

WWAB Meeting - DEQ

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WYOMING WATER AND WASTE ADVISORY BOARD

RE: DEQ

TRANSCRIPT OF MEETING PROCEEDINGS

Pursuant to notice duly given to all parties in interest, this matter came on for meeting on the 11th day of December, 2019, at the hour of 11:11 a.m., at the Wyoming State Library, 2800 Central Avenue, Cheyenne, Wyoming before the Wyoming Water and Waste Advisory Board, Mr. Alan Kirkbride, Chairman, presiding, with Ms. Lorie Cahn, and Ms. Marjorie Bedessem in attendance.

Mr. Andrew Kuhlmann, attorney for the Board; Mr. Matt VanWormer, attorney for DEQ; Mr. Colin McKee, DEQ Senior Policy Advisor; and Ms. Gina Thompson, Water Quality Division, were also in attendance.

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

2 (This portion of the meeting
3 proceedings commenced 11:11 a.m.,
4 December 11, 2019.)

5 CHAIRMAN KIRKBRIDE: All right. We'll move
6 on to the next area, which is Chapter 3. All right.

7 MR. MCKEE: Yes, Mr. Chairman.

8 CHAIRMAN KIRKBRIDE: Mr. McKee, you may
9 start -- begin.

10 MR. MCKEE: Thank you. Mr. Chairman, my
11 name is Colin McKee, Senior Policy Advisor with the
12 Department of Environmental Quality.

13 I have Matt VanWormer who's a senior assistant?

14 MR. VANWORMER: Senior Assistant Attorney
15 General.

16 MR. MCKEE: Senior Assistant Attorney
17 General.

18 And Gina Thompson, who is the quarterback on
19 this.

20 MS. THOMPSON: Water Quality Division
21 Policy and Planning Analyst, but providing support to
22 Mr. McKee today.

23 MR. MCKEE: Thank you.

24 So, Mr. Chairman, thank you. I thought I'd go
25 just through a little bit of background of why the Chapter

1 3 revisions were necessary, and then I thought we could
2 just kind of talk through the changes and any thoughts or
3 concerns of the Board, and kind of go from there, if that
4 works.

5 Okay. And I don't -- my history on this is just
6 a couple years old. It's what I could dig up. But during
7 the 2018 legislative session, the legislature incorporated
8 in the Environment Quality Council's budget a footnote that
9 directed the EQC and DEQ to report to the Minerals
10 Committee and Joint Appropriations Committee. The report
11 was to cover the efficiency and adequacy of staffing of the
12 Environmental Quality Council and whether the Council could
13 be staffed exclusively by personnel within DEQ. The report
14 shall include recommendations for an annual budget,
15 staffing levels, and statutory revisions.

16 So with that directive from the legislature, DEQ
17 selected three individuals and EQC selected three
18 individuals to form a work group to put this report
19 together. I believe they met about six times through 2018
20 and they kept the Minerals Committee apprised, 2018, of
21 what was going on.

22 I gave Andrew a section of the report that is
23 relevant to the discussion today. And did you all --

24 Did you pass that down, Andrew?

25 MR. KUHLMANN: I did. I think everybody

1 got one.

2 MR. MCKEE: So are you all aware of the
3 report? Have you read through the EQC report? Or we can
4 go through it again.

5 BOARD MEMBER BEDESSEM: We were just made
6 aware of.

7 BOARD MEMBER CAHN: We were made aware of
8 it and --

9 MR. MCKEE: I just read through it
10 yesterday morning. So, again, I didn't have the deep
11 history on this. Director Parfitt asked me to move the
12 rule changes through, and when the bill is occurring --
13 when this bill was going through session in 2019. So I'm
14 getting caught up a little bit on the history here as well.

15 I've printed off the relevant pages of that
16 Environmental Quality Council report. So on the first
17 page, Section 4.2.2, was one of the recommendations that
18 EQC and DEQ made to the Minerals Committee. And this
19 was -- what the changes here do -- the relevant change here
20 would do would be to allow the director to -- well, it's
21 probably just easier to read through it, but -- for the
22 adoption, amendment, or repeal of rules, regulations, or
23 standards, it's recommended -- that are recommended by the
24 Director after the Director consults with the advisory
25 boards and administrators.

1 So this was one piece of statute that the work
2 group recommended change -- that be changed in the
3 Environmental Quality Council. Their reasoning for that is
4 on the next page, in the second paragraph where it says the
5 proposed change in this section also allows the act to
6 clarify the rulemaking process pursuant to Statute
7 35-11-112, the Council is responsible for promulgating
8 rules and regulations after the recommendation from the
9 director of the department, the administrators of the
10 divisions and their respective advisory boards.

11 The idea behind the change is this next part
12 where it's the Department and Counsel agree that for rules
13 to be presented to the Council, the recommendation must
14 come from the Director. This proposed change clarifies the
15 recommendation must come from the Director rather than the
16 advisory boards for the rulemaking process.

17 And then the other -- the next part that was the
18 other recommendation from the report that is relevant to
19 the rule change today is next part under 4.2.3, where it
20 changes the -- the language in the Environmental Quality
21 Act from providing that the advisory boards shall recommend
22 action on rules to -- that the advisory board shall consult
23 and advise on the rulemaking process.

24 I think through the work group's review of the
25 Environmental Quality Act, they -- they were specifically

1 asked to look at the function of the Environmental Quality
2 Council's staff to ensure that the EQC was getting the
3 resources that it needed. But during that review, since
4 they were given the latitude to look through statutory
5 revisions, they look at just the broader process, the
6 relationship between DEQ, EQC, and the advisory boards.
7 And changes were recommended are intended just to make the
8 process more efficient.

9 And so that's what -- that's what the EQC
10 approved and DEQ approved. It was -- the report was
11 presented to the Minerals Committee in November of last
12 year. There was a bill drafted, and it passed the
13 legislature in February of last year. And I believe you
14 have a copy of that.

15 BOARD MEMBER CAHN: Who introduced the
16 bill?

17 MR. MCKEE: Mr. Chairman. The Minerals
18 Committee sponsored the bill. So it was no one individual.

19 BOARD MEMBER CAHN: Okay.

20 MR. MCKEE: And so the -- the primary
21 changes that were recommended in the report are reflected
22 in this bill, House Enrolled Act 33. So there were some
23 ancillary things, not necessarily relevant to our
24 discussion today, but some ancillary things in this bill,
25 again, discussing Environmental Quality Council, their

1 being allowed to hire staff, which is on the bottom of page
2 2. But the -- the primary portion for the rule change in
3 Chapter 3 is found on page 3 of the bill, under
4 35-11-114(b), again, where it just changes the process for
5 rulemaking to requiring that an advisory board recommend
6 Environmental Quality Council proceed with rulemaking to
7 requiring the Department to receive -- or to consult with
8 advisory boards and receive their advice on rulemaking.

9 So that's -- that's the background and how we got
10 there. I'm happy to try to think through any questions you
11 may have on the background. If there are any, I can take
12 them now, or if you want to go into the proposed changes on
13 the rule. Your discretion.

14 CHAIRMAN KIRKBRIDE: Lorie.

15 BOARD MEMBER CAHN: So I guess one of the
16 concerns that I would have, and I think shared with --
17 probably shared with the other board members, would be how
18 does the information that our board comes up with in terms
19 of discussions that happen at a board meeting, how is that
20 information passed on to EQC? And --

21 MR. MCKEE: If I may refer to Gina.

22 MS. THOMPSON: Gina Thompson, Water Quality
23 Division. At the time the director recommends that the --
24 the Council hear our proposed rulemaking, the division in
25 question, whether it be Water Quality, Air, or Land,

1 uploads a number of documents to the Council's -- the
2 Council has a docket website. So each rulemaking has a
3 unique identifier number. And within that number we get a
4 Web page and we upload things similar to what you all
5 receive, a clean copy of a rule, a strike and underline, a
6 statement of reasons. But we also upload a PDF of all
7 transcripts and all -- an index and materials of all the
8 materials that influenced our -- our decisions within a
9 given rulemaking.

10 So, for instance, on the chapter that we talked
11 about this morning, we met with you in October, we met with
12 you today, and then we'll meet with you again in the coming
13 year. And so when we create a docket with the Council,
14 they will get a copy of all of those transcripts. And all
15 of the -- and at their discretion, if they want to receive
16 copies of the versions that you are looking at, they have
17 the ability to ask for -- for those, in addition to -- so,
18 for instance, if you recommended a version that we give you
19 in say March of 2020, that's automatically the version that
20 they would get. But let's say that they wanted to see how
21 it evolved over time, because there's a point in there
22 that -- that they -- that particular council person wanted
23 more information on. We give them an index of all the
24 materials that were generated in the process, and all the
25 materials that influenced our decision. And so they send

1 us a quick request, and I immediately email them a copy of
2 whatever that item was in the index of material.

3 The index is a fairly new requirement, but the
4 transcripts and associating all the transcripts with the --
5 that occurred during the advisory board process, we've been
6 doing that since I've been employed with the agency. So
7 they always have a copy of -- of what we discussed verbatim
8 because we're using a court reporter.

9 BOARD MEMBER CAHN: So I guess the concern
10 would be in the event that -- well, I guess if I -- let me
11 back up. If I was sitting on EQC, I would want to know, in
12 a succinct way, whether the Advisory Board, who might have
13 looked in that -- in that and maybe more technical detail,
14 perhaps. What did they end up recommending, or if they --

15 BOARD MEMBER BEDESSEM: Advising.

16 BOARD MEMBER CAHN: Not recommending, what
17 they ended up advising, and whether or not the advice of
18 the advisory board was being adhered to. You know, what --
19 so did DEQ end up following the advice of the Board. If
20 they did -- you know, and if they didn't, then what were
21 the concerns, in a succinct way, the advisory board had
22 that DEQ took under advisement but didn't make any changes.

23 MS. THOMPSON: Sure. In -- in rulemakings,
24 where the Board gives the agency specific advice on a
25 rulemaking -- so, again, going back to our discussion on

1 our water quality rulemaking this morning, if in a given
2 section, in a given paragraph you gave us specific advice,
3 and you, you know, distilled your advice to -- we believe
4 the agency needs to clarify this point because it's not
5 clear whether you're acquiring X or Z in this situation.
6 And I, as a board member, would, you know, request that the
7 agency look at that and clarify it. I take that
8 information out of a transcript and I create a response to
9 comments document or an analysis of comments document.

10 So those analysis of comments documents do not
11 only cover the comments we received from the public that
12 we're addressing, we also put the specific points that the
13 Board gives us to address. And we consider those on an
14 individual basis and respond to them. And if we -- if --
15 in our evaluation, if we've realized that what the Board is
16 asking for is not possible, we explain why we did not take
17 the board's advice, or we explain that, yes, we did take
18 the board's advice, and, you know, we made the edit as
19 recommended. So that is one additional document or set of
20 documents, depending on how many meetings we have before
21 you all, that the Council gets in their docket of
22 information.

23 CHAIRMAN KIRKBRIDE: Lorie.

24 BOARD MEMBER CAHN: I guess another concern
25 is -- and I don't know if anyone had more discussion on

1 that part before we move on.

2 CHAIRMAN KIRKBRIDE: I think we're okay.

3 BOARD MEMBER BEDESSEM: I think we can
4 continue.

5 BOARD MEMBER CAHN: Is in the rule Chapter
6 3 -- whoops. That's not 3. Sorry. I've got -- okay.
7 Under Section 4(b), the three romanettes were removed. And
8 the three romanettes kind of explain, you know, did we
9 recommend that this discussion was continued and we
10 opened -- you know, opened it up for public comment. And
11 (i) -- (ii) is and whether we think that -- we advised DEQ
12 to go back and work on the preliminary rule again, or
13 whether we advised that the Department initiate -- we think
14 it's ready for rulemaking.

15 And so we were -- I'm wondering -- and I --
16 whether there's a way of incorporating these concepts,
17 rather than just removing them, leaving it as, you know,
18 the -- the -- the Board can advise -- may advise to, and
19 kind of change the wording. And maybe "remand" is too
20 strong of a word now. But, you know, advise to, you know,
21 continue discussion, you know, open up -- reopen or extend
22 the public comment period, you know --

23 BOARD MEMBER BEDESSEM: I think what you're
24 saying is you -- you would like to retain the structure,
25 but soften it so that it's advise -- advise the director to

1 do these things, as opposed to recommend, so that it is
2 consistent with the bill that was passed, yet still gives
3 the Board some structure as far as their deliberations.

4 BOARD MEMBER CAHN: Yeah, and the reason
5 I'm bringing that up, as I read the rule as proposed here,
6 I figured with the strike-out of those three romanettes,
7 that it was basically -- was not providing a structure or
8 an expectation or -- I, as a board member, was then unclear
9 of what I could do other than just advise. And so, you
10 know, I -- it would be -- I would like to know -- like
11 especially if I was going to be somebody who is a new board
12 member, I think it helps to give some clarity in terms of
13 what are the options that the Board -- and granted its
14 advice, but what kinds of things can the Board be
15 discussing? You know, can we be recommending extending the
16 public comment period and that kind of stuff, so...

17 MR. MCKEE: So, Mr. Chairman, in response
18 to that. So when -- when we're proposing the changes to
19 this section of the rule, I did follow the process that was
20 laid out in the statute. And so, you know, the process
21 requires DEQ to seek -- to consult and receive the advice
22 of the -- of the advisory boards. And so (i), (ii), and
23 (iii) -- or 1, 2 and 3 -- when I read through that, those
24 now seem like options for the Department to take after
25 receiving the advice of the advisory board. So it would be

1 at the discretion of the Division or the Department to
2 decide whether the advice was significant enough to require
3 changes to a rule that would necessitate coming back to the
4 advisory board, or if it needed to be, you know, given back
5 to the Division for some type of overhaul.

6 So I think, when I was reviewing it, it seemed
7 like those -- these responsibilities now fall on DEQ to
8 make that judgment. But, you know, I guess similar to
9 discussion we were having before, you know, how is the
10 advice considered by the EQC. You know, after rules come
11 out of advisory board the Director has to request -- or
12 initiate a rulemaking with the governor, and the governor's
13 office would ask, you know, likely the same thing the EQC
14 would, is, well, what did the advisory board say? Did they
15 have any concerns? And it would be difficult for the
16 Department to convince the governor to move forward with
17 rulemaking if there is a legitimate concern with a rule
18 that hadn't been addressed. And so I think these three
19 areas right here are important for the agency to continue
20 to follow. You know, follow the advice of the advisory
21 boards.

22 Matt had a suggestion this morning that may be of
23 interest. I don't know if it's something the advisory
24 board has done in the past, but is it on kind of some
25 policy or guidance documents that the Board may be able to

1 develop that could provide this type of structure?

2 MR. VANWORMER: Sure. Again, Matt
3 VanWormer, Attorney General's Office. Mr. Chairman, the
4 idea that Colin is referring to was that there could be
5 guidelines or internal policies for advisory boards
6 developed in a uniform fashion, or perhaps developed
7 specifically to each advisory board, that flesh out the
8 options for providing consultation and advice. But they
9 would be as guidelines or policy short of the rules that
10 are in place under Chapter 3 for rulemaking. Those
11 subparts, the (i-iii) could be seen, in a sense, as
12 limitations on the authority in the old -- under the old
13 statutory framework, because really what they were saying
14 at the conclusion of rulemaking hearing, the advisory board
15 has to do one of these three things. And they were all --
16 they seemed to be designed to make sure that the rule moves
17 forward with specific direction to get it to a final stage
18 or that immediately it's recommended for approval. The
19 options the advisory board has under advice and
20 consultation now would be much broader. They're not
21 limited to just a remand or a recommendation. They could
22 be advice on the content. It could be a recommendation for
23 substantive revisions and new public notice. It could be a
24 request that the rule gets presented again to the advisory
25 board with revisions and continued advice and consultation.

1 So the thought of having guidelines on how to
2 provide advice in consultation and to memorialize that
3 either in the minutes of the meeting or in some kind of
4 formal recommendation -- not the recommendation that would
5 determine the fate of the rules, but a recommendation to
6 the Division or DEQ on how to act, could be done internally
7 to the boards and not a rule promulgated by the EQC,
8 necessarily. Just an idea.

9 MR. MCKEE: Mr. Chairman. Marge, and that
10 could be a way to kind of -- if you have a new member that
11 comes in, in addition to all the other rules that -- that,
12 you know, guide your work and all the chapters that you
13 assist with the Water Quality Division, that could be, you
14 know, another piece that could assist. You know, current
15 members on just thinking through, you know, these various
16 ways that you can assist, that you have assisted, or new
17 ways you can or for new board members is kind of a guiding
18 document of the options that they have at their discretion.
19 So...

20 MR. KUHLMANN: I guess I'll just say that,
21 without really going into anything that we touched on in
22 executive session, I didn't talk to Matt before today, so
23 I'll just say that, about the rules, so...

24 BOARD MEMBER BEDESSEM: Thank you.

25 BOARD MEMBER CAHN: Thank you.

1 I guess the concern that I have is the emphasis
2 has gone from what the advisory board advises to what the
3 Director and/or the Department does. And so I certainly --
4 I guess I'm just still uncomfortable with sort of skipping
5 out on what the -- some options, because it did say the
6 advisory board may. It didn't say they had to do one of
7 (i), (ii), or (iii). They -- you know, those were some
8 options. So...

9 BOARD MEMBER BEDESSEM: So -- I mean, my
10 reading of the statute is that it simply changes our
11 recommended -- our recommending a course of action to the
12 Department that are recommendation of sending the rule,
13 that it's ready to go to the EQC, making that a
14 requirement, as opposed to it previously was a requirement
15 for the rule to get to the EQC, and now it's -- it doesn't
16 have to be a requirement. You know, it's -- if we don't
17 agree with it, it can still go to the EQC. So to me the
18 only difference here is whether that affirmative, you know,
19 vote from the advisory boards is required or not. To me it
20 doesn't change any of the process of how we provide advice
21 to the agency. The only thing that changed in that bill
22 was whether it was required for us to approve it in order
23 for the Department to move it forward to the Council.

24 And I feel like proposed Chapter 3 is changing
25 far more than that by taking out this structure where we --

1 it says "may." Okay? I feel like we need to be able to
2 conclude our meetings with a definitive, you know, advice
3 to the Department. If we take that all out and we have on
4 page 3-4 of (v) a statement that what is required to be
5 submitted to the Council is a statement from the Director
6 indicating the Director consulted with the affected
7 advisory board, essentially we can have a nice
8 conversation, you can check the box, and we're done. Okay?
9 So I think the rulemaking, as proposed, goes farther than
10 the bill.

11 BOARD MEMBER CAHN: The statute.

12 BOARD MEMBER BEDESSEM: Than the statute.

13 And I think this -- well, from hearing from what
14 Lorie has said and -- and what I feel is I don't think
15 removing that is necessary to be consistent with the bill.
16 I think you can simply say as you have edited it, except
17 that you would not remove at the conclusion of a
18 preliminary rulemaking hearing an advisory board may, and
19 change the romanettes to advise the Director to, and you
20 would still be consistent with the rule and maintain the
21 process. That has happened where I feel like we have been
22 responsive to the Department when the Department has really
23 needed to get a rule passed quickly. We have worked hard
24 to get that done and not cause delays. And I feel like,
25 together with the comments from the Board, together with

1 the Department, then in the end we've produced rules that
2 are essentially more practical and reasonable yet very
3 protective of the environment.

4 And I think if you take this all out and don't
5 put anything in -- in Item Number -- I still think you need
6 to put something in (v) that says that that -- that that
7 advice is transmitted to the EQC, you will have -- you have
8 very -- a lot of trouble even filling your boards, because
9 it's a voluntary position, and that takes, at this level, a
10 fair amount of time.

11 And if there is -- there is no structure or any
12 kind of commitment that those -- that those final decisions
13 will be transmitted to the EQC, it would be difficult to
14 do. It's difficult to fill board positions as it is.

15 So I -- I -- I guess I would ask that you
16 would -- would not look at seeing that change in the
17 statute as an overhaul of how this whole process works.
18 Right now, we don't have to have our final advice as --
19 with respect to whether we think the Department needs to
20 work on the rule more or they're resending it to the
21 Council. Transmit it to the Council, because by the fact
22 that the rule is being transmitted to the Council, that
23 affirms that we've done (iii). But since that isn't the
24 case and rules can be forwarded to the Environmental
25 Quality Council, when we may have advised otherwise, then

1 what we have advised should then also be transmitted to the
2 Council, where it would not have had to have done that
3 before. I think one time the Water Quality Division had --
4 you had to transmit a separate letter because it wasn't a
5 wholehearted approval of the -- of the -- of one particular
6 chapter of the Water Quality Division.

7 MS. THOMPSON: That's correct.

8 BOARD MEMBER BEDESSEM: And that was
9 transmitted by letter.

10 But other than that, you don't normally have to
11 do that, because other than the transcript, they've made
12 that assumption it's approved because it was required. Now
13 that's not the case, so I think it's important to make sure
14 that -- that the -- the succinct advice is included in
15 there, because the EQC members are busy, like all of us
16 are, and to expect them to go through pages and pages of
17 all the, you know, back transcripts and so forth is
18 difficult to be able to -- for us to be assured that they
19 receive at least the succinct -- as succinct, you know, as
20 these romanettes version of what came through the advisory
21 board I think is what's important to us.

22 So the only other thing I had on here was the --
23 um -- this little Chapter 3, it has a lot of sections that
24 say if the Director does this, Director does that, so on
25 and so forth. But in Section 4(b) and Section 5(a), it

1 says the Department. So don't know if, for consistency,
2 those should both be Director, or whether those should be
3 Department. So if you would just look at that for
4 consistency. That's Section 4(b) and Section 5(a).
5 Because everything in Section 3 it says Director. And I
6 think the statute says the Director shall consult with the
7 advisory boards. So that's just semantics.

8 MR. MCKEE: Mr. Chairman.

9 BOARD MEMBER CAHN: Also on (b), on page
10 3-4 --

11 BOARD MEMBER BEDESSEM: Yeah, Section 5(b),
12 also.

13 BOARD MEMBER CAHN: -- Section 5(b) also
14 has Department. And also in 6.

15 MS. THOMPSON: So if I might speak to that
16 from the -- from the passages I'm reading, so Section 5(a),
17 when the Department initiates rulemaking --

18 BOARD MEMBER BEDESSEM: Uh-huh.

19 MS. THOMPSON: -- it will file the
20 following with the Council.

21 BOARD MEMBER BEDESSEM: Uh-huh.

22 MS. THOMPSON: I think the rule is trying
23 to lay out the process as it happens. And if we change
24 Department to Director there, the Director is not the guy
25 who is filing all the documentation with the --

1 BOARD MEMBER BEDESSEM: Uh-huh.

2 MS. THOMPSON: -- with the Council.

3 It's --

4 BOARD MEMBER BEDESSEM: The Department.

5 MS. THOMPSON: It's the Department. It's
6 the Air Quality Division or Water Quality or Solid and
7 Hazardous Waste or Land Quality.

8 BOARD MEMBER BEDESSEM: It may be just
9 understood, then.

10 MS. THOMPSON: I think that's why they're
11 making those differentiations there.

12 BOARD MEMBER BEDESSEM: Okay.

13 MS. THOMPSON: You know, further down in
14 Section 5, where we need a statement from the Director
15 indicating -- so it's (a)(v), that -- that does have to
16 come from the director.

17 BOARD MEMBER BEDESSEM: Director. Gotcha.

18 MS. THOMPSON: That does have -- we have an
19 internal process that kind of supplements that piece, but
20 essentially what happens is the Division gets together. We
21 craft a memo to Director Parfitt that explains how did this
22 process work, and what are we doing, and what did you all
23 recommend? Did you, you know, vote to recommend adoption?
24 We lay that out, and then we -- we ask for him to, you
25 know, initiate the rulemaking on our request. He reviews

1 that, and then he -- he sends a memo to the chairman of the
2 Environmental Quality Council that says we -- you know, we
3 request -- we request a docket for the following
4 rulemaking, and we're attaching -- we're going to
5 submit, you know, the following list of documents, and,
6 you know, the, you know, given board, depending on which
7 division, obviously, it's coming from, the board voted to
8 recommend -- or recommend with reservations as you all have
9 recounted from a previous experience. So we state that in
10 the memo. Director Parfitt signs it, and then we transmit
11 that with our materials as part of our docket request.

12 So like that -- that particular statement, that
13 is -- that is definitely the director. Earlier in that
14 passage, it's the department as a whole and not -- not him
15 as an individual.

16 BOARD MEMBER BEDESSEM: Thank you for
17 that --

18 MS. THOMPSON: Yeah.

19 BOARD MEMBER BEDESSEM: -- explanation,
20 because it all makes perfect sense to me what you
21 explained, so --

22 MS. THOMPSON: Sure.

23 BOARD MEMBER BEDESSEM: -- I'm perfectly
24 fine with that.

25 MS. THOMPSON: Okay.

1 BOARD MEMBER BEDESSEM: How do you suggest,
2 though, our concern about making sure that the final advice
3 from the advisory board gets to the Council, because that
4 hadn't happened -- had to happen before, because previously
5 the final advice was the rule is approved.

6 MS. THOMPSON: Correct.

7 MR. MCKEE: So, Mr. Chairman, in that same
8 section on 5(a)(v), the language in there was changed from,
9 you know, there has to be a statement from the Director --
10 from the advisory board that they recommended approval.
11 Now that there has to be affirmation from the director that
12 the advisory board was consulted with. And, you know, I
13 don't -- I don't know if you -- I don't know if it's just a
14 simple statement that Director Parfitt says that the
15 advisory board was consulted with and that's it. You know,
16 I don't know if there's a part in there where we -- we
17 condense the written transcript into what were the main
18 points that the advisory boards were advising on or
19 suggesting. And then -- and the EQC can see if those
20 changes were made to a rule or not.

21 BOARD MEMBER BEDESSEM: So I don't think
22 that that's what we're so much concerned about is what
23 we're concerned about is, you know, they will have the
24 transcript to know what was -- you know -- you know, those
25 minor details. We're concerned about that final thing that

1 was in (i), (ii), and (iii). Let's say the Board says we
2 don't -- we don't like this rule. We think it should go
3 back to the agency. There's a lot more work that needs to
4 be done that we -- we would not normally approve this going
5 to the Council, so we advise the agency to look at this
6 again. And then the agency decides they don't want to look
7 at it again. They're going to move it forward, because
8 they don't have to have our buy-in. We want to know that
9 that -- that advice from the agency that we don't want you
10 to move forward is included in that transmittal to the EQC.
11 Not all the details about what -- okay?

12 MR. MCKEE: Yeah. So --

13 BOARD MEMBER BEDESSEM: That's the thing.

14 MR. MCKEE: Yeah. So, Mr. Chairman, again,
15 I think with that requirement now that the Director has to
16 indicate that that consultation occurred with the advisory
17 board, if there was a negative piece of advice from the
18 advisory board, then that would be transmitted, I assume,
19 in that letter. Or if not, it would be transmitted in the
20 minutes. And, again, it would have to go through the
21 governor's office first and through -- through a public
22 comment, and then to the Environmental Quality Council. So
23 it's not straight to EQC, but more processes where we can't
24 necessarily hide a negative recommendation. I don't -- I
25 don't effectively see that the process relationship between

1 the divisions and the advisory boards changing.

2 I think their -- again, it's -- the intent is
3 just for some efficiencies and a rare instance where the
4 Department has no other option but to move forward with a
5 rule and can't. And I think the way that Environmental
6 Quality Council and the Department read the act is that it
7 should be the director that recommends rulemaking. That
8 initiates formal rulemaking.

9 And so that's what we're making clear. However,
10 the -- the -- the advice and consultation with the advisory
11 boards is not intended to change, and the issues will be
12 addressed, you know, just as -- as Rich and Kevin were
13 talking with you this morning on, you know, the rule
14 that -- changes they're developing. You all highlighted
15 some thoughts or questions or concerns or comments from the
16 public that needed to be better addressed. I don't see
17 that relationship or anything changing. And I don't think
18 with the language that we have in here, that does change.

19 The three romanettes that were removed, you know,
20 could have been seen as constricting the advisory board's
21 ability on what type of actions or advice, or, you know, it
22 could provide. And I think with just the -- you know,
23 maybe broader, more plain language, that DEQ must
24 receive -- or must consult and receive the advice of the
25 affected advisory board moving forward with rulemaking,

1 that, you know, we must receive advice gives every advisory
2 board a lot more leeway or leverage on what you can offer
3 to the agency.

4 BOARD MEMBER BEDESSEM: How --

5 BOARD MEMBER CAHN: I just don't see that.

6 BOARD MEMBER BEDESSEM: I don't think we
7 ever felt limited by what we could -- by these three
8 romanettes.

9 MS. THOMPSON: If I might speak to, you
10 know, that transmittal of the material to the Council. My
11 experience with the Council is that they take -- they take
12 their adoption job very seriously. And they actually are
13 quite thorough in the review of the materials that we
14 submit to them. You know, probably, in some cases more
15 than others, depending on the magnitude of what we're
16 proposing to do -- so if we are proposing to do something,
17 you know, that seems pretty technical and very widespread,
18 we get increased scrutiny, because they do take their job
19 very seriously.

20 We cannot adopt our own rules, and they cannot
21 propose rules, so we have to do a very good job of giving
22 them as much information as we can so that they feel
23 comfortable adopting those rules that we need them to
24 adopt. And so when we do have situations within -- you
25 know, and, again, I can't speak for every -- every

1 division, but I can speak for my experience with the Water
2 Quality Division. When we've had rulemakings where the
3 Board was very concerned on some specific points, we -- we
4 call those out, so that it's not hidden, and so that we can
5 address it right up front. Because it's -- it's beneficial
6 for the Department to address right up front why we agreed
7 or disagreed with the point the Board made versus getting
8 called to the carpet unexpectedly at a counsel hearing.
9 Why didn't you do this thing that they talked about in your
10 first hearing? If I don't have an answer for that prepared
11 in advance, I'm probably not going to get an adoption vote
12 that day, and that is disappointing in the least, expensive
13 at the worst.

14 So the Division takes it very seriously when we
15 are going to them. We give them as much information as we
16 possibly can. In situations too where maybe we've had some
17 historical, you know, press coverage on a given action.

18 We are proactive with the governor's office and
19 we will call them as we're submitting a rule, and we will
20 offer to come explain ourselves if they need -- if they
21 need more information when they're evaluating, because we
22 can proceed -- once -- once you all vote and give us your
23 advice, we still have to go to the governor and ask
24 permission to proceed with a rulemaking. We can't just go
25 straight on to the Council.

1 We get to go through our friends at the Attorney
2 General's Office, and they look at the specifics of what
3 we're doing to ensure that we're not wording things in a
4 way that it will make it difficult for them to help us
5 enforce something, should we need to. We go to the
6 governor, and we request permission to initiate that
7 rulemaking. We put it out for an additional 45 -- minimum
8 45-day notice. And then we -- you know, it's not required
9 of all state agencies, but DEQ automatically schedules a
10 hearing in front of the Council. So we get a notice
11 period, and we also provide a meeting for the public to
12 show up and have their say. And that's in addition to all
13 of the comments that you guys provide us through
14 transcripts and multiple meetings. You know, they get all
15 of that to make their decision. And then it still goes
16 through the AG's again, and the Legislative Services Office
17 again.

18 MR. KUHLMANN: If I might, just as kind of
19 listening to the conversation and kind of the concerns you
20 mentioned about Section 5, and then also hearing kind of
21 the process that's already in place. So just as something
22 to maybe consider that might be some short and shouldn't
23 change the process hopefully, would be at the end of the
24 Section 5(a)(v) -- (v) there -- where it talks about the
25 statement the director must provide to the EQC. Basically

1 leaving everything the same as it is through that whole
2 part, and then adding at the end a comma and conveying the
3 advice the director received from the board or boards. I
4 think that maybe would be -- conveying might be brought
5 enough to cover the process that exists, but also might --
6 I don't know if that might provide the board members more
7 security there.

8 MR. MCKEE: Andrew, how would you
9 differentiate that from transmitting the records of the
10 meetings? I understand the intent, but, you know, if
11 someone reads through it, it sounds like we're saying the
12 same thing twice.

13 MR. KUHLMANN: Well, I think --

14 BOARD MEMBER BEDESSEM: I guess I wouldn't
15 have a problem with not changing (v) if we kept in Section
16 4(b), the options there, so that there was more structure
17 for the board. I don't believe any of us have felt that
18 the way this rule has been written has been restrictive to
19 us at all. And if the terminology was changed to advice,
20 based on what you have explained to us about the process, I
21 have no doubt that that information would be provided to
22 the EQC in their deliberation through the records.

23 So -- but not having it in both places, I think
24 causes concerns for us that it changes the basic way we
25 operate.

1 MR. KUHLMANN: Just --

2 BOARD MEMBER CAHN: I had the same idea
3 also as Andrew, and I was going to put it maybe in (vi),
4 recommendation from the Director that the Council adopt a
5 proposed rule. But I think "and the advice of the affected
6 advisory board," I agree with Andrew now that that actually
7 belongs in (v) rather than (vi), where I have put it. But
8 it would be -- I had the same idea when you say conveying
9 the advice.

10 But I'm of the opinion, I would like to see it in
11 both places. I mean, see -- see the (i), (ii), (iii) be
12 wordsmithed to be consistent with the statute. And then
13 also include that the advice, as Andrew suggested in
14 Section 5 (a)(v), that the advice would be conveyed. And
15 the reason I would like to see that in there has nothing to
16 do with the way we've operated in the past. You know, I
17 think it's worked extremely well, at least from my
18 perspective on the advisory board, and I hope DEQ would
19 feel the same, that --

20 BOARD MEMBER BEDESSEM: We've never felt
21 neglected.

22 BOARD MEMBER CAHN: -- you know, that our
23 relation -- that it's worked really well moving forward
24 with the advice -- with the recommendation in the past from
25 our board. And -- but my concern is people change. I

1 mean, you know, personnel retire, move on, and new people
2 come in, new people come in with different attitudes, maybe
3 a new person who doesn't -- didn't come up through the DEQ
4 ranks, maybe a new director comes in that came from a
5 completely different agency, reads this the way as it's
6 written right now, the way I took it as I was reading it,
7 and say, oh, well, I just have to consult with the board.
8 I don't need to get recommendation in the affirmative from
9 them. And --

10 BOARD MEMBER BEDESSEM: Or in any way. I
11 mean --

12 BOARD MEMBER CAHN: Yeah, in any way.
13 Just, you know, yes, we consult, tell them what to do, but
14 we're moving forward.

15 You know, and so I don't see that the way the
16 things are written as proposed here in the
17 redline/strikeout that we received, that it kind of
18 discourages that behavior of a new person coming in that --
19 you know, that --

20 BOARD MEMBER BEDESSEM: Or safeguards the
21 process for the future.

22 BOARD MEMBER CAHN: Yeah. Yeah. And so I
23 guess I would like to see it present -- you know, as some
24 language preserved in here that the advice will be conveyed
25 and that the Board can recommend extending public comment.

1 BOARD MEMBER BEDESSEM: Or advise.

2 BOARD MEMBER CAHN: Yes, advise rather than
3 recommend.

4 So -- I don't know. I just -- the way I read it
5 as is, it's -- to me, it's too terse and not clear enough.
6 Maybe it's more clear to the Director or the Department,
7 but less clear to the advisory board member as to what
8 options exist, so -- you know, or how our advice would be
9 conveyed. So...

10 MR. MCKEE: Okay.

11 MS. THOMPSON: Just to speak as, you know,
12 a water quality staff person who has, you know, worked on a
13 number of rules. I cannot imagine a scenario where the
14 Department would get away with just trotting right over to
15 the Council and saying, "Hey, we consulted. Here you go."

16 The agency takes these rulemakings very
17 seriously. And in situations where we do have -- you know,
18 we disagree with the board's advice on a given matter, we
19 proceed very carefully and we explain ourselves very
20 carefully, if we -- if we disagree. Because the Council
21 takes your advice very seriously. It informs their
22 decision greatly when they are considering something that
23 we are presenting forward. You know, part of their job
24 is to make sure that we are proposing something that is
25 within -- you know, within our authority to do so, and we

1 have several checks and balances during the process that
 2 ensure -- that signal them that we have done so. But it
 3 would have to be a very serious -- a very serious
 4 disagreement for the Department to say thank you very much
 5 for your advice and continue forward without -- I just
 6 can't imagine a situation where they wouldn't at least --
 7 they wouldn't address, you know, our grave concern.
 8 They -- we wouldn't -- we would never get away with just
 9 going before them and saying you don't have to pay
 10 attention to what they said.

11 BOARD MEMBER CAHN: Mr. Chair.

12 CHAIRMAN KIRKBRIDE: Yes.

13 BOARD MEMBER CAHN: Let me ask the question
 14 a different way.

15 MS. THOMPSON: Okay.

16 BOARD MEMBER CAHN: What would be the
 17 objection -- or how would -- how would it not be -- what
 18 would be the problem with changing the wording to as we're
 19 proposing? You know, to just -- to give more clarification
 20 as to the -- you know, what the advisory board's options
 21 of -- some of their options are and what the -- you know,
 22 and asking -- conveying the advice of the board?

23 MR. MCKEE: So, Mr. Chairman, I don't think
 24 there would be any problem with making the change that
 25 you're requesting. I just don't understand how you can

1 accomplish what you're asking through the language that is
2 in the rule right now. And so that's -- I think I -- I
3 understand your -- the thoughts on structure, but, you
4 know, the -- the phrase that, you know, the Department
5 shall receive advice, I -- I don't know. I just think that
6 leaves it open to the advisory board interacting with the
7 agency as it -- as it needs to. And so I -- I don't see
8 how you can't accomplish what you need to with what's in
9 there.

10 And then as far as ensuring that the governor or
11 EQC understand what advice was received or given from the
12 advisory boards, you know, in Section 4(b), where, you
13 know, the Department can't initiate rulemaking without
14 first receiving the advice of the advisory boards. So
15 there has to be proof that we had consulted with and
16 received your advice there. And, again, in Section 5, the
17 requirements on information that must be submitted to EQC
18 for rulemaking, you know, to me there are -- you know, at
19 least those two examples, where the advice sought has to be
20 known. And then, you know, what the Department does from
21 there is -- is, you know -- I mean, whether that -- they
22 have to provide some type of response to that -- to that
23 advice. Or have some type of justification for it, because
24 it will get asked what the advice was and what was
25 followed.

1 So I -- I understand what you're saying. I don't
2 think the changes are difficult to do what you're asking.
3 I just don't -- I don't see how we can accomplish what
4 you're asking with what -- with needing more than what we
5 have right now.

6 BOARD MEMBER CAHN: I guess I would propose
7 that we work on some -- I mean, I don't know whether what
8 the other board members feel -- but we work on some
9 language that we would recommend, we would advise, for this
10 rule, and then hope that would be conveyed to the other
11 boards when you meet with the other boards. And I
12 understand you can't meet with Air Quality, because they
13 don't have --

14 MR. MCKEE: They have one member. Makes it
15 difficult.

16 BOARD MEMBER CAHN: They have one member.
17 So once three people are appointed to the Air Quality Board
18 and they can meet --

19 MR. MCKEE: Yeah.

20 BOARD MEMBER CAHN: -- that our advice on
21 wordsmithing could provide. And then, obviously, the DEQ
22 is free to not add our advice.

23 MR. MCKEE: So, Gina, I would ask -- so if
24 Water Advisory Board provided the suggested changes that
25 are needed for this section, we got those, how do we move

1 forward? So we have the Land Quality Board is tomorrow.
2 And then Air somewhere. What would -- how could we --
3 would we have to cancel this topic for Land Quality, or how
4 do we make the revisions to this chapter? What's the
5 process, you know, to incorporate their advice? Would we
6 keep it as is, have their advice, and then present that to
7 EQC and EQC makes the changes? Or does the Department? I
8 don't know. I don't know. I don't know the process.

9 MS. THOMPSON: So like other changes to the
10 rules of practice, each advisory board -- we need the
11 consideration and the advice from each advisory board,
12 because each division that is covered by the rules has, you
13 know, a specific advisory board that we takes advice from.
14 So potentially, you know, if the board recommends specific
15 language today, we would, you know, keep the -- keep that
16 in the record, and we would take -- take the recommendation
17 to the Land Quality Advisory Board and -- but they are --
18 they are free to disagree with you.

19 BOARD MEMBER CAHN: Right. Of course.

20 BOARD MEMBER BEDESSEM: Uh-huh.

21 MS. THOMPSON: And then potentially, you
22 know, we'd have to work that out. But if they -- you know,
23 if you provided specific advice and say that's our advice,
24 and we take it to the Land Quality Board and they say we
25 like that advice and we recommend that too, then we just

1 keep going to the Air Quality Board when -- when they next
2 meet, and we provide them what's been agreed to by the
3 other two.

4 BOARD MEMBER BEDESSEM: Or alternatively --
5 I mean, you've heard differing opinions on our board. You
6 can meet with Land Quality, telling them you met with us
7 today, and these are the concerns that we raised, and get
8 feedback from them. And then with feedback from both
9 boards, come up with what you consider to be a happy
10 compromise to present it back.

11 MR. MCKEE: That's the problem. I think
12 what I created is the happy compromise.

13 BOARD MEMBER CAHN: What's that?

14 MR. MCKEE: I think what I created is the
15 happy compromise, so...

16 BOARD MEMBER BEDESSEM: Yeah.

17 MR. MCKEE: You know, so, Mr. Chairman, you
18 know -- I mean, I don't have a great deal of ownership in
19 what is done here, and I'm always happy to take advice.
20 There's -- I mean, there is the side of me where if
21 something -- if the Department is in need of getting
22 something through, the language is in statute, and so that
23 overrides the rules as of now. So I don't feel necessarily
24 bound to push these through without making sure you all
25 want the rules that you want.

1 BOARD MEMBER BEDESSEM: Because the statute
2 applies to us right now anyway. We're giving advice. That
3 doesn't change that.

4 MR. MCKEE: Yeah, that's where, you know,
5 it -- it -- I'm absolutely fine. I don't have to put my
6 foot down and feel like it's this or nothing. I was just
7 trying to think through what the process is, and
8 appreciating how many more meetings Matt's going to have to
9 join me in.

10 MR. VANWORMER: Mr. Chairman, Colin, it
11 seems prudent to me to follow the suggestion of soliciting
12 feedback from the Land Quality Advisory Board on the topics
13 that have been addressed, even if we can't present formal
14 revisions to those romanette subsections. We can discuss
15 the concerns, get input, consolidate those, and I think it
16 would be prudent to bring a revised version back. And if
17 the Water and Waste Advisory Board can provide specific
18 wordsmithing recommendations, and there's a way for DEQ to
19 receive that, that can be considered as well. But I would
20 say bring a revised version back, even though it requires
21 more meetings, do a thorough job. And then maybe Air
22 Quality will have a board to review it by that point.

23 BOARD MEMBER BEDESSEM: Because it would be
24 really nice not to have this rule be the first rule we
25 figure out what happens when none of the boards approve it.

1 MS. THOMPSON: I agree.

2 BOARD MEMBER BEDESSEM: That would be
3 really nice.

4 MR. KUHLMANN: Sort of processwise for the
5 Board, I think in order for the Board to really come up
6 with -- if the Board was to take first run here's what they
7 think the romanettes would be, I think we would need to do
8 that in session, in an open session at a meeting. I don't
9 know if we'd want to take the time now. I think another
10 alternative would be for DEQ to take a first crack at it,
11 and then what would happen is maybe come -- maybe we come
12 back and you guys would then look at their proposed
13 language, and we do more wordsmithing trying to come up
14 with the list ourselves. I guess those are two procedural
15 considerations, because I don't think -- unfortunately, I
16 don't think we can do sort of a let's go work on some
17 recommendations and then not have a meeting or -- and you
18 do that kind of behind closed doors, or something, and then
19 send them to DEQ, so...

20 BOARD MEMBER CAHN: Mr. Chairman.

21 CHAIRMAN KIRKBRIDE: Yes.

22 BOARD MEMBER CAHN: I'm prepared to propose
23 some -- advise some wordsmithing, if that's appropriate,
24 that then DEQ can take under advisement. If the Board --

25 CHAIRMAN KIRKBRIDE: At this time?

1 BOARD MEMBER CAHN: And then we can vote on
2 a motion to advise the -- the revised wording. I don't
3 know if that's an appropriate thing to do. At least to
4 give you guys something -- some straw man to -- straw
5 person -- to work with.

6 MR. MCKEE: Yeah.

7 CHAIRMAN KIRKBRIDE: At this time, Lorie,
8 you're proposing?

9 BOARD MEMBER CAHN: So --

10 CHAIRMAN KIRKBRIDE: Okay. Go ahead.

11 BOARD MEMBER CAHN: So I would recommend
12 that the Section 4 -- let me just see if -- before we get
13 to Section 4, there's something that would need to be done
14 before then.

15 Okay. So we would keep Section 4 romanette --
16 sorry, Section 4(b) basically the same, because -- or most
17 of it, because it would be the same as statute. So it
18 would say the Department may not initiate rulemaking and
19 submit a proposed rule to the Council for consideration
20 without first consulting with and receiving the advice of
21 the affected advisory board on the preliminary rule. Then
22 I would add at the conclusion of preliminary rulemaking
23 hearing an advisory board may -- and so that whole section
24 that's crossed out, I would put that back in.

25 MR. MCKEE: Uh-huh.

1 BOARD MEMBER CAHN: But before the colon at
2 the end say advise the Department to: So it would read at
3 the conclusion of a preliminary rulemaking hearing an
4 advisory board may advise the Department to:

5 BOARD MEMBER BEDESSEM: Or the Director to?

6 BOARD MEMBER CAHN: We're talking about the
7 Department so you guys --

8 BOARD MEMBER BEDESSEM: Okay. Has to be.

9 BOARD MEMBER CAHN: And then (i) would
10 say -- just get rid of "choose to" and just say continue
11 discussion of the -- so we're just going to add back in
12 everything that was in there. Continue discussion of the
13 preliminary rule at the next regularly scheduled meeting or
14 schedule special meeting specifically to discuss the
15 proposed rule. Retaining the ability in either situation
16 to also reopen and extend the public comment period for the
17 proposed rule:

18 And then (ii), we would remove "remand," because
19 I think that's probably too strong of word. And somehow we
20 need to indicate --

21 BOARD MEMBER BEDESSEM: You want to say
22 return?

23 CHAIRMAN KIRKBRIDE: Preserve?

24 BOARD MEMBER CAHN: Yeah. Yeah. Return
25 the preliminary rule to the Division for further action,

1 including addressing questions regarding specific aspects
2 of the preliminary rule: or get rid of in (iii), recommend
3 that the Department, just get rid of that and keep the
4 remaining of it, initiate rulemaking and submit the
5 preliminary rule to the Council for adoption. So --

6 MR. MCKEE: Okay.

7 BOARD MEMBER CAHN: -- that would be my
8 recommendation to the Board on that section. I don't know
9 if there's -- you want discussion on that, or it's --

10 BOARD MEMBER BEDESSEM: It sounds fine to
11 me.

12 CHAIRMAN KIRKBRIDE: It sounds fine to me.
13 I think we can --

14 BOARD MEMBER CAHN: And then --

15 CHAIRMAN KIRKBRIDE: It captures the
16 essence of the concerns with that.

17 BOARD MEMBER CAHN: And then in Section
18 5(v), I like Andrew's suggestion that we add "and conveying
19 the advice received" -- let's see. We had statement from
20 the Director indicating that the Director consulted with
21 the affected advisory board or boards and the affected
22 division administrator or administrators on the proposed
23 rule, and conveying the advice the director received. I'm
24 not sure how you had it, Andrew. You did a better job of
25 wording it than I am. Maybe you can --

1 MR. MCKEE: We can --

2 CHAIRMAN KIRKBRIDE: Let them convey, I
3 think is what he said.

4 MR. KUHLMANN: I think it was the end of
5 the current paragraph, comma, and conveying the advice the
6 Director received from the board or boards. That was just
7 an idea.

8 BOARD MEMBER BEDESSEM: I think --

9 MS. THOMPSON: Since we're talking about
10 this statement, could we -- and take it or leave it. So
11 you could say statement from the Director indicating the
12 Director consulted with the affected advisory board or
13 boards and the affected division administrator or
14 administrator on the proposed rule that conveys. So the
15 statement "that conveys," is that --

16 MR. MCKEE: We can -- I know what you're --
17 I know what you're getting at that. I can --

18 BOARD MEMBER CAHN: I think we need to add
19 the part about conveying the advice after we say -- so they
20 consulted with --

21 BOARD MEMBER BEDESSEM: The board and the
22 administrator.

23 BOARD MEMBER CAHN: Well, I'm thinking we
24 leave the part about the administrator to the end of the
25 sentence, so we're not splitting what's happening with the

1 board up. The three different phrases --

2 MR. MCKEE: I have -- I have, Mr. Chairman,
3 one question. Maybe concern on this. Again, it's
4 incumbent upon the Department to transmit the transcript to
5 the EQC. And I just wonder how the Department is going to
6 convey concisely the advice of a board where -- I mean, I
7 could go to Land Quality tomorrow and talk to them about
8 what it is, or is the Department required to go through the
9 written transcript and distill everything down there, or
10 just rely on the judgment of the people presenting, or is
11 it incumbent upon the advisory board to write that concise
12 advice that's being conveyed to the director? I don't know
13 how that occurs.

14 BOARD MEMBER BEDESSEM: So I think what
15 we're meaning is just to have a statement in there that
16 says whether those three romanettes, which thing -- it's
17 only one of those three things.

18 BOARD MEMBER CAHN: Well, the whole --

19 BOARD MEMBER BEDESSEM: It says they advise
20 to move it to the EQC or we advised it to go back and -- so
21 that statement letter only has to have that in it, but all
22 the transcripts are going to be there, so the details of
23 why we wanted it returned --

24 BOARD MEMBER CAHN: But, actually, the hope
25 would be that we would get to (iii) before it would move on

1 to EQC.

2 BOARD MEMBER BEDESSEM: Right.

3 BOARD MEMBER CAHN: In essence. So in the
4 event we didn't get to (iii), and we were just consulted
5 with, and the advice was not taken -- Gina, you know, is
6 good at doing -- whoever's working on that, they always
7 have a response to comments. And, you know, EQC will see
8 the advisory board -- you know, maybe it will say the
9 advisory board voted 3 to 2 to -- to do this, and two
10 concerns of the two members of the board that didn't vote
11 in favor were this. You know, and I think that that then
12 conveys that, yes, the recommendation of the board is it
13 move forward. There was some minority opinions, whatever.
14 I don't know.

15 BOARD MEMBER BEDESSEM: And you can refer
16 to the transcripts that are attached to the record.

17 BOARD MEMBER CAHN: Yeah.

18 MR. KUHLMANN: I think one thing that -- at
19 least I had encountered when trying to do responses to
20 comments, is sometimes the public comments is a long letter
21 that really doesn't say much. But the response to comment
22 then is a way you can format it, as you just say here's
23 point they were trying to make. Here's what our response
24 is. And the letter would still be included in the
25 entirety --

1 BOARD MEMBER BEDESSEM: Uh-huh. Yeah.

2 MR. KUHLMANN: -- but it would still kind
3 of summarize that.

4 And I think DEQ has done that sort of thing
5 pretty well in the past. And I guess I don't know that --
6 if that's something the advisory board would be kind of
7 comfortable with, but I don't know that -- I don't know
8 that it would be something too --

9 BOARD MEMBER BEDESSEM: Onerous?

10 MR. KUHLMANN: Yeah. Or too new, I guess.

11 MR. MCKEE: But, again, Mr. Chairman, so if
12 we effectively treat it like a response to comments and
13 someone -- and one of the divisions now has to read through
14 three hours of written transcript, that is a concern of
15 mine. Or if -- or if a meeting lasts for two days. And,
16 you know, that's where I'm getting concerned is -- and I --
17 I understand the divisions we do -- I mean, I've got
18 written down here the primary concerns that have been
19 brought up today, but improbable not every piece, and what,
20 you know, revisions would look like. But on much more
21 technical matters, you know, a lot of the discussion is --
22 is not as concise as perhaps written statement would be,
23 and so I -- I think -- I understand where you're going.
24 This is something we can look at and see if there's some
25 way we can -- we can phrase it in here to have more concise

1 advice that's given. And I know -- I know, but I -- I --
2 you know, the information is provided the EQC. The
3 departments -- the divisions to address the concerns that
4 are brought up by the advisory boards, you know, to the
5 best of their extent -- either recommend, you know, making
6 the changes, or not, reasons why.

7 But, you know, if it were on 4(b)(ii), you know,
8 refer the preliminary rule back to the Division for further
9 action. And -- and, you know, the Division then has to
10 say -- well, you know, convey to the EQC what was the
11 further action that the advisory board was recommending,
12 then we have to read through hours of written transcript,
13 perhaps, to come up with that. So I'm -- I'm trying to
14 just come up with a middle ground on how is this
15 information conveyed without putting --

16 BOARD MEMBER BEDESSEM: An extra burden.

17 MR. MCKEE: -- a new burden on Gina to have
18 to read through this.

19 BOARD MEMBER CAHN: But once -- when we do
20 almost always get to (iii), then it's a much simpler
21 process. We had a unanimous vote of the advisory board.
22 You had, you know, the recommended -- with this revised
23 wording, recommended it goes forward to the EQC, and then
24 there's no issues that are remaining. And that happens.
25 We get there almost all the time.

1 BOARD MEMBER BEDESSEM: Uh-huh.

2 BOARD MEMBER CAHN: I don't know what
3 percentage, but I'm sure it's in the high 90s. So then
4 it's a real simple thing to EQC, this is the recommended
5 language that DEQ -- you know, that DEQ took the advice
6 from the advisory board, and the advisory board had a
7 motion that it approved -- recommend -- advising to pass
8 the --

9 MR. MCKEE: I see what you're saying.

10 BOARD MEMBER BEDESSEM: And I'm wondering
11 whether it can be something where they convey the advice
12 and reference the section with the romanettes, because
13 that's the crux of -- of the item there. Just want to know
14 whether it was (i), (ii), or (iii).

15 BOARD MEMBER CAHN: We almost always get to
16 (iii).

17 BOARD MEMBER BEDESSEM: Yeah, like
18 99 percent of the time.

19 MR. MCKEE: But after how many meetings?
20 No. I'm kidding. I know what you're saying. And I -- I
21 just -- it's something -- we can think it through and try
22 to think if there's a better way to put language in the
23 rule.

24 BOARD MEMBER CAHN: And I'm more than happy
25 to -- we can either take a motion now to say this is the

1 advice of the wording, or we can, you know, take -- say you
2 guys go off and work on it. Now that you've heard our
3 advice, come up with something else.

4 MS. THOMPSON: So if I might. I spoke
5 before, Mr. Chairman, about, you know, the materials that
6 we transmit when we are transmitting a package over to the
7 Council to be added to their docket. And so we have a
8 standard memo, and I think it probably varies a little bit
9 here and there based on, you know, individual staff style.
10 But the memo I use every time, you know, it's addressed to
11 the chairman, gives the date, and -- you know, that we're
12 requesting a hearing for a given chapter, and we specify
13 the chapter number. And then we basically say the same
14 thing over and over. We say the Department of
15 Environmental Quality, Water Quality Division is proposing
16 revisions to Water Quality Rules and Regulations Chapter 24
17 and is requesting the Environmental Quality Council review
18 the proposal and consider adoption of these rules at your
19 November 19, 2019 hearing. The proposed revisions to
20 Chapter 24 were presented to the Water and Waste Advisory
21 Board at the June 25, 2019 meeting, at which the Water and
22 Waste Advisory Board recommended approval of the proposed
23 rule. The governor's office has approved proceeding with
24 the proposed rule.

25 When we have situations like the rule we spoke

1 about earlier, where we've presented to the Board on more
2 than one occasion, we state that in -- in that paragraph.
3 We say we presented to the Water and Waste Advisory Board
4 at this date, this date, and this date. The Board
5 recommended on this date.

6 Or in the case of a previous rulemaking where
7 we -- we received a unanimous vote of recommendation, but
8 we had some caveats, we said we -- but there were caveats,
9 and we have it at -- we have attached an additional
10 document that explains those concerns and the Department's
11 response.

12 Again, without -- my concern is that we get very
13 prescriptive here, and that because the work flows of Land
14 Quality Division and Air Quality Division are not the same
15 as Water Quality and Solid and Hazardous Waste Division,
16 that we put extra things in there that make my colleagues
17 have to do additional work that their board and those
18 colleagues had not had to do before because it didn't fit
19 with the relationship and how -- how their processes evolve
20 out of their boards.

21 So I would be hesitant to put too much
22 prescription in there, because we are already conveying
23 that in our transmittals. And, you know, as a staff
24 person, I'm concerned about creating things for other staff
25 people that it isn't -- it isn't something -- it would be

1 something that they would have to do now, but it isn't
2 something that grew out of their, you know, process in an
3 organic way. So I guess I would just ask that the Board be
4 mindful of how prescriptive we get because we will have to
5 pass these onto other folks. Yeah.

6 BOARD MEMBER BEDESSEM: I didn't really
7 have any desire for anybody to do any more additional work.

8 MS. THOMPSON: Okay.

9 BOARD MEMBER BEDESSEM: I just wanted that
10 sentence that you just read. Everything that was handled
11 previously was done perfectly --

12 MS. THOMPSON: Okay.

13 BOARD MEMBER BEDESSEM: -- because you were
14 required to report that we approved. Okay?

15 MS. THOMPSON: Uh-huh.

16 BOARD MEMBER BEDESSEM: And so I just want
17 assurance there's a sentence in there that says what the
18 board advised, whether they advised moving it to the EQC,
19 or whether they advised sending it back.

20 MS. THOMPSON: Okay.

21 BOARD MEMBER BEDESSEM: I mean, it's a
22 sentence.

23 MS. THOMPSON: Okay.

24 BOARD MEMBER BEDESSEM: Okay? And I
25 personally don't think there's any work involved. It's

1 just that before you may have documented in the sentence,
2 but it was a given, except for the one with the caveats,
3 that it was approved.

4 So I just don't want to see that letter replaced
5 with a letter that says we consulted with the Board on this
6 date and nothing else until the statement. We just want a
7 sentence in there that says, yes, and on that date, the
8 board recommended -- you know, advised moving forward or
9 advised returning it or whatever.

10 MS. THOMPSON: Okay.

11 BOARD MEMBER BEDESSEM: And so it's just a
12 sentence in the statement.

13 MS. THOMPSON: I just wanted to ensure that
14 we weren't requesting additional documentation every time
15 that talked about the advice in detail.

16 BOARD MEMBER BEDESSEM: I'm not interested
17 in any other work.

18 BOARD MEMBER CAHN: I'm not --

19 MS. THOMPSON: Okay.

20 BOARD MEMBER BEDESSEM: I just want that
21 sentence, because right now, based on way this rule is
22 written, all you have to do is say well, we talked to them
23 on this date. Okay? And the transcript is in there.
24 Okay? And so then they have to go read through the
25 transcript to see what happened. We just want a statement

1 upfront in the letter that says we talked to them on these
2 dates, and this was the final advice. And the final advice
3 is related to romanette -- Section 4 romanette -- these --
4 you know, these items. These -- and the items in (i), (ii)
5 and (iii) under Section 4(b) have never been constricting
6 to us.

7 So, you know, we -- we take the attitude that if
8 it's not broken, why are we fixing this? This is just
9 changing it to the word "advice," is what we are interested
10 in doing, so that it matches the statute and is consistent,
11 but it's not overhauling the way we have operated in the
12 past, which 99 percent of the time has not been
13 problematic, and has really resulted in a better product
14 moving forward to the EQC.

15 So I -- you know, I just wanted to let you know
16 that there was not an intent for tons of additional work.

17 MS. THOMPSON: Okay.

18 BOARD MEMBER BEDESSEM: It was just to make
19 sure that since we're not necessarily required to have
20 approval, that there was a statement upfront of what came
21 out of the board.

22 MS. THOMPSON: Sure. I just wanted to
23 clarify what the expectation was so that we weren't -- so
24 that there isn't confusion at the other advisory board
25 meetings with the other DEQ staff people.

1 BOARD MEMBER BEDESSEM: If you leave those
2 romanettes in, so there isn't confusion, you could
3 reference the advice, you know, pertaining to those three
4 items.

5 MS. THOMPSON: Sure.

6 BOARD MEMBER BEDESSEM: So that's all you
7 would have to put in that front statement, and it would be
8 no effort at all.

9 MS. THOMPSON: Okay.

10 BOARD MEMBER CAHN: I agree. Mr. Chairman,
11 I agree with Marge on that. She's stated it well.

12 I do have another question, maybe for Colin or
13 maybe for you. When you say that you find these three
14 romanettes limiting, what are you envisioning that the
15 advisory board could advise that isn't covered by these
16 three romanettes? How do you see those three romanettes in
17 4 being limiting? Because I don't see them limiting,
18 because that's -- maybe my mind is too small, but those are
19 the three things that we've always come to, so...

20 MR. MCKEE: Mr. Chairman. I -- this is the
21 first advisory board I've been to, so I can't suggest I
22 would know what type of advice you've given in the past or
23 recommendations. I mean, I don't know if there's -- I
24 mean, if they are limiting, but I think what -- what the --
25 what we were offering is, you know, provide the structure

1 that you were talking about in writing some type of
2 guidance document. The Board could have these three
3 things, or if there are additional actions that a board
4 would request agency to take, then you can do that.

5 One of them that I'm thinking right now is if,
6 you know, an option that the Board hasn't had in the past,
7 is if you, you know, approve rulemaking with the -- the
8 recommended or requested changes, then you're good with it,
9 so -- you know, so that way if something needed to get
10 through boards in a quicker manner, then we can leave here
11 with the suggested changes, go to Land Quality, and say
12 this was the advice that was -- that was given from the
13 water board, and making those changes. And then the land
14 board would say, yeah, we think that's good. We want that
15 advice as well. So it could -- as opposed to coming back
16 with the revisions every time. That's just one example,
17 you know. But there could be other options that -- like I
18 said, I would assume you all would know more about what
19 options you have than I do.

20 BOARD MEMBER CAHN: Mr. Chairman.

21 CHAIRMAN KIRKBRIDE: I'm going to --

22 BOARD MEMBER CAHN: So we actually, in
23 (iii), we do do that when we feel the DEQ and the Board
24 agrees that these changes are just editorial. We do say,
25 you know, with the revisions as discussed, we recommend

1 it move forward, so that we're not coming back for just
2 edit -- I mean, unless there's many, many, many changes.

3 BOARD MEMBER BEDESSEM: Yeah --

4 BOARD MEMBER CAHN: So we do that.

5 BOARD MEMBER BEDESSEM: -- we don't.

6 BOARD MEMBER CAHN: And I guess maybe (iii)
7 wording has to be changed to include that. But we always
8 have understood that (iii), you know, if it's not
9 substantive changes, that DEQ should please go forward.

10 MR. MCKEE: Mr. Chairman. Again, without
11 having attended the advisory boards and staying with the
12 language of the statute, we felt you could accomplish what
13 you needed from the language that's in the rule change.
14 You know, you could still accomplish those three romanettes
15 with what we have in there, so I -- I don't --

16 CHAIRMAN KIRKBRIDE: Andrew.

17 MR. KUHLMANN: I guess I wanted to kind of
18 weigh in a little bit, because I had some similar thoughts
19 on kind of the way that worked currently.

20 I guess I sort of read them under the old system,
21 under the way currently are, as they are kind of more
22 restrictive, because ultimately (iii) is approval
23 recommendation. That was required. So you had to get to
24 (iii).

25 So (i) was the Board could table the matter, talk

1 about the same rule at the second -- at another meeting.
2 (ii) was ask DEQ to go do some work and then have to come
3 back to the Board. And then (iii) was everything's fine,
4 we move on. And ultimately you had to get to (iii). And
5 so (i) and (ii) really were more procedural rather than
6 kind of identifying what the recommendations or what the
7 changes would be. So just sort of some ideas of looking at
8 these, what kind of the options we now have on the table
9 is, one, everything's great. Two is make some changes, but
10 EQC, you know, run with it. And these are all advice.

11 But then another advice would be make some
12 changes, but, please, we'd like to see how you do that
13 before you then take it to EQC. And the changes could be
14 editorial. The changes could be more substantive. It
15 could be more -- I guess it could be even more to here are
16 our thoughts, could you go and give us answers, rather than
17 here's the line item changes. And that could still be
18 advice. And the Board would have a definite interest in
19 being clear about anything it was going to ask of the
20 Department, because if the Department doesn't understand
21 it, nobody's going to be -- you know, they can't do
22 anything with it either.

23 But I think currently the way these are set up is
24 very procedural. And I think there are advice that could
25 be here's the process, or, in addition, DEQ, please go do

1 more public comment. You know, that's sort of a procedural
2 advice versus a substantive advice; hey, in this section on
3 storage tanks, please make the following changes.

4 So I guess advice can be a little broader than
5 maybe what these were intended, which is procedural steps.

6 BOARD MEMBER BEDESSEM: These were the
7 things at the conclusion of the meeting. Didn't say we
8 could give -- give advice on all sorts of, you know,
9 technical things and items, you know, throughout the
10 process, but at the end of -- I think this was written so
11 the end of the meeting, there was a kind of final
12 conclusion as to, you know, what the expectation was
13 between the advisory board and the Department.

14 MR. KUHLMANN: Uh-huh.

15 BOARD MEMBER CAHN: Yeah.

16 BOARD MEMBER BEDESSEM: And I don't -- did
17 that -- I don't -- I don't know we never felt it restricted
18 any of the conversation earlier in that meeting.

19 MR. KUHLMANN: Yeah. I think the concern
20 seems to be from -- and tell me if I'm wrong on this,
21 Colin -- it sounded like the Department has a concern on
22 whether or not how it conveys to make sure it understands
23 that it's conveying the full advice, and that it
24 understands what is "the advice" that it needs to tell the
25 Council about. Is it discrete comments in the record -- in

1 the transcript? Is it affirmative motion at the end of the
2 meeting that says here's what we would like you to change,
3 or here's what we would like -- you know, what the advice
4 would be to do, and needing that could be corresponding so
5 that the Board understands what it's advising distinctly,
6 and the Department can feel like it understands what the
7 advice was so it can take whatever action and take it under
8 consideration.

9 Did I capture kind of the concern?

10 MR. MCKEE: Yeah. Mr. Chairman, again --
11 you know, I mean, this is a formal setting, and we
12 understand the concerns and things that the advisory board
13 would make to see changed in this language. But putting
14 that in a formal letter to EQC or transmitting that beyond
15 is just an additional step. I don't see how it -- I --

16 BOARD MEMBER BEDESSEM: Sorry.

17 CHAIRMAN KIRKBRIDE: Well, see, it seemed
18 like to me we don't have -- we don't have a capsule for our
19 advice under what's proposed here. We did have a capsule.
20 The capsule was when we recommended something, then we knew
21 what the heck we recommended. But now this advice just
22 kind of floats out there. What did we advise? Have we got
23 a form for it? I think that's --

24 BOARD MEMBER BEDESSEM: Yeah, that's the
25 issue we have.

1 BOARD MEMBER CAHN: That's, in a nutshell,
2 exactly what the issue is.

3 MR. VANWORMER: Mr. Chairman, if I could
4 offer a thought on that. It does say under Section 5(a)
5 (iv) that the record or minutes. I think that could be
6 interpreted the record would include any attachments or
7 exhibits that the Board adds to the written minutes. So
8 typically like documents and things. I think it also can
9 include anything that's created by the Board to encapsulate
10 that advice. Not saying this is -- not trying to dictate
11 the outcome of this decision, but it is an option I think
12 the Board has if there were not changes to the text of the
13 rules, that the Board could shape that advice and make sure
14 that it goes to the EQC by adding resolution or something
15 that pulls it out in a -- you know, if you're worried about
16 something getting buried in the details, you could have
17 advice of the board or resolution of the board that --
18 especially in the unlikely, hopefully, event that the Board
19 is in serious conflict with DEQ, it would give the Board
20 independence on shaping that rather than saying let the
21 Director convey the advice, which can be a very simple, you
22 know, they weren't entirely onboard with it or something.
23 It could be we have the following seven concerns about the
24 rule, which we feel like in current form we're not
25 sufficiently advised.

1 BOARD MEMBER CAHN: And we've --
2 Mr. Chairman. We've had that situation before where Gina
3 was able to capture what the minority opinion of the Board
4 was, that was -- we -- we approved it -- I mean, I made --
5 I made a motion that we approve, you know, to move forward
6 with something, as so long as the caveats were also part of
7 that. It's like, okay, but...

8 You know, and so -- and Gina wrote up a nice
9 letter that -- and then sent it to me and -- I don't know.
10 I think it felt like --

11 BOARD MEMBER BEDESSEM: I think it was the
12 whole board.

13 BOARD MEMBER CAHN: -- the whole board --
14 to kind of look at does this capture what the caveats --
15 the concerns were. And then that went on to EQC. So it
16 was kind of an unusual situation.

17 I just had a thought on (i). I'm actually going
18 to take back my recommendation -- my advice that we use
19 most of that paragraph, because we don't often table. I
20 don't know that we table -- our board tables the
21 discussions. Like we haven't said, oh, well, geez, we're
22 out of time, and we haven't gotten to any recommendation or
23 any advice. We usually have something for --

24 Okay. Go ahead.

25 MS. THOMPSON: Well, that may be the case

1 for this particular advisory board.

2 BOARD MEMBER CAHN: Oh, but not for other
3 boards. Okay.

4 MS. THOMPSON: There are, on occasion, very
5 important issues that are very complicated and very
6 difficult for individual board members to digest all of the
7 information that the agency is throwing at them. And in
8 particular I'm thinking of, you know, potentially --
9 potentially Land Quality, but I know of several situations
10 in Air Quality Division where, you know, they were trying
11 to move forward with some very important legis --
12 rulemaking that came out of federal stuff that they wanted
13 primacy over. And it was -- it was very technical. Like
14 greenhouse gas technical.

15 BOARD MEMBER CAHN: Okay.

16 MS. THOMPSON: And they had several
17 meetings, because the Board would get to the end of the
18 scheduled day, and, you know, there are lots of economic
19 and political and everyday human implications that come
20 into play when they recommend -- when they provide advice.
21 And they wanted time to think about that.

22 Or, you know, maybe we gave -- maybe the agency
23 gave a lot of information, but, man, we forgot one really
24 important part. Maybe we didn't give enough economic
25 background to where, yeah, I don't -- I think we need to

1 discuss this more.

2 Or in the case of another division not covered by
3 this particular rule set, they got to the end of their
4 meeting and they were about to make a vote, and the people
5 who owned the building asked them to leave, because they
6 were closing for the day, and, no, you can't have five more
7 minutes. So --

8 BOARD MEMBER CAHN: Okay.

9 MS. THOMPSON: -- what do we do?

10 So while this particular board does not have to
11 table things, I would really advise against taking that
12 out, because I know of several examples in sister divisions
13 where they needed to do that, because --

14 BOARD MEMBER CAHN: Okay.

15 BOARD MEMBER BEDESSEM: This would be an ag
16 rule.

17 BOARD MEMBER CAHN: I think the problem for
18 me is that it's got reopening or extending public comment
19 period tied in with tabling, whereas we can -- you know,
20 recommend -- we can advise that the public comment period
21 be extended or reopened with revised rules. That happens
22 with number -- with (ii) for us. So that was my only --

23 BOARD MEMBER BEDESSEM: So apparently we've
24 done a bunch of things that aren't on this.

25 MR. KUHLMANN: Well, that's -- yeah. And I

1 guess we're seeing the weirdness that advice could take
2 too, so...

3 BOARD MEMBER BEDESSEM: Uh-huh.

4 MR. VANWORMER: In theory, you can advise
5 that DEQ abandon all efforts to go forward with the rules.
6 It's in such bad shape it will never receive your blessing,
7 which isn't one of three things in the --

8 BOARD MEMBER BEDESSEM: That's never
9 happened.

10 MR. VANWORMER: And then if I could just --

11 BOARD MEMBER CAHN: I would put that,
12 remand the preliminary rule to the division for further
13 action.

14 MR. VANWORMER: Further action, scrap it.

15 I think that was one of the points in this that
16 Colin had made is that when you start to enumerate it can
17 be read as a limitation, because you've specified certain
18 action items when others may come up in the future, and
19 that the effort went to try to constraint, but to leave it
20 to the board's interpretation in a way on what advice and
21 consultation essentially included.

22 BOARD MEMBER CAHN: Other than having
23 engineer design privies --

24 BOARD MEMBER BEDESSEM: Oh, yeah. That was
25 a problem.

1 BOARD MEMBER CAHN: -- I'm not sure we ever
2 said scrap it.

3 BOARD MEMBER BEDESSEM: I have a question.
4 This is, I guess, a legal question, is that when at the end
5 of the meeting it says, you know, the "advisory board may,"
6 and it has three things, that the implication is that those
7 are the only three things you can possibly do. It's not a
8 "may not."

9 BOARD MEMBER CAHN: It doesn't say "shall."

10 MR. KUHLMANN: I think -- well, so "shall"
11 would indicate "and." Shall do this, shall do that, shall
12 do another thing. I think it depends on the context of
13 whether or not "may" is an exclusive list, here's three
14 things, nothing else, or -- or an inclusive, it could --
15 you know, may do, but not limited to, or -- but, you know,
16 I think that depends on the context of how it's used.

17 MS. THOMPSON: Well, this --

18 BOARD MEMBER CAHN: It could say may, but
19 not limited to, and --

20 BOARD MEMBER BEDESSEM: I mean, that's the
21 concern here.

22 MS. THOMPSON: The idea behind the previous
23 rule, the one that's currently in place, was that when the
24 advisory board is providing its advice, that -- that, you
25 know, that it be specific, that it -- so it's may this,

1 this, or this. Those are your -- those are your three
2 choices. It's a may/or. So the idea was that the Division
3 isn't left hanging because, you know, the advisory board
4 didn't give a specific enough set of advice. It's -- it
5 doesn't just disappear because it makes us all
6 uncomfortable, right? It's either great and we keep going,
7 or, man, I don't know, let's keep talking about it, and we
8 commit to -- to -- you know, continuing our discussion, or,
9 no, we know exactly what's wrong, and this is what we think
10 the agency should do to fix it.

11 But the idea that we can vote and say, nope,
12 nope, you don't get our recommendation. The end. That's
13 not in that list. So that -- like that's why that list
14 is structured the way it is, is that we all -- we all kind
15 of --

16 BOARD MEMBER CAHN: You expect us to do
17 something.

18 MS. THOMPSON: Exactly.

19 BOARD MEMBER BEDESSEM: Yeah. Yeah.

20 BOARD MEMBER CAHN: And we expect of
21 ourselves to do something.

22 BOARD MEMBER BEDESSEM: To do something.

23 MS. THOMPSON: Correct.

24 BOARD MEMBER CAHN: That we don't just
25 leave us hanging with nothing.

1 MS. THOMPSON: Correct.

2 BOARD MEMBER CAHN: So I would be okay with
3 the language to say the advisory board may, but not
4 limited -- you know, advise the Department, but not limited
5 to (i), (ii), (iii). Whatever.

6 Anyways, what -- what --

7 BOARD MEMBER BEDESSEM: I don't know if
8 that works if there's no "or" in there.

9 BOARD MEMBER CAHN: Yeah. What would be
10 the --

11 MR. KUHLMANN: There can be a subsection at
12 the end that says or other advice or something.

13 MR. VANWORMER: Other advice.

14 MR. KUHLMANN: Other action or advice.

15 MR. VANWORMER: We can --

16 BOARD MEMBER BEDESSEM: Deemed relevant by
17 the Board.

18 CHAIRMAN KIRKBRIDE: What? Pardon me?

19 BOARD MEMBER CAHN: She just said one --

20 THE REPORTER: One at a time. They were
21 all talking at the same time.

22 BOARD MEMBER CAHN: Mr. Chair, I don't have
23 any more comments or advice. Just wondering, as a board,
24 whether we want to -- you know, we've provided some
25 proposed language. I don't know if we should move -- make

1 a motion on that, or if we should just let you guys go
2 ahead and work on it -- you know, DEQ work on it some more.
3 So I don't know where we should --

4 BOARD MEMBER BEDESSEM: I guess, our
5 question would be -- to you is whether you would like to
6 take proposed language to the Land Quality Board tomorrow,
7 if that would be more efficient for you, or whether you
8 just wanted to obtain feedback. We have some proposed
9 language.

10 MR. MCKEE: Mr. Chairman, I have the
11 suggested proposed language that you've all thrown out, so
12 I don't think you need -- I have the suggested language
13 that you've made to the -- to the rule, and I can convey
14 that to the Land Quality Board tomorrow.

15 BOARD MEMBER CAHN: And maybe add in the
16 "but not limited to" that Andrew suggested for the
17 romanettes.

18 MR. MCKEE: Okay.

19 BOARD MEMBER CAHN: So then you don't need
20 anything further from our board in terms of advice or a
21 vote?

22 CHAIRMAN KIRKBRIDE: I think we would
23 request that the general sense of our concerns be conveyed.

24 BOARD MEMBER CAHN: Yes.

25 MR. MCKEE: Mr. Chairman, I think it's

1 wholly appropriate, if the Board still wants to vote,
2 because in my mind that -- that shows level of support and
3 puts board members on the record of --

4 BOARD MEMBER CAHN: Okay.

5 MR. MCKEE: Again, that's just my thought.
6 Again, I don't see this as an overhaul of the function of
7 the advisory boards. I think after -- after this meeting,
8 or whenever you're done seeing my face, y'all will just
9 continue on as you have before, so...

10 BOARD MEMBER CAHN: That would be our hope.

11 MR. MCKEE: Yeah. You know, so I --

12 BOARD MEMBER CAHN: And Gina's.

13 MR. MCKEE: Yeah. And trust me, as I talk
14 about this, I had the same -- you know, I kept saying,
15 well, they're going to recommend and recommend. Well,
16 they'll advise. You know, trying to replace those two
17 words in my mind is kind of nonsense. I would just keep
18 doing what you've been doing.

19 BOARD MEMBER CAHN: Yeah. They're the same
20 words in my mind.

21 MR. MCKEE: Yeah. Yeah. So at least
22 that's my impression of it.

23 BOARD MEMBER CAHN: Okay. Well, then I
24 move that we advise DEQ to present tomorrow to the Land
25 Quality Board our proposed rewording.

1 BOARD MEMBER BEDESSEM: Second.

2 CHAIRMAN KIRKBRIDE: Is there any further
3 thing that we would want to convey to them?

4 BOARD MEMBER CAHN: I'd like to see it come
5 back before our board with the input from Land Quality.
6 I'm not sure what we do if Air Quality can't -- I don't see
7 how this can go forward without Air Quality. So I suppose
8 after -- I mean, I'd like to see it when you hear from Land
9 Quality and not hold things up because of Air Quality.
10 But, obviously, we need to -- once Air Quality has a
11 quorum, then we need to -- if they didn't agree with
12 something that Land and Water and Waste agreed to, then
13 we'd have to -- hope to see it again. We'd advise we'd
14 like to see it again.

15 CHAIRMAN KIRKBRIDE: Okay. But actually
16 your motion was just to recommend this language --

17 BOARD MEMBER CAHN: Yes.

18 CHAIRMAN KIRKBRIDE: -- to advise this
19 language.

20 BOARD MEMBER CAHN: Yes.

21 CHAIRMAN KIRKBRIDE: Okay. Is there
22 further discussion on that motion?

23 Proceed to vote. All in favor, say aye.

24 BOARD MEMBER CAHN: Aye.

25 BOARD MEMBER BEDESSEM: Aye.

1 CHAIRMAN KIRKBRIDE: Opposed?

2 That's carried.

3 BOARD MEMBER CAHN: Do we need to make a
4 motion regarding --

5 CHAIRMAN KIRKBRIDE: Requesting -- yeah.

6 BOARD MEMBER CAHN: -- advising we'd like
7 to see it again?

8 CHAIRMAN KIRKBRIDE: It would be our
9 preference to see it again?

10 Okay. Is there a motion to that effect?

11 BOARD MEMBER CAHN: So moved.

12 BOARD MEMBER BEDESSEM: Second.

13 CHAIRMAN KIRKBRIDE: All in favor, say aye.

14 BOARD MEMBER CAHN: Aye.

15 BOARD MEMBER BEDESSEM: Aye.

16 CHAIRMAN KIRKBRIDE: Opposed?

17 Carried.

18 It's a lot easier to have a board of 3 than 15,
19 you know.

20 MS. THOMPSON: Agreed.

21 CHAIRMAN KIRKBRIDE: So what do you think,
22 Gina? Have we done what we needed to do?

23 MS. THOMPSON: I think that, Mr. Chairman,
24 you have done 95 percent of what we need you to do. I
25 think the only outstanding item on our agenda would be

1 scheduling and location preferences for our next meeting.

2 So we're coming to the close of 2019, and we're
3 about to begin 2020. And so looking ahead at the Water
4 Quality Division and the Solid and Hazardous Waste
5 Division, we expect to see you at four quarterly meetings.
6 We will most likely have enough rulemaking for you to
7 review that we will need your time and attention and
8 consideration at all four quarters.

9 So quarter one, traditionally we meet towards the
10 end of the quarter. So if there are already any -- if you
11 already have business plans or vacation or just March will
12 not work for you as a whole, if -- if you could keep us in
13 mind, we'll need at least one day of your time. You know,
14 by then we'll miss you, so...

15 So we'll need some time with you in March,
16 preferably later in the month, because our administrators
17 will be on call --

18 CHAIRMAN KIRKBRIDE: You may be excused.

19 MR. MCKEE: Thank you.

20 MS. THOMPSON: -- for the legislative
21 session, and I believe that ends earlier -- they end
22 earlier in the month, so...

23 BOARD MEMBER CAHN: I can tell you right
24 now that March 27th is Friday, and it will not work for me.

25 MS. THOMPSON: Okay. That will just come

1 right off the --

2 BOARD MEMBER CAHN: And probably the
3 Monday, the 30th would probably not work as well, so...

4 MS. THOMPSON: Okay. So probably in the
5 next couple weeks we'll send out another Doodle Poll.
6 Additionally, if you have location preferences, you know,
7 we're -- we try to be flexible with that. And I can take
8 any preferences back to the administrators.

9 Do we have any preferences for Cheyenne or Casper
10 or somewhere else in the state? Or potentially, you know,
11 preference for, you know, go wherever you want, but that
12 time of year I have to call in, or I have to video in, or
13 any of that type of a preference? And if not, I can talk
14 to the administrators and see where they prefer to meet
15 next time.

16 And then one side note. We had talked about your
17 annual report at the last board meeting at the last
18 quarter. And, unfortunately, got hung up in our office in
19 a review loop. We have one more reviewer. Hopefully we
20 will get that through them this week. And so I plan to
21 send it out for your review.

22 And then, Chairman Kirkbride, once the Board
23 approves of the contents of the annual report, we would ask
24 you to sign the letter to the governor, and then we would
25 transmit it to Governor Gordon as part of that statutory

1 requirement that we provide a report of your activities
2 annually.

3 But, again, I apologize for the delay. It ended
4 up, due to work flow and, you know, personal leave and my
5 inattentiveness, I didn't realize people were --

6 CHAIRMAN KIRKBRIDE: Are we going to have
7 to have a consensus, then, on the report?

8 MS. THOMPSON: I don't believe so. I don't
9 believe it needs to come to a vote. It's just checking,
10 you know, did I make any typos or did I state that you were
11 at a meeting you weren't at, which I don't believe I did.
12 We used the transcript to create it. But, generally, I'm
13 just looking for your overall agreement that, yep, that's
14 what we did during that reporting period.

15 CHAIRMAN KIRKBRIDE: You plan to send us
16 each a copy?

17 MS. THOMPSON: I'll send you an electronic
18 copy.

19 CHAIRMAN KIRKBRIDE: Electronic.

20 MS. THOMPSON: And then previously I'd send
21 the electronic copy. If the Board had edits, they would
22 reply back and let me know. We'd make those changes. And
23 then we would send it to you. If you don't have any edits,
24 just let me know you don't have anything.

25 MR. KUHLMANN: And I would ask that you

1 respond only to Gina, and not to the rest of the group,
2 because contemporaneous email reply alls can fall
3 underneath the public records -- or the Public Meetings
4 Act.

5 BOARD MEMBER CAHN: Oh, wow.

6 MR. KUHLMANN: So if there is any direct
7 communication, if you can just respond back to Gina
8 individually.

9 CHAIRMAN KIRKBRIDE: Okay.

10 MS. THOMPSON: And I can set up the
11 outgoing email, where if I blind copied them, they wouldn't
12 be able to respond, probably.

13 CHAIRMAN KIRKBRIDE: Then you need it
14 signed.

15 BOARD MEMBER BEDESSEM: So you can't --

16 MS. THOMPSON: So basically would print out
17 the cover sheet and sign it, and if you wanted to scan a
18 copy or if you wanted to mail it, or if you were in town
19 and you were like, hey, I'll just drop it by, because you
20 needed a cup of coffee from the place up the street, that's
21 cool too. But then we'd just compile that -- and then the
22 director adds a memo onto the front explaining to Governor
23 Gordon why he's getting this random report from the
24 Department. It just -- we do one more tie-in to the
25 statute, so he knows that -- what we're doing.

1 So, yeah, thank you for joining us today and
2 considering our paperwork. And we'll be in touch on the
3 next meeting, so...

4 CHAIRMAN KIRKBRIDE: Anything further from
5 anyone?

6 BOARD MEMBER CAHN: Would you do me a
7 favor? When you send out that email, would you remind us
8 please don't respond all.

9 BOARD MEMBER BEDESSEM: You're going to be
10 cc'd so you won't accidentally do it.

11 BOARD MEMBER CAHN: Okay.

12 MS. THOMPSON: I'm going to blind copy you.

13 BOARD MEMBER CAHN: Okay. Great. Perfect.

14 MS. THOMPSON: Because I don't want to make
15 trouble for you, and I know I can do that to kind of stop
16 that from happening.

17 BOARD MEMBER BEDESSEM: Gina's going to
18 take care of us.

19 BOARD MEMBER CAHN: Great. Thank you.

20 BOARD MEMBER BEDESSEM: So, Andrew, I had
21 one question in that. If those romanettes get left in the
22 rule, that doesn't -- and it's the mostly procedural, as
23 you mentioned.

24 MR. KUHLMANN: Uh-huh.

25 BOARD MEMBER BEDESSEM: It doesn't preclude

1 the Department and the AG's Office coming up with a
2 guideline as to what advice may be, correct?

3 MR. KUHLMANN: Oh, as far as if we were to
4 come up with a guidance document for you to look at that
5 would say here's the options? Certainly sort of a bullet
6 list of here's things you might be able to do?

7 BOARD MEMBER BEDESSEM: Uh-huh.

8 MR. KUHLMANN: I can certainly try to work
9 on that, and possibly talk to the other AGs as well, if you
10 want us to try to look at it. Or DEQ would want to -- I
11 don't know. I can try and work with them on that sort of
12 thing, and we can bring it up at the next meeting, if you
13 want. I suspect I'd be able to get some movement on it,
14 not just --

15 MS. THOMPSON: So I think part of the
16 statute states that the agency will provide administrative
17 support to the Board. So if you need our administrative
18 support in looking into a guidance on your behalf and
19 working with your attorney to draft something for you to
20 review and coordinating that effort, I believe the
21 agency -- you know, I believe that falls under the
22 administrative support that we assist you with, so...

23 MR. KUHLMANN: I can try to take lead on it
24 as well.

25 MS. THOMPSON: That would be --

1 MR. KUHLMANN: Since I've got all the
2 boards.

3 MS. THOMPSON: That would be great.

4 BOARD MEMBER BEDESSEM: I was just asking,
5 because we don't really know what Land Quality's reaction
6 will be to this, or what will happen to those romanettes,
7 and that might give us a better idea of what the category
8 provides us.

9 CHAIRMAN KIRKBRIDE: Marge, you haven't
10 asked Andrew, though, to give us something that may be more
11 limiting, have you? Here's what you can do.

12 MR. KUHLMANN: I guess what I envisioned
13 was sort of a list of here's things we can think of. Not
14 an exclusive list of all the items, but more of a here's
15 some options so the board members could have, I guess, a
16 tool kit, here's the way this could go. And if we end up
17 inventing another one along the way, we invent another one.

18 MS. THOMPSON: So, for instance, the AG's
19 Office has provided the agencies with a takings guidance.
20 So the statutes require that the agency do a takings
21 analysis before we do our 45-day comment period. But most
22 of us, as staff, have no idea what a takings is. And the
23 AG's Office, they explain what a takings is, but they also
24 give examples of what a takings is to give us a picture of
25 what to avoid completely. So, potentially, if we

1 structured this in a way where we gave a couple of examples
2 just to give you a picture, but it didn't -- like that
3 checklist is great, because it isn't very prescriptive and
4 it doesn't tell us how to write our rule. It just gives us
5 a scenario where you can see from start to finish why there
6 was a terrible idea. And, you know, we're trying to get a
7 rule through. We're not -- we don't want trouble. So that
8 guidance was really helpful for people who aren't familiar
9 with that as a term or a concept. So potentially -- you
10 know, they're good at doing guidance that helps you to --
11 that clarifies for you, you know, what something is or what
12 something isn't so that you don't get confused. And, you
13 know, the agency uses guidances and policies daily. That,
14 you know, we have a rule and it says thou shalt not do
15 this, but what does that mean for us internally? Like how
16 do we implement that?

17 CHAIRMAN KIRKBRIDE: Sure.

18 MS. THOMPSON: So...

19 CHAIRMAN KIRKBRIDE: That's good.

20 MS. THOMPSON: All right. Well, thank you.

21 And if you want to adjourn the meeting, we'll let you go.

22 CHAIRMAN KIRKBRIDE: I will do that.

23 Meeting's adjourned.

24 (Meeting proceedings concluded

25 1:03 p.m., December 11, 2019.)

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C E R T I F I C A T E

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

Dated this 30th day of December, 2019.


KATHY J. KENDRICK
Registered Professional Reporter

