

WWAB Virtual Public Meeting

1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

WYOMING WATER AND WASTE ADVISORY BOARD

RE: VIRTUAL PUBLIC MEETING PROCEEDINGS

TRANSCRIPT OF VIRTUAL PUBLIC MEETING PROCEEDINGS

Pursuant to notice duly given to all parties in interest, this matter came on for virtual public meeting on the 8th day of May, 2020, at the hour of 9:21 a.m., at the DEQ Conference Room 211, 200 West 17th Street, Cheyenne, Wyoming before the Wyoming Water and Waste Advisory Board. Mr. Alan Kirkbride, Chairman, presiding, with Mr. Brian Deurloo and Ms. Lorie Cahn also in attendance virtually.

Mr. Andrew Kuhlmann, Attorney for the Board; Mr. Kevin Frederick, Water Quality Administrator; Mr. Richard Cripe, Wastewater Program Manager; Ms. Lily Barkau, Groundwater Section Manager; Mr. Dennis Lamb, Produced Water Treatment/Disposal Principal; and Ms. Gina Thompson, Water Quality Division, were also in attendance virtually, as well as various members of the public.

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

2 (Virtual public meeting proceedings
3 commenced 9:21 a.m., May 8, 2020.)

4 MS. THOMPSON: This is Gina from the
5 Cheyenne office. So basically I think we're all kind of
6 aware that this is going to be a challenging call for
7 audio. So we need -- we need you to kind of go the extra
8 mile, make sure that you speak slowly and clearly when
9 you're giving a comment. Make sure that you introduce
10 yourself, your name and the organization that you're with,
11 if you are calling in on behalf of an organization.

12 Please keep yourself muted until it's your turn
13 to speak. Please speak slowly so the court reporter can
14 capture your comments. And if you're having trouble or if
15 you need to reach us and it doesn't seem to be working
16 through the call that we're in right now, I'm at
17 (307) 777-7343 and at gina.thompson@wyo.gov, and we will
18 try to resolve any issues that you're having in sharing
19 your comments. But if you would just speak slowly and
20 clearly, that would be really helpful. Thank you.

21 BOARD MEMBER CAHN: This is Lorie. I'm
22 wondering if we should turn off our videos, and then would
23 that help the quality? I'm hearing fine, but I also wanted
24 to make sure that everybody knows there's a captioning.
25 They're working really well. So I've turned mine on. And

1 if anybody else wants to do that. The way I do it is go
2 bottom of my screen, and there's a pop-up and on the right
3 it says cc turn on captions or turn off captions, and it's
4 really helpful.

5 MR. FREDERICK: Good idea, Lorie. Thanks.

6 CHAIRMAN KIRKBRIDE: Thank you, Lorie.

7 Well, how about I use this opportunity to begin the
8 meeting. And if we have other problems as we go along
9 and -- or difficulties, I assume we'll -- please speak up
10 and we'll address them as they come up.

11 And the agenda begins -- do we have an agenda,
12 necessarily, Gina, to -- I don't have a copy of such a
13 thing.

14 MS. THOMPSON: Sure. I believe that we
15 just wanted to call the meeting into order, and then Water
16 Quality Division has a rulemaking. Then we will discuss a
17 future meeting setup, and then we'll adjourn.

18 MR. FREDERICK: Yeah, Alan, one thing you
19 may --

20 CHAIRMAN KIRKBRIDE: All right.

21 MR. FREDERICK: Alan, this is Kevin. One
22 thing you may want to think about is since Marge Bedessem
23 is no longer on the advisory board -- I believe she was
24 vice chair, if I'm not mistaken. And you may want to think
25 about having a vote to fill that position before -- before

1 you adjourn.

2 CHAIRMAN KIRKBRIDE: All right. Yes, I
3 think that's a good idea. And perhaps we even have a
4 volunteer by then.

5 MR. FREDERICK: Yeah. Even better.

6 CHAIRMAN KIRKBRIDE: Okay. So I think
7 perhaps we can --

8 BOARD MEMBER CAHN: I'll do it.

9 CHAIRMAN KIRKBRIDE: -- go to the Water
10 Quality Division.

11 BOARD MEMBER CAHN: I would volunteer,
12 unless Brian wants to do it. This is Lorie.

13 CHAIRMAN KIRKBRIDE: Lorie seems to be
14 amenable.

15 BOARD MEMBER DEURLOO: No. If Lorie's here
16 and willing to take on that role, I'm happy to step aside.
17 That's great. Thank you.

18 CHAIRMAN KIRKBRIDE: Brian, would you like
19 to make a motion to that effect?

20 BOARD MEMBER DEURLOO: Yes. Sure. I would
21 like to make the motion that -- to nominate Lorie Cahn as
22 the vice chair of the Wyoming Water and Waste Advisory
23 Board.

24 CHAIRMAN KIRKBRIDE: All right. Well, I'll
25 step out as chair and second that one.

1 Is there any discussion?

2 All in favor, say aye.

3 Aye.

4 BOARD MEMBER DEURLOO: Aye.

5 CHAIRMAN KIRKBRIDE: Opposed.

6 BOARD MEMBER CAHN: Abstain.

7 CHAIRMAN KIRKBRIDE: Not hearing any, Lorie
8 Cahn has been elected to the vice chair position, which is
9 a good choice.

10 Okay. Now, can we go to the Water Quality
11 Division? And I'll just turn it over.

12 MR. FREDERICK: Thank you, Mr. Chair.

13 CHAIRMAN KIRKBRIDE: Kevin, we'll go to
14 you.

15 MR. FREDERICK: Yes. Thank you.

16 Technically, the actions taken by the Board
17 require a majority vote of the membership. And correct me
18 if I'm wrong, I believe we have Andrew Kuhlmann on, if I'm
19 not mistaken.

20 So, Andrew, I just might ask you to confirm that
21 on the vote that was taken for the vice chair position,
22 just to make sure we're -- the Board is in good standing
23 there.

24 MR. KUHLMANN: Yeah, this is Andrew. I was
25 going to mention that, Lorie, I need you to not abstain for

1 that vote, because it currently only has two yes votes, and
2 we would need three for it to be a decision of the Board.

3 BOARD MEMBER CAHN: Okay. I didn't know
4 that I could vote on it. It seems like a conflict of
5 interest. But if you tell me I can, I believe you. So I'm
6 a changing my vote to yay -- aye.

7 CHAIRMAN KIRKBRIDE: Perhaps we can --
8 well, not perhaps. Now let the record stand that we have
9 three votes in affirmative for Lorie Cahn for the vice
10 chairmanship.

11 MR. FREDERICK: Thanks, Alan. Kevin again.

12 CHAIRMAN KIRKBRIDE: I hope that satisfies.

13 MR. FREDERICK: Thanks, Andrew.

14 So we're all adjusting to I guess what everybody
15 calls the new normal these days. I'm here today in the
16 office with Rich Cripe and Gina and our court reporter.

17 About 80 percent of DEQ is currently teleworking
18 from home. We have essentially a skeleton staff on all
19 four floors of the building, but things seem to be working
20 fairly well overall. We've had several of these video
21 teleconferences, and the majority of them have gone very
22 well, without problems or issues. But it's not surprising
23 that once in a while we're going to run into some glitches
24 like this, so I appreciate everyone's patience.

25 Over the past year or so, staff in Water Quality

1 Division have been working to develop systems that would
2 allow us to manage electronic documents much more
3 efficiently. And when we were affected by the governor's
4 orders to begin teleworking -- or I should say
5 recommendations, not orders -- we had to launch those
6 systems, and we were -- we were quite successful at that.

7 We had a little bit of work left to do to
8 essentially get them ready to launch, but thanks to staff,
9 including Gina, that all came together very, very quickly
10 and very nicely. And it enables staff to essentially
11 receive their incoming mail in electronic fashion. All of
12 that is now scanned and essentially delivered to employee
13 mailboxes. We also have implemented systems where we can
14 pass documents amongst ourselves, internal documents,
15 including permits -- permits, enforcement documents,
16 et cetera, internally via an electronic document management
17 system. We're using a system primarily called Smart
18 Sheets, and that's been working very well.

19 And we also developed a system where on our Web
20 page -- Water Quality Division Web page, stakeholders and
21 the regulated community, anyone else, can essentially
22 upload permit applications, correspondence, monitoring
23 reports, et cetera, to the agency through our website links
24 that then pull that information in -- into the cloud, and
25 it's distributed then to primarily section managers who

1 then redistribute it to the appropriate staff member. So
2 that's been -- it's been working very well.

3 We have gone very heavily to using electronic
4 signatures on documents. So in most cases, many of us
5 never really touch a piece of paper anymore. Certainly not
6 to the extent that we used to.

7 So that's been a -- I think a tremendous
8 improvement in efficiency on our end and trying to continue
9 to move towards a system where we deal less and less with
10 paper. Many staff have commented on how well that's
11 working for them as they're working at home.

12 And I've also heard from several that they find
13 themselves being very productive working at home, and
14 perhaps even more so than coming into the office. And I
15 think that that's somewhat understandable. I myself have
16 been teleworking quite a lot lately.

17 I do miss the daily interaction with people. I
18 think most of us do. We miss seeing our coworkers and our
19 friends. And that's been -- that's been quite an
20 adjustment for many of us. But on the other hand, we
21 likely don't have as many normal distractions that we
22 experience when we're working together in the office.

23 Our -- our business now is, rather than handling
24 it face to face when we bump into each other with a
25 question or a brief heads-up on something, that's primarily

1 handled now by email.

2 The meetings that I have -- the regular meetings
3 that I have scheduled with staff, those continue. None of
4 that has been interrupted. We do that now through the same
5 system we're using here, Google Hangouts. And it's -- it
6 seems to -- seems to be working very well.

7 We're ending -- getting near the end of the
8 fiscal year with our biennial budget. That ends June 30th.
9 And we've been working pretty closely with the director to
10 try and identify savings that we might make for the
11 remainder of this year. We do have a few critical needs
12 that we want to try and address with the remaining funds
13 available that we do have.

14 But on the other hand, there were a few projects
15 that we wanted to try and get underway before this fiscal
16 year ended that essentially had been put on hold. I know
17 that the director is going to be having conversations in
18 the next few weeks or so with the governor's office and the
19 Department of Administration & Information regarding plans
20 for taking a look at the next biennial budget that starts
21 on July 1. But we are expecting that it's very likely we
22 may be asked to make some budget reductions moving into the
23 next biennial cycle as well.

24 So overall we're pretty much a business as usual.
25 I wish we would have been able to get together for this

1 meeting face to face. But I think for probably the near
2 future at least this is going to be the new normal for us
3 in terms of the way we conduct business.

4 So I appreciate everyone's patience as we work
5 through these things. And certainly, as always, we're
6 definitely available to help and provide you with anything
7 that you need.

8 Finally, as you know, we have another vacancy on
9 the Board now with Marge Bedessem's departure. And we are
10 certainly interested in seeing applicants for not only
11 Marge's vacancy, but Klaus's as well.

12 Marge's was representing, as I understand it,
13 public at large. So candidates can essentially come from
14 any sector, I believe, but would be expected to represent
15 the overall public interest statewide.

16 Klaus's position -- or vacancy was representing
17 local government. So we need to try and find candidates
18 who have some association with local government. That may
19 be a conservation district, it may be a county commission,
20 it may be a city or a county employee, things along those
21 lines. And there are other governmental associations or
22 agencies out there, both at the local level and county
23 level that would also be appropriate to fill that type of
24 a -- of an interest.

25 And certainly if you have some recommendations

1 for consideration, that would be great. There is an
2 application form that we can provide them or they can
3 access, I believe, on the governor's home page -- Web page
4 as well.

5 So with that, I'll move into, Mr. Chair, the --

6 BOARD MEMBER CAHN: Kevin, this is Lorie.
7 Hello? This is Lorie. Can you just -- just tell us what's
8 going on with Marge, please?

9 MR. FREDERICK: So Marge received an
10 invitation from the governor's office to apply for
11 consideration as a member on the Environmental Quality
12 Council, which she did, and was accepted. So she will be
13 joining the Environmental Quality Council at their next
14 meeting.

15 CHAIRMAN KIRKBRIDE: This is Alan. And,
16 Kevin, I'll tell you something that is new to me that you
17 just said was -- which was an employee of those -- those
18 organizations was eligible. I had understood that it was
19 a -- had to be an elected official in that role.

20 MR. FREDERICK: Let me confirm that, Alan.
21 Andrew, perhaps you could -- you can clarify that
22 for us.

23 You may be right, Alan. We'll get some
24 clarification on that. Good question. Thanks.

25 CHAIRMAN KIRKBRIDE: Thank you.

1 MR. KUHLMANN: Mr. Chair, I'll look at that
2 while we're going on with the meeting.

3 MR. FREDERICK: Thanks, Andrew.

4 Okay. Mr. Chair, with that I'll move into --

5 BOARD MEMBER CAHN: Hello? Hello? This is
6 Lorie. I would just like to say for the record how much we
7 appreciate Marge's service on the Board. And she's been on
8 a long time and has been an excellent member of our board,
9 and I think it's a great choice for the EQC. So that's
10 really exciting news. So we're sorry we'll miss her, but
11 that's an excellent place for Marge to go.

12 CHAIRMAN KIRKBRIDE: I most certainly agree
13 with that.

14 All right. Kevin, you want to continue, then?

15 MR. FREDERICK: Yes, Mr. Chair.

16 So briefly, to kind of catch you up on what we're
17 going to be covering today. We brought these rules before
18 the advisory board --

19 MS. THOMPSON: So officially once, and an
20 additional briefing at their December meeting.

21 MR. FREDERICK: Right. We brought these
22 rules before the advisory last year, in October.

23 MS. THOMPSON: Yes.

24 MR. FREDERICK: And then provided also a
25 update in December of last year. And Chapter 14 is a

1 long-standing rule in Water Quality Division that deals
2 with financial assurance requirements for commercial
3 oilfield waste disposal facilities. And in particular, as
4 that relates to Water Quality Division, these are the
5 facilities that take produced water, hydraulic fracturing
6 flow back, other types of oil field wastes, to essentially
7 manage and dispose of them. And they take them from
8 multiple operators, and that's why they're called
9 commercial facilities.

10 You've probably seen these across the state.
11 There are many in the Powder River Basin. These typically
12 consist of a series evaporation ponds -- large evaporation
13 ponds that may hold tens of thousands of barrels of fluid.
14 And they also often contain waste storage tanks. They may
15 have separation ponds to settle solids and skim oil off of
16 before the wastewater is discharged into the evaporation
17 ponds and so forth.

18 The majority of them have monitoring --
19 groundwater monitoring systems associated with them. The
20 newer facilities are typically double lined with synthetic
21 liners. They have got -- newer systems have leak detection
22 systems associated with them as well.

23 So the financial assurance requirements kick in
24 when a facility is first permitted. And the purpose is to
25 essentially look at the costs that would be associated in

1 the event that an operator defaulted and went out of
2 business to provide financial resources for the state of
3 Wyoming to essentially close and reclaim that facility.
4 And oftentimes that involves having to deal with removal of
5 wastewater from the evaporation ponds, cleaning out these
6 settling ponds or sloop pits and disposing of any of the
7 hydrocarbons that may remain in there.

8 There may be some contaminated soils associated
9 with leaks and spills and things like that. And there's a
10 potential that there may be some groundwater contamination
11 associated with the facility as well from a leak of an
12 evaporation pond or spill or something along those lines.

13 So every year, and prior to getting a permit, the
14 permit applicant is required to essentially develop those
15 costs and provide cost estimates as part of the application
16 in terms of how much it would essentially cost to reclaim
17 and restore these facilities in the event of an operator
18 default. And the Department then reviews those, if
19 necessary makes some adjustments, and then the operator or
20 permit applicant is required to provide that financial
21 assurance via a series of different types of mechanisms,
22 which we'll talk a little bit more about as we go through
23 our modifications to this chapter with you.

24 There's a requirement that the financial
25 assurance estimates be revisited every year and modified as

1 necessary. And then the Department will make the
2 corresponding adjustments to either increase or decrease
3 the financial assurance requirement in order to obtain the
4 permit or to continue to operate under the existing permit.

5 So today we have Kimber Wichmann with us. And
6 Kimber is an economist here in DEQ, and essentially manages
7 the bonding program not only for Water Quality Division on
8 these commercial oilfield waste disposal facilities, but
9 also on Class I injection wells that the Water Quality
10 Division permits. She manages the bonding requirements
11 associated with Land Quality Division mining, and I believe
12 Industrial Siting evaluations with respect to economic
13 impacts associated with industrial siting investments and
14 so forth.

15 Kimber's been with the DEQ for many years, and
16 we're just thrilled that she's taken the bonding program
17 that was essentially handled by our staff here at Water
18 Quality Division for commercial oilfield facilities and
19 Class I wells and has really helped streamline that program
20 and make sure that everyone is in compliance with the rules
21 and regulations. She works very closely with our staff to
22 make sure that these requirements are adequately met.

23 And before I kind of ask Kimber to walk through
24 the modifications to Chapter 14 with the Board, I would
25 also like to mention that roughly a year ago the Attorney

1 General's Office requested that they be provided an
2 opportunity to look at our proposed rules and proposed rule
3 modifications a little bit more closely and look at the
4 entire rule, not just those sections that were being
5 proposed for modification, and -- to look more closely at
6 the entire rule to see if there were some things in there
7 that they felt could improve the rule, could perhaps bring
8 a little bit more clarification to a rule, or could make it
9 a little bit more understandable by reorganizing the rule a
10 little bit better. And, of course, checking for the
11 overall readability of the regulation as well.

12 So for both Chapter 14 and Chapter 28 that are
13 before the Board today, those have gone through that type
14 of a rather rigorous review. And that is why you probably
15 see a lot more redline and strikeout than -- than normally
16 see. Typically when we bring a rule revision before you,
17 it only deals with the proposed changes that we're asking
18 the Board to recommend for adoption. And in this case --
19 and it's not the first time you've seen this, but I just
20 wanted to point out that there's quite a lot of adjustments
21 to the rules that the Attorney General's Office suggested
22 we make as well.

23 So before I ask Kimber to review Chapter 14 with
24 you all, are there any changes -- or questions,
25 Mr. Chairman?

1 BOARD MEMBER CAHN: Alan?

2 CHAIRMAN KIRKBRIDE: I don't have any at
3 the moment.

4 BOARD MEMBER CAHN: This is Lorie.

5 CHAIRMAN KIRKBRIDE: Yes, Lorie.

6 BOARD MEMBER CAHN: Yes. Kevin, thank you
7 for that introduction. That's very helpful.

8 I just have a question about some of the
9 preexisting COWDFs. What about ones that don't have liners
10 or groundwater monitoring? Could you just kind of talk
11 about that? Thank you.

12 MR. FREDERICK: So normally -- and I think
13 in the vast majority of cases, if not all cases, there --
14 there is some type of liner. Some of these facilities were
15 actually in existence, I think, prior to our rules and
16 regulations that dealt with financial assurance and
17 construction of these types of wastewater impoundments
18 under our previous existing regulation system that we used
19 to permit these things, and that was primarily Chapter 3
20 and Chapter 11.

21 And Chapter 11 really deals with the design and
22 construction of wastewater-type facilities, but it didn't
23 really contemplate the type and variety of waste and the
24 size of facilities that these commercial oilfield waste
25 disposals typically evolve into. And that was the

1 purpose -- just for a little background. We had been
2 essentially permitting the design and construction and
3 operation of these facilities under essentially guidelines
4 and some regulatory authorities that we had in place, but
5 we really wanted to have a system that was a regulatory
6 structure rather than -- rather than a guideline approach.

7 So, historically, a lot of these older types of
8 impoundments were required to be bentonite lined. As I
9 mentioned, they've essentially evolved into synthetic
10 heavy-duty polyethylene liners with leak detection systems.
11 But the majority of them older systems also have
12 groundwater monitoring associated with them.

13 And as you recall, Lorie, about two years ago we
14 modified our rules and regulations to require that some of
15 these grandfathered facilities that hadn't been covered by
16 financial assurance, we closed that -- that -- that gap
17 where now all existing facilities have to have financial
18 assurance. And we've been pretty successful in that. I
19 think there were about 11 or 12 existing grandfathered
20 facilities that didn't have financial assurance. I believe
21 we have all but about three of those, possibly four, that
22 are now covered under financial assurance, and we're
23 continuing to work with the others to get them into
24 compliance.

25 So I hope that answers your question.

1 BOARD MEMBER CAHN: Yes, it does. Thank
2 you. That was helpful.

3 MR. FREDERICK: Okay. Thank you.

4 So with that, I guess we'll turn it over to
5 Kimber and --

6 MS. THOMPSON: Or Rich.

7 MR. FREDERICK: Or Rich. Excuse me. Rich
8 Cripe is going to kind of review this for us first. And
9 Rich is the manager of our water and wastewater section
10 that oversees the permitting of these commercial oilfield
11 waste disposal facilities. He works primarily with staff
12 in Casper.

13 Dennis Lamb has been involved -- working with
14 Rich in permitting and inspecting and monitoring these
15 commercial oilfield waste disposal facilities for many,
16 many years out of Casper. And Dennis also works with a
17 gentleman by the name of Hannes Stueckler. Hannes works
18 with Dennis in our Lander office.

19 So with that, I'll turn it over to Rich.

20 MR. CRIPE: Hi. Good morning.

21 CHAIR KIRKBRIDE: You have the floor.

22 MR. CRIPE: I heard some feedback.

23 CHAIRMAN KIRKBRIDE: You have the floor,
24 sir. Go right ahead.

25 MR. CRIPE: Chairman Kirkbride, my name is

1 Rich Cripe. I'm the water/wastewater section manager for
2 Water Quality Division, and I will begin with our rules of
3 Chapter 14 today. I will give you a summary of each of
4 these sections, what we've done as far as proposed changes,
5 and at the end of each one of the sections, I'll stop and
6 we'll see if you have questions, and then we'll proceed
7 forward. And I will begin with Chapter 14 and then finish
8 with Chapter 28.

9 So with that, I will start with Chapter --

10 CHAIRMAN KIRKBRIDE: Excuse me. Excuse me.
11 I wonder if I could just hold -- stop you just a moment.
12 And I'm working on my technology here, but what I'd like to
13 do is minimize -- minimize this meeting screen and bring up
14 my copies of those things that I've downloaded. And so if
15 you don't mind, just give me one second to do that.

16 MR. CRIPE: Sure.

17 CHAIRMAN KIRKBRIDE: And maybe anybody else
18 can get up to date too.

19 BOARD MEMBER CAHN: While you're doing
20 that, Alan -- this is Lorie. We haven't really gone
21 through the folks that are on the call for the record. I
22 don't know when you want to introduce the DEQ and the
23 members of the board, just to at least demonstrate we have
24 a quorum here today.

25 CHAIRMAN KIRKBRIDE: Lorie.

1 BOARD MEMBER CAHN: We usually do that.

2 CHAIRMAN KIRKBRIDE: So you're saying we
3 should introduce all participants, or just the Board, or
4 who? What's appropriate here?

5 BOARD MEMBER CAHN: I think at a minimum we
6 should introduce the Board just to show that we have a
7 quorum. And then I think DEQ usually does -- they start
8 with Kevin and introduce the people that are speaking. And
9 then when we get to public comments, people can introduce
10 themselves when they make a public comment.

11 CHAIRMAN KIRKBRIDE: Okay. That sounds
12 excellent. I'll begin. I'm Alan Kirkbride, and I'm the
13 chairman of the Board, and I'm representing the agriculture
14 section -- sector of the public.

15 And the other board members can introduce
16 themselves.

17 BOARD MEMBER DEURLOO: Okay.

18 BOARD MEMBER CAHN: I'm Lorie Cahn. I
19 represent -- I represent the public at large and I'm the
20 vice chair.

21 BOARD MEMBER DEURLOO: My name is Brian
22 Deurloo. I represent the industry.

23 CHAIRMAN KIRKBRIDE: All right. And,
24 Mr. Frederick, if you want to introduce, then, the members
25 of your staff. You have mentioned them in the meeting, but

1 let's go ahead and do it formally.

2 MR. FREDERICK: Sure. I'm Kevin Frederick,
3 the Water Quality Division Administrator. And today we
4 have Rich Cripe. Mr. Cripe is the manager of the water and
5 wastewater section for DEQ. We have Gina Thompson. Gina
6 assists the advisory board in working with the Water
7 Quality Division with new rules and regulations, amongst
8 many other things here in Water Quality Division.

9 And then I believe we also have joining us by
10 video Kimber Wichmann. And as I mentioned, Kimber is with
11 Industrial Siting and manages the bonding programs within
12 DEQ.

13 We also have Lily Barkau. Lily is our manager of
14 our groundwater and underground injection control section.
15 And I believe we have joining us by phone Dennis Lamb, who
16 I mentioned is involved in our Casper office in permitting
17 and oversight of commercial oilfield waste disposal
18 facilities.

19 CHAIRMAN KIRKBRIDE: All right. Are there
20 other members of the public or otherwise who are attending
21 the meeting who can make their presence known?

22 MR. KUHLMANN: Mr. Chairman, this is Andrew
23 Kuhlmann with the Attorney General's Office. I'm here
24 representing the Board.

25 CHAIRMAN KIRKBRIDE: Yes, Andrew. Thank

1 you.

2 Are there others?

3 All right. Well, hearing none -- if there are,
4 please let us know you're there. And, otherwise, let's --
5 I think we perhaps could go back to Mr. Cripe's
6 presentation.

7 MR. CRIPE: Very good. Chairman Kirkbride,
8 again, my name is Rich Cripe. I'm the water/wastewater
9 section manager, and I will go over our revisions to
10 Chapter 14, Section 1, In General. Water Quality Division
11 proposes correcting formatting inconsistencies. We removed
12 redundant statements. We removed definition of terms that
13 are no longer used in the chapter and added definitions of
14 terms of consistency with other WDEQ programs.

15 Is there any questions on Section 1?

16 BOARD MEMBER CAHN: Yes. This is Lorie.
17 Alan, is that okay?

18 CHAIRMAN KIRKBRIDE: Yes. You may go
19 ahead.

20 BOARD MEMBER CAHN: I just had a -- do we
21 want to go into Board comments as we go, or do we want
22 to -- with each section, or do we want Rich just to go
23 through? Because I have one comment on Section 1.

24 CHAIRMAN KIRKBRIDE: Well, I would think it
25 would be good to do Board comments as we go along. Unless

1 that's disruptive, Rich.

2 MR. CRIPE: No, that's totally fine.

3 BOARD MEMBER CAHN: Okay. Great. I'm
4 working --

5 CHAIRMAN KIRKBRIDE: Lorie, you want --

6 BOARD MEMBER CAHN: I'm on the strike and
7 underline version that Gina sent out the other day. So
8 this is the original one that was first posted. And I'm on
9 line 108. And it's -- there's something wrong with the
10 English. It says "...facility or a and commercial..." I'm
11 not sure what it's supposed to say. I think it's supposed
12 to be -- I think the "and" is supposed to be removed, so it
13 would read "Regulated facility means a commercial sludge
14 facility or commercial oilfield waste disposal facility.

15 MR. FREDERICK: Yes. That's correct,
16 Lorie. Thank you.

17 Go ahead, Rich.

18 MR. CRIPE: If there's -- are there any
19 other comments? If not, I will proceed on.

20 CHAIRMAN KIRKBRIDE: It looks all right.
21 Go ahead.

22 MR. CRIPE: Okay. Section 2, Requirements
23 to Demonstrate Financial Assurance. WQD proposes to
24 reorganize this section by moving passages formerly located
25 in the section titled Forms of Financial Assurance as the

1 passages are more appropriately suited to demonstrate
2 financial requirements.

3 With that, are there any comments on Section 2?

4 Is it safe to assume there are no comments and I
5 can move forward, Chairman Kirkbride?

6 CHAIRMAN KIRKBRIDE: I would think so.

7 MR. CRIPE: Okay.

8 CHAIRMAN KIRKBRIDE: Yes, sir. I would
9 think so.

10 BOARD MEMBER DEURLOO: I don't have any
11 comments, Chairman.

12 MR. CRIPE: Okay. Continuing on to
13 Section 3, Closure and Post-Closure Requirements. WQD
14 proposes to clarify the title of the section from coverage
15 to closure and post-closure requirements.

16 Also, we removed redundant and unnecessary
17 passages. We reorganized the closure requirements for
18 clarity. We added an April 1st deadline for annual
19 reporting of estimates. We consolidated the post-closure
20 requirements that were previously spread throughout the
21 chapter into one area. And, lastly, we moved the
22 corrective action requirements to a new section within this
23 chapter.

24 Are there any questions?

25 BOARD MEMBER CAHN: This is Lorie.

1 Mr. Chairman.

2 CHAIRMAN KIRKBRIDE: Go right ahead, Lorie.

3 BOARD MEMBER CAHN: I have a few comments
4 on this section. The first one is on line 179 where it
5 says "Notify the Department in writing of its intention..."
6 And "its" here is referring to the operator. I think it
7 would be better to say "their intention" rather than "its
8 intention."

9 And the same thing on line 185, where it says
10 "adjacent property owners" -- or "Notify the governing body
11 of each locality and adjacent property owners by certified
12 or registered mail of its intention to close the regulated
13 facility." And, again, that's referring to the operator.
14 So I was -- I would like to propose changing that to
15 "their."

16 MR. CRIPE: Board Member -- or Chairman
17 Kirkbride. Board Member Cahn, I would agree, and we can
18 make those changes.

19 BOARD MEMBER CAHN: Okay. And my next
20 comment is on line 347. And this is referring to
21 environmental monitoring -- environmental quality
22 monitoring systems. And I would note that in Statute -- in
23 35-11-306, the language that's used is environmental
24 monitoring systems and pollution control systems. So I --
25 I'm not -- it's not common usage to environmental quality

1 monitoring systems, at least in my experience, and I guess
2 I would prefer to use the language from the statute.

3 The question I have is since the statute includes
4 both environmental monitoring systems and pollution control
5 systems, why are we not including pollution control systems
6 here? I don't -- so I guess I'd like to ask that question.
7 Thank you.

8 MS. THOMPSON: So, Ms. Cahn, Chairman
9 Kirkbride, this is Gina Thompson. And the passage that is
10 under discussion, I believe it's original to the chapter.
11 And this chapter was originally promulgated in 1991, I
12 believe. So I can speculate that the passage above that
13 talks about the leachate collection, it could be that the
14 drafters thought that that covered the pollution control
15 aspect of the statute.

16 What I can commit to is it's definitely looking
17 at how that subsection aligns with the statute to make sure
18 that we're consistent. And just -- we would run that --
19 any revisions past our attorney general with that idea that
20 we're trying to make sure that we're very carefully aligned
21 with the statute. But I -- again, my hunch is that the
22 drafter thought the leachate was covering the pollution
23 control, and that the discrepancy between the passages --
24 again, that's been in place for a while, but we would
25 commit to looking at that closely with the attorneys to

1 make sure that that is aligned and that there isn't any
2 confusion there or that we're not leaving anything out.

3 BOARD MEMBER CAHN: Okay. That sounds good
4 to me. It also occurs on line 427, where it says
5 "environmental quality monitoring systems." So I would
6 have the same comment there.

7 And then a minor editorial on line 530. The
8 language is "If the closure is not satisfactory, the
9 Department shall specify necessary construction or other
10 such steps as may be appropriate..." And I'm just
11 wondering if rather than "as may be appropriate," if it
12 would be better to be "that may be appropriate." But
13 I'm -- I'll leave it up to you guys. That's -- I don't
14 have strong feelings on that.

15 MR. FREDERICK: So how about we change it
16 from "as may be" to "that may be"?

17 BOARD MEMBER CAHN: Yes, I think that would
18 be better in the -- in a rule.

19 MR. FREDERICK: Agree.

20 BOARD MEMBER CAHN: And then the next
21 comment I have is on -- starts on line 542 and goes down to
22 545, where it's talking about the director as him and his,
23 and I would like to, in line 542, replace "he" with "the
24 Director," and on the second incidence on that line of "he"
25 I would like to replace with "they." So the language would

1 read "Unless the Director has reason to believe that
2 closure has not been in accordance with the closure plan,
3 the Director shall notify the owner or operator in writing
4 that they are no longer required to maintain financial
5 assurance." So -- excuse me, I misspoke. I would replace
6 the second "he" with "they are" and replace "he is" with
7 "they are."

8 And then on line 545, where "him" is used to
9 refer to the owner-operator, I would change "him" to
10 "them." So the sentence would read "It does not release
11 them from legal responsibility."

12 And that's all I have on Section 3. Thank you.

13 MR. FREDERICK: Yeah. Thank you for that,
14 Lorie. Appreciate you catching that. We usually try and
15 look pretty closely for those types of clarifications. So
16 thank you.

17 BOARD MEMBER DEURLOO: Chairman Kirkbride,
18 I have a question or comment on Section 3 as well --

19 CHAIRMAN KIRKBRIDE: Yes.

20 BOARD MEMBER DEURLOO: -- if you don't
21 mind.

22 Thank you.

23 CHAIRMAN KIRKBRIDE: Go ahead.

24 BOARD MEMBER DEURLOO: Mr. Cripe, this is
25 Brian Deurloo. So in line -- oh, shoot. I just lost it.

1 I miss the paper. Where did that go? In 372 -- yeah,
2 there it is. So Section 3, I'm looking at line 371 and 372
3 on the marked-up and underlined version of 3-31.

4 And this section is dealing with the requirement
5 of the closure plan. What's required -- what should the
6 operator be thinking about when putting together a closure
7 plan. And I've had to in the past put together several
8 closure plans around drill sites or drill pads, stuff like
9 that.

10 And I made this comment last time we went over
11 this rule, but this rule, on 371, reads the closure
12 plan...must be updated, revised, and submitted to the
13 Department by April 1st of each year. And I remember, as
14 an operator, that it could have been -- it could be onerous
15 coming back to the same vendors every year, whether they be
16 dirt work, you know, moving dirt or rehab or seeding, but
17 every year getting a new process to satisfy this yearly
18 update.

19 And I'm just wondering what if -- have you heard
20 anything else from other operators kind of pushing back on
21 this yearly -- yearly revision and update? Because
22 sometimes I think, correct me if I'm wrong, but the
23 Department may require at least two, if not three
24 third-party estimates to verify what the closure would
25 cost. And if you could just speak around that a little

1 bit, Mr. Cripe, I'd appreciate it.

2 MR. CRIPE: So I think that's addressed in
3 statute, correct, the April 1st?

4 MR. FREDERICK: No, I don't believe so.

5 MR. CRIPE: Board Member Deurloo, give me
6 one moment and I'll collect my thoughts here.

7 Dennis, if you're on the -- on the phone, can you
8 speak to that question?

9 MR. FREDERICK: Is Dennis on mute?

10 MR. CRIPE: It looks like you're on mute,
11 Dennis. I think you have to do star 6 to unmute your
12 phone, if that's the correct number I'm looking at.

13 So I put that on mute for just a second. The
14 April 1st, I thought that's a requirement that we have --
15 we have it annually, and we just speak to that, but I don't
16 remember where that came from.

17 MR. FREDERICK: I think Dennis just --

18 MR. LAMB: Can you hear me now?

19 MR. CRIPE: Yes, we can hear you, Dennis.

20 MR. LAMB: All right. The April 1st is not
21 in statute. An annual review is in statute. Okay?

22 And the rest of the question I'm not quite sure I
23 have. I have not heard much about -- anybody much saying
24 anything about an annual update being onerous, but -- and
25 we do not require several bids to do this. We just require

1 one. And everything should be justified by bids from
2 different operators for different disposals and/or work.

3 BOARD MEMBER DEURLOO: Okay. Thank you,
4 Mr. Lamb.

5 Mr. Chairman, that satisfies my question. I
6 appreciate it.

7 CHAIRMAN KIRKBRIDE: All right. All right.
8 Thank you. I guess back to you, Rich.

9 MR. CRIPE: I gather that we don't have any
10 more questions or comments, so I will proceed to Section 4,
11 titled Corrective Action Requirements. WQD proposes to
12 move the requirements for the forms of financial assurance
13 to a new section, Section 6, and add to Section 4 the
14 corrective action requirements that were formerly located
15 in Section 3.

16 Also, we clarified the deadlines and -- for
17 corrective action plans for permittees and the Department.

18 Are there any questions or comments on Section 4?

19 BOARD MEMBER CAHN: Mr. Chairman, this is
20 Lorie.

21 CHAIRMAN KIRKBRIDE: Yes. You have the
22 floor, Lorie.

23 BOARD MEMBER CAHN: On line 620 -- thank
24 you.

25 On line 623, that occurrence again of

1 "environmental quality monitoring systems," so they would
2 be the same comment as previously.

3 Thank you. That's all I have on Section 4.

4 CHAIRMAN KIRKBRIDE: Okay. Brian, do you
5 have anything?

6 BOARD MEMBER DEURLOO: No, Mr. Chairman.
7 I'm good. Thank you.

8 CHAIRMAN KIRKBRIDE: Okay. Rich, I guess
9 you can proceed.

10 MR. CRIPE: Section 5, Establishment of
11 Financial Assurance Requirements. WQD proposes to move the
12 statement previously located at Section 3(e) to new
13 Section 5, and add passages to clarify the process for the
14 Department cost estimate evaluation.

15 Are there any questions or comments on Section 5?

16 BOARD MEMBER CAHN: I have none. This is
17 Lorie.

18 BOARD MEMBER DEURLOO: I have none. This
19 is Brian.

20 CHAIRMAN KIRKBRIDE: No. Go ahead.

21 MR. CRIPE: Okay. Continuing. Section 6,
22 Forms of Financial Assurance. WQD proposes to remove
23 self-bonding and the associated requirements from the
24 allowed forms of financial assurance that were previously
25 located in Section 4.

1 Currently, self-bonding passages from Chapter 14
 2 are inconsistent with the newly promulgated Land Quality
 3 self-bonding rules. Land Quality Division's financial
 4 assurance requirements for self-bonding are derived from
 5 the Federal Surface Mining Control and Reclamation Act
 6 requirements and Land Quality Division's specific state
 7 statutes.

8 WQD does not have equivalent passages such as
 9 from the Clean Water Act or the Safe Drinking Water Act
 10 from which to derive WQD specific self-bonding rules. WQD
 11 does not receive many requests from permittees for
 12 self-bonding, so removing this instrument is unlikely to
 13 create a hardship for permittees.

14 WQD proposes additional revisions to the section
 15 for consistency with other DEQ programs to correct
 16 formatting inconsistencies and remove redundant passages.

17 Are there any questions or comments on Section 6?

18 BOARD MEMBER CAHN: Mr. Chair, this is
 19 Lorie.

20 CHAIRMAN KIRKBRIDE: Yes, Lorie.

21 BOARD MEMBER CAHN: On the editorial on
 22 line -- it's on the paragraph that begins on line 1167, and
 23 it just has to do with sentence construction, and I just
 24 have suggestions to make it fewer words and I think read a
 25 little better, but I don't feel strongly about it.

1 So it would say, let's see, "The wording of the
2 irrevocable trust must be identical to the wording
3 specified on Wyoming Department of Environmental Quality
4 Irrevocable Trust Form and be signed by the operator or
5 guarantor as principal," and then I would delete the comma
6 and add an "and the financial institution as Trustee and,"
7 delete "be," "made payable to the Department." So new
8 wording would be "and be signed by the operator or
9 guarantor as principal, and the financial institution as
10 Trustee" -- sorry -- yes -- "and made payable to the
11 Department."

12 MS. THOMPSON: Lorie, I'm going to pause
13 for a moment and take a look at that. I believe that
14 passage came to us from Kimber's group, and I want to take
15 a pause and give Kimber a chance to look at that.

16 Kimber, please let us know if you are amenable to
17 revising the passage in the proposed fashion.

18 BOARD MEMBER CAHN: And, Gina, I don't
19 feel -- go ahead. Sorry. I'll just say that I don't --
20 repeat that, I don't feel really strongly, and if you need
21 to leave it the way it is and prefer that, that's okay. I
22 just thought it would read better, but I don't feel
23 strongly about it.

24 CHAIRMAN KIRKBRIDE: Rich, I have one thing
25 here, and that is a question. I was wondering to what

1 extent self-bonding is being used now, and if this is a
2 significant change to policy. And -- which will -- which
3 will affect some operators who are going to have to find
4 something different to -- different way to provide that
5 financial assurance.

6 MR. CRIPE: Chairman Kirkbride, it's my
7 understanding that over all these years, self-bonding was
8 one of those instruments we had in the rule that was just
9 never really used. It was recently proposed to be used by
10 one of the COWDFs. However, as I read through the
11 document -- or the summary here, we really didn't have a
12 basis to -- to do that.

13 But to also add to that point is even if they --
14 if we did have that in place, the way the bonding is set
15 up, they're still required to do that self-bonding, as well
16 as something in addition, and so they wouldn't be gaining
17 much from it. But my general understanding was was we had
18 that in the rule, and really it came from other parts of
19 the Department as to where that basis came from, and so we
20 felt that removing it would be consistent with what we're
21 supposed to do here. And we didn't see it as being a
22 hardship, because we've only had one incident over all the
23 years of it being explored.

24 Does that answer your question, Chairman?

25 CHAIRMAN KIRKBRIDE: Yes, I think it does.

1 If that's all the usage of it, I guess it's a -- you know,
2 that's fine. And I assume if somebody's got some problem
3 with that change, you'll have some push back over time, it
4 can be looked at again. But I'm sure the others have
5 perhaps more traditional approaches to bonding and -- or to
6 providing that kind of assurance. And so probably --
7 probably either take it out and don't have to worry about
8 whether or not we covered all the bases.

9 MS. WICHMANN: Chairman, this is Kimber
10 Wichmann. I'm happy to add to that, if you'd like.

11 CHAIRMAN KIRKBRIDE: Please.

12 MS. WICHMANN: To give some context on
13 this, commercial oilfield waste disposal facilities has
14 about 70 million in bonds currently, and they are mostly
15 sureties and CDs. We have no self-bonds right now. And,
16 in fact, there are no forms for self-bonding. So even
17 there -- even though there had been rules drafted and in
18 place, there was nothing that could be filled out or
19 submitted to us that was acceptable to the administrator or
20 the director.

21 On top of that, when we looked at this rule
22 rewrite, we noticed that what standards were in place were
23 outdated, and were, in fact, no longer used even by the
24 Land Quality Division, where I assumed they had originated
25 from.

1 Because of that, if anybody had actually wanted
2 to do self-bonding, it was unlikely that the Director would
3 accept it, even if they went through the steps necessary,
4 just because the regulations there did not adequately
5 protect the State any longer. So that's what led to
6 looking at this.

7 We did submit new rules that were approved for
8 Land Quality that especially changed the self-bonding
9 criteria. And the director saw that was necessary just
10 because of the volume of those bonds in mining. Most of
11 their bonds go in the hundreds of millions. And like I
12 said, the whole program for COWDF here is 70 million. So
13 it was a different reason self-bonding needed to be in that
14 particular program.

15 So when we looked at this, we weren't sure it
16 made a lot of sense just to carry over the new requirements
17 from Land Quality. And, in fact, since nobody was using
18 it, it made more sense to eliminate it at this time. But
19 any time the Board or the Division would like to relook at
20 that, you can always promulgate rules again to add
21 something like that, if that would be wanted. Thank you.

22 CHAIRMAN KIRKBRIDE: Thank you.

23 Are there any other questions of this section or
24 what we just discussed? If not, perhaps we can proceed
25 here.

1 MS. THOMPSON: I guess we should ask if the
2 public has my questions.

3 MR. FREDERICK: Not yet.

4 BOARD MEMBER CAHN: I'm wondering if we
5 could have a five-minute break.

6 CHAIRMAN KIRKBRIDE: That would be
7 appropriate. We will -- we will indeed have a five-minute
8 break here, which means perhaps we'll -- most of us will
9 unmute ourselves and be back in, oh, five, not longer than
10 ten minutes.

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

12 (Virtual public meeting proceedings
13 recessed 10:36 a.m. to 10:46 a.m.)

14 CHAIRMAN KIRKBRIDE: All right. Anybody
15 doesn't hear us, please speak up.

16 BOARD MEMBER DEURLOO: I'm here, Chairman
17 Kirkbride.

18 CHAIRMAN KIRKBRIDE: All right. Let's go
19 right on ahead.

20 MR. CRIPE: Chairman Kirkbride, I'm done
21 with Chapter 14, the presentation of it. Would the board
22 wish to take public comment at this time on Chapter 14?

23 CHAIRMAN KIRKBRIDE: I guess that would be
24 very appropriate.

25 Are there any comments from the public?

1 BOARD MEMBER DEURLOO: Chairman, this is
2 Board Member Deurloo. If there is any comment from the
3 public, please state your name and organization you
4 represent, please. Thank you.

5 CHAIRMAN KIRKBRIDE: I'm not hearing
6 anyone. If that is so, Mr. Frederick or Mr. Cripe, are
7 you -- would you be interested in a recommendation from the
8 Board, then? Is that where we are?

9 MR. CRIPE: Chairman Kirkbride, yes, we
10 would propose that maybe we put a motion there to move it
11 forward, I guess on the premise that we make all these
12 editorial changes that we've agreed to. And so if you can
13 put a motion there, we would like to see if we can move it
14 forward.

15 CHAIRMAN KIRKBRIDE: All right. Is there
16 a -- anybody on the Board have a preference one way or
17 another here?

18 BOARD MEMBER CAHN: Chairman Kirkbride, I
19 had a question whether DEQ prefers to have Chapters 14 and
20 28 going together. If that's the case, then maybe we would
21 wait on Chapter 14 until we're talking about 28 and make
22 one motion together or if it's okay for them to go
23 potentially separately up to EQC, then I'm okay voting on
24 14 now. So I'll leave that up to what they prefer.

25 MR. FREDERICK: So this is Kevin.

1 CHAIRMAN KIRKBRIDE: Is there a response on
2 that?

3 MR. FREDERICK: This is Kevin. That would
4 be preferred to move both rules at the same time. However,
5 I don't believe it's necessary in this case, and I'd
6 certainly like to move one or both of them to the EQC as
7 soon as possible, either individually or together.

8 BOARD MEMBER CAHN: Then I would make a
9 motion that we recommend moving this on to EQC, Chapter 14,
10 with the changes as discussed today.

11 CHAIRMAN KIRKBRIDE: Is there a second?
12 Well, the motion may die for lack of a second.

13 Mr. Deurloo, are you by any chance --

14 BOARD MEMBER DEURLOO: Sorry. I did
15 second, but I was talking to myself apparently. My
16 apologies.

17 This is Brian Deurloo. I second that motion.

18 CHAIRMAN KIRKBRIDE: Okay. That's helpful.

19 Well, is there any discussion on that further?

20 If not, all in favor, say aye.

21 BOARD MEMBER DEURLOO: Aye.

22 BOARD MEMBER CAHN: Aye.

23 CHAIRMAN KIRKBRIDE: And opposed?

24 That motion would carry.

25 Mr. Kuhlmann, are we okay here with the vote to

1 approve such a thing?

2 BOARD MEMBER DEURLOO: Chairman --

3 MR. KUHLMANN: Mr. Chairman -- sorry.

4 Mr. Chairman, I believe the Board is okay. I believe there
5 was a motion, a second, so it just requires three members
6 all vote in the affirmative.

7 CHAIRMAN KIRKBRIDE: Well, in that case, I
8 also vote in the affirmative. Let the record show that,
9 and, therefore, we've approved that motion.

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

11 MR. CRIPE: Chairman Kirkbride, this is
12 Rich. I would like to proceed with Chapter 28 at this
13 time, if that is okay.

14 CHAIRMAN KIRKBRIDE: I think that's just
15 what to do.

16 MR. CRIPE: Okay. Chapter 28, Standards
17 for Issuing Permits for Commercial Oilfield Waste Disposal
18 Facilities. The title -- WQD proposes to clarify the title
19 of the chapter to indicate that the chapter covers more
20 than construction and design standards.

21 Section 1, Authority. WQD proposes to make minor
22 revisions to the references to the Environmental Quality
23 Act.

24 Are there any questions on the title or Section
25 1?

1 CHAIRMAN KIRKBRIDE: It appears not. Go
2 ahead.

3 BOARD MEMBER CAHN: This is Lorie.
4 Mr. Chairman, I have a comment.

5 CHAIRMAN KIRKBRIDE: Yes. Go ahead.

6 BOARD MEMBER CAHN: So I couldn't -- I
7 couldn't find Wyoming Statute 35-11-302(b)(iii). I
8 couldn't find that, and so I think it's a mistaken
9 reference and would like to know what it is supposed to
10 say.

11 MS. THOMPSON: Lorie, this is Gina. And I
12 took a look at that question when we were -- Lorie had
13 asked for a copy of the statute, and I provided her with
14 one, and we were trying to find this paragraph, and we were
15 not able to.

16 So I went back to my notes and I consulted the
17 staff member who made that recommendation, and that is
18 indeed a typo. And the correct reference is to -- is to
19 paragraph (a)(iii), which talks about the administrator
20 recommending standards for permitting facilities. So we
21 will correct that (b) to a (a).

22 BOARD MEMBER CAHN: Okay. Thank you.

23 And the next question I have, I wasn't sure what
24 it says above that. We're going from 35-11-101 through the
25 35-11-1904, and I wasn't sure I was able to find 1904

1 either. Maybe with the stuff that you sent me, Gina, I can
2 find it. Nope, I wasn't able to find 1904.

3 So -- but I got 35-11 goes through 318, so I'm
4 not sure what the 1904 refers to either.

5 MS. THOMPSON: So the 1904, Lorie, is the
6 end of the Environmental Quality Act as a whole. So -- so
7 that reference is to the act as a whole, which starts
8 out -- and it -- you know, passage -- or in Part 100, and
9 then it ends in Part 1900. And so it's the act that
10 authorizes all the activities of the agency and not just
11 the Water Quality Division.

12 BOARD MEMBER CAHN: Okay. I see that.

13 And then we're not going to include Article 20,
14 the Nuclear Regulatory Agreement, because that's not
15 applicable. Okay. I'm with you. Thank you for the help
16 on that.

17 MR. CRIPE: Are there any more questions?

18 BOARD MEMBER CAHN: I have no further
19 comments on that one.

20 CHAIRMAN KIRKBRIDE: I think you're all
21 right, Rich, to move ahead.

22 BOARD MEMBER DEURLOO: No, sir. I don't
23 have any comments. Thank you.

24 MR. CRIPE: All right. Chairman Kirkbride,
25 I will continue.

1 Section 2, Applicability. WQD proposes to add
2 specific cross-references to the act. Add paragraphs
3 (a)(i) to (iii) to explain the basic compliance areas of
4 the chapter, clarify applicability in terms of what types
5 of waste WQD will permit.

6 Are there any questions or comments on Section 2?

7 BOARD MEMBER CAHN: Chairman -- Alan, I
8 have none.

9 BOARD MEMBER DEURLOO: Chairman, I have
10 none.

11 CHAIRMAN KIRKBRIDE: I have none either.

12 MR. CRIPE: Okay. I will continue.

13 Section 3, Timing of Compliance. WQD proposes to
14 clarify the permit timing for new and existing facilities
15 in Section 3.

16 Are there any questions or comments on Section 3?

17 BOARD MEMBER CAHN: Chairman, I have none.

18 BOARD MEMBER DEURLOO: Chairman, I have
19 none.

20 CHAIRMAN KIRKBRIDE: And I have none.

21 MR. CRIPE: Continuing on.

22 CHAIRMAN KIRKBRIDE: Excuse me. Excuse me.

23 On that, it clarifies the timing? What is -- what is the
24 clarification? What is the timing? When must they have
25 the new permit? Oh, wait. The first refers to the

1 other -- to Chapter 3, doesn't it? That's what you're
2 doing here quite a bit is cross-referencing. Okay. Am I
3 correct to understand that?

4 MR. CRIPE: Yes, Chairman Kirkbride, that
5 is correct.

6 CHAIRMAN KIRKBRIDE: All right. Okay. Go
7 right ahead, then.

8 MR. CRIPE: Continuing on Section 4,
9 Definitions. WQD proposes to revise the definitions for
10 COWDFs to remove any gaps that may prevent WQD from
11 enforcing the rule.

12 Are there any comments or questions on Section 4?

13 BOARD MEMBER CAHN: Chairman, I have some
14 comments. This is Lorie.

15 CHAIRMAN KIRKBRIDE: Go right ahead, Lorie.

16 BOARD MEMBER CAHN: Okay. On line 79, "the
17 department" is lower case, and everywhere else in this
18 chapter there it's capitalized. Capital D. So please
19 change that to a capital D.

20 Then the next comment I have is on line 80 where
21 you're talking about evaporative ponds. And this chapter
22 uses both evaporative ponds and evaporation cells, and I'm
23 wondering if they're different. And if they are different,
24 could you explain the difference, and then we should be
25 very clear about when we use one or the other. Thank you.

1 I'll ask you to answer that.

2 MR. CRIPE: Chairman Kirkbride. Board
3 Member Cahn, we can make that change -- that editorial
4 change that you're referring -- identifying. I believe
5 most of the chapter addresses evaporative ponds.
6 Clarification on cells. Can you identify where you might
7 be speaking to that? And the only thing I can think of,
8 without having any context, is it might be something
9 between the liners might be what that might refer to. If I
10 could get some context, that would help.

11 BOARD MEMBER CAHN: Sure. I just did a
12 search for "evaporation cells," and it is on line 485.
13 It's the first -- it's the first incidence of it. "The
14 proposed facility shall remove liquid hydro" -- excuse
15 me -- "hydrocarbons from waste produced water before it is
16 discharged to the evaporation cells."

17 And then on line 496, "To protect birds and other
18 wildlife evaporation cells..."

19 And then line 502, all produced water shall be
20 treated to remove hydrocarbons before discharged to
21 evaporation cells.

22 MR. CRIPE: Board Member Cahn, thank you.
23 I believe we could change that to be consistent throughout
24 the document. Thank you for that comment.

25 BOARD MEMBER CAHN: Okay. So everywhere

1 where it says "evaporation cells," it will say "evaporative
2 ponds."

3 And then the other question I have is sometimes
4 it's evaporative pond singularly and sometimes it's
5 evaporative ponds plural. So I'm wondering if we should,
6 when we use evaporative ponds, we should do (s).

7 MS. THOMPSON: Okay.

8 MR. CRIPE: Board Member Cahn, okay.

9 BOARD MEMBER CAHN: Okay. And then on line
10 89, there's -- at the end of the line, where I would remove
11 "that are," delete "that are," because it's not necessary.
12 So the rest of the sentence would read geothermal energy --
13 "natural gas or geothermal energy that are solids but not
14 identified as hazardous waste..." It's just -- it's -- but
15 I don't feel strongly. It's just to reduce the number of
16 words. As I say, I don't feel strongly. Thank you.
17 That's the end of my comments on that section.

18 MR. FREDERICK: We'll leave that alone.

19 MS. THOMPSON: Okay.

20 CHAIRMAN KIRKBRIDE: Lorie, which draft are
21 you using? I'm on the strike and underline draft. I'm on
22 different line numbers than you. So --

23 BOARD MEMBER CAHN: I'm sorry. I should
24 have mentioned I'm on the changes made -- it's called
25 Changes Made Since 10/17/19, and it has green in there so

1 we can see the difference between what we saw --

2 CHAIRMAN KIRKBRIDE: Okay.

3 BOARD MEMBER CAHN: -- at our October
4 meeting and what we're seeing now. So, I'm sorry, I should
5 have said that.

6 CHAIRMAN KIRKBRIDE: No, that's fine.
7 That's fine. I'm going to go where you've been, the best I
8 can. Okay.

9 MR. CRIPE: Chairman Kirkbride, are there
10 any more comments or questions on Section 4?

11 BOARD MEMBER DEURLOO: Yeah. Chairman
12 Kirkbride, this is Brian Deurloo. I have one comment.

13 CHAIRMAN KIRKBRIDE: Yes. Go ahead, Brian.

14 BOARD MEMBER DEURLOO: On the same document
15 that Lorie was looking at, strike and underline version
16 3/31/20, changes made since 10/17. On 92, the definition
17 for --

18 THE REPORTER: Please -- I can't -- he's
19 too fast.

20 BOARD MEMBER DEURLOO: It reads kind of
21 funny.

22 MR. FREDERICK: Brian. Excuse -- excuse
23 me, Brian. Kevin here. The court reporter is having a
24 little trouble keeping up with you. Could you slow down
25 just a little, please?

1 BOARD MEMBER DEURLOO: Sure.

2 MR. FREDERICK: Thanks.

3 BOARD MEMBER DEURLOO: Line 92,
4 Groundwater. I think it reads a little funny. I mean, it
5 reads "Groundwater means subsurface water that fills
6 available openings in rock or soil materials such that they
7 may be considered water saturated under hydrostatic
8 pressure."

9 Again, I'm not -- I don't feel strongly about
10 this, but I would suggest maybe re-wording this, changing
11 around that it may read "May be considered saturated with
12 water under hydrostatic pressure," or just changing the
13 definition altogether to where it reads "Groundwater is the
14 water found underground, in the cracks and spaces in soils,
15 sand and rock."

16 I don't think hydrostatic pressure has really
17 anything to do with groundwater. I mean, it does,
18 obviously, but if you guys want to look at that and change
19 it or leave it, it's totally up to you.

20 MR. FREDERICK: Yeah, so, Brian -- this is
21 Kevin -- I believe that definition is taken out of Chapter
22 8 on our groundwater quality standards and has been
23 incorporated into our UIC regulations Chapters 20 --

24 MS. THOMPSON: 24 and 27.

25 MR. FREDERICK: -- 24 and 27.

1 I hear what you're saying, Brian. It's certainly
2 something that we can take a look at, but for the time
3 being, I think I'd just kind of prefer to leave it as it
4 is. But we can take a look at making a group change at
5 some point in time to capture your point.

6 BOARD MEMBER DEURLOO: Okay. Thank you,
7 Mr. Frederick. I'm happy with Section 4.

8 MR. FREDERICK: Thank you.

9 CHAIRMAN KIRKBRIDE: Well, Kevin, I've got
10 a question about that. Is water saturated --

11 MR. FREDERICK: Well, let me make sure I
12 understand the question.

13 CHAIRMAN KIRKBRIDE: Okay. I can reask it,
14 but that's -- it's that these -- subsurface water may be
15 considered water which is saturated with hydrostatic
16 pressure. I see why saturation is a condition of water. I
17 didn't know that water could become more or less saturated.
18 And that's what I think -- it seems to me that Brian might
19 be getting to this particular --

20 (Phone interruption.)

21 MR. FREDERICK: Sorry about that.

22 BOARD MEMBER CAHN: Was that -- was that me
23 that had that ad running?

24 MR. FREDERICK: It was a number --

25 BOARD MEMBER CAHN: So -- this is Lorie. I

1 feel strongly -- so there is unsaturated water that's not
2 under positive hydrostatic pressure, the partially
3 saturated. And so I think it's important for the
4 definition to remain that it is saturated under -- under
5 positive hydrostatic pressure. I think that's important.
6 I agree that the language is awkward. I don't like a
7 definition "such that may be considered." It's a little
8 wishy-washy for a definition, but I personally feel it's
9 important to mention the hydrostatic pressure and that, you
10 know, it's water saturation -- full saturation, not partial
11 saturation. I'll leave it at that.

12 CHAIRMAN KIRKBRIDE: Thank you for
13 educating me a little bit there. I'll be -- sometime I'll
14 try to learn a little bit more about that.

15 Okay. Any other questions?

16 Brian, I guess you're okay with Kevin's response
17 there. Are you? Are we all? If so --

18 BOARD MEMBER DEURLOO: I'm fine, Chairman
19 Kirkbride. Thank you.

20 CHAIRMAN KIRKBRIDE: Okay. All right.
21 Anything else here on Section 4?

22 Okay. I think we can go on.

23 MR. CRIPE: Chairman Kirkbride, I will
24 continue on with Section 5, Prohibition changed to
25 Facilities and Systems not Specifically Covered by the

1 Standards. WQD proposes to remove the prohibition section
2 as the described activities as already prohibited by
3 statute and other rules and permits.

4 For consistency with other water quality rules
5 and regulation chapters, WQD proposes to replace the
6 prohibition passage with passages formerly located at
7 Section 10(b)(i) and supplemental passages to describe the
8 pilot plant process.

9 Are there any questions or comments on Section 5?

10 BOARD MEMBER CAHN: This is Lorie. I have
11 none. Thank you.

12 BOARD MEMBER DEURLOO: This is Brian. I
13 have none. Thank you.

14 CHAIRMAN KIRKBRIDE: And I have none.

15 MR. CRIPE: Continuing on. Section 6, Site
16 Suitability. WQD proposes to add a requirement for a
17 demonstration that references Wyoming Statute 35-11-306
18 provisions concerning setback distances. The Powder River
19 Basin Resource Council had requested that the rule more
20 plainly discuss the setback requirements from Wyoming
21 Statute 35-11-306.

22 Powder River Basin Resource Council had requested
23 that WQD revise the floodplain requirement from 100
24 floodplain to a 500-year floodplain. DEQ proposes to leave
25 the requirement at the 100-year floodplain, but proposes to

1 clarify the remainder of the passage.

2 WQD proposes to revise the paragraph formerly
3 located at (c), now renumbered to (d), by adjusting the
4 construction for consistency with the other paragraphs in
5 that section.

6 WQD proposes to remove the passage formerly
7 located at paragraph (d), as the requirement is already
8 enforceable in Water Quality Rules and Regulations
9 Chapter 3.

10 With that, are there any comments or questions on
11 Section 6?

12 BOARD MEMBER CAHN: This is Lorie. I have
13 some comments. Chairman Kirkbride. The first is on the
14 language where it says in line 150, and again at 153 and
15 again at 158, where it says "The proposed facility location
16 shall demonstrate compliance." And a location doesn't
17 demonstrate compliance. It would be an applicant that
18 demonstrates that the location is compliant. So I would
19 propose it be reworded to something like "The applicant
20 shall demonstrate that, (i), the proposed location complies
21 with Wyoming statute," et cetera. "(ii), the depth to
22 seasonal groundwater shall be at least 5 feet below the
23 secondary liner of the proposed facility; and (iii), the
24 proposed location is outside of the 100-year floodplain of
25 the surface water of the state; and (iv), the proposed

1 location is not within an established," et cetera.

2 And so -- that's just --

3 MS. THOMPSON: Lorie, this is Gina. And
4 the language that you're suggesting, I think that it's
5 going to be fine, but I may have to adjust the proposed
6 numbering, because I've been getting dinged a lot by the
7 Attorney General's Office on perfect outline structure.
8 And if there is an A, I have to have a B. And if I have a
9 1, I have to have a 2. So I have to make sure that when
10 I'm lining out that section that it's in perfect outline
11 form. But I believe -- like I agree, and I think Kevin
12 agrees, with the statement that, you know, the site cannot
13 demonstrate, that the applicant has to do the
14 demonstration. And so we will definitely rework that.

15 BOARD MEMBER CAHN: Okay. And I -- I
16 thought -- I kind of anticipated you might not like my A's
17 and no B. So that would be fine. So, you know, in order
18 to -- the main concept of -- you know, you've accepted. So
19 however you need to word it, if it has to be repetitive
20 wording to avoid not having a B, that's fine.

21 The only other comment I have on that section is
22 at the end of (d), there's an semicolon and an "and." I
23 believe that should be deleted and we should end with a
24 period. And that's all I have on this section. Thank you.

25 So that is line 163 where the semicolon and the

1 "and" should be deleted and replaced with a period.

2 CHAIRMAN KIRKBRIDE: You know, I noticed
3 that, and I believe I noticed the next section does the
4 same thing.

5 BOARD MEMBER DEURLOO: Chairman Kirkbride,
6 this is Brian Deurloo. I have a comment on Section 6, if I
7 may.

8 CHAIRMAN KIRKBRIDE: Yes.

9 BOARD MEMBER DEURLOO: Around that same
10 sentence that Lorie was just talking around on line 162 and
11 163 -- this question is for the DEQ, whether it be Richard
12 or Kevin or whoever, please. It talks about the facility
13 shall be -- not be placed within established drainages into
14 which natural runoff may flow or enter. That's pretty
15 broad. Is there a definition of what a natural drainage
16 is? Because when you go walking out there in the Powder
17 River breaks, or what have you, you may find, you know, a
18 little swell or something like that, a drainage obviously
19 where water is going to be flowing. And I know typically
20 some of these pits they have an upstream kind of diversion
21 for minor runoff. Is there a definition around that? Is
22 it a blue line? Because we used to, when we did Army Corps
23 stuff, the established drainage would be on the USGS
24 topographic maps being a blue line. That would be the
25 drainage.

1 Can you offer any color around what an
2 established drainage might be, please?

3 MR. FREDERICK: Sure, Brian. This is
4 Kevin. I think the closest I can come would be rather than
5 calling it established drainage, perhaps to call it an
6 ephemeral drainage.

7 BOARD MEMBER DEURLOO: Uh-huh.

8 MR. FREDERICK: Ephemeral drainages are
9 Waters of the State, and I think that's -- that's the
10 intent here.

11 BOARD MEMBER DEURLOO: I mean, that might
12 be a good idea. I'll leave that to you to think about.
13 But just to have greater clarity when dealing with
14 operators, kind of -- I bet dollars to donuts that question
15 would come up on your siting criteria -- what is an
16 established drainage. Having a clear definition might be
17 helpful to you.

18 MR. FREDERICK: Yeah. Good point. Thanks.

19 BOARD MEMBER DEURLOO: Thank you,
20 Mr. Kirkbride.

21 BOARD MEMBER CAHN: This is -- this is
22 Lorie. I forgot I had one more comment on this -- or
23 question, really, on the section that I forgot to bring up.

24 CHAIRMAN KIRKBRIDE: Okay.

25 BOARD MEMBER CAHN: And that is on line

1 153, where we talk about the applicant "...shall
 2 demonstrate that the depth to highest seasonal groundwater
 3 shall be at least 5 feet below the secondary liner." And I
 4 just had a question about if they put a boring in that goes
 5 5 feet or 10 feet and they haven't found water, is that --
 6 is that good enough, or do they have to go all the way to
 7 groundwater in order to show how -- you know, where that
 8 is, and what if it's 300 feet? So that's my question.
 9 Thank you.

10 MR. FREDERICK: What line number?

11 MS. THOMPSON: 153.

12 MR. CRIPE: 1-5-3.

13 MR. FREDERICK: Okay. Lorie, this is
 14 Kevin. So this is essentially fairly consistent with
 15 looking at insurance, if you will, that the liner is not
 16 placed within the water table. And I'm sure you understand
 17 why. And that's a little bit different than I think to
 18 your question as to how deep does a test have to be to
 19 establish the uppermost water bearing zone. This
 20 particular reference speaks to looking at essentially the
 21 separation distance between the liner and the seasonal high
 22 water table and not so much trying to establish whether or
 23 not groundwater monitoring is going to be required because
 24 in some situations it may be possible, although unlikely in
 25 most situations, that groundwater is going to be of such a

1 depth that potential for contamination may be somewhat
2 minimized because your vadose zone thickness is much
3 greater in that case than in a case where the water table
4 is much closer to the surface and the vadose zone is much
5 thinner.

6 Now, we've -- we've encountered this type of
7 question previously when we were evaluating the potential
8 of coal-bed methane impoundments in the Powder River Basin
9 to impact the uppermost aquifer. And this goes back to
10 2010, when we addressed this question in a guidance
11 document. And in this particular guidance document, when
12 we were trying to provide guidance as to how deep one must
13 investigate to determine whether or not monitoring was
14 required and to determine more specifically what depth the
15 first encountered or uppermost water bearing interval might
16 be, we essentially established a minimum of 150 feet
17 vesication for impoundments that were 50 acres or less in
18 size. A hundred -- or, excuse me, 200 feet, if they were
19 greater than I believe it was 200 -- or, excuse me, if they
20 were greater than 50 acre-feet.

21 And give me just a second here. I've got the
22 guidance document in front of me, and I can give you a
23 little bit more specificity here. Yeah, here we go. Okay.
24 So for impoundments less than 50 acre-feet in capacity, at
25 least one boring must be advanced in the first occurrence

1 of groundwater in bedrock or to a depth of
2 150 feet below the elevation of ground surface at the
3 impoundment if no groundwater is encountered. Impoundments
4 equal to or greater than 50 feet a boring must be advanced
5 in the first occurrence of groundwater in bedrock or to a
6 depth of 200 feet below the surface elevation of the
7 impoundment if no groundwater is encountered. And for
8 impoundments equal to or greater than a hundred acre-feet,
9 the operator must contact the DEQ groundwater program for
10 subsurface investigation requirements. In other words,
11 have a little conversation about whether or not it might be
12 likely that there is going to be groundwater to a depth
13 greater than 200 feet.

14 So that's how we've addressed that question in
15 the past. I think it worked well for us in the Powder
16 River Basin, primarily, where we're dealing with unknown
17 groundwater conditions in the Wasatch and in the Fort Union
18 formations. I believe in the majority of those cases where
19 these impoundments were tested, groundwater was encountered
20 above 150 feet. And I suspect that's going to be normally
21 the case in most conditions across the state. Now, there
22 are going to be some situations where that may not be the
23 case, and I recognize that.

24 I think the guidance documents served us well.
25 It provides us flexibility. I'm a little reluctant to try

1 and incorporate this kind of language into a rule because I
2 believe we do need to have some flexibility in making those
3 types of determinations, but, nevertheless, I think the
4 guidance that we've had around since 2010 has served us
5 well, and -- and I suggest that we continue to implement it
6 that way.

7 BOARD MEMBER CAHN: So let me just make
8 sure I understand what you're saying is that in this case
9 for the seasonal high water table, you're not anticipating
10 that an applicant would just put in wells -- or borings
11 that go to 5 feet depth below the secondary liner, so go
12 outside the secondary liner and go 5 feet below the bottom
13 of that and just check that on a regular frequency to see
14 if there's any water in them? That's not what you're
15 anticipating? You're anticipating that your guidance would
16 have them go, depending on how many acre-feet their
17 evaporative pond is, that that would then determine, by
18 guidance, how deep they would need to go to look for the
19 seasonal high groundwater?

20 MR. FREDERICK: Let me clarify. So the
21 soil borings that we're talking about in the section you
22 referenced here on line 154 --

23 BOARD MEMBER CAHN: Line 154.

24 MR. FREDERICK: -- yeah. So what we're
25 looking for here -- and normally these are going to be soil

1 borings where the imposed impoundment is going to be. And
2 in recognizing that there really wouldn't be any reason to
3 presume that it might be a future monitoring well location,
4 those are going to be constructed outside of the
5 impoundments. The intent here --

6 BOARD MEMBER CAHN: Of course.

7 MR. FREDERICK: -- is just to document that
8 where the liner is going to go in the impoundments, that
9 it's placed above the seasonal high water table. And
10 normally you can identify a seasonal high water table
11 often, at least there will be some standing associated with
12 the soils when you encounter them. Typically there's some
13 indication that they have periodically been saturated. The
14 depth --

15 BOARD MEMBER CAHN: Okay. I was wondering
16 if --

17 MR. FREDERICK: Yeah. Go ahead.

18 BOARD MEMBER CAHN: No. Sorry. I didn't
19 mean to interrupt. I thought you were finished. Go ahead.

20 MR. FREDERICK: I was just going to say the
21 test requirements I was referencing in our guidance
22 document would be more appropriate to where monitoring
23 wells are going to be cited.

24 BOARD MEMBER CAHN: Okay. I actually
25 think, Kevin, with the rewording that I -- that I think it

1 will be clear -- clearer what was meant, which would be the
2 depth to highest seasonal groundwater shall be -- and this
3 is what they're going to demonstrate -- applicants can
4 demonstrate that -- the depth to highest seasonal
5 groundwater shall be at least 5 feet below the secondary
6 liner of the facility. So I think that's -- I guess I -- I
7 think I understand now that -- what you mean here, and
8 that's different from where the groundwater monitoring
9 wells will be, so...

10 MR. FREDERICK: Yep.

11 BOARD MEMBER CAHN: Okay. Thank you.

12 MR. CRIPE: Chairman.

13 CHAIRMAN KIRKBRIDE: I have nothing else.

14 Go ahead.

15 MR. CRIPE: Assuming there's no more
16 comments, I will continue.

17 CHAIRMAN KIRKBRIDE: Yes, please.

18 MR. CRIPE: Section 7, Permits, Permit
19 Applications, and Recordkeeping Requirements. WQD proposes
20 to clarify the intent behind the cross-reference to Water
21 Quality Rules and Regulations Chapters 3, Section 6.

22 WQD proposes to restructure passages in the
23 section for clarity and to meet Secretary of State's
24 formatting requirements.

25 WQD proposes to revise the private property

1 access language. The Attorney General's Office and DEQ
2 management have crafted rule-specific language that is more
3 streamlined than the previously proposed access language.
4 This language that was previously proposed will be used as
5 a condition in future permits.

6 Are there any comments or questions on this
7 section?

8 BOARD MEMBER CAHN: This is Lorie. I have
9 some editorials.

10 CHAIRMAN KIRKBRIDE: All right. Please go
11 ahead, Lorie.

12 BOARD MEMBER CAHN: On line 179, I'm
13 wondering if there are other items in the application
14 besides the -- let's see. Okay. So we have include --
15 "The applicant shall: Include a signature of the real
16 estate owner of record or a legal designee and a signature
17 of the operator in the application." And I think that
18 if -- if there are other items in the applications, then we
19 can put in (b) above, include -- so that the applicant
20 shall include a signature, and then it would be (i) -- so
21 that shall include -- I'm -- I'm not -- I'm sorry. I'm not
22 understanding -- I'm not understanding my own notes. So I
23 apologize. So the first thing would be -- I think the
24 first part can be worded -- the second "a signature" could
25 be deleted, so there's not two signatures in the same line.

1 So it would just say include a signature of the real estate
2 owner of record or a legal designee and of the operator.

3 And then I think -- couldn't we get rid of in the
4 application and put it above. So say the applicant shall
5 include in the application and then (i) would be a
6 signature, et cetera; (ii) would be a management plan, and
7 on down the line.

8 So the other thing is, the way it's worded right
9 now in line 181, we have "Include a management plan which
10 shall include" -- so we're using "include" twice, and maybe
11 we can get creative. Instead of include, could you say
12 "contain"? I think it would all read better with fewer
13 words and read better.

14 MR. CRIPE: Board Member Cahn, okay. We
15 can make those changes. Thank you.

16 BOARD MEMBER CAHN: Okay. And then on line
17 201, there's -- there's an "and" on 201, and an "and" on
18 line 202. And I believe the first "and" on 201 can be
19 replaced with a comma. So that the line would read
20 "including plan specifications, design data, other
21 pertinent information covering the project, and any
22 additional information required by the administrator."

23 MR. CRIPE: Sure, Board Member Cahn. Okay.
24 We can make that change.

25 BOARD MEMBER CAHN: And then on line 250,

1 252, 255, all the romanettes, as well, I would include that
2 in (d) above. So it would be "including permission to."
3 And then (i) would start out "access the land" -- I'm sorry
4 (i). (ii) would start "collect resource data." (iii)
5 would start "enter and cross all properties." It just
6 takes out a few extra words that aren't necessary. But
7 I'll leave that up to you guys.

8 That's all I have on this section. Thank you.

9 MR. CRIPE: Board Member Cahn, we can make
10 those changes. Thank you.

11 BOARD MEMBER DEURLOO: This is Brian
12 Deurloo. I have a question.

13 CHAIRMAN KIRKBRIDE: Brian.

14 BOARD MEMBER DEURLOO: Thank you. Lorie,
15 those are good catches. I think that any time you can take
16 words out it always saves -- saves time. So good job.

17 My question pertains -- this is for the DEQ -- on
18 line 178, 179, reads "Include a signature of the real
19 estate owner of record or a legal designee and a signature
20 of the operator in the application." So what -- what if
21 you're on the state land? I think that's where the legal
22 designee comes from, but a lot of these impoundments are on
23 state land or maybe even BLM land or something like that.
24 So could somebody speak to and just -- does -- if we put --
25 if somebody put an impoundment on state land, who needs

1 to -- what signatures does an operator need? Do they need
2 just one from the State allowing that? Do they need one
3 from the grazing lessee? And I'll try not to take us too
4 much into the weeds, but a signature of the real estate
5 owner of record. Does that just include the surface real
6 estate, or does that also include the mineral estate or the
7 gravel estate? If you've got oil and gas, you have mining
8 and gravel all on one -- one property. If somebody could
9 speak to that, I'd appreciate it, please.

10 MR. CRIPE: I believe it's a surface --

11 MR. FREDERICK: Oh, sure. It's a surface
12 owner.

13 MR. CRIPE: Board Member Deurloo.

14 BOARD MEMBER DEURLOO: Yes.

15 MR. CRIPE: I believe the intent here is
16 surface and not the others that you've identified as far as
17 the signature. And I think the context there is correct,
18 what you're saying is a lot of these fall on state lands,
19 and so it would probably be the person that would be
20 leasing that state land to do what they're doing.

21 MR. FREDERICK: So, Dennis, are you -- are
22 you on?

23 MR. LAMB: I am. Can you hear me?

24 MR. FREDERICK: Yeah. How have we been
25 handling that?

1 MR. LAMB: Yeah, the Office of State Lands
2 signs off. The director of the Office of State Lands signs
3 off on our Chapter 3 permit application as the landowner.

4 MR. FREDERICK: Okay. What about BLM?

5 MR. LAMB: BLM is a different story. A lot
6 of times they won't sign. Sometimes they'll sign. Some
7 offices won't. We require a right-of-way be granted to the
8 operator by the BLM in lieu of a signature.

9 BOARD MEMBER DEURLOO: Okay. Is that in a
10 guidance document? Again, I ask just for clarity for
11 moving forward. Is this something you want to clarify in
12 this rule or on a case-by-case basis? And also do you want
13 to -- what about the mineral estate? Let's say somebody --
14 say a mineral owner doesn't want a pit on top of their land
15 because of their nice gravel location or something.

16 MR. LAMB: We've never gone into the
17 minerals. We've just always done it by the way I
18 described. So it may be some that are more complicated,
19 but we've never really looked into the minerals.

20 And as far as BLM, that kind of goes office by
21 office. I have some offices that will sign off, some
22 offices that won't, and the right-of-way went to the AG as
23 being in lieu of a signature. We just had one we settled
24 in the last year after several years of going back and
25 forth.

1 BOARD MEMBER DEURLOO: Okay. Would it
2 be -- do you want to include the words "surface real estate
3 owner" in here for greater clarity or not?

4 MR. LAMB: My opinion would be yes. This
5 is Dennis.

6 MR. FREDERICK: Yeah. And, Brian, just to
7 expand a little bit further on this point you're raising.
8 The permit application is going to be public noticed in a
9 newspaper, I believe, within the area of where the facility
10 is going to be constructed, if I'm not mistaken. So there
11 is going to be some public notice of the activity before
12 the permit is authorized. I know we have had instances
13 where mineral owners have commented on their concerns
14 through notice of an opportunity to provide comment on a
15 draft permit prior to issuance. So I -- I do know that,
16 you know, generally most people, I think, are aware of when
17 and where these new facilities are proposed to be
18 constructed. And I think more often than not, if they have
19 an issue or concern, they typically will contact somebody.

20 BOARD MEMBER DEURLOO: Okay. So what's
21 your intent in that -- thank you for that, Kevin. What is
22 your intent on (b) (i)? Is it the surface real estate
23 owner? And if that is the case, I think I suggest you put
24 surface real estate.

25 MR. FREDERICK: Yep. I agree, Brian.

1 And I think, you know, it sounds like Dennis has
 2 been able to, working with Rich, make adjustments when we
 3 run into a situation where BLM is unwilling to provide a
 4 signature. And I think Dennis's approach to, you know,
 5 requiring proof of access, at least, is sufficient. That's
 6 about as good as we can probably get out of a federal
 7 agency.

8 BOARD MEMBER DEURLOO: Uh-huh. I agree.

9 So do you want to say something -- do you want to
 10 add something to that that allows Dennis to make those
 11 allowances within the application? Signature of a surface
 12 real estate owner of record or a legal designee, and put in
 13 there something, or a -- a right-of-way? Maybe I'm getting
 14 too granular here. I don't want to cover too many bases.
 15 But it sounds like it happens fairly often that you have to
 16 get a right-of-way from a federal agency to access the
 17 site. Do you want to maybe spell that out in here,
 18 something about -- another romanette, or leave it silent?

19 MR. FREDERICK: Well, we might think about
 20 adding the words "or documentation of a legal access."

21 BOARD MEMBER DEURLOO: Uh-huh.

22 MR. FREDERICK: What do you think of that,
 23 Dennis?

24 MR. LAMB: Yeah, it's not just access,
 25 though. The -- like in the cases where they build the

1 ponds, it's also access, but it's also get a right-of-way
2 to use the property for what it is from BLM. So it would
3 be appropriate to put a right-of-way in. Like I said, some
4 places the BLM office will sign off on it, but other places
5 they won't. And when I asked for guidance on that several
6 years ago, I was told that a right-of-way for the property
7 would be -- what would be used in lieu of the signature.

8 My last case -- one of the more recent
9 cases, and this is one involved the AG's office -- it took
10 us five years to get the BLM people to issue a
11 right-of-way. And this was an existing facility.

12 MR. FREDERICK: Yeah. So perhaps providing
13 documentation of legal access or right-of-way.

14 MR. LAMB: Yeah.

15 BOARD MEMBER DEURLOO: Yeah.

16 MR. FREDERICK: Okay. We can do that.

17 BOARD MEMBER DEURLOO: I think that would
18 be good.

19 MR. FREDERICK: Okay. Got that, Gina?

20 MS. THOMPSON: I think so.

21 BOARD MEMBER CAHN: This is Lorie. This is
22 Lorie. Do we want to specify in the case of federal land
23 that would need documentation of the right-of-way or proof
24 of access, so that if it's not federal land, we're getting
25 the signature of the owner for just the right-of-way? What

1 do you think?

2 MR. FREDERICK: I think that would be
3 appropriate.

4 MS. THOMPSON: So can I read this back to
5 make sure I have what we're agreeing to proper? So we're
6 changing it to "or in cases of federal lands documentation
7 of a legal right-of-way"?

8 MR. FREDERICK: Of legal access or
9 right-of-way.

10 MS. THOMPSON: Of legal access or -- okay.

11 MR. FREDERICK: So let me ask you this,
12 Dennis. Is this something you think would come up where
13 either the state or the feds or a local government owns the
14 land?

15 MR. LAMB: You mean needing a right-of-way?
16 I have not seen the State do anything like that. The
17 State -- I talk to them quite often -- they have their own
18 way of dealing with it, and they sign -- the Office of
19 State Lands signs off on it. Now, local government, that's
20 a different -- that's a good question. It may come up.
21 I've never had that happen.

22 Then we have, relative to BLM, a needing of
23 right-of-way. In cases -- one was for access. It wasn't
24 for the site. In the other case, it was for access and the
25 site. So it's not a usual case. I have had other ones

1 proposed BLM land were never built, and -- not very many,
2 but one or two.

3 So, yeah, I could come up with a local government
4 too, I guess, but I'm not sure exactly how it would work,
5 who would sign their -- same type of thing. They'd have to
6 get documentation of a lease.

7 CHAIRMAN KIRKBRIDE: This is Alan. It
8 seems -- am I missing something here? Could there be
9 access problems even on private land?

10 MR. LAMB: You mean from BLM?

11 CHAIRMAN KIRKBRIDE: No, from -- I mean,
12 say -- say there's a -- there's a private landowner or
13 almost anyone, private or public landowner where you're
14 going to put the facility, but there's an access problem
15 from a public road to that facility site.

16 MR. LAMB: That's --

17 CHAIRMAN KIRKBRIDE: Am I right, that's a
18 condition?

19 MR. LAMB: Well, that was dealt with in the
20 section above where we have to be given permission, and
21 they have to give us permission if that exists. If there's
22 private property in between, they have to give us
23 permission from the owner to go across that property to
24 access the permitted site.

25 CHAIRMAN KIRKBRIDE: Thank you.

1 MR. FREDERICK: So Lorie and Brian, then,
2 back to Lorie's recommendation that we include the language
3 that for siting a facility on federal land to provide
4 documentation of legal access or right-of-way, are we --
5 are we good with that and not lay that off on either the
6 state or local governments? Sounds like there's a process
7 in place for states -- state land office does sign off, and
8 local governments probably is not going to be a situation
9 that we would even encounter, recognizing that these
10 facilities have to be sited at least a mile away from an
11 inhabited structure. So I would think if we just dealt
12 with the federal land issue, we should be okay.

13 BOARD MEMBER CAHN: This is Lorie.

14 BOARD MEMBER DEURLOO: Kevin, I think I
15 agree.

16 BOARD MEMBER CAHN: This is Lorie. Based
17 on what Dennis has said, I wonder if instead of federal
18 land, we just use public land. Would that then cover
19 local -- if that exists? I'll leave it up to you guys.
20 Whatever you and Dennis think will cover you is fine with
21 me. Thank you.

22 MR. LAMB: Boy, that's almost a legal
23 question. Public land or federal land, you know what I
24 mean? I would say write it up and run it by Kelly.

25 MR. FREDERICK: Yeah, we can do that.

1 BOARD MEMBER DEURLOO: This is Brian
2 Deurloo. Kevin, I think that language is a lot better. I
3 think it would serve your department well having a little
4 bit of clarity around that with private, state, and federal
5 lands.

6 I do like Lorie's suggestion with the public
7 lands, but that probably is a question for the attorneys
8 here. So if you want to make -- as you've -- a variance of
9 what you've just spoken about, I'm fine with that, and we
10 can move on.

11 MR. FREDERICK: Okay. Yeah. Thanks,
12 Brian. Good catch.

13 BOARD MEMBER DEURLOO: You're welcome.
14 Thank you.

15 MR. CRIPE: Chairman Kirkbride, are there
16 any more comments on Section 7?

17 CHAIRMAN KIRKBRIDE: I do not have any.
18 Anyone else?

19 BOARD MEMBER DEURLOO: None here.

20 MR. CRIPE: With that, I will move on.
21 Section 8, Annual Reporting Requirements.

22 CHAIRMAN KIRKBRIDE: Just one moment, Rich.
23 We might discuss our schedule here. We're almost at noon,
24 and I -- we need to find if people have the appetite to
25 continue to complete this entire thing before we take a

1 break, or should we take a break? I mean, is that -- is
2 that -- would that be useful, break -- to take a period of
3 time here, and then dive back into it in 45 minutes to an
4 hour? Or what's your -- what's your preference, folks? We
5 have quite a ways to go.

6 BOARD MEMBER CAHN: This is Lorie. I
7 would -- yeah, this is Lorie. I would prefer that we take
8 a lunch break. I don't need personally a lot of time, but
9 not everybody's in their own home. Just whatever time
10 people need is fine with me, but I prefer a lunch break.
11 Thank you.

12 BOARD MEMBER DEURLOO: Chairman Kirkbride,
13 this is Brian. I'm fine either way. I'll go with the
14 group. I'm just sitting here at my desk and I can eat as I
15 go. Whatever.

16 CHAIRMAN KIRKBRIDE: Yeah. I think we need
17 a little fresh air and to take a little time here. Maybe
18 30 minutes? How about 12:30? Guys, let's try to show up
19 here at 12:30 sharp. What do you think of that one?

20 MR. FREDERICK: Yep. That works for us.

21 BOARD MEMBER DEURLOO: Sure.

22 CHAIRMAN KIRKBRIDE: I'm going to keep
23 my -- I'm going to keep my video going so we don't have
24 this reconnection problem. Why don't we all keep our
25 videos going. Just mute our video and audio so we don't

1 have reconnection issues.

2 MR. CRIPE: Good idea.

3 CHAIRMAN KIRKBRIDE: We'll see you guys in
4 a few minutes.

5 (Virtual public meeting proceedings
6 recessed 11:58 a.m. to 12:32 p.m.)

7 CHAIRMAN KIRKBRIDE: All right. Anybody
8 need another minute? I don't hear anything.

9 And, Mr. Cripe, you may start right in.

10 MR. CRIPE: Okay. Section 8, Annual
11 Reporting. WQD proposes to add a paragraph that requires
12 wastewater transfer records to accompany the annual report.
13 Does anyone have any questions on Section 8 or comments?

14 BOARD MEMBER DEURLOO: I might. I might
15 have a small comment here. This is Brian. Oh, no. Sorry
16 it's Section 9. No, I don't have any comments on Section
17 8.

18 BOARD MEMBER CAHN: This is Lorie. I have
19 no comments.

20 CHAIRMAN KIRKBRIDE: Nor do I.

21 You may go ahead.

22 MR. CRIPE: Section 9, Engineering Design
23 Report. WQD proposes to restructure passages in this
24 section for clarity to meet Secretary of State's formatting
25 requirements and to remove unintended duplication of other

1 water quality rules and regulation chapters.

2 Are there questions or comments on Section 9?

3 BOARD MEMBER DEURLOO: Mr. Chairman, I have
4 one comment, I believe. Back to the DEQ. I'm a man of
5 repetition, that's for sure. Line 296, the landowner of
6 record. Do you think it would be helpful if we had the
7 mineral owner of record or grazing lessees, depending upon
8 who has some sort of control over the land? Mineral,
9 grazing lessees, or just landowners?

10 I'm sorry. That question -- Kevin Frederick, are
11 you there?

12 MR. FREDERICK: Yeah, I'm here, Brian.

13 BOARD MEMBER DEURLOO: Do you think just
14 having the surface landowner is sufficient for you, or
15 would it be helpful to have other owners of interest on the
16 property?

17 MR. FREDERICK: I think I would prefer to
18 stay with the surface landowner.

19 BOARD MEMBER DEURLOO: Uh-huh.

20 MR. FREDERICK: Obviously, the surface
21 landowner's going to have control over any lessees and
22 should be aware of them. So I don't know that it would be
23 appropriate to -- to require a surface lessee to provide --

24 BOARD MEMBER DEURLOO: Yeah, don't mineral
25 rights owners have -- what's the right word -- primacy over

1 surface rights?

2 MR. FREDERICK: I believe so. At least
3 yeah, right to access, right to drill.

4 BOARD MEMBER DEURLOO: Right. So would it
5 not -- I mean, these companies are probably going to have
6 to run title on that land anyhow, if somebody builds a
7 surface impoundment out there and two years later somebody
8 wants to come and drill an oil well. I'm just throwing it
9 out there, Kevin. It may be worth having mineral rights
10 owners, that could be a list of other people too.

11 MR. FREDERICK: So, Dennis, any thoughts on
12 that?

13 MR. LAMB: No. I have no idea how
14 difficult it would be to get surface mineral rights people
15 to sign off on something. It could end up being a problem,
16 I guess. It never has been. I've not heard of any problem
17 about it.

18 BOARD MEMBER DEURLOO: No, I --

19 MR. LAMB: A lot of states -- state lands,
20 like especially that have multiple users on them, so --

21 BOARD MEMBER DEURLOO: No, I'm not asking
22 for signature -- signatory authority. I'm not asking for
23 that for the mineral rights to sign off on the project.
24 That could take forever. I was just asking should we
25 include a list of the mineral rights or at least the top

1 50 percent. If that's -- if it's not important to you -- I
2 just raise the question. If it's not important, I'll just
3 pass over it.

4 MR. LAMB: I don't know that it would have
5 to be a -- you know, it would be probably a good thing to
6 have just to look at the site and say, wait a minute, you
7 might have a problem there. Yeah, I don't -- you know, so
8 long as they're not signing off. I don't -- I think you
9 would never be able to get minerals owners to sign off,
10 because Lord knows who owns the minerals where. And --

11 BOARD MEMBER DEURLOO: Exactly.

12 MR. LAMB: -- it's my experience, minerals
13 rights people are leery about signing anything, right?

14 BOARD MEMBER DEURLOO: Uh-huh.

15 MR. LAMB: Okay.

16 MR. FREDERICK: So why don't we do that,
17 Brian, and change it to --

18 BOARD MEMBER DEURLOO: Okay.

19 MR. FREDERICK: -- the surface and mineral
20 owners of record.

21 BOARD MEMBER DEURLOO: Yeah, if you think
22 that would be helpful in your due diligence process for the
23 application, I'm all for it, Kevin. But if it's -- owner
24 is too burdensome to other people involved, then I would
25 not suggest doing it. I'm kind of leaving it up to you.

1 It's just my thought.

2 MR. FREDERICK: Yeah, I don't think it's
3 going to be onerous. I think it helps --

4 MR. LAMB: Just as long as --

5 MR. FREDERICK: It helps ensure that
6 there's communication between the applicant, the surface
7 owner, and the mineral owner. At least he has to go to
8 some effort to identify who they are. So...

9 BOARD MEMBER DEURLOO: Yeah, because if
10 you're going to put a 50-acre -- you know, a hundred-acre
11 impoundment on a section of land, or something like that,
12 you're going to be taking a lot of potential access for the
13 minerals out of circulation.

14 MR. FREDERICK: Yeah, good point.

15 Dennis, did you have something?

16 MR. LAMB: Yeah. I was just going to say I
17 see no problem, as long as it's not -- we're not asking for
18 the signatures from those people. Yeah, it can't hurt.
19 That would be valuable enough to know. You could look for
20 conflict of interest ahead of time that way on the new
21 ones. But as long as we're not asking for signatures,
22 which I think would become very difficult.

23 BOARD MEMBER DEURLOO: Yeah. Agreed.

24 MR. FREDERICK: Yeah, good comment, Brian.

25 Thanks.

1 BOARD MEMBER DEURLOO: You're welcome.

2 MR. CRIPE: Are there --

3 BOARD MEMBER DEURLOO: Mr. Chairman, I
4 don't have any -- oh, one section -- or line 374,
5 comprise -- okay, line 374, it reads "...comprising the
6 unsaturated zone, the first encountered groundwater
7 section, and the uppermost aquifer underlying the proposed
8 facility." Are the last two not the same thing? First
9 encountered groundwater section and uppermost aquifer
10 underlying the proposed facility, are they not the same
11 thing?

12 MR. LAMB: It could be, and it could also
13 not be, because you could have shallow groundwater that's
14 very ephemeral, comes and goes seasonally.

15 BOARD MEMBER DEURLOO: Okay.

16 MR. LAMB: See what I mean? That would
17 still be of concern -- it would be of concern with building
18 the structure. So yes and no. You know what I mean?

19 BOARD MEMBER DEURLOO: Sure. Okay. I have
20 no further comments or questions, Mr. Chairman.

21 BOARD MEMBER CAHN: This is Lorie. I have
22 some questions. One of the questions I have is on line
23 336, "A list of anticipated generators of the waste." And
24 Paragon made a comment that they might not want to be
25 divulging proprietary -- or, you know, information -- or

1 business-sensitive information. So I'm just curious how
2 DEQ is going to respond to Paragon's comment on this one.

3 MR. FREDERICK: Mr. Chairman. Ms. Cahn,
4 Kevin. We run into similar concerns in permitting other
5 facilities under Chapter 3 as well that people who are
6 applying for a permit wish to keep certain information
7 business confidential, trade secret, that sort of thing.
8 So we've dealt with this not a lot, but often enough in the
9 past in our permitting processes and have a -- have
10 essentially a process in place that allows a permit
11 applicant to make that request and to essentially identify
12 to us what he wishes to keep business confidential and why.
13 We then, I believe, at the director level, has to review
14 and approve that or deny. And in the event it's approved,
15 then the public access information that has been deemed
16 business confidential is essentially redacted or withdrawn
17 out of the public documents. So we -- we do have a process
18 in place to accommodate that, and I would just suggest that
19 that should be the process that stays in place here, and
20 that way we're consistent with the other permitting
21 programs of how we treat these types of requests.

22 BOARD MEMBER CAHN: Thank you,
23 Mr. Frederick. That satisfies me on that.

24 The next comment I have is on line 364 about a
25 license -- about a Wyoming professional geologist, and I

1 think we went through this fairly extensively last meeting
 2 or the meeting before where we really don't -- aren't in
 3 the business of saying whether somebody who is licensed by
 4 the State of Wyoming, whether it's for professional geology
 5 or whether they're qualified. That's really not our job to
 6 determine that they're qualified. So I thought we had just
 7 agreed to have a licensed Wyoming professional geologist.
 8 And I know later on, when we talk about professional
 9 engineers in the state of Wyoming, we don't say qualified
 10 or licensed. So I just am wondering where we're at on
 11 that. I would prefer that we at least delete the word
 12 "qualified," but I'll ask you to answer that.

13 MR. CRIPE: Board Member Cahn, to be
 14 consistent, we can delete that word.

15 MS. THOMPSON: Board Member Cahn --

16 BOARD MEMBER CAHN: Okay.

17 MS. THOMPSON: -- this is Gina. I
 18 apologize. It looks like that is appearing due to a
 19 formatting error on my part. It looks like in the
 20 recommendations that I received from staff that that was
 21 stricken, and somehow I managed to restore it in this
 22 document. But we will remove that. So it will be
 23 corrected to say "a licensed professional geologist," and
 24 then we will have the corrected statutory reference there.

25 BOARD MEMBER CAHN: Okay. Gina, thank you.

1 Okay. I just wanted to then say when we get to
2 line 403, we have -- we say "The name and seal or
3 signature" though "of Wyoming Professional Engineer,
4 and we don't say "licensed." So I'm just wondering, I
5 mean, that if we're getting them to sign and seal -- back
6 to line 364, if they're signing and sealing a document, a
7 report, as a Wyoming PG, then in accordance with statutes,
8 then they -- I don't think we really need to say licensed,
9 because it -- like I can't stamp -- you know, I can't stamp
10 a drawing if I let my license lapse.

11 So I guess just to be consistent, it doesn't
12 matter to me whether we use license in there, but then we
13 should use it with a professional -- Wyoming Professional
14 Engineer. But because there's stamping of drawings, I
15 don't think it's necessary. But I'll leave it up to you
16 guys, just to be consistent between the PGs and PEs.

17 MR. CRIPE: Board Member Cahn, yes, we can
18 add that word "license" in there to be consistent.

19 BOARD MEMBER CAHN: To the professional
20 engineer.

21 MR. CRIPE: That is correct.

22 BOARD MEMBER CAHN: Okay. All right. Or
23 the other alternative would be to delete the word licensed
24 in both situations, because they're stamping drawings and
25 they can't do that if they're not licensed. But that's up

1 to you. I can move on.

2 On line 374, it's a -- the word -- the use of the
 3 word "section" in terms of describing the first
 4 encountered -- encountered groundwater is a little unusual
 5 to me. I would just -- I would just leave section out.
 6 That, to me, more speaks of lithology and rock -- rock
 7 formations in sections. So I would prefer to just strike
 8 the word "section" and have it read "The first encountered
 9 groundwater, and the uppermost aquifer."

10 MR. FREDERICK: Yeah. I think we're fine
 11 with that. Good point.

12 BOARD MEMBER CAHN: On line 377, Paragon
 13 had a comment about the potentiometric map of the uppermost
 14 water table. And I was just wondering if you prepared at
 15 this meeting on how you would respond to Paragon's comment.
 16 And the comment's basically, if I can paraphrase, was
 17 saying that they don't own all the wells and that they're
 18 not necessarily completed in the same -- same, you know,
 19 parts of the water table, the same depths, and they're not
 20 always measured at the same time, if they're not wells that
 21 they own. And so I was wondering if you could comment on
 22 how you will respond to Paragon. Or is it premature at
 23 this point, you haven't had enough time?

24 MR. FREDERICK: Oh, no. Mr. Chairman.
 25 Ms. Cahn, we're prepared.

1 And I guess I understand Paragon's comment, and
2 they make a good point about water levels that are measured
3 in off-site water wells within a mile of the -- within a
4 mile of the facility. But, nevertheless, I think the
5 important thing we're looking for here is a potentiometric
6 surface map that is drawn on water level information
7 collected from the site itself. In other words, there has
8 to be an investigation, as I discussed earlier, with
9 respect to the depth of the first encountered groundwater.
10 And depending upon the size -- excuse me -- of -- the
11 volume of the impoundments, the depth may differ. Normally
12 they will encounter groundwater, as I mentioned before,
13 above 150 feet in most locations. And this then would
14 provide the information and essentially constructing a
15 monitoring well system for the impoundments that can then
16 be used to develop the potentiometric surface map. And
17 that's important for us to understand in the event that
18 there is contamination identified through the periodic
19 compliance monitoring of these wells, because a
20 potentiometric surface map will help us understand the
21 direction of groundwater flow at the facility.

22 Now, with respect to the off-site wells, and in
23 recognition of how their water level data may be
24 inconsistent -- collected during different times of the
25 year, collected during drilling instead of during

1 stabilization of the water level -- normally, there aren't
2 going to be many of those wells. As I mentioned earlier,
3 there can't be any inhabited structures within a mile of
4 the facility, so we wouldn't expect to see any domestic-use
5 wells. There may be a livestock well here and there, I
6 suspect, within a mile. Maybe a few of those.

7 And we understand that -- as you do, I know --
8 that when you're dealing with relatively large areas with
9 little control over data, your interpretation of the
10 potentiometric surface obviously is somewhat speculative,
11 somewhat subjective, because you're trying to make the best
12 interpretation you can with very little data.

13 Oftentimes geologists illustrate that on
14 potentiometric surface maps, by showing the potentiometric
15 lines as dashed lines instead of solid lines. Normally on
16 these types of maps solid lines indicate very certain data,
17 and, obviously, they can develop that within the facility
18 boundaries, outside of it, where the data control is -- is
19 much sparser. We would probably expect to see a geologist
20 interpretate that -- interpret that on a potentiometric map
21 as speculative using dashed lines.

22 So I think I understand the concern, but I
23 believe it's not a big issue that should be problematic for
24 us.

25 BOARD MEMBER CAHN: Okay. I appreciate

1 that. I'm wondering when we say a potentiometric map of
2 the uppermost water table, if we're really talking about a
3 potentio -- a -- blah, excuse me -- potentiometric map of
4 the uppermost water tables of an aquifer as opposed to
5 perched water, because you start getting into smaller
6 perched water bodies where water flows up or down through
7 the columns, and it's really difficult to try to think
8 about direction that perched water moved in terms of a
9 potentiometric map. So I'm assuming you're looking for the
10 map for the uppermost surface of the aquifer, the uppermost
11 aquifer. And do we want to specify that that's what you're
12 looking for as opposed to some perched water?

13 MR. FREDERICK: Good question. And per our
14 rules and regulations in Chapter 8, perched water is also
15 considered to be groundwater of the state and warrants
16 protection. And you're right in how do you illustrate that
17 on a potentiometric map. Well, truthfully, you should only
18 be illustrating on the map where, you know, groundwater,
19 i.e. perched water, in this example exists, not so much
20 where it doesn't exist. So if you do have evidence that
21 it's a relatively discontinuous perch layer, which most of
22 them are, you should be able to characterize that on a
23 potentiometric map. And oftentimes -- I'd say more often
24 than not -- we understand that you can take heterogeneous
25 formations like the Wasatch and Fort Union and Powder River

1 Basin that these discontinuous intervals certainly do
2 exist, but normally across a relatively small site, so to
3 speak, at least in a regional picture. I wouldn't expect
4 to see a lot of discontinuity across a few acres like this.
5 Perhaps several acres like this. I think more on a broader
6 scale, yeah, definitely it's a -- a -- easy to identify.

7 But we are interested, as I said, in that perched
8 water as well. And perhaps, if anything, we could add to
9 the potentiometric map of the uppermost water table that
10 presumes that it's essentially under atmospheric pressure,
11 more or less. We can add a piezometric map of the
12 uppermost water-bearing interval that would likely be
13 something below a perched water table, in the event they
14 ran into perched water conditions.

15 BOARD MEMBER CAHN: That would -- that
16 would be -- yeah, I think that would be -- that would be a
17 good clarifying addition.

18 MR. FREDERICK: So along those lines, then,
19 we would probably say, on line 377, a potentiometric map of
20 the uppermost water table where one exists, or a
21 piezometric map of the uppermost water-bearing interval.

22 MR. RAU: This is Dave Rau. Can I make a
23 comment?

24 MR. FREDERICK: It's up to the chairman,
25 Dave. I don't know if he's taking public comment or not.

1 CHAIRMAN KIRKBRIDE: Yes, you may, sir.
2 Yeah, I guess I'm online. We can take a public comment
3 now.

4 MR. RAU: Okay. Well, I'm the one who
5 wrote the comment, so...

6 And Dennis and Rich could probably weigh in on
7 this, but I think it was just the wording was confusing.
8 I -- typically what we do is prepare a piezometric surface
9 map of groundwater observed within the facility boundaries,
10 and I know there was discussion about size. And my
11 experience, most of these facilities are well over a
12 hundred acres. So, you know, we end up with 8 to 12
13 monitor wells when we do encounter groundwater; then we
14 creat a piezometric surface for the data from those wells.
15 But trying to tie these other wells in that we don't have
16 any control over and we really have really poor data on was
17 really my concern. So maybe that item can just be
18 clarified a little bit.

19 CHAIRMAN KIRKBRIDE: All right. Sir, can
20 you identify yourself for the court reporter? I'm sorry.
21 I missed it.

22 MR. RAU: That's -- I thought I did. It's
23 Dave Rau, Paragon Consulting Group. It's R-A-U.

24 CHAIRMAN KIRKBRIDE: Thank you very much.

25 MR. RAU: Thank you.

1 CHAIRMAN KIRKBRIDE: All right. Back to
2 Kevin. And if you -- whatever you think about this issue.

3 Or Lorie, if that solves that information.

4 BOARD MEMBER CAHN: Yeah, we're still
5 trying to figure out the word. I'm wondering, Kevin,
6 instead of saying in terms of the uppermost water table,
7 just maybe we would want to say uppermost saturated, and
8 then bring in, you know, piezometric surface as an
9 alternative --

10 MR. FREDERICK: I think --

11 BOARD MEMBER CAHN: -- or in addition.

12 MR. FREDERICK: Yeah, I think that would
13 work, Lorie.

14 BOARD MEMBER CAHN: Did you guys want to --

15 MR. RAU: This is Dave Rau again. I want
16 to --

17 CHAIRMAN KIRKBRIDE: All right, sir. Go
18 ahead.

19 MR. RAU: This is Dave Rau again. To me
20 the issue really is -- I'm not real concerned whether it's
21 going to be potentiometric or piezometric. The issue is do
22 we use the wells that were installed at the facility, that
23 we have good data on, to create that surface and only those
24 wells. The way it's worded, it kind of draws in those
25 other wells within a mile, and I -- I think that's going to

1 give you very poor data. But it's really inconsistent with
2 the way this has been done for years, and it's --

3 CHAIRMAN KIRKBRIDE: All right. Thank you.

4 BOARD MEMBER CAHN: Maybe -- this is Lorie.
5 Perhaps potentiometric map that we're talking about would
6 be based on project wells, and then the bigger map would
7 just show the locations of all the wells within a mile of
8 the facility, plus the project borings that are dry -- you
9 know, that are at different depths, so they're not being
10 used to produce the surface -- potentiometric surface?

11 It's like --

12 MR. RAU: Yes. That's very consistent with
13 what we've done in the past.

14 BOARD MEMBER CAHN: So we wouldn't mix the
15 two things. One is we want to see all the wells that are
16 within a mile, where they're located, and where the project
17 borings are. And then, you know, another map that would
18 show the -- potentiometric map that would then have the
19 location of the wells that were being used, maybe -- I
20 mean, it could all be on one map and one symbol to indicate
21 these are the ones that we used to produce the surface, and
22 these are the wells that weren't used to produce the
23 locations. So there could be just one map.

24 MR. FREDERICK: So I'll ask Dennis and Lily
25 their thoughts on that recommendation.

1 MR. LAMB: This is Dennis. It's really
2 rare that you can -- especially the Powder River Basin,
3 given the top three differences that go on, it's kind of
4 hard with the well logs you get from the SEO to say you're
5 in the same water bearing zone. It's kind of hard to say.
6 And so I think when they have been identified, the well
7 logs have been given to us and there's been discussions,
8 they always have been put on maps. And I think that would
9 still be the best way to do it, given that it's just --
10 it's just a random selection of what you get when you get
11 the SEO logs from these wells. Especially out there, a lot
12 of them are older wells and done a long time ago.

13 Now, in some cases that may not -- that may be
14 practical to be able to incorporate some of those wells,
15 but I don't think on a regular basis it would be.

16 MR. FREDERICK: So, Dennis, help me
17 understand that you're suggesting that the offsite wells
18 should be incorporated into the potentiometric map?

19 MR. LAMB: Probably not.

20 MR. FREDERICK: Okay.

21 MR. LAMB: They should be looked at in that
22 case and see if they're in the same aquifer, but if you get
23 out in the country out there, you find a lot of times --
24 but almost all the time -- these are stock wells and
25 they're drilled in lower locations, along drainages, that

1 kind of stuff, where the geology has been changed by the
2 erosion that -- over time and fill back in. And so they
3 really don't relate to the -- the uppermost geology at the
4 site. If that makes sense. But it's still nice to know
5 where they are and what they are. I look at those all the
6 time.

7 MR. FREDERICK: Sure. So, Lorie, let me
8 suggest this for verbiage on line 377: A potentiometric
9 map of the uppermost water-bearing zone beneath the
10 facility and illustrates the locations and use of all wells
11 within one mile of the proposed facility, clearly
12 identifying those wells producing in whole or in part from
13 the uppermost water-bearing zone, we can say, including
14 project borings or wells. So here, you know, we're looking
15 for --

16 BOARD MEMBER CAHN: So --

17 MR. FREDERICK: We're looking for the
18 potentiometric surface between the facility, but also
19 beginning to understand which wells are close by and what
20 they're used for. And at least some indication as to
21 whether they're completed within the same water-bearing
22 zone or not. That may be speculative, I know that. But I
23 think if there's a well near the facility but off-site, we
24 would certainly want to know that it's there and what its
25 permitted use is and what the completion interval looks

1 like. And for those other wells within a mile.

2 BOARD MEMBER CAHN: This is Lorie.

3 MR. LAMB: That's correct. That's -- we do
4 that. It's two point --

5 BOARD MEMBER CAHN: So my suggestion I
6 think that would hopefully make everybody happy would be to
7 divide C into a C and a D and move D to E. And so one
8 thing would be to talk about a potentiometric map of the
9 uppermost, you know, as you said water-bearing zone beneath
10 the facility. And then D would discuss the location and
11 use of all wells within -- the well borings -- the wells
12 showing borings that are within one mile of the facility on
13 that same map. But hopefully then we're more clear you're
14 not using the other information that's necessary to make
15 your potentiometric map.

16 So I think it's because the -- the potentiometric
17 map is on the same -- on the same paragraph as showing
18 all the wells, so they think it's -- it's -- it's
19 conflicting -- whatever the word is -- to the two, or
20 maybe they're really separate things that can be shown on
21 the same map, but we're not using the data necessarily --
22 the data requiring the wells within one mile of the
23 facilities to be part of the potentiometric map. So maybe
24 that would -- would aid --

25 MR. FREDERICK: Yeah, I would agree with

1 that.

2 BOARD MEMBER CAHN: Maybe that would work.

3 MR. FREDERICK: Works for me.

4 BOARD MEMBER CAHN: Great.

5 MR. LAMB: Yeah, I think that's a good
6 point. That's ideally the way it's done.

7 MR. FREDERICK: Good.

8 BOARD MEMBER CAHN: And then I have just
9 one minor comment on line 379 with the use of the word
10 including. And I would -- when you go ", including," it
11 implies that it's a part of what you have before, which is
12 those wells producing or -- in whole or in part from the
13 uppermost aquifer, including project borings. So I would
14 prefer -- because project borings may just be -- may not
15 have any water in them. They might have been soil borings.
16 So they're really not part of the wells producing from the
17 uppermost aquifer. So instead of "including" I would,
18 comma, say and include -- or and including -- you know,
19 "and including project borings." So it's clear that it's
20 not part of the producing wells. It's a subtle --
21 subtlety, but I think it's more clear.

22 MR. FREDERICK: Okay. Yeah. We can do
23 that.

24 BOARD MEMBER CAHN: And it could even be
25 done as romanettes or whatever, so -- whatever.

1 Okay. So you guys will reword?

2 MR. FREDERICK: Yep.

3 BOARD MEMBER CAHN: Okay. So the next
4 comment I have is on line 382 and 383, and it's the use of
5 the word confinement or un -- we're talking about the
6 uppermost aquifer in terms of the confinement or
7 unconfinement. There's also semi-confined. So I just --
8 I'm not sure if -- I'm not sure whether we need to -- I
9 mean, either we need to just say in terms of its
10 confinement or maybe we need to say confinement or semi-
11 confinement or unconfinement. Just so -- I'll just throw
12 it out, that kind of threw me just to have a few options.
13 And maybe there's a term that includes -- that would be
14 inclusive of all three. So that's one comment.

15 And the second comment is the next word is
16 "type." And so I'm not sure what terms you're after in
17 most aquifer, what you're looking for. So that's just a
18 question.

19 MR. FREDERICK: Yeah, I think --

20 BOARD MEMBER CAHN: And that is --

21 MR. FREDERICK: Go ahead.

22 BOARD MEMBER CAHN: Go ahead. I'll bring
23 up my third part later, so we can talk about the first two.

24 MR. FREDERICK: Okay. So I think when
25 we -- when we talk about confinement, what we're looking

1 for is a description of its relative confinement. As you
2 say, is it confined or is it unconfined or is it semi-
3 confined. So we could just simply say --

4 BOARD MEMBER CAHN: So maybe we could --

5 MR. FREDERICK: We could just drop the
6 words "or confinement."

7 BOARD MEMBER CAHN: We can use your wording
8 in terms of --

9 MR. FREDERICK: So say relative confinement
10 and then drop the words "or unconfinement."

11 BOARD MEMBER CAHN: That would work for me.

12 MR. FREDERICK: And as to your second
13 comment on type, that's a good question. Type could mean a
14 variety of things, I guess. It could mean alluvial. It
15 could mean bedrock. It could mean laterally continuous,
16 laterally discontinuous, could mean perched. So it's
17 certainly open to interpretation. I understand what you're
18 saying there, Lorie.

19 MR. CRIPE: Would the word
20 "characteristics" be better or --

21 MR. FREDERICK: Dennis, anything to add to
22 that?

23 MR. LAMB: I was thinking the same thing
24 Rich said, characteristics. It would make it a little bit
25 more defined. But, once again, that's ambiguous. And

1 you're right. There's all kinds of things. It could be
2 fractured. It could be alluvial. It could be a bedrock,
3 on and on. But characteristics would probably be better
4 than type.

5 BOARD MEMBER CAHN: Yeah, I like
6 characteristics better --

7 MR. FREDERICK: Okay.

8 BOARD MEMBER CAHN: -- than type.

9 And then my next comment is on porosity. Is
10 porosity permeability or transmissivity or hydraulic
11 conductivity? I mean, which is the characteristic you want
12 there? Just porosity?

13 MR. FREDERICK: I'll have to defer to my
14 authors here, Dennis and Lily.

15 MR. LAMB: Typically we just look at the
16 porosity to see what's there. We don't really very often
17 go into the hydraulic characteristics of transmissivity and
18 that kind of stuff. Porosity a lot of times can come out
19 of the boring logs, and also can be -- come out with the
20 geotech work that's done there. They many times define the
21 porosity. And that's relative to not only groundwater
22 flow, but porosity has implications in construction too.

23 BOARD MEMBER CAHN: Okay. That answers my
24 question that it's porosity that you're after, unless Lily
25 has something to add.

1 MS. BARKAU: I don't have anything to add.

2 BOARD MEMBER CAHN: Okay. And then on 439,
3 line -- we're talking about scaled geologic evaporative
4 pond geometry, and it goes back to that original comment
5 about do we need to go with (s) in case there's more than
6 one pond, evaporative pond. And that's all I have in,
7 thank you, Section 9.

8 MR. CRIPE: I think I agree with that.

9 Board Member Cahn, I would agree with that as
10 well.

11 MR. FREDERICK: What was the comment?

12 MR. CRIPE: Pond or apostrophe -- or --

13 MS. THOMPSON: S.

14 MR. CRIPE: -- S, meaning it could be one
15 or more.

16 MR. FREDERICK: Sure. Possessive. Yep.

17 MR. CRIPE: Chairman Kirkbride, is there
18 any other comments or concerns or questions?

19 CHAIRMAN KIRKBRIDE: Do we have any?

20 BOARD MEMBER DEURLOO: I have none,
21 Mr. Chairman. I have none.

22 CHAIRMAN KIRKBRIDE: Nor do I.

23 MR. CRIPE: With that, I will proceed.

24 Section 10, Minimum Design and Construction
25 Standards. As stated in Section 5, Water Quality Division

1 proposed to move the passages formerly located in Section
2 10(b), as they pertain to pilot plant processes. Process.
3 WQD proposes to restructure passages in the section for
4 clarity to meet Secretary of State's formatting
5 requirements.

6 WQD proposed to remove the generic references to
7 ASTM and Geosynthetic Research Institute specifications,
8 and add specific standard requirements for geosynthetic
9 clay liners and HDPE membranes.

10 Are there any questions or comments on
11 Section 10?

12 BOARD MEMBER CAHN: Right. I have some
13 comments, Mr. Chair.

14 CHAIRMAN KIRKBRIDE: All right.

15 BOARD MEMBER CAHN: This is Lorie. Okay.
16 So I think we already talked about the three incidences of
17 evaporative cells, which are going to change to evaporative
18 ponds, and changing evaporative ponds to plural -- or
19 possibly plural. The next comments -- you can just find
20 those with a search.

21 On line 524 we have inner dike slopes shall be
22 sloped. I think that you don't need the second sloped. So
23 it reads inner dike slope shall be between the ratio of one
24 vertical to four horizontal, et cetera.

25 MR. CRIPE: So I think she's saying slope

1 instead of sloped?

2 Board Member Cahn, were you saying slope as
3 opposed to sloped?

4 BOARD MEMBER CAHN: But -- so the first
5 word is slopes, and the second word is sloped. And it's --
6 because I would remove one or the other. I was going to
7 recommend removing the second, and so it would be inner
8 dike slopes shall be between a ratio of one to four --
9 vertical to four horizontal. Or you can take out the first
10 slopes, either way, inner dikes, I guess, shall be sloped
11 between a ratio of one vertical to four horizontal. Just
12 don't need slopes and sloped three words apart. Anyway, I
13 have no preference, whichever way you go.

14 MR. CRIPE: We agree. We'll make that
15 change.

16 BOARD MEMBER CAHN: Okay. Okay.
17 Evaporative ponds in 538 and 544.

18 In line 565, we have -- take out qualified --
19 oops. Sorry. No, we already discussed that. We're fine.
20 That's the professional engineer. Remove the -- excuse me.
21 You already removed it.

22 So when we get to line 586, Paragon in a comment
23 about GRI GC5, and it may not be applicable. I was just
24 wondering if you had a response to their comment.

25 MR. CRIPE: Board Member Cahn, we agree

1 with Paragon. We considered their comment, and we agreed
 2 with their proposed rewording of that passage to clarify
 3 it.

4 BOARD MEMBER CAHN: Okay. Thank you.

5 And then I just kind of have a general question.
 6 I am not familiar, starting at line 637 with all of the GRI
 7 standards. Some of the ASTMs I'm familiar with, some I'm
 8 not. And I'm just wondering if -- because that's a lot.
 9 There's like 40-something mentioned, I think. If
 10 somebody -- like, I guess I could ask Paragon -- I don't
 11 know if that's appropriate -- but have they -- somebody
 12 gone over every one of these and assured that they are -- I
 13 mean, if Paragon -- that they are appropriate -- applicable
 14 or appropriate. And did Paragon only comment -- did they
 15 go through all of them, and this was the only one that was
 16 that, or, in honesty, had enough time to go through them
 17 all.

18 So I just want some kind of assurance, because
 19 I'm not familiar with these, that somebody's going to
 20 use -- and feels that all the rest of them are applicable
 21 and appropriate.

22 MR. CRIPE: Board Member Cahn, I believe
 23 Dennis could speak to your question.

24 MR. LAMB: Yeah, these -- these are what
 25 are referenced in the manufacturing code. Okay? The

1 manufacturer's documentation recommends -- recognizes and
2 mentions all these as standards of their construction
3 material, whether it be the GCL, or the fabric, all the
4 way -- both of them apply. And I believe DEQ checked them
5 out to ensure they were current. We checked them to be
6 current.

7 Correct, Gina?

8 MS. THOMPSON: Yes, that is correct. We --
9 the items listed in the incorporation by reference section
10 are the most current versions of those standards.

11 BOARD MEMBER CAHN: Okay. Well, I would
12 assume if Paragon or somebody else had concerns about any
13 of them -- my question wasn't whether they were the most
14 current standards. It was whether it was -- the reference
15 was the most --

16 MR. LAMB: The references I found -- these
17 are the references --

18 BOARD MEMBER CAHN: -- if they're
19 appropriate.

20 MR. LAMB: This is Dennis.

21 BOARD MEMBER CAHN: So --

22 MR. LAMB: These are references I found in
23 current permit applications that come in. These are the
24 ones that I referenced by people like Paragon and any other
25 consultants doing this to justify the materials that are

1 being used. And I don't know if Mr. Rau's still on or not,
2 but he could speak to that.

3 BOARD MEMBER CAHN: Great. Thanks.

4 MR. LAMB: But these are what I find is
5 referenced both by the manufacturer and by the engineers
6 designing these.

7 BOARD MEMBER CAHN: Okay.

8 MR. RAU: This is Dave Rau from Paragon. I
9 agree --

10 BOARD MEMBER CAHN: Great. Thank you.

11 MR. RAU: I agree with Dennis.

12 BOARD MEMBER CAHN: Great.

13 MR. RAU: You're welcome.

14 BOARD MEMBER CAHN: Then the next --

15 Paragon made a comment on line 696 through 698, about not
16 allowing to discharge to groundwater through the
17 geomembranes. That's a pretty high bar to say zero --
18 zero -- I mean obviously drainage or seepage -- seepage can
19 come through that geomembrane. Obviously, we don't know
20 how much it's going to create a problem, but is it
21 realistic to expect a zero discharge? So I'll just have
22 you address your comments to comments. I haven't seen the
23 response to comments, so that's why I asked my -- that's
24 why I'm asking what your response to comment is going to
25 be.

1 MR. FREDERICK: Go ahead, Rich.

2 MR. CRIPE: Board Member Cahn, you make a
3 good point. We got these late yesterday, so we, in a short
4 amount of time, pulled together some responses to it. And
5 so bear with us. We are trying to address that, but we got
6 it late in the day.

7 As far as your question and concern -- or the
8 comment there, we considered the comments of the passages
9 were edited to remove incorrect formatting -- formatted
10 cross-references, and to clarify the intent of the passage.
11 More clearly said, I guess, what I'm trying to get to is
12 the cross-reference, from our understanding according to
13 the AG, is not necessary because that chapter is also
14 required to be followed. And so speaking to the intent of
15 what that cross-reference is is what is identified in the
16 rule here as to speak to what we're trying to achieve as
17 opposed to identifying the cross-reference. Does that
18 answer your question?

19 BOARD MEMBER CAHN: Not -- not really. So
20 I guess it was actually hard following what you were just
21 saying. So my question is can you find some wording that
22 doesn't have some additional language of not allow a
23 discharge to groundwater.

24 BOARD MEMBER DEURLOO: Mr. Chairman.
25 Lorie, I think -- this is Brian -- this whole 696 to 698 is

1 kind of really the whole point of this rule to prevent any
2 discharge to groundwater where you have double liners and
3 bentonite and leak detection systems, because some of this
4 water can be pretty nasty and the others measures pointed
5 out in this rule. But I think this is kind of a
6 culmination of why this rule is there, is because they're
7 trying to protect groundwater and every effort should be
8 made to try to prevent any discharge of the effluence to
9 groundwater, is how you read it.

10 BOARD MEMBER CAHN: I don't disagree that
11 the purpose of this rule is very important as to prevent
12 any kind of impact to the groundwater, but I just think the
13 point is when, you know, any -- any system that there's no
14 zero-permeability liner that you can put down that doesn't
15 allow some seepage. And I think what we're after is we
16 don't want any adverse impact on groundwater and -- but
17 just the -- I'm trying to find wording that says, yes,
18 we've got to protect groundwater, but not something that
19 says there's no discharge. Maybe -- maybe --

20 MS. THOMPSON: Okay. So this is --

21 BOARD MEMBER CAHN: -- maybe it's not allow
22 discharge to impact groundwater, to reach groundwater.

23 MR. FREDERICK: Let me take a shot at this.

24 So we could -- we could clarify that the
25 discharge is not allowed to exceed groundwater standards or

1 something like that. We could add that clarification.

2 MS. THOMPSON: So if I might --

3 MR. FREDERICK: That wouldn't prevent the
4 discharge, but it would certainly make it clear that a
5 discharge to groundwater is acceptable so long as it does
6 not exceed our standards.

7 MS. THOMPSON: So that's --

8 BOARD MEMBER CAHN: So I -- I don't -- I'm
9 not advocating how the groundwater to -- if it's well below
10 the standards, to -- I'm not advocating that we allow
11 discharge to get to the standards. I don't mean -- I don't
12 want you to misinterpret what I'm saying. I'm -- maybe
13 it's just that we don't want a discharge that has a
14 measurable effect on groundwater. So we really don't want
15 any degradation of the groundwater up to -- you know, that
16 it's acceptable up to the standards, so that's not what I'm
17 after. I'm just trying to get to Paragon's comment it's
18 not realistic to have zero movement of moistures through
19 the layer -- the liner. So...

20 MR. FREDERICK: Sure. I get that.
21 Paragon's comment talks about seepage. It doesn't mention
22 that seepage being a discharge in the groundwater.

23 MS. THOMPSON: Can I make a suggestion?

24 MR. FREDERICK: It's a fine point, but if
25 the concern is recognizing that seepage is going to occur

1 in groundwater, it's acceptable so long as it doesn't
2 exceed standards. And I know you would prefer that it not
3 be measurable, but, quite honestly, if it's measurable,
4 it's still acceptable unless it exceeds our standards. So
5 best I can offer is --

6 BOARD MEMBER CAHN: Okay.

7 MR. FREDERICK: -- we would clarify that --

8 BOARD MEMBER CAHN: Well, that's not what
9 is written here.

10 MR. FREDERICK: No, I understand that. And
11 if we want to say it won't allow a discharge that exceeds
12 standards.

13 BOARD MEMBER CAHN: Okay. Um, I guess my
14 preference, then, would be to leave it as written --

15 MS. THOMPSON: So it --

16 BOARD MEMBER CAHN: -- if the alternative
17 is to spell it out the other way.

18 MS. THOMPSON: So if I might add something
19 here. I apologize. I think that -- so the recommended
20 edit came from -- is an internal recommendation. And
21 instead of referencing Section 17(a)(i) of Chapter 3, the
22 recommendation was to take out that reference and then put
23 in what is the intent. And when we did that, I believe I
24 left out some language, which would have prevented this
25 comment. And the language is when you go to 17(a)(i) in

1 Chapter 3, the passage reads "facility construction will
 2 not allow a discharge to groundwater by direct or indirect
 3 discharge, percolation or filtration, or" -- and then it
 4 proceeds to paragraph (ii), "the quality of wastewater will
 5 not cause any violation of groundwater standards; or (iii)
 6 existing soils or geology will not allow a discharge to
 7 groundwater." And so we were trying to put in a reference
 8 to go there, and the recommendation from the attorneys was
 9 don't do it that way. Just tell them what you want. But
 10 when I told them, I apparently left some pieces out. So if
 11 we restore that line to "will not allow a discharge to
 12 groundwater by direct or indirect discharge, percolation,
 13 or filtration," I believe that gets to the crux of -- of --
 14 I believe that satisfies what Paragon had suggested sort of
 15 indirectly. Like, they wanted the reference back. They
 16 can't have the reference back, but we could put the passage
 17 in.

18 BOARD MEMBER CAHN: That would satisfy me.

19 MR. FREDERICK: Okay. Good. So Gina will
 20 add the language from Chapter 3, Section 17(a)(i).

21 MS. THOMPSON: Yes.

22 MR. CRIPE: Chairman Kirkbride, are there
 23 other comments, questions on Section 10?

24 CHAIRMAN KIRKBRIDE: I have none.

25 Mr. Deurloo, what do you think? You okay?

1 BOARD MEMBER DEURLOO: Sorry. Yeah, I
2 don't have any more comments. Thank you.

3 MR. CRIPE: Okay.

4 BOARD MEMBER CAHN: Mr. Chair?

5 CHAIRMAN KIRKBRIDE: Yes. Okay. Lorie
6 might have something for you.

7 BOARD MEMBER CAHN: Go ahead. I'll wait
8 until you're done.

9 CHAIRMAN KIRKBRIDE: We're waiting for you,
10 if you have any more on 10.

11 BOARD MEMBER CAHN: Okay. It's -- okay.
12 This comes again on line 746. We are getting pretty bad
13 feedback. It's better now. Okay.

14 On 746 we have again "...shall not allow
15 discharge to groundwater by direct or indirect,
16 percolation, or filtration." And I think with the addition
17 of that, I'm okay. I want to make sure everybody else is.
18 Paragon is okay and everybody's okay.

19 MR. RAU: Yeah, we're fine with that.
20 Thank you.

21 BOARD MEMBER CAHN: Okay. That's all I had
22 on this. Thank you.

23 CHAIRMAN KIRKBRIDE: Thank you.

24 We're all square, Rich. You can go on.

25 MR. CRIPE: Okay. Proceeding on to Section

1 11, Monitoring and Reporting Requirements. WQD proposes to
2 restructure passages in this section for clarity and to
3 meet Secretary of State's formatting requirements.

4 Powder River Basin Resource Council requested
5 additional sampling and analysis of unconfined aquifers.
6 WQD will not be adding additional sampling requirements,
7 but proposes to clarify the sampling requirements for
8 ambient groundwater quality and establish in the class of
9 use.

10 WQD also proposes to remove the passages that are
11 redundant to groundwater monitoring program requirements
12 located in the Water Quality Chapter 3, Section 17.

13 At paragraph (f), WQD proposes to add reporting
14 requirements for water reuse transfers.

15 Is there comments or questions on Section 11?

16 BOARD MEMBER CAHN: This is Lorie.

17 CHAIRMAN KIRKBRIDE: Yes.

18 BOARD MEMBER CAHN: Mr. Chair.

19 CHAIRMAN KIRKBRIDE: Go ahead, Lorie.

20 BOARD MEMBER CAHN: Yeah, I have some
21 editorials.

22 On line 775, we say "The plan shall include
23 plans." And I just wonder if we can get rid of one of the
24 plans. Because above we've said "information required,"
25 and then (A), we can just say plans for recordkeeping and

1 reporting, because we've already said above is required.
2 So it could just start out -- we can delete "the plans
3 shall include."

4 MR. CRIPE: We agree.

5 BOARD MEMBER CAHN: Okay. Then the next
6 line, 781 and 780. I was really unclear. We're talking
7 about sampling and analysis plan shall identify the pond
8 locations, and it says methodology used, and it wasn't
9 really clear to me what you were referring to in the terms
10 of what methodology used. Methodology to locate the ponds
11 is not what I think you mean. Are we talking about sample
12 methodology? So I think it needs to be reworded to make
13 the meaning clear. So maybe you can tell me what you're
14 looking for, we can help to reword it. I think the -- I
15 think the word of concern is the term "methodology used."

16 MR. CRIPE: Lily would be my guess.

17 MR. FREDERICK: So I think Lily Barkau
18 worked on a response to that comment.

19 Are you there, Lily?

20 MS. BARKAU: I am. This is Lily Barkau.
21 I'm the groundwater section manager. And the second
22 passage I'm recommending the text be revised to say "The
23 sampling and analysis plan shall identify the evaporation
24 pond locations and the methodology to be used to conduct
25 monitoring at evaporation ponds; and..."

1 BOARD MEMBER CAHN: Lily, I love it.

2 MR. RAU: That takes care of Paragon's
3 comment too.

4 BOARD MEMBER CAHN: And I have one more
5 comment on my editorial on line 864, and then that will be
6 it for Section 11 for me. The line used required twice.
7 One word, required records required. So I think one of
8 those can go away.

9 MR. CRIPE: Oh, required is used twice.

10 BOARD MEMBER CAHN: It can say they shall
11 maintain all required records or they maintain onsite all
12 records required. Either way works for me rather than
13 required records required. And that's all I have for
14 Section 11.

15 MR. CRIPE: Board Member Cahn, we agree.
16 We will make that change.

17 BOARD MEMBER DEURLOO: Mr. Chairman, I
18 don't have comments on Section 11.

19 CHAIRMAN KIRKBRIDE: Nor do I.

20 MR. CRIPE: Okay. Moving on.

21 MR. FREDERICK: Just a second, Rich.

22 So I -- I think we may need some further
23 clarification on Lorie's comment and Paragon's comment on
24 the sampling and analysis plan. And looking at line 772,
25 the information required by Water Quality Rules and

1 Regulations Chapter 3, Section 17(e).

2 MS. THOMPSON: 3-21.

3 MR. FREDERICK: Chapter 3?

4 MS. THOMPSON: Yeah, -21. Oh, you must
5 have an older one. Never mind.

6 MR. FREDERICK: And Chapter 3, Section
7 17(e) really refers to groundwater monitoring. And then we
8 move on to line 775, "...plans for record-keeping and
9 reporting." And then 777, "The operational monitoring plan
10 shall include a sampling and analysis plan for each
11 evaporative pond."

12 And here it seems to suggest that we're
13 transitioning from what's required in 772 -- on line 772,
14 which relates to groundwater monitoring, and then we're
15 moving into evaporation pond monitoring under that same
16 section.

17 So I think we probably need to separate that out
18 a little bit, Gina.

19 Do you understand what I'm saying, Mr. Chairman,
20 Lorie?

21 BOARD MEMBER CAHN: Yes, I do. I think
22 that's an excellent catch. We don't want to be mixing
23 groundwater monitoring with sampling of the -- and
24 reporting on the evaporation ponds, that they're two
25 separate things.

1 MR. FREDERICK: So, Gina, I'm thinking if
2 we moved line 777, rather than a (B) to a paragraph (v).

3 MS. THOMPSON: Okay. That's clear.

4 MR. FREDERICK: Would that fix this, do you
5 think?

6 MS. THOMPSON: I think -- yeah.

7 MR. FREDERICK: 780 -- line 780 would be
8 (A), 783 would be (B).

9 MS. THOMPSON: Okay.

10 MR. FREDERICK: That would be my
11 recommendation. I think we could fix it that way and
12 distinguish between the two, the groundwater monitoring
13 plan and the evaporation pond monitoring.

14 BOARD MEMBER CAHN: I think that's an
15 excellent suggestion, Kevin.

16 MR. FREDERICK: Thank you.

17 Okay. I'm done, Rich. Thanks.

18 MR. CRIPE: Okay. Moving on to Section 12,
19 Operation and Maintenance Plan. WQD proposes to revise the
20 section based on the October 17, 2019 comments and
21 discussion with the Board.

22 Are there any comments, questions, or concerns on
23 our proposed language in the rule?

24 BOARD MEMBER DEURLOO: Mr. Chairman, this
25 is --

1 CHAIRMAN KIRKBRIDE: I have one.

2 BOARD MEMBER DEURLOO: Okay.

3 CHAIRMAN KIRKBRIDE: Go ahead, Brian.

4 BOARD MEMBER DEURLOO: Thanks,

5 Mr. Chairman. I have two.

6 Line 877, the process flow diagram, would it be
7 helpful to have a P&ID, piping and instrumentation diagram,
8 as well. Process flow is nice to know where the water is
9 flowing and which direction and so forth. Maybe it's too
10 detailed, but a P&ID is fairly critical in operations as
11 well because it shows you the exact piping and
12 instrumentation used to control water. Would that -- would
13 that be handy for you or not? They're usually -- anybody
14 in engineering, a pipe system like this will have a process
15 flow diagram and a P&ID to build their infrastructure like
16 we did.

17 MR. LAMB: This is Dennis. I find that
18 there's not a lot of instrumentation in these. There is
19 some instrumentation in the separation stuff, and it could
20 be asked for. But if these aren't -- the water transfer's
21 almost all highly manual, okay? The only real controls are
22 in some of the more modern separation systems. You know
23 what I mean? The tanks, process. And those are mainly
24 preventing overflow and watching pressure buildup, so you
25 don't have back pressure, those kinds of things. It can be

1 asked for. A lot of them they wouldn't have anything to
2 give me. You know what I mean? But we could ask for it,
3 because they probably will be coming down the line. So I
4 wouldn't be against it being on there.

5 BOARD MEMBER DEURLOO: Is there a -- I
6 haven't noticed -- I haven't noticed in this documentation
7 an operating and maintenance program. Is there an
8 allowance for an emergency shutdown procedure? That's what
9 a P&ID would help to show you too, where the shutdown is.

10 And, again, offhand I can't really think where
11 there would be an emergency that overflows a pump and so
12 forth. But do you -- do you ever ask for an emergency
13 shutdown procedure?

14 MR. LAMB: Yes. It's in the O&M plan, in
15 the detailed one, on the site operation. They almost
16 always deal with emergencies. The other major emergencies
17 are, one, spill; two, fire. Obviously fire's the other
18 critical one. And they usually say what can be done.
19 Although most of the time it's -- it's not there. But,
20 yeah, there is automatic shutdown on some of them.

21 BOARD MEMBER DEURLOO: Okay. All right.
22 P&ID isn't necessary. I'm not going to push the issue.

23 879 -- line 879, it reads "Wastewater receiving
24 procedures, including procedures refusing for loads that
25 may not conform to permit requirements," et cetera. Is

1 refusing the right word or is that a misprint?

2 CHAIRMAN KIRKBRIDE: "Refusing" and "for"
3 are switched.

4 MR. FREDERICK: Yep. Yep.

5 MR. LAMB: Yeah.

6 BOARD MEMBER DEURLOO: Yeah. Probably
7 switching for --

8 MR. LAMB: These facilities have -- okay.
9 Sorry. Go ahead.

10 BOARD MEMBER DEURLOO: No, I'm done.

11 MR. LAMB: I was just going to say these
12 facilities all have the right to refuse any loads,
13 conforming or not. But the procedure is you do it -- is --
14 is it in the manual, so -- okay?

15 BOARD MEMBER DEURLOO: Okay. That sounds
16 good. So switch those -- sounds like we need to switch
17 those two words and that reads properly then. Switch the
18 word "refusing" and "for."

19 That's all, Mr. Chairman.

20 CHAIRMAN KIRKBRIDE: Thank you.

21 BOARD MEMBER CAHN: This is Lorie. I don't
22 have anything other than what Brian brought up. I was
23 asked -- I think the audio quality is starting to suffer a
24 little bit, and so I'm just thinking if people -- everybody
25 who's on this call, if you're not talking, if you could

1 mute your microphone. I think that would improve our audio
2 quality. Thank you.

3 CHAIRMAN KIRKBRIDE: All right. I don't
4 think we have more on 12, then.

5 MR. CRIPE: Okay. Proceeding on -- okay.
6 Proceeding on to Section 13, Public Participation. WQD
7 proposes to restructure passages in this section for
8 clarity and to meet Secretary of State's formatting
9 requirements.

10 WQD proposes to remove passages that are
11 redundant to the Department of Environmental Quality Rules
12 of Practice and Procedures.

13 Are there any questions or comments on Section
14 13?

15 BOARD MEMBER CAHN: This is Lorie. I have
16 none.

17 BOARD MEMBER DEURLOO: This is Brian. I
18 have none.

19 CHAIRMAN KIRKBRIDE: Nor do I.

20 MR. CRIPE: Okay. Continuing on to Section
21 14, Incorporation by Reference. WQD proposes to add a
22 section that properly lists the information that we are
23 incorporating by reference the adoption date of reference
24 material and the availability and location of the reference
25 material.

1 Are there any questions or comments on Section
2 14?

3 BOARD MEMBER DEURLOO: This is Brian. I
4 have none.

5 BOARD MEMBER CAHN: This is Lorie. I have
6 none.

7 BOARD MEMBER DEURLOO: This is Brian. I
8 have none too.

9 CHAIRMAN KIRKBRIDE: Nor do I.

10 MR. CRIPE: Okay. I am done with my
11 presentation of Chapter 28.

12 Chairman Kirkbride, would the board wish to take
13 public comment at this time?

14 CHAIRMAN KIRKBRIDE: Indeed we do.

15 Is there public comment about Rule 28? Chapter
16 28.

17 MR. RAU: This is Dave Rau. I just want to
18 thank all the -- the Board and DEQ for allowing input at
19 this time and appreciate all the efforts. I think we're
20 going to end up with a better rule after this.

21 CHAIRMAN KIRKBRIDE: And I think that we
22 appreciate your participation in helping have a better
23 rule.

24 MR. RAU: Thank you.

25 Madam Court Reporter, this is Dave Rau. Sorry.

1 CHAIRMAN KIRKBRIDE: Any other public
2 comment?

3 Well, hearing none, Board, what would you like to
4 do with this Chapter 28?

5 MR. FREDERICK: Mr. Chairman.

6 BOARD MEMBER CAHN: This is Lorie again.

7 BOARD MEMBER DEURLOO: Mr. -- go ahead,
8 Lorie.

9 BOARD MEMBER CAHN: I was just going to ask
10 Mr. Rau if he would mute his microphone, as well as I
11 have -- I'm not who's on, but I have a 307 ending in 1-7
12 and a 307 ending in 0-2. And if anybody's not speaking
13 now, I think that would improve our audio quality, because
14 it's really breaking up at my end. Thank you.

15 MR. RAU: This is Dave. I've been muted
16 except when I've spoken.

17 BOARD MEMBER DEURLOO: Lorie, I think
18 Jackson Hole, they're starting to party up there a little
19 bit early, and all the Zoom meetings are starting on your
20 bandwidth, probably.

21 MR. FREDERICK: I love it.

22 Mr. Chairman, Kevin here.

23 CHAIRMAN KIRKBRIDE: Yes. Go ahead, Kevin.

24 MR. FREDERICK: We also received a comment
25 from the Powder River Basin Resource Council regarding the

1 request for monitoring for radium-226 and radium-228 for
2 baseline and operational monitoring, groundwater
3 monitoring.

4 And, Gina, if I'm not mistaken, we provided the
5 response to the -- to the Board --

6 MS. THOMPSON: Yes.

7 MR. FREDERICK: -- with respect to that.

8 And I'd also like to just take a few minutes to
9 inform the Board that in February we entered into a
10 contract to develop a TENORM -- that's an acronym --
11 evaluation report that evaluates updated data and makes
12 recommendations on the management of TENORM wastes in
13 Wyoming. And TENORM is essentially associated with what we
14 would consider to be low-level radioactive products such as
15 radium-226 and radium-228 that are sometimes associated
16 with produced water. And the comments from the Powder
17 River Basin Resource Council reference some materials that
18 looked into the presence of radionuclides and produced
19 water in some areas of the country. Primarily we know that
20 some of the produced water from the Marcellus Shale
21 production back in Pennsylvania and Ohio have some
22 naturally relatively higher concentrations of radium. But
23 it's certainly something that, as I mentioned, we're going
24 to be looking into here in Wyoming. We did look into this
25 back in 2011 and developed a guideline that addressed a

1 management of TENORM waste. TENORM, by the way, stands for
2 technologically enhanced naturally occurring radioactive
3 material.

4 So moving forward -- and by the way this contract
5 is being managed by our Solid and Hazardous Waste Division
6 here at DEQ. But there's six main objectives for this
7 study. I'll just go through these quickly. To research
8 and summarize existing and proposed and underdevelopment
9 regulations of TENORM by other states; to research and
10 summarize current research done by national and
11 international laboratories or institutions on TENORM; to
12 develop a sampling and analysis plan; to conduct sampling
13 and analysis of waste currently generated throughout the
14 state in the oil and gas industry from currently developed
15 geologic formations; to evaluate and conduct a statistical
16 analysis of the sample results; and to provide options for
17 proper waste management at disposal facilities within
18 Wyoming in recognition of those sample results.

19 Solid waste -- Solid and Hazardous Waste Division
20 is expecting a proposed sampling and analysis plan in the
21 third quarter of this year, with sample collection analysis
22 and evaluation scheduled for the third quarter of 2020
23 through the first quarter of 2021. And the study is
24 planned to conclude in the second quarter of 2021 with the
25 submittal of the TENORM evaluation report.

1 So I just wanted to make you aware that work is
2 ongoing and continuing. And we'll certainly be interested
3 to see the TENORM evaluation report with respect to its
4 analysis and recommendations. Some of them may be
5 associated with disposal of produced water into these
6 commercial oilfield waste disposal facilities. And if
7 that's the case, I can assure you that we will take
8 whatever steps we deem are appropriate and necessary at
9 that time.

10 So I just wanted to make you aware of that, that
11 work is underway and will be coming to us in roughly about
12 a year. Thank you.

13 And I would also --

14 CHAIRMAN KIRKBRIDE: Thank you, Kevin.

15 MR. FREDERICK: -- Mr. Chairman, just real
16 quickly, also express any appreciation to Paragon and
17 Dave Rau for the effort they put into assisting us in
18 developing this regulation. We certainly appreciate their
19 effort and interest. Thank you.

20 CHAIRMAN KIRKBRIDE: Well, I believe our
21 Water Quality Division has requested we deal with this
22 chapter one way or another.

23 Does the Board have any comment on what we ought
24 to do with it?

25 BOARD MEMBER CAHN: What -- I would like to

1 hear from DEQ what you're thinking. I guess from my
2 perspective there's, you know, some changes -- quite a few
3 changes, so I'd probably like to see it again with the
4 changes. But, you know, there might be some extenuating
5 circumstances that DEQ wants to make us aware of, so I'd
6 like to hear from them.

7 MR. FREDERICK: So, Mr. Chairman, I don't
8 think I have any extenuating circumstances, but I do
9 believe the edits that we discussed today are fairly easy
10 to make. I think we all agreed on the language for the
11 proposed modifications. I guess my preference would be to
12 proceed to make the modifications that we discussed today
13 and hopefully move the rule to the Environmental Quality
14 Council, if possible.

15 And we would certainly provide you a copy of the
16 modified rule that's coming out of today's meeting well
17 before it would be discussed before the Environmental
18 Quality Council, if that would help.

19 BOARD MEMBER CAHN: I think we saw a note
20 coming through from Andrew Kuhlmann on a chat that he had
21 some information to provide.

22 MS. THOMPSON: Yes. He's going to brief
23 you on a transcript versus minutes question and address the
24 question about the vacant board position after -- after we
25 get to a good point for that.

1 MR. KUHLMANN: Mr. Chairman, this is
2 Andrew. I apologize, it took a while to find the mute
3 button. But Gina's correct. I think those two questions
4 had come up earlier, but I don't think they're related to
5 what the Board should do with the current chapter.

6 So, Mr. Chairman, I'll just clarify. I'll
7 address those after the chapter --

8 CHAIRMAN KIRKBRIDE: Yes. Thank you,
9 Andrew.

10 You know, Lorie, as I remember, I just don't
11 remember that anything so substantive that we kind of
12 changed direction in this -- in our work on this rule. It
13 seemed like to me it was a lot of stuff for little tweaks
14 and things worded better. But it seems to me we were
15 pretty on course with it. And, you know, and I would think
16 we can move it forward. But I certainly would -- if
17 somebody's hesitant, then, why, I wouldn't press the case.

18 BOARD MEMBER DEURLOO: Mr. Chairman, I move
19 that we approve Section -- or Chapter 28 as discussed today
20 and forward it to the EQC as discussed by the Board.

21 CHAIRMAN KIRKBRIDE: Is there a second?

22 BOARD MEMBER CAHN: I'll second it with the
23 caveat that DEQ will send us, as Mr. Frederick has stated,
24 the redline/strikeout that shows changes made before it
25 goes to EQC.

1 CHAIRMAN KIRKBRIDE: All right. Is there
2 further discussion on that? We'll proceed to vote.

3 All in favor, say aye.

4 BOARD MEMBER CAHN: Aye.

5 BOARD MEMBER DEURLOO: Aye.

6 CHAIRMAN KIRKBRIDE: And I'm going to also
7 vote in the affirmative. Is there any nay vote? There is
8 none. So that carries.

9 MR. FREDERICK: Thank you very much,
10 Mr. Chairman, members of the Board. Appreciate your
11 diligence in helping us to make this a better rule. I
12 think it's in good shape and looking forward to bringing
13 our next proposed rule and business to you probably at the
14 next meeting. So thank you all. It's been good seeing you
15 again.

16 CHAIRMAN KIRKBRIDE: Thank you.

17 BOARD MEMBER DEURLOO: Thank you, Kevin.

18 CHAIRMAN KIRKBRIDE: Any further comments
19 from any members of the DEQ or the public? If not, we'll
20 go -- I think it would be appropriate to -- Andrew, perhaps
21 you could help us out with what you've been turning up.

22 MR. KUHLMANN: Thank you, Mr. Chairman. I
23 don't think that the questions are really something I would
24 say warrants an executive session. So I'm perfectly happy
25 to talk to you in open session here.

1 The first question has to do -- this is earlier
2 in the meeting -- had do with whether a member who
3 represented political subdivision had to be an elected
4 official or whether they could also be an employee. And I
5 don't have a whole lot to report, other than the statute
6 says they have to represent political subdivision. And it
7 really doesn't use any other term. And I'm looking at
8 35-11-113. And it either talks about representing them,
9 and it says if they cease to represent that interest group,
10 then they -- another member has to be appointed. So I
11 don't think the statute itself limits who represents a
12 political subdivision. I don't know how that's been
13 interpreted in the past. I don't know to what extent other
14 people have held that as an employee for these entities,
15 but I guess there's quite a bit of room there. And I also
16 don't know if the governor has a particular preference in
17 making the appointments either. So that's sort of what I
18 can tell you about the law. And I didn't find any rule
19 that addresses that. If somebody knows of that otherwise,
20 let me know. But I didn't find anything.

21 As for the second question that came up had to do
22 with whether or not the Board needed to --

23 BOARD MEMBER CAHN: Excuse me. Excuse me.
24 Hello. Hello. Hi. If you don't mind, I would just like
25 to bring in some history. I've been on the Board for I

1 think almost 20 years. We have had people representing
2 political subdivisions that were not elected officials in
3 the past. I think Harry LaBonde, I don't believe that he
4 was an elected official. And also Glenn Sugano worked for
5 Rock Springs, the Solid Waste -- or the -- maybe even
6 the -- anyways, landfill or the sewage treatment plant or
7 something like that.

8 So I know in the past we have had people on the
9 Board that served for many years that weren't elected
10 officials. So I think if the governor -- if it's okay for
11 the governor to appoint somebody that's not an elected
12 official, then hopefully it will be easier for the governor
13 to find somebody to serve on this Board, and we won't have
14 an opening for so long. So that's very good news to hear,
15 and hopefully this will make it easier to fill that
16 position. Thank you.

17 MR. KUHLMANN: Thank you, Board Member
18 Cahn. I guess I'll just clear -- I guess I'll just make a
19 caveat. That is my interpretation, as in looking at --
20 looking into the statutes during the meeting here. If the
21 governor's office has taken a different position on that, I
22 don't know what that position would be, and I certainly
23 won't state that my advice would override anything I
24 receive from the Attorney General directly or anything like
25 that. I was just trying to answer the question for your

1 purposes. I'm not planning to contact the governor's
 2 office to convey that interpretation onward.

3 CHAIRMAN KIRKBRIDE: May I assume that this
 4 is a similar structure on other advisory boards throughout
 5 the state?

6 MR. KUHLMANN: Mr. Chairman, I think -- the
 7 statute I'm looking at is general to advisory boards for
 8 DEQ. Different boards, you know, in other contexts, not
 9 just DEQ advisory boards, would have their own statutory
 10 language that might specify something different than just
 11 the term represents is what appears here.

12 I suspect, though, depending upon if the other
 13 advisory boards have more specific requirements, which I
 14 don't know that they do. I would think we could, you
 15 know -- that the other DEQ advisory boards, their past
 16 practices of who has been appointed to fill that role,
 17 would also show how DEQ and the Board have interpreted it
 18 in the past, and I guess past governors have interpreted it
 19 in the past.

20 BOARD MEMBER CAHN: I would -- this is
 21 Lorie. I would like to ask Kevin if DEQ -- or Gina -- if
 22 DEQ could forward to us any advertised board position
 23 openings. Because I think, you know, the rest of us could
 24 also pass that along to, you know, both somebody who might
 25 represent the public at large or some to fill Marge's

1 position or to fill Klaus's position. We could help at
2 least find out if we know people who might be interested,
3 they can contact the governor's office. So I would
4 appreciate that.

5 MR. FREDERICK: Yeah. We can certainly do
6 that. Gina will check with Air Quality and Land Quality to
7 see what the status of their board membership is with
8 respect to vacancies and which sector those vacancies apply
9 to. And, yeah, we would certainly appreciate any
10 applicants that -- that are made.

11 CHAIRMAN KIRKBRIDE: All right. Andrew,
12 you had another issue, did you not?

13 MR. KUHLMANN: Yes, Mr. Chairman. Second
14 question I believe had to do with whether or not the Board
15 needed to approve minutes from the last meeting. And I
16 believe the Board has been in the practice of having a
17 transcript made, as is currently happening, rather than
18 having minutes drafted.

19 So I looked into that and sort of what
20 requirements might be applicable. And there is sort of a
21 general requirement that, you know, actions of a public
22 board need to be recorded. And specific to advisory
23 boards, there is, in the same statute I was looking at
24 earlier, 35-11-113, there's a line that says each board
25 shall keep a written record of its meeting and proceedings.

1 So I don't know that there is a specific requirement that
2 would say the Board would need to have meetings -- sorry,
3 would need to have minutes separate from the transcript.
4 If the Board wanted to approve the transcripts from past
5 meetings, I don't know that that's a bad thing. That's at
6 least what I found in the statute.

7 CHAIRMAN KIRKBRIDE: All right.

8 MR. KUHLMANN: I guess I'll just add I'm
9 not particularly concerned the Board hasn't been in the
10 practice of approving transcripts in the past. But if it
11 wanted to go -- if it wanted to do that going forward, I
12 also don't think that would be harmful.

13 BOARD MEMBER DEURLOO: Mr. Chairman, this
14 is Brian. I had --

15 BOARD MEMBER CAHN: This is Lorie.

16 BOARD MEMBER DEURLOO: It seems to me when
17 we first started this -- when I first joined the Board, I
18 don't know, three years ago -- Lorie, you've been on a lot
19 longer than I have -- that we were approving our minutes or
20 transcript from the previous meeting, but I could be
21 mistaken. I'm fine either way, whether we want to vote to
22 approve transcripts or not.

23 Lorie, do you have an opinion?

24 BOARD MEMBER CAHN: Yeah, I do. You know,
25 in the past we used to get the transcripts as part of our

1 board packet. And we would read through them, and then
2 approve them. And I -- there may have been only one time
3 when I found something that might have changed the meeting.
4 But Kathy does an excellent job, and I don't really believe
5 that I feel like we need to be rereading them and approving
6 them. She does such a incredible job that I'm comfortable
7 just including the transcript as our official record of the
8 meeting and not voting to approve. I feel like if we're
9 going to vote to approve, then that's going to add to our
10 board packet that we're going to have to look through the
11 entire meeting again and read through it. And I'm
12 comfortable not doing that. I think my preference would be
13 to not do that. Sometimes, you know, I refer to the
14 minutes if I have a question about something that happened,
15 but I prefer not to read the whole meeting again. So
16 that's my thoughts.

17 MR. FREDERICK: That would be me.

18 BOARD MEMBER DEURLOO: Yeah, I would agree.

19 CHAIRMAN KIRKBRIDE: And I would agree. It
20 sounds like that Counsel is not telling us something else,
21 so are we at the point we should discuss the next meeting?

22 Gina, did you have something to report?

23 MS. THOMPSON: Yes. Thank you,
24 Mr. Chairman. So we would have at least a couple of items
25 anticipated to bring before you at your third quarter

1 meeting. And so I'm looking at we've typically scheduled
2 those in September or October in the past. And so as we
3 get ready to send out a Doodle poll, probably in the next
4 six weeks or so, before we send that out, I just thought
5 I'd get an idea of does the Board have -- and hopefully,
6 you know, this is a strange question in this current time,
7 but if you had any leave or business that you knew that you
8 would be out of -- out of reach for, you know, several days
9 or a week at a time, then we could just take those out now
10 and kind of work around those to make sure we got you all
11 together. But, obviously, since there's a lot of
12 restrictions on travel right now, it might make it
13 different to plan at this point.

14 CHAIRMAN KIRKBRIDE: Has anybody got travel
15 plans September and October today?

16 BOARD MEMBER DEURLOO: This is Brian. I
17 plan on traveling from the kitchen to the living room, and
18 that's about it. I don't have anything on my calendar
19 September, October, November currently at this time, so
20 feel free to send out the Doodle poll, Gina.

21 MS. THOMPSON: Okay.

22 BOARD MEMBER CAHN: This is Lorie. And I
23 have travel plans in September, but -- where I would have
24 been out of reach. But I doubt very much it's going to
25 happen. So at this point, you know, if I couldn't -- if we

1 could leave September open in case things open up, I would
2 prefer to have a meeting in October or August. But, you
3 know, it's -- everything's so unknown, and I don't know
4 that right now I can commit necessarily to a particular
5 time in September, unless we know more about when
6 restrictions are going to be lifted, so...

7 Thanks.

8 MS. THOMPSON: Okay.

9 CHAIRMAN KIRKBRIDE: And I have flexibility
10 at this time as far as I know.

11 MS. THOMPSON: Okay. Well, I think
12 that -- I think that we'll -- we'll just keep in mind
13 that things could change, but we will consult the
14 internal calendars to make sure we don't have any big
15 meetings for the administrators where they would be,
16 you know, already committed for long periods of time.
17 We'll go ahead and take a look at their calendars, send you
18 a Doodle poll.

19 Like I said, it would be a couple of rulemakings
20 anticipated. And we'll provide more details on that as we
21 get closer.

22 Before -- before we leave, is there any other
23 questions or items that you guys needed some assistance
24 with before we let you go?

25 BOARD MEMBER CAHN: No. I just want to

1 thank you --

2 CHAIRMAN KIRKBRIDE: Go ahead, Lorie.

3 BOARD MEMBER CAHN: Oh, I was just going to
4 thank Gina for doing this, setting all this up for us to do
5 it remotely, and also doing the extensive testing with us,
6 because I think it really worked out well. I just
7 appreciate that.

8 And I guess, just for suggestion maybe for the
9 next meeting, if we're remote again, perhaps just sending
10 out -- resending the invites that you had given us a couple
11 weeks ago, a month ago, whenever it was, because if we're
12 having both a test -- one on one test and then a group
13 meeting, maybe just do like -- maybe just to avoid
14 confusion, if you could please just send that out a second
15 time, maybe a day before the meeting or something, that
16 would be great that.

17 MS. THOMPSON: Yes. We can definitely do
18 that. And that's a helpful suggestion. Thank you.

19 BOARD MEMBER CAHN: Thanks for everybody's
20 hard work.

21 CHAIRMAN KIRKBRIDE: Yeah, Lorie's
22 suggestion is trying to make things more foolproof, shall
23 we say.

24 Gina, I did have one question.

25 MS. THOMPSON: Okay.

1 CHAIRMAN KIRKBRIDE: If we encounter a
2 board candidate, should we have them contact you? Would
3 that be the most appropriate way to do it?

4 MS. THOMPSON: You can either have them
5 contact me or -- the contact at the governor's office who
6 handles the appointments and coordinates those reviews is
7 Pamela Perea. And, essentially, I would send them over to
8 Pamela to apply. But if you don't have her hand -- her
9 information handy, I can get that -- I can make sure they
10 get to the right place.

11 CHAIRMAN KIRKBRIDE: Okay. I can remember
12 your name --

13 MS. THOMPSON: Okay.

14 CHAIRMAN KIRKBRIDE: -- without writing it
15 down.

16 BOARD MEMBER CAHN: Gina, if you send us
17 notice of the announcement of the openings, if you could
18 just send Pamela's last name and contact info at the
19 governor's office, that would be great. Thanks.

20 MS. THOMPSON: Okay.

21 CHAIRMAN KIRKBRIDE: Is there any further
22 business that should come before this meeting? If not, I
23 declare it adjourned.

24 BOARD MEMBER DEURLOO: I move that we
25 adjourn.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BOARD MEMBER CAHN: I second.

(Virtual public meeting proceedings
concluded 2:36 p.m., May 8, 2020.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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 22nd day of May, 2020.


KATHY J. KENDRICK
Registered Professional Reporter

