. We would just
4 need to make that request. And so if that's an interest of
5 the Board, I can inquire as to what the procedure would be
6 for that, so that you have that -- that option to you.

7 BOARD MEMBER CAHN: My concern really more
8 is -- I mean, when you bring up this issue of bias -- I
9 mean, hopefully we've been appointed to the Board by the
10 governor based on the feeling that we're not going to be
11 biased, you know. You know, we have expertise that's
12 valuable to the DEQ. But, you know, I think a member of
13 the public could also equally say if you're only going to
14 communicate from DEQ, and what we do as a public has to go
15 through DEQ to come to you, then you're also subject to
16 bias as well.

17 I mean, I think that -- that it's important for
18 people to just to be able to call and just kind of discuss
19 some concerns. And maybe -- maybe a member of the public
20 isn't going to be at the point where they want to make a
21 public comment, but they just have some concerns. I mean,
22 there's a lot of people who won't make public comments or
23 who won't write a letter, but might have a legitimate
24 concern, or they might have a concern that they think,
25 well, I don't know if this is even worth mentioning, you

1 know, or something they might want to just, you know, kind
2 of sound something out and then decide, well, you know,
3 okay. We can say, well, contact DEQ or write a letter, you
4 know, whatever you feel like doing. But I just feel like
5 we -- it's hard to represent the public at large if they
6 have no ability to contact us directly.

7 So I would like to -- you know, I've been on the
8 Board for a long time, since like, I don't know, 2000,
9 2001. It's like 17-something years. And for many years my
10 contact -- all of our contact information was on the
11 website.

12 MS. THOMPSON: Right.

13 BOARD MEMBER CAHN: And I never felt
14 inundated with -- or I never felt uncomfortable with
15 somebody calling me. It was always a welcome --

16 MS. THOMPSON: Right.

17 BOARD MEMBER CAHN: -- a welcome thing to
18 get a phone call. It was nice to know somebody was
19 interested in what we do.

20 MS. THOMPSON: Right. And while I
21 understand that point, that -- I know that specifically in
22 my division, we've run into some circumstances where it's
23 easier to address a particular concern or comment if the
24 division can hear them in the first person and get, you
25 know, all the comments and then ask additional questions as

1 needed to flush out some of those nuances that maybe aren't
2 as easily conveyed when they're conveyed in the third
3 person, right?

4 And I've also looked up the ex parte order that
5 the Council posts on their website. And it does apply
6 directly to them. So it's an order from 1985 that is
7 signed by the chairman of the Council, Harold Bergman. And
8 it shows that, you know, all documents delivered to the
9 Council have to be delivered to the Council staff office.
10 And no documents are to be delivered to individual council
11 members unless prior approval has been gained from the
12 office. And it applies to all documents, including but not
13 limited to correspondence, public comments or legal
14 analyses. So that applies to them.

15 What I can do in the meantime is talk to our
16 Attorney General's Office. I -- and go through the board's
17 and commission's handbook with them and see if we can flush
18 out how this applies to you as a board and how it applies
19 to our other agency boards, because we have multiple. And
20 it's a concern at the director's level that we have
21 consistency amongst all the boards, which is why we felt
22 comfortable taking down your contact information, because
23 the other boards did not have it listed specifically
24 either.

25 So I have a list of items I need to follow up on

1 and come back to you, hopefully in time for your next
2 meeting. And if I'm still waiting on information, I will
3 specifically update you on what I need still to get this
4 resolved for you. But I'll talk to the AG's Office about
5 getting a uniform like a one email address --

6 CHAIRMAN BEDESSEM: Whether that's
7 possible.

8 MS. THOMPSON: -- that folks can send, you
9 know, correspondence to the Board, and then that way the
10 agency can fairly disseminate that information to you. I
11 will look at the ex parte order with the AG and see how
12 that applies to you, since it is -- it's addressed to the
13 Council, but I believe that there are some executive order
14 materials that apply directly to all boards and
15 commissions. And so we can look at that.

16 And then I'll also ask them when their next
17 boards and commissions training is, because I believe that
18 the one that they had earlier in the year was pretty
19 helpful for the various board members and council members
20 that attended, because they -- you get those attorneys in
21 the room and they can answer these questions from a
22 professional qualified standpoint instead of Gina looking
23 on the website trying to get an answer for you, so...

24 CHAIRMAN BEDESSEM: It was difficult,
25 though, at that meeting, because a lot of times they'll

1 just say call your AG, and we don't have one.

2 MS. THOMPSON: You don't have one.

3 CHAIRMAN BEDESSEM: To be honest, when we
4 did have comments in the past that were directed to a board
5 member, it was not a comfortable situation where, you know,
6 the board member wanted to go to DEQ to first get an answer
7 from an AG. And it would be nice to have an AG assigned --

8 MS. THOMPSON: Yes.

9 CHAIRMAN BEDESSEM: -- so that if you have
10 something that isn't appropriate to go directly through the
11 agency, that you can get an answer, then you can call the
12 AG and say how am I supposed -- what are the logistics of
13 handling this and there's no ex parte communication.

14 MS. THOMPSON: Yes.

15 CHAIRMAN BEDESSEM: That's the procedure?

16 MS. THOMPSON: Uh-huh.

17 CHAIRMAN BEDESSEM: That doesn't work well
18 if you have to go through the agency.

19 MS. THOMPSON: That is correct.

20 CHAIRMAN BEDESSEM: To be honest, if we
21 were assigned an AG, there would be almost no work for that
22 AG, because --

23 MS. THOMPSON: Quarterly --

24 CHAIRMAN BEDESSEM: But you know,
25 essentially if something happened, then we would have a

1 name to call --

2 MS. THOMPSON: Yes. Uh-huh.

3 CHAIRMAN BEDESSEM: -- to ask.

4 MS. THOMPSON: Yes.

5 CHAIRMAN BEDESSEM: It may take them five
6 minutes a quarter, him or her, you know.

7 MS. THOMPSON: Yes.

8 CHAIRMAN BEDESSEM: But it would be nice to
9 have one assigned, because that was what was happening at
10 that training. They said, well, you know, go ask your --
11 well, we don't have one.

12 MS. THOMPSON: We don't have one, yes.

13 And I agree. I think that would clear up a lot
14 of confusion and question on our side too, because there
15 are times where -- you know, none of us wants to make a
16 misstep and compromise the proceedings. And it's nice to
17 have an attorney in the room to ask -- as an aside, you
18 know, I believe that they usually ask you to, you know --
19 if it's an elaborate question, you go into executive
20 session, kick everyone out so you can ask them -- so they
21 can counsel you.

22 CHAIRMAN BEDESSEM: We don't normally have
23 that here.

24 MS. THOMPSON: We don't normally have that,
25 but we would like to make that an option to you. So I will

1 commit to looking into that on your behalf. And to find --
2 you know, what kind of information do they need, what kind
3 of a request -- whether it has to be a formal request from
4 the Board, et cetera. But that will be on my to-do list as
5 well. Because I was anticipating that this would be a
6 concern at some point, and I would like for this to be
7 resolved for you so that you don't feel uncomfortable, and
8 so that we all have confidence in the system, and to --

9 CHAIRMAN BEDESSEM: We can be responsive to
10 the public.

11 MS. THOMPSON: Exactly.

12 BOARD MEMBER CAHN: And just add to your
13 list too --

14 MS. THOMPSON: Yeah.

15 BOARD MEMBER CAHN: -- whether or not we
16 can have our own emails and our own phone numbers. You
17 know, maybe that's a voluntary thing that a board member
18 says -- has the discretion whether or not they want to have
19 information included on the website, so...

20 CHAIRMAN BEDESSEM: And the other thing is,
21 if this is -- has something that is requested before to
22 make sure our contact information was on there, and it was
23 taken down, it would be good to notify the Board that this
24 is what happened and why --

25 BOARD MEMBER CAHN: Yes.

1 CHAIRMAN BEDESSEM: -- as opposed to us
2 just randomly finding out how come that didn't happen? So
3 that kind of communication and explanation of what's going
4 on --

5 BOARD MEMBER CAHN: Yes.

6 CHAIRMAN BEDESSEM: -- so we can figure out
7 the right approach.

8 MS. THOMPSON: I will note that as well,
9 Madam Chairman.

10 CHAIRMAN BEDESSEM: Thank you.

11 So to be discussed at the next meeting.

12 MS. THOMPSON: Yes, ma'am.

13 CHAIRMAN BEDESSEM: Sounds good. Thank you
14 very much for offering to do all those things.

15 MS. THOMPSON: Yes.

16 CHAIRMAN BEDESSEM: Okay. Is there any
17 more business before the Board? Okay. So the time is
18 11:25.

19 BOARD MEMBER CAHN: That's a record.

20 MS. THOMPSON: That's a record.

21 CHAIRMAN BEDESSEM: Yes. And we are now
22 going to conclude the third quarter Water and Waste
23 Advisory Board meeting.

24 Thank you, everyone, for attending. Appreciate
25 your comments and your participation today. Thank you very

1 much. And we're off before lunch.

2 (Meeting proceedings concluded

3 11:25 a.m., October 18, 2018

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C E R T I F I C A T E

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

Dated this 14th day of November, 2018.


KATHY J. KENDRICK
Registered Professional Reporter

