

WWAB - Solid and Hazardous Waste

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1 WYOMING WATER AND WASTE ADVISORY BOARD

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5 RE: SOLID AND HAZARDOUS WASTE DIVISION

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TRANSCRIPT OF MEETING PROCEEDINGS

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9 Pursuant to notice duly given to all parties
10 in interest, this matter came on for meeting
11 on the 17th day of October, 2019, at the hour of
12 1:40 p.m., at the Oil and Gas Commission, 2211 King
13 Boulevard, Casper, Wyoming before the Wyoming Water and
14 Waste Advisory Board, Mr. Alan Kirkbride, Chairman,
15 presiding, with Mr. Brian Deurloo, Ms. Lorie Cahn, and
16 Ms. Marjorie Bedessem in attendance.

17 Mr. Andrew Kuhlmann, attorney for the Board;
18 Ms. Gina Thompson, Water Quality Division; Mr. Jerry
19 Breed, HW/VRP Program Manager; Ms. Sarah Bargsten, VRP
20 Project Manager; Ms. Cindi Martinez, Orphan Site Program
21 and Brownfields Program Supervisor; Ms. Suzanne Engels,
22 Permitting & Corrective Action Manager; Ms. Jody Weikart,
23 Solid Waste Permitting & Corrective Action Program,
24 District 1 Supervisor; and Mr. Craig McOmie were also in
25 attendance.

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

2 (Meeting proceedings commenced
3 1:40 p.m., October 17, 2019.)

4 CHAIRMAN KIRKBRIDE: The meeting is now
5 readjourned, and on tap is the Voluntary Remediation
6 Program. And we would -- Solid and Hazardous Waste
7 Division.

8 You folks want to introduce yourselves? And you
9 have the floor.

10 MR. BREED: Okay. Thank you, Chairman
11 Kirkbride.

12 Good afternoon, Chairman Kirkbride, Board
13 Members. I don't think there's any public here, but them
14 as well. I'll just refer to the Voluntary Remediation
15 Program as the VRP.

16 BOARD MEMBER CAHN: You guys have to
17 introduce yourselves now, right, on the record?

18 MR. BREED: I thought we could -- I'll
19 introduce them --

20 MS. THOMPSON: He'll do it as he goes.

21 MR. BREED: Yeah, as I go.

22 I'm Jerry Breed, the program manager for the
23 hazardous waste program and the voluntary remediation
24 program. I just wanted to introduce ourselves in the
25 voluntary remediation fact sheet presentations that we're

1 going to do.

2 Sarah Bargsten is the project manager with the
3 VRP, and she was the lead in developing Fact Sheet Number
4 30, Vapor Intrusion fact sheet. She worked closely with
5 the rest of the VRP team, as well as we hired nationally
6 recognized expert to help us with development of that fact
7 sheet.

8 With that fact we had to revise five other fact
9 sheets that are also in your package, but they're just to
10 take out references and those kinds of things.

11 And Cindi Martinez, she's the program supervisor
12 for Orphan Site Program and the Brownfields Program. And
13 she'll talk about the revisions to Fact Sheets Number 13
14 and Number 12. And the revisions to those two fact sheets
15 were just for TPH GRO cleanup groundwater.

16 Ben Lucky was the project manager lead on that
17 project. He just couldn't be here today. And he also
18 worked closely with the Solid and Hazardous Waste Division
19 Storage Tank Program, because they have Chapter 1 that also
20 relates to that TPH cleanup level. As well as the Water
21 Quality Division to make sure we were all consistent.

22 The handout that Sarah gave you is just a
23 printout of the one comment that we received from the
24 public, from Dale Anderson. And we just wanted you to have
25 that. That was about Fact Sheet 12 and Fact Sheet 13, but

1 his primary concern was that we weren't transparent during
2 the public comments period of providing the documents that
3 he thought should be available. So when we got his
4 comment, we uploaded the summaries of those changes to
5 those fact sheets so they were available to him and
6 everyone else.

7 And that's all I have. If you have any other
8 questions -- I'm just doing the introduction part. Cindi
9 and them will do the more detailed presentations of the
10 fact sheets.

11 CHAIRMAN KIRKBRIDE: Jerry, I've got a
12 question here. I may be chairman, but there's a lot of
13 stuff I don't know. What's the difference between a fact
14 sheet and rule and a -- and a --

15 BOARD MEMBER DEURLOO: Guideline.

16 CHAIRMAN KIRKBRIDE: In other words, what's
17 a fact sheet?

18 MR. BREED: The term came out about when we
19 first did the voluntary remediation program. So a guidance
20 is more specific. It tells a user more -- more what we
21 want without a lot of leeway in it. A rule is enforceable.
22 A guidance isn't enforceable and a fact sheet isn't
23 enforceable. So the way we developed fact sheets and I
24 think why we call them fact sheets, to be a little more
25 user friendly and give a lot more flexibility in terms of a

1 user wanted to step outside of that general flavor, the
2 general description of what we would like someone to do. I
3 think a guidance is more detailed and specific in how
4 that's laid out.

5 So ours are based on we ask -- the fact sheets
6 are outlined as questions, and there's an answer to the
7 question. And almost all of our fact sheets, it goes on to
8 further say if you don't want to do it this way, just talk
9 to us. Guidance documents don't normally say that.

10 CHAIRMAN KIRKBRIDE: Okay.

11 MR. BREED: Just the terminology.

12 CHAIRMAN KIRKBRIDE: Okay. Thank you.

13 All right. Proceed.

14 MS. BARGSTEN: Good afternoon. Thank you
15 for allowing me time to present information to you today.
16 Mr. Chairman, I just want to make sure as I know up front,
17 as I go through my presentation, will there be questions
18 along the way or should I just proceed unless interjected?

19 CHAIRMAN KIRKBRIDE: Why don't you proceed,
20 and I think we'll be fairly polite. If we --

21 MS. BARGSTEN: There will be some
22 technical terms. And I apologize I didn't go into a lot
23 of definitions, but I'm happy to explain anything at the
24 end.

25 CHAIRMAN KIRKBRIDE: Thank you.

1 MS. BARGSTEN: My name is Sarah Bargsten.
2 I'm a project manager of sites and the cleanup programs
3 under the Wyoming DEQ, Solid and Hazardous Waste Division.

4 Today I will present a new fact sheet that
5 addresses vapor intrusion and respective changes to VRP
6 fact sheets. First, I'll provide some background
7 information. Then I will discuss the process that went
8 into development of Fact Sheet Number 13, Vapor Intrusion,
9 and revised intrusions of existing VRP fact sheets.

10 The new fact sheet, revised fact sheets, and
11 detailed changes to the fact sheets have been available on
12 the Wyoming DEQ website to support the public notice and
13 comment period for this meeting.

14 Lastly, I'll present some examples for using Fact
15 Sheet 30 before request to open the floor to comments.

16 In order to finalize the new and revised fact
17 sheets, the Wyoming DEQ will consider any feedback from the
18 Wyoming Water and Waste advisory board in addition to any
19 public comment. After I speak on vapor intrusion, Cindi
20 Martinez will discuss additional changes to VRP fact
21 sheets.

22 In 2015, the U.S. EPA released two technical
23 guides on vapor intrusion. The OSWER technical guide
24 addresses a broad universe of sites where vapor intrusion
25 may be a potential concern. The technical guide for

1 petroleum vapor intrusion is a companion to the OSWER
2 guide, but it is specifically to petroleum hydrocarbon
3 releases at underground storage tank sites. Both guides
4 were designed to promote national consistency in evaluating
5 the vapor intrusion pathway while providing a flexible
6 science-based approach to protection of human health.

7 These images from the Geosyntec website are for
8 informational purposes only. They are not intended as an
9 endorsement or infringement of copyright laws. Over the
10 years most states have developed vapor intrusion guidance
11 that is specific to cleanup programs in their state. The
12 Wyoming DEQ utilized program funds to contract Geosyntec
13 through the professional services process. Geosyntec is a
14 demonstrated leader in the science of vapor intrusion and
15 lent their expertise to the development of Fact Sheet 30.

16 THE REPORTER: Can you slow down just a
17 little.

18 MS. BARGSTEN: Yes. The new fact sheet has
19 the familiar VRP fact sheet format with an easy to follow
20 process. As with the other VRP fact sheets, Fact Sheet 30
21 allows for a flexible approach to accommodate unique
22 considerations at each VRP site.

23 The flowchart at the right includes
24 investigation, screening, and mitigation, and is on page 3
25 of Fact Sheet 30 in your binders. This helps volunteers

1 get a big-picture idea of what is required for a VRP site
2 with a potential vapor intrusion concern. In addition,
3 Fact Sheet 30, in Attachment A on page 14, provides an
4 example vapor intrusion site conceptual model, which
5 includes a visual representation and narrative description
6 of exposure pathways at a site. The vapor intrusion site
7 conceptual model is essential for decision making through
8 the VRP process.

9 Lastly, the new fact sheet includes a list of
10 resources for further reading and understanding. Many of
11 these are from the U.S. EPA and ITRC, but there is also one
12 from API on modeling, and one from Montana DEQ that
13 addresses background sources of vapor intrusion that would
14 likely be applicable at Wyoming sites as well.

15 To explain how a volunteer might navigate this
16 new VRP fact sheet, I have three simplified scenarios for a
17 new VRP site that is confirmed to the presence of volatile
18 contaminants in the subsurface. Note that vapor intrusion
19 screening levels are referred to as VISLs in these
20 examples, as well as Fact Sheet 30.

21 The first example is for a VRP site that has had
22 an ongoing coordinated solvent release until very recent.
23 Groundwater of the site is approximately 20 feet below
24 ground surface, with a fairly low indoor air VISL for TCE,
25 as indicated by the yellow arrow, and the possibility that

1 a vadose zone source remains, the volunteer opts to install
2 a mitigation system in the building at the VRP site to
3 protect building occupants.

4 The mitigation system is similar to radon systems
5 that are common in this region, and it will operate until
6 all cleanup is complete at the site.

7 The second example is also a VRP site with a
8 chlorinated solvent release, except that it occurred
9 decades ago. Old sites impacted with chlorinated compounds
10 often continue to have dissolved contaminants in
11 groundwater long after vadose zone sources are gone.
12 Initial site characterization data have been collected to
13 develop an initial vapor intrusion site conceptual model.

14 The first two quarters of data indicate the
15 concentrations are below the target groundwater VISLs in
16 the column with the green arrow. Indoor air data that were
17 collected from the building at the VRP site during the
18 summer indicate that the concentrations met the VISLs for a
19 1 in 1 million incremental cancer risk, in the column with
20 the blue arrow.

21 Before screening can be conducted, the criteria
22 on page 5 of Fact Sheet 30 must be met. Therefore, the VRP
23 project manager recommends that the volunteer conduct
24 further investigation at the site. Initially the volunteer
25 will collect at least two more quarters of groundwater data

1 to meet the data quality objectives that were established
2 in the work plan, and also sample indoor air during heating
3 months to better understand a worst-case scenario for
4 exposure by building occupants. After that, the volunteer
5 can continue investigating the vapor intrusion pathway or
6 elect to install a mitigation system in the building at the
7 site.

8 The figure on this slide is used for illustration
9 purposes only, and is from the EPA technical guide for
10 addressing petroleum vapor intrusion at leaking underground
11 storage tank sites, which is referenced in Fact Sheet 30.

12 The third vapor intrusion example is a petroleum
13 release associated with an underground storage tank. This
14 site was not eligible for cleanup under the Storage Tank
15 Program and was entered into the VRP. The building at the
16 site was assumed to be within the lateral inclusion zone,
17 which can be calculated using EPA guidance.

18 Site characterization is complete with soil gas,
19 soil, and groundwater data. There is LNAPL and
20 dissolved-phase contamination in the subsurface at the
21 site, but fuel additives are not contaminants of concern.
22 Utility access points have been screened to rule out the
23 possibility of them acting as a conduit for vapors.

24 The distance between the building slab and the
25 highest extent of contamination, in this case it is the top

1 of the smear zone, is greater than 15 feet. Therefore, the
 2 vapor intrusion pathway is screened out for this site.
 3 Details of each revision to the fact sheets are included in
 4 your binder. As noted by Board Member Cahn, some page
 5 numbers for the fact sheet revisions were incorrect.

6 The fact sheet revisions are necessary to ensure
 7 consistency with the new vapor intrusion fact sheet, and
 8 largely involved changing references from the OSWER
 9 technical guide to Fact Sheet 30.

10 In addition, there are some changes to reflect
 11 current state of the practice with respect to modeling.
 12 While modeling is allowed under the VRP, empirical data is
 13 preferred. In addition, the Johnson-Ettinger Model is no
 14 longer relied upon to predict indoor air concentrations.
 15 Rather, it may be used as a line of evidence for buildings
 16 that have yet to be constructed.

17 Mr. Chairman, would you like me to read through
 18 each item, or just address questions that anyone may have
 19 with regard to the revisions to existing fact sheets?

20 CHAIRMAN KIRKBRIDE: I would not think we
 21 need to read through it all, so I think we can --

22 MS. BARGSTEN: Okay. Then I'll proceed.
 23 Thank you.

24 Through the development of this presentation for
 25 the Board, an error in ambiguity were identified at page 5

1 of VRP Fact Sheet 30. Item B was corrected to read as
2 follows. If the only source of volatile compounds below a
3 building is dissolved-faced concentrations and groundwater,
4 then groundwater samples collected from adequately located
5 wells that are screened across the water table and
6 extending no more than 10 feet below the water table of the
7 time of sampling may be used for screening purposes.

8 Item F was clarified to read as follows. If any
9 of the above conditions are not met, as applicable, then
10 data gaps may exist and will need to be filled following
11 applicable VRP fact sheet procedures before VISLs can be
12 used for screening purposes.

13 BOARD MEMBER CAHN: Can you go back to
14 that. Just give us a chance to --

15 MS. BARGSTEN: Yes.

16 BOARD MEMBER CAHN: Because this is the
17 first time we're seeing it.

18 MS. BARGSTEN: Yes.

19 BOARD MEMBER CAHN: Just give us a
20 chance --

21 MS. BARGSTEN: Absolutely.

22 BOARD MEMBER CAHN: -- to digest it.

23 Can you -- Mr. Chair.

24 CHAIRMAN KIRKBRIDE: Yes.

25 BOARD MEMBER CAHN: Can you just give us a

1 little explanation as to why these changes were made?

2 MS. BARGSTEN: Yes.

3 BOARD MEMBER CAHN: That would be helpful.

4 MS. BARGSTEN: Board Member Cahn, I'd be
5 happy to. Mr. Chairman. Board Member Cahn.

6 So the -- Item B was a cut and paste error. If
7 you look at Item C in Fact Sheet 30, on page 5, it has
8 similar language, and I think it was just an error. Letter
9 F was -- I think in an attempt to make -- make it a
10 positive -- an affirmative statement instead of a negative
11 statement, it wasn't clear. So we stuck with the initial
12 negative statement.

13 BOARD MEMBER CAHN: Thank you.

14 CHAIRMAN KIRKBRIDE: Okay.

15 MS. BARGSTEN: Mr. Chairman, may I just
16 proceed, or do we have any other --

17 CHAIRMAN KIRKBRIDE: I think you can
18 proceed.

19 MS. BARGSTEN: Okay. I want to give
20 everyone plenty of time.

21 Okay. So this concludes my portion of the VRP
22 presentation. Mr. Chairman, I would like to hear any
23 questions or comments at this time, unless you would like
24 to proceed with the next segment of the VRP presentation.

25 CHAIRMAN KIRKBRIDE: Yes. Brian?

1 BOARD MEMBER DEURLOO: I'm fine.

2 BOARD MEMBER BEDESSEM: I just had a quick
3 question. In the development of the fact sheet and prior
4 to hiring Geosyntec and so forth, had you -- I imagine --
5 do you -- you had gotten comment from the public and from
6 the folks you work with, so on and so forth, to know what
7 you wanted in this.

8 MS. BARGSTEN: Mr. Chairman. Board Member
9 Bedessem. The process for developing fact sheets usually
10 depends on significant developments in the field of
11 remediation, vapor intrusion being one of them. It's
12 essentially an emerging pathway of concern. And with the
13 EPA document that came out in 2015 and subsequently states
14 coming out with their own guidance, meant that we should
15 follow suit.

16 We did have internal discussions about the
17 content and we knew it should look and feel similar to
18 other fact sheets with the flexibility. And maybe Jerry
19 has more to add to that.

20 MR. BREED: Yeah, I think -- so the fact
21 sheets that we had that were revised had all the references
22 to the EPA guidance and other guidance documents. So we
23 relied on those guidance documents when we were working
24 with volunteers on the fact -- or on vapor intrusion issues
25 or in our orphan site projects, where we have contaminated

1 groundwater that's a vapor intrusion issue.

2 So this was an attempt to update all the current
 3 information and start using the VISLs. We did training
 4 internally, which is Geosyntec. So all the staff are fully
 5 aware what the guidance is and how to use VISLs and how you
 6 do the samples and all those types of things. So I think
 7 putting all in one place, just like we have remediation, we
 8 have a risk assessment fact sheet or we have a risk
 9 assessment fact sheet. So it was a topic that needed its
 10 own -- own place versus going to all these other fact
 11 sheets and seeing those references and everybody goes to
 12 EPA to see what it is. So ours was just a culmination to,
 13 I think, make it more transparent to users. I don't know
 14 if that answers your question.

15 BOARD MEMBER BEDESSEM: Well, that sort of
 16 helps. I mean, I -- I think this is a great arrangement to
 17 have everything in one place. It's just a wonderful thing.
 18 It's a lot less confusing for people that are trying to
 19 meet the requirements. And having that internal training
 20 is a fantastic plus. So -- and -- was ITRC involved in
 21 this at all?

22 MR. BREED: No. They weren't involved --

23 BOARD MEMBER BEDESSEM: Okay.

24 MR. BREED: -- in the process of developing
 25 this.

1 BOARD MEMBER BEDESSEM: Okay.

2 MR. BREED: So we used their guidance
3 document. The consultant we did hire is nationally
4 recognized. I think he's helped other states. They have
5 helped quite a bit on our orphan sites. Those are like in
6 the late 2000s, 2009 when we started those. And so in
7 protrusion, science just keep moving forward, very rapidly
8 just keeps changing, and to keep up with it, you have to
9 have contacts that are keeping up with it at that speed,
10 because it's a very technical, complicated subject.

11 BOARD MEMBER BEDESSEM: I think it's
12 wonderful it's all in one place. You found all the
13 locations you have to change references for. So, anyway, I
14 realize it's very different than a rule where you don't
15 have that kind of public comment and so forth. But it
16 sounds to me like you've had a very excellent pathway to
17 get to the point you're at. So thank you.

18 CHAIRMAN KIRKBRIDE: Lorie.

19 BOARD MEMBER CAHN: I just had just a
20 suggestion for clarification. On page 12, Item 11, second
21 paragraph, I would -- there's so many acronyms in here.
22 And, for instance, myself, I wasn't familiar with AARST,
23 A-A-R-S-T. I had to look it up. I'm familiar -- you know,
24 familiar with SDCP, but maybe just spell them out.

25 MS. BARGSTEN: Sure.

1 BOARD MEMBER CAHN: That may be just
2 simple.

3 MS. BARGSTEN: Sure.

4 BOARD MEMBER BEDESSEM: Maybe the first
5 time.

6 BOARD MEMBER CAHN: Yeah, that's the only
7 time they're using them, so...

8 That's all I have.

9 MS. BARGSTEN: Thank you.

10 BOARD MEMBER BEDESSEM: Then also I wanted
11 to thank you guys for making the Board aware of your
12 endeavors, because I know you're not required to do that.
13 So just appreciate that, that you provided it. So thank
14 you.

15 MR. BREED: We also appreciate your
16 input, because I think it's important to have it reviewed
17 by other parties to make sure we're on task and it's
18 correct.

19 CHAIRMAN KIRKBRIDE: Okay.

20 MS. BARGSTEN: Mr. Chairman, thank you.
21 And if anyone has any additional questions, feel free to
22 contact me by phone or email.

23 And Cindi Martinez will now speak on VRP fact
24 sheet changes and conclude the VRP presentation.

25 MS. MARTINEZ: Thank you.

1 Good afternoon, Mr. Chairman, Advisory Board
2 members, any members of the public. I'm Cindi Martinez.
3 I'm the Orphan Site/Brownfields Remediation Program
4 supervisor. And I would like to present the summary of
5 changes to Fact Sheet Number 12 and Fact Sheet Number 13.

6 And, Gina, is that the -- could I get the
7 strikeout, please?

8 MS. THOMPSON: Sure.

9 MS. MARTINEZ: First changes to Fact Sheet
10 Number 12, Soil Cleanup Levels. The table found on page 14
11 of 24, Section 3, tables for petroleum hydrocarbon
12 contamination.

13 Yeah. Thank you.

14 Total Petroleum hydrocarbon, otherwise known as
15 TPH; gasoline range organics, also known as GRO; carbon
16 range, C4 through C9; and diesel range organics known as
17 DRO, carbon range 10 through C24, groundwater cleanup
18 levels and associated footnotes were updated for clarity in
19 response to a question from a volunteer, as well as to be
20 consistent with Wyoming Solid Waste Division Rules and
21 Regulations Chapter 1, Storage Tank Program, STP, Storage
22 Tanks, dated July 2018.

23 No formal presentation or slide presentation will
24 be provided here today as the VRP considers the changes to
25 Fact Sheets 12 and 13 to be fairly minimal and results in

1 slightly more conservative values as described by the
2 following. TPH DRO cleanup levels of 10 milligrams per
3 liter was removed from this table and a revised footnote b.
4 was added for cumulative TPH DRO and GRO, in that the
5 cumulative concentration must be below 10,000 micrograms
6 per liter or 10 milligrams per liter, for consistency with
7 STP rules.

8 Default cleanup level in the table for TPH DRO is
9 now 1.0 milligrams per liter with footnotes a. and b.
10 Previous footnotes a. and b. were combined into a revised
11 footnote a. to include updated STP rule reference, and
12 added the phrase "In the TPH DRO carbon range" for clarity
13 regarding what constituents of concern must be present or
14 not present in order for the 1.0 milligram per liter
15 cleanup level for TPH DRO to be applicable.

16 And lastly, previous footnote c. was removed
17 based on the TPH DRO 10 milligrams per liter change
18 described above.

19 So for clarity and illustration purposes, I would
20 like to present three example site scenarios. So Scenario
21 Number 1, GRO concentration in groundwater is 6.6
22 milligrams per liter. DRO concentration in groundwater is
23 3.3 milligrams per liter, resulting in a total
24 concentration of the two, equaling 9.9 milligrams per
25 liter. No other constituents of concern in the DRO carbon

1 range are present above the respective maximum contaminant
 2 levels or drinking water equivalent levels. This scenario
 3 is acceptable as accumulative DRO and GRO concentrations
 4 are below the 10 milligrams per liter.

5 Scenario Number 2. DRO concentration in
 6 groundwater is 10 milligrams per liter. GRO is not
 7 present, and no other constituents in the DRO carbon range
 8 are present above their respective MCLs or drinking water
 9 equivalent levels. This scenario is also acceptable.

10 Scenario Number 3. Constituents of concern in
 11 the DRO carbon range are present above their MCLs or
 12 drinking water equivalent levels. DRO cleanup level for
 13 groundwater is then 1.0 milligrams per liter.

14 And this is the table -- if you have the other
 15 one, Gina. This is the final table. You can just scroll
 16 down. This is the final table. It spreads it in both Fact
 17 Sheet 12, Soil Cleanup Levels, and Fact Sheet 13,
 18 Groundwater Cleanup Levels. The tables are identical, and
 19 the changes to both tables and the footnotes are the same
 20 in both fact sheets.

21 If you have any questions at this time, this
 22 concludes this very brief change to the fact sheets.

23 BOARD MEMBER BEDESSEM: Chairman Kirkbride.

24 CHAIRMAN KIRKBRIDE: Yes.

25 BOARD MEMBER BEDESSEM: I have a question.

1 So, yeah, I -- I totally understand the tables
2 and the levels and all that. Was this change made to the
3 fact sheet and it's on the website with this change?

4 MS. MARTINEZ: It is. It is. And it has
5 been for a little while.

6 BOARD MEMBER BEDESSEM: Because I notice
7 all the dates on bottom of these are a year ago.

8 MS. MARTINEZ: Right.

9 BOARD MEMBER BEDESSEM: So it's since
10 October 30, 2018 this change has been made.

11 MS. MARTINEZ: I believe that's correct.

12 MR. BREED: What happened is the -- when it
13 was converted to a PDF, for some reason it uploaded to the
14 website, we just noticed this not very long ago that it was
15 the wrong date. But it was right fact sheet, so I don't
16 know how the mixup got -- but somebody noticed it was the
17 wrong date. So it should be correct now. Because it was
18 uploaded like in February or March, or something like that.

19 BOARD MEMBER BEDESSEM: So they should have
20 marked -- I was curious, because they were different dates
21 on different pages, so I didn't know if you were keeping
22 the dates based on when the revisions were or just this
23 newest one will all have whatever the March date is on all
24 the pages.

25 MR. BREED: The latter.

1 BOARD MEMBER BEDESSEM: Okay. Sometimes
2 when we have documents, we have to track pages with
3 different dates, so I was curious if you had to do that
4 too.

5 MS. MARTINEZ: We do. We like to keep
6 track of the revisions, as well as the date. And I'm sure
7 this probably just didn't get changed in the Word version
8 uploaded to PDF.

9 BOARD MEMBER BEDESSEM: Gotcha.

10 MS. MARTINEZ: Got off there somewhere.

11 BOARD MEMBER BEDESSEM: Okay. So it's
12 sometime in 2019. Okay. The content is perfectly
13 understandable. The explanations were good. The examples
14 were good.

15 MS. MARTINEZ: Thank you.

16 CHAIRMAN KIRKBRIDE: A milligram per liter
17 of diesel, can you taste it?

18 MS. MARTINEZ: I'm not sure what that level
19 is. I believe it's documented, but I am not sure if it is
20 a milligram per liter.

21 CHAIRMAN KIRKBRIDE: Or other contaminant,
22 as you mentioned. I just wanted --

23 MS. MARTINEZ: That's a good question. I
24 don't know the answer to that. Mr. Chairman, I'm not sure.

25 MR. BREED: The statute has a taste, odor,

1 color component for cleanup of groundwater, but we don't
2 have a quantitative evaluation for those. And so you can
3 go to -- EPA has some scale out there for odor and color,
4 but they don't have anything for taste. And then I'd try
5 to do a search states, and even Region 8 states. And, you
6 know, just people kind of laugh at you if say do you have
7 taste, because everybody's taste is different.

8 BOARD MEMBER BEDESSEM: And nobody wants to
9 volunteer.

10 MR. BREED: Nobody wants to volunteer. So
11 I don't know -- I don't know what the concentration would
12 be.

13 CHAIRMAN KIRKBRIDE: I'm just wondering if
14 people can realize -- have a problem and not realize it.

15 MR. BREED: Oh, definitely. I mean, when
16 you get to other contaminants, like, you know, dry cleaning
17 contaminants and those kinds of things, there's not a -- at
18 low, low, low concentrations, there's no taste or odor or
19 anything, you wouldn't know that you were drinking
20 benzenes, the same way, at low concentrations.

21 CHAIRMAN KIRKBRIDE: Uh-huh. Anything
22 else?

23 BOARD MEMBER BEDESSEM: That's not an
24 uplifting note, but...

25 CHAIRMAN KIRKBRIDE: Okay.

1 MS. MARTINEZ: Thank you for the
2 opportunity to present. I think that concludes our
3 presentation, unless you have other questions.

4 BOARD MEMBER DEURLOO: Did you drive all
5 the way from Cheyenne?

6 MS. MARTINEZ: Yes, we did.

7 BOARD MEMBER DEURLOO: All right. Tailwind
8 on the way home.

9 MR. BREED: Right.

10 MS. BARGSTEN: Mr. Chairman and Board,
11 would anybody like my business card for contact?

12 BOARD MEMBER BEDESSEM: Uh-huh.

13 MS. BARGSTEN: Is that okay if I come up?

14 CHAIRMAN KIRKBRIDE: Sure.

15 BOARD MEMBER CAHN: Mr. Chair, I have a
16 question.

17 CHAIRMAN KIRKBRIDE: Yes.

18 BOARD MEMBER CAHN: So in response to
19 Mr. Anderson's comment, I just -- I need a little more
20 explanation as to why you wouldn't have put a
21 redline/strikeout version on the website, just to make it
22 simple for somebody to see. Obviously, it doesn't pertain
23 to the new one, but the old one. It just seems really
24 simple, so...

25 MR. BREED: Right. And we should have. I

1 think part of it was we had the summaries of where we made
2 the changes, but they were kind of -- especially for some
3 of the fact sheets that they were kind of hard to follow.
4 But we didn't have the old version of Fact Sheet 13, so we
5 didn't have a way to make redline/strikeout of it, because
6 we wanted to use that original version, because that was
7 back in the day, and we've done so much stuff with all the
8 stuff on our servers, we just don't have it. So we only
9 have Fact Sheet 12 that we could do a redline/strikeout.
10 So we thought it might be a little confusing to put one up
11 and not the other. So we just decided summaries would be
12 the best. And I think Mr. Anderson calling Sarah and
13 talking to her about that helped resolve an issue with that
14 one member of the public, but...

15 BOARD MEMBER CAHN: And so did you contact
16 Mr. Anderson after you had the revisions up to say, okay,
17 now the revisions are on the website, the summary -- the
18 summary page of the revisions?

19 MS. BARGSTEN: Mr. Chairman. Board Member
20 Cahn, no, I did not follow up with him. My understanding
21 of the process of responding to comments is a little vague,
22 so I thought it was through this process that he would know
23 how his comment was responded to. I believe that he mainly
24 just wanted to make sure we knew that it was not adequate
25 as it was.

1 BOARD MEMBER CAHN: Then I guess my only
2 other concern, you know, your response is pretty short.
3 Through the process of adding new and revised VRP fact
4 sheets, DEQ is committed to providing adequate information
5 to the public, responding to requests in a timely manner.
6 And that's really a nothing response. I mean, I'm sorry,
7 but, you know, I -- might be better to say thank you for
8 bringing this to our attention. You know, we've put
9 these -- the summary -- we didn't have the original for
10 these. I mean, I think that's a good excuse, you know.
11 And then -- and then just say, you know, we've -- we're
12 putting the summaries up, and in the future when we have
13 the originals, we will do redline/strikeout or something.
14 Just sort of seemed like, okay, we're -- so, anyway, just
15 in terms of transparency, I think it's also nice to tell
16 somebody who's bothered to comment the reasonable comment
17 that, thank you, we appreciate it, you know, here's what
18 we're going to do in response to your comment, so...

19 MS. BARGSTEN: Mr. Chairman. Board Member
20 Cahn, at the time I didn't know what our response would be
21 because our VRP process is a little bit different than
22 rules process. So I wasn't sure what we were necessarily
23 required to do and how fast to respond to him in an
24 expedited way. So -- and, furthermore, I wasn't directly
25 involved with Fact Sheet 12 and 13 revisions, so I wasn't

1 aware of that situation.

2 MR. BREED: I think your comment is very
3 well taken, and we should have responded that way. We can
4 do that easily in the future. I think it's a good idea to
5 put redline/strikeouts up there, if we have them, instead
6 of just summaries. I appreciate your comment.

7 BOARD MEMBER CAHN: Thank you.

8 MS. BARGSTEN: Yes, thank you.

9 CHAIRMAN KIRKBRIDE: Is it appropriate for
10 public comment? I don't know that -- if anyone else in the
11 room --

12 BOARD MEMBER BEDESSEM: I think everyone
13 works for DEQ.

14 CHAIRMAN KIRKBRIDE: -- has something to
15 say.

16 BOARD MEMBER BEDESSEM: Everyone works for
17 DEQ.

18 CHAIRMAN KIRKBRIDE: Okay. You all know
19 what you're doing. Great.

20 Okay. Well, thank you very much.

21 MS. MARTINEZ: Thank you. We appreciate
22 it.

23 MS. BARGSTEN: Thank you.

24 CHAIRMAN KIRKBRIDE: We can move on to the
25 next presentation.

1 All right, folks. Welcome. And you can
2 introduce yourself and proceed.

3 MS. ENGELS: Good afternoon. I'm Suzanne
4 Engels. I'm the program manager for the Solid Waste
5 Permitting and Corrective Action Program. And today we are
6 presenting three different topics to the Board. The first
7 is an update on the Cease and Transfer and Landfill
8 Remediation Program, solid waste guideline on C&D annual
9 report forms. And then we are bringing back our proposed
10 Chapter 18 for the Solid Waste Rules and Regulations
11 specific to coal combustion residuals.

12 And today to present is myself, Jody Weikart, and
13 Craig McOmie. Our administrator sends his regrets, Luke
14 Esch, that he's not able to join us today. He had a few
15 meetings in Cheyenne where he was not able to travel.

16 So with that, I think on the agenda we start off
17 with Cease and Transfer and Landfill Remediation Program
18 updates. So we'll just pass microphone down the way.

19 MR. MCOMIE: Yes. I have a such a booming
20 voice, I hopefully don't need too much microphone. But
21 thank you for the invitation.

22 Mr. Chairman. My name is Craig McOmie. I manage
23 the Cease and Transfer and the Landfill Remediation
24 Programs for the Department. It's been a while. It's been
25 over a year since I've given an update, so I think we might

1 have some new members, so I might delve a little bit deeper
2 in the premier slide here, just to give you a little on the
3 Cease and Transfer Program.

4 The Cease and Transfer Program was enacted in
5 2013 by the legislature to assist with regionalization of
6 small landfills in the larger regional landfills, with the
7 ultimate goal of controlling costs and also closing down
8 small landfills that were leaking and didn't have the
9 financial resources to line pits and comply with the --
10 with current rules as put forth.

11 We started out in that program with 52 entities.
12 There were 52 projects on that list. And from there, not
13 all -- some entities have -- would have two projects,
14 because you would first build a transfer station, and,
15 second, to go to a closure phase. Some of the entities had
16 had closures -- or built transfer stations under royalty
17 grants, countywide consensus, and so forth, before this
18 program.

19 So the program essentially comes in with grants
20 and loans to assist with the construction of a transfer
21 station, and with the closure of the landfill after the
22 transfer station's built. This has been a very successful
23 program in my opinion, which I might be biased a little
24 bit. But it's been a very good program to date.

25 As you'll see, so far we've -- moving to the

1 first slide that you have there is 29 projects have been
2 funded, which 11 of those were transfer stations, and 18
3 were closures. 16 of those 29 have been completed, which
4 means we still have 13 projects that are in some phase of
5 construction or preconstruction going on right now. Again,
6 getting those projects ready.

7 On the list remaining are 20 projects. So if
8 you're doing the math, and I said we started with 52, some
9 have come off. They have gone through a process whereas
10 they could either do a performance-based design and
11 realized they wanted to remain open or may have received
12 financing from some other source to line their cells and
13 continue in operations.

14 Others have been added to the program that have
15 come through and then their financial, or cost accounting,
16 if you will, and realize that they would like to enter the
17 program with assist to close and regionalize.

18 We had a very successful legislative session last
19 year. I think last year we had one or -- one and a half,
20 if you will, projects that quite didn't get all the way
21 through in the program, and that was due to lack of
22 funding. So legislature, as they've been known to do
23 throughout this program, provided an additional \$14 million
24 last year to be given out in grants and/or loans. We
25 provide zero-interest loans, so it's kind of an attractive

1 program versus some other interest-bearing options they
2 might have.

3 Several years back this program began as a
4 75 percent program with a 25 percent local match. We got
5 to certain entities that just didn't have the financial
6 means to do a 25 percent match through conventional
7 methods, so they ended up making this if you could
8 demonstrate financial hardship, you could get a hundred
9 percent of projects funded. And so that's where the
10 zero-interest loans now come in to help them with their
11 match, and they can now go above 75 percent grade,
12 depending on the facility.

13 An example would be a Manville that, you know,
14 they had -- their closure was substantial. It wasn't the
15 most horrible, but it was \$500,000 with 46 customers and
16 user rates, we couldn't possibly raise their rates high
17 enough to cover their match in a short period. So that's
18 some of the tweaks that have been made to the program that
19 have made it even more successful in assisting with
20 regionalization of solid waste in Wyoming.

21 As you can see, on Tuesday we submitted our
22 annual report. Every year we have to report back to
23 legislature with a report on progress in the program, needs
24 of the program, entities that have a window there of a
25 couple months where they can come back and ask to be put on

1 the program, if they're not, or, in some instances, they
2 can come back and ask for additional funding if they have
3 an engineer's estimate. So, in essence, a lot of the
4 estimates that were in that program were estimates that
5 were given by the Department for what we would think it
6 would cost, but because of different areas of the state
7 where it's more expansive or whatever happens, bids might
8 come in higher. We do have the opportunity to revise these
9 costs in the program and go back and have that approved by
10 the legislature.

11 I'll yield, Mr. Chairman, if you have any
12 questions on that program.

13 CHAIRMAN KIRKBRIDE: How about a quick
14 fundamental question.

15 MR. MCOMIE: Absolutely.

16 CHAIRMAN KIRKBRIDE: What's a transfer
17 station? And I know -- I know one in Cheyenne. What --
18 define it, and how does it fit into a landfill program that
19 takes solid waste?

20 MR. MCOMIE: Sure. Mr. Chairman, what
21 people historically have done is have an open landfill,
22 where you traditionally drive down in the pit and then
23 discard their waste into the working phase, as we call it.
24 A transfer allows them, now -- as I try to tell them it's
25 upsell -- you're now going into an enclosed building. You

1 tend to be on paved roads and you're dumping on a concrete
2 floor. From that point it's taken -- during the program,
3 we promote a number of things. One of the things we always
4 promote is safety with respect to segregation of the
5 commercial versus -- versus private. So when those
6 transfer stations, we try to have dedicated places that
7 each party dumps to keep the commingling so people aren't
8 getting run over by trucks, because they can tend to be a
9 small facility. But as most them are dealing with less
10 than 20 tons per day of waste, there's not a lot of waste
11 coming in. But once they come it on the transfer station
12 floor in the enclosed facility, then it's then moved and
13 loaded into a truck. And it can be a roll-off, which is
14 what you see at a construction site, or it can be even a
15 walking floor trailer, which is a semi trailer where the
16 slats actually walk the garbage out once they're inside of
17 it.

18 So it's really -- I do liken it as an upgrade.
19 One of the things I really particular like about those with
20 respect to solid waste management is that it allows for the
21 screening of waste. So as waste comes in, you have a much
22 better opportunity before the loader operator starts
23 pushing it over, or whatever, to actually look at that
24 waste and screen for any hazardous waste that might be in
25 there. Even if it's allowable waste, like latex paint or

1 something, it's not really hazardous, but it gives you the
2 opportunity to look at that, make sure it's not an
3 oil-based product, or to even segregate it for -- pull out
4 cardboard and other things that are recyclable.

5 That's another component of the program that we
6 require people to look at is diversion opportunities. So
7 as they get the funding, they have to address that through
8 us and tell us what are you going to do about diversion?
9 Are you going to have a composting component to this, or
10 are you going to have actual recycling with segregation of
11 plastics, your traditional commodities, aluminum, and all
12 those?

13 And so we do fund those as well. If they ask for
14 that component, they can have a separate area in there for
15 recycling. That is also eligible for funding. So that
16 helps them with the bottom line, also, because the more you
17 divert locally there, that's less you're shipping for the
18 eventual burial in whatever regional landfill you go to,
19 which saves them money on the tipping fees and helps offset
20 those costs.

21 CHAIRMAN KIRKBRIDE: Thank you.

22 BOARD MEMBER BEDESSEM: Mr. Chair, quick
23 question.

24 CHAIRMAN KIRKBRIDE: Yes.

25 BOARD MEMBER BEDESSEM: Kind of to add to

1 what Craig said. If we're not talking about the individual
2 ones that you're talking about, community, they're -- you
3 know, the regular garbage trucks that pick up individual
4 homeowners. Previously without the transfer station, they
5 would go directly to the landfill. With transfer station,
6 they'd go to the -- they'd go to the transfer station, and
7 then a larger vehicle would then take all the refuse from
8 lots of garbage trucks and move that to the landfill. So
9 that allows them more economically to have a landfill at a
10 farther location away from where the collection is so that
11 you can have regional landfills, and it's -- it's not so
12 onerous. You don't have a legion of -- the garbage truck
13 isn't driving to the regional landfill. So that's why two
14 things sort of tied together at the hip as far as closing
15 the local landfills and installing transfer stations and
16 using the regional ones.

17 MR. MCOMIE: Absolutely. Thank you, Member
18 Bedessem. That does capture -- so you'll take the packer
19 trucks that comes to pick up your alley waste, for
20 instance, and you'll take three or four of those trucks in
21 one of the larger semis for consolidation. Once you start
22 the regionalization, that's the -- that's the problem that
23 some smaller states face, is that it's so far between
24 entities. So, you know -- I mean, for instance, Baggs
25 comes all the way to Casper with their solid waste. They

1 do have Rock Springs as option, but they chose to come to
2 Casper, as does Rawlins and Douglas, Glenrock, Kaycee. So
3 instead of running those packer trucks up and down the
4 road, you consolidate that into larger semis, and it's more
5 economical.

6 CHAIRMAN KIRKBRIDE: Okay.

7 MR. MCOMIE: Seeing no other questions, I'm
8 going to move on to landfill remediation. So that's
9 another program that kind of is coupled with this a little
10 bit. And that a lot of those in 2006 through 2010,
11 actually, we began installing groundwater monitoring
12 networks at all of the landfills in the state. Most
13 landfills had some wells, but they weren't necessarily
14 adequate to detect a release.

15 There was \$7.9 million provided by the
16 legislature to assist with the installation of those
17 monitoring wells. What we found when we installed these
18 monitoring wells is that a very large number, 76 percent,
19 of the landfills looked at at that time, which were around
20 99 landfills -- we tend to study 112 total -- were leaking
21 in some fashion and had, you know, SSIs, or statistically
22 significant increases, from the upgradient to the
23 downgradient wells.

24 So because of that, that led to the conversation
25 that created Cease and Transfer, that we needed to get a

1 handle and help close or line small leaking landfills, but
2 in addition to that, we looked at network of 52 that were
3 operating. So, as I said, we studied 112 in total.

4 This program, after the monitoring networks were
5 in place, it was found that we would need to begin
6 remediation at some of these sites. So we went through a
7 prioritization list, which we actually ran through the WWAB
8 to get your counsel on what we think parameters that we
9 ought to be looking at and things like that.

10 And so obviously out of that was born distance to
11 receptors was the first and most obvious. Then we'd look
12 at the type of groundwater and all these other things, any
13 houses or anything of that nature to prioritize these
14 lists. We ended up with a list of 83 facilities that were
15 prioritized for some sort of action. That action could be
16 everything from full-blown remediation to studying to
17 understand a facility on a site-specific basis, because it
18 was a very high-altitude exercise with the installation of
19 the groundwater network.

20 So the legislature provided \$45 million for seed
21 money for that. Of that, eligible entities can receive up
22 to 75 percent of the cost of remediation funded through
23 this program. Once we have a remedy in place, then we
24 start a 10-year clock, where we have a system for watching
25 and monitoring that remedy for 10 years for effectiveness.

1 If it's found during any time in that 10-year window that
2 remedy isn't completely remediating the facility, then we
3 can implement a secondary remedy and new 10-year clock
4 starts on that where we assist on that. So it's a very --
5 very helpful program for communities that are trying to
6 understand, you know, as I popped in here, is that we did
7 everything by the rules at the time, and now you're coming
8 back and we're having to pay a lot of money to try to
9 remediate everything. We're cognizant of that. We'll be
10 trying to assist as much as we can with expertise and
11 financial assistance.

12 Of the \$45 million that was seed money for that
13 program, 19 million of that has been transferred to Cease
14 and Transfer. We thought that was actually a very wise use
15 of that money, because the nature and extent investigations
16 and such can take so long that we'd like to get active
17 quicker.

18 Cease and transfer of those facilities, as I
19 said, there were 83 active. Many of those facilities with
20 the exception of I think two that were on the original list
21 for cease and transfer were some of the leaky landfills.
22 So by capping through the Cease and Transfer Program and
23 using those funds there, we can get cap on these landfills
24 and turn the spigot off, as we say, if you will, sooner
25 than later and hopefully have remediation benefits through

1 that by the time we get back around to visiting those
2 facilities.

3 So that left us 26 million to begin. Of that
4 we created a list that we called the high-priority
5 landfills. And that was essentially a scoring list, where
6 you scored -- and with the criteria we put together, if you
7 scored over a hundred, then you ended up on a high-priority
8 list. There were 11 facilities that ended up on that list
9 which were to be acted on sooner than later. We began with
10 five of those facilities and actually three entities. So
11 Casper, Gillette, and Sheridan, with Gillette and Sheridan
12 having two landfills both on those. Sheridan they're
13 contiguous, so it was very hard to divorce those two high-
14 priority landfills, so we're treating those as one to gain
15 economy of scale.

16 And then the other six that were on that list are
17 being studied in the background, and just to do as much
18 site-specific and gain momentum as we can before we enter a
19 written agreement with these entities to do remedial work
20 there.

21 Let's see. I'll move to that last slide. So as
22 I said, we got the five highest priorities, but in the
23 meantime, in the background, just to move forward on the
24 others, we're looking at assessments of the landfill
25 remediation list throughout. And some of the things we're

1 doing there is helping -- when this was first taken --
2 undertaken, we did not have groundwater classification at
3 the vast majority of those facilities. So without that, we
4 assumed the worst-case scenario that they were all Class I
5 aquifers. So we're classifying groundwater so that we have
6 a better idea what the cleanup levels will be so we enact
7 appropriate measures for cleanup.

8 Additionally, we continue to look at that
9 high-priority landfills so that we can refine the costs of
10 it, because the original cost out of the gate, we're about
11 \$256 million for this undertaking. And so, obviously, when
12 you give that to the legislature, they would like as much
13 information what goes into that number as possible. So
14 we're constantly looking to refine that, and that means
15 information.

16 Until we actually enter what's called our written
17 agreement, which they have two options. They can choose
18 operator-led, which means they kind of pick their
19 consultant with our assistance, and then essentially they
20 pay for the bills and then we reimburse, or there's a
21 DEQ-led option, which we will help them in consultant
22 selection, the Department pays, and then we take 25 percent
23 escrow to match any of the bills. So that's the option
24 that really helps small communities that don't have deep
25 pockets, because some of these construction projects can be

1 kind of large.

2 And then the evaluating potential for the
3 expedited closure cost of small facilities. What that
4 means in that slide is that we're looking at some of the
5 top 11, and they're very small facilities. And some of
6 these facilities don't have a cap. They've never had an
7 engineered cap on them. So versus making them -- putting
8 them in a holding pattern while we treat the highest
9 priority ones and spend millions of dollars on those,
10 meanwhile they're continuing to leak without even the most
11 basic caps. So we're taking what we call intermeasures,
12 whereas we're going to go out and put caps on those before
13 the nature and extent investigation is complete, so that at
14 least we get some measures in place, and then we can study
15 what's happening to the plume or the off-site plume or any
16 exposure that might be happening.

17 I really like that aspect of the operation. We
18 thought about that long and hard, if we had the ability to
19 the way it's -- the program is crafted, but we feel that we
20 do.

21 And so there's approximately 11 million left in
22 program. Of that 11 million, 2 is in flux right now. So
23 we really probably only have 9. We've transferred some
24 more. We're in the construction season. In Campbell
25 County we have a massive project going on right now active

1 gas collection system and capping of the entire landfill
2 right in the middle of town there is going on as we speak.
3 So we're shifting money around all the time.

4 2019 was the first year that we've actually
5 started receiving some funds from the Underground Storage
6 Tank Program. If you're familiar with some of that
7 corrective action account that was -- as that program
8 starts to see a little bit of a sunset and winding down,
9 there are programs that we are diverting some of those
10 funds to. And this would be that program.

11 So this is first year we're talking money in,
12 whereas originally the legislature set a benchmark for how
13 much funds could come in every year from that program.
14 We've since changed the language to give the director
15 discretion. So if we have a slow year, you know, we can
16 divert a million dollars that year. But if we have a huge
17 construction project that needs funding, we can go up to
18 5, \$6 million in that year.

19 The key to that is that we have to, for EPA
20 reasons and just logical reasons, we have to make sure that
21 soundness is maintained in the Underground Storage Tank
22 Program with any money that's diverted.

23 With that, I'll yield again, Mr. Chairman. I
24 know that was a whirlwind tour of those programs, but like
25 I said, I haven't spoken for a --

1 CHAIRMAN KIRKBRIDE: Just back up just a
2 little.

3 MR. MCOMIE: You betcha.

4 CHAIRMAN KIRKBRIDE: You may have said
5 this, but I was curious. How many landfills in the state,
6 how many are in great shape, how many are real bad shape,
7 what -- give me a little dashboard there.

8 MR. MCOMIE: Certainly.

9 BOARD MEMBER CAHN: You're sitting down.

10 MR. MCOMIE: The program, Mr. Chairman, 112
11 landfills were studied, and a lot of those included
12 historic, which are pre-Subtitle D landfills that had
13 monitoring wells installed at them. Of those, we
14 determined that 83 of them need further study or action
15 upon those. And we fully expect that list could shrink as
16 we go through and we do take additional efforts, such as
17 groundwater classification, and as all of them are assumed
18 to have Class I aquifers, we know that's not the case
19 created at every facility.

20 With that 83 -- of the 83, we determined 11 of
21 them high-priority landfills. Of those 11, I think only
22 one of them was probably in the Cease and Transfer Program
23 to receive a cap. So of these 16 closures that you saw,
24 that would affect -- 16 of the 83 other landfills are now
25 being capped under this other program, and hopefully we can

1 take it and approach it, see if the cap is being effective
 2 to clean up that groundwater, and then it will be a much
 3 less and more abbreviated nature and extent to make sure
 4 that we're protective if anything got off site.

5 CHAIRMAN KIRKBRIDE: The 16 closures are
 6 different than the 11 high priorities?

7 MR. MCOMIE: Yes. Mr. Chairman, yes, they
 8 are. Although the five projects that we're undertaking
 9 right now, three of those projects involve caps as well,
 10 because it was deemed that the cap at Campbell County was
 11 insufficient, that there was still groundwater
 12 contamination at the cap, and has had such settlement
 13 issues that this FML, flexible membrane cap, literally
 14 ripped and moisture was flowing through.

15 In addition to that, we determined that --
 16 through the consultant -- a lot of the contamination was
 17 being driven by gas, landfill gases, as the garbage was
 18 breaking down. And so we ended up surrounding the
 19 perimeter with active gas system, which monitors the well's
 20 interior. And we're going to have a flare there, similar
 21 to what we have here in Casper. Casper was an active gas
 22 system with a flare to collect that gas.

23 Within months of turning that active system on in
 24 Casper, we immediate saw positive impacts to the
 25 groundwater wells, where they started coming under the

1 MCLs.

2 BOARD MEMBER DEURLOO: Wow.

3 MR. MCOMIE: That's the quick fix. The
4 caps take much longer to see a positive benefit, but we
5 expect to see that as well.

6 CHAIRMAN KIRKBRIDE: Thank you.

7 More questions, Council?

8 BOARD MEMBER DEURLOO: I don't. Thank you.

9 CHAIRMAN KIRKBRIDE: Okay.

10 MR. MCOMIE: I certainly afford you the --
11 thank you for the time to come up and address you folks,
12 and we will keep you abreast of what's going on as the
13 program continues to mature.

14 BOARD MEMBER BEDESSEM: I do have one other
15 question, was that when you presented these updates to the
16 legislature, are they planning on doing anything with
17 regard to these programs this coming year?

18 MR. MCOMIE: Mr. Chairman. Board Member
19 Bedessem, no, they're not. The 14 million we think
20 provides soundness. It kind of came at a wonky time
21 because this is a budget session, as you're aware. But at
22 this time, the program was -- was deemed financially sound
23 to not see funds this year. And I think providing the
24 director with discretion for MLP will really help that
25 program. We just need to get other people into the

1 program. As you know, it started the written agreements.
2 Its -- nature and extents can be quite costly to examine
3 these facilities, so it's really hard to tell what the
4 remedy is until you get through that stage. So it's kind
5 of a just-in-time planning when you're asking for funding
6 so that you don't overask, but at the same time we need to
7 keep the program solvent.

8 BOARD MEMBER BEDESSEM: Thank you.

9 BOARD MEMBER DEURLOO: Mr. Chairman, I did
10 have one question.

11 CHAIRMAN KIRKBRIDE: Yes, sir.

12 BOARD MEMBER DEURLOO: If you don't mind.

13 This may be a little bit off the subject. I'm
14 just asking as an interest. What is -- I visit other
15 states a lot where they're focused on diverting wastes to
16 the landfill, and they want to find other uses and
17 recycling and so forth. We've got heaps of land here in
18 Wyoming. I'm just wondering, are we making -- what steps
19 are we taking towards diverting recyclables or other things
20 away from our landfills, or are we even moving in that
21 direction at all?

22 MR. MCOMIE: Mr. Chairman. So one of my
23 hats is state recycling coordinator.

24 BOARD MEMBER DEURLOO: Is recycling
25 coordinator? Is that what you said? Okay.

1 MR. MCOMIE: We actually do quite a little
2 towards that. Right now I don't know how closely you
3 follow that, but there's a movement two years ago called
4 the China Sword, where they essentially said that they were
5 not going to take American commodities anymore. And that
6 was, I think, a couple of things. One, because we were
7 sending a lot of contamination, and they were ending up
8 with that.

9 Secondly, I think their middle class development
10 is such that they really don't need our stuff as nearly as
11 much anymore. And, unfortunately, we had shuttered a lot
12 of mills over here, while we shipped everything over there.
13 So now we're caught in this catch-22. So a lot of programs
14 are just struggling to stay alive right now, if you will.
15 Unfortunately, Wyoming doesn't have any recycling markets
16 with respect to any mills. Everything goes to the West
17 Coast, or there's a few mills in Colorado. Very minimal.
18 That's mostly glass and aluminum.

19 And then in Montana I think there was one paper
20 mill in Missoula that shut down. But we have many programs
21 that are doing their best to continue those, to accept
22 commodities. It is another thing where I've always viewed
23 it different all the way back to my recycling days to
24 Campbell County, which when I would inform the
25 commissioners that to me it's a service. You have to look

1 at it as a service similar that you would a library or
2 parks and rec, or you're not necessarily going to make
3 money at it, because in Wyoming not going to make money at
4 diversion. We have so much land that it's actually --
5 every economic analysis I've ever run is cheaper to dispose
6 of it than it is to divert it after you finish all freight
7 and all the other things.

8 But the gold standard is, you know, the
9 30 percent commodity version that's achievable, if you have
10 a robust program. And on top of that, when you throw in
11 composting of green waste, which can add a different --
12 additional 15 percent diversion. And then if you can ever
13 capture food waste out the waste stream, that's where you
14 really start to make hay on making landfills last longer.
15 We do have some pilot programs in the state where they're
16 doing food waste composting. Teton County in particular is
17 starting a program now through the Cease and Transfer
18 Program. We had to build them a temporary transfer
19 station, and they're actually changing that transfer, once
20 they got into the new one, into a food waste composting
21 project.

22 BOARD MEMBER DEURLOO: So food waste takes
23 up a lot of the landfill space.

24 MR. MCOMIE: Absolutely. And food waste is
25 one of the contributors -- largest contributors to leachate

1 generation because it's so moist. You know, and that's
2 where it gets -- a lot of people who think we were so arid
3 that we weren't going to have those issues. But the
4 moisture was already in the food, you know.

5 And so it's extremely important to try to help
6 those programs sustain themselves through these times until
7 markets get built back out in the United States. But I
8 never tried to be Pollyanish and tell people that recycling
9 pays for itself here, it doesn't. It's cheaper to bury it.
10 But you have to go to the elongated -- look at lifecycle
11 analysis to see the benefits of it, which there are many.

12 So I hope that answers your question.

13 BOARD MEMBER DEURLOO: It does. Thank you.

14 MR. MCOMIE: We really do a lot of outreach
15 to help people understand the -- and to prop their programs
16 up and to present to their councils, or -- you know,
17 because a lot of times staff will know something, but that
18 they'd rather hear it from somebody else. So I do a lot of
19 traveling and talking to people about the benefits of it to
20 their programs. It's much more enhanced now, the Cease and
21 Transfer -- I'm sorry, I'm digressing a little bit, but it
22 is important. And as I mentioned earlier, the more you
23 divert locally before you ship to Casper -- Baggs has a
24 very robust program, if you will, for diversion. And so
25 you know, they ship -- they divert almost 40 percent of the

1 things that come in, whether it's metal or batteries or the
2 traditional commodities. And so that's only 60 percent
3 they're paying Casper to bury instead of a hundred. And so
4 those numbers start panning out, plus being on I-80 -- very
5 close to 80, they get trucks pretty readily to take their
6 stuff to Salt Lake.

7 BOARD MEMBER DEURLOO: Who would have
8 thought Baggs, ahead of the game there.

9 MR. MCOMIE: Yeah, I'll talk trash with you
10 all day.

11 BOARD MEMBER DEURLOO: I'll gutter all day.
12 I'm in the gutter business.

13 MR. MCOMIE: You folks had a long morning,
14 so I'll stop there and yield to my colleagues.

15 BOARD MEMBER DEURLOO: Thank you,
16 Mr. Chairman.

17 MS. ENGELS: Mr. Chairman, I will move to
18 presenting the Solid Waste Guideline Number 26. There is a
19 specific tab for it in your binder, more towards the front.

20 Back in May of this year -- so just a few months
21 ago -- the governor signed our revised Chapter 4. It's the
22 Solid Waste Rules and Regulations specific to construction
23 and demolition landfills.

24 We previously presented that rule as a rule
25 package to the Board with Chapter 6. It's -- Chapter 6 is

1 our Transfer, Treatment, and Storage facilities. One of
2 the requirements in Chapter 4 is for facilities to submit
3 an annual report to the agency, and in a format approved by
4 the administrator. So we thought we would put together a
5 guidance document in a form that it would be approved by
6 our administrator so that facilities with this type of
7 permit could easily use this form and submit the
8 information that's required by rule to the Department.
9 That way it prevents multiple different formats coming into
10 us, a back and forth between the facility and consultants.

11 So today we -- we have our draft guideline for
12 your input and comment. And this also went out to public
13 comment, and we received no comments on this guideline. It
14 is also very similar to our annual report form for
15 municipal solid waste landfills, which are regulated under
16 our Chapter 2 regulations.

17 So it's very similar. And when we created this
18 form, we really just stuck to the rule and tried to stick
19 to what is required per rule and put it in a table format.
20 So I -- my goal, when I created this, was to have it be one
21 page, front and back. But as you can tell, I went over.

22 So I like to think it's pretty simple and
23 straightforward, but if you have any input on this before
24 we make it official and have our administrator sign it and
25 have our facilities use it, I would like to hear any input

1 that you have.

2 CHAIRMAN KIRKBRIDE: Yes.

3 BOARD MEMBER CAHN: Just one minor comment.

4 On the second page of the guideline, under 3.3,

5 Environmental Monitoring. The second acceptance in the

6 first paragraph is not a complete sentence, as I read it.

7 It just says "All electronic copies of all required

8 monitoring data not already submitted following a sampling

9 event," and it's missing --

10 BOARD MEMBER BEDESSEM: Can we put "should

11 be included" at the end of that sentence?

12 MS. ENGELS: Yes. Yes. Yes.

13 BOARD MEMBER BEDESSEM: Lorie and I tend to

14 write the same comments in our notes.

15 MS. ENGELS: Thank you. Thank you.

16 BOARD MEMBER CAHN: Other than that, I

17 thought it was easy to follow.

18 BOARD MEMBER BEDESSEM: And I also think in

19 that second sentence you don't need the first "all." You

20 can just say "Electronic copies of all required monitoring

21 data," instead of all electronic.

22 MS. ENGELS: Yeah, that sounds good.

23 BOARD MEMBER DEURLOO: And you're asking

24 for comments on this one and a half sheet, is that what

25 you're asking for?

1 MS. ENGELS: Yes.

2 BOARD MEMBER DEURLOO: This is actually --
3 I did not review this prior to the meeting. I'm kind of
4 giving it a quick glance over, Suzanne. But in (a),
5 3.2(a), a detailed summary description of the facility
6 operations and activities carried out during the last year,
7 such as where the facility is in the building sequence.
8 And I think it was Thomas Jefferson said, you know, less
9 words is better, right? Or something like that. But such
10 as the facility -- the status of the facilities filling
11 sequence or something -- there's just a lot of words right
12 there. If you could cut that down, status --

13 BOARD MEMBER BEDESSEM: Describe the status
14 of the filling sequence.

15 BOARD MEMBER DEURLOO: Describe the status
16 of the filling sequence, construction of new waste disposal
17 units. It's up to you. I'm just offering an opinion.

18 MS. ENGELS: I'll take a closer look at it,
19 because not only is it in the form itself, but it's also in
20 the narrative, same wording. So if we can be more
21 succinct, I'll take a look at it.

22 BOARD MEMBER DEURLOO: I'm just offering
23 opinion. I'm not telling you what to do there.

24 MS. ENGELS: Okay.

25 BOARD MEMBER DEURLOO: I think it's great.

1 It looks like a nice, clean form.

2 BOARD MEMBER BEDESSEM: Chairman Kirkbride.

3 CHAIRMAN KIRKBRIDE: Yes.

4 BOARD MEMBER BEDESSEM: So I know for the
5 municipal solid waste forms, they're staggered by the
6 permanent term. So these are just March 1st?

7 MS. ENGELS: That's correct.

8 BOARD MEMBER BEDESSEM: So how many
9 construction demolition landfills do you have now?

10 MS. ENGELS: We have five currently, and
11 one we are currently reviewing.

12 BOARD MEMBER BEDESSEM: So clearly it's not
13 a problem that they're all due on the same day.

14 MS. ENGELS: No.

15 BOARD MEMBER BEDESSEM: That's what I was
16 just checking.

17 MS. ENGELS: And I'd also point out they're
18 spread throughout the state, so different staff will be
19 looking at the reports.

20 BOARD MEMBER BEDESSEM: The only other --
21 this may be just a weird thing for me, but I -- I thought
22 when I looked at multiple different documents, that when
23 they say "landfill capacity," it seems to mean different
24 things like -- sometimes like when we're dealing with Air
25 Quality Division, they want to know the waste capacity --

1 just the waste, no interim cover, no nothing. But I get
2 the impression, from reading this, that this is landfill
3 capacity that's waste plus interim daily -- well, it's not
4 daily cover, but whatever the interim cover, it's just not
5 the final cover. So I just -- it would be nice to say in
6 parentheses, waste plus -- something like that, so that
7 it's not confused -- people don't go do they mean just the
8 waste capacity or the -- I don't know. It seems --

9 MS. ENGELS: I think that's a reasonable
10 clarification to make, yes.

11 BOARD MEMBER BEDESSEM: It just seems like
12 it varies a lot. And then having a conversation with Air
13 Quality, it gets totally confusing, what the capacity --
14 what has earth in it, and they want to know, because
15 they're looking at stuff that's generated from emissions
16 from only the waste part.

17 MS. ENGELS: That's correct. And I think
18 that's the big difference between --

19 BOARD MEMBER BEDESSEM: Right.

20 MS. ENGELS: -- the two divisions.

21 BOARD MEMBER BEDESSEM: So, anyway, so that
22 would be helpful.

23 And then the only other thing in the
24 environmental monitoring, not -- in the (f) above 2.3,
25 instead of the "needs to, needs to," if you could just say

1 "should" wherever it says "needs to," the report should
2 describe what is used to determine this quantity. Because
3 you use "should" in other places, and I just --

4 MS. ENGELS: Uh-huh. For consistency.

5 BOARD MEMBER BEDESSEM: That's all I have.
6 It's a great form.

7 MS. ENGELS: Thank you.

8 BOARD MEMBER BEDESSEM: May your reviews go
9 smoothly and quickly.

10 CHAIRMAN KIRKBRIDE: We okay? Go on.

11 MS. ENGELS: Thank you. We also are
12 presenting to you the revisions to Chapter 18 in our -- for
13 our Solid Waste Rules and Regulations. I'm not sure how we
14 are on time, if we should keep moving forward, if that's
15 what would you like to do.

16 CHAIRMAN KIRKBRIDE: Could we take a break
17 for just 5 or 10 minutes?

18 MS. ENGELS: Okay.

19 BOARD MEMBER DEURLOO: 7 and a half.

20 CHAIRMAN KIRKBRIDE: 7 and a half. 3:00.

21 (Meeting proceedings recessed
22 2:54 p.m. to 3:04 p.m.)

23 CHAIRMAN KIRKBRIDE: Thank you for joining
24 us. We're going to start again.

25 MS. ENGELS: Chairman Kirkbride, we will

1 start again presenting our Chapter 18 of the Solid Waste
 2 Rules and Regulations to the Board. We are passing out a
 3 handout.

4 We had some last-minute edits and changes to the
 5 rule. Good news is that it doesn't change the line
 6 numbers. So if you have comments, we should still be on
 7 track for those line numbers.

8 I'm getting the yes.

9 MS. WEIKART: Yes.

10 MS. ENGELS: So this rule was originally
 11 presented to the Board the second quarter 2019 meeting just
 12 in June. The Department is proceeding with this rulemaking
 13 process because there are federal rules. EPA signed the
 14 disposal of coal combustion residuals in landfills and
 15 surface impoundments in 2015. And the agency decided to
 16 move forward with adopting the federal standards, using
 17 incorporation by reference, and also including our
 18 current -- or the current standards and requirements found
 19 in our Chapter 3 industrial landfill regulations that
 20 industrial landfills are required to meet.

21 So like I mentioned, that these rules were
 22 originally presented, and we received comments from the
 23 Board and comments from the public. And we went back out
 24 to public comments after the last meeting. And after
 25 making edits to the rule that the Board suggested and were

1 discussed at that meeting. And we have a most current
 2 version of the rule dated October 17th. And Jody will be
 3 going over the changes to the rule. I believe all the
 4 changes are highlighted in green. And at the end of Jody's
 5 presentation, we would look for your recommendation for
 6 moving these rules forward to the EQC.

7 And with that, I'll turn it over to Jody.

8 MS. WEIKART: Good afternoon, Mr. Chairman,
 9 members of the Board. I'd like to start by speaking to
 10 some overarching revisions that occurred to the rule.
 11 Chapter 18 does appear differently than what you saw back
 12 in June. And this is primarily due to some corrected
 13 grammatical errors throughout the rule, the addition of a
 14 subsection to Sections 5 through 11 and Section 15. This
 15 was to better clarify the requirements necessary for a
 16 permit application. And we also inserted statute citations
 17 to remove redundant language from the rule that is also
 18 found in statute.

19 I'd like to highlight a few revisions by section.
 20 That may warrant additional comments and discussion by the
 21 Board.

22 I'd like to start in Section 2, if there are no
 23 comments on Section 1 from the Board.

24 BOARD MEMBER BEDESSEM: I have a question.
 25 In the new draft, in comparison to like the new drafts that

1 Water Quality give us, I thought the new drafts water
2 quality gave us, we had two different colors. One with the
3 original -- I guess for your case you don't have that,
4 because the original was a brand-new chapter. So is that
5 why everything that was changed is in green, but there's no
6 way to tell the difference between this draft and the
7 previous draft, because there's not two colors?

8 BOARD MEMBER CAHN: Yeah, so the 9/6 draft
9 versus the 10/17 draft --

10 MS. ENGELS: That's correct.

11 BOARD MEMBER CAHN: -- they both have green
12 and black. So how do we tell the difference what was
13 added to the 10/17--

14 BOARD MEMBER BEDESSEM: Right. When we
15 reviewed the 9/6.

16 BOARD MEMBER CAHN: Yeah.

17 MS. ENGELS: We can point those two items
18 that were changed --

19 BOARD MEMBER BEDESSEM: Oh, so there were
20 only two things.

21 MS. ENGELS: Yes.

22 BOARD MEMBER CAHN: Okay.

23 BOARD MEMBER BEDESSEM: Thank you.

24 Continue.

25 MS. WEIKART: Mr. Chair, may I continue?

1 CHAIRMAN KIRKBRIDE: You may.

2 MS. WEIKART: Section 2 is the
3 Incorporation By Reference section. It would be page 18-1,
4 line number 24, subsection 2(b). The Department identified
5 a typo. The line reads "The Wyoming Department of
6 Environmental Quality of Environmental Quality."

7 BOARD MEMBER BEDESSEM: Okay.

8 MS. ENGELS: So that's -- if I may
9 interject, Mr. Chairman. That is one of the newer changes
10 that we made in the 10/17 version that we did not catch in
11 the 9/6 version.

12 BOARD MEMBER BEDESSEM: Okay.

13 BOARD MEMBER DEURLOO: Is that kind of like
14 department of redundancy department?

15 MS. ENGELS: Yes, exactly.

16 BOARD MEMBER BEDESSEM: Awesome.

17 MS. WEIKART: Mr. Chairman, if there are no
18 remaining comments on Section 2, I'd like to move to
19 Section 3.

20 CHAIRMAN KIRKBRIDE: All right.

21 MS. WEIKART: Section 3 is the General
22 Provisions. We received a public comment from PacifiCorp.
23 It's their Comment Number 1. It's with regard to the item
24 on page 18-2, lines 80 to 84. And the subsection is
25 3(d)(ii)(C). PacifiCorp's comment is that PacifiCorp

1 remains concerned that requiring administrator approval in
2 addition to a PE certification before an operator is deemed
3 to have met individual documentation deadlines will create
4 untimely delays in certain instances.

5 The Department agrees with PacifiCorp and has
6 revised the language for lines 80 to 84 to reflect that
7 compliance will be met when it is submitted to the
8 administrator for approval.

9 BOARD MEMBER CAHN: Mr. Chair.

10 CHAIRMAN KIRKBRIDE: Yes.

11 BOARD MEMBER CAHN: So I just have some
12 question about the word submit, because it says shall mean
13 the certification from a qualified professional engineer
14 and submit -- so that submit doesn't fit -- doesn't match
15 certification. So maybe it should be in submittal to the
16 administrator to make it parallel construction.

17 BOARD MEMBER BEDESSEM: Submittal instead
18 of submit.

19 BOARD MEMBER CAHN: Yeah.

20 BOARD MEMBER BEDESSEM: It's just a grammar
21 thing.

22 MS. ENGELS: Uh-huh.

23 BOARD MEMBER CAHN: And then since the --
24 the administrator here is referring to DEQ, right?

25 MS. ENGELS: Mr. Chairman. Board Member

1 Cahn, we define administrator up above as the Solid and
2 Hazardous Waste Division Administrator.

3 BOARD MEMBER CAHN: So why wouldn't we also
4 have something for the EPA where -- when appropriate? Like
5 it's not -- because it says certification from the
6 participating state director or approval from EPA where EPA
7 is the permitting authority.

8 MS. ENGELS: That is the term found in the
9 federal rules that we are changing the definition of
10 what -- we're defining -- I'm sorry. We're defining what
11 that phrase means in our rule.

12 BOARD MEMBER CAHN: So submittal to you
13 is --

14 MS. ENGELS: Uh-huh.

15 BOARD MEMBER CAHN: Okay.

16 MS. ENGELS: Would meet the requirement if
17 they had to submit it to EPA.

18 BOARD MEMBER CAHN: I get it. I'm sorry.
19 I missed that.

20 BOARD MEMBER BEDESSEM: Chairman Kirkbride,
21 can I add one thing?

22 So you didn't have the pleasure of being here
23 this morning for our discussion on qualified engineer?

24 MS. ENGELS: We were not.

25 BOARD MEMBER BEDESSEM: So apparently the

1 AG's office doesn't think you should use the word
2 qualified, and I advised the Water Quality Division to
3 remove that from their rule. And so we mentioned that they
4 need to -- that it would be better if it be consistent, so
5 if AG is saying take it out, then you should probably take
6 it out of here.

7 MS. ENGELS: And we can seek input from the
8 AG too and confirm that.

9 BOARD MEMBER BEDESSEM: But you have two
10 different AGs, so they need to talk to each other.

11 MS. ENGELS: I agree. And we will take the
12 appropriate action.

13 CHAIRMAN KIRKBRIDE: Well, may I observe
14 that what we end up with in 83 is not a sentence, is it?
15 82 and 83?

16 BOARD MEMBER CAHN: Yeah.

17 BOARD MEMBER BEDESSEM: Yeah, they're all
18 like that.

19 BOARD MEMBER CAHN: And then when they
20 write it --

21 CHAIRMAN KIRKBRIDE: It can be made a
22 sentence.

23 BOARD MEMBER CAHN: In the clean version --

24 CHAIRMAN KIRKBRIDE: A couple sentences.

25 COUNCIL MEMBER CAHN: In the clean version

1 it looks okay.

2 CHAIRMAN KIRKBRIDE: Oh, does it?

3 BOARD MEMBER CAHN: Yeah.

4 MR. KUHLMANN: It's actually a definition,
5 isn't it?

6 MS. ENGELS: Right. We're defining terms.
7 So the term that we're defining has the period, and
8 then what the definition is.

9 BOARD MEMBER CAHN: So after -- after they
10 say administrator, then they say --

11 CHAIRMAN KIRKBRIDE: Okay.

12 BOARD MEMBER CAHN: So after they put the
13 thing that they're defining --

14 CHAIRMAN KIRKBRIDE: Oh, okay.

15 BOARD MEMBER CAHN: -- then they say
16 "shall." So it's confusing.

17 CHAIRMAN KIRKBRIDE: Okay.

18 BOARD MEMBER BEDESSEM: Anyway, you guys
19 missed a good conversation on qualified engineer.

20 BOARD MEMBER CAHN: I had the same problem.

21 CHAIRMAN KIRKBRIDE: Yeah. Yeah.

22 Okay. I think you can go on, Jody.

23 MS. WEIKART: Thank you.

24 I would like to move to Section 9, if there are
25 no comments from the Board on Sections 5 -- 4, 5, 6, 7, and

1 8.

2 BOARD MEMBER DEURLOO: Mr. Chairman, I have
3 one small question on Section 4.

4 CHAIRMAN KIRKBRIDE: All right.

5 BOARD MEMBER DEURLOO: On 4(c), Permit
6 Terms, (i) and -- or (i) and (ii). It says on line 129
7 "Permits for new CCR units..." And then on line 133 it
8 says "Renewal permits for CCR landfills," where "units" was
9 struck out. Is there a difference between units and
10 landfills? Because just in the space of two different
11 lines right there, these were changed.

12 MS. WEIKART: Mr. Chairman. Board Member
13 Deurloo, there is a difference between the two.

14 BOARD MEMBER DEURLOO: Okay.

15 MS. WEIKART: Units includes landfills and
16 surface impoundments, where landfills do not include
17 surface impoundments.

18 BOARD MEMBER DEURLOO: Okay. Thank you.
19 That's the only one I had so far.

20 BOARD MEMBER BEDESSEM: Before you start on
21 Section 9, you originally said, like the draft from 9/6 and
22 draft from 10/17, the numbers shouldn't be that different.
23 But I have Section 9 in the 9/6 draft starting on page
24 18-11, and then in the 10/17 draft I have it starting on
25 18-13 in a different spot. I was trying to find my comment

1 in there, and it's completely different places. So I don't
2 understand why I'd be off two pages, when you really
3 haven't changed much from the first one to here. And I'm
4 off like a page and a half or something.

5 MS. ENGELS: I'm sorry. Chairman Kirkbride
6 and Board Member Bedessem. Would you repeat those numbers
7 for me one more time?

8 BOARD MEMBER BEDESSEM: Well, as my
9 reference, I was just looking for the beginning of
10 Section 9, because that's what we were going to start
11 talking about. And in the September 6th draft, Section 9
12 starts on page 18-11.

13 BOARD MEMBER CAHN: Because that's the
14 clean -- like it's kind of the clean version.

15 BOARD MEMBER BEDESSEM: Oh, that's why.

16 BOARD MEMBER CAHN: You need to be in the
17 green version, not the blue version.

18 BOARD MEMBER BEDESSEM: The green version
19 of the --

20 BOARD MEMBER CAHN: You need to be in the
21 one that says green, Chapter 18, green --

22 BOARD MEMBER BEDESSEM: I'm in
23 strike/underline.

24 BOARD MEMBER CAHN: -- as opposed to
25 strike/underline, which is all blue, because it's all new.

1 MS. WEIKART: Mr. Chairman. Board Member
2 Bedessem, if you look at the green version from both --

3 BOARD MEMBER BEDESSEM: 9-6. Okay. So I
4 should be on the same page?

5 MS. WEIKART: Yes.

6 BOARD MEMBER BEDESSEM: Thank you for
7 clarifying, because I couldn't find where my comment was.
8 Because in a minute I would be giving a line number, and
9 you'd be going what?

10 MS. WEIKART: It should be page 18-13,
11 Section 9 begins at 1 -- or, sorry, 536.

12 BOARD MEMBER BEDESSEM: Okay. Hopefully I
13 can find it. So carry on while I figure out what
14 translated line number I'm on.

15 MS. WEIKART: In Section 9, I'd like to
16 direct the Board to page 18-16, lines 652 to 654. This
17 would be subsection 9(a)(viii)(A) and (VI) and (VII). The
18 Department has removed these two criteria from the rule
19 after discussions with the EPA in which determined that the
20 Department's program would not be approved by the EPA if
21 these items remained in the rule. This was also -- this is
22 the second change from the 9/6 version. And this is the
23 final change between the two versions.

24 BOARD MEMBER BEDESSEM: I found it. So
25 this is on line 564 [sic] in the green version. Where it

1 says Groundwater monitoring systems. The criteria of 40
2 CFR --

3 THE REPORTER: I'm sorry.

4 BOARD MEMBER BEDESSEM: Oops. The criteria
5 of 40 CFR part 257, Subpart D 257.9 are incorporated by
6 reference. I think what you need there is this a similar
7 thing that you have in (iv), where you have the words added
8 that say "with the following modifications" following
9 additions? Because otherwise the stuff that follows after
10 it doesn't have a preamble to it. So just with the
11 following additions?

12 MS. ENGELS: I would agree. I think that
13 makes it more clear.

14 BOARD MEMBER BEDESSEM: And then it's also
15 parallel with what you have further down. But I don't
16 think they're modifications. I think they're just
17 additions.

18 MS. ENGELS: Uh-huh. Yes.

19 BOARD MEMBER BEDESSEM: Thank you for
20 getting me squared away between the two forms, because I
21 never would have found it.

22 BOARD MEMBER CAHN: I have a question on
23 line 629, which is -- I'm trying to figure out what it's a
24 subset of, so I better go up. It's a subset of (B), "The
25 owner or operator of the CCR unit and the Water Quality

1 Division Administrator must establish a groundwater
2 protection standard for each constituent in appendix IV to
3 40 CFR Part 257, Subpart D detected in groundwater. The
4 groundwater protection standards shall be," and then it
5 goes down to (IV).

6 BOARD MEMBER BEDESSEM: What number are you
7 on?

8 BOARD MEMBER CAHN: So that was line 599 to
9 602. And now it goes down to (IV), so there's four parts
10 to it, so it goes down to line 627. And then it says "For
11 constituents for which the background level is higher than
12 the levels identified under paragraphs," and there's a
13 bunch of paragraphs of the section, "the background
14 concentration." So are we missing an "is" the background
15 concentration?

16 BOARD MEMBER BEDESSEM: It goes -- it
17 connects with the line on 602, where it says "The
18 groundwater protection standards shall be," and it shall be
19 the background concentration.

20 BOARD MEMBER CAHN: Yes. So can't we
21 say -- oh, okay. That's why you can't say "is." All
22 right.

23 BOARD MEMBER BEDESSEM: That's why you
24 can't say "is."

25 BOARD MEMBER CAHN: All right.

1 MS. ENGELS: Thank you for that
2 clarification.

3 BOARD MEMBER CAHN: For my ease of reading
4 it, would it be possible to flip and make the first part
5 the background consultation for constituents for which the
6 background level is -- so it's clear that's what -- you
7 know, the groundwater protection standard shall be the
8 background concentration for constituents. Just flip it?
9 I don't know.

10 BOARD MEMBER BEDESSEM: But then it
11 wouldn't be parallel with all the ones above it.

12 BOARD MEMBER CAHN: Oh, okay. All right.
13 Scratch that idea.

14 BOARD MEMBER BEDESSEM: Okay.

15 BOARD MEMBER CAHN: Thanks.

16 MS. WEIKART: Mr. Chairman, if there's no
17 additional comments, I would like to move to Section 12.

18 BOARD MEMBER BEDESSEM: So, yeah, I have a
19 comment on Section --

20 BOARD MEMBER DEURLOO: I have -- go ahead.

21 BOARD MEMBER BEDESSEM: I think yours is
22 going to be shorter.

23 BOARD MEMBER DEURLOO: Okay. Mine actually
24 goes back to Section 6, line 340. It starts on 339,
25 "Distance to other surface waters: CCR landfills and

1 surface impoundments" -- it's on the green -- it's on the
2 green over here -- the green, line 339 -- "impoundments
3 shall not be located within the ordinary high water mark of
4 perennial rivers, streams, or creeks..." But then we talk
5 about all these other things where the ponds can be close
6 to the streams or -- anyway, there's a bunch of
7 conversations in here how we need to stay away from the
8 24-hour hundred-year level of streams, yet we can put
9 landfills just in the ordinary high water mark of a
10 perennial stream. Do you follow what I'm trying to say?

11 MS. ENGELS: Chairman Kirkbride. I do. I
12 believe you're pointing out that we're only restricting
13 surface impoundments from being located in this area, but
14 not landfills.

15 BOARD MEMBER DEURLOO: Yeah. You're
16 basically saying -- well, you're basically saying landfills
17 can be located at the high water of the North Platte right
18 here, but say we didn't have Alcova, and you could put the
19 landfill right there at the normal high water mark, but
20 then we get a hundred-year flood event, it's going to be in
21 the flood. Right? Yet I was reading -- sorry, I lost my
22 spot here. 8, 9 -- right here. That it says on line 344
23 "All other ponds shall be protected from structural damage
24 during the 100-year flood event." So it's talking about
25 bypass ditches of 24-hour, hundred-year -- do you get my

1 point? Everything needs to be out of the hundred-year
2 flood event except for like the landfill.

3 MR. KUHLMANN: I guess --

4 BOARD MEMBER CAHN: I'm reading the
5 opposite.

6 BOARD MEMBER BEDESSEM: Yeah.

7 BOARD MEMBER DEURLOO: Am I reading the
8 opposite?

9 MR. KUHLMANN: The present --

10 BOARD MEMBER CAHN: I'm reading it's only
11 ponds that don't contain hazardous or toxic wastes that can
12 be located there, not landfills.

13 BOARD MEMBER DEURLOO: Distance to other
14 surface waters, CCR landfills and surface impoundments
15 shall not be located within the ordinary high water mark of
16 perennial rivers.

17 BOARD MEMBER BEDESSEM: Uh-huh.

18 BOARD MEMBER DEURLOO: So landfills shall
19 not be located within the normal -- the ordinary high water
20 mark.

21 BOARD MEMBER BEDESSEM: Uh-huh.

22 BOARD MEMBER CAHN: Then the next sentence
23 is only about ponds that don't contain hazardous or toxic
24 waste.

25 BOARD MEMBER DEURLOO: Ponds not containing

1 hazardous --

2 MR. KUHLMANN: It's also for intermittent
3 rivers.

4 BOARD MEMBER DEURLOO: Yeah, I get that.
5 But it could be -- the ponds that don't have hazardous
6 waste in them can be located within the high -- ordinary
7 high water mark, right?

8 CHAIRMAN KIRKBRIDE: Yeah.

9 BOARD MEMBER DEURLOO: But it's saying here
10 the landfills can be within the normal -- ordinary high
11 water mark. Maybe it's just semantics, but what is an
12 ordinary high water mark? Is it a 10-year --

13 CHAIRMAN KIRKBRIDE: Doesn't it say "not"?

14 BOARD MEMBER CAHN: It says "shall not be
15 located" on line --

16 BOARD MEMBER DEURLOO: Okay. I'm still --
17 what is -- what's considered an ordinary high water mark on
18 like the Crow Creek, Platte Creek -- or Platte River, I
19 mean. Is that a 10-year -- what is that, the DEQ's
20 highest -- do you know, is it like a 10-year, 24-hour
21 event? It seems pretty -- it just seems pretty ambiguous
22 to me.

23 MS. ENGELS: Chairman Kirkbride. Board
24 Member Deurloo, I see where you're going. I believe this
25 language was pulled or included from Water Quality rules.

1 MS. THOMPSON: That figures.

2 MS. ENGELS: Do you know -- and I'm going
3 to refer to Jody.

4 Do you know which chapter that was pulled from?

5 MS. WEIKART: Chapter 3, Water Quality.

6 MS. ENGELS: Chapter 3, as their
7 requirements for surface impoundments. So I believe if
8 we -- when we are reviewing these permit applications and
9 standards, we would be referring to Water Quality
10 Standards, and we're including them in our rule, and also
11 working with them internally to evaluate that site-specific
12 information. As far as in general, I'm not sure I have a
13 general answer for you.

14 BOARD MEMBER BEDESSEM: I guess I have a
15 question. This language says it has the -- it's surface
16 impoundments in one place and ponds in other place. And
17 the first part implies that surface impoundments should not
18 be blanketly not located within the ordinary high water
19 mark. But then -- and then it proceeds to -- seems like it
20 has a bunch of exceptions. It's really -- it's just
21 confusing.

22 MS. ENGELS: Uh-huh. Uh-huh.

23 BOARD MEMBER CAHN: Do we need to start
24 with except that -- exceptions to this are?

25 BOARD MEMBER BEDESSEM: Except that

1 ponds -- yeah, something. Because it's just really
2 confusing.

3 MS. ENGELS: Or clarify that we're talking
4 about surface impoundments?

5 BOARD MEMBER BEDESSEM: Yeah. I mean,
6 changing the term is like someone's going, well, is that a
7 different thing than a surface impoundment, than a pond?
8 It's just confusing.

9 BOARD MEMBER DEURLOO: Oh, I see what
10 you're saying there too, yeah. Because you do have surface
11 impoundments and ponds in the next one.

12 BOARD MEMBER CAHN: Are you allowed to
13 start out however --

14 BOARD MEMBER BEDESSEM: However.

15 BOARD MEMBER CAHN: -- ponds not containing
16 hazardous waste may be located -- can you do that? Is that
17 allowed?

18 MS. ENGELS: So we just quickly checked the
19 Water Quality rules to give you a better answer. And this
20 language is from Chapter 11 of Water Quality Rules and
21 Regulations. And I think this is our efforts and
22 challenges to pull together regulating landfills and
23 surface impoundments under one -- one rule and making sure
24 that we're capturing Water Quality standards appropriately
25 and Solid Waste standards appropriately.

1 And if -- I'm just looking over Gina's shoulder,
2 the language in Chapter 11 reads ponds shall not be located
3 within the ordinary high water mark of perennial rivers,
4 streams, or creeks nor in the bottoms of rivers, streams,
5 creeks, draws, coulees, or other natural drainages into
6 which natural runoff may flow and/or enter.

7 BOARD MEMBER CAHN: But that language
8 doesn't have the same language we're questioning.

9 MS. ENGELS: Doesn't match --

10 BOARD MEMBER CAHN: Yeah.

11 MS. ENGELS: -- what's here in our rule
12 either.

13 BOARD MEMBER CAHN: Yeah. So could you
14 start out "except that" or "however" or something to make
15 it clear that this is an exception to the blanket rule that
16 says a blanket rule is landfills and surface impoundments,
17 which includes ponds, can't be located in the ordinary high
18 water mark of perennial rivers. But now we're talking
19 about intermittent and we're talking only ponds and only
20 those that contain -- don't contain hazardous or toxic
21 waste.

22 BOARD MEMBER BEDESSEM: And when we're
23 talking about surface impoundments, we're talking about CCR
24 surface impoundments.

25 MS. ENGELS: Uh-huh.

1 BOARD MEMBER BEDESSEM: So it's not
2 apparent to me when it says CCR landfills and surface
3 impoundments, that the CCR is modified surface impoundments
4 also. I think that's why I got confused, because just -- I
5 just thought it was surface impoundments period, and then I
6 got to the ponds and what was the difference, and I guess
7 we're just talking CCR.

8 BOARD MEMBER CAHN: Except that the whole
9 chapter is on CCR in landfills and surface impoundments.

10 BOARD MEMBER BEDESSEM: Uh-huh. Yes.

11 BOARD MEMBER CAHN: When I see surface
12 impoundments in the chapter --

13 BOARD MEMBER BEDESSEM: It's the title, so
14 I'm just being dense.

15 BOARD MEMBER CAHN: No, you're not. We've
16 got a lot on our plate today.

17 MS. ENGELS: As a suggestion, if we modify
18 ponds to surface impoundments, would that be more clear?

19 BOARD MEMBER BEDESSEM: If we can say
20 "however" or "except that."

21 MS. ENGELS: Except that --

22 BOARD MEMBER BEDESSEM: Yeah, because
23 otherwise they are completely conflicting. Don't you
24 think?

25 BOARD MEMBER CAHN: Yeah.

1 BOARD MEMBER BEDESSEM: So same term, and
2 then "except that."

3 MS. ENGELS: And just for clarification,
4 "except that" starts the sentence?

5 BOARD MEMBER CAHN: Starts what?

6 MS. ENGELS: The sentence.

7 BOARD MEMBER BEDESSEM: The second
8 sentence.

9 MS. ENGELS: The second sentence.

10 BOARD MEMBER CAHN: And I don't have a
11 problem with changing ponds to surface impoundments. I
12 mean, are any surface impoundments not ponds? Are we using
13 those two terms interchangeably?

14 BOARD MEMBER BEDESSEM: Yeah, I think so.

15 BOARD MEMBER CAHN: So let's just stick
16 with surface impoundments.

17 BOARD MEMBER BEDESSEM: And then that means
18 the last line also would go from ponds to surface
19 impoundments.

20 MS. ENGELS: Correct.

21 BOARD MEMBER BEDESSEM: I think she was
22 just checking to make sure it was okay to start that
23 sentence with "except that."

24 BOARD MEMBER CAHN: What did you learn?

25 MS. THOMPSON: Oh, we were confirming

1 that the language in question appears multiple times in
2 Chapter 11, and Andrew was able to find a passage covering
3 feedlot ponds. But I also found it elsewhere. But it's --
4 it's pervasive. And so, you know, once -- once the program
5 determines a path forward for wording, I'm sure it will
6 influence future revisions to that chapter, because that
7 one is up for revision within the next few years, so...

8 BOARD MEMBER BEDESSEM: I think we got a --

9 MS. ENGELS: I think so too.

10 BOARD MEMBER BEDESSEM: -- path forward. A
11 lot more researching.

12 MS. THOMPSON: I think so, but, yeah, you
13 will probably get to see that same passage again.

14 BOARD MEMBER DEURLOO: May I hear the -- I
15 was doodling on high water marks and hundred-year storm
16 events. May I hear the resolution, please, of what
17 we're --

18 MS. ENGELS: Yeah. So the second sentence
19 will begin "Except that surface impoundments not
20 containing."

21 BOARD MEMBER BEDESSEM: And then the last
22 line --

23 MS. ENGELS: It finishes.

24 BOARD MEMBER BEDESSEM: -- switches from
25 ponds to surface impoundments.

1 BOARD MEMBER DEURLOO: Oh, good.

2 BOARD MEMBER BEDESSEM: It's the same term.

3 BOARD MEMBER DEURLOO: Yeah. I get it.

4 CHAIRMAN KIRKBRIDE: CCR pond that does not
5 have hazardous residue? Okay.

6 BOARD MEMBER DEURLOO: Okay. If you guys
7 are happy with that, I'm happy.

8 MS. ENGELS: Thank you.

9 BOARD MEMBER BEDESSEM: So I have my little
10 comment, unless.

11 CHAIRMAN KIRKBRIDE: You said yours is
12 going to be longer than mine, so go ahead.

13 BOARD MEMBER BEDESSEM: Probably. Okay.
14 You're glaring at me. It's 3:34.

15 BOARD MEMBER DEURLOO: Take your time.

16 MS. ENGELS: There's no glares. I'd like
17 to add that for the record.

18 BOARD MEMBER BEDESSEM: This is a weird
19 grammar thing. And I don't have the right lines, I'm
20 sorry, because I'm in the blue one. So if any of you guys
21 can figure out --

22 BOARD MEMBER CAHN: Does that chapter start
23 on 619? Like 619 in the green version?

24 BOARD MEMBER BEDESSEM: Okay. I'll look.
25 Yes, I think it's the right place.

1 Okay. So this is -- this is -- so look around
 2 the vicinity of 619. We're on to the assessment monitoring
 3 program. And so the first one on this is just a grammar
 4 thing so it's consistent. I think it just has a -- the
 5 first sentence just has a period when all the other ones
 6 they have colons at the end. Because you're listing a type
 7 of constituent. So like (II) says "For the following
 8 constituents:" And then (III), it says "For Chapter 8,
 9 Table 1," whatever, "constituents as established...standard
 10 based upon groundwater classification:" So in other words,
 11 it's not really a sentence. It's saying for these things,
 12 and then there's a bunch of stuff after it. You see what
 13 I'm saying?

14 CHAIRMAN KIRKBRIDE: After classification
 15 you're suggesting colon.

16 BOARD MEMBER BEDESSEM: Yeah, because then
 17 it would match the one above that says "the following
 18 constituents:" And the one about that says "For those
 19 constituents," and "MCL for that constituent:" Because
 20 otherwise it's a sentence -- it's not a sentence. It just
 21 says "For Chapter 8, Table 1, constituents is established
 22 by the" --

23 THE REPORTER: I'm sorry.

24 BOARD MEMBER BEDESSEM: "For Chapter 8,
 25 Table 1, of the Water Quality Rules and Regulations,

1 constituents as established by the Water Quality Division
2 Administrator and for which there was a class of use
3 standard based upon groundwater classification:" And then
4 the rest of it tells you how you come up with that -- that
5 standard.

6 MR. KUHLMANN: Is -- no.

7 MS. ENGELS: Chairman Kirkbride. Board
8 Member Bedessem, would you clarify where you are?

9 CHAIRMAN KIRKBRIDE: She's on 620.

10 BOARD MEMBER BEDESSEM: I'm on 620.

11 CHAIRMAN KIRKBRIDE: 620 in the green.

12 MS. ENGELS: 620 in the green.

13 BOARD MEMBER BEDESSEM: Uh-huh.

14 CHAIRMAN KIRKBRIDE: After the word
15 classification she's suggesting a colon.

16 MS. ENGELS: A colon.

17 BOARD MEMBER BEDESSEM: Yeah.

18 MS. ENGELS: And lower case U.

19 CHAIRMAN KIRKBRIDE: I don't know that --

20 BOARD MEMBER BEDESSEM: Not.

21 BOARD MEMBER CAHN: Not necessarily.

22 BOARD MEMBER BEDESSEM: Not necessarily.

23 It depends on what we do with the rest of that.

24 BOARD MEMBER CAHN: It's just that (I) has

25 a --

1 BOARD MEMBER BEDESSEM: Colon.

2 BOARD MEMBER CAHN: So actually has
3 semicolon, because it's got a list after it. But (II) has
4 a colon. So (III) --

5 MS. ENGELS: (III) is in paragraph form.

6 BOARD MEMBER BEDESSEM: And I'm wondering
7 whether it should be --

8 MS. ENGELS: Okay.

9 BOARD MEMBER BEDESSEM: -- because it's
10 hard to understand.

11 MR. KUHLMANN: So I guess if I'm seeing it
12 right, that first sentence, your thought is that's
13 equivalent of what is under like (II) for the following
14 constituents.

15 BOARD MEMBER BEDESSEM: Uh-huh.

16 MR. KUHLMANN: But that first part is
17 explaining which constituents, and until such time is then
18 talking about the standard for --

19 BOARD MEMBER BEDESSEM: No. (II) also --
20 it says for those constituents and it's giving you the
21 standard. So it Cobalt is 6. Lead is 15. Lithium is 40.
22 And for Chapter 8, then we're going to get the number by
23 doing this, and then the number. And (I), it says for
24 where we have an MCL, we're giving you the MCL.

25 MR. KUHLMANN: Okay.

1 BOARD MEMBER BEDESSEM: And so maybe you
2 should be having -- oh, so that's just a comma. Sorry.
3 I'm cutting on grammar, but I'm not getting to the actual
4 gist of why I was concerned about this. Because in the
5 first one, you just have a comma, and you say it's the MCL.
6 So theoretically you could have a comma there, but then
7 it's not three words, like in the first one. It is an
8 elaborate several sentences, and it might be better to have
9 a colon and have it separated out so it's easier to read.
10 That's just my suggestion, instead of having it lumped into
11 this big paragraph. Because if it's just a period, it's
12 not a full sentence and it's confusing.

13 So never mind the grammar thing. The thing that
14 I was concerned about and is my more critical issue is, for
15 example -- and so these -- there's a number of different
16 questions here. If -- the way it's -- so is this an order
17 of precedence -- so, for example, for Chapter 8, Table 1,
18 we have a long list of constituents that will have a class
19 of use standard. Some of those also may have an MCL. Is
20 it clear, by the way this is written, that if they have
21 both, that you're going to use the MCL? Because it just
22 says if it has a class of use standard, then this is how
23 we're going to do it. So I put in the first one of (I), my
24 question was unless it's covered by three or is it the
25 bottom one, unless -- or is three, unless it has an MCL?

1 Because I think you're trying to say that you're picking an
2 MCL first. But the way it's written, that's not clear that
3 one trumps the other. Because the third one just says if
4 you have a class of use standard, then this is what you do.
5 But you can have a constituent that has both. Because I
6 think your 40 CFR Part 141 is not the CCR part, it's just
7 the part that establishes MCLs, and so there's a longer
8 list of stuff. Its not just your constituents of concern.
9 So there's a lot of things in Chapter 8, Table 1, that have
10 both MCL and have a class standard.

11 And I know in your policies, you say do this
12 first, do this second, do this third. I just wasn't
13 comfortable reading this that I had a hierarchy. I wasn't
14 sure that this read as a hierarchy. So I don't have the
15 suggestion actually on what words to add to make it a
16 hierarchy. That was -- but the more -- the more concerning
17 question I had -- and I wasn't sure about how this was
18 done. At the very beginning of it, it says -- of the
19 chapter, in Section 2, it says more stringent and broader
20 in scope provisions, state specific rules that are
21 stringent broader in scope are described in the relevant
22 sections of this these rules. So what does that mean? Is
23 there like a notation in here when something is broader in
24 scope or more stringent?

25 MS. ENGELS: Board Member Bedessem, it just

1 means when we have additional requirements in addition to
2 the CFR, we include those in each section. So, for
3 instance -- I'll let Jody answer this -- continue
4 answering, because she has a good example right in front of
5 her with the section and everything.

6 BOARD MEMBER BEDESSEM: Okay.

7 MS. WEIKART: Page 18-14, line number 574
8 in the green version, it reads "Groundwater sampling and
9 analysis requirements. The criteria of 40 CFR Part 257,
10 Subpart D 257.93 are incorporated by reference with the
11 following modifications."

12 BOARD MEMBER BEDESSEM: So that's what
13 you're saying. It's not that you're calling out that it's
14 more stringent or broader in scope. You're just noting
15 that we're incorporating by reference and these are the
16 additional things that we're putting on there.

17 MS. WEIKART: That is correct.

18 BOARD MEMBER BEDESSEM: Okay. Thank you.

19 So my -- where is the line that adds the Chapter
20 8, Table 1 parameters to Appendix IV?

21 BOARD MEMBER DEURLOO: Where's the line?
22 585.

23 BOARD MEMBER BEDESSEM: 585?

24 MS. WEIKART: Yes, Board Member Bedessem,
25 it's line number 585.

1 BOARD MEMBER BEDESSEM: Uh-huh.

2 MS. WEIKART: The line reads "Appendix IV
3 shall also include constituents identified in Chapter 8,
4 Table 1 of the Wyoming Water Quality Rules and
5 Regulations." It is also noted as a footnote in
6 Appendix IV, which would be page 18-IV-1.

7 BOARD MEMBER BEDESSEM: Uh-huh.

8 MS. WEIKART: Footnote Number 2.

9 BOARD MEMBER BEDESSEM: Okay. So a concern
10 I have, and I know I expressed it previously, but I wasn't
11 able to express it in -- in detail because I didn't have a
12 copy of the 40 CFR to look at, is that I'm concerned -- I
13 completely understand why it would be of interest to get
14 data on the whole list of constituents in Chapter 8,
15 Table 1, especially if you're in a position where you have
16 to do a groundwater classification, I think this is kind of
17 critically important information. However, the problem I
18 have with where it's put in here is that if you want to add
19 it to the -- your, you know, baseline sampling program,
20 whatever, sounds great. I think you need all that
21 information. My problem with you putting it in Appendix IV
22 is twofold. It is, one, like when you did municipal solid
23 waste and we had the geochemical parameters and all this,
24 we didn't just tack it onto Appendix B, which is the
25 equivalent of Appendix IV. It's the list you do for

1 assessment monitoring. Because we didn't want to put that
2 weight on the results of those as far as kicking a
3 facility -- maintaining assessment monitoring or kicking a
4 facility into corrective action, because these are not the
5 specific constituents of concern. Okay?

6 So like in municipal solid waste, we had a
7 separate table to deal with those. So that as part of the
8 package, it didn't also kick in these other things, which
9 in here, if we put that whole full list in Appendix IV,
10 then according to 40 CFR we've got requirements if the
11 concentrations of any constituents in that appendix are
12 above background, above concentrations below, they have to
13 continue assessment monitoring. If one or more
14 constituents are detected, if statistically significant
15 levels above the groundwater protection standard, which,
16 you know, like it could be sulfate that's 500 and we have a
17 statistically significant increase to 520, we'd be, you
18 know, kicked into notifications and all sorts of things.
19 And it doesn't seem -- and it doesn't seem like 40 CFR
20 thought that list of constituents should trigger these
21 items, because they don't include them. So I think -- I
22 don't think you really want them to kick in all this stuff.
23 I think you just want the data to help you to your -- your
24 background -- your assessment, but not necessarily kick
25 into a pretty rigid methodology for assessment monitoring

1 and corrective action, because you can have a facility that
2 went into corrective action because of a parameter that, in
3 the overall scheme of things, doesn't matter if sulfate is
4 500 or 510. And then they would be continuing to spend
5 large amounts of money because this says exactly that
6 thing.

7 So do you see -- I mean, it just seems putting on
8 that table kicks in a package of other requirements that
9 are not apparent unless you read the 40 CFR. So I'm
10 perfectly fine with the requirement of sampling these
11 items. I just think you need to make a separate table or
12 something so that it doesn't have that same level of
13 urgency that the constituents of concern have that are in
14 your Appendix IV, which is what that table was for. Kind
15 of synonymous with our Appendix B for landfills. So that's
16 where I'm at with that.

17 So is that something that you guys discussed
18 before? Is that something you wanted to do? Or is this --
19 or is this like a -- a -- what -- collateral damage or
20 something? It's not what I mean, but like a -- a -- an
21 incidental impact?

22 BOARD MEMBER CAHN: So rather than saying
23 Appendix IV shall include -- also include constituents
24 identified in Chapter 8, maybe it just says for the
25 purposes of groundwater classification or whatever it is,

1 constituents shall also include Chapter 8, Table 1, rather
2 than for --

3 BOARD MEMBER BEDESSEM: Where do you want
4 this? Do you want one round of this? How do you want this
5 used? But I don't -- I don't think it's in your best
6 interest to have it the way it is, because then you'll find
7 yourself hamstrung by this sort of ladder of stuff that
8 will make you do things that you know are probably not
9 warranted.

10 MS. ENGELS: Chairman Kirkbride. Madam
11 Bedessem, this was one of those discussions that we had
12 with Water Quality as to the incorporation of Chapter 8.
13 And this is specifically where we wanted to include
14 Chapter 8, Table 1 constituents in this section.

15 BOARD MEMBER BEDESSEM: So you wanted it in
16 Appendix IV.

17 MS. ENGELS: In Appendix IV. After
18 consulting with Water Quality, that was their
19 recommendation and comments that we received internally.
20 And I think we also included some flexibility into the
21 language in this rule where it says a reduced list may be
22 requested provided that water quality samples are collected
23 from wells constructed in the unaffected portion of the
24 aquifer. So although we are incorporating Table 1 in its
25 entirety, the agency still has the ability to reduce that

1 list.

2 BOARD MEMBER BEDESSEM: It's also not clear
3 to me in here when the wells are -- when this is actually
4 happening, because Appendix IV isn't until assessment
5 monitoring.

6 MS. ENGELS: That's correct.

7 BOARD MEMBER BEDESSEM: So this seems odd
8 at that point to be doing the groundwater classification at
9 that late date, and so I don't think -- I don't -- I still
10 maintain that it's not a good choice.

11 BOARD MEMBER CAHN: I still don't have a
12 feeling for what is the reason for those constituents. Is
13 it for groundwater classification or is it for assessment
14 monitoring? Is it -- is it for corrective action -- for
15 deciding when you get into corrective action or is it for
16 groundwater classification?

17 BOARD MEMBER BEDESSEM: Yeah.

18 MS. ENGELS: Well, I think to start with it
19 it is for groundwater classification, because that is a key
20 part of corrective action, knowing what the groundwater
21 classification is.

22 Jody's writing me a note. Sorry for the delayed
23 response.

24 BOARD MEMBER BEDESSEM: It's okay to
25 confer.

1 MS. ENGELS: Okay, Chairman Kirkbride. I
2 think we have our ducks in a row for the time being.

3 MS. WEIKART: Mr. Chairman. Board Member
4 Bedessem, the thought here is that facilities cannot
5 degrade class of use, and that is why those constituents
6 are included in Appendix IV, which would be for assessment
7 monitoring, is because if those groundwater protection
8 standards were exceeded, then the facility would be
9 degrading groundwater, which is not allowed.

10 BOARD MEMBER BEDESSEM: That's why it's in
11 assessment monitoring?

12 MS. WEIKART: Yes. Correct.

13 BOARD MEMBER CAHN: So --

14 BOARD MEMBER BEDESSEM: Go ahead.

15 BOARD MEMBER CAHN: So I think to
16 clarify -- it needs to be clarified, because I don't --
17 personally, I don't disagree for groundwater class of use,
18 you need to look at these. And then to make sure they
19 don't exceed the MCLs and you don't degrade groundwater,
20 then you're looking at these. But that's different from
21 saying if you have a statistical exceedance of your
22 baseline, then you have to go into assessment. I think
23 assessment monitoring, which is where we're saying if
24 you're going to have some naturally fluctuating groundwater
25 levels that fluctuate naturally, we don't want those to

1 trigger going in -- into assessment monitoring. So I think
2 that -- at least for me, that's -- that's where it's not
3 clear, so we would -- so --

4 BOARD MEMBER BEDESSEM: Because there's
5 constituents on that list that aren't even related to the
6 wastes that are being put in there. And so if you're
7 comparing it to two background wells, but in that aquifer
8 you actually have a range that's quite a bit higher, you're
9 going to have a statistically significant increase that is
10 not real, that is going to kick you into all these
11 requirements. Or Water Quality Division has perfect
12 capabilities under the act, that if there is an impact -- a
13 real impact from any of these things, that they can pursue
14 that without this -- this hierarchy that's very specific to
15 RCRA. Okay? And just like when we -- the rule that we
16 just passed earlier today, that -- with regard to -- it was
17 Chapter 28? No. Because we only did the financial part.
18 But they didn't have to -- they can say what they want to
19 measure and they always know that they can't exceed that
20 groundwater -- that groundwater classification, but they
21 don't need this hierarchy to be able to enforce that and
22 make sure the facility is not polluting.

23 I'm concerned that you are tying these into a
24 very strict set that is not meant for a whole lot of
25 geochemical parameters. That's my concern. So if you are

1 going to have discussions like this, and it's based on
2 Water Quality Division, we should probably have Water
3 Quality Division here as well.

4 MS. ENGELS: Yeah. We appreciate the
5 feedback. And I guess, ultimately, is your recommendation
6 to move the Table 1 constituents to detection monitoring?
7 Is that what you're suggesting?

8 BOARD MEMBER CAHN: No.

9 MS. ENGELS: No?

10 BOARD MEMBER CAHN: Not the Table 1.

11 Table 1 includes things that -- it's a large list of
12 parameters. It includes things like chloride --

13 BOARD MEMBER BEDESSEM: Can't you just
14 add it --

15 BOARD MEMBER CAHN: -- sulfate.

16 That there's a difference between degrading
17 groundwater to the point where it's changing your class of
18 use or a statistically significant change.

19 So what we're concerned about is what I think --
20 if I can speak for Marge as well --

21 BOARD MEMBER BEDESSEM: Uh-huh.

22 BOARD MEMBER CAHN: -- things like sulfate,
23 chloride, are going to be naturally fluctuating. And if
24 you only have one sample and a not very well characterized
25 baseline, then our concern is how you use that -- you know,

1 you're going to be in a perpetual assessment monitoring,
 2 detect them going into detect monitoring, corrective
 3 action, or whatever. Somebody's keep going having to
 4 write, oh, but this isn't really a statistically -- this is
 5 a statistically significant difference, but it is not
 6 caused by the CCR impoundment.

7 BOARD MEMBER BEDESSEM: Which is -- you've
 8 run into this before --

9 BOARD MEMBER CAHN: Yes.

10 BOARD MEMBER BEDESSEM: -- where you've had
 11 to prove that you were the source of bicarbonate for
 12 something when it's -- the bicarbonate is fluctuating --

13 BOARD MEMBER CAHN: Naturally.

14 BOARD MEMBER BEDESSEM: -- because it does
 15 naturally in that aquifer.

16 BOARD MEMBER CAHN: And I had to do that
 17 quarterly for years and years and years, when it wasn't the
 18 impoundment -- or the landfill that was leaking. And so
 19 it's just a concern not to -- you know, yes, you need that
 20 information. That's critical for -- and you've got to
 21 protect the class of use. But don't mix that up with
 22 looking for constituents that are going to be in the CCR
 23 impoundments and whether you're going to see an increase in
 24 any of those, which aren't natural -- naturally occurring.
 25 And if you see an increase, then you know you could have a

1 problem with the impoundment.

2 So we don't want you chasing -- people chasing
3 naturally fluctuating groundwater concentrations that have
4 nothing to do with the impoundment, but might look like it
5 if you set it up that way. So that's the concern.

6 BOARD MEMBER BEDESSEM: But Chapter 2
7 treats, you know, that Appendix C, geochemical
8 constituents, differently. It's a whole new table. It's
9 separate. It's not you do it at the beginning like with
10 detection monitoring, but it's not technically detect --
11 well, it's -- it depends on how you wrote it too. You go
12 back and look at it. But it's not technically because it
13 doesn't have the same impact, meaning that if you have an
14 SSI in one of those geochemical constituents, it's not the
15 same level of kicking it to assessment monitoring as the
16 normal Appendix A constituents.

17 So you have Appendix A and Appendix C, and there
18 was a reason Appendix C was separated out. And we're
19 suggesting a similar -- somewhat similar construction for
20 Chapter 8, Table 1. And it doesn't take away anything from
21 Water Quality Division or your Division's ability to
22 enforce if there is a real problem with any of those
23 particular constituents. It just prevents it from being
24 locked into this kind of arrangement, which is really
25 dedicated to trying to target the constituents of concern

1 from a facility.

2 MS. ENGELS: And to just go back to your
3 point of always -- or trying to show that the impacts are
4 not coming from a specific unit. From talking with
5 industry, they're performing those alternate source
6 demonstrations now at the landfills where they're showing
7 that impacts at their facilities are coming from the
8 surface impoundment.

9 So I think I'm understanding what you're
10 suggesting and taking a closer look at where we are
11 incorporating Chapter 8, Table 1.

12 And Gina also offered to call Lily with Water
13 Quality for her input on this too, and she's on the phone
14 with us. So we can brief her and get her up to speed with
15 where we're at and see if she has any additional insight
16 for us as to why we have included this table specifically
17 here.

18 Lily?

19 MS. BARKAU: Yes.

20 MS. ENGELS: This is Suzanne.

21 MS. BARKAU: Okay.

22 MS. ENGELS: Thanks for pulling over.

23 BOARD MEMBER BEDESSEM: She's driving.

24 MS. ENGELS: She's driving.

25 And so the comments that we received -- and

1 correct me if I butcher this -- is that there's concern as
 2 to where we are including or adding Chapter 8, Table 1
 3 constituents in the CCR rule under the assessment
 4 monitoring section, and that we may be requiring ultimately
 5 facilities to go through corrective action unnecessarily,
 6 potentially, if there's SSIs to those constituents in
 7 Table 1. And so there's a suggestion to make Table 1
 8 constituents a separate table -- a separate appendix to the
 9 rule and not add them to Appendix IV. Does that make
 10 sense? Did I capture --

11 MS. BARKAU: Yeah. So are these for -- the
 12 concern is that they are being included as part of
 13 assessment monitoring, not as part of the detection
 14 monitoring; is that correct?

15 BOARD MEMBER CAHN: The difference is
 16 really -- Lily, this is Lorie. The difference -- they're
 17 brining the microphone closer.

18 The difference is really whether -- how the
 19 information is being used. We understand it's used -- we
 20 think it's understand its use, and agree with its use for
 21 class -- for groundwater classification, class of use, and
 22 making sure that we're not degrading that class of use.
 23 But if those constituents are naturally occurring --
 24 like, for instance, sulfate and/or -- what's another --
 25 chloride -- then we don't -- and if those might be

1 naturally fluctuating, we don't -- we're -- we don't
2 want -- we're concerned about whether those would be looked
3 at as statistically significant increases and be kicking
4 into -- that have nothing to do with CCR impoundments, and
5 that might kick them into assessment monitoring or
6 corrective action that -- so it's really --

7 MS. BARKAU: Okay.

8 BOARD MEMBER CAHN: It's really keeping
9 them separate, keeping -- keeping the information we need
10 for groundwater classification and protecting groundwater
11 from that perspective separate from looking for
12 statistically significant increases from the facility.

13 BOARD MEMBER BEDESSEM: From constituent of
14 concern.

15 BOARD MEMBER CAHN: From constituents of
16 concern, yes.

17 MS. BARKAU: Okay. So the reason for that
18 is two steps. So an initial step is they do need to
19 establish the class of use for the aquifer that underlies
20 the impoundments. And so they can take the background or
21 baseline samples that they had originally established for
22 those Chapter 8 tables, whichever is of the higher value,
23 is the standard that they evaluate against. From there,
24 to when they're looking to go into remedial action, based
25 on -- for closure, they need to restore the aquifer to the

1 constituent of the class of use, or the class based on
2 water quality.

3 So even if sulfates were to -- if the aquifer was
4 determined to be a Class II aquifer and then the standard,
5 I believe, is 500 for sulfate. If you attribute your 500
6 and -- or they come back with a baseline that's higher than
7 that value, then they would use whatever that higher value
8 is.

9 So we want to make sure that the ponds are not
10 contributing any additional impacts based on water quality
11 above the typical constituents that would be believed to be
12 found with CCR. So we have recommended that that table be
13 added to it, and if the constituents are identified and
14 exceed the Chapter 8 standards or the ambient standards,
15 they need to restore the aquifer to the -- to the level
16 that was determined as part of a classification.

17 BOARD MEMBER BEDESSEM: So I think we
18 understand that, and I think that that can be accomplished
19 with Chapter 8, Table 1 not being included in Appendix IV,
20 but having it as a separate table. You can still do all
21 those things without kicking in these particular items.
22 Everything I think that Lily mentioned can be done with the
23 table separately, just as you could do that in Chapter 2
24 with the Appendix C constituents. I don't believe that
25 having moved the Appendix C constituents to a separate

1 table has caused any particular problems with managing
2 Chapter 2.

3 MS. ENGELS: No, I don't think it has
4 either.

5 BOARD MEMBER BEDESSEM: So I don't think
6 that it would limit, you know, enforcement or remediation
7 in any way by doing that. And I think it will prevent you
8 from having unnecessary complications associated with this
9 very strict setup in the CFR that is really targeted to
10 COCs.

11 MS. BARKAU: Okay. Then can I get what the
12 recommendation of the language and reference would sound --
13 what would appear?

14 BOARD MEMBER BEDESSEM: I think just have
15 it separated out as a separate table, and it could be --

16 BOARD MEMBER CAHN: As part of -- as part
17 of class of use --

18 BOARD MEMBER BEDESSEM: Yeah.

19 BOARD MEMBER CAHN: -- as opposed to
20 detection monitoring or a corrective action.

21 BOARD MEMBER BEDESSEM: Or you can even put
22 it under -- I think we did Appendix C under detection
23 monitoring in Chapter 2. I think we have it under
24 detection monitoring, but it's a separate table. And it --
25 it's not the table that's referenced that kicks in

1 assessment monitoring --

2 MS. ENGELS: Right.

3 BOARD MEMBER BEDESSEM: -- for Chapter 2.

4 MS. ENGELS: I think that's what happens in
5 Chapter 2.

6 BOARD MEMBER BEDESSEM: Yeah.

7 MS. ENGELS: I'm just looking at the CCR
8 rule, because if we pull out Chapter 8, Table 1 and 2, its
9 own separate table, I think, I would need clarification if
10 we want to leave it in (v) or (vi) as a paragraph
11 describing it or if we leave it where it is or just where
12 it ends up in rule. I mean, I think it's easy to say make
13 it its own table and its own appendix, but where do we
14 address it in the narrative?

15 BOARD MEMBER CAHN: So --

16 MS. ENGELS: Right.

17 BOARD MEMBER CAHN: Since (iv) is
18 groundwater sampling and analysis requirements. And it's
19 understood that the purpose of that is for class of use,
20 that's the appropriate place to have Chapter 8, Table 1
21 referenced. When you get into detection monitoring and
22 assessment monitoring, then we don't think that's the
23 appropriate place to have -- so it would be -- it would
24 come out of line 619 -- well, let's see. No.

25 BOARD MEMBER BEDESSEM: Where you have in

1 (C), Appendix IV shall also include general groundwater
2 monitoring sampling analysis requirements, right? You can
3 just not have it be Appendix IV, and say constituents
4 identified in Chapter 8, Table 1 of the Wyoming Water
5 Quality Rules and Regulations will also be sampled.

6 BOARD MEMBER CAHN: Yeah, so it's almost
7 like -- it's almost like 619 through 625 belongs back in --

8 MS. ENGELS: IV.

9 BOARD MEMBER CAHN: -- 586. The reference
10 is it's in the wrong part.

11 MS. ENGELS: I believe 586 says "Appendix
12 IV shall also include constituents identified in Chapter 8,
13 Table 1..."

14 BOARD MEMBER BEDESSEM: We're just going to
15 take out the Appendix IV part.

16 BOARD MEMBER CAHN: Just take out
17 Appendix IV, and just say Chapter 8 -- this is where you do
18 Chapter 8, Table 1. And the reason you're doing it says
19 for which there is a class of use standard based upon -- so
20 all that explanation is all really -- refers to class of
21 use. But the problem is it's been put under assessment
22 monitoring.

23 BOARD MEMBER BEDESSEM: Well, I think
24 that's because -- yeah, under assessment monitoring, you're
25 talking about what the groundwater standard would be. But

1 I -- so I don't think it's essentially bad to have that
2 description under there, unless it says -- oh, yeah,
3 because it is under assessment monitoring groundwater.

4 It's going to take a little thought to move that.
5 Because you've got to identify the class of use, whether or
6 not you're in assessment monitoring, correct?

7 MS. ENGELS: Yes.

8 BOARD MEMBER BEDESSEM: So, I mean, it's
9 not tied to assessment monitoring. The idea is you're
10 getting, you know, background and baseline data to
11 establish a groundwater classification. So I think Lorie's
12 suggestion that that part not be in the assessment
13 monitoring part, where it explains how you did a
14 groundwater classification.

15 BOARD MEMBER CAHN: Yeah, that it's part of
16 groundwater sampling and analysis requirements.

17 MS. WEIKART: May I suggest adding it at
18 line 584? It would be (C). Adding language Water Quality
19 Division Chapter 8, Table 1 constituents as requested by
20 the Administrator, similar to what we are doing with the
21 constituents for the Chapter 3, Industrial Waste.

22 BOARD MEMBER BEDESSEM: But don't you have
23 to have it to get your classification?

24 MS. WEIKART: Yes. And the administrator
25 is to request it.

1 BOARD MEMBER BEDESSEM: He just always --
2 requests it, right.

3 But then the description of how you do the
4 classification -- see that following section where it talks
5 about how you develop a groundwater standard, it's stuck in
6 assessment monitoring.

7 BOARD MEMBER CAHN: So lines 618 through
8 625, which we don't have a problem -- we agreed that that
9 needs to be done. It's just that we don't like its
10 placement under assessment monitoring. It's something you
11 have to do for classification of use.

12 MS. BARKAU: May I interrupt?

13 BOARD MEMBER BEDESSEM: Yes. Please do.

14 MS. BARKAU: It's in the assessment
15 monitoring because they have the option of doing the
16 classification or going directly to the Chapter 8. So some
17 facilities may not want to do or have not been able to
18 establish a baseline originally, and so then they tend to
19 default to just doing -- using the Chapter 8 as part of the
20 determination for remediation or remedial activity. So
21 that's why it was put into that particular area.

22 BOARD MEMBER CAHN: For CCRs?

23 MS. BARKAU: For the assessment, yes.

24 BOARD MEMBER BEDESSEM: So I have one other
25 question. I know this is a continuing roundtable thing,

1 but it's good putting people's heads together.

2 If you change the (C) to say "as requested by the
3 Administrator," I don't -- I think you should just require
4 it, but then include that second part that says reduced
5 list may be requested, provided that -- you know, the stuff
6 that's 622 to 625.

7 MS. ENGELS: May I ask a question of Lily?

8 Lily, can you hear me? This is Suzanne again.

9 MS. BARKAU: Yes.

10 MS. ENGELS: So I just want to make sure
11 you're hearing a discussion too, that there's discussion
12 going on about moving the language for including Chapter 8,
13 Table 1, as requested by the Administrator underneath (iv)
14 of this section, where it's groundwater sampling and
15 analysis requirements, and not necessarily keeping that in
16 assessment monitoring.

17 Am I wrong?

18 BOARD MEMBER BEDESSEM: Well, it's in there
19 right now.

20 MS. ENGELS: Yeah.

21 BOARD MEMBER BEDESSEM: That's where it's
22 listed. It's just it's stuck in Appendix IV. But it's the
23 same line. You're just changing it from Appendix IV to as
24 requested by the administrator. Right?

25 MS. WEIKART: No. My suggestion would be

1 to move it out of Appendix IV, create a new appendix and
 2 refer to that "and as requested by the Administrator."

3 BOARD MEMBER CAHN: That could be then
 4 titled classification -- sampling for classification of use
 5 groundwater classification or something like that. And
 6 then to address Lily's concern that some people prefer for
 7 corrective action to go through that Table 1 of Chapter 8,
 8 than to have it as a separate part of assessment monitoring
 9 that says with consultation and approval by the
 10 administrator the -- this new table -- Section -- Chapter
 11 8's Table 1 -- or Section 8, Table 1 could be used for
 12 assessment monitoring or something like that.

13 Isn't that what you're trying to say, Lily,
 14 that -- is that something --

15 MS. BARKAU: Yeah. Sorry. I think that
 16 would still work as long as that table's still -- that
 17 Chapter 8 is still kept within the sections, if you wanted
 18 to call it out separately, that probably is fine.

19 BOARD MEMBER CAHN: I can't hear.

20 BOARD MEMBER BEDESSEM: She says she
 21 doesn't have a problem calling out separately. But I
 22 thought Lily also said that some people don't choose to
 23 pursue the groundwater classification and just use -- did I
 24 mishear that?

25 MS. ENGELS: Lily, will you repeat what you

1 said about facilities not pursuing a groundwater
 2 classification and just defaulting to Chapter 8?

3 MS. BARKAU: Yeah. We wanted to make sure
 4 that in the event they did not establish the groundwater
 5 classification, that at least those -- the constituents are
 6 still evaluated in some manner for, you know, any potential
 7 impacts that may occur. When we see facilities that may be
 8 older facilities that never established a baseline or they
 9 simply still want to go and construct a well to collect
 10 that baseline sample, and, therefore, we want to make sure
 11 that if they're not going to go into the groundwater
 12 classification, that they're still aware they have to be
 13 protective of the aquifer, not just restoring to whatever
 14 impacts they've already made. We see that with some
 15 operators that feel that the classification should be
 16 whatever the impacts have been based on their operations.
 17 And that's -- that's not what the intent of the rule is.
 18 You know, they have to grade -- they may have degraded the
 19 aquifer in some manner, and the way to show that there
 20 hasn't been impacts is to collect that baseline. But if
 21 they don't do what we want, to make sure that they know
 22 that there's still protection and restoration activities
 23 this need to occur.

24 BOARD MEMBER BEDESSEM: So the question I
 25 had was it sounded like they have no option that they -- it

1 says "A plan for monitoring well placement and sample
 2 frequency to provide a groundwater classification shall be
 3 submitted..." It's like the way it's written, that doesn't
 4 look like they have a choice to opt not to pursue a
 5 groundwater classification.

6 MS. ENGELS: I'm sorry. Would you repeat
 7 that?

8 BOARD MEMBER BEDESSEM: In line 624 and
 9 625, it didn't seem to me that there -- I guess they could
 10 fail and not get enough data, not have enough background
 11 data to get the groundwater classification. But it also
 12 sounds like in 624 and 625, that the requirement to submit
 13 a plan for monitor well placement and sample frequency to
 14 provide a groundwater classification, because it says they
 15 have to do that, it shall be submitted to the administrator
 16 for approval. So no matter what facility you have, they're
 17 required to do this. So they would have to do Chapter 8,
 18 Table 1.

19 At least that's what it says in here. It says
 20 plan for monitoring well placement and sample.

21 BOARD MEMBER CAHN: Yes. So that seems to
 22 conflict with what Lily's saying, that some opt not to do
 23 it, makes it not optional.

24 MS. THOMPSON: So I think -- if I might
 25 pipe up here. I think that historically that we have some

1 existing facilities that will be rolled into this other
2 program. And those existing facilities have been managed
3 under multiple programs within Water Quality, and may have
4 opted not to do -- or may have -- due to, you know, lapses
5 or just falling through the cracks, perhaps they didn't get
6 that done, and now they've been in existence for a number
7 of years. So we would still want them to be protective of
8 groundwater, even if they didn't set a baseline whenever
9 they went into production.

10 BOARD MEMBER CAHN: All right. So in that
11 case, how -- are the data that they collect, how is that
12 analyzed? So not analyzed, but how is that -- how do they
13 demonstrate that if they don't have baseline, how do they
14 demonstrate -- or if they have limited after-the-fact, you
15 know, status quo data, how do they demonstrate that they
16 haven't impacted the groundwater, then? Is it -- is it
17 establishing concentrations that then you look at
18 statistically significant increases, or is it looking at
19 a -- an MCL or a level, you know, a standard for that class
20 of use that they can't exceed, so that -- that's my
21 question.

22 BOARD MEMBER BEDESSEM: I think that's what
23 she was saying, as far as we just look at that class of
24 use.

25 BOARD MEMBER CAHN: So it's only looking at

1 whether or not they've exceeded a level. It's not looking
2 at statistically significant increase.

3 MS. ENGELS: I believe so. Uh-huh.

4 BOARD MEMBER CAHN: Okay. I don't have a
5 problem with it that way.

6 MS. ENGELS: Uh-huh.

7 BOARD MEMBER CAHN: I think that's an
8 appropriate way to do it. My problem would come in if it
9 has to be looked at statistically significant increase,
10 because that's really a difficult row to hoe. I mean,
11 that's a high bar that's very fraught with a lot of false
12 positives and very high false positive rates --

13 MS. ENGELS: Yes.

14 BOARD MEMBER CAHN: -- in terms of
15 statistical exceedance.

16 MS. WEIKART: The way the federal rule is
17 worded is -- with assessment monitoring, if there is an
18 exceedance of one of the MCLs groundwater protections -- it
19 depends on the constituent, of course -- then if there was
20 an exceedance, then they are kicked into corrective action.
21 If there's not an exceedance, but it's still a
22 statistically significant increase, they stay into
23 assessment monitoring until there's a period of time in
24 which they fall at or below background, and then they may
25 go back to detection monitoring. So that's sort of how the

1 process --

2 BOARD MEMBER CAHN: But those are also for
3 the detection monitoring constituents, as opposed to
4 constituents for groundwater classification. So I'm -- I'm
5 in agreement with doing that for appropriate parameters,
6 but not for -- you know, for things that a CCR is going to
7 impact groundwater on. I'm not okay with doing it with
8 saying this is natural occurring, that's naturally
9 fluctuating, which you use for classification --
10 groundwater classification.

11 MS. BARKAU: Okay. I think I understand
12 what you're saying, and I -- I can agree with that.

13 BOARD MEMBER CAHN: Okay. Great.

14 MS. BARKAU: So, yeah, anything that's used
15 for the classification, we would need to pull out because
16 we would not be doing SSI on Chapter 8 constituents, unless
17 they're specifically called out as part of the CCR analyte
18 list or that particular appendix. So I would agree that it
19 should be called out on its own, and I can work with you on
20 the language --

21 BOARD MEMBER CAHN: Great.

22 MS. BARKAU: -- and where to exactly put
23 that.

24 BOARD MEMBER CAHN: Wonderful.

25 MS. ENGELS: That sounds good.

1 MS. THOMPSON: Okay. Great.

2 BOARD MEMBER BEDESSEM: That's awesome.
3 Thank you for being involved in that conversation.

4 MS. THOMPSON: Thank you, Lily.

5 MS. BARKAU: Okay.

6 MS. ENGELS: I think we sort of talked
7 about how we would capture that under groundwater and
8 analysis requirements, and we'll make sure that language is
9 consistent with those subsections within that.

10 BOARD MEMBER BEDESSEM: Right.

11 MS. ENGELS: And just make sure that we're
12 not triggering corrective action on --

13 BOARD MEMBER BEDESSEM: All the things that
14 Appendix IV --

15 MS. ENGELS: -- Chapter 8, Table 1
16 constituents.

17 So we'll modify this existing paragraph and break
18 it apart.

19 BOARD MEMBER BEDESSEM: And, you know, you
20 came forward with this "as requested by the Administrator,"
21 but I for one -- I didn't know how other board members
22 might feel differently -- but I don't have any heartache
23 with you requiring that list, and especially if there's
24 even a line in here where they talk about until the
25 groundwater classification is determined or some such thing

1 along those lines.

2 MS. ENGELS: Okay.

3 BOARD MEMBER BEDESSEM: Whatever you feel
4 is necessary, as long as it's separated out and not kicked
5 in the program with Appendix IV.

6 MS. ENGELS: Great.

7 BOARD MEMBER CAHN: Wonderful.

8 BOARD MEMBER BEDESSEM: And we didn't get
9 you in trouble with Water Quality.

10 MS. ENGELS: Thank you.

11 BOARD MEMBER BEDESSEM: That was my
12 comment, and I'm sorry it did take a long time.

13 BOARD MEMBER DEURLOO: It was a lot longer
14 than mine.

15 BOARD MEMBER BEDESSEM: Yeah, I know. But
16 that was the last one I had.

17 BOARD MEMBER DEURLOO: It was really good.

18 BOARD MEMBER CAHN: So then on Appendix IV,
19 on page 18-IV-1, we'll remove Water Quality Rules and
20 Regulations, Chapter 8, Table 1 and the footnote
21 associated, and it will go into its own --

22 MS. ENGELS: That's correct.

23 BOARD MEMBER BEDESSEM: One last thing.
24 There may be something that's on that list in Appendix IV,
25 that's also on that. And so you may have to accommodate

1 that -- that Appendix IV trumps, and it wouldn't be on
2 that. So you might say --

3 MS. ENGELS: And it goes back to your
4 comment on the hierarchy.

5 BOARD MEMBER BEDESSEM: Yeah.

6 MS. ENGELS: Yes.

7 BOARD MEMBER BEDESSEM: So for that you can
8 say except for those constituents or establish a hierarchy
9 that trumps it, whatever. One or the other, so that people
10 aren't confused when it's in both places.

11 Okay. We lost the chairman.

12 MS. ENGELS: Should we assume we are taking
13 a short break?

14 BOARD MEMBER BEDESSEM: We're taking a
15 five-minute break.

16 (Meeting proceedings recessed

17 4:28 p.m. to 4:31 p.m.)

18 CHAIRMAN KIRKBRIDE: What do we need to do?

19 BOARD MEMBER BEDESSEM: Were there any more
20 comments?

21 CHAIRMAN KIRKBRIDE: Any more comments? We
22 only have two to this chapter.

23 MS. WEIKART: Mr. Chair, I'd like to
24 continue on our last revision that we'd like to highlight.

25 CHAIRMAN KIRKBRIDE: Okay.

1 MS. WEIKART: It would be Section 12. It's
2 on page 18-17, lines 714 to 717. It's subsection 12 (a).
3 The Board had a comment at our -- at the June meeting to
4 include a reference to the Chapter 3, Industrial Waste
5 Regulations. And so the Department has added a section to
6 Chapter 18 for the industrial waste standards. And we also
7 added in Section 9 -- this would be lines 577 to 583 -- we
8 added the ability to include the constituents for
9 groundwater monitoring detection and assessment monitoring
10 at the discretion of the administrator.

11 BOARD MEMBER BEDESSEM: So the intent there
12 was if we were co-disposing some other industrial wastes
13 from the facility. So as far as what's applicable
14 requirements, the only thing that's applicable is if
15 they're burying something else besides CCR.

16 MS. WEIKART: That's correct.

17 BOARD MEMBER CAHN: So now should it say
18 Appendix IV or should it say --

19 BOARD MEMBER BEDESSEM: What are --

20 BOARD MEMBER CAHN: You're on line 581.
21 Did you mean to say 581?

22 MS. WEIKART: I believe I said it's 577 to
23 583.

24 BOARD MEMBER CAHN: Yeah, so 581 says
25 "Appendix IV may include constituents identified in Chapter

1 3...as requested by the Administrator." So would that --
 2 that wouldn't be Appendix IV. That would be your sampling
 3 and -- groundwater sampling analysis requirement. So
 4 you've -- so instead of putting that in Appendix IV, which
 5 is -- everybody's Appendix IV is going to look the same,
 6 but you're sampling an analysis plan and requirements
 7 might -- will look different between facilities. So you
 8 can add additional constituents, but -- right? Do you see
 9 my problem? It says --

10 BOARD MEMBER BEDESSEM: I think what
 11 they're trying to say here is let -- they're just giving
 12 you some flexibility here. Kind of equivalent of Appendix
 13 A and B for municipal landfills. That if they have some
 14 industrial wastes, co-disposed with the CCR, that right now
 15 Appendix III and IV just really address constituents of
 16 concern related to CCR. And if there's something else that
 17 they're burying there, like MSW, they can add it to II, III
 18 and IV.

19 BOARD MEMBER CAHN: But I guess I'm seeing
 20 III and IV are in the rule, cast in stone, this is what III
 21 and IV are, but we're saying you can add additional -- you
 22 can sample for different things. So my problem is that it
 23 says Appendix III or Appendix IV, because -- because this
 24 is your Appendix IV, less the Chapter 8, Table 1. And --
 25 but they can sample for more things, and you can require

1 them to do it. So is everybody sampling Appendix IV going
2 to look different? I mean, I'm thinking the Appendix IV is
3 what's in the rule, and when they -- when they do their
4 sampling, there's additional --

5 MS. ENGELS: I believe it would only look
6 different if they're disposing of different wastes. It
7 would depend upon the facility, if they're deposing of
8 wastes other than CCR.

9 BOARD MEMBER CAHN: So everybody's going to
10 print in their sampling analysis, this is my version of
11 Appendix IV. It's got these samples, plus. And this is my
12 Appendix IV, so there's going to be eight different
13 Appendix IVs. Do you see what I'm saying?

14 BOARD MEMBER BEDESSEM: I think -- well,
15 the first comment I have is that -- like in Section 12,
16 where it says the applicable requirements of Chapter 3, it
17 seems to me that you should say if industrial wastes are
18 co-disposed with CCR, then the permit application shall
19 demonstrate compliance with the applicable requirements of
20 Chapter 3. Because it's a very specific case.

21 MS. ENGELS: In Section 12(a).

22 BOARD MEMBER BEDESSEM: Yeah, because every
23 CCR doesn't -- whoever's developing the permit application
24 doesn't have to go through Chapter 3, if that's the only
25 thing that they're burying is CCR.

1 MS. ENGELS: Correct.

2 BOARD MEMBER BEDESSEM: Right? So if we
3 could say that --

4 MS. ENGELS: And --

5 BOARD MEMBER BEDESSEM: -- so that it's
6 specific. And then would we also do that here, where
7 you've added Appendix III may -- you know, if industrial
8 wastes are co-disposed with CCR, Appendix III may include
9 constituents identified in Chapter 3, Appendix A.

10 BOARD MEMBER CAHN: I just wouldn't use the
11 word Appendix III. I would say the sampling requirements
12 will include, can include other --

13 BOARD MEMBER BEDESSEM: But I think what
14 they're looking at specific constituents of concern related
15 to municipal solid waste, because -- not municipal, but
16 it's basically industrial waste from the facility is what
17 we're trying to address. It's usually MSW.

18 MS. WEIKART: If I may. The Appendix A of
19 Chapter 3 that we're referring to is for constituents
20 specifically for detection monitoring of industrial waste.
21 And so we would like to add that to the Appendix III, which
22 is detection monitoring in the CCR in Chapter 18.

23 BOARD MEMBER BEDESSEM: So it doesn't
24 include the geochemical parameters like we were just
25 discussing.

1 MS. WEIKART: Only be the same for
2 assessment monitoring, as well, if applicable.

3 BOARD MEMBER BEDESSEM: So --

4 BOARD MEMBER CAHN: And I -- I don't know
5 why I'm hung up -- okay. I guess it's only in Appendix IV,
6 which is part of this rule, is what I'm concerned about.
7 So I'm okay with it there.

8 BOARD MEMBER BEDESSEM: But I still think
9 if you say those wastes are co-disposed, so the average Joe
10 looks at those doesn't think they're going to add Chapter 3
11 stuff at their discretion for no reason. It has to be the
12 reason is that they have disposed of these other materials.

13 MS. WEIKART: Yes. We agree.

14 BOARD MEMBER BEDESSEM: Okay.

15 MS. WEIKART: Mr. Chair, that concludes our
16 presentation for Chapter 18.

17 CHAIRMAN KIRKBRIDE: Thank you.

18 BOARD MEMBER CAHN: Can I just -- I'm
19 sorry. I just -- okay. So on line 581, would it be a
20 problem if it started out with the may include. So it
21 would read, starting at 574, groundwater sampling analysis
22 requirements, the criteria 40 CFR Part 257, Subpart D,
23 257.93 are incorporated by reference with the following
24 modifications, and then say -- because we're talking about
25 groundwater sample analysis requirements, and then say may

1 include constituents identified in Chapter 3, Appendix B,
2 rather than saying Appendix IV may include. Just saying
3 that the sampling analysis requirements may include
4 constituents identified in Chapter 3. Unless you -- I'm
5 having a hard time making my concern.

6 BOARD MEMBER BEDESSEM: I think what they
7 want to do is put it in -- that those were the things that
8 they wanted to add if there was MSW buried, but --

9 MS. ENGELS: That's correct. We
10 specifically would like to add constituents from Appendix A
11 into the detection monitoring program for Appendix III of
12 this rule, and then mirror Chapter 3, Appendix B
13 constituents into Appendix IV of this rule. I think what's
14 also a little confusing is the terminology for appendixes
15 varies, and that's just how --

16 BOARD MEMBER CAHN: But you're adding it to
17 the constituents that are being sampled. In addition to
18 what's listed in Table 4, you're also going to add the --
19 they're not being added to the table.

20 MS. ENGELS: That's correct.

21 BOARD MEMBER CAHN: They're being added --.

22 MS. ENGELS: That's correct.

23 BOARD MEMBER CAHN: Okay. I think the
24 language needs to be clear on that, because I was obviously
25 confused, so...

1 MS. ENGELS: So we're saying Appendix III
2 may include constituents identified in Chapter 3, Appendix
3 A.

4 BOARD MEMBER CAHN: If industrial wastes
5 are --

6 MS. ENGELS: Co-disposed.

7 BOARD MEMBER CAHN: -- co-disposed.

8 BOARD MEMBER BEDESSEM: And then it would
9 be equivalent to the municipal solid waste rules, we're
10 going to test those constituents and it'd be under the
11 detection assessment anyway.

12 BOARD MEMBER CAHN: Constituents identified
13 in Chapter 3, as requested -- may be added as requested by
14 the Administrator or something like that.

15 MS. ENGELS: I'm hesitant to group together
16 subpart (A) and (B). I think -- or unless I'm
17 misinterpreting what you're suggesting.

18 BOARD MEMBER CAHN: I'm not saying put them
19 together.

20 MS. ENGELS: Okay.

21 BOARD MEMBER CAHN: They're separate. But
22 it's just a question of whether Appendix III appears,
23 Appendix IV appears. That's all.

24 BOARD MEMBER BEDESSEM: They want the III
25 and IV in there, because then that puts it into the system

1 of detection and assessment monitoring, which is equivalent
2 how it's handled for the municipal solid waste rules.

3 BOARD MEMBER CAHN: Okay.

4 BOARD MEMBER BEDESSEM: So it wouldn't be
5 any different in the handling, and it's completely opposite
6 from what we just discussed with the geochemical parameters
7 we don't want in there. These we want in there.

8 MS. ENGELS: Yes.

9 BOARD MEMBER CAHN: So then why would that
10 language be under detection monitoring and assessment
11 monitoring, rather than where it is?

12 BOARD MEMBER BEDESSEM: That's a point.

13 BOARD MEMBER CAHN: So anyways --

14 MS. ENGELS: We'll take a quick side bar.

15 BOARD MEMBER BEDESSEM: Yeah, as far as
16 placement.

17 BOARD MEMBER CAHN: All right.

18 BOARD MEMBER BEDESSEM: But maybe we should
19 leave it there, because that's where we decided to leave
20 what we're doing with the geochemical list. So it can't be
21 by itself, so you need to leave these in there so that all
22 three of those are in there. Seriously, otherwise there's
23 nothing in the paragraph.

24 BOARD MEMBER CAHN: We have a paragraph on
25 groundwater classification, and then we have a paragraph on

1 detection monitoring, and then a paragraph on assessment
2 monitoring. But anyways...

3 BOARD MEMBER BEDESSEM: Our chair is
4 suffering.

5 BOARD MEMBER CAHN: Okay. I'm happy to let
6 you go ahead and figure this out. Come back at the next
7 meeting with your resolution.

8 MS. ENGELS: I believe we included it in
9 this section because it -- we would like those constituents
10 identified in their sampling plan, which is identified
11 under groundwater sampling and analysis requirements. And
12 then I believe the detection monitoring program talks
13 about -- just looking here -- identifying SSIs after
14 90 days of a sampling event and the frequency of the
15 detection monitoring program, very high summary of that
16 section in the federal rule.

17 BOARD MEMBER BEDESSEM: So I agree with
18 what you said. I think it's okay where it is --

19 MS. ENGELS: To leave it --

20 BOARD MEMBER BEDESSEM: -- down in there.

21 MS. ENGELS: -- where it's currently
22 located.

23 CHAIRMAN KIRKBRIDE: Well, then anything
24 else from the Board here?

25 BOARD MEMBER BEDESSEM: No.

1 BOARD MEMBER CAHN: Other than the next
2 meeting.

3 BOARD MEMBER BEDESSEM: Oh, yeah, the next
4 meeting.

5 CHAIRMAN KIRKBRIDE: These rules, we don't
6 need to do any more with them? Are we sending them back?
7 Is that what we do?

8 MS. ENGELS: Right. Mr. Chairman, we would
9 request that you vote or take a vote to -- is it to make a
10 final action on our proposed rule?

11 MS. THOMPSON: I think that's what the
12 agency would prefer. And the way the rules are written is
13 if you can't make a recommendation to move forward to the
14 Council, then we need specific recommendation of what to do
15 next.

16 BOARD MEMBER BEDESSEM: Well, clearly
17 there's a number of things that we've agreed need to be
18 modified. I -- since this hadn't really come up
19 extensively in public comment, I don't know that we need
20 additional public comment.

21 What are your thoughts? I would think we just --
22 because we've been through two public comment time periods.

23 MS. ENGELS: That's correct. For this
24 specific section that we discussed extensively, we did not
25 receive any public comments on this, or --

1 MS. WEIKART: Not during the second round.

2 MS. ENGELS: -- of where it's located in
3 the rule.

4 MS. THOMPSON: Additionally, once we
5 receive a docket from the Council, the Environmental
6 Quality Council, it would go out for public comment again.
7 So that's an additional consideration, if you're concerned
8 the public hasn't weighed in. There will be an additional
9 guaranteed 45-day notice period, so...

10 MS. ENGELS: And it's a longer comment
11 period.

12 MS. THOMPSON: It's longer than the period
13 that we use for the board, so...

14 BOARD MEMBER BEDESSEM: I think we would
15 make revisions and come back with a final version and,
16 fortunately, today it was wonderful to be able to have Lily
17 on the phone and know that -- that post change is going to
18 be okay with the Water Quality Division as well. I don't
19 think we need to vote.

20 BOARD MEMBER CAHN: I don't think we need
21 to vote.

22 And what we're saying is essentially we don't --
23 nobody is coming forward and saying we need another public
24 comment period, because, as you've said, they'll get a
25 chance to comment before the EQC. But let's get it

1 revised, come back to the Board, and then the Board can
2 move it forward with revised package for -- to EQC.

3 BOARD MEMBER BEDESSEM: Next time around.

4 BOARD MEMBER CAHN: Next time around.

5 MS. ENGELS: Just so I'm clear too,
6 there's -- you're not requesting that DEQ go out for
7 another round of public comment. You're just requesting
8 that we make the revisions as discussed today, and then
9 bring them back to the Board.

10 BOARD MEMBER CAHN: Yes.

11 MS. THOMPSON: Okay. So --

12 BOARD MEMBER BEDESSEM: With a different
13 color.

14 MS. ENGELS: We can change the color.

15 BOARD MEMBER BEDESSEM: Thank you.

16 MS. THOMPSON: So we can craft our notice
17 to indicate that we will not be taking public comment on
18 this rule for this one.

19 MS. ENGELS: Uh-huh.

20 MS. THOMPSON: So we'll do that.

21 BOARD MEMBER BEDESSEM: Chapter 28, for
22 Water Quality, we went ahead and did additional public
23 comment.

24 MS. THOMPSON: We will, because that's a
25 pretty significant change, what we're doing. And we may

1 receive comment on making those adjustments, so I think.

2 MS. ENGELS: I guess I do have a question.

3 For the Board, is it necessary to have a vote that the rule
4 does not move forward, or is that -- no? It's just that --

5 MS. THOMPSON: I think that --

6 MS. ENGELS: Since it's only a
7 recommendation to move forward --

8 MS. THOMPSON: Yeah.

9 BOARD MEMBER BEDESSEM: We've never voted,
10 other than someone making a motion to move it forward and
11 then having it not pass.

12 MS. THOMPSON: So earlier we had a similar
13 discussion, and -- with the Water Quality Chapter 28. And
14 they did not vote to have us come back. That we decided
15 that the way the statute is written is they have to vote to
16 recommend adoption to the Council. So they're voting to
17 make that recommendation to the Council. But if it's
18 not -- if they're not doing that recommendation, then they
19 don't need to vote, but we do need specific feedback. It
20 doesn't go into la-la land.

21 MS. ENGELS: Okay.

22 MS. THOMPSON: So their specific feedback
23 is that we make the changes that we've discussed today, and
24 that we come back again, but with no additional comment
25 period.

1 MS. ENGELS: Okay.

2 BOARD MEMBER BEDESSEM: So that's what our
3 own attorney advised us.

4 MR. KUHLMANN: As far as not making a
5 recommendation, yeah, we don't have to do a vote on that.

6 BOARD MEMBER CAHN: Okay with not have a
7 public comment when we made significant change to this
8 based on the fact that there was not public comment?

9 MR. KUHLMANN: As far as I know -- and Gina
10 or somebody correct me if I'm wrong about the rules of
11 practice and procedure part -- but I don't know that
12 there's public comment required before advisory board rules
13 at all.

14 MS. THOMPSON: Just supposed to --

15 MR. KUHLMANN: It's more a courtesy.

16 MS. THOMPSON: We're expected to provide
17 advance notice if there's a meeting. And so it has to
18 comply with Public Meetings Act.

19 MR. KUHLMANN: But public comment for any
20 type of rules I don't think is required for this. The only
21 requirement, I believe, is the 45 days for the EQC, because
22 the EQC's approval is sort of final step before it can go
23 to the governor.

24 MS. THOMPSON: Right. They're the adopting
25 entity. So because they're adopting a rule, then it has to

1 comply with the Administrative Procedures Act, so...

2 MR. KUHLMANN: Yeah.

3 BOARD MEMBER BEDESSEM: We're okay?

4 MS. THOMPSON: We think that you're okay.

5 So...

6 BOARD MEMBER BEDESSEM: Next meeting.

7 MS. THOMPSON: Okay. So we do have one

8 last agenda item to talk about, scheduling and whatnot.

9 And -- so to give you an idea, we will need a fourth
10 quarter meeting in front of the Board. Obviously --

11 BOARD MEMBER BEDESSEM: Isn't this a fourth
12 quarter meeting?

13 MS. THOMPSON: No. This is technically our
14 third quarter meeting that we moved.

15 BOARD MEMBER BEDESSEM: I apologize because
16 I opened it up as the fourth quarter meeting.

17 COUNCIL MEMBER CAHN: I did too. I put it
18 in my computer as my --

19 MS. THOMPSON: It's okay. So it's -- so we
20 would like to request some time in front of you. Water
21 Quality Division will most likely be able to bring that
22 Chapter 28 back in front of you. And I won't speak for
23 Solid and Hazardous Waste, but I would imagine they would
24 like to make those changes and get them back to you as soon
25 as possible to continue on with the promulgation process.

1 Additionally, in addition to those two normal
2 topics, our Administration Division --

3 BOARD MEMBER CAHN: Can you put the
4 microphone in front of you?

5 MS. THOMPSON: Oh. Sorry.

6 Okay. So the Administration Division, or the
7 Department as a whole, will be revising the Rules of
8 Practice and Procedure. There were some statute changes
9 this past session that have precipitated a need to do
10 another revision. And because it's Rule of Practice, we
11 have to take it in front of all the different boards again.
12 So that particular rulemaking will be led by Administrator
13 Colin McKee. So he will be making those presentations to
14 you. He'll also be presenting to Air Quality and Land
15 Quality and --

16 Board Member Bedessem, did you have a question?

17 BOARD MEMBER BEDESSEM: We're not going to
18 do it all at the same time like we did that one time?

19 MS. THOMPSON: No. Because as fun as that
20 is, there -- December does present a number of logistical
21 challenges that are just inherent in the system. So we
22 will do separate meetings. So they will -- we'll just put
23 it as an agenda item for your next normal meeting.

24 BOARD MEMBER BEDESSEM: Okay.

25 MS. THOMPSON: So when we're all back in

1 the office, I will send a Doodle Poll, because December is
2 right around the corner. So I will send a poll for
3 the following dates, so you can be thinking about them.
4 We're looking at either Friday, December 6th; Tuesday,
5 December 10th; Wednesday, December 11th; or Friday,
6 December 13th. We can do -- I don't believe that we have a
7 specific location requirement. I believe Colin's pretty
8 open. He just wants the time so that we can proceed with
9 the revision. And we will make sure to make remote access
10 available as needed. So we can either meet in Cheyenne or
11 Casper or Laramie or Lander, if you're just really feeling
12 Lander. I don't know.

13 So if the board has a preference let us know. We
14 can work on logistical pieces in that direction too.
15 Otherwise, we'll defer to the administrators.

16 And then the last item would be of annual report.
17 The statute requires that we submit an annual report on
18 behalf of the Board annually. We have yours drafted.
19 Because you are the chairman now, Mr. Kirkbride, I will --
20 I will kind of adjust the report to come from you, as the
21 chairman.

22 CHAIRMAN KIRKBRIDE: In a more masculine
23 tone of things or what?

24 MS. THOMPSON: Basically we just submit a
25 cover letter from you that explains that you have enclosed

1 an annual report. So it's drafted. I need to run it
2 through DEQ internal review before we send you the draft
3 report for your -- for your review. The period currently
4 covers through the end of September. However, if you wish
5 for me to add today's meeting information, I can.

6 So the end of the period was December 30th,
7 because it was a nice, neat number. So if you want me to
8 add today's stuff, I can, or today would be included in
9 next year's annual report. So if you don't have a
10 preference, I'll leave it as is, and I'll send it out to
11 you next week for your review.

12 CHAIRMAN KIRKBRIDE: I'd say send it out,
13 Gina. If you've got it made up, send it out. Don't you
14 think?

15 MS. THOMPSON: All right. That is all I
16 had. Thanks for meeting with us today.

17 BOARD MEMBER CAHN: Thank you.

18 BOARD MEMBER BEDESSEM: Thank you.

19 MS. THOMPSON: And I think you may need to
20 adjourn.

21 CHAIRMAN KIRKBRIDE: To adjourn?

22 MS. THOMPSON: Yeah.

23 CHAIRMAN KIRKBRIDE: I think we ought to
24 pick a place, don't you think?

25 BOARD MEMBER CAHN: Depends on what's on

1 the agenda.

2 MS. THOMPSON: So it's our two rules and
3 the rules of practice and procedure. I'm not aware of any
4 guidances or additional briefings.

5 BOARD MEMBER BEDESSEM: Can we do it in
6 Cheyenne?

7 BOARD MEMBER CAHN: I won't be able to
8 physically be at the meeting, so Cheyenne is fine with me.

9 BOARD MEMBER BEDESSEM: You're okay?

10 BOARD MEMBER DEURLOO: I go down there all
11 the time. Or to Denver.

12 CHAIRMAN KIRKBRIDE: That would be good for
13 me.

14 MS. THOMPSON: So we'll pick Cheyenne as
15 the location.

16 CHAIRMAN KIRKBRIDE: Okay. Any further
17 business to be transacted? If not, we are adjourned.

18 (Meeting proceedings concluded

19 4:57 p.m., October 17, 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 13th day of November, 2019.


KATHY J. KENDRICK
Registered Professional Reporter

