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BEFORE THE ENVIRONMENTAL QUALITY COUNCIL

STATE OF WYOMING

Hazardous Waste Rules, Chapter 1,
General Provisions, IBR, Update 2 Docket No. 21-5102

TRANSCRIPT OF HEARING PROCEEDING

PURSUANT TO NOTICE duly given to all parties in interest, this matter came on for hearing on the 16th day of November, 2021, at the hour of 9:08 a.m., at the University of Wyoming Campus, Energy Innovation Center, BP Room at 1000 E. Lewis Street, Laramie, Wyoming, before the Wyoming Environmental Quality Council. Council members present were Mr. John Corra, Chairman, presiding, with Council Members Mr. Stan Blake, Mr. Ryan Greene, Mr. Shane True, Ms. Marge Bedessem, and Mr. J.D. Radakovich also in attendance, with Mr. Steve Lenz present by videoconference.

Mr. Ryan Schelhaas, Chief Deputy Attorney General, Attorney for the Council; Mr. Jim Ruby, Executive Director to the Council; Mr. Joe Girardin, Business Office Coordinator, were also in attendance.

Mr. Matt VanWormer, Attorney General's Office; Ms. Suzanne Engels, Solid Waste and Hazardous Waste Division Administrator; Mr. Ben Luckey, Hazardous Waste Program/Voluntary Remediation Program Manager; Ms. Carol Stark, Voluntary Remediation Project Manager; Mr. Brian Wood, Solid and Hazardous Waste Inspection, Compliance and Enforcement Inspector; and Mr. Matt Buchholz, Hazardous Waste Senior Project Manager, were also in attendance.

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

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3 (Hearing proceedings commenced

4 9:08 a.m., November 16, 2021.)

5 CHAIRMAN CORRA: So next on our agenda is
6 sort of a public hearing to hear an update to the Hazardous
7 Waste Rules Chapter 1.

8 And so with that, would you like to take the
9 floor and introduce yourself for the Council, as well as
10 those present representing the Division.

11 MS. ENGELS: Sounds good. Thank you,
12 Mr. Chairman.

13 My name is Suzanne Engels. I am the
14 administrator for the Solid and Hazardous Waste Division at
15 DEQ. I was appointed to this position in July, so this is
16 my first time appearing in front of the Council as
17 administrator, and happy to be here today to discuss the
18 Hazardous Waste Rules with you and look forward to working
19 on future topics related to my division in the future.

20 There's been a few other changes within the
21 Division, as you can imagine, as people accept different
22 positions and there's a shuffle, so to speak. I have a new
23 program manager, relatively new --

24 CHAIRMAN CORRA: Let me stop you.

25 MS. ENGELS: -- Ben Luckey, here to my

1 right.

2 CHAIRMAN CORRA: Suzanne, let me interrupt
3 you for a second.

4 MS. ENGELS: Sure.

5 CHAIRMAN CORRA: Let me interrupt you for a
6 second, because I made a mistake. The -- for these rules
7 hearings, we have a hearing officer as part of our
8 procedures. And I neglected to point out that Council
9 Member Shane True is the hearing officer for your rule
10 package.

11 COUNCIL MEMBER TRUE: Oh. That's all
12 right.

13 CHAIRMAN CORRA: So correcting that -- I
14 don't think you have to go back and repeat yourself, but I
15 do want to -- now the meeting is being run by Council
16 Member True. He'll conduct the hearing and all that, and
17 then turn the meeting over to me when we're all done with
18 questions and stuff. So he's your guy.

19 MS. ENGELS: Sounds good.

20 CHAIRMAN CORRA: Sorry about --

21 COUNCIL MEMBER TRUE: Just continue.

22 MS. ENGELS: Thank you, Council Member
23 True.

24 As I was saying, I have Ben Luckey here to my
25 right. He's the program manager for the Hazardous Waste

1 Program, as well as the Voluntary Remediation Program. I
2 believe he started in August? September?

3 MR. LUCKEY: September.

4 MS. ENGELS: September. So we're excited
5 that he's in this role.

6 And then to Ben's right is Carol Stark. She has
7 been working on the hazardous waste rules and revisions and
8 has been involved in the previous update that we did in
9 2019.

10 And then to my left I have Matt VanWormer, our
11 trusty attorney from the Attorney General's Office. He has
12 also contributed and given a lot of positive feedback on
13 this rule revision, and so in the event there's any
14 questions that we can't answer at the table, we'll rely on
15 Matt. And we also have some members of the Division in the
16 audience from our inspection and compliance program and
17 other members of the Hazardous Waste Program too.

18 So with that, we're presenting our revisions to
19 the Hazardous Waste Rules. It's an incorporation by
20 reference. It's our update number 2. The first update was
21 done in 2019. I'm just sort of working backwards.

22 The program received primacy back in October of
23 1995. So primacy is where this State has authorization to
24 implement the federal rules within the state. And these
25 revisions are being done to maintain that primacy. So it's

1 very important that we, as an agency and division, keep
2 that primacy and evaluate federal standards and rules as
3 they come out to see if they make sense. And a lot of
4 these rule updates provide benefits to the industry within
5 the state.

6 So at the end of Carol's presentation, we'll be
7 asking the EQC to approve the proposed changes to Chapter 1
8 and the Statement of Principal Reasons.

9 So with that, I will turn things over to
10 Ms. Stark.

11 MS. STARK: Yes. Thank you, Suzanne.

12 So good morning. As introduced, my name is Carol
13 Stark. I'm officially a Voluntary Remediation Project
14 Manager. That's what I do when I'm not doing rules. I
15 also coordinate revisions to the Hazardous Waste Rules for
16 the Solid and Hazardous Waste Division.

17 Thank you for hearing our proposed adoption of
18 the Hazardous Waste Rule revisions for the great state of
19 Wyoming.

20 So what I'm going to talk to you about is the
21 Hazardous Waste Rules Chapter 1, General Provisions,
22 Incorporation by Reference -- and a lot of times we'll say
23 IBR -- Update 2. The EPA has promulgated five new rules
24 since the last Incorporation by Reference, or IBR, Update
25 1, which was, like Suzanne said, adopted in May of 2019.

1 The five rules include the definition of a solid
2 waste, which was -- which is mandatory with some optional
3 parts; the Hazardous Waste Pharmaceuticals Management and
4 Amendment to the Nicotine Listing, which is also mandatory;
5 and the three optionals are the Safe Management of Recalled
6 Airbags, Increasing Recycling by Adding Aerosol Cans to the
7 Universal Waste Regulations, and also Modernizing Ignitable
8 Liquids Determinations, which is optional.

9 Now these optional rules, I should explain if we
10 don't adopt them -- you say if they're optional, why are we
11 adopting them? If we don't adopt them, we will be more
12 stringent than federal rule, and we don't want to do that.
13 They are -- we want to be helpful to the industry.

14 So this proposed revision makes Hazardous Waste
15 Rules up to date through July 7 of 2020. And you might
16 say, well, it's 2021. Well, it takes a while to get them
17 through the process. And not only that, that was the last
18 rule. The Modernizing Ignitable Liquid Determination was
19 really the last rule that EPA promulgated that we needed to
20 adopt.

21 So the EPA, the Wyoming Attorney General's Office
22 and the WWAB all provided comments which included current
23 revision of the Chapter 1, General Provisions.

24 Outreach was conducted from December 2019 to
25 May of 2020. Public notice for the WWAB was from May 14th

1 to June 25th of 2021. And for the EQC, September 12th to
2 November 2nd of 2021.

3 There was one formal comment, which actually was
4 in favor of the Aerosol Can Recycling Rule adoption. The
5 comment was from an industry in Washington, D.C. The
6 comment and response were uploaded to the docket.

7 So now there were extensive renumbering
8 revisions. And as a result, there were some recently
9 discovered minor mistakes made in the strike and underline
10 copy that were not in the clean copy. However, there were
11 a few small romanette changes in the clean copy that were
12 recently discovered and will be corrected before -- prior
13 to uploading to the Secretary of State's site.

14 So I'd like to, for example, explain to you -- I
15 don't know if anyone has their clean copy open. Okay. On
16 page 1-16, the romanette in that section talks about (j).
17 It should be (h). There was a typo.

18 Go ahead.

19 MR. VANWORMER: Carol, I can point them out
20 specifically.

21 MS. STARK: That would be great.

22 MR. VANWORMER: Mr. Hearing Officer.

23 COUNCIL MEMBER TRUE: Yes.

24 MR. VANWORMER: Members of the Council.

25 The three errors in the clean copy that we noticed going

1 through this recently was on -- if you're looking at the
2 clean copy, I'm on page 1-16, line 577. There's a
3 reference to Section 264(i), (j) and (k). That -- those
4 sections provide location standards. That should have been
5 updated in this draft to Sections 264(h), (i) and (j).
6 There was just a minor oversight. There is no Section (k)
7 anymore in this rule provision.

8 And, similarly, on page -- the bottom of 1-17,
9 line 620, there's a reference to the standards for Class II
10 facilities in Section 264(j). If you look, the (j) now
11 covers Class III facility location standards. So that
12 should actually say in Section 264(i).

13 And, finally, on page 1-18, line 627, the
14 reference there should have been replaced to Sections
15 264(j) (i) (A) through (C). There's a couple extra
16 parentheticals that will be deleted as we update the final
17 clean copies. So I think when the Division moves for the
18 Council to adopt the rules, it would be with those changes
19 proposed. Thank you.

20 MS. STARK: Thank you, Matt.

21 We're requesting approval, as Matt said,
22 accepting those minor changes.

23 Once the rules are adopted by the State of
24 Wyoming, this is moving forward, just to let you know, they
25 will be presented to the EPA for authorization.

1 Thank you again for hearing our proposed adoption
2 of the Hazardous Waste Rules for the State of Wyoming. Are
3 there any questions?

4 COUNCIL MEMBER TRUE: Thank you very much.

5 We'll start -- are there any questions from the
6 Council?

7 CHAIRMAN CORRA: I have several,
8 Mr. Hearing Officer.

9 COUNCIL MEMBER TRUE: Okay. Go ahead.

10 CHAIRMAN CORRA: So the checklists -- as I
11 looked at those checklists, are they meant for both the
12 reviewer of the permit as well as -- or they meant for the
13 applicant? or both? Just a general comment about -- so an
14 applicant can go over that checklist, fill in the blanks,
15 or does he provide more detail?

16 MS. STARK: Are you -- Madam --

17 CHAIRMAN CORRA: That's okay.

18 MS. STARK: Mr. Corra. I used to know
19 those.

20 Mr. Corra, are you talking about the -- as
21 clarification, are you talking about the summary table
22 that's in -- that has the Federal Registers listed, and
23 it's a table that shows all the things that are going to be
24 adopted?

25 CHAIRMAN CORRA: Yeah.

1 MS. STARK: Or are you talking in the back
2 of the chapters?

3 CHAIRMAN CORRA: Back of the chapter, I
4 think, where the --

5 MS. STARK: The back of the chapter is only
6 mentioned -- talks about the exceptions, the things that
7 were -- that we are different from --

8 CHAIRMAN CORRA: Okay.

9 MS. STARK: -- the table, Table A.

10 CHAIRMAN CORRA: The -- a couple of my
11 questions just sort of have to do with general stuff.

12 MS. STARK: Okay.

13 CHAIRMAN CORRA: So you don't need to go
14 into great detail. But universal waste, as I recall it,
15 carries with it, say, a lighter regulatory hand than
16 hazardous waste or perhaps even, well, solid waste in some
17 cases. So can you -- what is the definition of universal
18 waste? I mean, just -- what does it all include?

19 MS. STARK: Can I defer this to Brian Wood,
20 our inspection and compliance --

21 CHAIRMAN CORRA: Sure. Yeah.

22 MS. STARK: -- that deals with this daily.

23 MR. WOOD: Universal waste --

24 MR. RUBY: Brian, come on up to the
25 microphone.

1 MS. ENGELS: Come to the table.

2 MR. RUBY: That way Steve will be able to
3 hear you over the mics.

4 MS. ENGELS: And introduce yourself.

5 MR. WOOD: My name is Brian Wood. I work
6 for Wyoming Department of Environmental Quality, the Solid
7 and Hazardous Waste Division. I am a member of the
8 inspection and compliance group.

9 Currently what's in universal waste is lamps, you
10 know, fluorescent tubes, sodium bulbs, et cetera. Waste
11 pesticides fall into that category. Mercury switches,
12 which are pretty much obsolete. You find a lot of those
13 like in the old power plants, which a lot of that's getting
14 phased out now. And the last thing is batteries,
15 lithium-ion, NiCad, and that series. So that's what is
16 currently under universal waste.

17 CHAIRMAN CORRA: Thank you.

18 MR. WOOD: Sure.

19 CHAIRMAN CORRA: The definition of solid
20 waste -- and there was a big, long -- a long time ago, a
21 number of years ago, that coal ash would be in or out of
22 that or be classified as subtitle C or D for hazardous
23 waste. So as the definition of solid waste applies to what
24 you're asking us to approve, if we approve your request on
25 these rules that -- are we making changes to how that is

1 interpreted in the state of Wyoming?

2 MS. STARK: Can I first answer, Suzanne,
3 the first part.

4 The defini -- the definition of a solid waste
5 that we're trying to adopt, it was -- this rule clears --
6 creates a clear definition of legitimate recycling for the
7 recycling of catalysts at refineries. It wasn't adopted in
8 2008, 2015 and 2018, as you know, due to litigation, which
9 was legally resolved in mid-2018.

10 Suzanne's probably going to talk about the coal
11 ash part.

12 CHAIRMAN CORRA: Yeah. All right.

13 MS. ENGELS: Council Member Corra. Coal
14 ash is defined under RCRA Subtitle D, so it's considered
15 nonhazardous waste. And our Division is also moving
16 forward with a separate rule package that will have the --
17 that will meet the federal standards specific to coal ash
18 landfills and coal ash impoundments.

19 CHAIRMAN CORRA: So we'll see that probably
20 later on sometime?

21 MS. ENGELS: Next year.

22 CHAIRMAN CORRA: Yeah. I got it. Okay.
23 This just narrowly focused the catalyst in recycling.

24 MS. STARK: Correct.

25 CHAIRMAN CORRA: Yeah, thank you.

1 You know, that's all I've got, Mr. Hearing
2 Officer.

3 COUNCIL MEMBER TRUE: All right. Sounds
4 good.

5 Are there any other questions from the Council?

6 Now we're going to move into people who want to
7 testify for or against and in a neutral capacity. But
8 before we get started, I do want to say the order in which
9 I'll look for that testimony will first be those in
10 support, and then we'll look for those in opposition, and
11 then those who wish to give testimony in a neutral
12 capacity.

13 In each of those cases, we'll start with people
14 in the room to testify, and then we'll look at people on
15 Zoom. And if you're on Zoom and you wish to testify, if we
16 get people on, need to raise their -- either raise their
17 hand button and then I will call upon them. And then after
18 each person that testifies, I will open up questions for
19 the Council to ask questions of the person who testifies.

20 And then DEQ director or his designee, which
21 looks like it's Mr. Esch today. Oh. Mr. Parfitt's here.
22 I missed you. Sorry. He will have an opportunity to ask
23 questions. And then we will move -- move on until we get
24 through all the people who wish to testify.

25 So to start out, is there anyone in the room that

1 wishes to testify in support of the rule package? Is there
2 anyone online?

3 Is there anyone here that wishes to testify
4 against the rule package, or anyone online?

5 And, last, is there anyone that wishes to testify
6 in a neutral capacity, here or online?

7 Seeing that there is none -- and I can't imagine
8 how this rule package doesn't have just so much more
9 testimony, argument, fighting over it -- I'll close the
10 public hearing on the docket.

11 CHAIRMAN CORRA: Okay.

12 COUNCIL MEMBER TRUE: I'll turn it over to
13 Chairman Corra.

14 CHAIRMAN CORRA: Good. Forgot to turn it
15 over to you earlier.

16 COUNCIL MEMBER TRUE: That's all right.

17 CHAIRMAN CORRA: So, Council Members, we
18 need to take a vote. First a motion. The motion should be
19 to approve the proposed rule package presented to us by
20 DEQ, Solid and Hazardous Waste Division, with the
21 amendments that were -- that they noted at the beginning of
22 the presentation.

23 MR. RUBY: Mr. Chair.

24 CHAIRMAN CORRA: Yeah.

25 MR. RUBY: And the Statement of Principal

1 Reasons. They have to go together.

2 CHAIRMAN CORRA: Right. And the Statement
3 of Principal Reasons.

4 COUNCIL MEMBER BLAKE: I'll make that
5 motion, Mr. Chairman.

6 COUNCIL MEMBER BEDESSEM: Second.

7 CHAIRMAN CORRA: Council Member -- you good
8 with the wording?

9 Okay. So motion made by Council Member Blake,
10 seconded by Councilwoman --

11 COUNCIL MEMBER BEDESSEM: Bedessem.

12 CHAIRMAN CORRA: Bedessem.

13 All right. So any discussion, Council Members?

14 You know, I have one -- I should have asked this
15 question. But keeping the question to the Council and Jim
16 and Ryan. I noticed in reading this stuff that there's a
17 severability clause that was stricken. And I didn't go
18 back to see if it was added in another section, but the
19 severability clause suggests one part of that rule doesn't
20 fly, the whole rule goes down. So I just -- I point that
21 out. And if -- I think perhaps it's okay, Jim, for you
22 to -- and we can ask them.

23 MR. RUBY: Yeah. They're the ones that
24 have to answer it.

25 MS. ENGELS: Council Member Corra, if it's

1 okay, we can provide an answer, because that paragraph has
2 been stricken from most, if not all, the rules that we have
3 been presenting to the Council and have been revising based
4 on advice from the Attorney General's Office. So I'll let
5 Matt elaborate.

6 MR. VANWORMER: Mr. Chairman, the reason
7 our office has advised that we remove that provision from
8 this rule and others that DEQ and the EQC promulgate is
9 that courts that have looked at rulemaking in a similar
10 context, a lot of this is in federal cases, under the
11 federal Administrative Procedure Act. When they're looking
12 at the content rules, they presume severability now, and we
13 anticipate that if the Wyoming Supreme Court or other
14 Wyoming courts were asked to make the same decision, that
15 they would follow the line of logic and presume that an
16 error or defect in one component of the rule would not
17 jeopardize the remaining portions. So we recommended
18 removing the severability clause because it's unnecessary.

19 CHAIRMAN CORRA: Very good. Okay. Thank
20 you. Great.

21 Any other comments or discussion on the package?
22 Hearing none, we'll take a vote. All those in favor of the
23 motion please say aye.

24 MR. RUBY: Take a roll call vote.

25 CHAIRMAN CORRA: We'll ask for a roll call

1 vote.

2 So we'll start with Council Member Lenz.

3 COUNCIL MEMBER LENZ: Aye.

4 CHAIRMAN CORRA: Marge?

5 COUNCIL MEMBER BEDESSEM: Aye.

6 CHAIRMAN CORRA: Shane.

7 COUNCIL MEMBER TRUE: Aye.

8 CHAIRMAN CORRA: J.D.

9 COUNCIL MEMBER RADAKOVICH: Aye. Excuse
10 me. Aye.

11 CHAIRMAN CORRA: Stan.

12 COUNCIL MEMBER BLAKE: Aye.

13 CHAIRMAN CORRA: Ryan.

14 COUNCIL MEMBER GREENE: Aye.

15 CHAIRMAN CORRA: I vote aye as well. So
16 motion carries. The rules are promulgated.

17 Thank you very much for the presentation.

18 MS. STARK: Thank you.

19 MS. ENGELS: Thank you.

20 CHAIRMAN CORRA: All right. Very good.

21 (Hearing proceedings concluded

22 9:24 a.m., November 16, 2021.)

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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 November, 2021.


KATHY J. KENDRICK
Registered Professional Reporter

